

# HEINONLINE

Citation: 47 Okla. L. Rev. 481 1994

Content downloaded/printed from  
HeinOnline (<http://heinonline.org>)  
Thu Jun 7 10:49:29 2012

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/cc/basicSearch.do?  
&operation=go&searchType=0  
&lastSearch=simple&all=on&titleOrStdNo=0030-1752](https://www.copyright.com/cc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=0030-1752)



Retrieved from DiscoverArchive,  
Vanderbilt University's Institutional Repository

This work was originally published in  
47 Okla. L. Rev. 481 1994

# BETWEEN THE FRONTIER AND THE BIG CITY: SIXTY YEARS OF SMALL-TOWN MURDER PROSECUTION

CHRIS GUTHRIE\*

## *Table of Contents*

Introduction . . . . .	482
I. Johnson County . . . . .	483
II. The Murders and Murder Prosecution . . . . .	484
A. The Process Begins . . . . .	485
B. Defendants and Victims . . . . .	487
1. Defendants . . . . .	487
2. Victims . . . . .	488
3. Relationship . . . . .	488
C. Weapons . . . . .	489
D. Types of Murders . . . . .	490
1. Spousal Disputes . . . . .	491
2. Family/Lover Disputes . . . . .	493
3. Disputes Between Acquaintances Over Other Matters . . . . .	496
4. Workplace Disputes . . . . .	497
5. Law Enforcement . . . . .	498
E. Preliminary Examination of Accused . . . . .	499
F. Dismissals, Pleas, and Plea Bargaining . . . . .	500
G. Trial . . . . .	501
H. Sentencing . . . . .	504
1. Johnson County Jail . . . . .	505
2. Kansas State Penitentiary . . . . .	506
3. Death Penalty . . . . .	507
4. Lynching . . . . .	509
I. Appeals . . . . .	510
III. Conclusion . . . . .	511
A. Results . . . . .	511
B. Implications . . . . .	512

---

\* 1993-94 Research Fellow, Stanford Center on Conflict & Negotiation (SCCN). B.A., 1989, Stanford University; Ed.M., 1991, Harvard University; J.D., 1994, Stanford Law School. The author thanks Lawrence M. Friedman, Joanna L. Grossman, Eric C. Grunwald, and participants in the 1994 History of Criminal Justice Seminar at Stanford Law School for comments on earlier drafts of this article. Thanks also to Gerald A. Motsinger and Theresa Anderson of the Johnson County, Kansas Archives in Olathe, Kansas, for their invaluable research assistance. Research support was generously provided by the Stanford Law & Society Fund.

### Introduction

From Lizzie Borden<sup>1</sup> to *In Cold Blood*<sup>2</sup> to Charles Manson<sup>3</sup> to the O.J. Simpson case,<sup>4</sup> no crime sparks the American imagination, sends chills up our spines, and provides more fodder for books, movies, and television than murder. Despite our collective fascination with murder, and despite the fact that we have read about it and "watched" it hundreds of times, we know surprisingly little about its history.

We do have pockets of knowledge. We know, for instance, about murder on the frontier. Studies of California and Nevada border towns during the mid-nineteenth century paint an unmistakable picture of regular "shootings and shoot-outs among roughs, badmen, and miners."<sup>5</sup> We also know a little about murder in the big cities — including New York,<sup>6</sup> Philadelphia,<sup>7</sup> Chicago,<sup>8</sup> and Seattle<sup>9</sup> — during the late nineteenth and early twentieth centuries. But we know very little about murder in the small town; not the unruly frontier town, but the established small town most Americans called home around the turn of the century.<sup>10</sup>

Of course, murder may be more alike from place-to-place and time-to-time than it is different. By definition, every murder involves a murderer, an instrument of death, and a victim; it makes no difference whether it occurred in a frontier cattle town in 1865, New York City in 1900, or Johnson County, Kansas, in 1910. On the

1. See, e.g., VICTORIA LINCOLN, *A PRIVATE DISGRACE: LIZZIE BORDEN BY DAYLIGHT* (1967); EDMUND L. PEARSON ED., *THE TRIAL OF LIZZIE BORDEN* (1967); ROBERT SULLIVAN, *GOODBYE LIZZIE BORDEN* (1974).

2. TRUMAN CAPOTE, *IN COLD BLOOD* (1965) (describing the murder of a family in a small southwestern Kansas town in the mid-twentieth century).

3. See, e.g., VINCENT BUGLIOSI, *HELTER SKELTER* (1974); DAVID FELTON, *MINDFUCKERS* (1972); SY WIZINSKI, *CHARLES MANSON* (1976).

4. See, e.g., Erwin Chemerensky, *O.J. Simpson's All-Star Defense Team*, L.A. DAILY J., July 8, 1994, at 6; Don J. DeBenedictis, *L.A. Abuzz About O.J. Lawyers*, NAT'L L.J., June 27, 1994, at A5; Bill Kisliuk, *Will O.J.'s DNA Be Admissible in Court? Frenetic Genetic Debate*, LEGAL TIMES, June 27, 1994, at 2; Charles L. Lindner, *Trial By Ordeal Ahead for O.J. and Prosecutors*, NAT'L L.J., July 4, 1994, at A19; Stuart Taylor, Jr., *If O.J. Did It, Lock Him Up Forever*, N.J. L.J., July 4, 1994, at 18.

5. ROGER D. McGRATH, *GUNFIGHTERS, HIGHWAYMEN & VIGILANTES: VIOLENCE ON THE FRONTIER* 247 (1984). While the literature on the frontier is split, most scholars seem to believe that it was violent. More recent scholars, like McGrath, argue that it was not violent. However, even those like McGrath who argue that it was not violent concede that murder, one form of violence, was rampant.

6. Eric H. Monkkenen, *The American State from the Bottom Up: Of Homicides and Courts*, 24 LAW & SOC. REV. 521 (1990).

7. ROGER LANE, *VIOLENT DEATH IN THE CITY: SUICIDE, ACCIDENT, AND MURDER IN NINETEENTH-CENTURY PHILADELPHIA* (1979).

8. Arthur V. Lashly, *Homicide (In Cook County)*, in ILLINOIS ASS'N FOR CRIMINAL JUSTICE STAFF, *ILLINOIS CRIME SURVEY* 591 (John A. Wigmore ed., 1968) (photo. reprint) (1929).

9. Calvin F. Schmid, *A Study of Homicides in Seattle, 1914 to 1924*, 4 SOC. FORCES 745 (1926).

10. There are two published studies of which I am aware that address murder in a rural state — Kentucky — and in a medium-sized town — Sacramento, California. See Robert M. Ireland, *Homicide in Nineteenth Century Kentucky*, 81 REG. KY. HIST. SOC'Y 134 (1983); Robert H. Tillman, *The Prosecution of Homicide in Sacramento County, California, 1853-1900*, 68 S. CAL. Q. 167 (1986). I am unaware of any that address small-town murder.

other hand, it seems reasonable to speculate that the established small town of the late nineteenth and early twentieth centuries differed from unstructured frontier towns and impersonal urban centers in ways that might have given murder a slightly different look and feel. Perhaps the relationship between the murderer and victim, or the type of weapon used, or maybe just the nature of the small-town murders themselves differed ever so slightly from murder on the frontier or in the big city.

This article examines small-town murder in Johnson County, Kansas, from 1880 to 1939.<sup>11</sup> While providing lurid details of the murders committed over a sixty-year period in the county's small towns and villages, this article concludes that small-town murder — though criminal and violent — was more a matter of inept dispute resolution than a matter of violent crime. True, the frontier and the big cities saw their share of petty disputes "resolved" through murder. But the small-town murders, at least those in Johnson County, were almost exclusively of this type; by and large, stranger murders, serial killers, random homicide, and felony murder were not part of the small-town landscape.<sup>12</sup>

### *I. Johnson County*

Today, Johnson County<sup>13</sup> is an affluent suburb located on the Kansas side of the Kansas City metropolitan area. But suburbanization of the county did not begin until well into the 1930s.<sup>14</sup> Before that, Johnson County was lightly populated, rural, and host to a handful of small towns.

Founded in 1855, six years before Kansas joined the union, Johnson County was one of a number of nondescript, midwestern counties that were largely agricultural in nature, with some railroad business thrown into the mix. Throughout the late nineteenth and early twentieth centuries, the county was home to fewer than 20,000 residents; sometime in the 1920s, the population began to grow sharply, reaching 27,179 residents in 1930 and more than 33,000 in 1940.<sup>15</sup> (See figure 1).

---

11. Although this article focuses on the murder cases prosecuted in Johnson County throughout this 60-year period, it occasionally makes reference to cases reported in the newspaper that were not prosecuted. See *infra* note 48.

12. In addition, this article adds to the pitifully small literature on law and legal culture in the Midwest. See Kermit L. Hall, *The Legal Culture of the Great Plains*, 12 GREAT PLAINS Q. 86, 86 (1992) ("The great prairie lawyer Abraham Lincoln once said of an opposing counsel's argument, 'He caught onto something, but only by the hind leg.' Lincoln's observation applies with equal force to our current understanding of the legal culture of the Great Plains, and even that characterization is generous.")

13. See generally ED BLAIR, HISTORY OF JOHNSON COUNTY KANSAS (1915); 1 ALFRED T. ANDREAS, HISTORY OF THE STATE OF KANSAS 624-45 (1883) [hereinafter HISTORY OF KANSAS].

14. Mark H. Rose, *There is Less Smoke in the District: J.C. Nichols, Urban Change, and Technological Systems*, 25 J. WEST 44, 50 (1986).

15. CENSUS OFFICE, U.S. DEP'T OF THE INTERIOR, ABSTRACT OF THE ELEVENTH CENSUS: 1890, at 10 (1894) (reporting 1880 and 1890 population figures for Johnson County); 1 BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, THIRTEENTH CENSUS OF THE UNITED STATES TAKEN IN THE YEAR 1910, POPULATION 1910, GENERAL REPORT AND ANALYSIS 90 (1913) (reporting 1890, 1900, and 1910 population figures); 3 BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, FOURTEENTH CENSUS OF THE

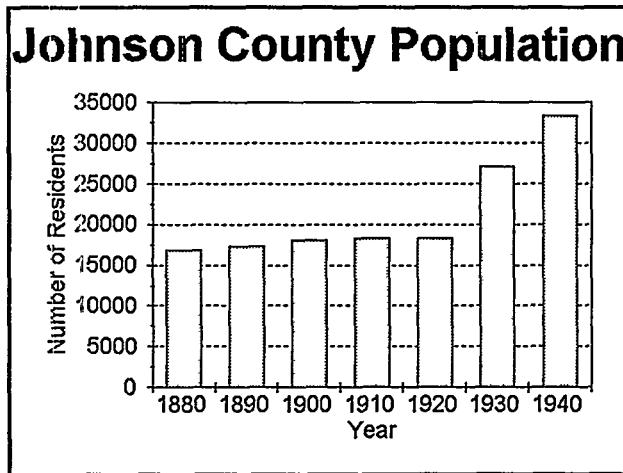


Figure 1

At the county's inception, several towns and townships were organized — Aubry, Lexington, Monticello, McCamish, Olathe, Sante Fe, Spring Hill, and Shawnee. Olathe was the county seat and most prominent town in the county throughout the period of this study, though all of the county's towns, including Olathe, were small.<sup>16</sup>

Most of Johnson County's legal business was conducted in Olathe, home to the district court for the Tenth Judicial District. Like the state's other district courts, the county court in Olathe was empowered to hear both civil and criminal cases.<sup>17</sup> In the 1880s and 1890s, the court heard about twenty-three criminal cases per year; in the 1920s and 1930s, about sixty-one per year.<sup>18</sup> (See figures 2 and 3).

