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**CAPITAL PUNISHMENT IN COLORADO:
1859–1972**

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INTRODUCTION

The history of capital punishment in Colorado is as old as the state's history of European settlement. It begins in 1859, when the first murder ever recorded in the new settlement of Denver was avenged by the hanging of the confessed perpetrator, John Stoefel. At the time, six-month-old Denver comprised part of Arapahoe County, in Kansas Territory. Although the community housed only 150 buildings (mostly saloons and gambling halls), some one thousand spectators attended the execution. Stoefel was driven in a two-horse wagon to a cottonwood tree in Cherry Creek, a rope was put around his neck, and he dropped to his death when the wagon

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was driven out from underneath him.¹ A fortnight later, the inaugural issue of the first Denver newspaper, the *Rocky Mountain News*, published the news about the crime and execution.²

This Article and its Appendix present information regarding every execution that occurred in Colorado between 1859 and 1972. The Article also examines the debates that changed the way in which the death penalty has been practiced in Colorado, including the movement of hangings from local counties to one central location in Cañon City in 1890, the temporary abolition of the death penalty in 1897, the continual search for a more "humane" way to execute, and the longstanding presence of strong abolition sentiment in the state.³ It will review how this abolition sentiment led to a temporary moratorium on the death penalty in the mid-1960s, which ended with the defeat of a ballot initiative in 1966 that would have removed the death penalty from Colorado's statutes had it passed. This Article concludes with general observations regarding the role of the medical profession in Colorado executions; comments about cases in which reasonable doubts exist about the guilt of the executed defendant; and a general discussion of the importance of race and ethnic status in determining who was executed in the state. Overall, this Article argues that the history of the death penalty in Colorado prior to 1972 is a history of its gradual restriction. Further, it demonstrates that the death penalty has always sparked controversy in the state; Colorado has housed substantial anti-death penalty sentiment, often led by religious leaders and politicians, as well as criminal justice and prison officials.

The Article begins by defining what is meant by a "legal execution" and explaining how I obtained information on the cases. The Article then presents the names of those executed

1. Olga Curtis, *Denver's First Murderer*, DENVER POST, May 7, 1978, Empire Magazine, at 66.

2. *Murder and Execution*, ROCKY MOUNTAIN NEWS, Apr. 23, 1859, at 3 [hereinafter *Murder and Execution*]. At its beginning, the newspaper was published as a weekly.

3. There are two unpublished papers in the Colorado State Archives that give valuable background information on the death penalty in Colorado. See Robert W. Gordon, *A Legislative History of Capital Punishment for the Territory and State of Colorado, 1861 to 1965* (1965) (unpublished manuscript, on file with the Colorado Historical Society); John O. Sindall, *Capital Punishment in Colorado* (1973) (unpublished manuscript, on file with the Colorado Historical Society).

in Colorado, the dates of their crimes and dates (and days of week) of their executions, the number of murder victims in each case, and information on the estimated number of spectators who attended the execution if it was open to the public. Part II examines ten executions that occurred in counties before Colorado became a state and fifteen others that occurred in counties before all executions were moved to the State Prison in Cañon City in 1890. Part III reviews hangings in the 1890s, the state's efforts to make executions more humane and to remove the role of the executioner in causing the death, and the rise of abolitionist sentiment in the state during the decade. Part IV discusses Colorado's experiment with complete abolition (1897–1901), which ended not because of increased crime in the state, but because angry vigilante mobs lynched criminals who they believed no longer deserved to live. Part V examines the executions in the first two-thirds of the twentieth century, beginning with hangings (1905–1933) and progressing to, as a consequence of renewed efforts to make executions more “humane,” asphyxiations (1934–1967). Part VI looks at the battles over the death penalty in the 1960s and early 1970s, both in Colorado and elsewhere in the U.S., which were fought in the legislature, the courts, and the arena of public opinion. The Article concludes with observations about key issues in Colorado's death penalty debate, including physician involvement, racial and ethnic bias, and the execution of the innocent.

I. COLORADO'S LEGAL EXECUTIONS: METHODOLOGICAL ISSUES AND GENERAL PATTERNS

This Section discusses how to define legal executions and differentiate them from lynchings, how to identify legal executions, and how information about them was collected. After identifying the relevant set of executions, I explain some general patterns.

A. Defining and Identifying Executions

In the 110 years after John Stoefel was hanged from the cottonwood tree in Cherry Creek in 1859, 101 additional legally mandated executions occurred in what would become the state of Colorado in 1876. The last of these 102 executions occurred in June 1967, when Luis Jose Monge, having fired his

attorneys, was granted his wish and was asphyxiated at Colorado State Penitentiary in Cañon City.⁴ He was the last person executed in the United States before the 1972 *Furman v. Georgia* decision,⁵ in which the Supreme Court effectively invalidated all but a few death penalty statutes nationwide.⁶ Across the country, no other executions occurred until 1977.⁷ Colorado did not execute another person for three decades, until the state executed Gary Davis in 1997.⁸ This Article focuses on the history of the death penalty in Colorado prior to the 1972 *Furman* decision and hence focuses on 102 of the 103 executions known as of 2003.⁹

Assembling a list of those executed in Colorado's history is neither a simple nor a straightforward task. Before November 1890, Colorado executions occurred in counties, and there has never been a "master list" that gives students of the death penalty the names, dates, and places where executions were carried out under county authority. The best single source for execution data, both in Colorado and in other states, comes from the scholarship of M. Watt Espy, an Alabama researcher whose work in documenting executions scholars regard as definitive.¹⁰ As a starting point, Mr. Espy supplied his data for this project, which included the names and dates of

4. See *infra* Appendix, notes 632–40 and accompanying text.

5. 408 U.S. 238 (1972).

6. After *Furman* was handed down, there were still some questions about some narrowly defined and/or mandatory capital statutes. MICHAEL MELTSNER, *CRUEL AND UNUSUAL: THE SUPREME COURT AND CAPITAL PUNISHMENT* 299–302 (1973).

7. Gary Gilmore, the first "post-*Furman*" prisoner to be put to death in the United States, was executed by a firing squad in Utah on January 17, 1977. Like Monge, Gilmore dropped his appeals and asked to be executed. For a complete and up-to-date list of all those executed in the United States since 1976, see Death Penalty Information Center, at <http://deathpenaltyinfo.org/facts.html#Executions> (last visited Apr. 15, 2003).

8. Lisa Levitt Ryckman, *Davis Pays Final Price*, ROCKY MOUNTAIN NEWS, Oct. 14, 1997, at 5A. As this Article went to press in early 2003, Davis remained the only person executed in Colorado since 1967. This *de facto* moratorium on executions has occurred despite strong efforts by the Colorado legislature to increase the use of the death penalty. See Roxane J. Perruso, *And Then There Were Three: Colorado's New Death Penalty Sentencing Statute*, 68 U. COLO. L. REV. 190 (1997); Robin Lutz, Note, *Experimenting with Death: An Examination of Colorado's Use of the Three-Judge Panel in Capital Sentencing*, 73 U. COLO. L. REV. 227 (2002).

9. For detailed information on the death penalty in Colorado post-1972, see Lutz, *supra* note 8, at 227.

10. See, e.g., Francis X. Clines, *A Dismayed Historian of the Gallows*, N.Y. TIMES, Nov. 18, 1992, at A16.

approximately ninety percent of the executions included in the Appendix. Extensive searches in the Colorado State Archives, Denver Public Library, and Norlin Library at the University of Colorado-Boulder (as well as in several smaller libraries throughout the state) were conducted to supplement the Espy data and to collect information on each execution. In several cases in which the race of the victim who had been murdered by the executed prisoner was unknown, information was obtained from death certificates from the Health Statistics Section, Colorado Department of Public Health and Environment.

To assemble a complete list of Colorado executions, decisions had to be made on how to accurately distinguish a legal execution—performed after a trial under statutory authority—from a lynching—in which a mob or group performs an execution without legal authority. Stephen J. Leonard has documented some 175 lynchings in Colorado between 1859 and 1919, including two in which the victims were burned to death and one in which a woman was lynched.¹¹ Sometimes a perfunctory trial before a vigilante court preceded a lynching, but that extra-legal trial should not cause today's historians to classify the hanging as a legal execution. On the other hand, five cases listed as legal executions in the Appendix arguably should be classified as lynchings,¹² but are included in the inventory of legal executions because they were, at least, quasi-legal. Strictly speaking, these five executions occurred without statutory authority. In each, however, the prisoner received a formal trial, which included a judge, defense attorney, prosecutor, and jurors, and attempts by those in charge to provide the prisoner with minimal due process protections, such as the opportunity to cross-examine witnesses. The five defendants in these questionable cases were tried in forums known as "People's Courts."

11. See STEPHEN J. LEONARD, *LYNCHING IN COLORADO, 1859–1919* 3 (2002) [hereinafter LEONARD, *LYNCHING IN COLORADO*]; Stephen J. Leonard, *Avenging Mary Rose: The Lynchings of Margaret and Michael Cuddigan in Ouray, Colorado, 1864*, 37 *COLO. HERITAGE* 34 (1999) [hereinafter Leonard, *Avenging Mary Rose*].

12. See *infra* Appendix, notes 339–46 and accompanying text (cases of John Stoeffel, Moses Young, Marcus Gredler, James A. Gordon, and Patrick Waters). Indeed, these five cases are included in Professor Leonard's seminal work on Colorado lynchings, so there is some overlap in our work. LEONARD, *LYNCHING IN COLORADO*, *supra* note 11, at 3.

People's Courts were used in Denver between 1859 and 1861, when the territory of Colorado was organized.¹³ At the time, Denver was under the jurisdiction of Arapahoe County, Kansas Territory, but the nearest functioning court system was in Leavenworth, Kansas. Thus, in pre-railroad days, Colorado lacked an effective, legally sanctioned criminal justice system. Hence, *ad hoc* People's Courts developed, which varied slightly in structure from case to case but usually had one man serving as a judge and twelve others as jurors.¹⁴ In at least one of these cases, the court summoned twenty-four prospective jurors and permitted the prosecutor and defense to strike six.¹⁵ Given these efforts to ensure some measure of due process and the implausibility or impracticality of any alternative, this Article's catalogue of legal executions includes these cases.

These same criteria led to the exclusion of other defendants whose hangings followed perfunctory trials in jurisdictions in which and at times when legitimate legal remedies within the criminal justice system existed. Take, for example, the hanging of Joseph ("Jack") Carr on November 6, 1869, in Evans, Weld County. After a quarrel, he shot the owner of a local hotel, who was a former member of the territorial legislature. Once apprehended shortly after the murder, Carr was then

taken back, a people's court was organized, with Capt. R. Sopris as judge, a jury empaneled, and after a trial lasting half an hour, the jury returned a verdict of murder in the first degree, and the judge sentenced him to be hung to the nearest tree, which was done.¹⁶

13. LEONARD, LYNCHING IN COLORADO, *supra* note 11, at 15-29; Francis S. Williams, *Trials and Judgments of the People's Courts of Denver*, 27 COLO. MAG. 294 (1950).

14. B. Richard Burg, *Administration of Justice in the Denver People's Courts*, 7 J. OF THE WEST 510 (1968). In addition to the five defendants who were hanged under the jurisdiction of the People's Courts, Burg also describes the case of William F. Hadley, who was sentenced to death by a People's Court on June 25, 1860. However, on the eve of his execution, Hadley bribed a guard, escaped, and was never heard from again. *Id.* at 515.

15. See *infra* Appendix, note 346 and accompanying text (case of Patrick Waters).

16. *Murder of Daniel Steele at Evans*, ROCKY MOUNTAIN NEWS, Nov. 8, 1869, at 4; see also LEONARD, LYNCHING IN COLORADO, *supra* note 11, at 64-65; CAROL REIN SHWAYDER, 1 WELD COUNTY-OLD & NEW A32 (1983).

To today's eye, this proceeding is merely a vigilante court with perfunctory hearings followed by lynch-mob justice. Furthermore, unlike in earlier years, the Territory of Colorado had an active death penalty statute after November 1861.¹⁷ Hence, it is not included in this catalogue of legal executions.

B. General Patterns in Colorado Executions

Using this methodology, a total of 102 legal executions between 1859 and 1972 were identified. Only men were executed,¹⁸ all of whom were convicted of murder.¹⁹ Table 1, which follows this Article, summarizes these executions, breaking them into four categories: county authority, pre-statehood (ten cases), county authority after statehood (fifteen cases), hangings under state authority (forty-five cases), and

17. See *infra* note 19 and accompanying text.

18. Although Colorado has never executed a woman, there was at least one lynching that claimed the life of a woman. On January 19, 1884, Michael and Margaret Cuddigan were lynched in Ouray after being arrested (on skimpy evidence) of killing a ten-year-old foster child who was in their care. Margaret was twenty-one at the time of her death and was seven months pregnant. See LEONARD, LYNCHING IN COLORADO, *supra* note 11, at 73-86; Leonard, *Avenging Mary Rose*, *supra* note 11. There is also a possibility that a Hispanic woman was lynched in Trinidad in 1873. LEONARD, LYNCHING IN COLORADO, *supra* note 11, at 74. This research project has not identified any woman who was ever sentenced to death in Colorado.

19. Although every person legally executed in Colorado since 1859 was convicted of murder, there were other crimes that at one time or another also carried the death penalty. A mandatory death sentence was legislated for those convicted of causing a death by anarchy. See COLO. REV. STAT. § 40-23-14 (2002). Those performing abortions in which the woman died also faced a mandatory capital sentence. See *id.*, § 40-2-23. The 1861 Session Laws made the death penalty mandatory for those convicted of perjury that resulted in the conviction and execution of an innocent person. Act of Nov. 5, 1861, § 80, 1861 Colo. Terr. Sess. Laws 290, 306; see also COLO. REV. STAT. § 35-1717 (1908). In 1939, in the wake of the 1932 New Jersey kidnapping of the son of aviator Charles Lindbergh, the legislature made kidnapping in which the victim suffers bodily harm a capital offense. See Act of Apr. 3, 1939, § 1(a), 1939 Colo. Sess. Laws 319. Finally, prisoners serving a life sentence faced a death sentence for assaults while attempting to escape:

Every person undergoing a life sentence in the state penitentiary who, while escaping or attempting to escape, commits an assault with intent to commit bodily injury upon the person of another with a deadly weapon or instrument, or by any means of force likely to produce great bodily injury, shall be guilty of a felony, and upon conviction thereof, be punishable by death.

COLO. REV. STAT. § 40-7-49 (repealed).

asphyxiations under state authority (thirty-two cases).²⁰ Table 1 also lists the date of the offense, date of execution, the day of week on which the execution occurred, and the number of months between the crime and the execution.

As shown in Table 1, on eight occasions, two men were executed on the same day²¹ and twice the state executed three people on a single day.²² One of the double executions claimed the lives of Louis and John Pacheco, who are the only brothers to be executed in the state.²³ Table 2 categorizes some of the data from Table 1 so that various trends by decade can be examined. During the 1930s—Colorado's busiest decade—twenty-five executions took place, seven in 1930 alone. Colorado's execution total was also in double figures in the 1880s (thirteen), the 1890s (twelve), and in the 1940s (thirteen). There were, however, only ten executions (including the 1997 execution of Gary Davis) in the last half of the twentieth century.

Table 2 also collapses data from Table 1 to calculate the average time between the crime and execution. Prior to 1869, when there were few places to confine prisoners, executions typically occurred within two months of the crime. During the next ninety years, prisoners' executions occurred roughly one to two years after their crimes. By the 1960s, however, the average prisoner waited four years after the crime before his execution. The longest time between the commission of the crime and execution came in the case of Leroy Adolph Leick, executed in January 1960, after a six-year battle fought mainly

20. In 1988, Colorado changed its method of execution from asphyxiation to lethal injection. See Act of May 29, 1988, § 1, 1988 Colo. Sess. Laws 671.

21. See *infra* Appendix, notes 349–54 and accompanying text (cases of Franklin Foster and Henry Stone), 370 and accompanying text (case of Merrick Rosengrants), 371 and accompanying text (case of Franklin Gilbert), 401–02 and accompanying text (case of Thomas A. Jordan), 403 and accompanying text (case of Peter Augustana), 414–15 and accompanying text (cases of J. Newton Andrews and Fred Arnold), 459–62 and accompanying text (cases of Raymond Jasper Noakes and Arthur Alonzo Osborn), 474–79 and accompanying text (cases of Howard L. Royston and George J. Abshier), 514–17 and accompanying text (cases of Louis Pacheco and John Pacheco), 530–34 and accompanying text (case of Pete Catalina), 535–36 and accompanying text (case of Angelo Agnes).

22. See *infra* Appendix, notes 407–09 and accompanying text (cases of William Holt, Albert Noble and Deonicio Romero), 489–93 and accompanying text (cases of Claude Ray, John Walker, and Andrew Halliday).

23. See *infra* Appendix, notes 514–17 and accompanying text (cases of Louis Pacheco and John Pacheco).

over his mental competence for execution.²⁴ In sharp contrast, the average time between sentence and execution for the 749 inmates executed in the U.S. between 1977 and 2001 was ten years.²⁵

Table 3, also collapsing case-by-case data from Table 1, shows that about seventy percent of Colorado executions occurred on Fridays. This finding holds for both executions under county authority (1889 and earlier) and those conducted in and after 1890 under state authority. This result occurred because Colorado statutes required that the trial judge, or state Supreme Court if the case was appealed, designate a week during which to conduct the execution. The sheriff or warden, however, had discretion to determine the exact day and hour. The Colorado Supreme Court defined that "week" as beginning at midnight Saturday and ending at midnight the following Saturday.²⁶ Friday executions allowed the prisoner to live most of the week and eliminated the need for those employees involved in the execution to work on weekends.

Table 4 shows that three-quarters of those executed in Colorado—78 out of 102—were sentenced to death for killing one victim. Five were convicted of killing four people, including three codefendants who killed four people during a bank robbery in Lamar in 1928.²⁷ In 1957, the state executed John Gilbert Graham, the only person executed for killing more than four people, after his conviction for blowing up an airliner in 1955.²⁸

Finally, Table 5 displays the estimated attendance at executions that were conducted in public and open to all interested citizens. Executions were important social events, and often they attracted large audiences—some of the biggest crowds ever assembled in the state—from distant towns and cities. As discussed below, by the 1880s, the popularity of

24. See *infra* Appendix, notes 603–12 and accompanying text (case of Leroy Adolph Leick).

25. TRACY L. SNELL & LAURA M. MARUSCHAK, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, BULLETIN, CAPITAL PUNISHMENT 2001, at 12 (Dec. 2002). This time span would be even longer if those who gave up their appeals and asked to be executed were removed from the analysis.

26. *In re Tyson*, 22 P. 810, 812 (Colo. 1889); *Mora v. People*, 35 P. 179, 182 (Colo. 1893).

27. See *infra* Appendix, notes 474–79 and accompanying text (cases of Ralph Emerson Fleagle, Howard L. Royston, and George J. Abshier).

28. See *infra* Appendix, notes 598–602 and accompanying text (case of John Gilbert Graham).

executions and their festive atmospheres prompted the state to turn them into private events. The largest crowd to witness an execution assembled in Denver in 1886 to watch Andrew Green slowly strangle to death.

Having observed some general patterns in Colorado executions, this Article now focuses on the laws and individual executions that form these patterns.

II. 1859–1889: THE DEBATES, THE LAWS, AND PUBLIC HANGINGS IN COUNTIES

Prior to 1890, Colorado executions were conducted in the individual counties and by hanging. No central place existed to hold all executions in the state and most executions were public. This section reviews the debates on public hangings, the legislation that permitted them, and the hangings that occurred under county authority. Ultimately the state moved executions behind the closed doors of one prison, largely because of the atmosphere of public executions that some felt demeaned the communities in which they were held.

A. *The Debate*

The justification that underlay Colorado executions in the 1860s disappeared with the opening of a territorial prison in Cañon City in 1871.²⁹ In addition to a formal criminal justice system, Colorado settlers in 1860 lacked jails or prisons, other than distant federal prisons, that housed those convicted of violent crimes for long periods of time.³⁰ An 1866 newspaper

29. Cañon City is located in south central Colorado, approximately one hundred miles south of Denver and forty miles west of Pueblo. A member of the Territorial Legislature from Cañon City, Thomas Macon, was instrumental in the decision to locate the prison at Cañon City. At the time, both Denver and Golden were fighting over which city would be named capital of the new state. Representative Macon supported Denver over Golden, and this support won him enough votes from legislators in northern Colorado to have the prison located in Cañon City. ROSEMAE WELLS CAMPBELL, FROM TRAPPERS TO TOURISTS: FREMONT COUNTY, COLORADO, 1830–1950 at 46 (1972). For more information on the history of the Colorado State Penitentiary, see Colorado Department of Personnel and Administration, State Penitentiary Records at the Colorado State Archives, at <http://www.archives.state.co.us/pen/history.htm> (last accessed Apr. 15, 2003).

30. Denver did not have a jail until 1861, three years after the city was founded. LEONARD, LYNCHING IN COLORADO, *supra* note 11, at 106.

description of the first Denver execution under territorial law noted that “[p]revious to this the exigencies of the times threw the administration of justice for capital offenses into the hands of the people and People’s Courts, which, on account of the absence of places wherein to confine notorious criminals, were obliged to dispense justice in a very summary manner.”³¹

Supporters of the death penalty mainly cited its deterrent effect as a justification, while voices in opposition focused on religious principles and the basic immorality of revenge. A debate in the *Rocky Mountain News* in 1867 provides examples of the arguments from both sides. A lengthy letter to the editor complained that the death penalty is “clearly opposed to the divine precepts of Jesus, . . . [and] at variation with every principle of justice.”³² The author denounced the death penalty as pure retaliation and revenge and pointed to several European countries to show that the death penalty was in decline. Finally, the author argued that imprisonment for life “is a more horrible thing to contemplate, in many instances, than death.”³³ In response, the editors of the *Rocky Mountain News* focused on the death penalty as a means of deterring future murderers from criminal violence, explaining:

It is a fact well known to all our pioneer settlers, that were it not for the visitation of the death penalty upon notorious offenders, our city would at one period have been so completely sunken in the wicked depravity of crime, as to have made it utterly impossible for a quiet, peaceable man, much less a God-fearing, law abiding one, to reside in it.³⁴

Notably, this debate lacks any discussion of two leading modern justifications for the death penalty: retribution and the need to execute killers to help ease the grief of the families of the murder victims. Instead, these nineteenth-century justifications for the death penalty focused on religious principles, the need to execute killers because they could not be kept in prison for long periods of time, and deterrence.

31. *Justice Appeased*, ROCKY MOUNTAIN NEWS, May 30, 1866, at 1 [hereinafter *Justice Appeased*].

32. Laura de Forch Gordon, *Capital Punishment*, ROCKY MOUNTAIN NEWS, Apr. 24, 1867, at 2.

33. *Id.*

34. *Id.*

B. *The Legislation*

Governor William Gilpin signed the first legislation authorizing the death penalty in the Territory of Colorado into law on November 5, 1861,³⁵ which was codified in 1868.³⁶ The first legal execution under territorial authority took the life of William S. Van Horn, who was hanged before a crowd of "thousands" in Central City on December 18, 1863.³⁷ A bill signed by Governor Edward M. McCook on February 11, 1870, amended the 1868 capital statute.³⁸ Legislative glitches, however, spared the lives of several murderers, because the 1870 legislation permitted defendants to avoid the death penalty by pleading guilty and avoiding a jury trial. As Perruso explains:

The legislation . . . limited the availability of the death penalty to cases *in which the jury* found not only that the defendant was guilty of murder, but also that the killing was deliberate, premeditated, or committed during the perpetration (or attempted perpetration) of a felony.³⁹

The 1876 Denver trial of Filomeno Gallotti and two of his associates ("the Italian Murderers") for a quadruple murder revealed this "loophole." The murders were especially atrocious, and the defendants escaped several lynching attempts before their trial. Future Colorado Governor and U.S. Senator, Charles S. Thomas, served as Gallotti's defense attorney.⁴⁰ Thomas successfully argued that no jury could be impaneled following a defendant's guilty plea, which negated

35. See Perruso, *supra* note 8, at 194; Act of Nov. 5, 1861, div. IV, § 20, 1861 Colo. Terr. Sess. Laws 290, 293. For two years prior to that bill, provisional laws also punished murder with a mandatory death sentence. See Provisional Laws and Joint Resolutions Passed at the First and Called Sessions of the General Assembly of Jefferson Territory, Part First, § 2 (1860).

36. COLO. TERR. REV. STAT. ch. XXII, § 20 (1868).

37. See *infra* Appendix, notes 347-48 and accompanying text (case of William S. Van Horn).

38. See Act of Feb. 11, 1870, 1870 Colo. Terr. Sess. Laws 70.

39. Perruso, *supra* note 8, at 194 (emphasis added).

40. PAUL H. GANTT, THE CASE OF ALFRED PACKER, THE MAN EATER 146 n.213 (1952). Thomas served as governor between 1899 and 1901 and as Senator between 1913 and 1921. *Id.*

the possibility of a death sentence. The three defendants promptly received sentences of life imprisonment.⁴¹

Before this issue was resolved, Colorado achieved statehood, and the state's first legislature adopted both the 1868 death penalty statute and the 1870 provision amending it.⁴² On February 2, 1877, an African-American named James Miller, convicted of killing a white man at a dance hall after being harassed by another white patron, became the first prisoner who the state of Colorado legally executed.⁴³ Miller pled not guilty, thus closing the door to the type of relief won by the Italian Murderers.

In 1881, the legislature attempted to close the avenue through which the Italian Murderers escaped the gallows by repealing the provisions of the 1870 statute. They instead adopted

a new statute with essentially the same provisions but adding a proviso that in case a defendant pleaded guilty of murder, a jury should pass on the question whether the murder was deliberate and premeditated or not. Thus in the case of a positive finding, the death penalty could be imposed.⁴⁴

This corrective action, however, was itself flawed because by repealing the 1870 statute the convictions of all those sentenced under its authority could not be sustained.⁴⁵ The Colorado Supreme Court revealed a similar flaw in an 1882 decision. The Colorado legislature had repealed a larceny statute in 1881 without a "savings clause" to maintain the applicability of the statute to all crimes committed prior to its

41. *Id.* at 81. A similar issue recently led a New York court to invalidate a portion of the current New York death penalty law. The statute allows for the imposition of a death sentence only by a jury. Defendants pleading guilty to capital murder (which is allowed only on the consent of the prosecutor and permission of the judge) cannot be sentenced to death. The New York Court of Appeals has ruled that this provision coerces guilty pleas and punishes the right to trial by jury—at least in cases where the prosecutor has filed a notice of intent to seek a capital sentence. It has invalidated one death sentence imposed under the statute on this ground. *See People v. Harris*, 779 N.E.2d 705 (N.Y. 2002).

42. Perruso, *supra* note 8, at 195 (citing Colo. Gen. Laws ch. XXIV, div. IV, § 615 (1877); Colo. Gen. Laws ch. XXIV, div. XV, §§ 868, 869 (1877)).

43. *See infra* Appendix, note 362 and accompanying text (case of James Miller).

44. GANTT, *supra* note 40, at 81 (citing Colo. Laws 1881, at 70).

45. *Id.* at 82.

repeal.⁴⁶ Similarly, in the 1883 decision *Garvey v. People*,⁴⁷ the Colorado Supreme Court held that any murder conviction under the 1870 statute could not be sustained because the amended statute did not contain a savings clause, thus prohibiting the retroactive application of the new 1881 statute.⁴⁸

This 1883 decision also effectively spared the life of one of Colorado's most notorious felons, alleged cannibal Alfred Packer. Packer received a death sentence for the murder of five companions on April 13, 1883, one month prior to the *Garvey* decision. In 1885, the Colorado Supreme Court invalidated Packer's death sentence under *Garvey* but allowed the state to try Packer under Colorado's manslaughter statute, which had avoided legislative tinkering.⁴⁹ In 1886, Packer was convicted of manslaughter and sentenced to forty years in prison, fifteen of which he served before being paroled in 1901.⁵⁰

Following Packer's flawed death sentence in 1883, the legislature finally corrected the statute to allow capital punishment of defendants who pled guilty.⁵¹ For the first time, this statute established degrees of murder, setting a penalty of ten years to life for those found guilty of second-degree murder.⁵²

C. *The Controversy about Public Executions*

Public executions—whether legally authorized or by lynching—were important social events in the community that served an entertainment function. Legal executions regularly attracted audiences of between one thousand and five thousand

46. See *Hirschburg v. People*, 6 Colo. 145 (1882); GANTT, *supra* note 40, at 82.

47. 6 Colo. 559 (1883).

48. See *id.*; GANTT, *supra* note 40, at 82.

49. GANTT, *supra* note 40, at 82. See also Colorado Department of Personnel & Administration, The Alfred Packer Collection at the Colorado State Archives, at <http://www.archives.state.co.us/packer.html> (last accessed Apr. 15, 2003).

50. See Colorado Department of Personnel & Administration, The Alfred Packer Collection at the Colorado State Archives, at <http://www.archives.state.co.us/packer.html> (last accessed Apr. 15, 2003). Packer died in 1907. *Id.*

51. WILLIAM M. KING, GOING TO MEET A MAN 13–14 (1990).

52. Perruso, *supra* note 8, at 195 (citing Colo. Gen. Stat. ch. XXV, div. IV, § 709 (1883)).

spectators.⁵³ By far the largest number of witnesses to an execution gathered in Denver on July 27, 1886, to watch Andrew Green die for the murder of a streetcar driver.⁵⁴

Debate in Denver over whether hangings should be public accelerated in the month before Green's execution. By that time, several eastern cities—including Boston, New York, and Philadelphia—had abolished public hangings, and some civic leaders feared that the spectacle of a public hanging would tarnish the image of the progressive, cosmopolitan city that Denver was trying to cultivate.⁵⁵ A year before, State Representative Lafe Pence of Ouray had tried to abolish public hangings following the lynching of a woman in his city.⁵⁶ Editorials in the *Denver Tribune-Republican* urged the sheriff to conduct the hanging in private, but other editorials in the *Rocky Mountain News* urged the sheriff to open the event to the public.⁵⁷ As a compromise, the sheriff allowed the public to witness Green's execution but did not announce its site beforehand. Instead, the site became known only on the day of Green's death when carpenters arrived to construct the gallows. By the time they finished the job—still several hours before the hanging—some three thousand spectators had already assembled.⁵⁸

Green was hanged with "twitch-up" gallows, which were thought to inflict less suffering on the prisoner and to run a lesser chance of blunder than the more traditional "long-drop" gallows. With long-drop hanging, the prisoner drops with a rope around his neck, and his weight causes death through strangulation or a broken neck.⁵⁹ With the "twitch-up" method,

53. See *infra* Table 5.

54. See *infra* Appendix, note 386 and accompanying text (case of Andrew Green).

55. KING, *supra* note 51, at 91.

56. *Id.* at 92–93.

57. *Id.* at 92–98.

58. *Id.* at 119.

59. Hangings caused relatively instantaneous death if the victim's spinal cord was severed. However, this happened in only a minority of hangings. More often, the rope would cut off blood supply to the brain, taking several minutes before death would come, or the prisoner would be asphyxiated, causing the prisoner to gasp for breath for several moments while he slowly suffocated. If the drop was too long, the prisoner would be decapitated. Consequently, hanging as a method of executions was always controversial. STUART BANNER, *THE DEATH PENALTY: AN AMERICAN HISTORY* 44–48 (2002). It was hoped that the "twitch-up" method of hanging would increase the proportion of executed prisoners who succumbed to a broken neck. *Id.*

a weight greater than that of the condemned man's body causes the death.⁶⁰ In Green's case, the executioner attached a 310-pound weight to the rope, which was strung through series of pulleys on a horizontal beam. When the weight fell, taking with it the slack in the rope around his neck, Green shot up about four feet into the air.⁶¹ The launch, however, failed to break Green's neck, so the crowd of fifteen to twenty thousand spectators,⁶² including a choir that sang several hymns during the ceremony, watched for nearly twenty-three minutes as Green slowly strangled to death.⁶³ In the aftermath, as King notes, "the abolition of public hangings in Colorado, because of the Denver experience with Andrew Green, was an idea whose time had surely come."⁶⁴

Overall, in the three decades prior to 1890, the death penalty invoked heated public debate in Colorado. Although some western lore and many western television shows often depict a citizenry that welcomed frequent executions, in fact, fewer than one execution occurred per year in the state and the executions were always debated. Eventually, increasing opposition to the festive atmosphere surrounding public executions led to their abolition.

III. NINETEENTH-CENTURY HANGINGS UNDER STATE AUTHORITY

The botched execution of Andrew Green, and the spectacle surrounding it, fueled the movement to abolish public hangings in Colorado. To make executions less visible to the public, critics of public hangings urged legislators to "centralize" executions by moving all hangings in the state to one location and conducting them under the authority of the state rather than the counties. A growing desire to search for ways to apply the death penalty more humanely and with limited involvement of prison personnel accompanied increasing

60. *Id.* at 92.

61. The rope used to hang Green was manufactured by a St. Louis company that specialized in making rope for this purpose. One hundred feet of the rope was ordered for Green's hanging, leaving enough left over to be used for the hanging of Nicolai Femenella, two years after Green's death. See *infra* Appendix, notes 378–380 and accompanying text; KING, *supra* note 51, at 117.

62. KING, *supra* note 51, at 119, 131.

63. *Id.* at 150.

64. *Id.* at 142.

cultural opposition to public executions. This Section discusses the move from public hangings in counties to private executions in one central location.

A. The Shift to Centralized Executions

The outrage sparked by the circus and party atmosphere alone did not lead to the uproar by opponents of public executions. Rather, the perception of an “image problem”—a belief that public hangings were bad for business in the rapidly developing city—similarly fueled opposition to public executions. As William King notes:

Hanging people in the public square had no place in a modern society that emphasized order and control; it effected an unsavory image, was bad for long-term growth and development, and should therefore be opposed by progressive-minded people.⁶⁵

Or, as Stuart Banner puts it:

Public executions would be widely criticized in the nineteenth century, and much of the criticism would be directed at the crowd, who would be accused of drunkenness, irreverence, rowdiness, and similar sins. Respectable Americans of the nineteenth century would come to feel embarrassment at the idea of attending an execution, and a superiority to the sort of person who would attend.⁶⁶

Six months after Green’s death, Governor Benjamin H. Eaton called for legislation outlawing public executions. It took almost three years after Green’s death, however, for the legislature to pass such a bill. On April 19, 1889, Governor Job A. Cooper signed a bill moving all executions within the walls of the state penitentiary in Cañon City.⁶⁷ Those who most

65. *Id.*

66. BANNER, *supra* note 59, at 37.

67. *Id.* at 151; Act of Apr. 19, 1889, § 1, 1889 Colo. Sess. Laws 118. The law repealed all previous death penalty statutes and took effect on July 19, 1889, ninety days after the governor signed it. However, the repeal took effect immediately on the date the governor signed the law in April. There was no savings clause. Consequently, two defendants sentenced to death for murders committed in May and June 1889 later had their convictions and sentences

strenuously objected to the new law included Colorado State Penitentiary Warden J.A. Lamping, who perceived executions as incompatible with the rehabilitative goals of the prison.⁶⁸ The last public hanging in Colorado took the life of Jose Abram Ortiz⁶⁹ in Conejos on July 16, 1889, three months after Governor Cooper signed the new legislation but three days before the ban took effect.⁷⁰

Because of the fierce opposition to public executions, the 1889 legislation not only prevented the public from attending executions but also from learning any details about them. Thereafter, the warden in charge of the execution no longer announced the day and time of the execution in advance. The legislation mandated that state officials keep all details about the execution secret, although such officials later violated the rule at irregular intervals. Furthermore, the legislation permitted only a small group of spectators to witness each execution and prohibited the spectators from divulging any details.⁷¹ The legislation mandated that immediately after the execution, "a *post mortem* examination of the body of the

vacated by the U.S. Supreme Court. See *In re Medley*, 134 U.S. 160 (1890); *In re Savage*, 134 U.S. 176 (1890).

68. William Hazlett, *Capital Punishment Has Bloody History*, ROCKY MOUNTAIN NEWS, Dec. 19, 1960, at 24. At least one later warden agreed. Harry C. Tinsley, who supervised seven executions from 1955 to 1964, told the *Rocky Mountain News* that he thought "[a]n execution serves to upset the order and dignity of a prison." William Hazlett, *Hand of Every Person Guides Executioner*, ROCKY MOUNTAIN NEWS, Dec. 20, 1960, at 6.

69. See *infra* Appendix, notes 390-92 and accompanying text (case of Jose Ortiz).

70. *Judicially Hanged: Ortiz, the Mexican Murderer, Suffers the Penalty of Law for His Crime*, ROCKY MOUNTAIN NEWS, July 17, 1889, at 1 [hereinafter *Judicially Hanged*]. The last public execution in the United States took place before a crowd of ten to twenty thousand spectators in Owensboro, Kentucky in 1936. BANNER, *supra* note 59, at 156.

71. BANNER, *supra* note 59, at 156. However, the rule on the number of spectators was irregularly enforced. For example, thirty people witnessed the hanging of E.J. Farmer in 1932. See *infra* Appendix, notes 495-96 and accompanying text. The next year, sixty legislators and state employees watched as Nelivelt Moss was hanged. See *infra* Appendix, notes 499-500 and accompanying text. In 1933, fifteen physicians were permitted to witness the execution of William Kelley, who was the first person to die in Colorado's gas chamber. See *infra* Appendix, notes 507-13 and accompanying text. There were fifty spectators present when Paul J. Schneider was executed in 1949. See *infra* Appendix, notes 585-87 and accompanying text. Before Pete Catalina was put to death in 1939, Warden Best invited twenty inmates to watch as the gas chamber was tested by killing a pig. See *infra* Appendix, notes 530-34 and accompanying text. It was thought that watching the pig gasp for its final breaths would deter the prisoners from future criminality.

convict shall be made by the attending physician and surgeon”⁷² Several other states passed similar secrecy laws at roughly the same time, but occasionally these laws were flouted, and prison officials and others in attendance leaked details about a given execution, such as information about the inmate’s demeanor in his last moments.⁷³

The new laws were particularly aimed to restrict access to executions by children and women. Until 1890, children frequently attended public executions in Colorado; parents and other adults who believed the death penalty had a deterrent effect considered the experience particularly instructive. The elimination of public executions effectively ended the opportunity for women and children to witness the events. One death penalty historian, Stuart Banner, attributes the masculinization of executions partly to positions of power, with men more likely than women to have the jobs and connections necessary to secure invitations to hangings.⁷⁴ In addition, changing social mores led to the perception of attending executions as an un-feminine activity.