## II. The Murders and Murder Prosecution

Throughout the period of this study, the statutory definitions of first and second degree murder remained essentially the same. According to the Kansas criminal code in effect at the time:

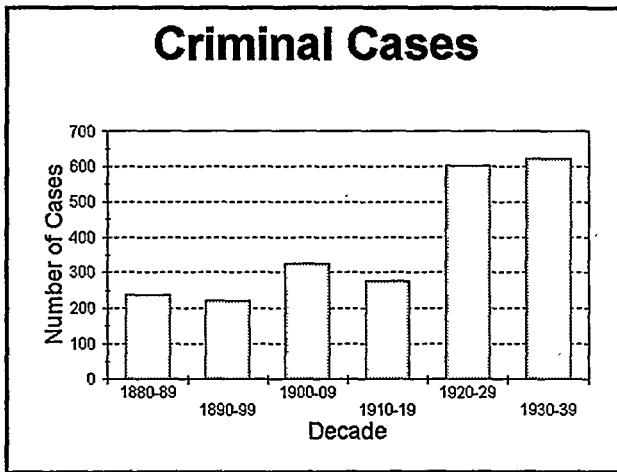
---

UNITED STATES TAKEN IN THE YEAR 1920, POPULATION 1920, COMPOSITION AND CHARACTERISTICS OF THE POPULATION BY STATES 348 (1922) (reporting 1920 population figures); 3 BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, FIFTEENTH CENSUS OF THE UNITED STATES: 1930, POPULATION pt. 1, at 833 (1932) (reporting 1930 population figures); BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, A STATISTICAL ABSTRACT SUPPLEMENT: COUNTY AND CITY DATA BOOK 1949, at 43 (1949) (reporting 1940 figures).

16. In 1880, for instance, the town of Olathe had a population of 2285 and the township of Olathe had a population of 1545. HISTORY OF KANSAS, *supra* note 13, at 624. In 1914, the town of Olathe was home to 3626 residents and the township 1288. BLAIR, *supra* note 13, at 78.

17. Compiled Laws of Kansas, ch. 28, art. 1, § 1 (1879); *id.* art. 2, § 23.

18. This number was derived from a database created by the Johnson County Archive. This database contains a list of the cases processed in Johnson County during this period. This information is on file with the author.



*Figure 2*

Every murder which shall be committed by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration of an attempt to perpetrate any arson, rape, robbery, burglary or other felony, shall be deemed murder in the first degree.<sup>19</sup>

Second degree murder differed from first only in that it was committed "without deliberation and premeditation."<sup>20</sup>

Few of the criminal cases processed by the Johnson County court were murders. In fact, throughout the sixty-year period covered by this study, murder accounted for less than two percent of the court's criminal caseload.<sup>21</sup> On average, the court processed one murder case every two years; throughout the 1920s, however, the court did not hear a single murder case.<sup>22</sup>

#### *A. The Process Begins*

Every murder case processed in Johnson County, as elsewhere, began with some unfortunate act — usually a shooting, sometimes a knifing or a beating — that mortally wounded someone in the county. Most of these acts resulted in immediate

19. Compiled Laws of Kansas. ch. 31, § 6 (1879).

20. *Id.* § 7.

21. The Johnson County murder statistics compare favorably with data from Alameda County, California. LAWRENCE M. FRIEDMAN & ROBERT V. PERCIVAL, *THE ROOTS OF JUSTICE: CRIME AND PUNISHMENT IN ALAMEDA COUNTY, CALIFORNIA 1870-1910*, at 137 (1981) [hereinafter *ROOTS OF JUSTICE*]. Based on a sample of cases, Friedman and Percival found that murder accounted for about four percent of Alameda County's criminal cases from 1870 to 1910. *Id.*

22. Although the actual number of murder cases reviewed in this article is small, the conclusions are based on *all* the murder cases prosecuted over a period of 60 years.

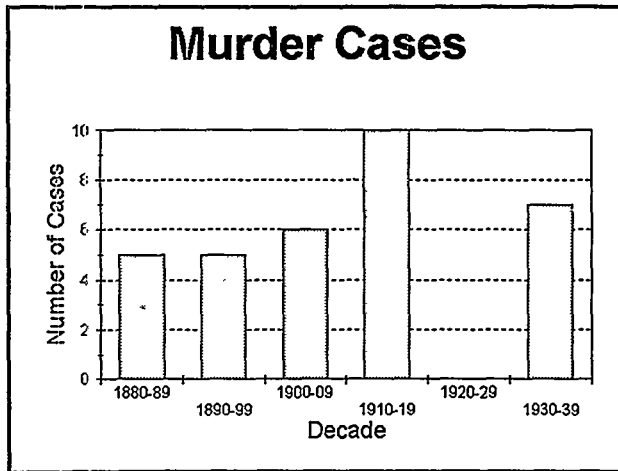


Figure 3

death. A majority (64%) of the Johnson County victims died on the day of the act. Others, however, languished for days or even weeks before dying.<sup>23</sup>

Shortly after (sometimes before) the victim's rigor mortis set in, the criminal justice system became involved.<sup>24</sup> To set the wheels of justice in motion, someone first had to file a "charge" with the county justice of the peace. In the early years of this study, the charge was usually filed by a relative of the murder victim, the county sheriff, or the county coroner. In the latter part of the study, as the process became more professionalized, the county attorney almost always filed the charge himself. The charge was a simple, one- or two-page document, which identified the alleged defendant, the victim, and the time, place, and manner of the murder.<sup>25</sup>

23. See, e.g., *State v. McDonald*, Case No. K1062 (Dist. Ct. Johnson County, Kan. filed June 20, 1899) (on file with the Johnson County, Kansas Archives). While at a dance hall, Mack McDonald allegedly shot William Nelson "in the head at a distance of about 3 feet with a 38 caliber revolver." *A Shooting*, OLATHE REGISTER, Jan. 27, 1899, at 5. Nelson lived for almost four months after the shooting. Indeed, he "got up and was apparently well." *District Court*, OLATHE REGISTER, May 15, 1899, at 4. Later, however, "he was taken ill and died and it was found by a post mortem examination that the bullet had penetrated the skull and caused an abscess which caused his death." *Id.*

24. For a thorough treatment of the processing of felonies, including murder, in the late nineteenth and early twentieth centuries, see *ROOTS OF JUSTICE*, *supra* note 21, at 154-92; Lawrence M. Friedman & Robert V. Percival, *The Processing of Felonies in the Superior Court of Alameda County 1880-1974*, 5 *LAW & HIST. REV.* 413 (1987) [hereinafter *Felonies*]. Although Friedman and Percival describe the manner in which the Alameda County, California, criminal justice system processed cases, their description is more-or-less consistent with the process employed in Johnson County during the same period.

25. For instance, the charge against Nancy Jane Mayes stated, in part:

B. Holmes, of lawful age, being duly sworn, says that Nancy Jane Mayes on or about the 4th day of December A.D. 1896, at the County of Johnson, and State of Kansas, then and there being, did then and there unlawfully, wrongfully, feloniously, willfully, deliberately, premeditatedly, and of her malice aforethought, did make an assault upon one Anna Bell Williams, by then, and there feloniously, willfully, deliberately, premeditatedly, and of her

## B. Defendants and Victims

### 1. Defendants

Thirty-three defendants were charged with the murder of twenty-eight victims during this sixty-year period.<sup>26</sup> All defendants were charged with murder in the first degree, though, as we will see, the defendants were convicted of first-degree murder, a variety of lesser-included offenses, such as second degree murder, and non-homicide offenses, such as assault and battery.

Not surprisingly, most of the defendants charged in Johnson County, nearly 80%, were men (twenty-six of thirty-three). Criminal defendants then, as now,<sup>27</sup> were disproportionately male, and murder defendants were no exception. Somewhat surprising, however, was the average age of defendants. The male defendants were slightly older than one might expect, about thirty-seven on average. Perhaps even more surprisingly, the men comprised a real socioeconomic cross-section of the community. More than half of the male defendants for whom occupational information was available appeared to come from an upper- or middle-class background.<sup>28</sup>

Although men were disproportionately represented among the murder defendants, so were women, though in a slightly different way. Then, as now, very few women were criminal defendants. In Alameda County, California, for instance, women were

---

malice aforethought, fix, clasp and press both the hands of her the said Nancy Jane Mayes, about the throat, and neck of her the said Anna Bell Williams, and the said Nancy Jane Mayes, then and there being, did then and there feloniously, willfully deliberately premeditatedly, and of her malice aforethought mortally choak [sic], and strangle her the said Anna Bell Williams, from which choaking [sic], and strangling as aforesaid by the said Nancy Jane Mayes, she the said Anna Bell Williams then, and there, died.

State v. Mayes, Case No. 1022 (Dist. Ct. Johnson County, Kan. filed Jan. 4, 1897) (Charge) (on file with the *Oklahoma Law Review*).

26. In four cases, two defendants were charged in connection with the same murder. See State v. William Adams, Case No. K2585 (Dist. Ct. Johnson County, Kan. filed May 21, 1933) (on file with the Johnson County, Kansas Archives) (Ridens named as second defendant); State v. Roy Adams, Case No. K2422 (Dist. Ct. Johnson County, Kan. filed Sept. 3, 1931) (on file with the Johnson County, Kansas Archives) (John Adams named as second defendant); State v. Mayes, Case No. K1021 (Dist. Ct. Johnson County, Kan. filed Jan. 4, 1897) (on file with the Johnson County, Kansas Archives) (Williams named as second defendant, as Case No. K1022); State v. Campbell, Case No. K819 (Dist. Ct. Johnson County, Kan. filed July 16, 1888) (on file with the Johnson County, Kansas Archives) (Hollenback named as second defendant). In another case, three defendants were charged in connection with the same murder. See State v. Brown, Case No. K1664 (Dist. Ct. Johnson County, Kan. filed July 31, 1919) (on file with the Johnson County, Kansas Archives) (Thomas and Love named as second and third defendants). In one case, a single defendant was charged with the murder of two people. See State v. Dudley, Case No. K1567 (Dist. Ct. Johnson County, Kan. filed Aug. 24, 1916) (on file with the Johnson County, Kansas Archives).

27. *Felonies*, *supra* note 24, at 426 (reporting that men were defendants in 95% of Alameda County felony prosecutions from 1880 to 1974).

28. Of the 13 for whom information is available, three were law enforcement officers, two were businessmen, one was a doctor, one a graduate student, three were skilled tradesmen, two were farmers, and one was a laborer.



defendants in only five percent of all criminal cases filed between 1880 and 1974.<sup>29</sup> Yet more than 20% of the murder defendants in Johnson County were women. It is not surprising that the women comprised a higher percentage of the Johnson County murder defendants than criminal defendants generally. Although women committed violent crimes infrequently, murder — rather than, say, armed robbery or rape — was often their violent crime of choice.<sup>30</sup> Nevertheless, substantially more women were charged with murder in Johnson County than on the frontier<sup>31</sup> or in the big cities of the late nineteenth and early twentieth centuries. In Philadelphia from 1839 to 1901, for instance, fewer than 10% of all murder defendants were female.<sup>32</sup>

Most of the defendants, more than three-fourths, were white. Only seven blacks, six of them men, were charged with murder. In absolute terms, blacks were charged with murder in only a few cases; in relative terms, they were overrepresented. More than one-fifth of the defendants in Johnson County murder cases were black, yet blacks accounted for less than four percent of the county's population.<sup>33</sup> This disproportionate representation of blacks was true in late nineteenth-century Philadelphia as well.<sup>34</sup>

## 2. Victims

The demographic characteristics of the victims more or less mirrored those of the defendants. Most of the victims, and defendants, were male. About 80% of the defendants and nearly 90% of the victims were men. Most of the victims, and defendants, were white, approximately 80% of the defendants and 70% of the victims. Again, however, blacks were disproportionately represented, as nearly 30% of the victims but less than 4% of the population was black. The victims were about the same age as the defendants, and something on the order of half of the victims qualified as upper or middle class.<sup>35</sup>

## 3. Relationship

Describing the defendants and victims separately tells only half the story; describing the relationship between them tells the other half. In Johnson County, the

29. *Felonies*, *supra* note 24, at 426.