On November 8, 1890, Noerto Griego, convicted of killing a merchant in Trinidad, became the first of forty-five prisoners to be hanged at the Colorado State Penitentiary (then the Territorial Prison), in Cañon City.⁷⁵ In supervising the execution, Warden J.A. Lamping followed the law closely by not disclosing in advance the time of the hanging and by keeping secret all of the details of the hanging after it occurred. The warden could invite only six people—all men—to attend executions, none of whom were representatives of the press and all of whom were sworn to secrecy.⁷⁶ “Newspaper men of every description were positively forbidden admittance, and the utmost secrecy was observed until after the execution, when it

72. Act of Apr. 19, 1889, § 5, 1889 Colo. Sess. Laws 120.

73. BANNER, *supra* note 59, at 163.

74. *Id.* at 159.

75. See *infra* Appendix, note 393 and accompanying text (case of Noerto Griego).

76. *The Crime Expiated: Noerto Griego Probably Pays the Penalty of His Awful Deed Today*, TRINIDAD DAILY NEWS (Colo.), Nov. 7, 1890, at 4. “The law requires that only the penitentiary Warden, the prison physician and one assistant, one friend of the condemned man whom he may name, the Sheriff of the county in which the murder took place, and a jury of six men to be selected by the Warden shall witness the execution.” *Graves to Hang Himself*, N.Y. TIMES, Jan. 24, 1892, at 16 [hereinafter *Graves to Hang Himself*].

was readily ascertained who the witnesses were and that everything had worked well."⁷⁷

B. Hangings in the 1890s and the Influence of Changing Technology

When the legislature charged the state prison—against Warden Lamping's wishes—with the responsibility of conducting executions after 1890, no one coveted the duty of serving as the hangman. Consequently, there was an attempt to build a hanging machine that would not require a prison worker or volunteer citizen to spring open a trap door on the gallows and otherwise supervise the execution. At the same time, the authorities wanted a hanging machine that accomplished its mission quickly and did not cause prolonged suffering for the inmate.

As seen in Table 2, eleven more hangings occurred in the prison at Cañon City after Griego's death during the 1890s. The next hanging took place in January 1891, and James Joyce, convicted of killing a coworker after a day of heavy drinking, was the victim.⁷⁸ According to the *Rocky Mountain News*, the surgeons declared that the execution was "the most successful and painless execution that has ever been performed in America."⁷⁹ They credited Warden Lamping for this achievement and particularly for a hydraulic process that was used in the hanging. In effect, this invention, "which is intended to do away with the repugnant duties of the executioner,"⁸⁰ required the prisoner to hang himself. The *Rocky Mountain News* described:

The criminal . . . stepped upon a small carpeted platform, two feet by three feet . . . and the plug was drawn out of the can in the adjacent room, and as the water, weighing some forty pounds, trickled away it lessened the weight on the

77. *Hung for Murder*, PUEBLO CHIEFTAN (Colo.), Nov. 9, 1890, at 1 [hereinafter *Hung for Murder*].

78. See *infra* Appendix, notes 394–96 and accompanying text (case of James T. Joyce).

79. *Without a Tremor*, ROCKY MOUNTAIN NEWS, Jan. 18, 1891, at 1 [hereinafter *Without a Tremor*].

80. *Graves to Hang Himself*, *supra* note 76, at 16.

end of an iron rod until that dropped off, and Joyce's soul took its flight into eternity.⁸¹

The hanging machine was used again eight months later on William H. Davis,⁸² who had been convicted of killing his foster mother and her paramour.⁸³ A few months after Davis's death, the *New York Times* printed a more detailed description of Colorado's unique hanging machine:

In the centre of the death chamber is a platform about four feet square, raised, perhaps, five inches above the level of the stone floor. Over this platform dangles the noose. The hangman's rope runs over a pulley wheel at the ceiling and disappears through a small aperture into the adjoining room. To the end of the rope, in this second room, is attached an iron weight of 370 pounds. This weight is supported, six feet from the floor, by a cross beam which may be likened to the beam of a large pair of balancing scales. On its end opposite the weight is suspended a small wooden cask containing about two gallons of water. This water cask may be moved from right to left and an exact balance thereby given to the cask and the iron weight. In the bottom of the cask is a wooden plug and connected with

81. *Without a Tremor*, *supra* note 79, at 1.

82. See *infra* Appendix, note 397 and accompanying text (case of William H. Davis).

83. This time newspapers credited Deputy Warden George E. Dudley for the invention of the new machine. *Hanged in Prison*, ROCKY MOUNTAIN NEWS, Sept. 23, 1891, at 1 [hereinafter *Hanged in Prison*].

This death machine is the only one of its kind on record. It is the invention of a tender-hearted Deputy Warden who had been assigned to cut the rope at a previous execution, but who, rather than perform that duty, set his wits at work to invent a contrivance which would do the undesirable work for him. This he did. His conscience is now serene.

Graves to Hang Himself, *supra* note 76, at 16. The Deputy Warden did not receive lasting credit for his invention. By 1971 the *Denver Post* reported that the machine was "[c]reated by a convict, whose name has now been forgotten." Cary Stiff, *The Do-It-Yourself Hanging Machine*, DENVER POST, June 13, 1971, Empire Magazine, at 45.

Despite this technology, someone still had to serve as the executioner. One of Colorado's executioners was John J. ("Jack") Eeles, a veteran guard who was widely disliked by prisoners for his role in executions. In October 1929, the country's worst prison riot to date occurred in Cañon City, taking the lives of eight guards and five convicts. Among those murdered was Eeles. WAYNE K. PATTERSON & BETTY L. ALT, *SLAUGHTER IN CELL HOUSE 3: THE ANATOMY OF A RIOT* 3, 78 (1997). The next correctional officer murdered on duty in Colorado was Eric Autobee, who was murdered at Limon Correctional Institution in 2002. Kieran Nicholson, *Inmate Kills Corrections Worker, State Says Officer Is 1st Killed by Prisoner Since '29*, DENVER POST, Oct. 20, 2002, at B1.

it is a small, strong cord leading from the plug to the platform in the death chamber.

When . . . [the condemned inmate] steps on the platform . . . [h]is weight on the platform removes the plug from the cask, the water rushes from it until the cask is sufficiently lightened, and then the heavy weight on the opposite end of the beam drops on a thick mattress on the floor.⁸⁴

When the weight dropped, the prisoner, attached by his neck to the other end of it, abruptly went skyward. This "twitch-up" method of hanging led to the expression that the inmate was "jerked to Jesus."⁸⁵

After Davis's execution, the state hanged nine other men from the gallows in Cañon City before the end of the nineteenth century. No executions occurred between 1892 and 1895 because Governor Davis Waite opposed the death penalty,⁸⁶ but seven took place during 1895 and 1896. These included two men hanged on May 11, 1895, for separate crimes: Thomas Jordan, who shot a coworker,⁸⁷ and Peter Augusta, who killed a man in a lover's triangle.⁸⁸ The attending physician described the executions as "the most skillful that had been made in his seventeen years' experience as prison surgeon," even though Jordan's neck did not immediately break and he dangled from the gallows for eleven minutes before death was pronounced.⁸⁹ Jordan's execution had been vigorously contested by his attorneys; he was the first prisoner hanged at Cañon City to appeal his conviction to the Colorado

84. *Graves to Hang Himself*, *supra* note 76, at 16.

85. See, e.g., *infra* Appendix, notes 372-74 and accompanying text (case of Thomas Coleman), 375 and accompanying text (case of George N. Woods). Reference to Woods being "jerked to Jesus" can be found in DUANE A. SMITH, *ROCKY MOUNTAIN BOOM TOWN, A HISTORY OF DURANGO* 51 (1980).

86. In discussing the execution of Thomas Jordan, who was put to death soon after Governor Waite left office, the *Rocky Mountain News* reported "Governor Waite's position upon capital punishment was well known. He was opposed to it, and during his administration it was practically admitted that Jordan would be safe from the noose of the hangman." *The Condemned, Executive Clemency Prolongs Life for Two Murderers*, *ROCKY MOUNTAIN NEWS*, May 12, 1895, at 1 [hereinafter *The Condemned*].

87. See *infra* Appendix, notes 401-02 and accompanying text (case of Thomas A. Jordan).

88. See *infra* Appendix, note 403 and accompanying text (case of Peter Augusta).

89. *Two Men Executed*, *TRINIDAD DAILY NEWS* (Colo.), May 14, 1895, at 1.

Supreme Court.⁹⁰ Concerns about his sanity were so paramount that Governor Albert W. McIntire visited Jordan on death row so he could ascertain with first-hand personal information whether clemency was in order.⁹¹

The last executions of the nineteenth century took the lives of three codefendants hanged in June 1896 for their roles in killing a Trinidad police officer.⁹² Although no one knew it at the time, these executions proved to be the end of an era in Colorado, as the state later abolished the death penalty.

IV. ABOLITION AND REINSTATEMENT: 1897–1901

Unlike most other states that today retain capital punishment, Colorado experimented with the total abolition of the death penalty. Unfortunately for death penalty opponents, angry mobs viewed the abolition of the death penalty as a license to resort to lynching. Leading newspapers, fearing that national opinion might associate the lynch mobs with a perception of Colorado as uncivilized or barbaric, tried to frame the discussion as the absence of capital punishment rather than the barbarity of the mobs. The legislature soon followed to put Colorado's executioner back in business.

In 1846, Michigan became the first state in the U.S. to abolish the death penalty. Rhode Island and Wisconsin followed in 1852 and 1853, respectively. Iowa temporarily abolished the death penalty in 1872, but restored it in 1878, and Maine abolished the death penalty between 1876 and 1883. Colorado followed as the next state to experiment with abolition.⁹³

Efforts to abolish the death penalty in Colorado, led mainly by religious leaders, greatly accelerated in the mid-1890s. On March 15, 1893, by a nineteen to thirteen vote, the state senate passed a bill abolishing the death penalty,⁹⁴ but the house of representatives defeated the measure two weeks later, thirty to

90. *Jordan v. People*, 36 P. 218 (Colo. 1894).

91. *The Condemned*, *supra* note 86, at 1.

92. See *infra* Appendix, notes 407–09 and accompanying text (cases of William Holt, Albert Noble, and Deonicio Romero).

93. Iowa, Maine and Wisconsin totally abolished the death penalty; Michigan retained it for treason until 1963, and Rhode Island retained it for murder of a guard by a lifetime prisoner. HUGO ADAM BEDAU, *THE DEATH PENALTY IN AMERICA, CURRENT CONTROVERSIES* 9 (1997).

94. S.J. Res. 962–63, 9th Leg., (Colo. 1893).

nineteen.⁹⁵ On February 28, 1895, a bill abolishing the death penalty passed without debate in the state senate.⁹⁶ The *Denver Post* applauded the move, although the editors added that the bill would strengthen the anti-death penalty position if it also removed any hope of a pardon for the prisoner.⁹⁷ Ultimately the bill died in the house of representatives,⁹⁸ but it successfully resurfaced two years later.

On March 29, 1897, Governor Alva Adams signed legislation abolishing the death penalty for all crimes and substituting life imprisonment at hard labor for those convicted of first-degree murder.⁹⁹ Two years later, Governor Adams applauded the repeal in his annual message to the legislature, calling it "the most forward step in criminal legislation that has yet been taken in Colorado."¹⁰⁰

During the first three years after abolition, there were no strong efforts to restore the death penalty to the law books. In early 1899, the *Boulder Daily Camera* editorialized: "There is no call for a revival of that relic of barbarism, capital punishment. Colorado, in the vanguard of progress, must take no step backward."¹⁰¹

Despite that optimism, three lynchings early in the new century rekindled efforts to bring the executioner back into the state's employ. The first lynching occurred in Cañon City in January, 1900, after four prisoners escaped from the state penitentiary, murdering a guard in the process.¹⁰² All four men were soon recaptured. When Thomas Reynolds, the one who had killed the guard, returned to Cañon City, an angry mob of five hundred citizens seized him and lynched him from the

95. *The Capital Punishment Bill*, ROCKY MOUNTAIN NEWS, Apr. 1, 1893, at 8.

96. *No Work for Hangman*, ROCKY MOUNTAIN NEWS, Mar. 1, 1895, at 8.

97. *Capital Punishment*, DENVER POST, Mar. 1, 1895, at 4.

98. H.R.J. Res. 853, 10th Leg., (Colo. 1895).

99. Act of Mar. 29, 1897, § 1, 1897 Colo. Sess. Laws 135; *Hanging Is Abolished*, DENVER POST, Mar. 29, 1897, at 1; *No More Hanging by Law*, ROCKY MOUNTAIN NEWS, Mar. 30, 1897, at 10. The Act also abolished the secrecy requirements surrounding executions imposed by the 1889 legislation.

100. Message of Governor Alva Adams, S.J. Res. 39, 41, 12th Leg., (Colo. 1899). Governor Adams also noted that of the twenty-five inmates condemned to death since executions were moved to the state penitentiary, thirteen were reprieved by the courts or the governor. *Id.* at 40.

101. *Editorial*, BOULDER DAILY CAMERA, Jan. 31, 1899, at 2.

102. One of the escaped convicts was Anton Woode, who was convicted of murder on April 8, 1893, and sentenced to twenty-five years in prison. The murder was committed when Woode was eleven years of age.

nearest telegraph pole.¹⁰³ When Governor Charles S. Thomas and Secretary of State Charles Stonaker heard the news, Secretary Stonaker recognized at once that the lynching would fuel renewed debate over the death penalty:

Lynching is a horrible thing, . . . but this affair has been horrible from the start. If lynching was ever justifiable, it was in this case, but I cannot put myself in the position of indorsing [sic] it Capital punishment will never be restored. The people have outgrown it. It was useless. It was not a deterrent of crime. It is merely an end of the criminal.¹⁰⁴

Nonetheless, within a few days, the *Denver Times* renewed its call for restoration of the death penalty.¹⁰⁵

Four months later in Pueblo, a mob of roughly six thousand citizens lynched Calvin Kimblern, an African-American suspected of killing two young girls. No investigation was ever undertaken to identify the lynchers; the coroner refused to investigate the death because, he said, Kimblern was not a human being. Governor Charles S. Thomas justified the lynching as "a natural outburst of indignation of the people of Pueblo."¹⁰⁶ He pointed out that because no death penalty existed, Kimblern would have received a prison sentence for the crimes, and people seeking a

103. *Reynolds Lynched at Cañon City*, ROCKY MOUNTAIN NEWS, Jan. 27, 1900, at 1; *A Rope Awaits Wagoner: Convict Reynolds Lynched Last Night*, DENVER POST, Jan. 27, 1900, at 1; *No Inquest Over Reynolds' Remains*, DENVER TIMES, Jan. 27, 1900, at 1.

104. *What the Governor Thought of Lynching*, ROCKY MOUNTAIN NEWS, Jan. 27, 1900, at 8.

105. In an editorial in the *Denver Times*, it was stated that:

The Cañon City citizens who took the law into their own hands felt that there has been too much leniency shown criminals in this state, where sentimentality has overbalanced common sense. Prisoners at the penitentiary are accorded too many privileges, and escape, legal or otherwise, has been made too easy. The people of Cañon City believed that in self-protection, an object lesson should be given these prisoners The lynchers also had in mind a hint to the legislature that if the law does not provide adequate punishment for criminals the people will.

Editorial, *Restore Capital Punishment*, DENVER TIMES, Jan. 28, 1900, at 12. Several other newspapers from throughout the state echoed the call for reinstatement. *Restore Capital Punishment*, DENVER TIMES, Jan. 29, 1900, at 4 (quoting excerpts from editorials from ten other Colorado newspapers).

106. LEONARD, LYNCHING IN COLORADO, *supra* note 11, at 146.

commutation of Kimblern's sentence would then bother a future governor. Thus, he reasoned, the absence of the death penalty—not racial hatred run amuck—bore the blame for the lynching.¹⁰⁷

Newspapers around the state echoed this theme. On the day after the lynching, the *Denver Post* quoted editorials in the *Denver Republican*, *Colorado Springs Gazette*, and *Pueblo Chieftan* calling for a restoration of the death penalty:

The horror of the lynching at Pueblo has shocked the public, but it is the legitimate outcome of the abolishment of capital punishment. No punishment short of death would have fitted Kimblern's atrocious crime Repealing the law providing for the death penalty was at least a piece of silly sentimental folly.¹⁰⁸

The *Rocky Mountain News* added:

To prevent the recurrence of such horrors the death penalty should be restored In the case of such crimes as those committed by Kimblern a jury may be relied upon to fix the penalty at death, and the certainty that it will do so will stop the blackening of Colorado's fair name with lynchings.¹⁰⁹

Six months later, a thirteen-year-old white girl named Louise Frost was sexually assaulted and murdered in Limon, allegedly by a sixteen-year-old black youth named John Preston Porter, Jr. After Porter's apprehension in Denver, local newspapers quickly announced that his guilt was unquestionable,¹¹⁰ and the calls for the return of capital punishment resurfaced. The *Denver Post* wrote:

[T]he laws of Colorado, since the repeal of the law legalizing hanging, provide no adequate punishment for such inhuman brutes as those who commit outrageous crimes like that at Limon. Indeed, with capital punishment abolished there is in such cases a direct invitation to the outraged people to

107. *Id.* at 143, 146–47.

108. *Capital Punishment Must Be Restored*, DENVER POST, May 4, 1900, at 4.

109. *Restore Capital Punishment*, ROCKY MOUNTAIN NEWS, May 24, 1900, at 4.

110. *Guilt Points Its Finger at Porter*, ROCKY MOUNTAIN NEWS, Nov. 13, 1900, at 1.

take the law into their own hands and visit upon the head of the brutal murderer such condign punishment as cannot fail to shock the whole community A few more object lessons will doubtless convince the people of the state that capital punishment should be restored to the statute books. While it may be true that ordinary life or long term imprisonment may be a fit punishment for the crime committed, there are times when nothing short of the death penalty will satisfy the demands of justice.¹¹¹

Back in Limon, mobs began to search all trains coming from Denver to see if one brought Porter back to the city for trial.¹¹² On November 15th, the *Rocky Mountain News* announced that Porter had confessed with the headline "Porter Condemned to Death By His Own Confession."¹¹³ The next day, the *Rocky Mountain News* reported that following a meeting in Limon, citizens had decided to hang Porter but chose not to disgrace the state by resorting to torture. The *Rocky Mountain News* wrote, "In addition to deciding that the execution would be a hanging the men of Lincoln county voted to notify all negroes [sic] of bad character to leave the county. Notices will be posted. If they do not go they will be quietly escorted across the border."¹¹⁴ That afternoon, a crowd of three hundred met the train carrying Porter as it arrived in Limon and brought him to the site of the murder. Two hours later, the father of the victim took a torch and lit the fire that burned Porter at the stake.¹¹⁵

As historian Stephen Leonard characterized, "In less than half a century the 1859 People's Court had devolved into a mob shaking with pure enjoyment as they roasted a human being."¹¹⁶ The following Sunday, ministers throughout Denver

111. *Punishment for the Limon Ravisher*, DENVER POST, Nov. 13, 1900, at 4.

112. *Determined Men Search the Trains for Porter*, ROCKY MOUNTAIN NEWS, Nov. 13, 1900, at 2.

113. *Porter Condemned to Death by His Own Confession*, ROCKY MOUNTAIN NEWS, Nov. 15, 1900, at 1.

114. *Mob Much Disappointed*, ROCKY MOUNTAIN NEWS, Nov. 16, 1900, at 2.

115. JOHN H. MONNETT & MICHAEL MCCARTHY, COLORADO PROFILES: MEN AND WOMEN WHO SHAPED THE CENTENNIAL STATE 205-14 (1996); *Fearful Revenge for Murder of Louise Frost*, ROCKY MOUNTAIN NEWS, Nov. 17, 1900, at 1. When asked to comment on the lynching, Governor Charles S. Thomas (1899-1901) stated: "My opinion is that there is one less negro [sic] in the world." LEONARD, LYNCHING IN COLORADO, *supra* note 11, at 149 (quoted in *Thomas Is Waggish*, BOULDER DAILY CAMERA, Nov. 17, 1900, at 2).

116. LEONARD, LYNCHING IN COLORADO, *supra* note 11, at 124.

condemned the mob action, but several also called for the reintroduction of capital punishment as a method to deter future lynchers.¹¹⁷ Again, some newspapers called for a repeal of the law that had abolished capital punishment.¹¹⁸ As the spotlight shifted to the debate of capital punishment, pressure to condemn the lynchers lessened.

Thus, death penalty foes had a short-lived victory. Just four years after the abolition of the death penalty, the Colorado legislature again debated the death penalty. On February 8, 1901, by a forty-one to twenty-four margin, the state house of representatives voted to reinstate capital punishment following an intense debate. The sponsor of the legislation "referred feelingly to the parents of Louise Frost," and one opponent accused those who supported the bill of "cold and deliberate murder."¹¹⁹ The bill passed the state senate on March 29.¹²⁰ Governor James B. Orman would not sign the reinstatement bill—but he did not veto it—and on July 31, 1901, it became effective without his signature.¹²¹

As before, the new law permitted few witnesses to attend the executions¹²² and dictated that virtually all aspects of the hangings to remain secret.¹²³ Juries decided whether to sentence defendants convicted of first-degree murder to death or imprisonment for life at hard labor. The new law rendered defendants under the age of eighteen at the time of conviction

117. *Oppose Mob Rule*, DENVER TIMES, Nov. 19, 1900, at 16.

118. See, e.g., *Once More, the Death Penalty*, DENVER TIMES, Nov. 17, 1900, at 4; *The Porter Burning*, DENVER TIMES, Nov. 19, 1900, at 7 (presenting excerpts from editorials from several newspapers from throughout the state); *Whether to Restore the Death Penalty*, DENVER TIMES, Jan. 28, 1901, at 6.

119. *Calls Them Murderers*, DENVER POST, Feb. 9, 1901, at 10.

120. *Passed the Senate*, DENVER POST, Mar. 29, 1901, at 2.

121. Act of May 2, 1901, ch. 64, sec. 2, § 1176, 1901 Colo. Sess. Laws 153–54. In declining to veto the bill, Governor Orman stated that he believed it would be repealed by the next legislature and that he had doubts about the constitutionality of the bill's provisions. *Kills Two Bills: Capital Punishment Becomes a Law Through Lapse of Time*, ROCKY MOUNTAIN NEWS, May 1, 1901, at 12.

122. The statute specified that the warden shall invite to be present thereat the sheriff of the county wherein the conviction was had, the chaplain and physician of the penitentiary, two practicing surgeons, residents of the state, the spiritual adviser [sic] of the convict, if any, and six reputable citizens of the state, of full age.

Act of May 2, 1901, § 6, 1901 Colo. Sess. Laws 155–56.

123. Those who violated the secrecy provision were subject to a fine of between fifty and five hundred dollars, or by one to six months in jail. *Id.* § 9, at 157.

ineligible for the death penalty, as well as those convicted solely on circumstantial evidence.¹²⁴ To the regret of today's students of the death penalty, the law also specified that "[n]o account of the details of any such execution, beyond the statement of the fact that such convict was on the day in question duly executed according to law at the state penitentiary, shall in any manner be published in this state."¹²⁵

After the new capital punishment statute became law, only five more lynchings occurred within Colorado's borders.¹²⁶ The decline in lynching was a national phenomenon, but to supporters of the death penalty in Colorado, the decline naturally resulted from the return of the state-employed hangman. Whether the death penalty deterred homicide remained an open question, but the pro-death penalty newspapers and legislators were no doubt pleased at the death penalty's resurrection as a deterrent to would-be lynch mobs.¹²⁷

V. TWENTIETH-CENTURY EXECUTIONS IN COLORADO

Sixty-five people were put to death in Colorado between 1905 and 1967, with just over half (thirty-three) hanged. Growing concerns about botched executions prompted the state to execute those sent to their deaths after 1933 by asphyxiation in the gas chamber. This Section will review these executions, as well as the reasons behind Colorado's change in its method of execution.

A. *Hangings, 1905–1933*

In the first thirty-three years of the twentieth century, Colorado executed an average of one man per year with its "twitch-up" hanging machinery in Cañon City. In February, 1905, in *Andrews v. People*, a unanimous Colorado Supreme Court held that the new death penalty statute was constitutional.¹²⁸ J. Newton Andrews, however, was not the

124. *Id.* § 2, at 154.

125. *Id.* § 6, at 156.

126. LEONARD, LYNCHING IN COLORADO, *supra* note 11, at 174.

127. For a discussion of the many parallels between the practice of capital punishment today in the United States and the practice of lynchings a century years ago, see FRANKLIN E. ZIMRING, *THE CONTRADICTIONS OF AMERICAN CAPITAL PUNISHMENT* (2003).

128. *Andrews v. People*, 79 P. 1031 (Colo. 1905).

first to be hanged under its authority. Instead, Azel Galbraith,¹²⁹ whose execution was delayed pending the outcome of the *Andrews* case, was the first prisoner to legally hang in Colorado in the twentieth century. Galbraith, convicted of killing his wife and their eight-year-old son, went to his death on March 6, 1905.

The state next hanged Andrews and his codefendant, Fred Arnold.¹³⁰ They were convicted of entering a Denver home in a robbery attempt, murdering a sixty-three-year old resident, and wounding her son. At age nineteen, Arnold remains the only teenager and the youngest person ever executed in the state. The state also executed a fourth man in 1905: a deputy sheriff named Joseph Johnson, who was hanged for the murder of a prominent democratic politician in Trinidad.¹³¹

Colorado executed seven more men before 1920. The state sent Harry Hillen to his death for the senseless murder of a real estate agent during a robbery in Denver.¹³² Hillen confessed to the murder, explaining that it was triggered "because he snarled at me. I can't stand snarls."¹³³

The state executed seven inmates in the 1920s, the first four of whom were convicted of double murders.¹³⁴ Four of the seven received their sentences for domestic murders, which resulted from jealousy or lovers' quarrels.¹³⁵ Two cousins, Raymond Noakes and Arthur Osborn, were the last two hanged in the 1920s.¹³⁶ They killed their neighbor after an argument over access to a road on the neighbor's property.

129. See *infra* Appendix, notes 410–13 and accompanying text (case of Azel D. Galbraith).

130. See *infra* Appendix, notes 414–15 and accompanying text (cases of J. Newton Andrews and Fred Arnold).

131. See *infra* Appendix, notes 416–17 and accompanying text (case of Joseph Johnson).

132. See *infra* Appendix, notes 432–37 and accompanying text (case of Harry Edgar Hillen).

133. *Shot Chase Dead When He Snarled, Bandit Confesses*, ROCKY MOUNTAIN NEWS, Oct. 28, 1913, at 1 [hereinafter *Shot Chase Dead When He Snarled*].

134. See *infra* Appendix, notes 446–48, 449, 450–53, 454–55 and accompanying text (cases of George Bosko, Daniel Borich, Joe McGonigal, and Ray Shank).

135. See *infra* Appendix, notes 449, 450–53, 454–55, 456–58 and accompanying text (cases of Daniel Borich, Joe McGonigal, Ray Shank, and Antonio Casias).

136. See *infra* Appendix, notes 459–62 and accompanying text (cases of Raymond Jasper Noakes and Arthur Alonzo Osborn).

Colorado executed as many people in 1930 as it had during all of the 1920s. Those executed in 1930 included three codefendants hanged the same night for the murder of four men during an attempted bank robbery in Lamar.¹³⁷ Although those murders were highly aggravated, two other men faced the executioner for killing their wives in domestic arguments.¹³⁸

Four more executions followed in 1931, including Colorado's second triple-execution, which, like the first,¹³⁹ resulted from a botched bank robbery. Claude Ray, John Walker, and Andrew Halliday robbed a bank in Kansas and shot a sheriff in Eads, Colorado, as they attempted their escape.¹⁴⁰ In 1931, the state hanged quadruple murderer John Foster, convicted of pouring gasoline on his wife and three children and lighting them afire.¹⁴¹

B. The Continuing Struggle to Abolish or Perfect Executions

Weak undercurrents pushed to abolish the death penalty in the early twentieth century, but Colorado instead opted to shift methods of execution. For example, in 1916, the State Federation of Women's Clubs proposed a bill to abolish the death penalty. Heated argument broke out at the meeting of the Denver Ministerial Alliance when asked to support the bill. In the debate, Rev. John H. Houghton, rector of the St. Mark's Episcopal Church, left no doubt about where he stood on the measure, stating, "Look at this disgraceful Bulger [an accused murderer]—I would hang him tomorrow. A man not worth one-ninety-thousandth part of a cent to the community. He should be hanged like a dog."¹⁴² Similar debates raged in other states: Kansas abolished the death penalty in 1907, Minnesota

137. See *infra* Appendix, notes 474–79 and accompanying text (cases of Ralph Fleagle, Howard Royston, and George J. Abshier).

138. See *infra* Appendix, notes 470–73 and accompanying text (case of Harold Weiss), 480–85 and accompanying text (case of Emelio Herrera).

139. See *infra* Appendix, notes 474–79 and accompanying text (cases of Ralph Emerson Fleagle, Howard L. Royston, and George J. Abshier).

140. See *infra* Appendix, notes 489–93 and accompanying text (cases of Claude Ray, John Walker, and Andrew Halliday).

141. See *infra* Appendix, note 494 and accompanying text (case of James V. Foster).

142. *Hang Bulger Like Dog, Cries Church Rector*, ROCKY MOUNTAIN NEWS, Jan. 4, 1916, at 12.

in 1911, Washington in 1913, Oregon in 1914, North Dakota in 1915 (except for murder committed by a prisoner already serving a life sentence), South Dakota in 1915, Tennessee in 1915 (except for rape), and Missouri in 1917.¹⁴³ In Colorado, however, efforts to reform the death penalty in the years surrounding World War I failed.

Reform efforts accelerated again in the 1930s, focusing on improving the techniques of executions or abolishing the practice altogether. Colorado's "twitch-up" execution apparatus never worked with the perfection hoped for by its inventors. Although it is difficult to say with certainty, King reports that "in forty of the forty-four instances where this method was employed in Colorado between 1890 and 1933 . . . death by strangulation was the result; in only four instances did the neck of the felon actually break."¹⁴⁴

By the 1930s, the weight that jerked the prisoner into the air had increased to six hundred pounds¹⁴⁵ and eventually even to one thousand pounds.¹⁴⁶ When the state hanged eighty-pound Eddie Ives¹⁴⁷ in 1930, the hanging rope came off the pulley, and Ives "flew up to the ceiling, then dropped back to the floor."¹⁴⁸ This mishap required a second attempt at Ives's

143. BEDAU, *supra* note 93, at 9.

144. KING, *supra* note 51, at 92. Actually, forty-five men were hanged in Cañon City between 1890 and 1933 (see Table 1). Unfortunately, King does not provide the source for these tallies. Another report states that "Only two of the last fifteen hanged on the queer gallows have received broken necks." *Killer Strangles in Fourteen Minutes on Colorado Gallows*, DENVER POST, Dec. 2, 1933, at 1 [hereinafter *Killer Strangles in Fourteen Minutes*]. Data presented in Appendix, *infra*, taken from newspaper accounts, indicate whether or not the inmate's neck was broken in thirty-two of the forty-five hangings. Of the thirty-two, it was reported that the neck was broken in twenty-two cases. Of the last ten hangings where the type of death was reported, only two men had their necks broken. See *infra* Appendix, notes 384-493 and accompanying text.

145. *Lethal Gas Chamber Soon Will Be Built at State Pen*, ROCKY MOUNTAIN NEWS, May 21, 1933, at 3.

146. A one thousand pound weight was used to hang Claude Ray, John Walker, and Andrew Halliday in 1931. Charles T. O'Brien, *Three Manter Bandits Hanged: Noose Fails to Break Necks and Slayers Strangle to Death*, DENVER POST, Jan. 31, 1931, at 1.

147. See *infra* Appendix, notes 463-69 and accompanying text (case of Edward Ives).

148. Frances Melrose, *Little Eddie Ives Played Big Role in Changing Execution*, ROCKY MOUNTAIN NEWS, Jan. 17, 1977, at 8; see also Alice Spencer Cook, *The Man Was Hanged Twice*, DENVER POST, Apr. 6, 1958, Empire Magazine, at 6.

hanging.¹⁴⁹ These events fueled cries to find a more dependable, if not humane, execution method. Supporters of the change included Warden F.E. Crawford, "a kindly and considerate man who abhorred executions and who regarded hanging as a form of punishment out of the Middle Ages."¹⁵⁰ During his tenure from 1927 to 1931, Crawford supervised a dozen hangings.

The Colorado legislature became dissatisfied with the state's use of the death penalty, and efforts to completely outlaw capital punishment resurfaced. In 1933, President Franklin D. Roosevelt joined those calling for the abolition of the death penalty.¹⁵¹ In March of 1933, by a vote of twenty to twelve, the Colorado senate passed a bill abolishing the death penalty.¹⁵² This bill, amidst two hundred others that dealt with a broad range of non-death penalty issues, ultimately died without action in the state house of representatives on May 8th, when members voted to adjourn.¹⁵³ Earlier that year, both the senate¹⁵⁴ and the house of representatives passed legislation formally switching the state's method of execution from hanging to asphyxiation. Arguably, this reform defused opposition to the death penalty by furthering the belief that

149. Botched hangings were not unheard of in Colorado's past. When James Miller was hanged in 1877, the entire trap door on the scaffold fell beneath him, and Miller's feet came to rest on it when he dropped. The trap door had to be removed so he could dangle freely. See *infra* Appendix, note 362 and accompanying text. In 1881, the rope broke as W.H. Salisbury was being hanged, forcing the executioners to hang him a second time. See *infra* Appendix, note 369 and accompanying text. Later that year, the trap door failed to open so Thomas Coleman could be hanged; he had to be removed from the gallows while repairs (which later proved to be successful) were made. See *infra* Appendix, notes 372-74 and accompanying text. The secrecy provisions surrounding Colorado executions make it impossible to determine how many executions conducted at Cañon City were "botched." We do know, however, that during one asphyxiation, the spectators had to scatter when the gas chamber leaked. *Death Chamber at Pen Tested*, ROCKY MOUNTAIN NEWS, Dec. 5, 1939, at 1. See *infra* Appendix, notes 530-34 and accompanying text (case of Pete Catalina).

150. W.T. Little, *What About Executions Before 1890?*, ROCKY MOUNTAIN NEWS, July 6, 1965, at 76.

151. BANNER, *supra* note 59, at 224.

152. *Measure to Abolish Death Penalty Is Passed by State Senate and Sent to House*, ROCKY MOUNTAIN NEWS, Mar. 18, 1933, at 5; *Death Penalty Bill May Save Doomed Men*, DENVER POST, Mar. 29, 1933, at 2.

153. S. 86, 1933 Leg., Evening Sess. (Colo. May 8, 1933); *Vote for Adjournment Kills Scores of Bills in General Assembly*, DENVER POST, May 9, 1933, at 4.

154. *Colorado Senate Approves Lethal Gas for Executions*, DENVER POST, Feb. 2, 1933, at 4.

executions were indeed "humane" and weakening abolitionists' claims that executions were inherently cruel. On March 31, 1933, Governor Edwin C. Johnson signed the bill, changing the method of execution for all capital offenses committed after that date.¹⁵⁵

Nevada adopted the gas chamber in 1921 and first used it in 1924. Hence, when Colorado began its search for a new method of execution, lethal gas, as the most modern method available, was seen as the most technically advanced and civilized. In 1933, Colorado became the second state to adopt asphyxiation as its official means of execution.¹⁵⁶

In May 1933, Warden Roy Best visited Carson City, Nevada, to inspect that state's execution apparatus. Once he knew what he wanted—a huge three-seat model—Best turned to the Denver firm of Eaton Metal Products Co. and paid them twenty-five hundred dollars to handle the construction.¹⁵⁷ Eaton Metals usually built boilers, but soon they found themselves with a side business of constructing gas chambers. Eventually they built gas chambers for all but one of the eleven states that adopted that method of execution.¹⁵⁸ Colorado used its three-seat gas chamber—nicknamed "Roy's Penthouse" in honor of Warden Best¹⁵⁹—until 1955,¹⁶⁰ when the state constructed a new execution chamber and the builders deemed the original gas chamber too big and bulky for the new building. A lean, trim, one-seat model, also built by Eaton

155. Act of Mar. 31, 1933, ch. 61, 1933 Colo. Sess. Laws, 420-22; *Governor Signs Lethal Gas Bill*, ROCKY MOUNTAIN NEWS, Apr. 1, 1933, at 1.

156. By 1955, a total of eleven states had turned to lethal gas as the execution method. BANNER, *supra* note 59, at 199.

157. \$2,500 for Death House, ROCKY MOUNTAIN NEWS, June 15, 1933, at 14; Maurice Leckenby, *State Pen Death Chamber Nearing Completion Here*, ROCKY MOUNTAIN NEWS, Sept. 24, 1933, at 6.

158. Cary Stiff, *The Death House by the Side of the Road*, DENVER POST, May 16, 1971, at 18 [hereinafter Stiff, *The Death House*]. Eaton Metal Products built all the gas chambers used in the U.S. except the one used in North Carolina. *Id.*; see also, *Execution Chamber Styles*, ROCKY MOUNTAIN NEWS, Feb. 27, 1938 (includes picture of Denver workman putting the final touches on the gas chamber that would soon be installed in San Quentin, California); Cary Stiff, *Denverite 'Refined' Death*, DENVER POST, Sept. 15, 1966, at 88; Bill Pardue, *Denver Firm Receives Inquiries on Gas Chambers*, ROCKY MOUNTAIN NEWS, Dec. 6, 1976, at 43.

159. *Id.*

160. Colorado never had a triple execution using gas; its only two triple executions (1896 and 1931) were by hanging. There were also four double hangings (1895, 1905, 1928, and 1930).

Metal Products, replaced the old three-seat chamber.¹⁶¹ To the extent that concerns over painful and lingering deaths caused by bungled hangings threatened the future of Colorado's death penalty, the introduction of the gas chamber allowed the executioner to continue to practice in the state.

C. Asphyxiations, 1934–1967

On June 22, 1934, William Cody Kelley became the first prisoner to die in Colorado's gas chamber.¹⁶² Kelley and an accomplice were convicted and sentenced to death for the beating death of a rancher, but the accomplice's death sentence was commuted and he spent fifteen years in prison running a business and building a savings account.¹⁶³ As done before many, if not most, subsequent asphyxiations, prison authorities first tested the gas chamber by executing a pig. Apparently their preparations led to success. Echoing a theme that newspapers claimed in several other cases, the *Rocky Mountain News* described the execution as "far quicker and much more humane than any of the hangings which have preceded it."¹⁶⁴ Warden Best, pleased with the machine he helped design, pronounced the execution "the most successful and painless one ever conducted at the penitentiary."¹⁶⁵ Still, the proclaimed success did not eliminate room for improvement. Although prison officials described the double execution of Pete Catalina¹⁶⁶ and Angelo Agnes¹⁶⁷ in 1939 as "the quickest and

161. Stiff, *The Death House*, *supra* note 158, at 18; *see also*, *State's New Gas Chamber to Claim 1st Victim Friday*, ROCKY MOUNTAIN NEWS, Sept. 2, 1956, at 5. This new gas chamber, in which eight prisoners eventually died, now sits outside the prison museum in Cañon City. By the time the new chamber was constructed, Colorado's original gas chamber had been turned into a grain storage building. *Id.* It has since been discarded.

162. *See infra* Appendix, notes 507–13 and accompanying text (case of William Cody Kelley).

163. *Id.*

164. Wallis M. Reef, *Kelley Meets Swift Death by Lethal Gas*, ROCKY MOUNTAIN NEWS, June 23, 1934, at 1.

165. Charles T. O'Brien, *Kelley Executed in New Gas Cell*, DENVER POST, June 23, 1934, at 1.

166. *See infra* Appendix, note 530–34 and accompanying text (case of Pete Catalina).

167. *See infra* Appendix, note 535–36 and accompanying text (case of Angelo Agnes).

most humane execution we ever had,"¹⁶⁸ ironically, the public later learned that the gas chamber leaked during the execution—leading spectators to flee the room.¹⁶⁹ Two years later, the *Denver Post* claimed that the execution of Joe Coats¹⁷⁰ was "the easiest and quickest death of any of the fourteen men" who died in Colorado's gas chamber.¹⁷¹ Clearly, the prison officials and the newspapers wanted to reassure the public that the prisoners were being executed humanely.

The next two to die in the gas chamber received convictions for murdering both a rancher and his son, and wounding his wife, in a robbery near Greeley. The killers, Louis and John Pacheco, died sitting in two of the three chairs in Roy's Penthouse. The two, Mexican-Americans born in Colorado,¹⁷² remain the only brothers executed in the state.¹⁷³

Arguably the most controversial execution in the history of the state also took place in the 1930s, when the state executed a mentally retarded inmate named Joe Arridy for the rape and murder of a young Pueblo girl.¹⁷⁴ Arridy's conviction rested solely on the basis of his confession. In addition to Arridy, the state also executed Frank Aguilar, who possessed the murder weapon, for the crime.¹⁷⁵ Notably, as Aguilar's execution occurred, one of the witnesses suffered a heart attack and died.¹⁷⁶ Although his execution was otherwise routine, Arridy's stay on death row differed from the experiences of other condemned inmates. While on death row, he became close friends with Warden Best, who ultimately spoke out against

168. *Agnes and Catalina Executed Together in Lethal Chamber*, DENVER POST, Sept. 30, 1939, at 1 [hereinafter *Agnes and Catalina Executed Together*].

169. *Death Chamber at Pen Tested*, *supra* note 149, at 1.

170. *See infra* Appendix, notes 541–49 and accompanying text (case of Joe Coates).

171. *Coates Begs for Prayer in Death Chair*, DENVER POST, Jan. 11, 1941, at 1.

172. *See infra* Appendix, notes 514–517 and accompanying text.

173. In 1928, cousins Raymond Noakes and Arthur Osborn, who had been raised like brothers, were hanged. *See infra* Appendix, notes 459–462 and accompanying text.

174. *See infra* Appendix, notes 525–29 and accompanying text (case of Joe Arridy).

175. *Id.*

176. "Last night's attack was apparently caused by the excitement of the execution." *Puebloan Witness Dies at Execution*, PUEBLO CHIEFTAN (Colo.), Aug. 11, 1937, at 1.

the execution and purchased toys and picture books to help the inmate pass the time.¹⁷⁷

Colorado executed thirteen individuals during the 1940s. At least one of those took the life of another mentally retarded inmate, John Sullivan.¹⁷⁸ Even the sheriff who investigated the crime concluded that Sullivan was a "decidedly subnormal person."¹⁷⁹ The Colorado Supreme Court wrote: "The experts were . . . practically unanimous in saying that [the] defendant's intellect was below 'the average normal level;' that he was 'of inferior intelligence' and 'mentally' below eighteen years of age."¹⁸⁰ Sullivan's attorneys had challenged the execution by arguing that Colorado banned the death penalty for those under age eighteen. The court reasoned that "[t]his has nothing to do with 'age' as used in the statute Had the legislature intended 'mental age' it would have used no such equivocal language."¹⁸¹

Only three executions occurred in the 1950s. The last involved perhaps the most notorious killer in the history of the state, John Gilbert Graham.¹⁸² Graham planted twenty-five sticks of dynamite in his mother's suitcase as she departed on a United Airlines flight from Denver to Portland, Oregon. Eighteen minutes after the plane departed from Denver's Stapleton Airport, the suitcase exploded, killing Mrs. Graham and forty-three others on the plane. Despite the magnitude of the crime, the motive was simple: Graham's troubled relationship with his mother. Also famous for its innovative use of cameras in the courtroom, Graham's 1956 trial was filmed and recorded from a special booth in the courtroom that hid the equipment and camera operators from view. Denver news shows regularly broadcasted excerpts from the ongoing trial. According to the *Denver Post*: "When the trial was over, the judge, the jury foreman, and prosecution and defense attorneys said that to their knowledge the broadcast did not distract anyone and did not interfere with the fairness of the

177. See ROBERT PERSKE, DEADLY INNOCENCE? 125 (1995).

178. See *infra* Appendix, notes 558–561 and accompanying text (case of John Sullivan).

179. *Handyman Is Held in Slaying of Woman at Manitou Springs*, DENVER POST, Jan. 12, 1942, at 5 [hereinafter *Handyman Is Held in Slaying*].

180. Sullivan v. People, 139 P.2d 876, 877 (Colo. 1943).

181. *Id.*

182. See *infra* Appendix, notes 598–602 and accompanying text (case of John Gilbert Graham).

trial.”¹⁸³ After Graham’s execution in 1957, Colorado’s gas chamber was not used again during that decade.

Six men died in Colorado’s gas chamber during the 1960s, all of whom committed highly premeditated and aggravated crimes. The first individual executed during this decade was Leroy Leick, who killed his wife after an unsuccessful two-year attempt to hire someone to do the job instead.¹⁸⁴ In 1961, David Early was executed for the murder of a Denver attorney and the attorney’s wife and child.¹⁸⁵ The murders occurred only four days after Early’s release from a federal penitentiary. Harold Wooley was executed for the murder of an affluent Denver man,¹⁸⁶ and Walter Hammil was convicted of the sexual assault and murder of an eleven-year-old Denver boy.¹⁸⁷ John Bizup, who spent eighteen of his thirty years in and out of reform schools and jails, was executed in 1964 for the murder of a Pueblo cab driver.¹⁸⁸

During the next three years, Colorado did not perform any executions. Then, in 1967, a Coloradoan of Puerto Rican ancestry, Luis Jose Monge,¹⁸⁹ gave up his appeals and asked to be executed following a conviction for killing his wife and three of their ten children. After sharing a final meal with his seven surviving children, Monge went to the gas chamber on June 2, 1967. On the eve of the execution, seventy protestors denounced the death penalty in a rally at the state capitol. Unbeknownst to Coloradans at the time, Monge would be the last person ever asphyxiated in Colorado, the last person executed in the state for thirty years, and the last person to be executed in the United States until 1977.

183. Howard Pankratz, *Colo. A Leader in Courtroom Cameras*, DENVER POST, Dec. 12, 2002, at 7A.

184. See *infra* Appendix, notes 603–12 and accompanying text (case of Leroy Adolph Leick).

185. See *infra* Appendix, notes 613–17 and accompanying text (case of David Francis Early).

186. See *infra* Appendix, notes 618–22 and accompanying text (case of Harold David Wooley).

187. See *infra* Appendix, notes 623–25 and accompanying text (case of Walter J. Hammil).

188. See *infra* Appendix, notes 626–31 and accompanying text (case of John Bizup, Jr.).

189. See *infra* Appendix, notes 632–40 and accompanying text (case of Luis Jose Monge).

VI. THE MOVEMENT TO ABOLISH THE DEATH PENALTY

During the 1950s and 1960s, Colorado's death penalty faced both political and legal challenges. Colorado legislators attempted to abolish the death penalty on several occasions. In addition to legislators, many prominent figures supported this movement, including prison wardens, district attorneys, governors, and the religious community. This movement ultimately failed, however, largely because several heinous murders both in Colorado and elsewhere in the U.S. in the mid-1960s shifted sentiment to support capital punishment. On the other hand, efforts throughout the country to urge the U.S. Supreme Court to review the constitutionality of the death penalty had more success. This Section examines the political efforts in Colorado and legal efforts elsewhere.

A. *The Reemergence and Retreat of Anti-death Penalty Sentiment*

The Colorado legislature attempted several efforts to abolish the death penalty in the 1950s and 1960s. In February, 1955, for example, Castle Rock Republican Ed G. Seidensticker and Arapahoe County democrat Byron Johnson introduced abolitionist legislation in the state house of representatives.¹⁹⁰ A month later, the house came "within a whisker" of passing the ban,¹⁹¹ first approving the abolition bill but soon thereafter returning it to a committee for more study.¹⁹² Similarly in 1957, a bill championed by the Women's International League for Peace and Freedom and sponsored by Republican Representative Rena Mary Taylor of Palisade passed a house committee on a six to five vote,¹⁹³ but ultimately failed in the full house.¹⁹⁴

190. *House Measure Bans Death Penalty in State*, ROCKY MOUNTAIN NEWS, Feb. 24, 1955, at 16.

191. *Bill to End Capital Punishment Returned to House Committee*, ROCKY MOUNTAIN NEWS, Mar. 29, 1955, at 44.

192. The vote to bury the bill was 34-29. *House Move Kills Death Penalty Ban*, DENVER POST, Mar. 29, 1955, at 3.

193. *Bill Voiding Death Penalty Squeaks by House Group*, ROCKY MOUNTAIN NEWS, Feb. 27, 1957, at 41; *House Will Debate Capital Punishment*, ROCKY MOUNTAIN NEWS, Mar. 2, 1957, at 34; *House Kills Bill Banning Death Penalty in Colorado*, ROCKY MOUNTAIN NEWS, Mar. 5, 1957, at 5.

194. The vote was thirty-six to twenty-three. *Bill to Ban Death Penalty Turned Down by House*, DENVER POST, Mar. 5, 1957, at 14.

Yet the issue stubbornly persisted. In many ways, the death penalty comprised part of a wide array of civil rights and human rights issues that Americans were reexamining at the time, including rights for racial and ethnic minorities and the roles of women. In 1959, the Colorado senate overwhelmingly defeated an abolitionist measure by Senator Everett Cook (D-Cañon City). Senator Cook estimated that the abolition of the death penalty would save taxpayers more than \$750,000.¹⁹⁵ Two years later, an abolitionist bill, as well as a bill establishing a statewide referendum on the issue, failed in the senate judiciary committee.¹⁹⁶ In 1964, the senate rejected a referendum that imposed a five-year moratorium on the death penalty after heated debate over Biblical directives on capital punishment.¹⁹⁷ Ultimately a resolution calling for a referendum on a constitutional amendment to abolish the death penalty passed the senate in 1964, but it failed to muster enough votes to pass through a house committee.¹⁹⁸

This bill appeared again in the 1965 legislative session, this time introduced by Republican Representatives John Mackle of Longmont and Ruth Clark of Ft. Collins. On its initial reading, it passed the house by an "overwhelming" margin.¹⁹⁹ Ten days later, the senate approved the referendum. Again, leadership on the issue was provided by a Republican, Senator Donald E. Kelley of Denver.²⁰⁰ The resolution provided that all offenses committed after January 1, 1967, would carry a maximum sentence of life imprisonment. Citizens would vote as part of the 1966 general election, eighteen months after the legislature's action. When Governor

195. Tom Gavin, *Senate Dumps Death Penalty Measure Again*, ROCKY MOUNTAIN NEWS, Mar. 5, 1959, at 5.

196. The measures failed by identical five to two votes. *Anti-Death Penalty Bill Dies*, ROCKY MOUNTAIN NEWS, Mar. 2, 1961, at 24.

197. This bill was defeated on a twenty-three to nine vote. Dan Thomasson, *Senate Defeats Moratorium on Death Penalty*, ROCKY MOUNTAIN NEWS, Feb. 18, 1964, at 5.

198. *Plan to Bar Death Penalty Is Introduced*, ROCKY MOUNTAIN NEWS, Jan. 22, 1965, at 44.

199. Leonard Larsen, *House Votes to Put Death Penalty on Ballot*, DENVER POST, Apr. 10, 1965, at 20.

200. The referendum was approved by an eighteen to twelve margin. Martin Moran, *Senate Wants Voters to Weigh Death Law*, ROCKY MOUNTAIN NEWS, Apr. 20, 1965, at 5; Charles Roos, *Senate Okays Death Penalty Vote Bill*, DENVER POST, Apr. 20, 1965, at 13.

John Love signed the legislation on May 6, 1965, he set the stage for a spirited debate on the issue throughout the state.²⁰¹

Governor Love also pledged not to authorize any executions until the voters spoke. So when the Colorado Supreme Court, in November 1965, upheld the executions of three men—Luis Jose Monge, Michael John Bell, and Sylvester Lee Garrison—Coloradans knew that the executions would not occur until after the referendum was conducted.²⁰²

The Colorado District Attorneys Association was one of the first groups to publicly support the abolition of the death penalty. Just a month after Governor Love signed the legislation authorizing a referendum, the group passed a resolution calling for the abolition of the death penalty by a “decisive” and “overwhelming” margin.²⁰³ According to the *Rocky Mountain News*:

Dist. Atty. Rex Scott of Boulder said, “As far as district attorneys are concerned, the death penalty makes our job tougher, increases trial costs and increases the number of insanity pleas.”

He claimed capital punishment is not a deterrent to murder, carries over from the Dark Ages concept of eye for an eye, and creates the danger of executing an innocent person. He said the penalty is discriminatory in that under the same set of circumstances one jury would sentence a man to die and another would give him life imprisonment. Race and financial positions also enter into juries’ verdicts he said.²⁰⁴

Other members of law enforcement professions had mixed feelings about abolishing the death penalty. Although no reliable polls were taken, evidence indicates that police officers did not share the prosecutors’ anti-death penalty attitude. A poll of one hundred Colorado law enforcement officers in September 1966, for example, found “unanimous” support for

201. *Death Penalty Bill is Signed*, DENVER POST, May 6, 1965, at 34; *Love Signs Law Permitting Vote on Capital Punishment*, ROCKY MOUNTAIN NEWS, May 7, 1965, at 65.

202. Rendall Ayers, *State Supreme Court Orders 3 Executions*, DENVER POST, Nov. 1, 1965, at 23.

203. *State DAs Condemn Death Law*, DENVER POST, June 20, 1965, at 20.

204. William Logan, *Colorado DAs Ask Death Penalty End*, ROCKY MOUNTAIN NEWS, June 20, 1965, at 12.

the death penalty. On the other hand, in 1974, members of the Colorado Correctional Association voted to oppose the death penalty by a reportedly "overwhelming" margin.²⁰⁵

The prosecutors and prison employees of the 1960s were not the first of their respective professions to harbor anti-death penalty attitudes. Rather, several wardens who supervised executions in Colorado stood opposed to the death penalty, at least privately. Warden Lamping first exhibited this sentiment when he opposed moving the site of executions to Cañon City in the late 1880s.²⁰⁶ Later, the death penalty so offended Warden Thomas J. Tynan that he refused to enter the death chamber on at least two occasions.²⁰⁷ Warden Tynan's successor, F.E. Crawford, who served from 1927 to 1931, also opposed the death penalty.²⁰⁸ Roy Best shared similar opinions while, during his twenty-two-year term as warden, supervising twenty-six executions (more than any other warden in the state's history) and the construction of Colorado's first gas chamber.²⁰⁹ Warden Harry C. Tinsley, who served as warden from 1955 to 1965 and supervised eight executions, also opposed the death penalty.²¹⁰ In 1965, Tinsley became not only the Chief of the Colorado Department of Corrections but also the Honorary Chairman of a new statewide anti-death penalty group.²¹¹ In that position, he stood at the forefront of the efforts to ban the death penalty in the 1966 referendum.²¹²

205. *Correctional Group Opposes Death Penalty*, ROCKY MOUNTAIN NEWS, Oct. 5, 1974, at 27.

206. See discussion of Lamping, *supra* Part III.A.

207. See *infra* Appendix, notes 425-31 and accompanying text (case of Lewis J. Wechter), 438-40 and accompanying text (case of George Quinn).

208. Little, *supra* note 150, at 76.

209. Pasquale Marranzino, *No Sponge from Roy's Closet*, ROCKY MOUNTAIN NEWS, May 31, 1954, at 23.

210. Little, *supra* note 150, at 76.

211. Rendall Ayers, *Tinsley Honed for Challenges*, DENVER POST, Sept. 12, 1965, at 35 (stating he would support the death penalty only in cases in which police officers were murdered); *Anti-Capital Punishment Council Will Incorporate*, ROCKY MOUNTAIN NEWS, Dec. 1, 1965, at 73. Warden Tinsley later was among those who filed *amicus* briefs in *Furman v. Georgia*. See *Furman v. Georgia*, 408 U.S. 238, 287, n.35 (1971).

212. Later wardens not only opposed the death penalty, but also followed Tinsley's lead by taking an active role in speaking out against capital punishment. Wayne K. Patterson, who served as warden from 1965-1972 and pulled the lever releasing the cyanide pellets that killed Luis Monge in 1967, remains to this day a staunch opponent of the death penalty. Karen Bailey, *Ex Warden Against Capital Punishment*, ROCKY MOUNTAIN NEWS, July 2, 1985, at 14; Glenn Troelstrup, *Ex-Warden Still Opposes Death Penalty*, DENVER POST,

Those supporting the 1966 referendum to abolish the death penalty noted that several former Colorado governors had voiced opposition to the death penalty. Governor Davis H. Waite, in office in the late nineteenth century, was an early foe.²¹³ Governor Alva Adams signed the 1897 bill that temporarily abolished the death penalty.²¹⁴ In 1901, Governor James Orman refused to sign the bill reinstating the death penalty but allowed it to become law without his signature.²¹⁵ In the early twentieth century, Governor John F. Shafroth also opposed the death penalty, although executions did occur while he was in office.²¹⁶ Similarly, Governor William H. Adams, in office between 1927 and 1933, did not allow his personal opposition to the death penalty to stop executions during his tenure.²¹⁷ In the middle of his term as governor during the 1950s, Edwin C. Johnson published an opinion piece in the *Rocky Mountain News* titled "I Hate Capital Punishment." At the same time, however, Governor Johnson pledged to carry out the law and enforce the death penalty in cases which warranted it.²¹⁸ Two days before the article's publication, Governor Johnson proved his point by not intervening to stop the execution of Besalirez Martinez.²¹⁹

Dec. 19, 1976, at 52; see also *infra* Appendix, notes 632–40 and accompanying text (case of Luis Jose Monge). Alex Wilson, the Warden in 1974, also opposed the death penalty and pledged that he would never personally carry one out. He took the position that executions should not take place at the prison because "it is an extremely derogative thing to do." Joan Zyda, *Warden Personally Against Executions*, DENVER POST, June 9, 1974, at 36. In 1974, Wilson allegedly told an audience that "[p]eople who are in favor of capital punishment are nuts." John Boslough, *Warden Rakes Death Penalty*, DENVER POST, Sept. 27, 1974, at 2. However, when this quote was printed in *The Denver Post*, he denied the statement, pointing out that many people he admired were in favor of the death penalty. 'Nuts' Quote Is Denied by Warden, DENVER POST, Sept. 29, 1974, at 2.

213. *The Condemned*, *supra* note 86, at 9. Governor Waite's term lasted from 1893 until 1895.

214. See *supra* note 96 and accompanying text.

215. See *supra* note 121 and accompanying text.

216. See *infra* Appendix, notes 425–31 and accompanying text (case of Lewis J. Wechter). Governor Shafroth served between 1909 and 1913.

217. See *infra* Appendix, notes 459–62 and accompanying text (cases of Raymond Jasper Noakes and Arthus Alonzo Osborn).

218. Ed C. Johnson, *I Hate Capital Punishment but a Governor Must Do His Job*, ROCKY MOUNTAIN NEWS, Sept. 9, 1956, at 5. Johnson served as governor between 1955 and 1957.

219. See *infra* Appendix, notes 595–97 and accompanying text (case of Besalirez Martinez). Other governors, although apparently not opposed to the death penalty, did visit condemned inmates before executions to better inform their clemency decisions. Governor Albert W. McIntire (1895–1897) visited

The religious community became increasingly involved in organizing against the death penalty during the 1960s and led the fight to outlaw capital punishment in the 1966 referendum. Charles Milligan, a professor of Christian Ethics at the Iliff School of Theology in Denver, provided one of the first calls for abolition in 1961.²²⁰ By 1965, a *Denver Post* poll of Colorado religious leaders found that a majority stood against the death penalty.²²¹ By this time, the debate over the death penalty encompassed several other groups.

In early 1965, the Colorado branch of the American Civil Liberties Union, which had never adopted a stance on capital punishment, began to reconsider its silence.²²² Later that year, the Colorado Council to Abolish Capital Punishment was formed, headed by Denver attorney Edward H. Sherman.²²³ The Council also named Harry C. Tinsley, Chief of Corrections for the State of Colorado and former warden of Colorado State Prison, as honorary chairman.²²⁴ Among other events, the Colorado Council to Abolish Capital Punishment sponsored an eight-day speaking tour of the state in early October by former San Quentin, California, Prison Warden Clinton Duffy.²²⁵ The Colorado Young Democrats²²⁶ also publicly opposed the death

Thomas Jordan. See *infra* Appendix, notes 401–02 and accompanying text. Governor Ralph L. Carr (1939–1943) visited Joe Coates and Martin Sukle. See *infra* Appendix, notes 541–49, 552–55 and accompanying text.

220. *End to Death Penalty Envisaged in Colorado*, DENVER POST, Dec. 16, 1961, at 6. Among relevant scholarship published by Professor Milligan is: *A Protestant's View of the Death Penalty*, in *THE DEATH PENALTY IN AMERICA* 175 (Hugo Adam Bedau ed., 1964); *Reflections on the Gas Chamber*, 23 ILIFF REV. 3 (1966); *The Effect of Cruelty on Those Who Inflict It, with Special Reference to the Eighth Amendment*, 12 CONTEMP. PHIL. 24 (1991); *The 'Cruel and Unusual' Proscription in the Eighth Amendment*, in *THE BILL OF RIGHTS: BICENTENNIAL REFLECTIONS* 103 (Yeager Hudson & Creighton Peden eds., 1993).

221. Eva Hodges, *Clergymen Oppose Capital Punishment in Poll*, DENVER POST, Mar. 20, 1965, at 1 (Religion Section).

222. Morgan Lawhon, *State's ACLU Mulls Death Penalty*, DENVER POST, Jan. 31, 1965, at 14.

223. Rendall Ayers, *Colo. Anti-Death Penalty Unit Formed*, DENVER POST, Nov. 29, 1965, at 3.

224. *Anti-Capital Punishment Council Will Incorporate*, ROCKY MOUNTAIN NEWS, Dec. 1, 1965, at 73.

225. Cary Stiff, *Chessman Views Given by Ex-Warden Duffy*, DENVER POST, Oct. 3, 1966, at 48. Warden Duffy was a dogged opponent of the death penalty. See generally, Clinton Duffy, 88 MEN & 2 WOMEN (1962).

226. The Colorado Young Democrats first took a stand against the death penalty in 1958, when a resolution supporting abolition passed by a narrow margin (661 to 620) at their state convention. Roberta McIntyre, *End Capital Punishment, Dems Urge*, ROCKY MOUNTAIN NEWS, June 2, 1958, at 5.

penalty. The president of the group's Denver branch promised "to go door-to-door" to convince voters to abolish the death penalty.²²⁷

Yet a series of unrelated, unusually brutal murders, which shook both Colorado and the nation in the four months before the 1966 referendum, arguably affected the vote more than any statements for or against the death penalty. On July 9, 1966, University of Colorado student Elaura Jaquette was raped and bludgeoned to death in a room in the auditorium of the Boulder campus.²²⁸ Four days later, eight student nurses were found slain in their Chicago apartment, crimes that soon led to the arrest of Richard Speck.²²⁹ On August 1, Charles Joseph Whitman killed fifteen people and wounded thirty-one others by firing from the top of the University of Texas's bell tower in Austin.²³⁰ Then, less than a week before the referendum, the bullet-ridden bodies of an Arizona couple were found stuffed in a privy in a U.S. Forest Service campground forty miles north of Durango, Colorado.²³¹ To no one's surprise, the November 1966 referendum to abolish the death penalty failed by nearly a two-to-one margin, with 110,452 voters in favor of abolition and 207,908 supporting retention.²³²

Governor Love wasted little time in ending the moratorium on executions. After waiting for the passage of the Christmas season, on January 4, 1967, he lifted the stays that he had granted to Monge, Bell, and Garrison, as well as the stays that he had given to two other condemned inmates, John Major Young and Joe Albert Segura. His action allowed the Colorado Supreme Court to set execution dates²³³ and it did so within the

227. *Denver Young Dems Push Drive to End Death Penalty*, DENVER POST, Aug. 16, 1966, at 28.

228. Clark Secrest, *Girl Found Slain in CU Auditorium*, DENVER POST, July 10, 1966, at 1.

229. *Eight Nurses Massacred*, DENVER POST, July 14, 1966, at 1; *Richard Speck, 49, Chicago Killer of 8 Student Nurses 25 Years Ago*, N.Y. TIMES, Dec. 6, 1991, at 21 (obituary).

230. *Texas Toll: 16 Dead, 31 Shot*, DENVER POST, Aug. 2, 1966, at 1.

231. The victims' names were Milton and Mildred Moeller. Harry Gessing, *Missing Pair Found Slain in Colo. Camp*, DENVER POST, Nov. 3, 1966, at 1. One month later, Thomas Julius Sergeant was arrested for the murders. Robert Kistler, *Slay-Suspect Sergeant Facing Early Return*, DENVER POST, Dec. 14, 1966, at 3. Sergeant was subsequently convicted of first degree murder. *Sergeant v. People*, 497 P.2d 983, 984 (Colo. 1972).

232. Fritz Lalendorf, *Daylight Time OK'd: Voters Retain Death Penalty*, ROCKY MOUNTAIN NEWS, Nov. 9, 1966, at 5.

233. *Gov. Love Lifts Execution Stays*, DENVER POST, Jan. 5, 1967, at 18.

next month, scheduling Garrison's execution for late April, Bell's in mid-May,²³⁴ Monge's in early June, and Segura's soon thereafter. Because Young's direct appeal was still pending, the court did not set an execution date for him.²³⁵ By that time, Garrison had already spent more than seven years on death row in Cañon City. On the day before his May 1967 execution date, however, Governor John Love issued a five-week stay to allow the defense attorneys to take their appeal to federal court. Despite the stay, Warden Wayne Patterson allowed Garrison to eat the "last meal" that had already been prepared in anticipation of his death.²³⁶ A federal judge eventually reduced the sentences of both Garrison—who also ate "last meals" on two other occasions—and Segura to life in June 1971.²³⁷ Garrison had spent over eleven years on death row and was ultimately paroled in 1978.²³⁸

In sum, the political opposition to the death penalty in Colorado in the 1960s directly and indirectly resulted in fewer executions. The political opposition directly led to a delay in executions that allowed more time for death-row inmates to obtain relief from the courts. Indirectly, the political opposition impacted public opinion to an extent that may have caused fewer prosecutors to seek death sentences and fewer juries to

234. Bell and another death row inmate, Ernest Alsip, were killed by guards in an escape attempt on May 1, 1971. Alan Cunningham, *2 Inmates Die in Escape Try in View of Students*, ROCKY MOUNTAIN NEWS, May 2, 1971, at 5.

235. Cary Stiff, *Joe Segura Execution Date Due*, DENVER POST, Feb. 19, 1967, at 31.

236. Fred Brown, *Governor Grants Garrison 5-Week Stay of Execution*, DENVER POST, May 4, 1967, at 1.

237. The death sentences were set aside because of the improper removal of jurors who had reservations about the death penalty from the trial juries. *Segura v. Patterson*, 402 F.2d 249, 251–252 (1968). Carol McMurrough, *Court Decisions Move 2 Men Off Death Row*, DENVER POST, June 29, 1971, at 3; Carol McMurrough, *Garrison Leaves Prison Death Row*, DENVER POST, June 30, 1971, at 21.

238. Bill McBean, *Slayer Cheated Death and Won*, DENVER POST, Apr. 26, 1978, at 3. On Thanksgiving Day, 1978, Lt. Gov. George Brown granted Garrison a pardon while Governor Love was traveling out of state. Love immediately rescinded the pardon upon his return. Dick Foster, *Top State Jobs Have Heated History; Lieutenant Governors Not Always Loyal to Governors*, ROCKY MOUNTAIN NEWS, Oct. 10, 1999, at 5A. Garrison's suit to have the pardon restored failed. Dick Foster, *Governors Hold Solemn Power, Face Public's Wrath in Deciding Pardons*, ROCKY MOUNTAIN NEWS, Feb. 25, 2001, at 4A. By 1994, Garrison had worked for the City of Denver as a janitor for sixteen years. He still lived with his mother and his only legal problems since being released were two traffic tickets. Greg Lopez, *Politicians 'Forget About the Person,' Death Row Survivor Says*, ROCKY MOUNTAIN NEWS, Mar. 16, 1994, at 4.

impose them. In the end, however, the movement failed to achieve its goal of persuading Colorado politicians to abolish the death penalty.

B. The Assault on the Death Penalty in the Courts

As in Colorado, the pace of executions throughout the United States steadily declined between the 1930s and the 1960s. The nation averaged 166 executions per year in the 1930s, 128 in the 1940s, and seventy-two in the 1950s. Public support for the death penalty also began to decline in the 1950s—partly because of three especially controversial executions: Ethel and Julius Rosenberg for espionage in New York in June, 1953, under federal authority²³⁹ and Caryl Chessman in California in May 1960.²⁴⁰ The prosecution of Dr. Sam Sheppard in Ohio in 1954, perceived by many as unfair, also eroded support for the death penalty in the 1950s.²⁴¹ By 1966, only forty-seven percent of the American public voiced support for the death penalty. Between 1960 and 1966, the average number of executions in the U.S. fell to twenty-seven. After Luis Monge's²⁴² execution in Colorado in June 1967, no executions occurred anywhere in the United States for nearly a decade because of litigation in the U.S. Supreme Court.²⁴³

In the decade before 1967, Colorado was not the only state moving in the direction of abolition. Delaware briefly abolished the death penalty in 1958,²⁴⁴ and the abolitionist jurisdictions

239. The Rosenbergs' guilt remains controversial. See, e.g., WALTER SCHNEIR & MIRIAM SCHNEIR, *INVITATION TO AN INQUEST: A NEW LOOK AT THE ROSENBERG-SOBEL CASE* (1968).

240. Chessman had attained worldwide notoriety for several well-received books that he wrote while on death row. See, e.g., CARYL CHESSMAN, *CELL 2455 DEATH ROW* (1954). In addition, he was executed for kidnapping for the purpose of robbery, which many felt should not have been a capital offense. See EDMUND G. (PAT) BROWN, *PUBLIC JUSTICE, PRIVATE MERCY: A GOVERNOR'S EDUCATION ON DEATH ROW 20-52* (1989).

241. This case later became the basis for a popular television show, "The Fugitive." The state sought the death penalty for Dr. Sheppard for the murder of his wife, but in a compromise verdict, he was convicted of second-degree murder and sentenced to life imprisonment. In 1966 a retrial was ordered on the grounds that massive, pervasive, and prejudicial publicity had attended his prosecution. *Sheppard v. Maxwell*, 384 U.S. 333 (1966). At retrial he was acquitted when bloodstain evidence indicated that he was not the killer.

242. See *infra* Appendix, notes 632-40 and accompanying text (case of Luis Jose Monge).

243. *Furman v. Georgia*, 408 U.S. 238 (1972).

244. BEDAU, *supra* note 93, at 22-23.

of Alaska and Hawaii became states in 1959.²⁴⁵ In 1964, a large majority of Oregon voters threw out the death penalty through a public referendum,²⁴⁶ and in 1965, New York and Vermont greatly restricted the availability of death sentences in their jurisdictions.²⁴⁷ Governors such as Edmund ("Pat") Brown in California, Endicott Peabody in Massachusetts, Michael DiSalle in Ohio, Milton Shapp in Pennsylvania, and Winthrop Rockefeller in Arkansas lent their voices to the abolitionists' chorus.²⁴⁸ Scholars began to outline strategies to abolish capital punishment,²⁴⁹ and Supreme Court Justices William Brennan, William O. Douglas, Abe Fortas,²⁵⁰ and Arthur Goldberg²⁵¹ began to invite challenges to the constitutionality of the death penalty.

Meanwhile, in 1963, University of Pennsylvania law professor Anthony Amsterdam began to consult with the New York-based NAACP Legal Defense Fund (LDF) and develop strategies to fight death sentences in state and federal courts throughout the country. These efforts would profoundly affect the administration of the death penalty throughout the country, including Colorado. Some victories in the courts, as well as narrow losses that left room for new challenges, energized these efforts. For example, in 1968, the U.S. Supreme Court's ruling that attorneys could exclude only the most unyielding opponents of the death penalty from jury service in capital cases added many citizens with general reservations against the death penalty to pools of eligible jurors.²⁵² At the time of that decision, many observers believed that another execution would never occur in the United

245. *See id.*

246. Hugo Adam Bedau, *The 1964 Death Penalty Referendum in Oregon: Some Notes from a Participant-Observer*, 26 CRIME & DELINQUENCY 528, 534-535 (1980).

247. MELTSNER, *supra* note 6, at 52.

248. *Id.* at 222, 255.

249. *See, e.g.*, Gerald H. Gottlieb, *Testing the Death Penalty*, 34 S. CAL. L. REV. 268 (1961).

250. Fortas later published his views in Abe Fortas, *The Case Against Capital Punishment*, N.Y. TIMES MAG., Jan. 23, 1977, at 9.

251. Justice Arthur J. Goldberg, joined by Justices William J. Brennan and William O. Douglas, invited a challenge to the death penalty for rape in his dissent in *Rudolph v. Alabama*, 375 U.S. 889 (1963). His clerk at the time was (now) Harvard Law Professor Alan Dershowitz. *See* Arthur J. Goldberg & Alan M. Dershowitz, *Declaring the Death Penalty Unconstitutional*, 83 HARV. L. REV. 1773, 1773 (1970).

252. *Witherspoon v. Illinois*, 391 U.S. 510, 520-22 (1968).

States.²⁵³ Furthermore, an increasing recognition of the role of race in the administration of the death penalty,²⁵⁴ especially for those convicted of rape, led some to anticipate the decisions of appellate courts. Nonetheless, even after extensive research by University of Pennsylvania criminologist Marvin Wolfgang documented widespread racial bias in the death penalty for rape,²⁵⁵ the Eighth Circuit Court of Appeals, in *Maxwell v. Bishop*, refused to intervene.²⁵⁶ Nine years later, the Supreme Court abolished the death penalty for non-homicidal rape, not on grounds of racial bias but because "a sentence of death is grossly disproportionate and excessive punishment for the crime of rape and is therefore forbidden by the Eighth Amendment as cruel and unusual punishment."²⁵⁷

In addition to arguments related to evolving standards of decency and race, death penalty opponents attacked capital punishment because of pure arbitrariness in its application. On appeal to the U.S. Supreme Court, the petitioners in *Maxwell* argued for mandatory standards on which jurors should frame their life-and-death decisions in capital cases and a bifurcated trial system to allow jurors to hear testimony relating to their penalty decision in a separate proceeding following the trial.²⁵⁸ Given the very real hope that the Supreme Court would decide these issues, governors or various state and federal courts suspended all executions in the nation pending the Court's decision.²⁵⁹ The Court's 1970 ruling, however, disposed of the case on narrow grounds pertaining to jury selection and sidestepped the constitutional questions. Almost immediately, however, the Court announced that existing stays of execution would remain in effect until it

253. See MELTSNER, *supra* note 6, at 123–24.

254. *Id.* at 27–31.