30. *Id.*

31. See, e.g., ROBERT R. DYKSTRA, *THE CATTLE TOWNS* 146-47 (reporting that very few murderers or victims in the frontier cattle trading centers were female); MCGRATH, *supra* note 5, at 251 (reporting that women in the California and Nevada frontier towns he studied were seldom involved as perpetrators or victims in violent crime).

32. LANE, *supra* note 7, at 100.

33. Of the 18,288 people who resided in Johnson County in 1910, only 611 were black. 1 BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, THIRTEENTH CENSUS OF THE UNITED STATES, POPULATION 235 (1913).

34. LANE, *supra* note 7, at 104 ("No major group had a higher rate of indictment, as the 147 identifiably black person indicted between 1839 and 1901 may be computed at 7.5 per 100,000 — itself an understatement — or close to three times the rate for whites.").

35. Of the 12 victims for whom occupational information was available, two were businessmen, two were educators, one was a retired sea captain, three were skilled tradesmen, two were farmers, and two were common laborers.

defendants killed people like themselves, people they knew, and with whom they associated. For the most part, men killed men. (Interestingly, in the nine cases involving male-female violence, women were twice as likely to kill men as the reverse.) Generally whites killed whites, and blacks killed blacks. (Throughout this period, there were only two interracial murders, both involving a white man killing a black man.)<sup>36</sup> Finally, almost all of the defendants in the Johnson County murder cases knew their victims. Most of the defendants and victims were in some kind of relationship with each other, based on blood, love, friendship, or business; only four of the thirty-three defendants (12.1%) did not seem to know their victims. This pattern was comparable to the pattern on the frontier and in the big cities, though much more exaggerated. In his study of murder in Philadelphia from 1839 to 1901, for instance, Lane found that most defendants and victims knew each other, but a sizeable percentage — 30% — did not.<sup>37</sup>

### C. Weapons

According to Kennett and Anderson, "The nineteenth century was in many respects the age of firearms in America."<sup>38</sup> Maybe so, but this was more true in some parts of America than in others.

Guns permeated the frontier in the mid-nineteenth century. "[G]unshots were far and away the principal medium of death" in the old Kansas cattle towns.<sup>39</sup> Similarly, guns were the murder weapon of choice in the frontier towns of California and Nevada: "Although a couple of homicides resulted from beatings and a few from stabbings, the great majority resulted from shootings."<sup>40</sup>

In the second half of the nineteenth century and in the early twentieth century, guns were prevalent in the south and the west, but not in the northeast.<sup>41</sup> For instance, Ireland attributed Kentucky's inflated murder rate, in large part, to the practice of carrying, concealing, and using guns.<sup>42</sup> In Seattle, more than three-fourths of the murders from 1914 to 1924 were committed with firearms.<sup>43</sup> In

36. *State v. Adams*, Case No. K2585 (Dist. Ct. Johnson County, Kan. filed July 15, 1933) (on file with the Johnson County, Kansas Archives); *State v. Wilmont*, Case No. K1414 (Dist. Ct. Johnson County, Kan. filed Aug. 20, 1910) (on file with the Johnson County, Kansas Archives).

37. LANE, *supra* note 7, at 83.

38. LEE KENNETT & JAMES LAVERNE ANDERSON, *THE GUN IN AMERICA: THE ORIGINS OF A NATIONAL DILEMMA* 109-10 (1975). Moreover, as the authors note,

The omnipresence of firearms in the nineteenth century was noted by many of the commentators . . . A writer for the *Wichita Eagle* remarked in May 1874 that "Pistols are as thick as blackberries." And from El Paso a man wrote, "I would as soon go out into the street without my pants as without my Colt."

*Id.* at 120.

39. DYKSTRA, *supra* note 31, at 148.

40. MCGRATH, *supra* note 5, at 255.

41. Ireland, *supra* note 10, at 137 ("The *New Englander* magazine noted in 1844 that 'happily the practice of carrying deadly weapons has not yet become common in this part of the country, being confined in a great measure to those few whose ideas are not indigenous to New England.'").

42. *Id.* at 136-42.

43. Schmid, *supra* note 9, at 754.

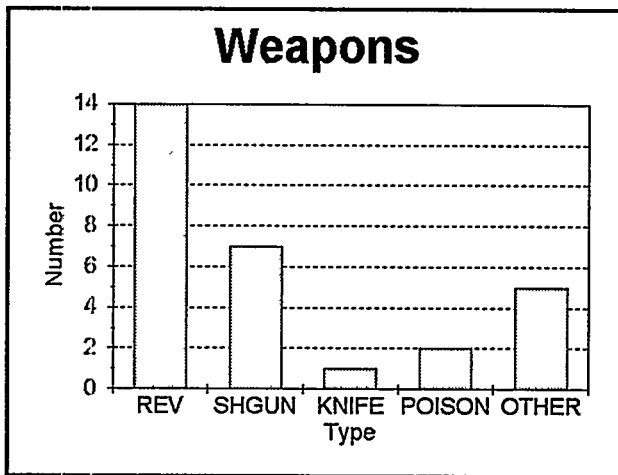


Figure 4

Philadelphia, on the other hand, guns were used in only about a quarter of the murders committed from 1839 to 1901,<sup>44</sup> and in about a third of the murders committed from 1948 to 1952.<sup>45</sup>

Although Johnson County defendants used a variety of weapons to kill their victims, the vast majority, like their counterparts on the frontier and in Seattle, used guns. (See figure 4). Nearly half of the murder victims in the county died at the hands of a revolver, and another quarter died at the hands of a shotgun. Thus, in Johnson County, the late nineteenth and early twentieth centuries were the "age of the firearm."

#### D. Types of Murders:

In his study of frontier cattle towns, Dykstra was confounded by the variety and uniqueness of the murders he studied:

With the exception of killings by law officers and lynchings, the homicidal situations varied considerably. Seventeen apparently resulted from private quarrels, four were accidental or without discernible motive, two were committed by resisters of arrest, two avenged prior homicides, and two consisted of murders for profit.<sup>46</sup>

By contrast, the Johnson County murders during the period of this study fell rather neatly into five discrete categories: (1) disputes between spouses; (2) family/lover

44. LANE, *supra* note 7, at 62. Despite the fact that shootings were much less common in Philadelphia than in other parts of the country, Lane concluded that there was no question "that the practice of carrying handguns affected the murder rate" in Philadelphia, sometime between the 1850s and 1880s. *Id.* at 61.

45. MARVIN E. WOLFGANG, *PATTERNS IN CRIMINAL HOMICIDE* 320 (1958).

46. DYKSTRA, *supra* note 31, at 147.

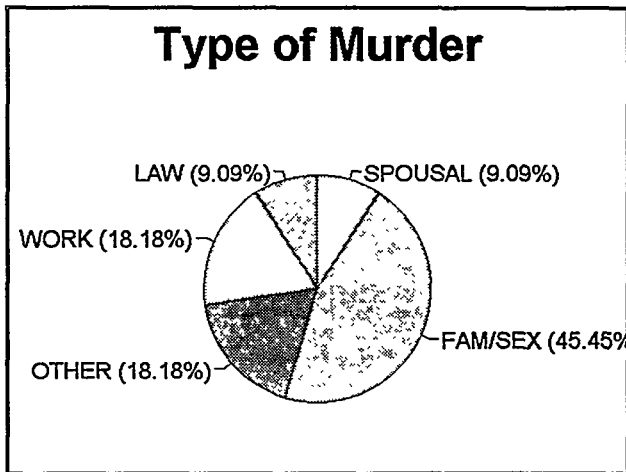


Figure 5

disputes; (3) disputes between acquaintances over other matters; (4) workplace disputes; and (5) law enforcement cases. (See figure 5).

### 1. Spousal Disputes

The first type of murder, common throughout American history,<sup>47</sup> involved disgruntled spouses unable to resolve their problems peaceably. Three of the thirty-three defendants in Johnson County were charged with spouse-killing, all of whom were women.<sup>48</sup> Indeed, nearly half of the women charged with murder in Johnson

47. See, e.g., LAWRENCE M. FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY* 493 (1993) [hereinafter *CRIME AND PUNISHMENT*] ("It is also worth pointing out that there is another historical pattern: domestic violence — crimes of passion and hatred, and family brutality. These account for most homicides, even today.")

48. A cursory review of local newspapers reveals that at least three Johnson County husbands killed their wives during this period. One of these cases was not included in the study because it was disposed of in Douglas County — not Johnson County — after the defense secured a change of venue.

In this case, the most heavily publicized Johnson County murder case in the 60-year period of this study, a prominent local doctor, S.O. Netherton, allegedly killed his wife to gain control of her fortune. See, e.g., *S.O. Netherton Charged with Murder of His Wife*, *OLATHE MIRROR*, Mar. 1, 1928, at 1; *Dr. Netherton is Held!*, *OLATHE MIRROR*, Mar. 29, 1928, at 1; *The Motive is Sought*, *OLATHE MIRROR*, Mar. 29, 1928, at 9. Ultimately, after two trials and an unsuccessful appeal to the Kansas State Supreme Court, Dr. Netherton was convicted of first degree murder and sentenced to life imprisonment in the penitentiary. See *Netherton Guilty*, *OLATHE MIRROR*, May 24, 1928, at 1; *Imprisonment for Life*, *OLATHE MIRROR*, Nov. 15, 1928, at 1; *Is Found Guilty*, *JOHNSON COUNTY DEMOCRAT*, Mar. 29, 1930, at 1; *Uphold Decision in Supreme Court*, *OLATHE MIRROR*, Oct. 15, 1931, at 1.

The other two cases were not included in this study because they were murder-suicides; as such, there was no defendant to prosecute and no court records to review. In one of these cases, William Hollenback shot and killed his wife, Belle, and then turned the gun on himself. According to the January 9, 1903 *Olathe Register*, "Christmas day Hollenback went to his wife, who was sick in bed, and said, 'Here's a Christmas present for you.'" *Id.* at 4. Then:

He opened a box containing a revolver and shot the prostrate woman three times. One

County were suspected of killing their husbands.

In one of these cases,<sup>49</sup> Mrs. Alline Keck, the twenty-two-year-old wife of Allen Keck, shot her husband with a revolver. J.A. Brenner, the newly inducted sheriff of Johnson County, took her into custody, charging her with assault with intent to kill. A few days later, her thirty-nine-year-old husband died, prompting a charge of first degree murder.

At the trial, which lasted only three days, she offered two defenses. First, she contended that the shooting was accidental, claiming that "she did not know the gun was loaded and that the shooting was as much a shock to her as it was to her husband."<sup>50</sup> Second, she claimed self-defense, charging that her husband had abused her over the years and that she was afraid of him. In fact, Alline's in-laws and friends testified "that on several occasions he had beat[en] her to almost unconsciousness."<sup>51</sup> Apparently the jury found these defenses convincing, as she was acquitted.<sup>52</sup>

A few years later, in 1938, Lillian Laughlin killed her husband Chauncey shortly after he divorced her.<sup>53</sup> According to the local newspapers, both Lillian and Chauncey were well-known and popular residents of Olathe. Chauncey, a forty-nine-year-old deaf man, "had been instructor in cabinet-making at the Kansas State School for the Deaf here since 1920. He was acknowledged to be one of the finest cabinet-makers in the entire county, and was highly popular as an instructor and as a man."<sup>54</sup> Similarly, Lillian, a fifty-one-year-old deaf woman and mother of one son, "was popular and had an excellent reputation."<sup>55</sup> Nevertheless, as the paper noted, "trouble can arise between the best of people and in the best of families, [and] it appears that Mrs. Laughlin had developed a jealousy of her husband that brought on the tragedy."<sup>56</sup>

On the day of the murder, Lillian snuck into Chauncey's boarding room and hid in his closet. Sometime after he arrived home, she surprised him, fired one shot into his heart, fired a second shot into his right shoulder, and then turned the gun on herself.<sup>57</sup> As fate would have it, she succeeded in killing him, but not herself. Accordingly, she was charged with first degree murder and tried in Johnson County

bullet struck her in the left side and passed through her body, lodging in the muscles of the back. A second bullet lodged in the left shoulder and the third struck her finger. Pearl Osborn was also in the room and Hollenback tried to shoot her. She got away and then Hollenback [shot himself] . . . and fell dead on the floor of his wife's room.