255. Some 405 of the 455 men executed for rape (eighty-nine percent) between 1930 and 1967 were African-American. See Marvin E. Wolfgang & Marc Riedel, *Rape, Racial Discrimination, and the Death Penalty*, in CAPITAL PUNISHMENT IN THE UNITED STATES 99–121 (Hugo Adam Bedau & Chester M. Pierce eds., 1976). Colorado never authorized the death penalty for those convicted of rape.

256. The decision was written by future Supreme Court Justice (and future death penalty opponent) Judge Harry Blackmun. *Maxwell v. Bishop*, 398 F.2d 138 (1968).

257. *Coker v. Georgia*, 433 U.S. 584, 592 (1977).

258. *Maxwell v. Bishop*, 398 U.S. 262 (1970).

259. MELTSNER, *supra* note 6, at 148.

addressed these broader issues in other cases.²⁶⁰ Thus, the status of the death penalty in Colorado in the late 1960s and early 1970s was fueled by events that occurred far beyond the state's borders.

In May 1971, by identical six-to-three votes, the Supreme Court dealt two setbacks to the abolitionist strategy in *McGautha v. California* and *Crampton v. Ohio*, ruling that states were free to give juries unguided discretion in sentencing decisions²⁶¹ and that the Constitution did not require separate guilt and punishment proceedings in capital trials.²⁶² But despite these decisions, in the following month, the Supreme Court announced that it would hear a series of cases to determine whether the death penalty itself constituted "cruel and unusual punishment," in violation of the Eighth and Fourteenth Amendments. With this, the stays of execution continued and the case of *Furman v. Georgia* moved to center stage.

Early in 1972, the California Supreme Court, by a six-to-one vote, abolished the death penalty in that state, holding that it violated the "cruel or unusual" clause in the California constitution.²⁶³ That ruling reduced the death sentences for 102 men and five women to life imprisonment.²⁶⁴ Furthermore, because the decision interpreted the state constitution, it could not be appealed to federal courts. Clearly, the abolitionist position had gained strength.

The U.S. Supreme Court finally decided *Furman v. Georgia* in June 1972, marking a monumental victory for the foes of capital punishment. By a five-to-four vote, with each justice writing a separate opinion, the Court held that the death penalty statutes under review—and, by implication, all others in the country—constituted cruel and unusual punishment in violation of the Eighth and Fourteenth amendments.²⁶⁵ Justices Douglas, Marshall, Brennan,

260. *Id.* at 227–28.

261. *McGautha v. California*, 402 U.S. 183, 196 (1971). This holding was opposite to what the Supreme Court was to hold the next year in *Furman*, although *McGautha* involved a Due Process challenge, whereas *Furman* challenged the death penalty under the Eighth Amendment. See *Furman v. Georgia*, 408 U.S. 238 (1972).

262. *Crampton v. Ohio*, 402 U.S. 183, 221–22 (1971).

263. *People v. Anderson*, 493 P.2d 880, 898 (Cal. 1972).

264. MELTSNER, *supra* note 6, at 282.

265. *Furman*, 408 U.S. at 239–40.

Stewart, and White voted with the majority, while Justices Powell, Blackmun, Rehnquist, and Chief Justice Burger all dissented.²⁶⁶ At the time, most observers agreed with Jack Greenberg, the Executive Director of the Legal Defense Fund, who stated: "There will no longer be any more capital punishment in the United States."²⁶⁷ *Furman* and its related cases led to death sentences commuted to prison terms for some 631 men and two women then on death row in thirty-two states. Two Colorado inmates were among those who received commuted sentences: John Major Young, Jr.,²⁶⁸ and James D. Mainer.²⁶⁹

In the end, important questions remained undecided regarding the constitutionality of mandatory death sentences, in which no sentencing discretion was possible, statutes that attempted to guide the discretion of jurors by specifying aggravating and mitigating circumstances, and capital statutes for nonhomicidal crimes. Additionally, with a one-vote majority, *Furman* was a fragile victory for abolitionists. States quickly returned to their legislative drawing boards to devise capital punishment statutes that would survive the Supreme Court's mandate.

266. Ironically, in later years two of the dissenters, Justices Powell and Blackmun, would announce their unequivocal opposition to the death penalty. In 1991, then-retired Justice Lewis Powell told his biographer, "I have come to think that capital punishment should be abolished . . . [because it] serves no useful purpose." JOHN C. JEFFRIES, JR., JUSTICE LEWIS F. POWELL, JR. 451-52 (1994). In 1994, while still on the Court, Justice Blackmun (who, while a Federal Circuit judge, wrote the decision in *Maxwell v. Bishop*, denying the claim that the death penalty for rape was racially tainted) wrote:

From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years I have endeavored . . . along with a majority of this Court, to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor. Rather than continue to coddle the Court's delusion that the desired level of fairness has been achieved . . . I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed.

Callins v. Collins, 510 U.S. 1141, 1145 (1994) (citation omitted).

267. MELTSNER, *supra* note 6, at 291.

268. Young (black) was sentenced to death for the 1965 murder of a Colorado Springs service station attendant. Jack Olsen, 2 in *Colo. Death Row Spared by Court Ruling*, DENVER POST, June 29, 1972, at 3.

269. Mainer (white) was sentenced to death for killing his former wife in January 1970. *Id.*

Various states, led by Florida, adopted "post-*Furman*" death penalty statutes.²⁷⁰ Per *Furman*'s mandate, these "guided discretion" statutes required that determinations of guilt and punishment occur in separate proceedings and that jurors consider specified aggravating and mitigating factors to decide between a death and a prison sentence. By 1976, thirty-five states had passed new death penalty laws and more than five hundred inmates were confined to America's death rows.²⁷¹

Public support for the death penalty had also grown markedly since *Furman*; by this time some two-thirds of Americans supported it. By 1976, the Supreme Court decided five cases stemming from these new statutes. In *Woodson v. North Carolina*²⁷² and *Roberts v. Louisiana*,²⁷³ the Court rejected mandatory death sentences as constitutionally impermissible, thus requiring some sort of individualized decisions in death penalty cases. In three other cases, *Gregg v. Georgia*,²⁷⁴ *Proffitt v. Florida*,²⁷⁵ and *Jurek v. Texas*,²⁷⁶ the Court upheld "guided discretion" statutes—in which legislatures gave judges and jurors guidelines to decide between a prison and a death sentence—as constitutional. America's executioners, including Colorado's, again had the green light.²⁷⁷

270. Charles W. Ehrhardt & L. Harold Levinson, *Florida's Legislative Response to Furman: An Exercise in Futility?* 64 J. CRIM. L. & CRIMINOLOGY 10 (1973).

271. Among those states was Colorado. In a referendum in November 1974, Colorado voters approved the reinstatement of the death penalty. *Death Penalty, Other Amendments Ok'd*, ROCKY MOUNTAIN NEWS, Nov. 6, 1974, at 41; Perruso, *supra* note 8, at 199.

272. *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976).

273. *Roberts v. Louisiana*, 428 U.S. 325 (1976).

274. *Gregg v. Georgia*, 428 U.S. 153, 206-07 (1976).

275. *Proffitt v. Florida*, 428 U.S. 242, 259-60 (1976).

276. *Jurek v. Texas*, 428 U.S. 262, 276 (1976).

277. For a history of the death penalty in Colorado 1976-1997, see Perruso, *supra* note 8 and Lutz, *supra* note 8. Both of these papers describe how in 1995 Colorado shifted the responsibility for sentencing in capital cases from juries to a three-judge panel. On June 24, 2002, the Supreme Court ruled that sentencing authority in capital cases should remain in the hands of the jury. *Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428, 2443 (2002). Colorado Governor Bill Owens responded immediately by calling a special session of the legislature, which convened in Denver on July 8, 2002. Julia C. Martinez & Howard Pankratz, *State to Rewrite Death Penalty; Special Session Planned in Wake of Court Ruling*, DENVER POST, June 27, 2002, at B1. A bill requiring a unanimous jury recommendation before the death penalty could be imposed was signed into law by Governor Owens on July 12. John Sanko, *Governor Signs Death Penalty Law*;

The legal battle over the death penalty in the 1960s and early 1970s effectively mothballed American death chambers for a decade and resulted in a number of reforms that shaped the practice of the death penalty for years thereafter. Capital punishment in America was forever changed.

VII. PATTERNS AND CONCLUSIONS

By way of conclusion, this Section offers four general observations about the death penalty in Colorado concerning: 1) the role of the medical profession and mental health professionals in the death penalty in Colorado; 2) the possibility that innocent people have been executed; 3) the possibility of racial and ethnic bias in the administration of the death penalty; and 4) the general trends toward permanent abolition of the death penalty in the state.

A. *Physician Involvement, Insanity, and Mental Retardation*

The extent of the medical profession's involvement in Colorado death penalty cases unexpectedly emerged as a finding from the case vignettes presented in the Appendix. The involvement of the medical profession grew, rather than declined, during the first seventy years of the twentieth century. It included witnessing executions, pronouncing death, and performing autopsies of the executed inmates as well as significant involvement in determining the mental status of defendants, and, by extension, defendants' degrees of premeditation, intent, and culpability for their criminal behavior.

Colorado statutes always required some involvement by physicians. The 1889 death penalty statute required the warden to invite the "physician of the Penitentiary" and "one practicing surgeon resident in the State" to the execution, and "[i]mmediately after said execution, a *post mortem* examination of the body of the convict shall be made by the attending physician and surgeon"²⁷⁸ Physicians often could take any

Juries Will Make Life-or-Death Calls Instead of Judges, ROCKY MOUNTAIN NEWS, July 13, 2002, at 2B.

278. Act of Apr. 19, 1889, §§ 3, 5, 1889 Colo. Sess. Laws 118, 119, 120. In 1901, the new Colorado death penalty law added a second surgeon to attend the

unclaimed bodies of executed inmates and use them for dissection.

Apparently at least some of these *post-mortem* exams included the removal of the heart from the prisoner's body. When Ralph Fleagle²⁷⁹ was hanged in 1930, "[t]he body was cut down and taken to the prison hospital where the heart was removed by a surgeon to comply with a state law."²⁸⁰ In 1934, after William Kelley²⁸¹ became the first Coloradoan to die in the gas chamber, some fifteen to twenty physicians observed the execution and the autopsy. According to the *Denver Post*: "The long established custom of 'cutting the executed man's heart out,' adopted in hanging days to make sure of the victim's death, was not followed." However, "as a last measure of precaution, [the physicians] did cut [Kelley's] heart artery."²⁸²

The medical profession, however, had a greater role than simply observing executions and performing *post-mortem* exams. Prosecutors, juries, trial and appellate judges, and governors alone did not decide who should live and who should die in Colorado, but these decisions also rested to a remarkable degree on the observations of the medical profession. Defendants facing capital charges often pleaded not guilty by reason of insanity, leading to many battles between experts to determine the prisoner's fate.

Although the number of Colorado defendants facing capital murder charges who avoided conviction or execution because of a mental health defense or support from mental health professionals in clemency applications is unknown, some inmates certainly went to their deaths after their insanity defense failed.²⁸³ In some cases, inmates were sent to death

execution and participate in the post-mortem. Act of May 2, 1901, ch. 64, §§ 6, 8, 1901 Colo. Sess. Laws, 153, 155, 156-57. In 1955, the law was changed to eliminate the requirement for surgeons, instead requiring the presence of "two other duly licensed physicians." Act of Apr. 9, 1955, § 1, 1955 Colo. Sess. Laws 280.

279. See *infra* Appendix, notes 474-79 and accompanying text (case of Ralph Emerson Fleagle).

280. Charles T. O'Brien, *Ralph Fleagle Dies on Gallows*, DENVER POST, July 11, 1930, at 1, 4.

281. See *infra* Appendix, notes 507-513 and accompanying text (case of William Cody Kelley).

282. O'Brien, *supra* note 165 at 1, 3.

283. See, e.g., *infra* Appendix, notes 441-45 and accompanying text (case of Oscar Cook), 454-55 and accompanying text (case of Ray F. Shank), 459-62 and accompanying text (cases of Raymond Jasper Noakes and Arthur Alonzo Osborn); 495-96 and accompanying text (case of E.J. Farmer); 525-29 and accompanying text (case of Joe Arridy); 576-79 and accompanying text (case of John Henry

row even after at least some experts supported the insanity plea. For example, two psychologists and four psychiatrists believed that David Early was paranoid schizophrenic,²⁸⁴ and one psychiatrist thought that John Bizup was insane.²⁸⁵ Other mental health professionals disagreed, and the men were executed. In at least one other case, that of Guisepppe Alia, the state likely executed a severely mentally ill man, either because he could not afford a mental health defense or perhaps because the outrageousness of his crime—the murder of a Catholic priest during Sunday Mass—rendered jurors deaf to his insanity plea.²⁸⁶ In two other cases,²⁸⁷ questions about the defendants' mental status persisted after insanity defenses failed and the men lived on death row. In at least five other cases,²⁸⁸ the sanity of defendants on death row was questioned, unsuccessfully, even though they had not attempted an insanity defense at trial.

Physicians also played roles in cases in which mentally retarded inmates were executed.²⁸⁹ Colorado banned the execution of the mentally retarded by statute in 1993²⁹⁰ and the U.S. Supreme Court banned the practice outright in 2002.²⁹¹ Apparently, however, at least four mentally retarded inmates went to their deaths in Colorado's gas chamber. In 1935, Leonard Belongia was executed despite testimony from one

Brown); 582–84 and accompanying text (case of Robert S. Battalino); 585–87 and accompanying text (case of Paul J. Schnieider); 598–602 and accompanying text (case of John Gilbert Graham); 603–12 and accompanying text (case of Leroy Adolph Leick); 618–22 and accompanying text (case of Harold David Wooley); 632–40 and accompanying text (case of Luis Jose Monge).

284. See *infra* Appendix, note 613–17 and accompanying text (case of David Francis Early).

285. See *infra* Appendix, notes 626–31 and accompanying text (case of John Bizup, Jr.).

286. See *infra* Appendix, note 420 and accompanying text (case of Giuseppe Alia).

287. See *infra* Appendix, notes 450–53 and accompanying text (case of Joe McGonigal), 569–71 and accompanying text (case of Charles Silliman).

288. See *infra* Appendix, notes 401–02 and accompanying text (case of Thomas A. Jordan), notes 446–48 and accompanying text (case of George R. Bosko); notes 463–69 and accompanying text (case of Edward Ives); note 494 and accompanying text (case of James V. Foster); and notes 588–594 and accompanying text (case of John J. Berger).

289. For a discussion of physicians' involvement in death penalty cases involving mentally retarded defendants, see George J. Annas, *Moral Progress, Mental Retardation, and the Death Penalty*, 347 NEW ENG. J. MED. 1814 (2002).

290. Act of Apr. 29, 1993, ch. 155, § 1, 1993 Colo. Sess. Laws 543, 544 (currently codified at COLO. REV. STAT. ANN. § 16-11-103(1)(a) (West 2002)).

291. *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242, 2252 (2002).

physician that Belongia had the mentality of a ten-year-old.²⁹² Four years later, Joe Arridy, with an I.Q. of 46, was executed for a conviction that rested on a very controversial confession.²⁹³ In 1943, John Sullivan was executed even though the sheriff and several experts believed that he had subnormal intelligence.²⁹⁴ Finally, in 1962, Walter Hammil was executed despite acknowledgement by the examining physicians that he was mentally retarded.²⁹⁵

Few professional rules or guidelines limited the involvement of physicians in capital cases prior to the 1970s. In contrast, today's ethical standards by the American Medical Association sharply limit involvement of physicians in death penalty cases and executions. These restrictions are based on a basic tenant of the medical profession, *primum non nocere*, or "first of all do no harm."²⁹⁶ These standards prohibit physicians from using their expertise to assist executioners and from attending or observing an execution in their capacity as physicians. Furthermore, although these standards prohibit physicians from declaring death, they allow physicians to certify death from outside the execution chamber once another person has declared that the prisoner has expired.²⁹⁷ Despite these guidelines, many physicians today still condone participation by physicians in capital cases and executions even if that behavior violates the above standards.²⁹⁸ Accordingly,

292. See *infra* Appendix, notes 518–22 and accompanying text (case of Leonard (Lee) Belongia).

293. See *infra* Appendix, notes 525–29 and accompanying text (case of Joe Arridy). For a variety of reasons, mentally retarded citizens are more likely than others to confess to crimes that they did not commit. See, e.g., James Ellis & Ruth Luckasson, *Mentally Retarded Criminal Defendants*, 53 GEO. WASH. L. REV. 414 (1985); Morgan Cloud, et al., *Words without Meaning: The Constitution, Confessions, and Mentally Retarded Suspects*, 69 U. CHI. L. REV. 495 (2002).

294. See *infra* Appendix, notes 558–61 and accompanying text (case of John Sullivan).

295. See *infra* Appendix, notes 623–25 and accompanying text (case of Walter J. Hammil).

296. COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS, AMERICAN MEDICAL ASSOCIATION, PHYSICIAN PARTICIPATION IN CAPITAL PUNISHMENT, 270 J. AM. MED. ASS'N 365, 365 (1993).

297. *Id.*; COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS, AMERICAN MEDICAL ASSOCIATION, CODE OF MEDICAL ETHICS: CURRENT OPINIONS WITH ANNOTATIONS, 2000–2001, at 15–19 (2000).

298. Neil J. Farber et al., *Physicians' Willingness to Participate in the Process of Lethal Injection for Capital Punishment*, 135 ANNALS OF INTERNAL MED. 884, 887 (2001); see also Linda L. Emanuel & Leigh B. Bienen, Editorial,

involvement of physicians in capital cases raises questions that are far from resolved today.

B. Innocence

The State of Colorado has never acknowledged than anyone executed under its authority was, in fact, innocent of the crime. Thus any claims that a given inmate was indeed innocent will likely spark controversy. Additionally, DNA evidence has not definitely cleared an executed inmate. Therefore, any claim of innocence is necessarily a probability statement, suggesting that a given defendant, for example, "may have been" or "probably was" innocent. Furthermore, looking back through history, the judgments made by jurors and judges in such cases are very difficult to second-guess. American history, however, is replete with examples of inmates convicted of murder who, despite the judgments of the prosecutors, jurors, and judges involved, actually were innocent.²⁹⁹ Often, these exonerations resulted from pure luck.³⁰⁰

Like inmates throughout the U.S. today, some Colorado inmates facing execution steadfastly maintained their innocence prior to execution.³⁰¹ Some admitted that they actually killed the victim but claimed that they did so in self-defense³⁰² or by accident.³⁰³ Others claimed that they indeed

Physician Participation in Executions: Time to Eliminate Anonymity Provisions and Protest the Practice, 135 ANNALS OF INTERNAL MED. 922 (2001).

299. MICHAEL L. RADELET ET AL., IN SPITE OF INNOCENCE 5–10 (1992).

300. For a discussion of the role of "Lady Luck" in exonerating convicted defendants, see, e.g., Michael L. Radelet & Hugo Adam Bedau, *The Execution of the Innocent*, 61 LAW & CONTEMP. PROBS., Autumn 1998, at 117–18. Examples of cases where an innocent death row inmate owes their vindication to luck include cases in which previously silent eyewitnesses step forward, the inmate or his friends are able to convince a journalist or journalism class to take an interest in the case, and cases where biological material that can be used for DNA analysis is left at the crime scene.

301. See *infra* Appendix, notes 349–54 and accompanying text (case of Henry Stone); note 363 and accompanying text (case of Victor Nunez); note 369 and accompanying text (case of W.H. Salisbury); notes 421–24 and accompanying text (case of James Lynn); notes 441–45 and accompanying text (case of Oscar Cook); notes 463–69 and accompanying text (case of Edward Ives); notes 507–13 and accompanying text (case of William Cody Kelley); notes 618–22 and accompanying text (case of Harold David Wooley).

302. See *infra* Appendix, notes 358–61 and accompanying text (case of Theodore Myers); note 375 and accompanying text (case of George N. Woods); notes 387–92 and accompanying text (case of Nicolai Femenella); notes 486–88

had committed second-degree or lesser types of criminal homicide but not capital murder.³⁰⁴

In other cases, in addition to the defendant's claims of innocence, some very reasonable people had doubts about the defendant's guilt. These include the case of Joe Arridy, in which a mentally retarded defendant sealed his fate with a very questionable confession.³⁰⁵ Merrick Rosengrants was executed in Leadville despite no prior record of criminality, an alibi witness who did not testify at trial, and the belief of several Leadville citizens that his innocence claim was indeed true.³⁰⁶ Five years later, Cyrus Minich³⁰⁷ was also hanged in Leadville, despite the Colorado Supreme Court's acknowledgement that "[t]he conviction, it is true, is based upon circumstantial evidence."³⁰⁸ When the Colorado legislature reenacted the death penalty in 1901, it banned executions of defendants "convicted on circumstantial evidence alone."³⁰⁹ This led three Colorado Supreme Court justices to dissent when the court sustained John Berger's³¹⁰ conviction and death sentence, arguing that "[t]he whole record is sufficiently satisfying to sustain the verdict of guilty of murder, but not to warrant the infliction of the death penalty."³¹¹ Looking at these cases individually, in hindsight, some chance exists that the defendants may not have been guilty, but combining the probabilities, likely there is a high probability that at least one person executed in Colorado's history was indeed not guilty of capital murder.

and accompanying text (case of William Moya); notes 541-49 and accompanying text (case of Joe Coates).

303. See *infra* Appendix, note 386 and accompanying text (case of Andrew Green); notes 537-40 and accompanying text (case of Harry Leopold).

304. See *infra* Appendix, notes 497-98 and accompanying text (case of Joe Maestas).

305. See *infra* Appendix, notes 528-29 and accompanying text (case of Joe Arridy).

306. See *infra* Appendix, note 370 and accompanying text (case of Merrick Rosengrants).

307. See *infra* Appendix, notes 382-85 and accompanying text (case of Cyrus Minich).

308. Minich v. People, 9 P. 4, 14 (Colo. 1885).

309. Act of May 2, 1901, ch. 64, § 2, 1901 Colo. Sess. Laws 153, 154.

310. See *infra* Appendix, notes 595-97 and accompanying text (case of Besalirez Martinez).

311. Berger v. People, 224 P.2d 228, 246 (Colo. 1950), *cert. denied*, 342 U.S. 837 (1951).

C. Race and Ethnicity

Several studies have documented racial bias in the administration of the death penalty in the United States prior to the *Furman* decision in 1972.³¹² Unfortunately, no systematic empirical study has addressed the possibility of race or ethnic bias in the administration of the death penalty in Colorado. No studies have compared cases in which defendants were executed to determine if there were equally or more aggravated cases in which the defendants were not executed, and if those differences correlate with such extra-legal factors as race, gender, or geographic region. Yet, some Colorado cases present plausible situations in which one can conclude that race or ethnic status influenced the decision to execute.

Table 6 presents data on the race of the defendants and victims in all Colorado death penalty cases. This Table classifies non-Hispanic white immigrants as white, and therefore the Table does not reflect the extent to which anti-Italian or anti-Irish sentiments may have affected death penalty decisions. The data show that nearly one-quarter of those executed in Colorado were members of racial or ethnic minorities (25/102 or 24.3 percent). If the tallies include the eight Italian and Irish immigrants executed in the state, the proportion of racial minorities executed increases to nearly one-third of all executions in Colorado.³¹³

312. For review of this literature, see WILLIAM J. BOWERS ET AL., *LEGAL HOMICIDE: DEATH AS PUNISHMENT IN AMERICA, 1864-1982*, at 205-17 (1984).

313. At least four Italian immigrants were executed in Colorado. See *infra* Appendix, notes 387-89 and accompanying text (case of Nicolai Femenella); note 403 and accompanying text (case of Peter Augusta); note 420 and accompanying text (case of Giuseppe Alia); and notes 530-34 and accompanying text (case of Pete Catalina). Also, four Irish immigrants were executed in Colorado. See *infra* Appendix, note 346 and accompanying text (case of Patrick Waters); notes 379-81 and accompanying text (case of Marshall Clements); notes 401-02 and accompanying text (case of Thomas A. Jordan); and note 403 and accompanying text (case of Peter Augusta). Also hanged was a "Mohammedan" born to Turkish parents in Serbia, see *infra* Appendix, note 449 and accompanying text (case of Daniel Borich), and a Romanian Jew, see *infra* Appendix, notes 470-73 and accompanying text (case of Harold Weiss). Despite a history of anti-Chinese sentiment in the state, see Leonard, *Avenging Mary Rose*, *supra* note 11, at 130-35, no defendants of Chinese ethnicity have ever been executed in Colorado. Nor have any American Indians, save Joe Maestas, who was half Mexican and half Navajo. See *infra* Appendix, notes 497-98 and accompanying text. The only other American Indian sentenced to death in Colorado that was identified in this research project was Pablo Hatch, sentenced to death on May 10, 1896, from

On the other hand, only about ten percent of those executed in Colorado were convicted of killing ethnic or racial minorities. The vast majority (91/102 or 89.2 percent) of inmates were convicted of killing whites. Colorado executed only one white for the murder of an ethnic or racial minority: Pete Catalina, a native of Italy was convicted of the murder of a Mexican.³¹⁴ Whether, or how much, any anti-Italian sentiment contributed to this sentence is unknown.³¹⁵

Ten African-Americans have been executed in Colorado; the last in 1947.³¹⁶ Six received this punishment for killing whites³¹⁷ and four for killing other blacks.³¹⁸ Unlike the vast majority of executed defendants, none of the black defendants executed for killing other blacks were convicted of killing strangers.³¹⁹ Similarly, only one of the five Hispanics executed for killing other Hispanics was sent to death row for killing a stranger: Besalirez Martinez killed the owner of a tavern.³²⁰ The other four killed friends or family. Victor Nunez killed a man in a lover's triangle;³²¹ Antonio Casias was hanged for murdering a woman friend because of jealousy;³²² Emelio

Montezuma County. Prison records in the Colorado State Archives indicate that Hatch died in the prison from a hemorrhage to his lungs on October 27, 1896.

314. See *infra* Appendix, notes 530-34 and accompanying text (case of Pete Catalina).

315. For the role of anti-Italian attitudes in Colorado lynchings, see Leonard, *Avenging Mary Rose*, *supra* note 11, at 135-42.

316. See *infra* Appendix, notes 576-79 and accompanying text (case of John Brown). It should be noted that for the purposes of this Article, any person with at least one-half African-American heritage is coded as African-American.

317. See *infra* Appendix, notes 355-57 and accompanying text (case of George Smith); note 362 and accompanying text (case of James Miller); note 386 and accompanying text (case of Andrew Green); notes 421-24 and accompanying text (case of James Lynn); notes 499-500 and accompanying text (case of Nelivelt Moss); and notes 541-49 and accompanying text (case of Joe Coates).

318. See *infra* Appendix, notes 372-74 and accompanying text (case of Thomas Coleman); note 398 and accompanying text (case of Charles Smith); notes 535-36 and accompanying text (case of Angelo Agnes); and notes 576-79 and accompanying text (case of John Henry Brown).

319. See *infra* Appendix, notes 372-74 and accompanying text (case of Thomas Coleman); note 398 and accompanying text (case of Charles Smith); notes 535-36 and accompanying text (case of Angelo Agnes); and notes 576-79 and accompanying text (case of John Brown).

320. See *infra* Appendix, notes 595-97 and accompanying text (case of Besalirez Martinez).

321. See *infra* Appendix, note 363 and accompanying text (case of Victor Nunez).

322. See *infra* Appendix, notes 456-58 and accompanying text (case of Antonio Casias).

Herrera shot his wife in a domestic argument;³²³ and Luis Monge (Puerto Rican) killed his wife and three of their children, also in a domestic argument.³²⁴ In general, the state applies the death penalty less frequently to punish murders of family members and friends than to punish murders by strangers.³²⁵ Therefore, these patterns suggest that minority defendants, on average, were executed in Colorado for less aggravated crimes than their white counterparts.

Racial antagonism played a role in at least two cases in which African-Americans were executed for killing whites. James Miller, an African-American veteran of the Civil War, was so outraged at being tossed out of a dance hall because of his race that, in the heat of the moment, he randomly fired a shot inside the building, killing an innocent white patron.³²⁶ Similarly, Nelivelt Moss was hanged for murdering a white woman, allegedly in retaliation for a racial slur that she had used against Moss.³²⁷

Ethnic bias appears to have played a role in the executions of two Italian natives and one Asian. In 1888, Nicolai Femenella was executed for killing an Irish immigrant during quarrels between groups of Italian and Irish railroad workers.³²⁸ In 1908, Guiseppe Alia, another Italian immigrant, was hanged for killing a Catholic priest.³²⁹ The crime outraged Denver citizens, and this public sentiment combined with Alia's apparent psychosis outweighed the pleas of the Italian government to stop the hanging.³³⁰ Finally, at the peak of World War II, a Denver restaurant owner of Japanese ethnicity named George Honda was convicted of stabbing his wife.³³¹

323. See *infra* Appendix, notes 480–85 and accompanying text (case of Emilio Herrera).

324. See *infra* Appendix, notes 632–40 and accompanying text (case of Luis Jose Monge).

325. See, e.g., Michael L. Radelet & Glenn L. Pierce, *Choosing Those Who Will Die: Race and the Death Penalty in Florida*, 43 FLA. L. REV. 1, 24 (1991).

326. See *infra* Appendix, note 362 and accompanying text (case of James Miller).

327. See *infra* Appendix, notes 499–500 and accompanying text (case of Nelivelt Moss).

328. See *infra* Appendix, notes 387–89 and accompanying text (case of Nicolai Femenella).

329. See *infra* Appendix, note 420 and accompanying text (case of Giuseppe Alia).

330. *Id.*

331. See *infra* Appendix, notes 562–65 and accompanying text (case of George Masayoshi Honda).

Plausibly, this relatively common domestic homicide became a capital case because of anti-Japanese sentiments fueled by the Japanese attack on Pearl Harbor, which preceded the murder by only six months.

Although individual case studies may suggest or reveal racial or ethnic biases, no systematic empirical study of Colorado homicides prior to 1972 has measured the overall strength of these biases in determining which convicted murderers lived and which were sent to the executioner. Such a study would need to gather data from a large sample of homicide cases and rank them on levels of aggravation (e.g., whether additional felonies were involved, number of victims, defendant's prior record of felony convictions) and compare the sentences given to white defendants with other defendants for similar types of homicides.³³² Future researchers might also attempt to compile a list of every person sentenced to death in Colorado and compare the racial and ethnic characteristics of those executed with those whose sentences were commuted by judicial or executive authorities.³³³

D. General Trends Toward Abolition

There are several general trends that can be seen by stepping back and examining the entire 123 years of Colorado history reported in the Article. Unquestionably, the general trend was in the direction of the abolition of the death penalty. We first saw growing disgust at witnessing retributive punishments, leading to a ban on public executions in 1889. History is replete with examples of attempts to "humanize" methods of execution, beginning with the invention and use of

332. The best example of this type of work was conducted by David Baldus and his colleagues in Georgia and presented to the Supreme Court in *McCleskey v. Kemp*, 481 U.S. 279 (1987). See DAVID C. BALDUS ET AL., *EQUAL JUSTICE AND THE DEATH PENALTY: A LEGAL AND EMPIRICAL ANALYSIS* (1990). For a more recent study estimating data from Illinois, see Glenn L. Pierce & Michael L. Radelet, *Race, Region, and Death Sentencing in Illinois, 1988-1997*, 81 OR. L. REV. 39 (2002).

333. A good source of data for such a study are Colorado prisoner records, which are available on microfilm at the Colorado State Archives. Among the data given for each prisoner are the date of conviction and sentence. Names and prisoner numbers of inmates from 1871-1973 and more information about the state archives are can be found at Colorado Department of Personnel & Administration, State Penitentiary Records at the Colorado State Archives, at <http://www.archives.state.co.us/pen/history.htm> (last accessed Apr. 15, 2003).

the “jerk-up” hanging machine and moving to the introduction of the gas chamber in 1933, and, after the end of the study period, to lethal injection. We also can see an expanding role of state and federal courts in receiving death penalty appeals and (see Table 2) a gradual increase in the time between the crime and the execution (especially post-1950).

Colorado has also seen an experiment with abolition. This experiment failed not because arguments that the death penalty was needed to deter homicides persuaded political leaders, but rather because these leaders were so easily convinced that the death penalty was needed to deter lynchers. In 1901, when the legislature decided to bring back the executioner, absolutely no data were presented claiming that the death penalty was needed to reduce rates of criminal homicide.

Approximately every thirty years in Colorado’s pre-1972 history brought major efforts to reform or abolish the death penalty. The 1890s brought the movement to abolish public hangings and move them to within the walls of the prison, as well as abolition efforts that finally met success in 1897. In the 1930s, abolition efforts led to the introduction of the gas chamber and the expulsion of the hangman. Furthermore, in 1933, the state senate—but not the house of representatives—voted to abolish the death penalty altogether. In 1955 and again in 1957, abolition bills in the Colorado house of representatives garnered strong support but not enough to pass. Finally, in 1965, the legislature effectively ducked the issue by passing legislation permitting the 1966 referendum on the issue.

Colorado was among several jurisdictions moving toward the abolition of the death penalty. The last two hangings in Great Britain occurred in 1964,³³⁴ and Canada abolished the death penalty “for ordinary crimes” in 1976.³³⁵ According to Amnesty International, by the end of 2002, some 111 countries throughout the world had abolished the death penalty in law or in practice.³³⁶ Colorado and thirty-seven other states in the

334. See generally, ELWYN JONES, *THE LAST TWO TO HANG* (1966).

335. *THE DEATH PENALTY IN AMERICA: CURRENT CONTROVERSIES* 83 (Hugo Adam Bedau ed., 1997).

336. Amnesty International, *Facts and Figures on the Death Penalty*, at <http://web.amnesty.org/rmp/dplibrary.nsf/index?openview> (last accessed Apr. 15, 2003).

U.S. have been moving in the opposite direction: together, the states executed some 820 prisoners in the twenty-six years between January 1, 1977 and December 31, 2002.³³⁷ Thus, our children and grandchildren must determine whether this resurgence in America's use of the executioners' services is permanent or just another temporary phase like Colorado has seen before.

337. See Death Penalty Information Center, *Executions by Year*, <http://www.deathpenaltyinfo.org/article.php?scid=8&did=146> (last accessed Apr. 15, 2003).

TABLE 1: COLORADO EXECUTIONS 1859–1967

Case	Name	Date of Crime	Date of Execution	Day of Execution	Months Between Crime and Execution
<u>County Authority—Pre-statehood—Hanging (N = 10)</u>					
1	Stoefel	04-07-1859	04-09-1859	Saturday	0
2	Young	03-12-1860	03-15-1860	Thursday	0
3	Gredler	06-12-1860	06-15-1860	Friday	0
4	Gordon	07-20-1860	10-06-1860	Saturday	3
5	Waters	11-30-1860	12-21-1860	Friday	1
6	Van Horn	Oct. 1863	12-18-1863	Friday	2
7	Foster	01-05-1866	05-24-1866	Thursday	4
8	Stone	01-05-1866	05-24-1866	Thursday	4
9	Smith	02-16-1868	02-18-1870	Friday	24
10	Myers	08-10-1871	01-24-1873	Friday	17
<u>County Authority—State Law—Hanging (N = 15)</u>					
11	Miller	08-26-1876	02-02-1877	Friday	6
12	Nunez	10-04-1877	03-14-1879	Friday	17
13	Simms	01-25-1880	07-23-1880	Friday	6
14	Salisbury	04-29-1880	06-17-1881	Friday	14
15	Rosengrants	06-18-1880	07-29-1881	Friday	13
16	Gilbert	10-02-1880	07-29-1881	Friday	9
17	Coleman	07-05-1881	12-16-1881	Friday	5
18	Woods	05-25-1882	06-23-1882	Friday	1
19	Garcia	04-15-1883	12-20-1884	Saturday	20
20	Hibbard	Nov. 1883	04-24-1885	Friday	17
21	Clements	08-17-1885	12-03-1885	Thursday	4
22	Minich	10-13-1884	02-05-1886	Friday	16
23	Green	05-19-1886	07-27-1886	Tuesday	2
24	Femenella	03-11-1888	08-23-1888	Thursday	5
25	Ortiz	03-30-1889	07-16-1889	Tuesday	4
<u>State Authority—Cañon City—Hanging (N = 45)</u>					
26	Griego	06-03-1890	11-08-1890	Saturday	5
27	Joyce	07-04-1890	01-17-1892	Saturday	6
28	Davis	01-07-1891	09-22-1891	Saturday	8
29	Smith	June 1891	12-14-1891	Monday	6
30	Lawton	08-17-1891	05-06-1892	Friday	9
31	Jordan	01-23-1893	05-11-1895	Saturday	28

32	Augusta	07-19-1892	05-11-1895	Saturday	34
33	Taylor	01-19-1895	12-13-1895	Friday	11
34	Ratcliff	05-06-1895	02-07-1896	Friday	9
35	Holt	11-20-1895	06-26-1896	Friday	7
36	Noble	11-20-1895	06-26-1896	Friday	7
37	Romero	11-20-1895	06-26-1896	Friday	7
38	Galbraith	03-09-1904	03-06-1905	Monday	12
39	Andrews	12-31-1903	06-16-1905	Friday	18
40	Arnold	12-31-1903	06-16-1905	Friday	18
41	Johnson	04-08-1905	09-13-1905	Wednesday	5
42	McGarvey	09-24-1906	01-12-1907	Saturday	4
43	Alia	02-23-1908	07-15-1908	Wednesday	5
44	Lynn	05-14-1908	10-08-1908	Thursday	5
45	Wechter	02-11-1911	08-31-1912	Saturday	18
46	Hillen	10-24-1913	06-24-1915	Thursday	20
47	Quinn	10-24-1914	01-28-1916	Friday	15
48	Cook	03-09-1912	02-26-1916	Saturday	47
49	Bosko	04-11-1919	12-10-1920	Friday	20
50	Borich	03-31-1922	08-18-1922	Friday	5
51	McGonigal	06-01-1922	04-26-1924	Saturday	22
52	Shank	09-16-1925	09-18-1926	Saturday	12
53	Casias	06-19-1926	11-12-1926	Friday	5
54	Noakes	07-21-1926	03-30-1928	Friday	21
55	Osborn	07-21-1926	03-30-1928	Friday	21
56	Ives	11-22-1928	01-10-1930	Friday	14
57	Weiss	02-14-1929	05-28-1930	Wednesday	15
58	Fleagle	05-23-1928	07-10-1930	Thursday	26
59	Royston	05-23-1928	07-18-1930	Friday	26
60	Abshier	05-23-1928	07-18-1930	Friday	26
61	Herrera	06-29-1929	08-20-1930	Wednesday	13
62	Moya	01-27-1930	12-12-1930	Friday	11
63	Ray	03-14-1930	01-30-1931	Friday	10
64	Walker	03-14-1930	01-30-1931	Friday	10
65	Halliday	03-14-1930	01-30-1931	Friday	10
66	Foster	July 1931	12-11-1931	Friday	5
67	Farmer	01-06-1931	03-18-1932	Friday	14
68	Maestas	09-09-1931	05-27-1932	Friday	8
69	Moss	03-10-1932	03-10-1933	Friday	12
70	Jones	Oct. 1932	12-01-1933	Friday	14

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71	Kelley	10-17-1933	06-22-1934	Friday	8
72	L. Pacheco	02-27-1934	05-31-1935	Friday	15

73	J. Pacheco	02-27-1934	05-31-1935	Friday	15
74	Belongia	12-16-1934	06-21-1935	Friday	6
75	McDaniels	07-15-1935	02-14-1936	Friday	7
76	Aguilar	08-15-1936	08-13-1937	Friday	12
77	Arridy	08-15-1936	01-06-1939	Friday	29
78	Catalina	03-15-1938	09-29-1939	Friday	18
79	Agnes	11-20-1937	09-29-1939	Friday	22
80	Leopold	12-04-1938	12-08-1939	Friday	12
81	Coates	10-13-1938	01-10-1941	Friday	27
82	Stephens	10-09-1939	06-20-1941	Friday	20
83	Sukle	09-30-1939	05-22-1942	Friday	32
84	Fearn	04-22-1942	10-23-1942	Friday	6
85	Sullivan	01-09-1942	09-20-1943	Monday	20
86	Honda	05-03-1942	10-08-1943	Friday	17
87	Potts	04-03-1943	06-22-1945	Friday	26
88	Silliman	01-22-1944	11-09-1945	Friday	10
89	Martz	12-06-1943	11-23-1945	Friday	23
90	Brown	05-12-1945	05-23-1947	Friday	24
91	Gillette	12-26-1946	06-20-1947	Friday	6
92	Battalino	07-07-1947	01-07-1949	Friday	18
93	Schneider	09-20-1947	12-16-1949	Friday	27
94	Berger	01-26-1948	10-26-1951	Friday	45
95	Martinez	11-28-1954	09-07-1956	Friday	22
96	Graham	11-01-1955	01-11-1957	Friday	14
97	Leick	12-01-1953	01-22-1960	Friday	73
98	Early	04-25-1958	08-11-1961	Friday	40
99	Wooley	06-16-1959	03-09-1962	Friday	33
100	Hammil	08-27-1958	05-25-1962	Friday	45
101	Bizup	03-25-1960	08-14-1964	Friday	53
102	Monge	06-29-1963	06-02-1967	Friday	48

TABLE 2: COLORADO EXECUTIONS BY DECADE 1850–1970
(N=102)

Decade	Number of Executions	Average Number of Months between Crime and Execution
1850–1859	1	0.0
1860–1869	7	2.0
1870–1879	4	13.3
1880–1889	13	8.9
1890–1899	12	11.4
1900–1909	7	9.6
1910–1919	4	25.0
1920–1929	7	15.1
1930–1939	25	13.9
1940–1949	13	19.7
1950–1959	3	27.0
1960–1969	6	48.7

TABLE 3: DAY OF WEEK OF EXECUTIONS (N=102)

Day of Week	1885-1889	1890-1967
Sunday	0	0
Monday	0	3
Tuesday	2	0
Wednesday	0	4
Thursday	5	3
Friday	15	57
Saturday	3	10
Totals	25	77

TABLE 4: NUMBER OF HOMICIDE VICTIMS FOR EACH EXECUTED INMATE*

Number of Victims	Number of Cases (N = 102)	Case Numbers
1	78	—
2	15	7-8, 21, 28, 38, 48, 49, 50, 51, 52, 67, 72-73, 83, 88
3	3	34, 93, 98
4	5	58-60, 66, 102
44	1	96

* These numbers reflect only the number killed in the time immediately surrounding the capital homicide. The defendant might not have been convicted of, or sentenced to death for, each of the murders. Nor do these tallies reflect prior homicides.

TABLE 5: ATTENDANCE AT SELECTED PUBLIC HANGINGS

Date	Defendant	Location	Spectators (est.)
04-09-1859	Stoefel	Denver	1,000
06-15-1860	Gredler	Denver	3,000-4,000
10-06-1860	Gordon	Denver	Several thousand
12-18-1863	Van Horn	Central City	Thousands
05-24-1866	Foster & Stone	Denver	Over 3,000
02-18-1870	Smith	Central City	2,000
01-24-1873	Myers	Denver	3,000
03-14-1879	Nunez	Pueblo	1,200-1,500
07-23-1880	Simms	Fairplay	800
06-17-1881	Salisbury*	Colo. Springs	Over 1,000
07-29-1881	Rosengrants & Gilbert	Leadville	5,000
12-03-1885	Clements	Saguache	5,000
12-20-1884	Garcia	Pueblo	4,000
07-27-1886	Green	Denver	15,000-20,000

Unknown Number of Witnesses

03-15-1860	Young	Denver
12-21-1860	Waters	Denver
02-02-1877	Miller	W. Las Animas
12-06-1881	Coleman*	Gunnison
06-23-1882	Woods	Durango
04-24-1885	Hibbard	Trinidad
02-05-1886	Minich	Leadville
08-23-1888	Femenella*	Buena Vista
07-16-1889	Ortiz	Antonito

* Three executions were held within the fences of local jails, and hence were only "semi-public."

TABLE 6: DEFENDANT-VICTIM RACIAL/ETHNIC COMBINATIONS

Race of Defendant-Victim	Number of Cases
W-W	75
H-W	7
B-W	6
W-B&W	1
Other-W	2
B-B	4
H-H	5
W-H	1
A-A	1
Total	102

APPENDIX I: CATALOGUE OF COLORADO EXECUTIONS³³⁸

1. JOHN STOEFEI (a.k.a. Stofel, Stuffle). April 9, 1859. Denver. W-W. Hanging. For committing the first murder ever recorded in the new settlement of Denver, Stoefer became the first of five men executed under orders by Denver's "People's Court." Stoefer "confessed to shooting a fellow prospector for his gold dust."³³⁹ The victim was Stoefer's brother-in-law, Thomas Biencroft. A party of three Germans, including an elderly man and his two sons (one of whom was Biencroft), and a son-in-law (Stoefer, who was Hungarian) had left their camp looking for cattle, and Stoeffer shot Biencroft during the trip. The hanging occurred less than forty-eight hours after the murder. At the time, Denver was part of Arapahoe County, Kansas Territory, and had been settled for only six months. Although the settlement only consisted of 150 buildings (mostly saloons and gambling halls), some one thousand spectators attended the execution. A fortnight later, the inaugural issue of the Denver newspaper, the *Rocky Mountain News*, referenced the hanging.³⁴⁰

2. MOSES YOUNG. March 15, 1860. Denver. W-W. Hanging. Young was convicted by Denver's "People's Court" of murdering William West with a shotgun. Both men hailed from Leavenworth, Kansas, and were "old acquaintances, if not friends."³⁴¹ Within forty-eight hours of the murder, Young was tried before a twelve-man jury and hundreds of spectators. The next morning, a scaffold was erected on the site of the murder

338. After the inmate's name, date of execution, and location of conviction, information on the race of defendant, followed by race of victim, is presented. Prisoners whose heritage is at least half African-American are coded as Black, and European immigrants to America are coded as White. One Syrian defendant and one defendant who was half Mexican and half Navajo Indian are classified as "other." The race information is followed by the method of execution (hanging or asphyxiation), and, for hanging, the cause of death if known (broken neck or strangulation).

339. WAYNE GARD, *FRONTIER JUSTICE* 206 (1949); see also JEROME C. SMILEY, *HISTORY OF DENVER* 339 (1901).

340. SMILEY, *supra* note 339, at 339; Curtis, *supra* note 1, at 66, 70-71; Leonard, *Avenging Mary Rose*, *supra* note 11, at 16-18; Williams, *supra* note 13, at 294-95; *Murder and Execution*, *supra* note 2, at 3.

341. SMILEY, *supra* note 339, at 342.

(the slain man's house), and amid the roar of drums, Young was marched to the gallows and hanged.³⁴²

3. MARCUS GREDLER. June 15, 1860. Denver. W-W. Hanging. Gredler was convicted of murdering Jacob Rodler, a friend and traveling companion, by chopping off his head with an axe while passing through Denver. Gredler, a thirty-one-year-old brewer by trade, was born in Germany and had lived in the U.S. for six years before the crime. Rodler often quarreled with others, and even his wife, a member of the traveling party, said that her life was better with Rodler dead. Gredler claimed that Rodler's wife had asked him to kill Rodler. Between three and four thousand people attended the hanging.³⁴³

4. JAMES A. GORDON. October 6, 1860. Denver. W-W. Hanging. By age twenty-three, Gordon's "reputation as a desperado accredited him with having killed three or four men before he came here."³⁴⁴ He was educated as an engineer and owned a saloon in Denver. While intoxicated in a Denver bar on July 20, 1860, Gordon shot and killed an unarmed stranger, a German named John Gantz. Gordon escaped to Kansas but was apprehended and taken to Leavenworth. There, after being freed briefly on a writ of *habeas corpus*, he was nearly lynched by a mob of German citizens who were angered by the atrocious nature of the crime. After being rearrested, the authorities returned him to Denver on the morning of September 28. His trial began that afternoon before a People's Court, twelve jurors, and an audience of one thousand people. Gordon was found guilty, and was hanged the next week in front of a crowd of several thousand.³⁴⁵

5. PATRICK WATERS. December 21, 1860. Denver. W-W. Hanging/Broken neck. Waters, a farmhand born in Ireland, shot and killed Thomas R. Freeman, his employer, near Ft. Lupton, where the two had journeyed to pick up a load of hay. Water's motive was to rob Freeman of the money that he carried to purchase the hay. Once arrested, two weeks after

342. *Id.*; Burg, *supra* note 14, at 514; Williams, *supra* note 13, at 295-96.

343. SMILEY, *supra* note 339, at 342; Williams, *supra* note 13, at 296; *Execution of Marcus Gredler*, THE WESTERN MOUNTAINEER, June 28, 1860, at 8.

344. SMILEY, *supra* note 339, at 343.

345. GARD, *supra* note 339, at 206; ALICE POLK HILL, TALES OF THE COLORADO PIONEERS 57-61 (1884); William MacLeod Raine, *The Gordon Case*, in DENVER MURDERS 13 (Lee Casey ed., 1946); Leonard, *Avenging Mary Rose*, *supra* note 11, at 24-25; Williams, *supra* note 13, at 298-300.

the homicide in Nebraska and returned to Denver, Waters was taken to the scene of the murder by a party of a dozen men who were searching for Freeman's body. They threatened Waters with immediate lynching if he did not disclose the location of the body, and so he did—as the rope was being placed over his head. Waters had no prior arrest record and a reputation of peaceableness and honesty. He fully confessed before his death.³⁴⁶

6. WILLIAM S. VAN HORN. December 18, 1863. Central City. W-W. Hanging. Van Horn was convicted of murdering Josiah Copeland. Van Horn's mistress allegedly lured Copeland to the scene of the murder, where Van Horn lay in wait to kill him, although the mistress was never charged with the crime.³⁴⁷ Hundreds attended the trial. To avoid a lynching, Van Horn was taken to Denver and lodged in the Arapahoe County jail. Thousands attended the execution, which was the first carried out under territorial law in Colorado.³⁴⁸

7-8. FRANKLIN FOSTER AND HENRY STONE. May 24, 1866. Denver. W-W. Hanging. The two defendants, both former Union soldiers with no prior criminal records, were convicted of murdering two men, Isaac H. Augustus and H. Sluman, and stealing some eight thousand dollars in gold.³⁴⁹ Foster was twenty and Stone was twenty-four years old at the time of the crime.³⁵⁰ The murders occurred approximately one hundred miles east of Denver.³⁵¹ "Foster confessed to the crime and implicated Stone, who denied all connection with the murder for which he was executed, but admitted the commission of four

346. GARD, *supra* note 339, at 207; SMILEY, *supra* note 339, at 348; Williams, *supra* note 13, at 300–02; *Murder of Thomas Freeman*, ROCKY MOUNTAIN NEWS, Dec. 6, 1860, at 2; *The Waters Trial*, ROCKY MOUNTAIN NEWS, Dec. 19, 1860, at 2; *Trial of Patrick Waters for the Murder of Thomas R. Freeman Before a Court of the People*, ROCKY MOUNTAIN NEWS, Dec. 20, 1860, at 2; *The Execution of Waters*, ROCKY MOUNTAIN NEWS, Dec. 21, 1860, at 2.

347. *The Van Horn Case*, ROCKY MOUNTAIN NEWS, Dec. 2, 1863, at 2; *William S. Van Horn*, ROCKY MOUNTAIN NEWS, Dec. 23, 1863, at 1.

348. Stephen J. Leonard, *Judge Lynch in Colorado, 1859–1919*, 3 COLO. HERITAGE 3 (2000); II FRANK HALL, *HISTORY OF THE STATE OF COLORADO*, at 150–54 (1890).

349. *Robbing and Murder!*, ROCKY MOUNTAIN NEWS, Jan. 6, 1866, at 1; *Justice Appeased*, *supra* note 31, at 1; *The Execution*, ROCKY MOUNTAIN NEWS, May 25, 1866, at 4 [hereinafter *The Execution*].

350. *Prisoners Sentenced*, ROCKY MOUNTAIN NEWS, Apr. 28, 1866, at 4.

351. HALL, *supra* note 348, at 154.

other murders of men in the states.”³⁵² “There [were] probably not less than 3,000 spectators present . . .”³⁵³ The *Rocky Mountain News* said: “Although we hope never to witness another scene like that presented yesterday, it is an extremely gratifying thought that the majesty of the law is upheld by a people who are evidently looked upon by the ‘all-civilized’ people of the east as little better than barbarians.”³⁵⁴

9. GEORGE SMITH. February 18, 1870. Central City. B-W. Hanging. Smith was convicted of murder by beating and strangling to death William Hamblin, a milkman. The murder occurred in February 1868; the motive was to obtain the victim’s money. Suspicion immediately fell on Smith and another African-American, Bob Reynolds. Both were soon apprehended, and both confessed.³⁵⁵ Reynolds, however, escaped from custody and a week later suffered injuries while being apprehended. He died in prison before trial. After Smith’s conviction and death sentence, several unsuccessful efforts by local citizens were made to save him from the gallows, including a plea to the governor.³⁵⁶ Approximately two thousand people witnessed the hanging.³⁵⁷

10. THEODORE MYERS (a.k.a. Meiers, Miears, or Maier). January 24, 1873. Denver. W-W. Hanging/Broken neck. A German immigrant and farmhand, Myers, age twenty-six, was convicted of murdering his employer, George Bonacina, and wounding a female companion of the employer’s, variously described as the employer’s mistress or sister. Myers had loaned the employer twenty-five dollars, and the murder resulted from an argument when the employer failed to return the money. The defense argued alternatively that the killing lacked premeditation and it was in self-defense. Myers was first convicted in February 1872, but a motion for a new trial was granted,³⁵⁸ and he was again convicted later that year. Appeals for relief to the Colorado Supreme Court, supported by

352. *The Penalty Paid: Miears, the Murderer of Bonacina, Hanged*, ROCKY MOUNTAIN NEWS, Jan. 25, 1873, at 4 [hereinafter *The Penalty Paid*].

353. *Execution of Franklin Foster and Henry Stone for the Murder of Isaac H. Augustus and Sluman*, ROCKY MOUNTAIN NEWS, May 24, 1866, at 1.

354. *The Execution*, *supra* note 349, at 4.

355. ROCKY MOUNTAIN NEWS, Feb. 19, 1868, at 4; ROCKY MOUNTAIN NEWS, Feb. 20, 1868, at 4.

356. ROCKY MOUNTAIN NEWS, Feb. 19, 1870, at 4.

357. *The Scaffold: Execution of George Smith, Two Thousand People Present*, COLO. TRIB., Feb. 24, 1870, at 2.

358. *People v. Myers*, 1 Colo. 508 (1872).

a petition signed by over three hundred citizens, and to the governor failed. Because the governor was out of state, the acting governor, who later wrote his reflections on the case, made the clemency decision.³⁵⁹ In addition, the defense attorney, N. Harrison, later published his criticism of both the trial judge's refusal to issue a writ of error and the statute under which Myers was executed.³⁶⁰ Three thousand people attended the execution.³⁶¹

11. JAMES MILLER. February 2, 1877. West Las Animas (Bent County). B-W. Hanging/Strangulation. Miller's execution was the first in Colorado after the territory achieved statehood. Miller, a twenty-three-year-old "mulatto," had served as a soldier with the United States Colored Troops for the previous five years. He entered a dance hall that was reserved for whites that night, and an inebriated white customer forced him at gunpoint to leave. Another white customer, John Sutherland, told the thug to leave Miller alone. Miller and a friend, Benjamin Smith, later returned and randomly shot into the bar, missing the thug but killing Sutherland. Both men received death sentences; the governor commuted Smith's sentence. At the hanging, which the governor delayed two weeks so Miller could join a church and be married, the trapdoor would not open at first, and when it did, it fell to the ground. Miller dropped through the opening in the platform, but the rope was too long and his feet came to rest on the trap door that had fallen below him. The trap door was quickly removed so Miller could swing unimpeded. He hung for twenty-five minutes before expiring. Later, the sheriff, distraught over the bungled hanging, resigned his position and left the community.³⁶²

12. VICTOR NUNEZ. March 14, 1879. Pueblo. H-H. Hanging/Broken neck. Despite consistent protestations of innocence, Nunez, a fifty-seven-year-old ranch-hand born in Mexico, was executed for the murder of an affluent Mexican rancher. Nunez's alleged motive was that he "entertained an unlawful passion" for the victim's wife, who served as a

359. HALL, *supra* note 348, at 147-50.

360. N. HARRISON, A REVIEW OF THE TRIAL OF THEODORE MYERS, FOR THE MURDER OF GEORGE M. BONACINA (1873) (on file in Archives, Norlin Library, University of Colorado, Boulder).

361. *The Penalty Paid*, *supra* note 352, at 4.

362. KING, *supra* note 51, at 163 n.3; *The Gallows*, PUEBLO CHIEFTAN (Colo.), Feb. 3, 1877, at 1; *The Execution*, *supra* note 349, at 2.

prosecution witness. No one immediately suspected that the victim, Luis Rascone, had been murdered—they thought he had simply left town—while Nunez spent the winter with the victim's wife in Pueblo. Eventually a young Indian girl who had witnessed the murder came forward and revealed the story. Between twelve and fifteen hundred people witnessed the hanging. "Among them we were astonished and pained to see many females and a horde of children, from five years old upward. The morbid curiosity that prompts such desires ought not to be gratified and we hope that the next execution that occurs in Pueblo will be a private one."³⁶³

13. CICERO SIMMS (a.k.a. Sims). July 23, 1880. Fairplay (Park County). W-W. Hanging/Broken neck. At age twenty-two, Simms, a prospector and miner, was convicted of murdering a friend, John Johnson, in Alma. Simms shot and killed Johnson after some horseplay resulted in an angry rage.³⁶⁴ Johnson, a Dane by birth, was well respected in the community and had provided housing and food for Simms in exchange for cooking and household duties.³⁶⁵ On at least three occasions prior to the murder, Simms had inappropriately brandished a pistol during various quarrels with Johnson. Simms had been arrested several times for crimes of varying degrees of violence and was suspected of a previous murder. His attorney protested that Simms received an unfair trial because on the night before it began, another prisoner, recently spared the death penalty, had been removed from the local jail and lynched.³⁶⁶ This, argued the defense attorney, led to an increased appetite for legal executions to deter lynching. After Simms's execution, an editorial in the *Rocky Mountain News* questioned capital punishment, especially in cases such as this where the crime was committed in the "spasm of passion."³⁶⁷ Approximately eight hundred people attended the hanging.³⁶⁸

363. *Nunez Hanged for the Murder of Luis Rascone*, PUEBLO CHIEFTAN (Colo.), Mar. 15, 1879, at 4.

364. *Sentenced to Hang*, ROCKY MOUNTAIN NEWS, Apr. 30, 1880, at 5.

365. *Shot by His Friend*, FAIRPLAY FLUME (Colo.), Jan. 29, 1880, at 4.

366. *Doomed: Sims, the Alma Murderer, to Hang To-Morrow*, ROCKY MOUNTAIN NEWS, July 22, 1880, at 4; *The Gallows: Cicero C. Simms, the Alma Murderer, Suffers the Penalty of His Dastardly Crime*, ROCKY MOUNTAIN NEWS, July 24, 1880, at 1.

367. Editorial, *The Plea of the State*, ROCKY MOUNTAIN NEWS, July 25, 1880, at 4.

368. *The Fatal Trap: How It Opened to Engulf Cicero Simms*, FAIRPLAY FLUME (Colo.), July 29, 1880, at 1.

14. W.H. SALISBURY (a.k.a. William H. Canty). June 17, 1881. Buena Vista (Chaffee County). W-W. Hanging/Broken neck. After a change of venue to Colorado Springs, a jury deliberated for four hours and convicted Salisbury, age thirty-four, of the murder of a Buena Vista police officer, Thomas L. Perkins. Salisbury shot Officer Perkins four times as he attempted to arrest a friend of Salisbury's. Several eyewitnesses identified Salisbury, but Salisbury argued that the friend, and not he, was the triggerman. The execution took place in the jail yard of the El Paso County Jail in Colorado Springs, with only an unknown number of ticketed spectators present. Over one thousand people, however, assembled in an open square surrounding the jail to try to get a glimpse of the hanging. On the scaffold, Salisbury made a tearful speech in which he insisted upon his innocence. When the trap opened, the rope broke from the hook holding it to the scaffold, allowing Salisbury's body to fall to the ground. The rope was quickly reattached, and physicians later claimed that the original fall broke Salisbury's neck and the broken rope caused no additional agony.³⁶⁹

15. MERRICK ROSENGRANTS. July 29, 1881. Leadville (Lake County). W-W. Hanging. Rosengrants was convicted on the victim's deathbed declaration. John Langmeyer claimed Rosengrants shot him when he found Rosengrants inside his cabin ransacking his trunk. Rosengrants was well-respected, and his acquaintances believed he would never rob another person's property, much less shoot someone. He also had an alibi witness, who did not testify at trial because the defense attorney thought that the witness's alcohol abuse lessened his credibility. Rosengrants steadfastly maintained his innocence until his death, along with a number of Leadville citizens. He was hanged on a two-rope gallows simultaneously with Franklin Gilbert (q.v.).³⁷⁰

369. *Beginning the Trial of Canty, the Alleged Murderer of Tom Perkins*, COLO. SPRINGS DAILY GAZETTE, Apr. 19, 1881, at 4; *Continuation of the Trial of Canty—The Case Under Argument*, COLO. SPRINGS DAILY GAZETTE, Apr. 20, 1881, at 4; *The Jury Finds Canty Guilty of Premeditated Murder*, COLO. SPRINGS DAILY GAZETTE, Apr. 21, 1881, at 4; *Life for a Life, Law Vindicated and Life More Secure, W.H. Salisbury, Alias W.H. Canty, Expiates His Crime*, COLO. SPRINGS DAILY GAZETTE, June 18, 1881, at 1.

370. SHERILL WARFORD, VERDICT: GUILTY AS CHARGED, LEADVILLE JUSTICE, 1879-1886, at 16-29 (1977).

16. FRANKLIN GILBERT. July 29, 1881. Leadville (Lake County). W-W. Hanging/Broken neck. A charcoal salesman, approximately thirty years of age, Gilbert was convicted of murdering James McCollom. The state contended that Gilbert shot and stabbed McCollom because McCollom owed him some money. Gilbert was hanged alongside Rosengrants (above) in front of some five thousand spectators.³⁷¹

17. THOMAS COLEMAN. December 16, 1881. Gunnison (Gunnison County). B-B. Hanging/Broken neck. A railroad worker and foreman of a grading crew, Coleman, age twenty-seven, was convicted of murdering another African-American, a teamster named Albert Smith. The two had quarreled several months before the murder over five dollars that Coleman had lost in a card game. Coleman believed Smith had cheated him, and on July 5, 1881, he shot Smith when Smith refused to return the money. The execution took place before a "large crowd" in the yard of the Gunnison jail. Coleman was intoxicated and had to be carried to the gallows.³⁷² When the signal was given to proceed with the hanging, the trap door failed to open, and Coleman was removed from the gallows while the mechanism was repaired. Once adjustments were made, it worked properly. The *Pitkin Independent's* headline after the hanging read, "Jerked to Jesus. The Negro Coleman bids adieu to all earthly sights and takes a flying trip over the river Jordan."³⁷³ Later, Coleman's body was left to freeze and bits of it were chipped off for souvenirs.³⁷⁴

18. GEORGE N. WOODS. June 23, 1882. Durango (La Plata County). W-W. Hanging/Strangulation. Woods was executed less than one month after he shot and murdered M.G. Buchanan. Both Woods, age thirty-four, and Buchanan were members of the "Stockton Gang," and both were friends with Stockton's widow, who had already remarried by the time of the murder. Woods and Buchanan frequently quarreled about her, apparently because Woods was attracted to her and Buchanan, a friend of the widow's new husband, tried to discourage the romance. The murder occurred in a Durango

371. *Id.*

372. *Paid in Full*, GUNNISON DAILY NEWS DEMOCRAT (Colo.), Dec. 17, 1881, at 1; *Sent Heavenward*, PUEBLO CHIEFTAN (Colo.), Dec. 18, 1881, at 1.

373. DUANE VANDENBUSCHE, *THE GUNNISON COUNTRY* 181-82 (1980) (containing a picture of Coleman on the execution scaffold).

374. *Id.* at 182.

saloon, where both brandished weapons before Woods killed Buchanan. Woods argued self-defense. Shortly before his execution, Woods told a newspaper that he regretted that he did not also kill the woman's new husband, Joel Estes.³⁷⁵

19. MIGUEL GARCIA. December 20, 1884. Pueblo. H-W. Hanging/Broken neck. A native of Mexico, Garcia, age fifty-four, did not speak English. He was employed gathering old rags, bones, iron, etc. After a change of venue to Pueblo, Garcia was convicted of killing his employer, Dennis Wilkes, near Las Animas, in Bent County.³⁷⁶ Garcia crushed Wilkes' head while he lay in bed sleeping; the alleged motive was robbery. The murder occurred after Wilkes had employed Garcia for two weeks. Garcia abruptly left town before the body was discovered and pawned the victim's watch. Garcia was actually tried and convicted three times; the first conviction was set aside by the trial court because of errors in the trial transcript, and the second was set aside by the trial court because of insufficiency of the evidence. A crowd of approximately four thousand attended the execution, which, like the trial, was held in Pueblo.³⁷⁷

20. CHARLES HIBBARD. April 24, 1885. Trinidad (Las Animas County). W-W. Hanging/Broken neck. Hibbard was convicted of the murder of William Knowles in Stonewall, approximately forty miles north of Trinidad. Hibbard was living at his uncle's ranch in Stonewall when Knowles, an elderly man who had a large sum of money, came to visit. When the uncle left for a trip to Illinois, Hibbard and Knowles stayed behind to care for the ranch. Soon neighbors realized that Knowles was missing, and their inquiries prompted Hibbard to leave town. The uncle discovered Knowles's body when he returned from Illinois. Upon his apprehension in

375. *Murder!*, DURANGO DAILY HERALD (Colo.), May 25, 1882, at 1; *Home Stretch: Woods Does Not Weaken as He Approaches the Same*, DURANGO DAILY HERALD (Colo.), June 20, 1882, at 4; *Woods Willing*, DURANGO DAILY HERALD (Colo.), June 22, 1882, at 4; *Wild Woods, Fails to Shuffle off the Sheriff's Coil, He Died the Death Due His Dark Deed at Durango*, ROCKY MOUNTAIN NEWS, June 24, 1882, at 1; SMITH, *supra* note 85, at 51 (containing picture of the hanging).

376. *Garcia Convicted*, PUEBLO CHIEFTAN (Colo.), Nov. 27, 1884, at 4.

377. *Sentence Passed*, PUEBLO CHIEFTAN (Colo.), Dec. 2, 1884, at 5; *Gone Glimmering: the Soul of Miguel Garcia Takes Its Flight to a Higher Court for a Hearing*, PUEBLO CHIEFTAN (Colo.), Dec. 21, 1884, at 4; *Garcia's Adios*, ROCKY MOUNTAIN NEWS, Dec. 21, 1884, at 8.

Kansas, Hibbard confessed to the murder and a long history of other crimes, including murder and horse and cattle theft.³⁷⁸

21. MARSHALL CLEMENTS. December 3, 1885. Saguache (Saguache County). W-W. Hanging. Clements was convicted of murdering his brother, Thomas H. Clements, and sister-in-law, Susie Y. Clements. In his written confession, Clements accused the victims of mistreating his father and sister, who had raised the boys and four other siblings after the mother's death, and living off them. Clements also called his sisters prostitutes and blamed the victims for causing his father's death through physical and psychological abuse. The family had emigrated from Ireland two years before the murders.³⁷⁹ At the execution, because the sheriff "had no stomach," an anonymous person sprung the trap with a rope strung from the hanging scaffold to the nearby county clerk's office.³⁸⁰ Some five thousand spectators attended the hanging.³⁸¹

22. CYRUS MINICH. February 5, 1886. Leadville (Lake County). W-W. Hanging. Minich was convicted of murdering Samuel Baldwin, a miner who was widely rumored to hold all his money on his person because of a distrust of the banking system. Four robbers allegedly beat Baldwin to death, and the fact that Minich deposited \$360 in a bank on the day after Baldwin's death served as the only evidence connecting him to the crime.³⁸² One self-confessed participant fingered Minich, but he later jumped bail and, like a third suspect, was never heard from again. The fourth man implicated in the murder had an alibi and therefore was never tried for the crime. Meanwhile, Minich, age thirty-seven, maintained his innocence from the time of his arrest until the time of his death. Although the Colorado Supreme Court acknowledged that the State's case against Minich was based only on circumstantial evidence, it stated: "Yet there is woven about the defendant a web of circumstances which, coupled with his attempted explanation thereof, point irresistibly to him as one of the

378. *Hibbard Hanged*, ROCKY MOUNTAIN NEWS, Apr. 25, 1885, at 1.

379. *Four Fiends: The Clements Murder at Saguache a Deed of Atrocity Unparalleled in Colorado*, ROCKY MOUNTAIN NEWS, Oct. 2, 1885, at 8.

380. *That Fatal Drop*, ROCKY MOUNTAIN NEWS, Dec. 4, 1885, at 1.

381. Patrea Jensen, *Colorado's 86 Legal Executions*, in COLO. SHERIFF & PEACE OFFICER 14, 14-15 (Oct.-Nov. 1966).

382. *Tightening Toils: Network of the Baldwin Murder—A Poor Chance for Gillespie*, ROCKY MOUNTAIN NEWS, Oct. 19, 1884, at 2.

guilty parties.”³⁸³ On the gallows, Minich again proclaimed his innocence, and then said: “Good bye to all. Good bye.”³⁸⁴ As the local newspaper described: “The crowd then responded with one voice, saying twice, ‘Good bye, Cy.’”³⁸⁵

23. ANDREW GREEN. July 27, 1886. Denver. B-W. Hanging/Strangulation. Green was convicted of robbing and murdering Joseph C. Whitnah, a driver for the Denver City Railway Company. Green, age twenty-five, and an accomplice were overheard while talking in a saloon about the murder, and within a few days Green had been arrested for vagrancy, drunkenness, and carrying a concealed weapon—charges that were soon replaced with a charge of murder. He had previously served time in prison in both Colorado and Missouri for theft, and at age twelve he had shot and wounded his father. Green argued that he simply wanted to rob Whitnah, that he had no intent to commit murder, and that his gun had discharged accidentally. Nonetheless, he was convicted under the felony-murder doctrine and sentenced to death. The accomplice, after pleading guilty to second-degree murder, was sentenced to life imprisonment at hard labor. In the twenty-five days between the verdict and the execution, the Denver newspapers engaged in a lengthy debate about whether the hanging should be public. This debate continued on after Green’s death, eventually culminating in legislation signed in 1889 that relegated all future Colorado executions to the state prison in Cañon City. Some fifteen thousand to twenty thousand people attended the execution, many of whom were repulsed while they watched, for nearly twenty-three minutes, as Green twisted and slowly suffocated to death. A century later, University of Colorado historian William M. King authored a detailed book about the crime, execution, and late-nineteenth century race relations in Denver.³⁸⁶

24. NICOLAI FEMENELLA (a.k.a. Mike George). August 23, 1888. Buena Vista (Chaffee County). W-W. Hanging/Broken neck. An Italian immigrant, Femenella was convicted of murdering Irishman William “Pat” Casey, who, like Femenella,

383. *Minich v. People*, 9 P. 4, 14 (Colo. 1885).

384. DON L. GRISWOLD & JEAN HARVEY GRISWOLD, *HISTORY OF LEADVILLE AND LAKE COUNTY, COLORADO*, VOLUME 2, at 1776 (1996); WARFORD, *supra* note 370, at 38; *Minich: His Terrible Crime and Awful Punishment, A Full History of the Murder, Arrest, and Trial*, LEADVILLE HERALD DEMOCRAT, Feb. 6, 1886, at 1.

385. WARFORD, *supra* note 370, at 38.

386. See KING, *supra* note 51.

was employed as a railroad section hand in the city of Granite. The murder resulted from a quarrel between several Irish and Italian immigrants about the men's different ethnic heritages. After his conviction, Femenella began to claim that he killed in self-defense, a plea that may have saved him from the gallows had he originally used it at trial.³⁸⁷ Governor Alva Adams deferred the execution on three occasions. "According to prevalent opinion here Femenella has received more consideration than would be accorded to the majority of life-long citizens in this community."³⁸⁸ Approximately seventy-five people were admitted to the jail yard to witness the hanging, and a "large crowd" mingled outside the jail fence. He was hanged with rope left over from that ordered from a St. Louis company to hang Andrew Green (q.v.).³⁸⁹

25. JOSE ORTIZ (a.k.a. James Abram Ortiz). July 16, 1889. Antonito (Conejos County). H-W. Hanging/Broken neck. Ortiz was convicted of murdering O.E. LeDuc, a miner. "The murder was one of a peculiarly revolting character."³⁹⁰ LeDuc, on a short business trip, disappeared after stopping to spend the night at Ortiz's cabin. His friends spent several weeks searching for him. After tracking him to Ortiz's home, a search party found the home abandoned and smeared with blood, and they soon found LeDuc's body on the property. The evidence indicated that he had been killed with a heavy instrument, probably an axe, while in bed. When Ortiz was found, he was wearing LeDuc's watch. The jury, which included six Mexicans, deliberated for a full day before returning their verdict. The execution, which took place before a "dense" crowd, occurred three months after Governor Job A. Cooper had signed a bill prohibiting public executions.³⁹¹ The ban, however, did not take effect until July 19th, three days after Ortiz's scheduled execution. Thereafter, all Colorado executions took place at the state prison in Cañon City. Wrote the *Rocky Mountain News*, "Ortiz was small and stunted, and a typical Mexican, stunted naturally and morally as well as physically."³⁹²

387. *Justice Satisfied at Last*, SALIDA MAIL (Colo.), Aug. 24, 1888, at 2.

388. *Femenella Is Hanged*, ROCKY MOUNTAIN NEWS, Aug. 24, 1888, at 1; see also *Hanged!*, BUENA VISTA DEMOCRAT (Colo.), Aug. 23, 1888, at 3.

389. KING, *supra* note 51, at 117.

390. *Judicially Hanged*, *supra* note 70, at 1.

391. KING, *supra* note 51, at 158 n.13; see also *supra* text accompanying note 17.

392. See generally *Judicially Hanged*, *supra* note 70.

26. NOVERTO GRIEGO. November 8, 1890. Trinidad (Las Animas County). H-W. Hanging/Broken neck. Griego (Mexican) was convicted of murdering W.L. Underwood, a merchant who ran a grocery store that catered to the Hispanic community. Underwood's killer hit him on the back of his head with a hammer while he worked at the store. His hand clutched a piece of paper, which indicated that his last sale had been to someone named "Griego." Upon discovering his body the next morning, the authorities also found that Underwood's jewelry, as well as all the cash in the store, had been stolen. A second participant in the crimes, an African-American named George Upton (a.k.a. John Jones), received a sentence of life imprisonment, rather than death, in exchange for testifying against Griego. Both men confessed to their crimes. The execution was the first under state authority at the prison in Cañon City. The public did not know exact time of Griego's execution in advance or the name of the executioner, and no representatives from the press were permitted to witness it.³⁹³

27. JAMES T. JOYCE. January 17, 1891. Denver (Arapahoe County). W-W. Hanging/Broken neck. Joyce was convicted of "one of the coldest blooded murders in Colorado's history."³⁹⁴ Both Joyce, age thirty-three, and the victim, twenty-year-old John Snooks, worked at a Denver slaughterhouse. The murder occurred on July 4, 1890, when many of the employees had celebrated Independence Day by drinking all day, first at work and then in a neighborhood saloon. At the bar, Joyce and others accused Snooks of drinking more than his share of the beer, and Snooks was thrown out. Snooks returned a few minutes later with an empty musket and threatened Joyce with it. Later that day, back at work, Joyce was skinning a sheep when Snooks walked by. Joyce attacked him with the knife, killing him. Joyce was believed to have committed an earlier murder in Kentucky, and had also been involved in a prior assault. No journalists were permitted to witness the execution.³⁹⁵ "The neck was instantly broken, and, according to the surgeons present, the most

393. *Unknown Assassins*, ROCKY MOUNTAIN NEWS, June 5, 1890, at 1; *Three Mexicans Arrested*, ROCKY MOUNTAIN NEWS, June 6, 1890, at 1; *Hung For Murder*, *supra* note 77, at 1.