*Id.*

49. *State v. Keck*, Case No. K2373 (Dist. Ct. Johnson County, Kan. filed Feb. 21, 1931) (on file with the Johnson County, Kansas Archives).

50. *Allen Keck Dies*, JOHNSON COUNTY DEMOCRAT, Jan. 29, 1931, at 1.

51. *Widow is Freed*, JOHNSON COUNTY DEMOCRAT, Mar. 21, 1931, at 1-2.

52. *Keck*, *supra* note 49, at 2 (Journal Entry).

53. *State v. Laughlin*, Case No. K2836 (Dist. Ct. Johnson County, Kan. filed Dec. 16, 1938) (on file with the Johnson County, Kansas Archives).

54. *C. H. Laughlin is Slain by Ex-Wife*, OLATHE MIRROR, Aug. 11, 1938, at 1.

55. *Id.*

56. *Id.*

57. *Id.*

court. The trial attracted much attention, particularly from the deaf community.<sup>58</sup> The jury "heard" from Lillian via a court-appointed interpreter; apparently the jury members found Lillian's story less sympathetic than Alline Keck's, as they convicted her of first degree murder after only a couple hours of deliberation.<sup>59</sup> The judge sentenced her to life imprisonment in the Women's Industrial Farm in Kansas.

## 2. Family/Lover Disputes

The most common kind of Johnson County murder — the family/lover dispute — involved fights between male friends over women, fights between lovers, and family squabbles that got out of hand. Roughly 45% of the Johnson County defendants, nearly three-fourths of them men, were charged with this kind of murder. It appears that many of the frontier murders and the big city murders during the period arose from this type of dispute as well. Dykstra reported that the number of murders involving fights over women "exceeded by eight to one those mainly resulting from gambling disagreements"<sup>60</sup> in the frontier cattle towns. In the big city, Lane reported that 22% of the murders from 1839 to 1901 involved family members, and nearly half of the murders involved acquaintances who got into altercations, many no doubt over family, love, and sexual matters.<sup>61</sup>

A number of these disputes revolved around a code of honor by which "real men" were expected to lead their lives. According to this code, "a gentleman had to demand immediate satisfaction if his honor was besmirched. 'Honor' involved not only one's own reputation but that of loved ones, especially women, and close friends."<sup>62</sup> Ireland described the operation of this code in Kentucky:

The record shows that nineteenth century Kentuckians openly defended and freely engaged in de facto duels. A delegate to the Constitutional Convention of 1849 urged husbands and fathers whose wives and daughters had been insulted to shoot down their detractors as if they were 'the fiercest wild beasts that ever inhabited a forest.' Others spoke of the certain disgrace that awaited the man who failed to avenge his honor.<sup>63</sup>

A similar informal code of honor seems to have operated in the small towns of Johnson County, particularly during the early years covered by this study. This code, when combined with raw emotion, guns, and knives, proved deadly,

---

58. *Deaf Woman Found Guilty of Murder*, OLATHE MIRROR, Jan. 26, 1939, at 1, 12 ("Probably the first time a deaf person ever has been charged with a crime in the district court here, it was natural that the case should attract much attention and that much of the trial crowd should be made up of deaf persons who were realizing their first opportunity to witness and understand the procedure in a courtroom.").

59. *Id.*

60. DYKSTRA, *supra* note 31, at 147.

61. LANE, *supra* note 7, at 83.

62. Ireland, *supra* note 10, at 142.

63. *Id.* at 144.

particularly when two men involved in a dispute over a woman confronted each other.

In one case,<sup>64</sup> for instance, Cass Roady stabbed young James Patten to death at a "disreputable dance" three miles southwest of Paola.<sup>65</sup> The newspaper made a cryptic reference to the fact that "there was a woman in the case."<sup>66</sup> In January 1893, Roady was found guilty of second degree manslaughter and was sentenced to four years at the Kansas State Penitentiary.<sup>67</sup>

In another case,<sup>68</sup> Thomas Cottom, "a well known colored citizen of Spring Hill,"<sup>69</sup> shot and killed James Deerfield. Apparently Deerfield "had been forcing unwelcome attentions on Mrs. Cottom."<sup>70</sup> On the day of the murder, "Deerfield followed Cottom and his wife to church and again attempted to force his addresses on Mrs. Cottom. The Cottoms finally left the church. Deerfield followed and attacked Cottom with a knife and received his death wound."<sup>71</sup> As the facts would suggest, Cottom claimed self-defense at his trial. On January 10, 1903, he was acquitted.<sup>72</sup>

In still another case involving a dispute over a woman, Dewey O'Bryant, "a rather wordy, but peaceable old negro" known as "Admiral Dewey,"<sup>73</sup> shot and killed Burl Stevens, another black man.<sup>74</sup> Dewey had apparently sought the affections of Stevens' wife, and Stevens had threatened to kill him.<sup>75</sup> Dewey obtained a peace warrant from the county, though "there was some delay in getting a constable to serve it and the consequence is that there is a dead nigger and it isn't our friend 'Dewey.'"<sup>76</sup> Dewey and Stevens got into an altercation, which Dewey won by firing "a charge of thirty-six buckshot" into Stevens' chest.<sup>77</sup> Three months later, Dewey lost in court, where he was found guilty of first degree murder and slapped with an indeterminate sentence at the Kansas State Penitentiary.<sup>78</sup>

64. *State v. Roady*, Case No. K923 (Dist. Ct. Johnson County, Kan. filed Oct. 25, 1893) (on file with the Johnson County, Kansas Archives).

65. *Stabbed at a Dance*, OLATHE MIRROR, Feb. 13, 1890, at 4.

66. *Id.*

67. *See Guilty of Manslaughter*, OLATHE MIRROR, Jan. 26, 1893, at 7; *District Court*, OLATHE WEEKLY HERALD, Jan. 27, 1893, at 4.

68. *State v. Cottom*, Case No. K1146 (Dist. Ct. Johnson County, Kan. filed Nov. 20, 1903) (on file with the Johnson County, Kansas Archives).

69. *Negro Killed at Spring Hill*, OLATHE REGISTER, Oct. 3, 1902, at 5.

70. *Id.*

71. *Id.*

72. *District Court*, OLATHE REGISTER, Jan. 16, 1903, at 4.

73. *Shot Him with Buckshot*, OLATHE REGISTER, June 27, 1912, at 1.

74. *State v. O'Bryant*, Case No. K1451 (Dist. Ct. Johnson County, Kan. filed Aug. 14, 1912) (on file with the Johnson County, Kansas Archives).

75. *O'Bryant Murder Case*, OLATHE REGISTER, Sept. 12, 1912, at 1.

76. *Shot Him with Buckshot*, *supra* note 73, at 1.

77. *Id.*

78. *Murder in First Degree*, OLATHE REGISTER, Sept. 19, 1912, at 1.

In yet another case,<sup>79</sup> John Adams, a twenty-two-year-old boarder in Charles Belt's house, took a liking to Belt's wife. One night, Belt caught John and his wife in a compromising position, and a fight ensued. Meanwhile, John's brother Roy drove up and heard the ruckus. Roy joined in the fight, bashing Belt in the head with a brick.<sup>80</sup> The Adams brothers proceeded to take Belt to the train tracks, where they placed him "in such a position that . . . [he] . . . was struck and hit by a Southbound train . . . thereby inflicting upon the head, face and body of the said Charles Belt certain other mortal wounds, bruises, cuts and contusions . . ."<sup>81</sup> The Adams brothers confessed to their crime, though they subsequently retracted their statements, alleging that "they had been beaten and that their statements were obtained by duress."<sup>82</sup> The brothers stood trial; both were convicted of first degree murder and sentenced to life in the penitentiary.<sup>83</sup>

Although most of the murder cases in the family/lover category involved code of honor disputes between jealous men fighting over women, a number of the cases involved disputes between lovers. In one,<sup>84</sup> two buddies, Herbert Woodruff and Emmet Thomas, took their girlfriends out for a drive. Somewhere between Olathe and Kansas City, they drove onto a deserted road, stopped the car, and got out. Emmet and his girlfriend took a blanket and wandered off in one direction; Herbert and his girlfriend took the cushions from the car and wandered off in another. About fifteen or twenty minutes later, someone shot Herbert to death. Emmet reported hearing a gunshot and seeing a "light skinned negro" running away from the scene, and Herbert's girlfriend corroborated this story.<sup>85</sup> However, the police found that Herbert had been "choked, scratched about the throat and ears and the imprint of a woman's heel [was] showing plainly on his neck."<sup>86</sup> Accordingly, Emmet, Emmet's girlfriend, and Herbert's girlfriend were all arrested and charged with first degree murder, though all were later acquitted. Upon their acquittal, the local newspaper summed up public opinion regarding this case as follows:

So long as there are two sides to any question so long will it be impossible for a jury to bring in a verdict that is agreeable to all of the people or, we are sometimes tempted to think, to themselves. It is a little hard for those who have heard some of the testimony and have caught bits of the evidence in the Woodruff case to have a very high opinion of the moral character of the defendants and that fact may incline some people to question the verdict of acquittal.<sup>87</sup>

---

79. *State v. Adams*, Case No. K2422 (Dist. Ct. Johnson County, Kan. filed Sept. 8, 1931) (on file with the Johnson County, Kansas Archives).

80. *Five Are Charged in Hideous Crime*, OLATHE MIRROR, Sept. 3, 1931, at 1.

81. *Adams*, Case No. K2422 (Instructions) (on file with the *Oklahoma Law Review*).

82. *Adams Boys to Stand Trial in Belt Murder*, OLATHE MIRROR, Sept. 10, 1931, at 1.

83. *At Court House*, JOHNSON COUNTY DEMOCRAT, Sept. 24, 1931, at 1.

84. *State v. Brown*, Case No. K1664 (Dist. Ct. Johnson County, Kan. filed Aug. 19, 1919) (on file with the Johnson County, Kansas Archives).

85. *Herbert Woodruff Killed*, OLATHE REGISTER, July 31, 1919, at 1.

86. *Hold 3 For Murder*, OLATHE MIRROR, July 31, 1919, at 1.

87. *The Court House Grist*, OLATHE REGISTER, Sept. 18, 1919, at 1.



Of course, some of the family/lover murders had nothing to do with sex or romance but involved disputes among warring factions within a family. On one Saturday morning in July 1902, for instance, Allen Bailey, a twelve-year-old boy, visited his aunt's house and became the unwitting victim of an ongoing feud between his parents and his aunt.<sup>88</sup> Upon his arrival, Aunt Bessie "enticed him into the basement of the house and killed him, it is supposed, with an axe which was found on the premises covered with blood."<sup>89</sup> According to the local paper, she axed him to death as a means of "getting even" with the Baileys.<sup>90</sup> At her trial, she pleaded not guilty by reason of insanity, dysmenorrhoea, and cocaine addiction.<sup>91</sup> Despite her desperate pleas, the jury convicted her of second degree murder, and the judge sentenced her to twenty years of hard labor in the women's penitentiary.<sup>92</sup>

### 3. *Disputes Between Acquaintances Over Other Matters*

Another type of murder, also common throughout American history, arose between friends and acquaintances — generally male — over a variety of issues they could not settle peaceably. Typically, these murders occurred in the heat of a quarrel, and alcohol was often involved.