394. *Joyce Hanged*, PUEBLO CHIEFTAN (Colo.), Jan. 18, 1891, at 1.

395. *Id.*

successful and painless execution that has ever been performed in America.”³⁹⁶

28. WILLIAM H. DAVIS. Sept. 22, 1891. Pueblo. W-B&W. Hanging/Broken neck. Davis was convicted, at age twenty-five or twenty-six, of murdering his foster mother, Carrie Armsby (“a light mulatto”), and her alleged white paramour, James Arnold, because they refused to give him money to continue a drinking binge. The time of the execution was not announced before the hanging, and no journalists were invited to attend.³⁹⁷

29. CHARLES SMITH. December 14, 1891. Walsenburg (Huerfano County). B-B. Hanging. A thirty-year-old coal miner, Smith was convicted of killing Taylor Sillman, a neighbor whose wife was having relations with Smith. The affair resulted in “bad blood” and physical altercations between the two men. Eventually, after receiving a hefty beating by Sillman, Smith returned home, got his shotgun, and shot Sillman off his horse.³⁹⁸

30. THOMAS LAWTON. May 6, 1892. Colorado Springs (El Paso County). W-W. Hanging. Lawton was convicted of murdering a streetcar conductor, John Hemming, during an attempted robbery of his streetcar. An accomplice, Albert Russell, admitted his role in the crime to friends, implicating Lawton. Russell was convicted of second-degree murder and sentenced to life imprisonment. Twenty-four-year-old “Lawton,” an assumed name, refused to tell anyone his real name or anything about his background or family.³⁹⁹ He spent the four hours before his death moaning and wailing, although by the time he was executed he had become calm.⁴⁰⁰

31. THOMAS A. JORDAN. May 11, 1895. Littleton (Arapahoe County). W-W. Hanging/Strangulation. Jordan was a native of Ireland and age twenty-nine at his death. He worked at a Denver-area smelter, but after drinking heavily and being tardy for work, he was fired. The next day, continuing to drink heavily, he purchased a pistol and went to

396. *Without a Tremor*, *supra* note 79, at 1.

397. *Hanged in Prison*, *supra* note 83, at 1; *The End of His Rope: W.H. Davis, the Pueblo Murderer, Hung at Cañon City*, PUEBLO CHIEFTAN (Colo.), Sept. 23, 1891, at 1.

398. *Met Death Bravely: Charles Smith, the Walsenburg Murderer, Hanged at the State Penitentiary Last Night*, ROCKY MOUNTAIN NEWS, Dec. 15, 1891, at 1.

399. *Lawton Is Executed*, DENVER REPUBLICAN, May 7, 1892, at 1.

400. *Crying Like a Baby: A Man Who Shot Down a Fellow Creature Begg for Mercy*, PUEBLO CHIEFTAN (Colo.), May 7, 1892, at 1.

the smelter to kill the foreman who had fired him. That person was not at the factory when Jordan arrived, but Jordan's presence at the smelter caused a disturbance. He instead shot a friend named Gustavus "Gus" Gisin, a smelter watchman who had come to quell the ruckus.⁴⁰¹ On death row, Jordan's sanity was questioned and a panel of physicians was appointed to evaluate him. They found him to be sane. Governor Albert W. McIntire also visited with Jordan in the prison but denied executive clemency. At the execution, Jordan's neck was not broken and he strangled to death. The *Rocky Mountain News* asserted that Jordan and Peter Augusta, who were hanged that same night, had "the most remarkable records of any persons ever sentenced to execution at Cañon City. Through the law's delays and executive clemency their lives were prolonged by two years."⁴⁰²

32. PETER AUGUSTA. May 11, 1895. Littleton (Arapahoe County). W-W. Hanging/Broken neck. Augusta was convicted of murdering Harry Sullivan (a.k.a. David McClennigan) in a jealous rage, under the belief that Sullivan was having an affair with the woman with whom Augusta was living. In a dying statement, Sullivan fingered Augusta as the man who assaulted him, saying he was stabbed while sleeping in the woman's house. Augusta was a forty-seven-year-old immigrant from Italy, and the Italian consulate was among those petitioning for a commutation.⁴⁰³

33. ABE TAYLOR. December 13, 1895. Alamosa (Conejos County). W-W. Hanging/Broken neck. Taylor, a thirty-two-year-old ranchman, was convicted of murdering Charles H. Emerson. With William Thompson, aged sixteen or seventeen, Taylor stole a wagonload of oats. Emerson was the town marshal and constable of Alamosa, and Taylor shot him while he apprehended the two men for theft. Taylor used a gun given to him by Thompson. In his final statement, Taylor told the fourteen witnesses to the execution that the murder was not premeditated and that he never held any malice toward the victim.⁴⁰⁴

401. *Jordan v. People*, 36 P. 218, 220-21 (Colo. 1894).

402. *The Condemned*, *supra* note 86, at 1.

403. *Id.*

404. *Taylor v. People*, 42 P. 652, 653-54 (Colo. 1895); *Shot the Marshal*, ROCKY MOUNTAIN NEWS, Jan. 20, 1895, at 4; *Marshal Emerson Dead*, ROCKY MOUNTAIN NEWS, Jan. 22, 1895, at 2; *Abe Taylor Executed*, ROCKY MOUNTAIN NEWS,

34. BENJAMIN RATCLIFF (a.k.a. Radcliff). February 7, 1896. Salida (Chaffee County). W-W. Hanging/Broken neck. A farmer, Ratcliff was convicted of murdering three members of the Park County School Board: George Douglas Wyatt, Samuel Taylor, and L.F. McCurdy. Ratcliff believed that McCurdy had slandered Ratcliff's daughter by claiming she was pregnant. The murders occurred at a school board meeting. Ratcliff had gone to the meeting to demand a retraction and apology, but when McCurdy refused to apologize, Ratcliff shot wildly at all three men.⁴⁰⁵ Later he turned himself into the authorities, who housed him in several jails before trial to avoid lynching.⁴⁰⁶

35-37. WILLIAM HOLT, ALBERT NOBLE, and DEONICIO ROMERO. June 26, 1896. Trinidad (Las Animas County). W-W. Hanging/Broken necks. These three codefendants were convicted of the felony murder of a Trinidad police officer, John Solomon. In July 1895, Romero, age twenty-one, and Noble, age thirty-four, became acquainted with Leonardo Martinez and Pedro Baca, who were being held in the Las Animas County Jail pending trial for murder. Romero was serving a jail sentence for assault, having served several previous sentences for petty offenses. Noble had been arrested for a robbery in New Mexico, having previously served a seven-year sentence for robbing a post office.⁴⁰⁷ Upon release from jail, Romero, Noble, and a third man, William Holt, age twenty-one, conspired to rob the Horse Shoe Gambling Club in Trinidad to secure funds for Martinez and Baca's defense. Several others, including Martinez's mother, also assisted with the scheme. Officer John Solomon discovered and foiled the robbery. Solomon first struggled with Holt before Noble shot him in the back. Holt was the first person arrested; a gun left at the scene, which he purchased from a local pawnbroker a few days previously, tied him to the crime. Upon interrogation by the authorities, Holt confessed, and Romero quickly confirmed his story. Noble was tried first, followed by a joint trial for Holt

Dec. 14, 1895, at 1; *The Suicide Machine: Abe Taylor Tried the Automatic Gallows, Death Sudden and Sure*, PUEBLO CHIEFTAN (Colo.), Dec. 14, 1895, at 1.

405. *Ratcliff v. People*, 43 P. 553, 554-55 (Colo. 1896); *Ratcliff Must Hang*, DENVER POST, Jan. 15, 1896, at 2; *Would See Him Die*, DENVER POST, Feb. 7, 1896, at 2.

406. *Radcliff Was Executed Last Night*, ROCKY MOUNTAIN NEWS, Feb. 8, 1896, at 1; *His Life a Forfeit*, DENVER POST, Feb. 8, 1896, at 2.

407. *Noble's Record*, ROCKY MOUNTAIN NEWS, Dec. 2, 1895, at 8.

and Romero. The convictions were affirmed on appeal.⁴⁰⁸ The three were executed in the first triple execution in Colorado's history. The men were executed in alphabetical order, in private, with all details prior to the executions kept secret. Originally the men were supposed to be hanged in the order of their culpability—Noble, Romero, and then Holt—but Holt was so distressed that he "was called first." Notably, Holt had to be carried to the death chamber.⁴⁰⁹

38. AZEL D. GALBRAITH. March 6, 1905. Central City (Gilpin County). W-W. Hanging/Broken neck. Galbraith was convicted of murdering his wife and eight-year-old son. The *Rocky Mountain News* dubbed the crime "one of the most shocking in the criminal annals of the state."⁴¹⁰ Shortly before the murders, Galbraith had been dismissed from his position as a mine manager. After the murders, he lived in Denver for one month before an arrest for forgery; he had signed his employer's name to one thousand dollars worth of checks. Two days thereafter the bodies were discovered. Galbraith confessed to the murders, detailing how he shot his unsuspecting wife as they lay in bed together and how he then brought his eight-year-old son into the bed and shot him. Galbraith blamed his crimes on drinking, gambling, and a desire to be with his paramour.⁴¹¹ He was thirty-four at the time of his death, had no prior convictions, had attended two years of college, and worked as a timekeeper in a mine.⁴¹² He faced his death stoically, with the witnesses reportedly in agreement that he was "[t]he bravest man that ever stepped on a scaffold in Colorado."⁴¹³

39–40. J. NEWTON ANDREWS and FRED ARNOLD. June 16, 1905. Denver. W-W. Hanging/Broken necks. The pair was convicted in separate trials of the murder of sixty-three-year-

408. *Holt v. People*, 45 P. 374 (Colo. 1896); *Noble v. People*, 45 P. 376 (Colo. 1896).

409. *Shot a Police Officer*, ROCKY MOUNTAIN NEWS, Nov. 21, 1895, at 1; *Officer Solomon Dead*, ROCKY MOUNTAIN NEWS, Nov. 22, 1895, at 6; *Confessed the Murder*, ROCKY MOUNTAIN NEWS, Nov. 30, 1895, at 6; *Three Men Executed at Cañon City*, ROCKY MOUNTAIN NEWS, June 27, 1896, at 1.

410. *Story of One of Most Horrible Crimes in History of Colorado*, ROCKY MOUNTAIN NEWS, Mar. 7, 1905, at 3.

411. *Azel Galbraith Is Hanged for His Crime*, ROCKY MOUNTAIN NEWS, Mar. 7, 1905, at 3.

412. *His Last Hope Gone, Azel D. Galbraith Must Hang Tonight*, DENVER POST, Mar. 6, 1905, at 1.

413. *Azel Galbraith Is Hanged for His Crime*, *supra* note 411, at 3.

old Amanda E. Youngblood during an attempted robbery at her home, which also served as a small neighborhood grocery store. Her husband responded to a knock at the door at eleven-thirty p.m. on New Year's Eve, 1903, and found three men who requested to use his telephone. Without suspicion, he invited them inside, where they immediately announced a hold-up. Mr. Youngblood resisted. The commotion awakened Mrs. Youngblood and the Youngblood's son, and they entered the room where the confrontation was taking place. The three men then murdered Mrs. Youngblood and shot the Youngblood's son in the jaw. Although both defendants confessed to involvement in the crimes, claiming they were drunk, each blamed the other for firing the fatal shot. The third intruder, Charles Peters, age twenty-five, received a death sentence for the murders, but his sanity was questioned and he was never executed. Arnold, a laborer, was nineteen-years-old at the time of his execution; Andrews, who worked for the railroads, was two years older and had a prior arrest for burglarizing telephone boxes.⁴¹⁴ Before their executions, the Colorado Supreme Court upheld a new death penalty statute passed by the Colorado legislature in 1901, ending a four year period of abolition.⁴¹⁵

41. JOSEPH JOHNSON. September 13, 1905. Trinidad (Las Animas County). W-W. Hanging/Broken neck. Johnson was convicted of killing John H. Fox, "ex-county treasurer, and one of the most prominent Democratic politicians of the county and state."⁴¹⁶ Johnson was a deputy sheriff and worked as a bodyguard for a state senator. When Fox's former clerk was arrested in California for misappropriating Las Animas county funds, Johnson wanted the job of going to California to retrieve the prisoner. Fox refused to grant Johnson the appointment, a quarrel ensued, and Johnson shot Fox with a revolver.

414. *Robbers Kill Mother and Wound Her Son*, ROCKY MOUNTAIN NEWS, Jan. 1, 1904, § 2, at 1; *Boys Confess to Wanton Murder of Aged Woman*, ROCKY MOUNTAIN NEWS, Jan. 2, 1904, at 1; *Boy Murderers to Hang Today*, DENVER POST, June 16, 1905, at 1; *Arnold's Brutal Nature Displayed in Last Hours*, ROCKY MOUNTAIN NEWS, June 16, 1905, at 1; *Mother's Love Grows in Face of Inevitable*, ROCKY MOUNTAIN NEWS, June 16, 1905, at 1; *Quiet and Successful Execution Occurs Inside Walls of State Penitentiary*, DENVER REPUBLICAN, June 17, 1905, at 1; *Andrews and Arnold Pay the Penalty of Their Crime*, ROCKY MOUNTAIN NEWS, June 17, 1905, at 1.

415. *Andrews v. People*, 79 P. 1031, 1035 (Colo. 1905); *Capital Punishment Law Is Upheld by Supreme Court*, DENVER POST, Feb. 6, 1905, at 1.

416. *Shot from Behind: John H. Fox Is Killed by a Deputy Sheriff Who Escapes the Mob*, DENVER POST, Apr. 9, 1905, at 1.

Johnson was immediately apprehended and admitted his guilt.⁴¹⁷

42. JOHN MCGARVEY. January 12, 1907. W-W. Grand Junction (Mesa County). Hanging/Broken neck. A native of Scotland, McGarvey was in jail awaiting trial for the attempted criminal assault of a twelve-year-old girl when he crushed the skull of the jailer, Edward Innes, with a piece of firewood. He then stabbed the unconscious jailer, stole his pistol, and escaped.⁴¹⁸ Innes died a few days later. McGarvey was quickly apprehended, tried, and convicted at age twenty-three.⁴¹⁹

43. GUISEPPE ALIA. July 15, 1908. Denver. W-W. Hanging/Strangulation. Alia shot and killed a Catholic priest, Father Leo Heinrich, as Heinrich distributed communion to Alia and other congregants during mass at St. Elizabeth's Church in Denver. Alia, fifty-one at the time of his death, spent his first thirty-eight years in Italy and did not speak English. After leaving Italy, he worked as a shoemaker in Argentina for twelve years. He hated the Catholic Church and believed that Father Leo had somehow mistreated him in Portugal some years before the murder. His insanity defense, however, failed. The acting governor did not accept pleas for clemency by the Italian government and the Franciscan order to which Father Leo belonged. At the time of his death, less than five months after the crime, Alia shouted "*Viva Italia*" and "*Viva Protestant*," and he implored God to destroy the Roman Catholic priesthood. Because the rope slipped, it took nineteen minutes for Alia to strangle to death.⁴²⁰

44. JAMES LYNN. October 8, 1908. Pueblo. B-W. Hanging/Broken neck. On May 14, 1908, the front-page headline in the local newspaper shocked Pueblo residents: "*Negro Drives Two White Women from Their Home and Shoots Them Down in the Street.*"⁴²¹ The article identified a neighbor, James Lynn (a Pueblo resident for twenty-two years), as the shooter. Sarah James, sixteen, was dead, and her mother,

417. See *Joseph Johnson Will Be Hanged Tonight for the Murder of John H. Fox*, DENVER POST, Sept. 13, 1905, at 6.

418. *M'Garvey Pays Death Penalty*, DENVER REPUBLICAN, Jan. 13, 1907, at 1.

419. *M'Garvey Jerked to Eternity*, DENVER POST, Jan. 13, 1907, at 1; *M'Garvey Pays Death Penalty*, *supra* note 418, at 1.

420. *Alia Will Be Hanged Tonight*, DENVER POST, July 15, 1908, at 1; *Slayer of Priest, with Curses on His Tongue, Died of Strangulation*, TRINIDAD DAILY NEWS (Colo.), July 16, 1908, at 1.

421. PUEBLO CHIEFTAN (Colo.), May 14, 1908, at 1.

Julia, was wounded and "expected to die at any moment."⁴²² Julia, however, a widow with six children, later recovered. She and her daughter had fled their home when Lynn burst into it at one o'clock in the morning. The wages Sarah earned as a "servant" to a local physician supported the entire family of seven. Lynn, a day laborer, was infatuated with Sarah, and was jealous when another man, who left by the rear door as Lynn came through the front, was spending the night with her. Lynn had a prior arrest for assaulting a man with a poker.⁴²³ After his arrest, Lynn was kept in Colorado Springs to prevent a lynching. His trial occurred exactly one month after the murder, and Lynn maintained his innocence. The jury, however, returned a guilty verdict after only fifteen minutes of deliberation.⁴²⁴

45. LEWIS J. WECHTER. August 31, 1912. Denver. W-W. Hanging. Wechter was convicted of murdering W. Clifford Burrowes, a salesman for a hardware store, during the attempted robbery of a cafe. Burrowes had just finished eating at the cafe when a masked robber entered, ordering everyone to move behind the counter. Burrowes refused and was shot. The mother and daughter who owned the cafe quickly overpowered Wechter, disarmed him, and held him until the authorities arrived. Burrowes died the next day. Wechter, twenty-nine, had served in the Navy for twelve years and at the time of the crime worked in a mattress factory.⁴²⁵ He had killed a man in Utah a few months prior to the Burrowes murder and was wanted by the Utah authorities.⁴²⁶ The jury deliberated for only fifteen minutes before returning a guilty verdict and recommending a death sentence.⁴²⁷ On appeal, the state

422. *Id.*

423. *Officers Discover Motive Which Actuated Negro in Murder of Young White Girl*, PUEBLO CHIEFTAN (Colo.), May 15, 1908, at 1; *Negro Murderer Lynn Caught*, PUEBLO CHIEFTAN (Colo.), May 18, 1908, at 1.

424. *Lynn Is Hanged As He Protests His Innocence*, ROCKY MOUNTAIN NEWS, Oct. 9, 1908, at 1.

425. *Women Catch Bandit; Man Shot in Cafe*, ROCKY MOUNTAIN NEWS, Feb. 12, 1911, at 1; *Bandit's Victim Dies; Slayer in His Cell Merely Smiles*, ROCKY MOUNTAIN NEWS, Feb. 13, 1911, at 2.

426. *Lewis Wechter to Pay Death Penalty in State Prison at 9 o'clock Tonight for Murder of W. Clifford Burrowes*, DENVER POST, Aug. 30, 1912, at 1.

427. *Noose Urged for Wechter by Jury*, ROCKY MOUNTAIN NEWS, Mar. 23, 1911, at 1.

Supreme Court affirmed the conviction.⁴²⁸ Although personally opposed to capital punishment, Governor Shafroth declined to commute the sentence.⁴²⁹ The prison warden, Thomas Tynan, also opposed the death penalty and refused to participate in the execution.⁴³⁰ Because the time of the execution was supposed to be secret, Wechter's execution was postponed for twenty-four hours after the newspapers learned its originally scheduled time. Death was by strangulation: "For 23 minutes the black-capped form dangled to and fro in the shadows cast by a great arc lamp."⁴³¹

46. HARRY EDGAR HILLEN (a.k.a. James Nelson, Frank Allen). June 24, 1915. Denver. W-W. Hanging/Broken neck. Hillen was convicted of murdering real estate agent Thomas J. Chase during the commission of a robbery. Several other robberies occurred in Denver in the time period surrounding the murder.⁴³² When arrested for brandishing his weapons while drunk, Hillen confessed to nine of the robberies.⁴³³ The next day, he confessed to killing Chase "because he snarled at me. I can't stand snarls."⁴³⁴ The widow said: "The lawyer who would defend the confessed slayer of my husband is a far worse criminal than [Hillen]."⁴³⁵ The Colorado Supreme Court affirmed his conviction on appeal.⁴³⁶ Hillen, twenty-four at the time of the murder, was suspected of over fifty forgeries and

428. *Wechter v. People*, 124 P. 183, 187 (Colo. 1912). Wechter argued that there was no direct proof of his intent to commit robbery, therefore making him ineligible for the death penalty.

429. *Wechter to Live Until Week's End, General Opinion*, DENVER POST, Aug. 26, 1912, at 3.

430. *Id.*

431. *Wechter Hangs After Torture from Suspense*, ROCKY MOUNTAIN NEWS, Sept. 1, 1912, at 1.

432. *1 Man Slain, Another Shot, Bandit Suspect Captured in Pistol Duel with Police*, ROCKY MOUNTAIN NEWS, Oct. 24, 1913, at 1; *Bandit Pair Hold Denver in Grip of Fear, Bullets Fly As Victim Fights Back*, ROCKY MOUNTAIN NEWS, Oct. 25, 1913, at 1; *Lone Bandit Loots Grocer, Flees in Rain of Lead; One New Suspect in Dragnet*, ROCKY MOUNTAIN NEWS, Oct. 26, 1913, at 1.

433. *Terror of Denver Caught, Confesses Nine Holdups, Woman Flees with Loot*, ROCKY MOUNTAIN NEWS, Oct. 27, 1913, at 1.

434. *Shot Chase Dead When He Snarled*, *supra* note 133, at 1.

435. *I'd Kill Bandit, Cries Mrs. Chase*, ROCKY MOUNTAIN NEWS, Oct. 28, 1913, at 2.

436. *Hillen v. People*, 149 P. 250, 253 (Colo. 1915). Hillen had objected to the exclusion of potential jurors who opposed the death penalty, to the admission of evidence that he had committed several other similar robberies, and to the prosecutor's statement to the jury that if Hillen were sentenced to life imprisonment, he would be released from prison in only a few years.

armed robberies throughout the U.S., including approximately twenty robberies in Denver during the week of the murder.⁴³⁷

47. GEORGE QUINN. January 28, 1916. Denver. W-W. Hanging/Broken neck. Quinn was convicted of murdering the husband of the woman with whom he was having an affair and who was carrying his child. Quinn used a sawed-off shotgun and fired from close range to kill William Herbertson, a thirty-six-year-old contractor. Quinn, thirty-two at the time, worked as a teamster. After shooting Herbertson, Quinn also threatened his mistress and her twenty-month-old baby. This woman became the chief prosecution witness, but while Quinn was in jail, she (the victim's widow) recanted her testimony and married him "so that the babe might be given a name."⁴³⁸ She also actively attempted to get the governor to commute the sentence. Ultimately, the Colorado Supreme Court affirmed the conviction on appeal.⁴³⁹ At the execution, Warden Thomas Tynan, an opponent of capital punishment, refused to enter the death chamber and instead remained in his office until the prisoner was executed.⁴⁴⁰

48. OSCAR COOK. February 26, 1916. Denver. W-W. Hanging/Broken neck. Cook was convicted of murdering patrolman William McPherson and saloonkeeper Andrew J. Loyd in an exchange of gunshots during a robbery of a Denver saloon. Two men entered the saloon announcing a holdup, and the shooting commenced when Officer McPherson, who was visiting the saloon in uniform, reached for his revolver.⁴⁴¹ In an *ante-mortem* statement, Officer McPherson implicated two other men as the culprits; these men were arrested but released upon the arrest of Cook and Edward Seiwald, an accomplice. Cook, twenty-five, worked as a miner. His arrest

437. W. L. Morrissey, *Hillen Goes To Death Asserting Innocence and Forgiving Enemies*, June 25, 1915, at 1; *Hillen Dies on Gallows Maintaining His Innocence To End*, June 25, 1915, at 1.

438. *Quinn Dies on Gallows, Calm to End*, ROCKY MOUNTAIN NEWS, Jan. 29, 1916, at 1.

439. *Quinn v. People*, 152 P. 148, 149 (Colo. 1915).

440. *Quinn Dies on Gallows, Calm to End*, *supra* note 438, at 1; *Tell Them I Died Game, Says Quinn, as He Goes to Death Upon Gallows*, DENVER POST, Jan. 29, 1916, at 1; *Quinn Goes to Trap for Herbertson's Death*, DENVER POST, Jan. 29, 1916, at 1.

441. *Policeman and Barkeeper Fatally Shot by Assassins*, ROCKY MOUNTAIN NEWS, Mar. 10, 1912, at 1; Arthur M'Lenan, *Policeman M'Pherson [sic] and Saloon Owner Die of Wounds; Boy Bandit's Confession Clears Double Murder Mystery*, DENVER POST, Mar. 11, 1912, at 1.

occurred after he requested medical care for a bullet wound, which the state argued he received in the crossfire but Cook said he received when trespassing in a lumberyard. Thinking he was dying, Cook first claimed he had been wounded in a robbery. Seiwald, who was tried with Cook for the murders, offered a more complete confession. Seiwald, nineteen, implicated Cook as the gunman, claiming that he (Seiwald) shot Cook after he realized that their robbery plans had ended in murder because of Cook. At trial, Cook argued insanity,⁴⁴² but received a death sentence. Seiwald was convicted of second-degree murder and sentenced to twelve years in prison. On appeal, Cook's conviction was vacated because of a failure to grant a severance.⁴⁴³ At retrial, Cook was again convicted and sentenced to death; this conviction and sentence were affirmed on appeal.⁴⁴⁴ In his last words, Cook continued to maintain that he had not fired the fatal shots. As was the custom, the warden allowed Cook to name the exact hour of his execution.⁴⁴⁵

49. GEORGE R. BOSKO (a.k.a. Bosco). December 10, 1920. Pueblo. W-W. Hanging/Broken neck. Bosco was executed for the murders of William T. Hunter and Elton C. Parks. Bosco's brother and accomplice, Tom, was under eighteen years of age at the time of the crimes,⁴⁴⁶ and because of his young age, he received a sentence of life imprisonment, rather than death, for his role in the crimes. Parks, a car salesman, was demonstrating a new car to Hunter, a ranch owner, when they picked up the two brothers. The brothers then shot the victims and stole the car. Bosco, age twenty-eight, worked as a ranch hand, had no prior arrests, and had served in the Army for three years. Upon his arrest, he gave a full confession, and at his arraignment he pleaded guilty. The convictions were affirmed on appeal.⁴⁴⁷ The Lieutenant Governor delayed the execution for five months so physicians could evaluate Bosco's

442. *Death Penalty for Oscar Cook*, ROCKY MOUNTAIN NEWS, Oct. 25, 1914, at 1.

443. *Cook v. People*, 138 P. 756, 760 (Colo. 1914).

444. *Cook v. People*, 153 P. 214, 217 (Colo. 1915).

445. *Cook, in Last Second of Life, Protests Innocence*, ROCKY MOUNTAIN NEWS, Feb. 27, 1916, at 1; *Oscar Cook Pays Penalty of Murder Just Before Dawn Creeps Into Prison*, DENVER POST, Feb. 26, 1916, at 1.

446. *Bosko v. People*, 188 P. 743, 743 (Colo. 1920); see also *Bosco* (sic) *Hanged at Cañon City, Aged Mother Is Near Death*, ROCKY MOUNTAIN NEWS, Dec. 11, 1920, at 1 [hereinafter *Bosco* (sic) *Hanged at Cañon City*].

447. *Bosko*, 188 P. at 744.

sanity. At the time of the execution, Bosko's mother "is said to have suffered a collapse . . . and was not expected to live thru [sic] the night."⁴⁴⁸

50. DANIEL BORICH. August 18, 1922. Oak Creek (Routt County). W-W. Hanging. Borich was executed for the murders of his wife and Joseph Kezele, a man who had tried to protect Mrs. Borich when her husband started to stab her. Borich, a fifty-one-year-old coal miner, was a "Mohammedan," born to Turkish parents in Serbia. Borich was executed in the prison boiler room on a hastily built hanging machine. Prior hangings in Cañon City had taken place in a separate "execution house."⁴⁴⁹

51. JOE MCGONIGAL (a.k.a. M'Gonnigal, McGonigle). April 26, 1924. Trinidad (Las Animas County). W-W. Hanging. McGonigal was convicted of murdering Wilbur N. Ferguson, a student at the Colorado School of Mines, and Ella Centers, the daughter of the owner of a rooming house where both Ferguson and McGonigal lived. McGonigal, forty-two, worked as a watchman at a mine, and at one time had been prominent in the affairs of the United Mine Workers. He shot Ferguson inside the house, and Centers fled in terror. McGonigal chased her and killed her with a shotgun as she pleaded for her life. Several nearby workmen witnessed the murder. McGonigal then returned to the house and, apparently to create a self-defense claim, shot himself in the foot, which later had to be amputated. The state alleged that the McGonigal committed the murders while drunk and that he was jealous of the personal relationship between Ferguson and Centers. McGonigal's sole defense was insanity, although he only proffered jail prisoners, and no experts, to support that claim. In contrast, three psychiatrists testified that the defendant was sane.⁴⁵⁰ On appeal, the defense attorney failed to file an abstract of the record and brief. The court reprimanded the attorney and cited him for contempt, but

448. *George Bosko Pays Penalty for Crime*, PUEBLO CHIEFTAN (Cdo.), Dec. 11, 1920, at 1; *Bosco (sic) Hanged at Cañon City*, *supra* note 446, at 1.

449. *Borich Hanged at Cañon City for Double Oak Creek Killing*, DENVER POST, Aug. 19, 1922, at 1; *Wife Slayer Hanged in State Prison; Was Routt County Miner*, ROCKY MOUNTAIN NEWS, Aug. 20, 1922, at 8.

450. *Slayer of Student to Plead Insanity*, ROCKY MOUNTAIN NEWS, Oct. 13, 1922, at 11; *Slayer of Student and Girl Convicted; Penalty Is Death*, ROCKY MOUNTAIN NEWS, Oct. 14, 1922, at 14; *Convicted Slayer Sentenced to Hang*, ROCKY MOUNTAIN NEWS, Nov. 19, 1922, at 14.

permitted him to continue on the case.⁴⁵¹ The conviction was later affirmed,⁴⁵² and after the governor granted a one-month stay of execution to evaluate McGonigal's sanity, he was hanged with the "old water type" gallows.⁴⁵³

52. RAY F. SHANK. September 18, 1926. Denver. W-W. Hanging. After being served with divorce papers, Shank, age fifty-two, shot and killed his wife, Marion, and their nineteen-year-old son, Paul, who was murdered while he was sleeping. Shank then beat and tried to kill their twenty-one-year-old daughter, Ruth, but a neighbor saved her life when he disarmed Shank. Shank, a machinist, had a history of domestic abuse but no prior arrests. At trial, his insanity defense failed, and he was sentenced to death for the murder of his wife. The conviction was affirmed on appeal.⁴⁵⁴ On the eve of his execution, Shank was quoted as saying: "This is the happiest night for me since the tragedy . . . I know that all will soon be over."⁴⁵⁵

53. ANTONIO CASIAS. November 12, 1926. Del Norte (Rio Grande County). H-H. Hanging/Broken neck. Casias was convicted of stabbing to death Carmen Barela (a.k.a. Barilla) on the main street of Monte Vista. Barela, a widow, was the mother of four children, and her death quickly led to lynching threats.⁴⁵⁶ She and Casias, a laborer, had been friends and both were of Mexican ethnicity. Casias pled guilty and said that the motive was jealousy. He did not speak English, and some officials considered him "unbalanced" because for many years he "suffered from a loathsome [unnamed] disease. There is nothing pretty about the case of Antonio Casias."⁴⁵⁷ "He went to his death with the singular distinction of being the only

451. *McGonnigal Is Hanged at Dawn Saturday at Penitentiary for Double Murder*, DENVER POST, Apr. 26, 1924, at 1 [hereinafter *McGonnigal Is Hanged at Dawn Saturday*].

452. *McGonigal v. People*, 220 P. 1003, 1006 (Colo. 1923).

453. *Girl Slain by Jealous Admirer After He Kills Mines Student*, DENVER POST, June 2, 1922, at 1; *McGonnigal Is Hanged at Dawn Saturday*, *supra* note 451, at 1; *McGonnigal Dies on Gallows as Last Pardon Hope Fails*, ROCKY MOUNTAIN NEWS, Apr. 26, 1924, at 1.

454. *Shank v. People*, 247 P. 559, 563 (Colo. 1926).

455. *Shank's Body Sent Here After He Pays Supreme Penalty*, ROCKY MOUNTAIN NEWS, Sept. 19, 1926, at 1.

456. *Lynching Near As Monte Vista Woman Is Slain*, DENVER POST, June 20, 1926, at 1.

457. *Murderer of Woman Pays Death Penalty on Cañon City Gallows*, DENVER POST, Nov. 12, 1926, at 1.

prisoner ever executed in Colorado over whom no one displayed the slightest concern.”⁴⁵⁸

54–55. RAYMOND JASPER NOAKES and ARTHUR ALONZO OSBORN. March 30, 1928. Hot Sulphur Springs (Grand County). W-W. Hanging. The two cousins were convicted of the robbery and murder of Fred N. Selak, a sixty-five-year-old hermit. Noakes and Osborn hanged Selak from a tree on his property, motivated not only by robbery but by a feud between the parties over a road owned by Selak that Osborn and Noakes needed to use to remove lumber from a nearby property. Selak had forbidden Osborn and Noakes from using his road. Osborn had been previously arrested and fined for assaulting Selak. Osborn was a lumberjack and twenty-two years old at the time of the crime. Noakes was also a lumberjack and twenty at the time of the crime. The two cousins were very close, having been raised as brothers for the previous fifteen years. Upon their arrests three weeks after the murder, for purchasing items with coins owned by Selak, the men confessed and directed authorities to where the body was still hanging.⁴⁵⁹ At trial they pled not guilty by reason of insanity, and their convictions and death sentences were affirmed on appeal.⁴⁶⁰ Governor William H. Adams, though a strong foe of the death penalty, did not find grounds for commutation,⁴⁶¹ even though Warden Francis E. Crawford and others traveled to Denver to plead the case.⁴⁶²

56. EDWARD IVES. January 10, 1930. Denver. W-W. Hanging/Strangulation. A career criminal who had served five prior prison terms and was suspected in over one hundred Denver burglaries,⁴⁶³ Ives, forty-six at the time of his hanging, received a death sentence for the murder of Denver police officer Harry R. Ohle. Ives and an African-American friend,

458. *Id.*

459. *Youth Admits Hanging Grand Lake Hermit*, ROCKY MOUNTAIN NEWS, Aug. 17, 1926, at 1; *Second Confession Is Made by Osborne [sic] in Selak Slaying*, ROCKY MOUNTAIN NEWS, Aug. 20, 1926, at 1.

460. *Osborn v. People*, 262 P.2d 892, 906 (Colo. 1927).

461. *Executive Is Unnerved by Trying Ordeal*, DENVER POST, Mar. 30, 1928, at 2.

462. *Noakes, Osborn Hanged*, ROCKY MOUNTAIN NEWS, Mar. 30, 1928, at 1; *Face Noose Calmly*, DENVER POST, Mar. 30, 1928, at 1.

463. *Eddie Ives Ends 40 Years of Crime in Three States on Gallows at Cañon City*, ROCKY MOUNTAIN NEWS, Jan. 11, 1930, at 3. Ives “had spent all but eight of his 46 years doing time in one prison or another, including the penitentiaries of Colorado, Utah and Oregon.” Melrose, *supra* note 148, at 8.

Henry Hill, had gone to a house in Denver that offered primarily black customers liquor and the services of prostitutes. While there, the police raided the house. The customers scattered, and Officer Ohle was shot as he searched under a bed. Mrs. Reese, the proprietor, was also shot and killed that night, but no one ever stood trial for that murder. Another officer was wounded.⁴⁶⁴ Although no one witnessed the murder of Officer Ohle, Ives possessed the gun used in the murder when he was arrested. Ives maintained his innocence, blaming the murder on Hill, and appealed his conviction to the Colorado Supreme Court under a law that prohibited the execution of anyone convicted solely on circumstantial evidence. The court, however, found the evidence sufficient to sustain the conviction and sentence.⁴⁶⁵ Alleging insanity, Ives was granted a short stay of execution so psychiatrists could examine him but this motion was unsuccessful. Shortly before the execution, Warden Crawford traveled to Denver to meet with the Governor William H. Adams to support the insanity claim and appeal for clemency.⁴⁶⁶ This, too, was unsuccessful. In his final statement, Ives continued to profess his innocence.⁴⁶⁷ The hanging was horribly botched. When the weight was dropped to jerk Ives upward, he accelerated skyward, but because Ives weighed only eighty pounds, the rope fell off the pulleys and Ives fell back to the ground. He was semi-conscious but yelled that "you can't hang a man twice."⁴⁶⁸ He was wrong. The second time the machinery worked, although it failed to break his neck.⁴⁶⁹

57. HAROLD I. WEISS. May 28, 1930. Denver. W-W. Hanging/Strangulation. Weiss was convicted of the murder of

464. This officer was Robert Evans. When admitted to the hospital, a nurse named Farice King was assigned to care for him. King recognized Evans as a person with whom she had had an affair a dozen years previously. She purchased a pistol, and, five days after he was admitted to the hospital, she shot and killed him as he slept and then attempted to take her own life. She was eventually sentenced to life imprisonment, but pardoned by Governor Ed Johnson in 1934. See Melrose, *supra* note 148, at 8.