On the frontier, there were many such killings between cowboys and card players out on the streets and in saloons. In nineteenth century Sacramento, murder was often "the unanticipated outcome of an argument that got out of hand or an attempt to settle an ongoing dispute."<sup>93</sup> Similarly, "[t]he modal homicide in nineteenth-century Philadelphia resulted from a brawl or quarrel originating in a saloon but reaching a climax in the street."<sup>94</sup>

Johnson County saw its share of disputes like these, roughly 15% of the cases from 1880 to 1939. The principals in all of these cases were male, and guns were the weapon of choice. Generally, alcohol played a role as well. In fact, at least 60% of the Johnson County defendants and half of the victims had been drinking prior to the murder.

In one case,<sup>95</sup> two good friends, Godfrey Kirn and Samuel Jacobsen, were "batching" it on a farm located near Washita.<sup>96</sup> After drinking all afternoon, the two men fell into some kind of drunken argument late that night. According to Kirn, Jacobson came at him with a bread knife, so Kirn "was compelled to shoot

88. *State v. Hickland*, Case No. K1142 (Dist. Ct. Johnson County, Kan. filed Aug. 8, 1902) (on file with the Johnson County, Kansas Archives).

89. *Murdered Her Nephew*, OLATHE REGISTER, Aug. 8, 1902, at 4.

90. *Id.*

91. *Hickland*, Case No. K1142, at 6 (Charge of the Court, § 20) (on file with the Johnson County, Kansas Archives).

92. *Murder in the Second Degree*, OLATHE REGISTER, Sept. 5, 1902, at 4.

93. *See Tillman*, *supra* note 10, at 25.

94. *See LANE*, *supra* note 7, at 59.

95. *State v. Kirn*, Case No. K1486 (Dist. Ct. Johnson County, Kan. filed Oct. 30, 1913) (on file with the Johnson County, Kansas Archives).

96. *Kirn Slew His Guest*, OLATHE REGISTER, Aug. 28, 1913, at 1.

him in self-defense.<sup>97</sup> Eventually, Kirn pleaded guilty to assault and battery and was sentenced to six months in the Johnson County jail.<sup>98</sup>

In another case,<sup>99</sup> and one of only two involving an interracial killing, a dispute arose at a drinking party between three white men and their two black friends. Apparently, one of the black men made a remark offending William Adams, who suggested to the two whites that "they kill the negroes."<sup>100</sup> Accordingly, Adams and one of his white friends, Charley Ridens, invited their black friends to go for a ride. While in the car, Adams turned around and "shot and killed Rogers and cut his throat with a dull pocket knife before throwing the body into the ditch."<sup>101</sup> Adams was charged, tried, convicted of first degree murder, and sentenced to life in prison;<sup>102</sup> Ridens, who maintained that he did not know that Adams was actually going to kill Rogers, was acquitted.<sup>103</sup>

#### 4. Workplace Disputes

Although workplace homicide seems like a peculiarly modern phenomenon, the Johnson County records reveal that a number of cases from the late nineteenth and early twentieth centuries — nearly 20% — fell into this not-so-modern category. In these cases, business partners,<sup>104</sup> business rivals,<sup>105</sup> employers and customers,<sup>106</sup> and employees and employers<sup>107</sup> became embroiled in disputes that ended in tragedy.

In one,<sup>108</sup> William White, a rear brakeman on a freight train, did not take kindly to a reprimand he received from his boss O.E. Quinn, the conductor. In response, he bashed Quinn's head in with a stove poker. According to a report in the local paper:

When the train stopped in Olathe, Quinn went to the station office and received his orders. Then he returned to the caboose, seated himself at his desk and began checking off cars. He held a pad of way [sic] bills in one hand and a tally sheet in the other, while his foot was on his

97. *The Murder at Washita*, OLATHE INDEPENDENT, Sept. 3, 1913, at 3.

98. *To Penitentiary or Jail*, OLATHE REGISTER, Jan. 15, 1914, at 1.

99. *State v. Adams*, Case No. K2585 (Dist. Ct. Johnson County, Kan. filed July 15, 1933) (on file with the Johnson County, Kansas Archives).

100. *Three Face Charges of Murder in Negro Death*, OLATHE MIRROR, May 25, 1933, at 1.

101. *Slayer of Negro Is Sentenced for Life*, OLATHE MIRROR, Sept. 14, 1933, at 1.

102. *Id.*

103. *Jury Acquits Ridens in Negro Murder Case*, OLATHE MIRROR, Sept. 21, 1933, at 1, 10.

104. *See, e.g., State v. Little*, Case No. K941 (Dist. Ct. Johnson County, Kan. filed Mar. 10, 1894) (on file with the Johnson County, Kansas Archives).

105. *See, e.g., State v. Demming*, Case No. K1333 (Dist. Ct. Johnson County, Kan. filed Feb. 29, 1908) (on file with the Johnson County, Kansas Archives).

106. *See, e.g., State v. Wilmont*, Case No. K1414 (Dist. Ct. Johnson County, Kan. filed Aug. 20, 1910) (on file with the Johnson County, Kansas Archives).

107. *See, e.g., State v. Dudley*, Case No. K1567 (Dist. Ct. Johnson County, Kan. filed Aug. 24, 1916) (on file with the Johnson County, Kansas Archives); *State v. White*, Case No. K1520 (Dist. Ct. Johnson County, Kan. filed Jan. 19, 1915) (on file with the Johnson County, Kansas Archives).

108. *White, supra* note 107, at 1.

lantern. The murderous blow came from behind, and Quinn settled deeply in his chair and retained in death the identical pose of his last act in life.<sup>109</sup>

White was charged with first degree murder, tried, convicted of first degree manslaughter, and sentenced to five to twenty years in the state penitentiary.<sup>110</sup>

### 5. Law Enforcement

The least common kind of small-town murder involved law enforcement officers — a term I use loosely — who killed suspected criminals in the course of their duties. In contrast to the other types of murder, all involving well-acquainted parties incapable of resolving their disputes without resorting to violence, the law enforcement murders involved officers killing people they may or may not have ever known.

From 1880 to 1939, three law enforcement officers were charged with the murder of two victims. In one case,<sup>111</sup> a posse led by Deputy Sheriff Hannibal Campbell inadvertently shot and killed the wrong man in Monticello. Sheriff Campbell and Frank Hollenback shot at a man they thought was "Rogers." Their shots were right, but their victim was wrong. John Reardon, an innocent man, perished as a result of their misidentification and hasty trigger fingers.<sup>112</sup> Both men were charged and tried; Campbell was acquitted, and the case against Hollenback was subsequently dismissed by the state. In the other case,<sup>113</sup> which also ended in dismissal, Gardner City Marshall Sanford Howland, while attempting to arrest Estel Briggs, was attacked by the other Briggs brothers. Marshall Howland shot and killed Bud Briggs. According to the paper:

Bud, who up to this time had remained in the wagon, jumped out and started toward the marshal [sic] (who had told his little girl to bring his revolver) and as he approached with the probable intention of striking him, the marshal [sic] drew his gun and shot twice, the first ball entering his left leg just below the thigh and the second one his right lung.<sup>114</sup>

The marshal was arrested, charged, dismissed, and later rearrested. Ultimately, his case was dismissed for good, though not without controversy.<sup>115</sup>

---

109. *Killed With Stove Poker*, OLATHE REGISTER, Jan. 21, 1915, at 1.

110. *White Wants New Trial*, OLATHE REGISTER, May 13, 1915, at 1.

111. *State v. Campbell*, Case No. K819 (Dist. Ct. Johnson County, Kan. filed Aug. 15, 1888) (on file with the Johnson County, Kansas Archives).

112. *The Wrong Man Killed*, OLATHE MIRROR, May 3, 1888, at 1.

113. *State v. Howland*, Case No. K1166 (Dist. Ct. Johnson County, Kan. filed July 7, 1903) (on file with the Johnson County, Kansas Archives).

114. *A Tragedy at Gardner*, OLATHE REGISTER, Apr. 10, 1903, at 4.

115. See *Sanford Howland Re-Arrested*, OLATHE REGISTER, May 1, 1903, at 4; *Sanford Howland Free*, OLATHE MIRROR, Jan. 7, 1904, at 2.

*E. Preliminary Examination of Accused*

Once the charge of murder was filed against the accused — regardless of the type of murder committed — the justice of the peace typically issued a warrant for his arrest. Once arrested, the accused was brought before the justice of the peace, where he was informed of the charges against him, told when his preliminary examination would take place, and advised of his right to obtain counsel (though undoubtedly not with the mechanical precision currently dictated by *Miranda*).

In Johnson County, thirty-one of the thirty-three murder defendants (93.9%) hired attorneys at this point in the process (if not before). One (3%) was represented by a court-appointed attorney; he was the only defendant in this study to enter an initial guilty plea.<sup>116</sup> Another defendant (3%) chose to represent himself and was subsequently convicted on two counts of first degree murder.<sup>117</sup>

The case files reveal almost nothing about the quality of representation the defendants received. During this period, requirements for the bar were not particularly stringent; neither college nor law school was required.<sup>118</sup> Some commentators painted a rather dim view of attorney qualifications in small-town Kansas during the late nineteenth century. Baker described Ellis County lawyers as follows:

Just after the county was settled, any one who desired to become a lawyer had to go through a certain procedure. First, he needed to be recommended to the district judge by another lawyer. The judge would appoint a committee of three to conduct an examination. A date was set and on that date the applicant furnished an ample supply of beer and whiskey. About all they examined was the taste of drinks. The applicant admitted the committee to his bar drinks and they in turn admitted the applicant to the legal bar.<sup>119</sup>

Haywood, on the other hand, held Dodge City lawyers in high regard, noting that they bore only "slight resemblance to the untutored, amateur administrators of the law"<sup>120</sup> represented by Baker's portrayal of the Ellis County lawyers. "The judges and lawyers were, in the main, competent and were generally sensitive to the requirements of preserving correct rules and form."<sup>121</sup>

---

116. *State v. Skelton*, Case No. K2287 (Dist. Ct. Johnson County, Kan. Feb. 18, 1930) (on file with the Johnson County, Kansas Archives).

117. *State v. Dudley*, Case No. K1567 (Dist. Ct. Johnson County, Kan. filed Aug. 24, 1916) (on file with the Johnson County, Kansas Archives). See *infra* text accompanying notes 168-74.

118. Indeed, prospective lawyers could "pass" the Kansas bar as late as 1968 solely by completing a prescribed period of "law office study." John F. Fontron, Jr., *The KBA Story, in REQUISITE LEARNING AND GOOD MORAL CHARACTER: A HISTORY OF THE KANSAS BENCH AND BAR 9* (Robert W. Richmond ed., 1982).

119. Wallace F. Bauer, *Criminal Cases in Ellis County, Kansas 1867-1937*, at 4 (1938) (unpublished M.S. thesis, Fort Hays Kansas State College (now Fort Hays State University)) (on file with author).

120. C. Robert Haywood, *Cowtown Courts: Dodge City Courts, 1876-1886*, 11 KAN. HIST. 22, 22 (1988).

121. *Id.* at 22-23.

Whatever their qualifications and talents, the lawyers representing the Johnson County murder defendants, as well as the county prosecutors, prepared for the preliminary examination immediately after the charge had been filed by interviewing witnesses and collecting evidence. At the preliminary examination, each side presented its case before the justice of the peace, whose primary responsibility was to determine whether there was "probable cause" to believe that the defendant committed the murder. Upon finding "probable cause," the justice of the peace set the defendants' bail and held them over for trial.