465. *Ives v. People*, 278 P. 792, 798 (Colo. 1929).

466. *Warden to Make Final Plea for Life of Ives*, ROCKY MOUNTAIN NEWS, Jan. 9, 1930, at 1; *Last Hope of Eddie Ives Escaping Noose Vanishes*, ROCKY MOUNTAIN NEWS, Jan. 10, 1930, at 1.

467. Wallis M. Reef, *Eddie Ives Is Hanged at Cañon City Prison: Killer Goes to Gallows with Prayer on Lips*, ROCKY MOUNTAIN NEWS, Jan. 11, 1930, at 1.

468. Melrose, *supra* note 148, at 8.

469. *Belongia Goes to Death Gladly in Gas Chamber*, DENVER POST, June 22, 1935, at 1; Cook, *supra* note 148, at 6.

his estranged wife. Both were Jewish Romanian by birth. Mrs. Weiss had sought alimony support from him for their three children, who, shortly before the murder, had been hospitalized for malnourishment. On the night of the murder, the couple went for a car ride to discuss payment, but a quarrel ensued and Mrs. Weiss jumped from the car. Weiss, age twenty-six and a proprietor of a cleaning establishment, then fired five shots at her with a gun he had purchased earlier that afternoon.⁴⁷⁰ Weiss picked her up and carried her into a neighboring home until the police and medical personnel arrived. "I hated her because she wouldn't stop loving me," said Weiss upon his arrest.⁴⁷¹ His wife had filed for divorce three times before she was murdered, but the couple reconciled after the first two.⁴⁷² The conviction was affirmed on appeal.⁴⁷³

58-60. RALPH EMERSON FLEAGLE (July 10, 1930), HOWARD L. ROYSTON (July 18, 1930), and GEORGE J. ABSHIER (a.k.a. Bill Messick) (July 18, 1930). Lamar (Prowers County). W-W. Hanging/Broken neck, strangulation, strangulation. This trio killed four men in connection with a \$220,000 robbery of the First National Bank in Lamar on May 23, 1928. The three men killed bank president A. Newton Parrish and his son, cashier John F. Parrish, at the scene. The three also took E.A. Kesinger, a teller at the bank, hostage and later murdered him in Kansas. In Kansas, the villains abducted Dr. W.W. Wineinger, a physician, and forced him to treat Royston, who had been wounded during the shoot-out in the bank. After Wineinger rendered care, the trio murdered him as well with a gunshot wound to the back of his head. Rewards totaling seven thousand dollars, including one thousand dollars from the *Denver Post*, were immediately offered, and stories about the murders dominated newspapers.⁴⁷⁴ On appeal, Fleagle claimed that the state promised him a sentence of life imprisonment in

470. *Shoots Down Wife on Street*, ROCKY MOUNTAIN NEWS, Feb. 14, 1929, at 1; *Denver Man Shoots His Wife in Spine After a Row in Auto*, DENVER POST, Feb. 14, 1929, at 14.

471. *Wife's Unyielding Love Spelled Death at Hand of Her Husband*, DENVER POST, Feb. 15, 1929, at 3.

472. *Weiss Will Hang Wednesday Night*, ROCKY MOUNTAIN NEWS, May 28, 1930, at 1; *Harold Weiss Is Hanged for Slaying Wife*, DENVER POST, May 29, 1930, at 1; *Weiss Is Hanged with Prayer on His Lips*, ROCKY MOUNTAIN NEWS, May 29, 1930, at 1.

473. *Weiss v. People*, 285 P. 162 (Colo. 1930).

474. See, e.g., Wade Mountfortt, Jr., *Lamar Bandits Still at Large*, DENVER POST, May 24, 1928, at 1.

exchange for his confession and guilty plea for the murder of the bank president. The court agreed, but also stated that the district attorney did not explicitly *ask* the jury for death and that the district attorney did not have the power to usurp the jury by promising a sentence of life.⁴⁷⁵ Royston and Abshier also confessed, pled guilty, and had their convictions and sentences affirmed on appeal.⁴⁷⁶ Fleagle was hanged a week before the other two,⁴⁷⁷ and Abshier and Royston were permitted to decide that Abshier would be hanged before Royston.⁴⁷⁸ At the time of the hangings, a fourth member of the gang, Ralph's brother Jake Fleagle, had not been apprehended, but a detective subsequently killed him in Branson, Missouri.⁴⁷⁹

61. EMELIO HERRERA. August 20, 1930. Denver. H-H. Hanging/Broken neck. A railroad section hand, Herrera, age twenty-one, was convicted of murdering his wife, Maria, by firing four shots into her in the street outside their home.⁴⁸⁰ One of the bullets entered through her back. At first Herrera insisted that his wife had committed suicide, but quickly admitted that he had killed her.⁴⁸¹ Later he gave what the state Supreme Court labeled—in affirming the conviction—as inconsistent and self-contradictory statements.⁴⁸² Shortly before his death, Herrera told to a priest that he was a full-blooded Navajo Indian,⁴⁸³ although prison records, the Colorado Supreme Court, and the *Denver Post* classify him as having

475. *Fleagle v. People*, 289 P. 1078, 1079 (Colo. 1930); see also *Lamar Demands Death for Ralph Despite Promise*, DENVER POST, Oct. 17, 1929, at 3; *Court Rules Lamar Gang Must Die; Declares Fleagle Not Victim of Broken Promise Made by State*, DENVER POST, June 9, 1930, at 1.

476. *Royston v. People*, 289 P. 1077 (Colo. 1930); *Abshier v. People*, 289 P. 1081 (Colo. 1930).

477. O'Brien, *supra* note 280, at 1.

478. Fred S. Warren, *Lamar Bandits Are Avenged! Abshier and Royston Hanged at Canyon City Pen.*, DENVER POST, July 19, 1930, at 1.

479. *Kansas Gets Flood of Letters Favoring Capital Punishment*, DENVER POST, Feb. 1, 1931, at 16.

480. *Denver Woman Shot to Death in Her Bedroom*, DENVER POST, June 30, 1929, at 4.

481. *Evidence Closes Around Mexican Murder Suspect*, DENVER POST, July 1, 1929, at 6; *Emelio Herrera, Wife Slayer, Says He 'Wants to Die'*, DENVER POST, July 2, 1929, at 3.

482. *Herrera v. People*, 287 P. 643, 643-44 (Colo. 1930).

483. *Wife Slayer to Hang Tonight*, ROCKY MOUNTAIN NEWS, Aug. 20, 1930, at 1.

Mexican ethnicity and born in New Mexico.⁴⁸⁴ He accepted full responsibility for the murder before his execution.⁴⁸⁵

62. WILLIAM MOYA. December 12, 1930. Denver. H-W. Hanging. Moya was convicted of murder by beating to death Joseph Zemp, his eighty-year-old landlord, in the course of a robbery. Moya, born in New Mexico and of Mexican ethnicity, argued self-defense. Zemp's body was found stuffed in an outhouse. Eight years prior to this murder, Moya had been tried and acquitted for a New Mexico murder, but he received a prison term of six to eight years for perjury during that trial.⁴⁸⁶ The Colorado murder conviction was affirmed on appeal.⁴⁸⁷ He was thirty-three at the time of his execution.⁴⁸⁸

63-65. CLAUDE RAY, JOHN WALKER, and ANDREW HALLIDAY. January 30, 1931. Eads (Kiowa County). W-W. Hangings/Strangulations. After robbing a bank in Manter, Kansas—a deed that earned them the nickname “Manter bandits”—the defendants fled to Colorado, where local authorities had been notified of their crime. While passing through Eads, Sheriff Coral A. Hickman stopped the trio, who then shot and killed the sheriff. The bandits continued their escape and later shot at three men, wounding two of them. The three then stole a car and fled back to Kansas before they were apprehended. All three defendants fully confessed to the murders as well as to between seven and ten bank robberies. The Colorado Supreme Court affirmed their convictions on appeal.⁴⁸⁹ Walker was forty-one, Ray, the triggerman, was twenty-three, and Halliday, who shouted to Ray, “[l]et him have it” at the time of the murder,⁴⁹⁰ was twenty-two when

484. *Herrera Is Hanged for Murder of Wife*, DENVER POST, Aug. 21, 1930, at 1.

485. *Emelio Herrera, 21-Year-Old Wife Murderer, Is Hanged*, ROCKY MOUNTAIN NEWS, Aug. 21, 1930, at 1; *Herrera Is Hanged for Murder of Wife*, *supra* note 484, at 1.

486. *Recluse Slayer Goes on Trial*, ROCKY MOUNTAIN NEWS, Mar. 5, 1930, at 2; *Slayer's Wife Testifies to Save Him from the Noose*, ROCKY MOUNTAIN NEWS, Mar. 6, 1930, at 1; *Denver Recluse Slayer to Die on Gallows for Crime*, DENVER POST, Mar. 8, 1930, at 1.

487. *Moya v. People*, 293 P. 335 (Colo. 1930).

488. *Moya Walks Firmly to Gallows*, ROCKY MOUNTAIN NEWS, Dec. 13, 1930, at 1.

489. *Walker v. People*, 295 P. 787 (Colo. 1931).

490. A 1991 movie entitled “Let Him Have It” (Vermillion Pictures 1991) got its name from the words spoken by Derek Bentley to an accomplice shortly before a police officer was murdered in England. After Bentley spoke, the sixteen-year-old accomplice fired the fatal shot. Whether Bentley meant “let the officer have your gun,” or “let the officer have a bullet” has been hotly debated. Bentley's trial jury

they were executed. The men were allowed to choose the order of the executions, which they determined by flipping coins.⁴⁹¹ The one-thousand-pound weight on the gallows failed to break the men's necks, and all three died by strangulation.⁴⁹² The murders provoked strong sentiment for a return of capital punishment to Kansas, which had abolished it in 1907 and had not hosted an execution since 1870.⁴⁹³

66. JAMES V. FOSTER. December 11, 1931. Greeley (Weld County). W-W. Hanging. Foster was convicted of the murder of his wife and three children by dousing them with gasoline and lighting them afire. Foster, age forty-five, was a salesman without prior criminal record. Foster's attorney did not appeal because he did not believe that the court committed any error. Before the execution, Foster's attorney and three prison officials expressed their belief that Foster was insane, as did the head of the Colorado Psychiatric Hospital who had examined Foster during the trial. Governor William H. Adams, however, who had never commuted a death sentence during his three terms in office, refused to intervene.⁴⁹⁴

67. E.J. FARMER. March 18, 1932. Craig (Moffat County). W-W. Hanging. A rancher, Farmer became involved in a dispute with two other ranchers, Earl Hopkins and Joe J. Jones, over the ownership of some hay located on Farmer's ranch. The dispute ended when Farmer shot the two men. Farmer's son-in-law witnessed the murders. Farmer first argued self-defense, but at trial he argued an insanity defense. On appeal, the Colorado Supreme Court affirmed the conviction.⁴⁹⁵ While on death row Farmer twice attempted suicide. Despite Colorado's statute that greatly restricted

asked for mercy, but he was nonetheless executed in 1953. Bentley was nineteen when he was executed and had an I.Q. of sixty-six. In 1993, Bentley received a limited pardon from the British government. William E. Schmidt, *Youth Hanged in Error in '53, Britain Says*, N.Y. TIMES, Aug. 1, 1993, at 10.

491. O'Brien, *supra* note 146, at 1; *State Ready to Execute 3 Bank Bandits Tonight*, ROCKY MOUNTAIN NEWS, Jan. 30, 1931, at 1; *Hanged Bandit Is Buried in Prison Plot*, ROCKY MOUNTAIN NEWS, Feb. 1, 1931, at 4.

492. O'Brien, *supra* note 146, at 1.

493. *Kansas Gets Flood of Letters Favoring Capital Punishment*, *supra* note 479, at 16.

494. *Preparations Are Made to Hang Greeley Torch Slayer Tonight*, DENVER POST, Dec. 9, 1931, at 1; *Adams Takes No Action in Foster Case*, DENVER POST, Dec. 10, 1931, at 13; *Adams Says Torch Slayer Must Hang*, DENVER POST, Dec. 11, 1931, at 1; *Greeley Torch Slayer Dies on Prison Gallows*, DENVER POST, Dec. 12, 1931, at 1; *Foster Is Executed for "Torch Killings,"* ROCKY MOUNTAIN NEWS, Dec. 12, 1931, at 1.

495. *Farmer v. People*, 7 P.2d 947 (Colo. 1932).

attendance at executions, thirty people witnessed the hanging, including some relatives of Farmer's victims.⁴⁹⁶

68. JOE MAESTAS. May 27, 1932. San Luis (Costilla County). Other-W. Hanging. Maestas was convicted of the murder of Ben Addis, a cookie salesman, near Fort Garland. Addis and his sister were sleeping in their car, parked on the roadside, when Maestas and a companion, Agipito Fernandez, awakened them. Addis and his sister tried to escape, but Maestas shot Addis, who died the next day. Fernandez's trial ended with a directed verdict of not guilty. Maestas, an ex-convict who was inebriated the night of the crime, admitted to the shooting, initially claiming that it had been done in self-defense. On appeal, he argued that although the state may have been able to prove second-degree murder, the proof of deliberate and premeditated design was insufficient to sustain a verdict of first-degree murder because of his inebriation.⁴⁹⁷ Maestas was twenty-five-years-old, and half-Navajo Indian and half-Mexican. At 240 pounds, he was the heaviest man ever hanged in Colorado.⁴⁹⁸

69. NELIVELT MOSS (a.k.a. Nelivelt Elliott). March 10, 1933. Gunnison (Gunnison County). B-W. Hanging. Age twenty and drunk at the time of the crime, Moss killed an eighty-year-old white woman, Rena Schrienbeck, in retaliation for her racial slur and her accusation that he stole twenty dollars from her. Her body was found in a bed among the ashes of her home, which had burned to the ground. An autopsy revealed that she had been struck with a heavy object before the fire began.⁴⁹⁹ Moss, who confessed to the murder, had once received a ten-year sentence in Mississippi for an unknown crime but had escaped after serving only forty days. Some

496. *Farmer Breaks Down As Hour of Death Nears*, DENVER POST, Mar. 18, 1932, at 1; *Farmer Dies on Gallows at Cañon City Pen.*, DENVER POST, Mar. 19, 1932, at 1.

497. *Maestas v. People*, 11 P.2d 227 (Colo. 1932); Appellant's Opening Brief at 12-13, *Maestas v. People*, 11 P. 2d 227 (Colo. 1932) (No. 13019).

498. Appellant's Opening Brief at 12, *Maestas v. People*, 11 P. 2d 227 (Colo. 1932) (13019); *Joe Maestas Dies on Prison Gallows*, ROCKY MOUNTAIN NEWS, May 27, 1932, at 1; *Fort Garland Killer Hangs at Cañon City*, DENVER POST, May 28, 1932, at 6.

499. *Moss v. People*, 18 P.2d 316, 317 (Colo. 1932); *Pitkin Woman Believed Slain*, ROCKY MOUNTAIN NEWS, Mar. 12, 1932, at 2.

sixty legislators and state employees, curious about execution methods, witnessed the execution.⁵⁰⁰

70. WALTER "SHORTY" JONES (a.k.a. John Morgan). December 1, 1933. Grand Junction (Mesa County). W-W. Hanging/Strangulation. Jones became the forty-fifth man, and the last, to be hanged in the state prison in Cañon City.⁵⁰¹ After he was sentenced to hang, the Colorado legislature changed its method of execution from hanging to asphyxiation.⁵⁰² He was convicted of the murder of Hartford Johnson, a fellow tramp. His accomplice, Montad J. Nelson, received a life sentence for his role in the crime. Jones and Nelson plotted to rob two fellow tramps traveling on a train. Each armed himself with a heavy bolt and struck one of the men, and then, together, they threw the victims off the train. Jones's victim, Hartford Johnson, died; the other victim lived and testified at trial. The Colorado Supreme Court affirmed the conviction on appeal.⁵⁰³ Jones's execution was postponed one week so that he could enjoy Thanksgiving.⁵⁰⁴ As his last request, Jones asked for some beer, and Warden Roy Best obliged by giving him two bottles. "A blizzard howled a dirge around the gray prison walls as the twenty-three-year-old, two hundred-pound slayer was jerked from his feet in the hemp noose"⁵⁰⁵ Jones took fourteen minutes to strangle to death.⁵⁰⁶

71. WILLIAM CODY KELLEY. June 22, 1934. Delta (Delta County). W-W. Asphyxiation. Kelley and an accomplice, Lloyd Frady, were convicted of the murder of rancher Russell Downing by beating him with a pipe, binding him with barbed wire, and then burning down his house. The defendants were tried separately. Both blamed the murder on the other, and both were sentenced to death. Kelley claimed that he was very drunk at the time of the murder and remembered very little,

500. *Negro Slayer Hanged at Pen.*, ROCKY MOUNTAIN NEWS, Mar. 11, 1933, at 7; *Slayer Dies on Gallows at Colorado Pen.*, DENVER POST, Mar. 11, 1933, at 11.

501. The forty-five hangings took place over a span of forty-three years at the state penitentiary in Cañon City.

502. *Jones Is Brave as Hour of His Execution Approaches*, DENVER POST, Dec. 2, 1933, at 2.

503. *Jones v. People*, 26 P.2d 103 (Colo. 1933).

504. *Colorado Will Hang Hobo Slayer Friday*, ROCKY MOUNTAIN NEWS, Nov. 26, 1933, at 5.

505. Wallis M. Reef, *Last Victim of Gallows Strangled at Cañon City*, ROCKY MOUNTAIN NEWS, Dec. 2, 1933, at 1.

506. *Id.*; *Killer Strangles in Fourteen Minutes*, *supra* note 144, at 1.

but he insisted on his innocence until the time of his death.⁵⁰⁷ His conviction was not appealed.⁵⁰⁸ The preparations for the execution were extensive. Fifteen Colorado physicians arrived at the prison to witness the execution, anxious to learn about the effects of the gas. "The gruesome custom of 'cutting the heart out,' which has been practiced for years following hangings, to make certain of death, will be abandoned with the new method of execution."⁵⁰⁹ A few days before the execution, the gas chamber was tested on a pig, which squealed and struggled momentarily before proving that the chamber worked. The warden also tested it with a dog, a pigeon, and some canaries. After Kelley died, "Warden Best pronounced the execution the most successful and painless one ever conducted at the penitentiary."⁵¹⁰ Hundreds of requests were received from physicians from all over the country for copies of the autopsy report.⁵¹¹ In exchange for his testimony against Kelley, Frady received a recommendation for a conviction for second-degree murder, with no death sentence, from the district attorney, but the jury nonetheless sentenced him to death. After Kelley's execution, Frady argued on appeal that

507. Walden E. Sweet, *Young Wife's Plea for Mercy Fails to Save Kelley from Death Chamber*, DENVER POST, June 19, 1934, at 1.

508. His conviction was not appealed because, unlike Frady, he did not have the two hundred dollars needed to prepare a trial transcript. When informed of the case on a visit to Colorado, the two hundred dollars was nearly donated by Lorena A. Hickok, a close friend of First Lady Eleanor Roosevelt's who served as the chief investigator for Harry L. Hopkins, administrator of the Federal Relief Administration. A Colorado relief worker, however, warned Hickok that intervention by her might embarrass the President. Writing to Mrs. Roosevelt, Hickok explained her feelings:

The thing has nearly driven me crazy. How *can* you have any faith or hope in us if we do things like that in this supposedly enlightened age? . . . I feel as though we were living in the Dark Ages, and I *loathe* myself for not having more courage and trying to stop it, no matter what the consequences were. *You* would have *done* it. Well – I guess I'd better not think about it any more . . ."

ONE THIRD OF A NATION: LORENA HICKOK REPORTS ON THE GREAT DEPRESSION 285–86 (Richard Lowitt & Maurine Beasley eds., 1981). Mrs. Roosevelt tried to comfort her friend, replying, "You mustn't agonize so over things . . . your giving the \$200 would have been useless." *Id.* at xiv; *see also* STEPHEN J. LEONARD, TRIALS AND TRIUMPHS: A COLORADO PORTRAIT OF THE GREAT DEPRESSION WITH FSA PHOTOGRAPHS 215 (1993).

509. Charles T. O'Brien, *Last-Minute Fight on to Save Kelley*, DENVER POST, June 22, 1934, at 1.

510. O'Brien, *supra* note 165, at 1.

511. *Autopsy Will Be Performed Upon Kelley*, DENVER POST, June 24, 1934, at 5.

the judge should have accepted this agreement. His conviction and death sentence, however, were affirmed, although the Colorado Supreme Court recommended to the executive branch that the sentence be commuted.⁵¹² In 1935, his sentence was commuted and he became wealthy in prison selling "curio goods," such as leather work, beaded arts, and silver jewelry. With the earnings, he purchased a new home for his parents and a new car for himself, which was waiting for him at the prison gates when he was released in 1949.⁵¹³

72-73. LOUIS PACHECO and JOHN PACHECO. May 31, 1935. Greeley (Weld County). H-W. Asphyxiation. "Two fiendish killers invaded the ranch home of Clifford Smith, 32, . . . shot Smith and Robert Griffin, 16, a ranch hand, to death, wounded Mrs. [Violet] Smith and then fled after an unsuccessful attempt to cremate all three victims."⁵¹⁴ Griffin was shot first as he lay in bed, and later the Smiths were shot when they returned home from an outing. Two brothers—John Pacheco, twenty-two, and Louis Pacheco, a thirty-seven-year-old ex-convict recently released from prison (who at one time had worked for Smith)—ultimately confessed to the crime. The brothers had two motives: robbery of fifty dollars that Smith was known to have and arguments over the rustling of a calf. At trial, Mrs. Smith identified the brothers and also described an "attack upon her person" after she had been shot, which may have been a sexual assault.⁵¹⁵ The convictions were affirmed on appeal.⁵¹⁶ As the brothers sat in two of the three chairs in Colorado's gas chamber, they were "[s]tolid as a pair of Aztec idols."⁵¹⁷

74. LEONARD (LEE) BELONGIA. June 21, 1935. Greeley (Weld County). W-W. Asphyxiation. Belongia was convicted of the murder of a rancher, Albert E. Oesterick. He killed the rancher and wounded the rancher's wife as the victims lay sleeping in their beds, and beat the couple's thirteen-year-old

512. *Frady v. People*, 40 P.2d 606, 613 (Colo. 1934).

513. *Con Who Won Wealth Behind Bars Freed*, DENVER POST, Apr. 4, 1949, at 3.

514. *Burglars Murder Colorado Farmer and Schoolboy and Wound Woman; Fiends Shoot Three Then Pour Kerosene on Them and Light It*, DENVER POST, Feb. 28, 1934, at 1.

515. *Defense Suddenly Rests Case in Trial of Pacheco Brothers*, DENVER POST, Mar. 30, 1934, at 25.

516. *Pacheco et al. v. People*, 43 P.2d 165 (Colo. 1935).

517. Wallis M. Reef, *Two Brothers Die for Brutal Murder*, ROCKY MOUNTAIN NEWS, June 1, 1935, at 1.

son over the head with a rifle. Belongia, aged twenty-four at the time, worked for the rancher as a sheepherder, receiving room and board in compensation. He murdered Oesterick because he felt he was underpaid and needed money so he could marry. He fully confessed upon his arrest. Shortly before the murder, Belongia had been released from a Minnesota prison, where he had served a sentence of eight years for auto theft.⁵¹⁸ At trial, he admitted the crimes. A physician also testified, rendering the opinion that Belongia had the mentality of a ten-year-old.⁵¹⁹ Belongia welcomed the death sentence and made no attempt to avoid it. His last request was for an opportunity to will his body to a medical school so scientists could examine his brain and determine what made him a murderer.⁵²⁰ The offer was accepted by the medical school at the University of Colorado in Denver, but then rejected because no one offered the ten dollars needed to ship the body to Denver.⁵²¹ After his death, the *Denver Post* published a letter he dictated explaining his own thoughts on what had caused his criminality.⁵²²

75. OTIS MCDANIELS. February 14, 1936. Telluride (San Miguel County). W-W. Asphyxiation. McDaniels, age thirty, and his brother Herbert, age twenty, robbed and bound a Montezuma County sheep rancher, leaving him to die of exposure and starvation in his isolated cabin. Once arrested, they were held in the jail of neighboring Glenwood Springs to maximize security. Two months later, on the ride back to Montezuma County for arraignment, they overpowered the sheriff, W.W. Dunlap, and a deputy who were transporting them. The brothers grabbed a gun, which Otis used to murder Sheriff Dunlap.⁵²³ Otis received a life sentence for the first

518. *Rancher Slain and Wife Shot Near Greeley*, ROCKY MOUNTAIN NEWS, Dec. 17, 1934, at 1; *Ex-Convict Murders Colorado Rancher and Wounds His Wife*, DENVER POST, Dec. 17, 1934, at 14.

519. *Ex-Convict on Trial at Greeley for Killing Planned to Escape*, DENVER POST, Mar. 6, 1935, at 11; *Ex-Convict Gets Death Penalty for Killing Colorado Rancher*, DENVER POST, Mar. 7, 1935, at 19.

520. *Murderer Offers Brain to Science*, DENVER POST, June 20, 1935, at 1; *College Rejects Murderer's Brain*, DENVER POST, June 21, 1935, at 1.

521. *Belongia Goes to Death Gladly in Gas Chamber*, *supra* note 469, at 1.

522. *Slayer Leaves Letter of Advice to Parents, Explaining Causes of His Life of Crime*, DENVER POST, June 22, 1935, at 1.

523. Morris Cleavenger, *Sheriff Slayers Caught*, ROCKY MOUNTAIN NEWS, Aug. 7, 1935, at 1; *Posses Encircle Slayers of Sheriff in Colorado*, ROCKY MOUNTAIN NEWS, July 16, 1935, at 1.

murder and a death sentence for the second, while Herbert received life sentences for both. Otis admitted the murders, but said that they were unintended. He had served previous prison terms in Utah and New Mexico. The warden allowed four other convicts to witness the execution.⁵²⁴

76-77. FRANK AGUILAR (August 13, 1937) and JOE ARRIDY (a.k.a. Arrdy) (January 6, 1939). Pueblo. (H-W and Other-W). Asphyxiation. Aguilar and Arridy were convicted of the August 16, 1936, murder of Dorothy Drain. The men were accused of breaking into the Drain home, sexually assaulting Dorothy, and then killing her and seriously wounding her younger sister with a hatchet. In 1925, Arridy, who was born in Pueblo shortly after his parents immigrated from Syria, had been adjudicated as mentally incompetent and sent to "[t]he State Home and Training School for Mental Defectives" in Grand Junction. At the institution, his IQ was measured at forty-six. He was released after a nine-month stay, but three years later returned to the institution. In 1936, he walked away from the Home and was not seen until his arrest in Wyoming sixteen days later—ten days after the murder. There he offered the first of many confessions to the crime, with each confession changing a bit to conform with newly discovered facts. Arridy's arrest surprised officials in Pueblo, who had already arrested Aguilar, a Mexican national, for the murder and discovered the murder weapon in Aguilar's home. The Wyoming authorities then secured a confession from Arridy in which he said that he had acted alone in the murder. A jury trial first was conducted to determine if he was sane, where three psychiatrists testified that Arridy had the mind of a five or six-year-old child. Law enforcement officials, however, claimed that he was sane, and that position prevailed, even without the support of any mental health experts. Arridy was then convicted of murder in a separate jury proceeding, in which the defense attorney again focused on proving that Arridy was insane rather than challenging the "evidence." The conviction was affirmed on appeal, and further attempts to show that Arridy was mentally incompetent for execution failed, each time by four-to-three

524. Jack Carberry, *McDaniels Shows Remorse and Fear on Execution Day*, DENVER POST, Feb. 14, 1936, at 1; *Otis McDaniels Walks Smiling to Gas Chamber to Die as Double Slayer*, ROCKY MOUNTAIN NEWS, Feb. 15, 1936, at 1.

votes in the Colorado Supreme Court.⁵²⁵ Meanwhile, Aguilar was executed in 1937.⁵²⁶ During the execution, one of the official witnesses, Adlai S. "Ad" Hamilton, a Pueblo resident and conductor for the Missouri Pacific Railroad, had a heart attack and died.⁵²⁷ During his eighteen months on death row, Arridy became close friends with the warden, Roy Best. The warden, who spoke out against the pending execution, bought him toys, picture books, and for Christmas in 1938, a wind-up toy train that quickly became Arridy's favorite toy.⁵²⁸ Arridy's appellate attorney was Colorado's future attorney general, (Mr.) Gail Ireland. Later, the case formed the basis for a seminal book-length case study written by Robert Perske. Among other things, the book explains how the desire to please through false confessions, coupled with ineffective assistance of counsel and an environment in which there was little concern for understanding the mentally retarded, may very well have cost an innocent person his life.⁵²⁹

78. PETE CATALINA. September 29, 1939. Salida (Chaffee County). W-H. Asphyxiation. A native of Italy,⁵³⁰ Catalina, forty-one, was executed for the murder of twenty-three-year-old

525. *Arridy v. People*, 82 P.2d 757 (Colo. 1938); *People ex rel. Best v. Eldred*, 86 P.2d 248 (Colo. 1938).

526. Several months after the execution, Aguilar's three-year-old daughter died when the family's Pueblo home burned. Later, Aguilar's other two children were placed in an orphanage when authorities claimed that they have been abandoned by Aguilar's widow. Eventually the children were returned to Aguilar's mother. However, the children were constantly ridiculed by other children. In December 1938, with funds provided by the county welfare department, Mrs. Aguilar (age seventy-seven) and her two grandchildren left the state and went to live with relatives in Mexico. *Aguilars to Start Life Anew in Mexico*, PUEBLO CHIEFTAN (Colo.), Dec. 4, 1938, at 1.

527. *Puebloan Witness Dies at Execution*, *supra* note 176, at 1.

528. On the day of his execution, Arridy gave the train to a fellow death row inmate, Angelo Agnes (case no. 79). A picture of this presentation is available in the Cañon City Public Library, available at <http://ccpl.lib.co.us> (last accessed Apr. 17, 2003).

529. See PERSKE, *supra* note 177. In 1993, Colorado banned the death penalty for the mentally retarded. Act of Apr. 29, 1993, ch. 155, 1993 Colo. Sess. Laws 543 (codified at Colo. Rev. Stat. §§ 16-9-401 to -403, 16-11-103. In 2002, the U.S. Supreme Court did the same, finding that such executions violated the Eighth Amendment's protections against cruel and unusual punishment. See generally *Atkins v. Virginia*, 536 U.S. 304 (2002).

530. One newspaper lists him as a native of Greece. *Two Murderers Will Die Together In Gas Chamber*, DENVER POST, Sept. 29, 1939, at 1. However, his prison records state that he was born in Italy. See Colorado Department of Personnel and Administration, State Penitentiary Records at the Colorado State Archives, at <http://www.archives.state.co.us/pen/history.htm> (last accessed Apr. 15, 2003).

John Trujillo. Catalina was the proprietor of a cigar store, in which he allowed gambling. Trujillo, a customer, purchased some poker chips, but a quarrel erupted because Trujillo owed Catalina fifty cents more than he paid and Trujillo openly accused other players of cheating. The quarrel ended when Catalina shot him.⁵³¹ The conviction was affirmed on appeal.⁵³² Prior to the execution, the warden used a pig to test the gas chamber's lethality. He invited twenty inmates to watch the pig's death—mostly young men convicted of armed robbery—believing that watching the execution would deter them from future criminality. Catalina was executed in Colorado's three-seat gas chamber with Angelo Agnes (q.v.), with warden Roy Best serving as the executioner. They were "[t]he quickest and most humane execution[s] we ever had," said prison officials.⁵³³ Later, the prison revealed that leaking fumes drove spectators from the room.⁵³⁴

79. ANGELO AGNES. September 29, 1939. Denver. B-B. Asphyxiation. Executed for killing Malinda Agnes, his wife. He was thirty-one at the time of his death. The couple was living with Malinda's mother and brother, and Angelo left after a domestic quarrel. Two weeks later, they met at another location and he shot her.⁵³⁵ Agnes had a prior conviction for burglary.⁵³⁶

80. HARRY LEOPOLD. December 8, 1939. Denver. W-W. Asphyxiation. Leopold was convicted of the murder of a Denver tavern owner, Emil Albrecht. Leopold, age thirty at the time of his execution, had been paroled from the State Penitentiary in Cañon City in September 1936, where he had served a sentence for aggravated assault. He and a prison friend, Robert Gwynne, robbed Albrecht's tavern and shot Albrecht, killing him instantly. After the men fled in a taxi, police confronted them about three hours after the murder. In the ensuing shoot-out, police killed Gwynne and wounded

531. *Salida Man Held in Fatal Shooting*, DENVER POST, Mar. 16, 1938, at 10.

532. *Catalina v. People*, 93 P.2d 897 (Colo. 1939).

533. *Two Murderers Will Die Together In Gas Chamber*, DENVER POST, Sept. 29, 1939, at 1; *Agnes and Catalina Executed Together*, *supra* note 168, at 1.

534. *Death Chamber at Pen Tested*, *supra* note 149, at 1.

535. *Negro Woman Dies from Wounds*, ROCKY MOUNTAIN NEWS, Nov. 21, 1937, at 5; *Negro Surrenders As Wife-Slayer*, ROCKY MOUNTAIN NEWS, Nov. 23, 1937, at 16.

536. *Agnes v. People*, 93 P.2d 891 (Colo. 1939); *Two Murderers Will Die Together In Gas Chamber*, *supra* note 533, at 1; *Agnes and Catalina Executed Together*, *supra* note 168, at 1.

Leopold. As a newspaper recounted: "Less than three hours after a pair of gunmen shot and killed a tavern keeper last night, one of them was a bullet-riddled corpse and the other was a badly wounded prisoner."⁵³⁷ Leopold later confessed, stating that the murder was accidental. On a failed appeal, Leopold only contested the sentence, not the conviction.⁵³⁸ At Leopold's request, warden Roy Best delayed the execution for thirty minutes so Leopold could listen to a favorite radio show.⁵³⁹ Leopold was put to death in "the quickest and cleanest gas execution ever held at the prison."⁵⁴⁰

81. JOE COATES. January 10, 1941. Denver. B-W. Asphyxiation. Employed in the commercial sex industry as a pimp, Coates was convicted of the murder of Denver police detective Frank Renovato. Coates had previous convictions for petty offenses, such as vagrancy and disorderly conduct, and also had seven arrests in the previous four years. The murder resulted from an argument between Coates, his old girlfriend for whom he was pimping, the man she was living with, and their landlord. Coates threatened the woman's paramour and landlord with a gun, and the landlord rushed to find a police officer. The landlord returned to the scene with Detective Renovato, whom he found on a nearby street. A shootout ensued, and Detective Renovato was killed in the crossfire.⁵⁴¹ Coates—a "marijuana-crazed negro"⁵⁴²—was identified immediately after the murder by an eyewitness⁵⁴³ and was arrested six days after the murder.⁵⁴⁴ Upon arrest, he admitted firing the fatal shots but claimed they were in self-defense. The district attorney, however, announced that he would demand a death sentence.⁵⁴⁵ Within two months, "Joe Coates,

537. *Trapped Bandits Shoot It Out with Officers*, ROCKY MOUNTAIN NEWS, Dec. 5, 1938, at 1.

538. *Leopold v. People*, 95 P.2d 811 (Colo. 1939).

539. W.T. Little, *Humor Not to Be Denied Even at Grim Execution Hill*, ROCKY MOUNTAIN NEWS, Nov. 18, 1951, at 34.

540. *Smiling Leopold Goes to His Death in Gas Chamber*, ROCKY MOUNTAIN NEWS, Dec. 9, 1939, at 1.

541. *City Detective Shot to Death as He Tries to Save Woman*, ROCKY MOUNTAIN NEWS, Oct. 14, 1938, at 1.

542. *Door-to-Door Hunt Seeks Police Killer*, ROCKY MOUNTAIN NEWS, Oct. 15, 1938, at 1.

543. *Id.*

544. *Renovato's Slayer Is Captured*, ROCKY MOUNTAIN NEWS, Oct. 19, 1938, at 1.

545. *Death Penalty Demanded for Coates*, ROCKY MOUNTAIN NEWS, Oct. 20, 1938, at 1.

61, the shuffling, stoop-shouldered Negro known as 'the bad man of Larimar (sic) Street,' was condemned to die"⁵⁴⁶ The conviction and sentence were affirmed on appeal,⁵⁴⁷ although the Colorado Supreme Court delayed the execution at least four times.⁵⁴⁸ After visiting with Coates, Governor Ralph L. Carr denied clemency. A newspaper described the execution as "the easiest and quickest death of any of the fourteen men" who had succumbed in Colorado's gas chamber.⁵⁴⁹

82. JAMES STEPHENS (a.k.a. "Mancos Jim"). June 20, 1941. Cortez (Montezuma County). W-W. Asphyxiation. Stephens was convicted of murdering Lynn Dean, town marshal of Mancos, Colorado. Stephens worked as a railroad section hand. On the night of the murder, Stephens had been drinking heavily and was belligerent, and Officer Dean told him to go home. When Stephens instead went to another tavern, Dean arrested him but did not inspect him for hidden weapons, and Stephens then shot Dean. The conviction was affirmed on appeal.⁵⁵⁰ At the time of the execution, the warden claimed that Stephens, age seventy-six, was the oldest person ever executed in the history of the United States. In the death chamber, Stephens wiggled his left hand out of the strap that bound it to the chair, removed the mask covering his face, loosened his right hand and the waist strap holding him to the chair, sang a Navajo death chant, and waited calmly for the gas to hit his nostrils.⁵⁵¹

83. MARTIN SUKLE. May 22, 1942. Colorado Springs (El Paso County). W-W. Asphyxiation. Suple was convicted and sentenced to death for the murder of his second wife's "partner in illicit relations," Jack Russell.⁵⁵² Suple was also arrested, but never tried, for killing this wife, Marie. A thirty-five-year-old janitor, Suple first killed Russell and two days later killed Marie. Notably, Suple had served three years in prison in Montana for attempting to murder his first wife. Upon his

546. *Coates Must Die As Slayer of Detective*, DENVER POST, Dec. 4, 1938, at 1.