Bail varied considerably from case to case; in two cases, defendants were held without bail, but in 60% of the cases, bail was set below \$10,000. Of course, the bail amount increased over the course of the study. In the 1890s, the average bail for murder defendants was set at \$5625; in the 1910s, \$6450; by the 1930s, the average bail amount was set at \$15,000. A cursory review of the records suggests that many of the defendants made bail but that a majority probably did not.

After bail was set, after the defendant was held over for trial, and after the preliminary examination was completed, the county attorney filed an "information," formally charging the defendant with the crime on which he was to be tried. On average, the information was filed about two months after the original charge had been filed with the justice of the peace.

#### *F. Dismissals, Pleas, and Plea Bargains*

At this point in the process, some of the murder cases were resolved. The state dismissed the cases against four defendants — half of whom were law enforcement personnel — because it lacked probable cause to formally charge and convict them of murder (12.1%). Two other defendants opted to plead guilty rather than face a jury of their peers.

In one,<sup>122</sup> the only instance of explicit plea bargaining in this sixty-year period of murder prosecution, Gottfried Kirn pleaded not guilty to first degree murder after shooting his childhood friend to death during a drunken brawl.<sup>123</sup> Rather than run the risk of a conviction and a life sentence in the penitentiary, Kirn eventually agreed to plead guilty to a reduced charge — assault and battery — and face a six-month sentence in the Johnson County jail.

In the other case,<sup>124</sup> William Skelton, represented by a court-appointed attorney, entered an initial guilty plea to the first degree murder charge against him. It is not at all clear why he chose to do this, but it is unlikely that this was a case of "implicit bargaining"<sup>125</sup> because Skelton got nothing in return for his plea. On the

---

122. *State v. Kirn*, Case No. K1486 (Dist. Ct. Johnson County, Kan. filed Oct. 30, 1913) (on file with the Johnson County, Kansas Archives).

123. *See supra* text accompanying notes 92-95.

124. *State v. Skelton*, Case No. K2287 (Dist. Ct. Johnson County, Kan. filed Feb. 18, 1930) (on file with the Johnson County, Kansas Archives).

125. This refers to the practice of pleading guilty in order to get lighter treatment by the state, though no explicit discussion of "bargaining" takes place. Milton Heumann, *A Note on Plea Bargaining and Case Pressure*, 9 *LAW & SOC. REV.* 515 (1975); *see also* Lawrence M. Friedman, *Plea Bargaining in Historical Perspective*, 13 *LAW & SOC. REV.* 247, 253-56 (1979).

contrary, he received the maximum sentence available under the law at the time, life in the state penitentiary.

### G. Trial

One striking fact about murder cases — as compared to other criminal cases during this period — is that so many of them went to trial. In Johnson County, more than 80% of the murder defendants had their cases resolved in court.<sup>126</sup> Unfortunately, because the case files do not contain trial transcripts, we have minimal information about the content of the trials themselves. However, a few bits and pieces emerge from other court documents and contemporaneous newspaper articles. Drawing from these sources, we see that the murder trials were, for the most part, well attended, showy, and the subject of much discussion around town. Newspaper articles routinely made reference to the public's opinion of the defendant, the circumstances surrounding the murder, the skill of the attorneys involved, and the oratory at the trial.<sup>127</sup> The trials seem to have contained a fair amount of haggling over jury selection and jury instructions.<sup>128</sup> And most defendants claimed self-defense, insanity, and accident. Indeed, self-defense alone was offered in about a third of the cases.<sup>129</sup>

On average, the murder trials took longer than most other criminal trials of the day. Jury deliberation took anywhere from a few hours to several days. Verdicts were typically entered about two-and-a-half months after the county attorney had filed the information. Thus, from the filing of the initial charge to the disposition

---

126. By way of contrast, roughly 40% of all felonies prosecuted in Alameda County from 1880 to 1910 went to trial. *ROOTS OF JUSTICE*, *supra* note 21, at 173.

127. *See, e.g.*, *MIRROR & NEWSLETTER* (Olathe, Kan.), Mar. 24, 1881, at 1, reporting the trial of Enoch Kearly:

The court room was densely packed last week during the Kearley trial and especially on the day the case was argued by the respective attorneys. The argument was opened by States Attorney John A. Rankin who spoke for an hour and a half. Following him Judge Devenney, on behalf of the defense, spoke for nearly three hours, and the argument was concluded by Col. Burris for the prosecution who addressed the jury without a minutes cessation, for two hours and fifty minutes. The respective speeches of Judge Devenney and Col. Burris were each able efforts. Of course they were expected to be, considering the wide reputation of those gentlemen as jurists and advocates. The opening argument of John A. Rankin was an able and careful review of the testimony and those who have heretofore questioned John's ability on account of his age and inexperience had all those doubts removed if they listened to his speech to that jury.

*Id.*

128. *See, e.g.*, *State v. Adams*, Case No. K2422 (Dist Ct. Johnson County, Kan. filed Sept 8, 1931); *State v. O'Bryant*, Case No. K1451 (Dist. Ct. Johnson County, Kan. filed Aug. 14, 1912); *State v. Hickland*, Case No. K1142 (Dist. Ct. Johnson County, Kan. filed Aug. 8, 1902). All of these cases are on file with the Johnson County Archives in Olathe, Kansas.

129. *See supra* text accompanying notes 65-69.

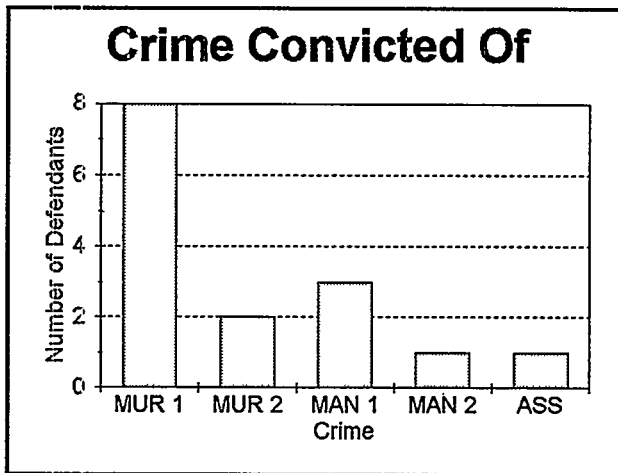


Figure 6

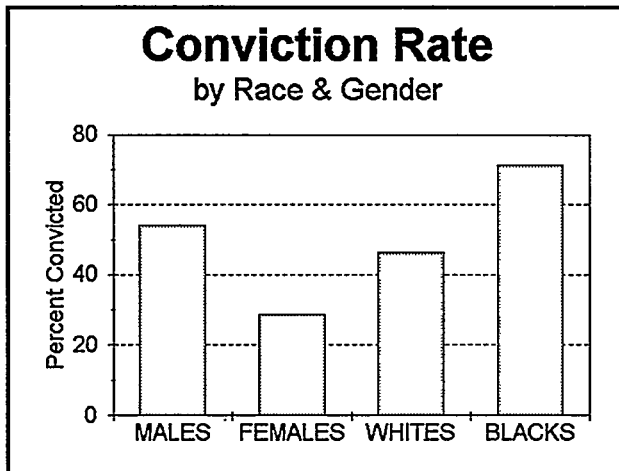
of the case (at least at the trial court level), the process generally took about four to five months.

About three-fourths of the defendants convicted at trial filed motions for a new trial. Only one was granted. This lucky defendant, "Ham" Grinter, filed a motion for a new trial after receiving a first degree manslaughter conviction. His motion was granted, and the charge against him was lowered to manslaughter four; he promptly pleaded guilty to this reduced charge and was sentenced to nine months in the Johnson County jail.<sup>130</sup> Had his conviction for first degree manslaughter stood, he would probably have been sentenced to somewhere between five and twenty-five years in the state penitentiary.<sup>131</sup>

More than half of the defendants tried for first degree murder were convicted of some crime. (See figure 6). Eight defendants were convicted of first degree murder, seven were convicted of other crimes, and only twelve were acquitted. When combined with the two defendants who pleaded guilty and the four whose cases were dismissed, the overall conviction rate for first degree murder cases in Johnson County was 51.5% (seventeen of thirty-three defendants). This conviction rate exceeded the conviction rates in other places. In Sacramento, for instance, the conviction rate from 1853 to 1900 was 44%, though it exceeded 50% from 1881 to

130. State v. Grinter, Case No. K1512 (Dist. Ct. Johnson County, Kan. filed Sept. 2, 1914) (on file with the Johnson County, Kansas Archives).

131. Two defendants were convicted of first degree manslaughter and sentenced to the state penitentiary, one for five years and the other for five-to-twenty years. State v. White, Case No. K1520 (Dist. Ct. Johnson County, Kan. filed Jan. 21, 1915) (on file with the Johnson County, Kansas Archives); State v. McDonald, Case No. K1062 (Dist. Ct. Johnson County, Kan. filed May 20, 1899) (on file with the Johnson County, Kansas Archives).



*Figure 7*

1900.<sup>132</sup> In nineteenth-century New York City, less than half the cases went to trial and relatively few defendants seem to have been convicted.<sup>133</sup>

The Johnson County conviction rate varied substantially depending upon the demographic characteristics of the defendant. (See figures 7 and 8). Males were much more likely than females (53.9% vs. 28.6%) to be convicted or to plead guilty. Interestingly, however, females who killed males were more likely to be convicted than males who killed females (50% vs. 33.3%). Similarly, blacks were substantially more likely than whites to be found guilty (71.4% vs. 46.2%). Of the two white defendants accused of killing a black, one was found guilty, and the other was acquitted.

The conviction rate also varied with the type of murder committed. Two-thirds of the defendants involved in spousal disputes, workplace homicides, and other disputes with friends and acquaintances were found guilty. Those involved in family/lover squabbles were significantly less likely to be convicted; less than half were found guilty. The law enforcement officers fared best of all, sporting a 0% conviction rate (one was acquitted, and the cases against the other two were dismissed by the state).

The conviction rate fluctuated somewhat over the course of the study, dropping around the close of the nineteenth century and rising sharply in the 1930s. The conviction rate in the 1880s was 60%; it dropped to 40% in the 1890s and 33.3% in the 1900s. In the 1930s, more than 70% of the murder defendants were found guilty.

132. Tillman, *supra* note 10, at 172-73.

133. Monkkonen, *supra* note 6, at 528.



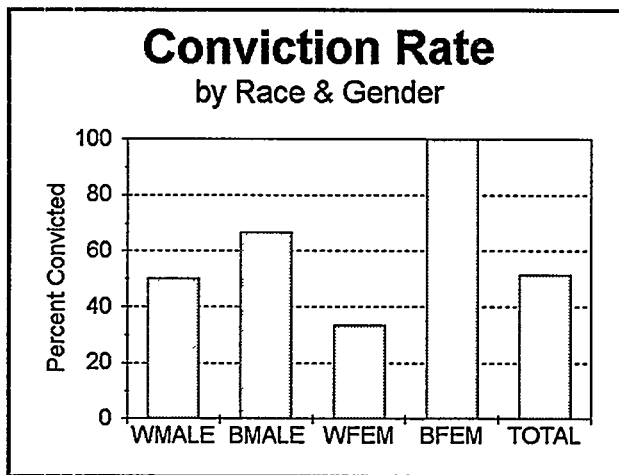


Figure 8

#### H. Sentencing

Generally about two weeks after the trial verdict was rendered (or at the time the plea was made for those who waived their right to trial), the guilty defendants were sentenced by the court. Sentences varied substantially, ranging from a \$10 fine for John Kerner, who was convicted of assault, to life or death sentences for those convicted of first degree murder. (See figure 9). The variation in sentences seems to have depended entirely on the crime for which the defendant was convicted (in contrast to the conviction rate, which varied substantially depending upon the demographic characteristics of the defendant and the type of murder committed). Not surprisingly, those found guilty of first degree murder consistently received the harshest sentences, generally life or death.<sup>134</sup> There does not appear to have been any disparity in the sentencing of males and females or whites and blacks.<sup>135</sup> Nor does the sentencing appear to have changed much over time.<sup>136</sup> Upon examination,

134. Only eight of the nine persons convicted of first degree murder received sentences. The ninth, Bert Dudley, was lynched before he could be sentenced. See *infra* text accompanying notes 168-74.

135. Sentencing information is available for three white men, three black men, and two white women convicted of first degree murder. Two of the white men and two of the black men were given life sentences at the Kansas State Penitentiary. The third white man was sentenced to death; the third black man was given an open-ended sentence at the penitentiary. One of the convicted women was sentenced to life in prison; the other was sentenced to death.

136. In the 1880s, the two first degree murder convicts were sentenced to death; in the 1910s, one first degree murder convict was given an indeterminate sentence, and the other was lynched; in the 1930s, all five charged with first degree murder were given life sentences.

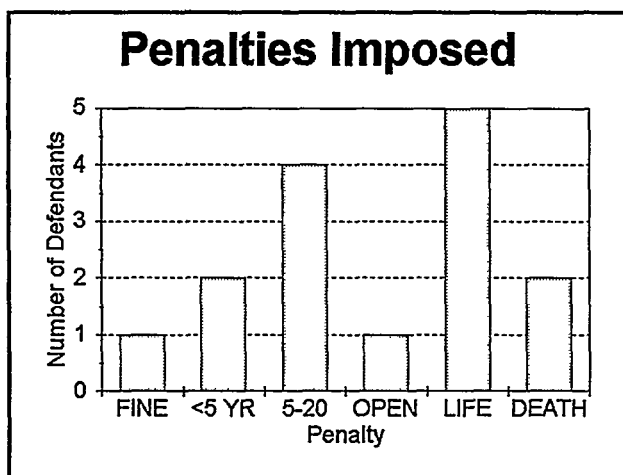


Figure 9

all of the sentences, with the possible exception of the \$10 fine, were quite severe, as conditions in the penal institutions of the day left a lot to be desired.

#### 1. Johnson County Jail

Generally, the Johnson County jail housed petty crooks, drunks, bums, and the like; its cells (only six of them) seldom housed front-page criminals. Nevertheless, two of our murder defendants — one found guilty of assault and battery<sup>137</sup> and the other of fourth degree manslaughter<sup>138</sup> — were sentenced to the county jail for six and nine months, respectively. In addition, the county jail was home, at least temporarily, to murder defendants who failed to make bail.

By all accounts, the county jails of the late nineteenth and early twentieth centuries were less than accommodating. Indeed, in the early 1900s, the insanitary and inhumane conditions of the Kansas county jails attracted national attention.<sup>139</sup>

The Johnson County jail was no exception. According to a grand jury report submitted in September 1888, the Johnson County jail was "entirely too small, and otherwise unfit as a place of confinement for a human being."<sup>140</sup>

The grand jury found that "six holes, together with two small grated windows, one in either end of the hall, constitute the entire ventilating system of the prison," resulting in "the air supply being not only inadequate, but also damp, foul and offensive."<sup>141</sup> Moreover, the grand jury reported that "the sanitary regulations and condition" of the jail were "extremely deficient":<sup>142</sup>

137. See *supra* text accompanying notes 119-20.

138. See *supra* text accompanying notes 127-28.

139. See Clayton R. Koppes, *The Industrial Workers of the World and County-Jail Reform in Kansas, 1915-1920*, 41 KAN. HIST. Q. 63 (1975).

140. *The Grand Jury's Report on the County Jail*, OLATHE MIRROR, Sept. 20, 1888, at 3.

141. *Id.*

142. *Id.*

The slops and excrement necessarily accumulating in the prison, must be deposited in vessels and remain there to contaminate the small air supply until such time as it may be convenient for the sheriff to remove the same; said slops and excrement are emptied into cisterns or cess-pools, situated within a few feet of the cistern and well from which is taken the daily supply of water for use of prisoners and the sheriff's family — the water from said cistern and well being impregnated by the filth of the above mentioned cess-pool is thus rendered unfit for use.<sup>143</sup>

By all accounts, the county jail was hardly a pleasant place to spend a few minutes, let alone a few months. Undoubtedly, however, defendants sentenced to the Johnson County jail were relieved that they did not have to do their time in the state penitentiary.

## 2. *Kansas State Penitentiary*

Eleven Johnson County murder defendants were sentenced to one of two state penitentiaries, one for as few as four years, two for indeterminate periods of time, and about half for life. Most were sent to the famous, and infamous, Kansas State Penitentiary at Lansing.<sup>144</sup>

Opened as a temporary wooden stockade in 1867, the Kansas State Penitentiary at Lansing eventually became a large, self-supporting, permanent facility.<sup>145</sup> Under the supervision of prison officials, the inmates actually built the mammoth prison themselves. According to one commentator, the prison "resembled a fortified medieval castle,"<sup>146</sup> surrounded by "forbidding walls," which concealed "wagon, shoe, furniture, harness, and marble slab factories, operated by labor contractors and employing about 350 convicts."<sup>147</sup> Moreover, it sat on a coal mine which the prison operated with the "assistance" of its charges.

The Lansing prison achieved "a position of leadership among prisons of the Western states"<sup>148</sup> in large part because of its sophisticated labor system; it achieved notoriety because of its inhumane conditions and mistreatment of prisoners in the late 1800s and early 1900s.

Two Lansing inmates published books detailing the inhumane conditions of the prison and the maltreatment of its prisoners — John Reynolds' *A Kansas Hell* and Carl Arnold's *The Kansas Inferno*. Both books criticized the prison's labor system and foul conditions. Reynolds, who worked for six months in the Lansing coal mine, complained about the conditions in the mine, charging that "in the darkness

---

143. *Id.*

144. See F.W. Blackmar, *Penology in Kansas*, 1 KAN. UNIV. Q. 155 (1893) ("The Kansas State Penitentiary at Lansing has been noted as one of the best prisons in the far west.").

145. Harvey R. Høugen, *Kate Barnard and the Kansas Penitentiary Scandal, 1908-1909*, 17 J. WEST 9 (1978) [hereinafter *Kansas Penitentiary Scandal*].

146. Harvey R. Høugen, *The Impact of Politics and Prison Industry on the General Management of the Kansas State Penitentiary, 1883-1909*, 43 KANSAS H.Q. 297, 298 (1977) [hereinafter *Politics and Prison Industry*].

147. *Id.*

148. *Id.* at 297.

and silence old and hardened criminals debase and mistreat themselves and sometimes the younger ones that are associated with them. . . . These cases of self-abuse and sodomy are of daily occurrence."<sup>149</sup>

The books also reported torture by the guards. Some prisoners were given the "water cure" when they misbehaved. Guards stripped the offending inmate, tied him to a post, and "turned a stream of water on him from a hose under high pressure."<sup>150</sup> Reynolds called the suffering "intense."<sup>151</sup>

Others were given the "alakazan degree."<sup>152</sup> Guards shackled the offending inmate's wrists and ankles and then drew them together behind the inmate's back, before locking him inside a coffin-like box known as a crib. According to Arnold, the offending inmate's "feet are drawn upward and backward until his whole body is stretched taut in the shape of a bow. The intense agony inflicted by this method of torture is indescribable; every muscle of the body quivers and throbs with pain."<sup>153</sup>

Reports describing these punishments captured the attention of penal reformers and state officials who eventually investigated the claims, published findings, and instituted "reforms" of the Lansing penitentiary.<sup>154</sup> Even after the reforms, however, it is likely that the penitentiary remained a less-than-pleasant place to rot away.

### 3. Death Penalty

While life in Lansing was no picnic, it was, at least, life. Convicted murderers might also face death, as Kansas, according to the statute books, permitted the imposition of the death penalty during some of the period covered by this study.

The death penalty has a long and colorful history in Kansas, dating back to 1870, when the state invited the public to witness the execution of convicted murderer William Dickson. One commentator described the scene as follows:

Long before noon, the appointed time for the hanging, people occupied hilltops in the vicinity and the upper stories of neighboring buildings. By 11:00 A.M. the entrances to the jail were besieged with persons attempting to gain admittance. The *Daily Times* reported that "all over the city people on house tops and eminences looked with glasses or the naked eye to see the suspension of the convicted wretch."<sup>155</sup>

---

149. *Id.* at 311.

150. *Id.* at 312.

151. *Id.*

152. *Id.*

153. *Id.*

154. See *Kansas Penitentiary Scandal*, *supra* note 145.

155. Harvey Richard Hougen, *The Strange Career of the Kansas Hangman: A History of Capital Punishment in the Sunflower State to 1944*, at 79 (1979) (unpublished Ph.D. dissertation, Kansas State University) [hereinafter *Kansas Hangman*] (on file with the *Oklahoma Law Review*).

Shortly after Dickson's execution, the Kansas state legislature passed a so-called "Maine Law,"<sup>156</sup> under which convicts who received the death penalty were confined for one year in the state penitentiary. Only if the governor issued a death warrant at the end of that year — which he was not required to do — was the inmate executed. If the governor did not take action, the inmate's life was spared. Murderers sentenced under this law, for obvious reasons, were called "year and hang" prisoners by other inmates and prison personnel.<sup>157</sup>

The adoption of the "Maine Law" in 1872 effectively ended legalized executions for thirty-five years in Kansas. Over the course of those thirty-five years, courts sentenced at least 168 persons to hang, but thirteen consecutive Kansas governors refused to issue a single death warrant.<sup>158</sup>

After thirty-five years of de facto illegalization, the Kansas state legislature formally outlawed the death penalty in 1907.<sup>159</sup> And although the legislature brought the death penalty back in 1935, there were no legal executions until 1944.<sup>160</sup> Thus, throughout the period of this study, capital punishment was illegal in fact from 1880 to 1907, illegal under law from 1907 to 1935, and available but unused from 1935 to 1939.<sup>161</sup> Nevertheless, two of the murder defendants in our study — Enoch Kearly in 1881 and Lucy Tennison in 1889 — received death sentences.

Kearly, embroiled in a dispute with John Wyatt over Mrs. Samuel Green, shot Wyatt in the head at point blank range with his revolver.<sup>162</sup> He was charged and convicted of first degree murder. The local newspaper described the dramatic scene at his sentencing:

Judge Stevens then very feelingly told the prisoner that his days for associating with others as a member of society, had probably ended forever and the remainder of his time on earth would be best spent in preparing for the life hereafter, and in a voice trembling with emotion, sentenced him to be confined one year in the penitentiary of the state of Kansas, and at the end of that time to be hung at the will of the Governor. During this exciting scene, the prisoner was perhaps the calmest man in the court room, to judge from outward appearances, and occupied the few remaining moments at the court house in unavailing efforts to console his heart-broken wife — the devoted partner of his life with whom he was now about to part — perhaps forever.<sup>163</sup>

---

156. *Id.* at 85.

157. *Id.* at 90.

158. *Id.* at 1, 186.

159. *Id.* at 1.

160. *Id.*

161. See generally Louise Barry, *Legal Hangings in Kansas*, 18 KANSAS H.Q. 279 (1950).

162. *State v. Kearly*, Case No. K524 (Dist Ct. Johnson County, Kan. filed Mar. 29, 1881) (on file with the Johnson County, Kansas Archives).

163. *End of the Kearly Case*, OLATHE GAZETTE, Mar. 31, 1881, at 3.

Subsequently, Kearly appealed his case to the Kansas State Supreme Court, only to have the court affirm the trial court ruling and uphold the sentence. Of course, as noted above, no one was actually executed under the Maine Law, so it is likely that Kearly simply lived out his life in Lansing.