547. *Coates v. People*, 106 P. 2d 354 (Colo. 1940).

548. *Denver Killer Goes to Death*, ROCKY MOUNTAIN NEWS, Jan. 11, 1941, at 1.

549. *Coates Begs for Prayer in Death Chair*, *supra* note 171, at 1.

550. *Stephens v. People*, 111 P.2d 1057 (Colo. 1941).

551. *Mancos Jim Is Ready for Death Friday*, DENVER POST, June 19, 1941, at 1; *Colorado Killer Jerks from Chair, Dies Calmly 'Like Indian Victim'*, ROCKY MOUNTAIN NEWS, June 21, 1941, at 1.

552. *'I Warned Him,' Says Janitor; Gives Self Up*, ROCKY MOUNTAIN NEWS, Oct. 10, 1939, at 1.

arrest, Sukle, an employee of a psychiatric hospital, gave a full confession. On appeal, the conviction for Russell's murder was reversed because during deliberations, the jury forwarded a question to the judge about whether the defendant, if sentenced to life, would be eligible for parole. The judge answered that he would be eligible, and the Colorado Supreme Court ruled that this question was not within the jury's proper concern.⁵⁵³ Sukle was retried, reconvicted, and resentenced to death, and this conviction and sentence were affirmed on appeal.⁵⁵⁴ After visiting with him in prison, Governor Ralph L. Carr denied the request for clemency.⁵⁵⁵

84. DONALD H. FEARN. October 23, 1942. Pueblo. W-W. Asphyxiation. Fearn received a death sentence for kidnapping, raping, torturing, and shooting a sixteen-year-old high school student, Alice Porter, the daughter of a former Pueblo detective. Thirty-six hours before the murder, Fearn's wife gave birth to their second child. Fearn abducted the victim at gunpoint off a Pueblo street and took her to an abandoned ranch. He forced her to disrobe, bound her, and burned her two dozen times with a wire he had heated in the fireplace. He then raped her, beat her over the head with a hammer, and shot her to make sure she was dead. Her body was later found in a cistern. During the crimes, a heavy rainstorm passed over the area that caused Fearn's car to sink in mud. As a result, Fearn had to walk several miles for assistance, which led to his arrest. Fearn, a twenty-six-year-old railroad brakeman, immediately confessed.⁵⁵⁶ He had no prior arrests, but, in his confession, told authorities that since childhood he had felt an uncontrollable urge to commit this type of crime. Fearn believed that he deserved to die. He did not appeal his conviction and was executed six months after the crimes. His last request, for a bottle of beer, was honored. The victim's father and two of her uncles witnessed the execution.⁵⁵⁷

553. *Sukle v. People*, 111 P.2d 233 (Colo. 1941).

554. *Sukle v. People*, 125 P.2d 151 (Colo. 1942).

555. *Sukle Almost Runs to Gas Chamber*, DENVER POST, May 23, 1942, at 2; *Murderer Sukle Pays His Penalty*, ROCKY MOUNTAIN NEWS, May 23, 1942, at 2.

556. *Murderer of Pueblo Girl by Torture Confessed*, DENVER POST, Apr. 27, 1942, at 1.

557. *Sex Slayer Dies in Gas Chamber*, ROCKY MOUNTAIN NEWS, Oct. 24, 1942, at 5; *Pueblo's Torture Murderer Dies in Gas Chamber*, DENVER POST, Oct. 24, 1942, at 5.

85. JOHN SULLIVAN. September 20, 1943. Colorado Springs (El Paso County). W-W. Asphyxiation. Sullivan was convicted of sexually assaulting and murdering Carrie Winona Culbertson, whom he believed had mistreated his employer the previous summer.⁵⁵⁸ Sullivan went to Culbertson's home to deliver some mail and using a letter opener he found there, stabbed her to death. Upon his arrest, Sullivan, a forty-two-year-old handyman, was described as a "decidedly subnormal person" by the sheriff.⁵⁵⁹ His confession was the state's main evidence against him at trial, where the experts were "practically unanimous" in their opinions that Sullivan had limited intelligence.⁵⁶⁰ On appeal, Sullivan's attorneys challenged the death sentence, arguing that Colorado's restriction against executing people under age eighteen did not allow execution of people with subnormal intelligence. This appeal failed, and Sullivan went to his death with little debate about the propriety of executing the mentally retarded.⁵⁶¹

86. GEORGE MASAYOSHI HONDA. October 8, 1943. Denver. A-A.⁵⁶² Asphyxiation. The owner of a restaurant, Honda quarreled with his wife, Mary, over her failure to design menus for the day and because, as he told authorities, he felt that she never loved him. He then stabbed her to death in the lobby of the Denver hotel where they lived.⁵⁶³ Honda, thirty-seven, had no previous record of criminality. He was tried in an atmosphere of anti-Japanese sentiments in the middle of World War II. Efforts to delay the trial until after the war ended did not succeed. The conviction was affirmed on appeal.⁵⁶⁴ Honda used his last statement to express his hope that America would win the war.⁵⁶⁵

558. *Woman Found Raped, Slain*, ROCKY MOUNTAIN NEWS, Jan. 12, 1942, at 1.

559. *Handyman Is Held in Slaying*, *supra* note 179, at 5; *Sex Murder Confessed by Handy Man*, ROCKY MOUNTAIN NEWS, Jan. 13, 1942, at 9.

560. *Sullivan v. People*, 139 P.2d 876, 877 (Colo. 1943).

561. *Slayer Dies in Colorado Gas Chamber*, DENVER POST, Sept. 20, 1943, at 2; *Manitou Springs Killer Executed*, ROCKY MOUNTAIN NEWS, Sept. 21, 1943, at 31.

562. "A-A" signifies Asian defendant and victim. Honda was an American citizen, born in Honolulu. He and his family lived in Japan from the time he was three months old until he was sixteen. His wife was of Japanese decent; born and raised in Colorado.

563. *Japanese Cuts Wife to Death in Hotel Lobby*, DENVER POST, May 4, 1942, at 8.

564. *Honda v. People*, 141 P.2d 178 (Colo. 1943).

565. *Denver Jap (sic) Goes to Death Chamber Wishing Allies Well*, DENVER POST, Oct. 9, 1943, at 4; *Honda Dies Calmly in Lethal Cell, Hopes Allied Armies Will Win War*, ROCKY MOUNTAIN NEWS, Oct. 9, 1943, at 5.

87. HOWARD C. ("SONNY") POTTS (a.k.a. Metzgar). June 22, 1945. Denver. W-W. Asphyxiation. Potts was convicted of murdering his wife, Mary. Potts beat her to death and then buried her in the basement of their home. Neighbors, knowing that relations between the couple were precarious and that Potts had a history of spousal abuse, became suspicious when they did not see Mary for several weeks. Potts explained that she had gone to visit relatives in California. Neighbors, however, called police when they saw Potts carrying a pick and shovel into his house. When the police confronted him nearly seven weeks after the murder, Potts confessed and directed them to where he had buried the body.⁵⁶⁶ Potts, thirty-nine at the time of the crime, had worked for Western Electric as a shipping clerk for the previous fourteen years and had no prior arrests. The conviction was affirmed on appeal.⁵⁶⁷ The execution was described as "routine."⁵⁶⁸

88. CHARLES FORD SILLIMAN. November 9, 1945. Littleton (Arapahoe County). W-W. Asphyxiation. Silliman was arrested for killing his wife, Esther, and four-year-old daughter, Patricia, by poisoning them with strychnine. He was convicted of the former murder but was not tried for the latter. Silliman, thirty-four, worked at a truck freight dock. In his confession given shortly after his arrest, Silliman said that he and his wife had entered into a murder-suicide pact because of indebtedness, but that he lost nerve when it was time to kill himself.⁵⁶⁹ His insanity defense at trial failed. Shortly before the execution, two psychiatrists concluded that he was insane, but neither the Colorado Supreme Court nor the governor intervened to stop the execution.⁵⁷⁰ His execution was delayed two hours while approximately 550 Fremont County merchants

566. *Denver Woman Found Dead in Cellar Grave*, DENVER POST, May 21, 1943, at 1; Fred Pettid, *Find Body of Denver Wife in Cellar Grave*, ROCKY MOUNTAIN NEWS, May 21, 1943, at 1; *Potts Tells Police He Stamped (sic) Wife to Death in Mad Frenzy*, DENVER POST, May 22, 1943, at 1.

567. *Potts v. People*, 158 P.2d 739 (Colo. 1945).

568. *Potts Pays with Life for Killing Wife*, DENVER POST, June 23, 1945, at 1; *see also Potts Prepares to Die Friday Evening*, DENVER POST, June 22, 1945, at 1.

569. *Girl, 4, Mom Die in Agony, Dad Quizzed*, ROCKY MOUNTAIN NEWS, Jan. 23, 1944, at 5; *Father Admits Poisoning Two*, ROCKY MOUNTAIN NEWS, Jan. 24, 1944, at 1.

570. *Supreme Court Refuses to Stay Silliman Execution Slated Tonight*, ROCKY MOUNTAIN NEWS, Nov. 9, 1945, at 5; *Silliman Calmly Waits Death Call*, DENVER POST, Nov. 9, 1945, at 1.

and farmers enjoyed a previously scheduled banquet at the prison.⁵⁷¹

89. FRANK MARTZ. November 23, 1945. Littleton (Arapahoe County). W-W. Asphyxiation. Martz was convicted of murdering a three-year-old girl, Kathleen Geist. Martz beat, strangled, and mutilated Geist, whose body was found crammed under a kitchen sink. Martz had lured the girl away from her mother at a tavern. A Denver police officer noticed Martz walking with the girl and remembered where they went, and this led to the discovery of the victim and to Martz's arrest. When arrested, just two hours after the murder, Martz claimed he remembered abducting the girl, but because he was so drunk, he could not remember what he did with her. He stuck to this statement until the time he died. Martz, aged thirty-three at the time of the crime, was a staff sergeant stationed at Fort Logan, where he worked as a cook. He had no prior convictions,⁵⁷² and this conviction was affirmed on appeal.⁵⁷³ A day before the scheduled execution, Martz was examined by a psychiatrist, at the order of a district court judge, to determine competence for execution.⁵⁷⁴ The judge, however, ultimately concluded that Martz was sane, and he was executed on schedule.⁵⁷⁵

90. JOHN HENRY BROWN. May 23, 1947. Denver. B-B.⁵⁷⁶ Asphyxiation. Brown was convicted of murdering Evelyn Smith, his paramour. Brown, age fifty at the time of his death, had served six years of a ten-year sentence in Missouri for armed-robbery. He and Smith had gone to a social gathering, and Brown became jealous over attentions paid to her by another man and her refusal to leave the party and return to Brown's room with him. Brown left the party, returning with a shotgun a short while later, again demanding that Smith leave

571. *Prisoner Silliman Dies in Gas Chamber*, DENVER POST, Nov. 10, 1945, at 1; *Silliman Meets Death by Gas for Poisoning Wife*, ROCKY MOUNTAIN NEWS, Nov. 10, 1945, at 5.

572. *Four-Year-Old Girl Found Murdered, Soldier Arrested*, DENVER POST, Dec. 7, 1943, at 1; *Soldier Faces Murder Trial in Girl's Death*, DENVER POST, Dec. 8, 1943, at 1; *Sergeant Confesses Beating Girl Found Dead in Englewood*, DENVER POST, Dec. 9, 1943, at 1.

573. *Martz v. People*, 162 P.2d 408 (Colo. 1945).

574. *Martz May Be Given Stay of Execution*, DENVER POST, Nov. 23, 1945, at 1.

575. *Martz Loses His Appeal and Goes to Gas Death*, DENVER POST, Nov. 24, 1945, at 1.

576. Brown was described as having "mixed Negro and Indian blood." *Death Near for Slayer*, DENVER POST, May 22, 1947, at 32.

with him. She refused, and Brown shot her.⁵⁷⁷ At trial, Brown pleaded not guilty by reason of insanity, but this failed, and the conviction was affirmed on appeal.⁵⁷⁸ The execution was described as routine.⁵⁷⁹

91. HAROLD GILLETTE (a.k.a. Philip King). June 20, 1947. Ft. Collins (Larimer County). W-W. Asphyxiation. Gillette was executed for the murder of Glen Cook, a ranch foreman. Gillette stood outside Cook's house and shot him in the back while he sat in his living room. Gillette then entered the house, tied Mrs. Cook to a bed, locked two youngsters in a room, stole a small amount of property, and absconded in the victim's car. Gillette had worked as a ranch hand at the ranch and said that he killed Cook when Cook learned that Gillette, in an effort to hide his previous record of criminality, had been using an assumed name. At trial, Gillette pleaded guilty and was bitter that the jury still imposed a death sentence. Later, he was angry that the governor did not commute his sentence.⁵⁸⁰ No appeal was taken. Gillette was thirty-one at the time of his death. He had served previous prison terms in five states.⁵⁸¹

92. ROBERT S. ("BAT") BATTALINO. January 7, 1949. Golden (Jefferson County). W-W. Asphyxiation. A restaurant cook, Battalino was fired by the owner, Michael H. Randolph, who accused him of stealing money from the cash register. Along with another restaurant employee, Archie Miller, Battalino kidnapped Randolph at gunpoint, drove him to a rural area, and stole \$450 from him. Battalino then shot Randolph in the forehead. The body was discovered several weeks later. Upon their arrests, both Miller and Battalino confessed. At trial, Battalino argued an insanity defense, but this failed. His conviction was affirmed on appeal.⁵⁸² At the

577. *Rejected Suitor's Gunshot Wound Fatal to Woman*, ROCKY MOUNTAIN NEWS, May 13, 1945, at 31; *Denver Woman Dies in Shooting Affray*, DENVER POST, May 13, 1945, at 3.

578. *Brown v. People*, 178 P.2d 948 (Colo. 1947).

579. *Hugh Jennings, Murderer Executed at Prison*, DENVER POST, May 24, 1947, at 16; *Denver Slayer of Woman Calmly Accepts Gas Death*, ROCKY MOUNTAIN NEWS, May 24, 1947, at 5.

580. *Condemned Slayer Visits with Mother*, DENVER POST, June 20, 1947, at 30.

581. *Ranch Hand Sought in Foreman's Death*, DENVER POST, Dec. 28, 1946, at 14; *FBI Joins Search for Man Wanted in Slaying*, ROCKY MOUNTAIN NEWS, Dec. 29, 1946, at 14; *Gillette Dies in Gas Chamber*, DENVER POST, June 21, 1947, at 16.

582. *Battalino v. People*, 199 P.2d 897 (Colo. 1948).

time of his execution, Battalino, thirty-nine, spat at a priest, stated to the warden "I hate your guts," and that he looked forward to joining his friends in hell.⁵⁸³ Miller was acquitted for his role in the crime.⁵⁸⁴

93. PAUL J. SCHNEIDER. December 16, 1949. W-W. Akron (Washington County). Asphyxiation. A triple-murderer, Schneider was executed for the robbery-murder of gas station owner Frank J. Ford. Schneider abducted Mr. Ford from his Denver gas station in September 1947, and his body was discovered one month later approximately one hundred miles northeast of the city. A concussion, caused by a blow from a tire iron, and a gunshot caused Mr. Ford's death. One month after the murder, Schneider was apprehended in Kentucky when he tried to cash a check that Ford once possessed. Schneider soon offered a complete confession, not only to the murder of Ford but also to two other robbery-murders in Michigan gas stations committed after Ford was slain. This confession led authorities to Ford's body. At trial, Schneider pled not guilty by reason of insanity, but three physicians testified to his sanity. The Colorado Supreme Court affirmed the conviction,⁵⁸⁵ and the U.S. Supreme Court denied *certiorari*.⁵⁸⁶ The trial judge visited Schneider in his death row cell just three hours before the execution. Schneider was twenty-five at the time of his death. Approximately fifty people crowded around the gas chamber to watch his final moments.⁵⁸⁷

94. JOHN J. BERGER, JR. October 26, 1951. Denver. W-W. Asphyxiation. Berger was sentenced to death for murdering his wife, Pauline. For at least five years prior to the murder, Berger had beaten her, resulting in frequent arrests. He accused her of infidelity and a divorce was pending. Berger had an alcohol problem that caused him to be especially pugilistic. They had four children, the oldest of whom, Robert, was seven years old at the time of the crime. Berger was

583. Bernard Beckwith, *'I'll Join My Friends in Hell:' Battalino*, DENVER POST, Jan. 7, 1949, at 1; see also *Battalino Surly on Eve of Execution; Warden Adds Deputy to Guard*, ROCKY MOUNTAIN NEWS, Jan. 7 1949, at 10; *Friendless Battalino Faces Gas*, DENVER POST, Jan. 7, 1949, at 36.

584. Pasquale Marranzino, *Battalino Dies Smiling*, ROCKY MOUNTAIN NEWS, Jan. 8, 1949, at 1.

585. *Schneider v. People*, 199 P.2d 873, 880 (Colo. 1948).

586. *Schneider v. Colorado*, 338 U.S. 862 (1949).

587. Robert M. Cour, *Triple Killer Schneider Executed*, DENVER POST, Dec. 17, 1949, at 1; Sam Lusky, *Schneider Dies in Gas Chamber*, ROCKY MOUNTAIN NEWS, Dec. 17, 1949, at 1.

convicted of arson in June, 1947, and while traveling to prison for that conviction he said that upon his release, he planned to kill his wife. He was freed from his prison term, which included three months in a psychiatric ward, on January 26, 1948.⁵⁸⁸ Berger returned home and that night strangled his wife. He was thirty at the time of the crime. At trial, his son Robert served as the chief prosecution witness⁵⁸⁹ and vacationed with the trial judge immediately after the trial.⁵⁹⁰ The child's competency to testify was challenged on appeal.⁵⁹¹ This challenge failed, although three justices dissented because the evidence of guilt, while strong, was circumstantial and not sufficient to sustain a death sentence.⁵⁹² Berger was executed after two psychiatrists concluded he was sane.⁵⁹³ "I do not wish to have any part in the execution of an insane man," said Governor Thornton.⁵⁹⁴

95. BESALIREZ MARTINEZ. September 7, 1956. H-H. Eagle (Eagle County). Asphyxiation. Martinez was convicted of murder after walking into a tavern and shooting its owner, Perfecto Cruz. Within a few hours, Martinez was arrested and had offered a full confession. Twenty-two months before the murder, Cruz had thrown Martinez out of the bar for causing a disturbance, and Martinez attacked Cruz with a knife, resulting in a six-month jail sentence for assault.⁵⁹⁵ He was tried by an all-male jury and convicted, and the conviction was affirmed on appeal.⁵⁹⁶ After meeting with Martinez's wife and five of his eight children, Governor Edwin C. Johnson denied clemency. Forty-four years old at the time of his death, Martinez, a miner, was the first to be executed in a newly built gas chamber.⁵⁹⁷

588. *Attorney Lost 3-Year Fight to Save Berger*, DENVER POST, Oct. 27, 1951, at 2.

589. *Berger Guilty in Wife's Murder*, DENVER POST, July 1, 1948, at 1.

590. *Berger Boy, Judge to Go on Vacation*, DENVER POST, July 1, 1948, at 19; *Bobby Berger Gets \$20 to Spend 'As You Like,'* DENVER POST, July 2, 1948, at 2.

591. *Berger v. People*, 224 P.2d 228, 232 (Colo. 1950).

592. *Id.* at 247 (Holland, Hilliard and Moore JJ., dissenting).

593. Fred Baker, *Berger Executed, Silent, Sullen to Last*, DENVER POST, Oct. 27, 1951, at 1; Fred Baker, *'I Am Signing Nothing'—Killer Defiant to End*, DENVER POST, Oct. 27, 1951, at 2.

594. Thor Severson, *Berger Sane; Dies Tonight*, DENVER POST, Oct. 26, 1951, at 1.

595. *Tavern Man Slain in Eagle Feud*, DENVER POST, Nov. 29, 1954, at 40.

596. *Martinez v. People*, 299 P. 2d 510 (Colo. 1956).

597. Fred Baker, *Father of Eight Executed in State Gas Chamber*, DENVER POST, Sept. 9, 1956, at 1; *These Are Events Leading to Execution of Martinez*, ROCKY

96. JOHN GILBERT GRAHAM. January 11, 1957. Denver. W-W. Asphyxiation. Graham was convicted of murdering his mother, Daisy E. King. Graham blew up a United Airlines DC-6 airplane on which she was a passenger by packing twenty-five sticks of dynamite in her suitcase. The blast also killed forty-three additional passengers and crewmembers. The bomb exploded eighteen minutes after the plane, en-route to Portland, Oregon, departed from Denver's Stapleton Airport.⁵⁹⁸ The plane departed fifteen minutes late, but if it had departed on time, the explosion would have occurred as the plane ascended over the Rocky Mountains, making the identification of the cause of the crash much more difficult. Graham, age twenty-four at the time of execution, primarily worked in construction and drove trucks, had completed one year of college, and had prior convictions for bootlegging, carrying a concealed weapon, and check forgery. Some alleged his motive was to receive \$37,500 from a trip insurance policy purchased at the direction of his mother, but the bulk of the evidence pointed to a troubled relationship with his mother, who lived with Graham, his wife, and their two children.⁵⁹⁹ Agents quickly determined that a bomb had brought down the plane, and two weeks after the crash, they interviewed Graham because of questions raised after they inspected the remnants of his mother's luggage. At that time he gave a full confession. Graham withdrew his insanity plea after six psychiatrists found him to be sane. After his conviction, Graham attempted to prevent his case from being appealed, but the Colorado Supreme Court nonetheless reviewed and affirmed it.⁶⁰⁰ Before his death, Graham invited Zeke Scher, a *Denver Post* reporter who had covered his trial, to sit on his lap while the execution was taking place.⁶⁰¹ This invitation was declined. During the execution, Graham gasped, screamed, and strained at the straps, prompting the warden to comment that "this was not a

MOUNTAIN NEWS, Sept. 8, 1956, at 27; *Three on Death Row Ignored by Martinez*, DENVER POST, Sept. 9, 1956, at 3; Tom Gavin, *Martinez Dies in Gas Chamber*, ROCKY MOUNTAIN NEWS, Sept. 8, 1956, at 5.

598. Al Nakkula, *44 Killed in Airliner Explosion*, ROCKY MOUNTAIN NEWS, Nov. 2, 1955, at 5; *44 Die in Plane Crash*, DENVER POST, Nov. 2, 1955, at 1.

599. For a more thorough description of Graham's life history and mental status, see JOHN M. MACDONALD, *THE MURDERER AND HIS VICTIM* 201-16 (1961); and James A.V. Galvin & John M. MacDonald, *Psychiatric Study of a Mass Murderer*, 115 AM. J. PSYCHIATRY 1057 (1959).

600. *Graham v. People*, 302 P.2d 737 (Colo. 1956).

601. MACDONALD, *supra* note 599, at 348.

normal procedure," but that it had happened before in other executions.⁶⁰²

97. LEROY ADOLPH LEICK. January 22, 1960. Denver. W-W. Asphyxiation. Leick was convicted of murdering his wife, Evelyn, by beating and strangling her to death. Evelyn's sister was also beaten, and initial reports of the crime also indicated that the suspected culprits, thugs attempting a robbery, had beaten Leick as well.⁶⁰³ A day after the murder, however, a man came forward to say that two years earlier, Leick had tried to hire him to commit the murder. He had reported this to the police at the time, but no action was taken.⁶⁰⁴ Two others said that Leick had independently approached them for the same mission.⁶⁰⁵ Two days after the murder, both Leick and a man he had hired to stage the robbery, Gene Dukes, confessed to the plot, stating that the motive was to win life insurance money.⁶⁰⁶ At trial, Leick claimed an insanity defense. The Colorado Supreme Court reversed his first conviction,⁶⁰⁷ but the conviction resulting from the second trial was affirmed.⁶⁰⁸ Efforts to challenge his mental competency for execution also failed.⁶⁰⁹ Shortly before the execution, Leick unsuccessfully tried to absolve Dukes, who had been sentenced to life imprisonment, from responsibility for the murder.⁶¹⁰ Leick, a thirty-six-year-old business executive for a Denver appliance firm, had a prior conviction for stealing an eight hundred-dollar diamond ring.⁶¹¹ His execution ended six years

602. Zeke Scher, *Graham Dies for Plane Bomb Murder*, DENVER POST, June 12, 1957, at 1.

603. *Denver Woman Kidnapped and Murdered!*, ROCKY MOUNTAIN NEWS, Dec. 2, 1953, at 1.

604. *Police Were Told of Plot, Mrs. Leick Wasn't, Why Not?*, ROCKY MOUNTAIN NEWS, Dec. 6, 1953, at 5.

605. Ken Wayman & Jack Gaskie, *Was Slain Denver Woman Victim of Fiendish Plot?*, ROCKY MOUNTAIN NEWS, Dec. 3, 1953, at 1.

606. Ken Pearce, *Wife Killer Confesses!*, ROCKY MOUNTAIN NEWS, Dec. 4, 1953, at 1; Sam Lusky, *Gay Cafe Dinner Prelude to Death*, ROCKY MOUNTAIN NEWS, Dec. 5, 1953, at 1.

607. *Leick v. People*, 281 P.2d 806, 813 (Colo. 1955).

608. *Leick v. People*, 322 P.2d 674, 688 (Colo. 1958), *cert. denied*, 357 U.S. 922 (1958).

609. *Leick v. People*, 345 P.2d 1054, 1057 (Colo. 1959).

610. Al Nakkula, *Leick Absolves Dukes As Slay Accomplice*, ROCKY MOUNTAIN NEWS, Jan. 22, 1960, at 5.

611. Bill Brenneman, *Theft of \$800 Diamond Ring Blots Leick's Record*, ROCKY MOUNTAIN NEWS, Dec. 3, 1953, at 5.

of legal battles, almost all of which concerned his mental status.⁶¹²

98. DAVID FRANCIS EARLY. August 11, 1961. Littleton (Arapahoe County). W-W. Asphyxiation. Early was convicted of the murder of Regina Knight and accused of (but not tried for) murdering her husband, Merrill, and the couple's fifteen-year-old daughter, Karen. Merrill Knight was a prominent Denver attorney who had befriended him. The murders occurred four days after Early, who had also served prison terms in New Mexico and Colorado, was released from a federal penitentiary.⁶¹³ According to one report, he had informed a psychologist at the penitentiary that he intended to commit a murder as soon as he could after his release.⁶¹⁴ He broke into the Knight home, and finding no one at home, waited for the family to return. In the home he found a gun and a rifle. One by one over a six-hour period, as the family returned, he bound them in different rooms in the house. He then shot them all, except for their son, who managed to escape and was not harmed. Neighbors quickly apprehended him, and he immediately confessed.⁶¹⁵ At trial he pled not guilty by reason of insanity and supported this assertion with the testimony of two psychologists and four psychiatrists, who concluded he was paranoid schizophrenic. Five psychiatrists testifying for the state, however, found him to be sane. The jury rejected the insanity defense, and the conviction was affirmed on appeal.⁶¹⁶ As he entered the gas chamber, Early, thirty-two, apologized for his crimes.⁶¹⁷

99. HAROLD DAVID WOOLEY. March 9, 1962. Golden (Jefferson County). W-W. Asphyxiation. Wooley, thirty-nine at the time of his death, was executed for the murder of a wealthy Denver "socialite," William Scott Wright. Mary Pearl

612. Al Nakkula, *Leick Is Executed!*, ROCKY MOUNTAIN NEWS, Jan 23, 1960, at 1; Zeke Scher, *Wife-Slayer Leick Dies Calmly in State Gas Chamber*, DENVER POST, Jan. 23, 1960, at 1.

613. *Self-Confessed Killer's Record Started at 15*, DENVER POST, Apr. 26, 1958, at 3.

614. MACDONALD, *supra* note 599, at 249.

615. *Ex-Convict Confesses Slaying Attorney, Wife and Daughter*, DENVER POST, Apr. 26, 1958, at 1.

616. *Early v. People*, 352 P.2d 112, 120 (Colo. 1960); *cert. denied*, 364 U.S. 847 (1960).

617. Fred Baker, *David F. Early Executed in Gas Chamber*, DENVER POST, Aug. 12, 1961, at 24; William Hazlett, *Murderer of Three in Littleton Home Gassed to Death*, ROCKY MOUNTAIN NEWS, Aug. 12, 1961, at 5.

Walker, Wooley's common-law wife, who stood beside Wooley when he shot Wright and helped bury the body, was also convicted and sentenced to life imprisonment.⁶¹⁸ Wright was a friend of the duo's, and had invited the couple for a brief vacation in his mountain cabin. There, Wright was killed by a single bullet wound to his head as he slept. For three months thereafter, the couple cashed checks made out to Wooley and pretended that their friend had gone on vacation. On September 15, Wright's body was discovered and two days later both Wooley and Walker confessed that they had plotted the murder.⁶¹⁹ Wooley, who worked for his father in an upholstery shop, had no prior convictions. His claim of insanity failed, and the conviction was affirmed on appeal.⁶²⁰ Walker claimed shortly before the execution that she had fired the fatal shot, but the authorities did not find her statement to be credible. Shortly before the execution, Wooley was permitted to visit with Walker, and he gave her most of his possessions, including a parakeet that he had been allowed to keep in jail.⁶²¹ Two months before his death, Wooley denied his previous confessions and pleaded that he was innocent, and he continued to maintain his innocence throughout the remainder of his life.⁶²²

100. WALTER J. HAMMIL (a.k.a. Hammill). May 25, 1962. Denver. W-W. Asphyxiation. Age thirty-one at the time of his death, the former circus animal trainer was convicted of murdering eleven-year-old Lester G. Brown, Jr., as part of a sex-related crime. Hammil was arrested the day after the crime and immediately confessed, explaining that he had invited the young boy to return to the circus one night, promising him a free ride on an elephant. Hammil choked him to prevent him from alerting adults when the boy refused his sexual advances. Hammil was arrested the next day. He confessed, led police to the body, and acknowledged that he

618. *Mrs. Walker Faces Death Chair*, DENVER POST, Sept. 18, 1959, at 3; *Stood Beside Wooley at Killing, Helped Burial, Woman Admits*, DENVER POST, Sept. 18, 1959, at 3.

619. *Ex-Con Confesses Killing Heir*, DENVER POST, Sept. 17, 1959, at 1; *\$15,000 Cache 'Missing' in Heir Slay Case*, DENVER POST, Sept. 18, 1959, at 1.

620. *Wooley v. People*, 367 P.2d 903, 909 (Colo. 1962).

621. *Dick Woodbury, Wooley Executed in Prison*, DENVER POST, Mar. 10, 1962, at 1.

622. William Hazlett, *Wooley Is Executed at Cañon City Prison*, ROCKY MOUNTAIN NEWS, Mar. 10, 1962, at 1.

would probably have to die for the crime.⁶²³ Hammil had a long record of prior convictions and delinquencies, dating back to when he was nine years old.⁶²⁴ Physicians "described Hammil as mentally retarded but legally sane."⁶²⁵

101. JOHN BIZUP, JR. August 14, 1964. Pueblo. W-W. Asphyxiation. Bizup was executed for the robbery-murder of a cab driver, Roy Don Bussey.⁶²⁶ Bizup, age thirty, had been hitchhiking through Colorado at the time of the crime. He had been in reform schools and jails since age twelve.⁶²⁷ Bizup confessed to the murder and claimed an insanity defense. One psychiatrist supported that claim, while three opposed it. The conviction was affirmed on appeal,⁶²⁸ and his petition for a writ of *habeas corpus* was denied.⁶²⁹ Shortly before his death, a psychiatrist concluded that Bizup was sane, and Governor John Love refused to commute the sentence.⁶³⁰ During the execution, cries of "killers" and "murderers" yelled by other prisoners and directed at the prison staff were heard in the death chamber.⁶³¹

102. LUIS JOSE MONGE. June 2, 1967. Denver. H-H. Asphyxiation. Monge was sentenced to death for the murder of his pregnant wife, Leonarda. Monge also killed three of the couple's ten children: Alan, age six, Vincent, age four, and Teresa, eleven months. Monge was a native of Puerto Rico who grew up in New York. Immediately after the four murders, Monge called police and admitted his guilt. A salesman, Monge had no prior felony convictions, although in 1961 he abandoned

623. *Bereaved Parents Muted with Grief*, DENVER POST, Aug. 29, 1958, at 48; *Denver Boy, 11, Disappears; Police Quiz Circus Worker*, DENVER POST, Aug. 28, 1958, at 1; *'I'll Have to Die,' Slayer Says*, DENVER POST, Aug. 30, 1958, at 1; *Roustabout Admits Killing*, DENVER POST, Aug. 29, 1958, at 1.

624. *Hammill (sic) Has Long Record*, DENVER POST, Aug. 30, 1958, at 3.

625. Dick Woodbury, *Hammill (sic) Due to Die Tonight*, DENVER POST, May 25, 1962, at 2. See also *Hammill v. People*, 361 P.2d 117 (Colo. 1961); Dick Woodbury, *Hammill (sic) Pays Full Penalty*, DENVER POST, May 26, 1962, at 2.

626. *Cab Man Killed by Bullet*, DENVER POST, Mar. 26, 1960, at 24.

627. *Killer Clings to Hope Until the Last*, DENVER POST, Aug. 15, 1964, at 3.

628. *Bizup v. People*, 371 P.2d 786, 790 (Colo. 1962).

629. *Bizup v. Tinsley*, 393 P.2d 556 (Colo. 1964).

630. *Doomed Slayer Wills Eyes, but Clings to Clemency Hope*, DENVER POST, Aug. 13, 1964, at 2; *Killer's Fate Still Uncertain as End Looms*, ROCKY MOUNTAIN NEWS, Aug. 14, 1964, at 5; *Rendall Ayers, Gov. Love Denies Clemency to Bizup*, DENVER POST, Aug. 14, 1964, at 3.

631. John Kokish, *Bizup Dies in Gas Chamber*, DENVER POST, Aug. 15, 1964, at 3; W.T. Little, *Bizup Executed for Pueblo Slaying*, ROCKY MOUNTAIN NEWS, Aug. 15, 1964, at 5; see also *Killer Clings to Hope Until the Last*, *supra* note 627, at 3.

his family for two months and served a short jail sentence in Louisiana for vagrancy.⁶³² The alleged motive for the murders was "to prevent exposure of sex crimes committed by defendant with his own children."⁶³³ Monge beat his wife to death with a steel bar as she slept, stabbed Teresa, choked Vincent, and bludgeoned Alan with the steel bar.⁶³⁴ After pleading not guilty by reason of insanity, psychiatrists evaluated Monge and found him to be sane. He then insisted on pleading guilty to first-degree murder. A jury that was convened for the penalty phase of the trial recommended death, and the conviction and sentence were affirmed on appeal. In January 1966, Governor Love suspended all executions in Colorado pending a referendum on capital punishment by voters, but on November 8, 1966, the voters decided to retain the death penalty by a three-to-one margin. In March 1967, Monge attracted national attention when he asked a Denver court to allow him to be hanged at high noon on the front steps of the Denver City and County Building. This request was denied.⁶³⁵ The following month, Monge fired his attorneys and directed that no attempts should be made to save his life; nonetheless, his surviving children appealed for clemency. Doctors again evaluated Monge's mental status and found him mentally competent for execution.⁶³⁶ A week before his death, Monge shared a final meal with his surviving seven children.⁶³⁷ On the eve of the execution, some seventy members of the Colorado Council to Abolish Capital Punishment gathered on the steps of the state capitol building in Denver to protest the execution. Monge was forty-eight at the time of his death.⁶³⁸ As he wished, one of his corneas was transplanted to a teenaged

632. *Slayer's Disappearance Recalled; Described as Good Father*, DENVER POST, June 30, 1963, at 3A.

633. *Monge v. People*, 406 P.2d 674, 676 (Colo. 1965).

634. Bill Myers & Walt Lindenmann, *Father of Ten Kills His Wife, 3 of Children*, DENVER POST, June 29, 1963, at 1; Bill Myers & Walt Lindenmann, *Police Guard Slayer of Expectant Wife, Three Children*, DENVER POST, June 30, 1963, at 3A.

635. R. Roger Harkins, *Some Thoughts on Watching a Man Suffocated*, BOULDER DAILY CAMERA, (Colo.), June 4, 1967, at 1.

636. Cary Stiff, *Killer Monge Slated to Die Friday, Wills Eyes to Boy*, DENVER POST, June 1, 1967, at 3; Martin Moran, *Monge Ruled Sane: Execution Slated Friday*, ROCKY MOUNTAIN NEWS, June 1, 1967, at 11.

637. Loy Holman, *Monge Visits with Son On Eve of His Execution*, ROCKY MOUNTAIN NEWS, June 2, 1967, at 5.

638. Cary Stiff, *Monge Goes To His Death With Smile*, DENVER POST, June 3, 1967, at 24; Loy Holman, *Monge Dies in Prison Gas Chamber*, ROCKY MOUNTAIN NEWS, June 3, 1967, at 5.

reformatory inmate upon his death.⁶³⁹ He was the last person executed in the United States before all capital statutes were effectively voided by the U.S. Supreme Court in 1972.⁶⁴⁰

639. *Silent Vigil Protests 'Shame' of Execution*, DENVER POST, June 3, 1967, at 2; William Logan, *Monge Eye Transplant Is Called Success*, ROCKY MOUNTAIN NEWS, June 4, 1967, at 5.

640. *Furman v. Georgia*, 408 U.S. 238 (1972); Gary Gerhardt, *Last Man Executed also Wanted to Die*, ROCKY MOUNTAIN NEWS, Jan. 17, 1977, at 6; *see also supra* note 6 and accompanying text.