The other person sentenced to death, Lucy Tennison, was one of only five women sentenced under the Maine Law.<sup>164</sup> She was convicted of poisoning her husband to death with white arsenic.<sup>165</sup> At the time, she was at least sixty years old, and her husband was sixty-five. She appealed the conviction on grounds that the prosecution had improperly stated to the jury in closing argument that her refusal to testify on her own behalf constituted an admission of guilt. The Kansas State Supreme Court reversed the trial court conviction and remanded the case for a new trial. On March 21, 1890, nearly three years after her husband's death, she was acquitted.<sup>166</sup>

#### 4. Lynching

As compared to its neighbors, the State of Kansas executed few of its convicted murderers.<sup>167</sup> During the period of this study, as described above, not a single person was executed by the state. Yet "the low number of legal hangings glosses over" the state's appalling record of "more than two hundred" lynchings.<sup>168</sup>

The term "lynching" originated with Colonel Charles Lynch, a Virginia man who formed a citizen's group in the 1780s to catch and punish wrongdoers — usually by whipping.<sup>169</sup> Over time, lynching "came to have a much more sinister meaning: mob murder of men and women accused of crime, dragged from their cells and killed — or killed before the justice system could get any sort of grip on them."<sup>170</sup>

One of the Johnson County murder defendants, Bert Dudley, was subjected to this extralegal punishment in 1916.<sup>171</sup> Dudley, an ex-convict, worked for Mr. and Mrs. Henry Muller, land and farm owners near Stilwell. Apparently they parted company

---

164. Kansas Hangman, *supra* note 155, at 104.

165. State v. Tennison, Nos. K780 & K782 (Dist. Ct. Johnson County, Kan. filed Dec. 30, 1889) (on file with the Johnson County, Kansas Archives).

166. *Not Guilty*, OLATHE MIRROR, Mar. 27, 1890, at 3.

167. Kansas Hangman, *supra* note 155, at 1 ("Only twenty-four convicted felons have died on the gallows during the state's 118 year history [from 1861-1979], a very low total in comparison to most contiguous and neighboring states. Consider these incomplete statistics: Nebraska, twenty since 1903; Missouri, thirty-nine since 1938; Arkansas, 168 since 1913; Oklahoma, eighty-three since 1915; Colorado, seventy-seven since 1890; and Texas, 361 since 1924.").

168. *Id.* at 1; see also Barry, *supra* note 161, at 279 ("More than 200 men have been lynched in Kansas. These outside-the-law executions were largely for the crimes of horse stealing and murder. Although more than half of the lynchings occurred in the first 15 years of Kansas' existence, some 90 persons were illegally hanged in the state between 1870 and 1932."); Genevieve Yost, *History of Lynchings in Kansas*, 2 KAN. HIST. Q. 182, 210 (1933) ("Figures on lynchings in the United States for the years 1882-1927 show that Kansas ranked 18th of all states, with fifty-five to her discredit.").

169. CRIME AND PUNISHMENT, *supra* note 47, at 189.

170. *Id.*

171. State v. Dudley, Case No. K1567 (Dist. Ct. Johnson County, Kan. filed Aug. 24, 1916) (on file with the Johnson County, Kansas Archives).

on uncertain terms; about three weeks later, Dudley shot and killed both of them. These murders were called "as revolting as any that ever stained Johnson County's record" by one of the local newspapers.<sup>172</sup>

Shortly after the murders, Dudley confessed to the crime, though he claimed at trial that "he told that he had kiled [sic] the Mullers in order to be taken to jail and thus avoid the attentions of the mob that he felt would be after him."<sup>173</sup> And, in fact, the Johnson County sheriff removed him from the county jail because "there were signs that the enraged farmers about Stilwell had a lynching party in their minds."<sup>174</sup>

Despite his recanted confession, Dudley was whisked through the criminal justice system in record time. On August 24, 1916, he was charged with murder; a week later, the information was filed against him; less than three weeks later, he was convicted of two counts of first degree murder.

Two days after his conviction, prior to his formal sentencing, Dudley "paid the price" for the murders.<sup>175</sup> A mob of 60 men "sentenced" Dudley to death and carried out the sentence at a local farm. According to the *Olathe Register*:

A mob of sixty heavily armed men drove into town about 2 o'clock Thursday morning, broke into the jail, overpowered Sheriff E.G. Carroll, battered down three sets of steel doors, and took Dudley from his cell. Then, the mob hanged Dudley to a telephone pole at a point, one-half mile south of the Midget Poultry farm, and while the shackled body was swinging in the air filled it with bullets from their revolvers.<sup>176</sup>

Just before the lynchers hanged him from the telephone pole, Dudley uttered, "I did not do it, so help me, God."<sup>177</sup>

### *I. Appeals*

Bert Dudley did not have a chance to appeal his conviction, but nearly 30% of the fourteen other defendants convicted by a jury filed appeals with the Kansas State Supreme Court. This was a relatively high percentage, as criminal appeals were not particularly common during this period. From 1870 to 1910, "there were appeals in about 3 percent of the felony *prosecutions* in Alameda County, [California] in about 5 percent of the felony *convictions*, and in roughly one out of seven cases in which the *jury* returned a verdict of guilty."<sup>178</sup> Not surprisingly, however, these figures rose when the accused was convicted of a serious crime — like murder — and hit with a harsh penalty — like life or death.<sup>179</sup> The Johnson

172. *Ex-Convict Murders Two*, OLATHE REGISTER, Aug. 31, 1916, at 1.

173. *Id.*

174. *Id.*

175. *Bert Dudley Paid Price*, OLATHE REGISTER, Sept. 21, 1916, at 1.

176. *Id.*

177. *Id.*

178. ROOTS OF JUSTICE, *supra* note 21, at 262.

179. *Id.* at 263 ("Naturally enough, defendants appealed mostly when the stakes were high, when the case was serious and the sentence harsh. Every death sentence was appealed. Sex crimes and murder

County appellants, like those motioning for new trials, found little success at the Kansas State Supreme Court. Although Lucy Tennison won her appeal and was acquitted on remand, the other three appellants lost.

### *III. Conclusion*

#### *A. Results*

The small towns of Johnson County, like innumerable small towns across America's heartland, did not change as rapidly or drastically over time as the big cities. The population grew slowly, if at all. People continued to know each other's names, to live in the same houses, to work on the same farms, to frequent the same churches. Fashion trends, technological breakthroughs, and innovative social policies originating in the cities eventually reached these small towns, but they made less of an indentation.

Not surprisingly, then, the murder cases and their prosecution did not change much over the sixty-year period of this study, either. True, the murder rate peaked in the 1910s and dropped sharply in the 1920s, but a comparison of the first decade of this study — the 1880s — with the final decade — the 1930s — illustrates the way things more or less stayed the same. In the 1880s, there were five Johnson County murder cases; in the 1930s, seven. In both decades, a majority of the cases involved spousal disputes or miscellaneous family/lover disputes (60% in the 1880s; 57.1% in the 1930s); most of the alleged murderers were men (80% in the 1880s; 71.4% in the 1930s); all of the victims were men; and most of the defendants were found guilty (60% in the 1880s; 71.4% in the 1930s). Sentencing, as noted above, was also quite similar.<sup>180</sup>

Given the stability and stubborn conservatism of the small Johnson County towns, it is somewhat surprising to find that the murders there resembled those on the wild frontier and in the rapidly evolving urban centers as much as they did. As elsewhere, males and blacks were disproportionately represented, both as defendants and victims. Murder typically occurred when feelings were running high; seldom was it the product of cool, calculated, rational thought. Guns, particularly handguns, were frequently the weapon of choice.

Despite these similarities, however, the small-town murders do seem to have differed — if not in kind, at least in degree — from frontier killing and big city shootouts in an important, and perhaps intuitive, way. As described throughout this article, small-town murders, whether in the 1880s or the 1930s, whether in the family home or the neighborhood saloon, were largely the tragic consequence of people caught up in disputes from which they could not extricate themselves peaceably. The vast majority of Johnson County murders involved murderers and victims who knew each other, often intimately. For whatever reason, these parties found themselves in disputes, quarrels, petty jealousies, and the like; despite their

---

made up 10 percent of the prosecutions, but spawned 30 percent of the appeals.").

180. See *supra* notes 134-36.



apparent ability to resolve prior disputes, they failed, on these occasions, to solve their problems short of murder.

In his work on homicide in Philadelphia during the mid-twentieth century, Wolfgang found that about one-fourth of the big city murders were what he called "victim-precipitated."<sup>181</sup> In victim-precipitated murders, the victim, by throwing the first punch, brandishing the first weapon, or otherwise making the first move, instigates his own murder. According to Wolfgang, the victim is "one of the major precipitating causes of his own demise."<sup>182</sup> The Johnson County case files contain records that document the existence of victim-precipitated homicides in these small Kansas towns as well. Remember, for example, Samuel Jacobson, who got drunk with his buddy Gottfried Kim, quarreled, pulled a bread knife, and was shot to death.<sup>183</sup>

Despite the fact that the victim-precipitation label captures the essence of some of the Johnson County murders, its descriptive power is limited for two reasons. First, it applies only to those victims who made the initial physical move; the victims in the Johnson County cases sometimes made the first physical move, but often, they simply provoked murder with their words, their posturing, their feuding, their very existence. Second, it focuses too narrowly on the events immediately surrounding the murder and does not take into consideration the series of events leading up to the murder. In the vast majority of small-town murders, whether spousal disputes, family feuds, workplace homicides, or other disputes between friends, the murders seem to have resulted from the parties' inability to work through their problems prior to the events surrounding the murder.

### B. Implications

The implications of "small-town murder as inept dispute resolution" are significant, as this kind of murder may be, even today, the modal murder in small towns and other areas. The first implication of the inept dispute resolution idea is that alcohol, macho honor traditions, and destructive weapons (particularly if concealed) are very dangerous. The Johnson County murders often arose when men were loaded with booze, bravado, and bullets. Eliminating or reducing any of these would have saved lives at the turn of the century, and undoubtedly, today.

The second implication of viewing small-town murder as inept dispute resolution is that the penalty for murder seems largely meaningless. Almost all of these murders arose when people were angry, jealous, distraught — not when they were thinking rationally and clearly about the potential consequences of their actions.

---

181. Marvin E. Wolfgang, *Victim Precipitated Criminal Homicide*, 48 J. CRIM. L., CRIMINOLOGY, & POLICE SCI. 1, 2 (1957) ("The term *victim-precipitated* is applied to those criminal homicides in which the victim is a direct, positive precipitator in the crime. The role of the victim is characterized by his having been the first in the homicide drama to use physical force directly against his subsequent slayer. The victim-precipitated cases are those in which the victim was the first to show and use a deadly weapon, to strike a blow in an altercation — in short, the first to commence the interplay or resort to physical violence.").

182. *Id.* at 1.

183. *See supra* text accompanying notes 92-95.

Changing the murder penalty to make it more or less stringent is unlikely to deter anyone in this kind of mental state from committing murder, though it might affect the behavior of the murderers once they are charged and convicted. As we saw in Johnson County, for instance, both defendants who were sentenced to death filed motions for new trials and appealed their cases to the supreme court, buying them time (and in one case, an acquittal) and costing the state money and manpower.

The third implication of the murder-as-inept-dispute-resolution idea is that the criminal justice system, particularly in smaller towns where people know each other and know what's going on, might be able to prevent murders by playing a more proactive, mediative role in ongoing disputes. In the "Admiral Dewey" case,<sup>184</sup> for instance, Dewey O'Bryant obtained a peace warrant, but the county officials failed to act promptly and intervene to try to resolve the dispute between Dewey and his subsequent victim. Had they acted promptly, they probably could have prevented a murder from taking place. Similarly, many murders today — particularly domestic murders — might be prevented by the early intervention of the criminal justice system and nonprofit agencies. In short, the idea that murder in small towns and villages arose largely because of poor dispute resolution skills suggests very different ways of preventing and punishing murder.

---

184. See *supra* text accompanying notes 70-75.

