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The Trial and Hanging of Nelson Charles

Averil Lerman

This article summarizes research on the trial and hanging of Nelson Charles, who was executed in Juneau, Alaska in 1939. It is a part of a larger work in progress, a history of the death penalty in Territorial Alaska, derived from both documentary sources and from oral interviews with participants and witnesses. Principal sources for this history include personal interviews conducted by the author, as well as contemporary reports published in newspapers and records of the Territorial court system.

Overview: The Death Penalty in Territorial Alaska

Until it was abolished by the Territorial Legislature in 1957, Alaska had a death penalty. Between 1900 and 1957, eight men were executed in the territory by force of law, each of them convicted of murder. Although records indicate most murders in the territory were committed by white men, only two of the men hanged during this period were white Americans: in Nome in 1902 and in Sitka in 1903. After 1904, all of the men hanged in the Territory were non-

white or of minority status. Three were Natives; two were African-American; and one was a foreigner from Montenegro, who was viewed as a minority by the citizens who tried him.

In 1957, after a prolonged debate and an impassioned speech by abolition sponsor Warren Taylor, the territorial legislature abolished the death penalty in Alaska. According to Vic Fischer, who was the junior sponsor of the abolition bill, one factor motivating abolition was concern about the

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Juneau, Alaska.
November 10, 1939

We, the undersigned, citizens of the United States and residents of Juneau, Alaska, do hereby certify that we witnessed the execution by hanging, of Nelson Charles, at the Federal Jail in Juneau, Alaska, at the hour of 8:46 A.M., on this, the tenth day of November, 1939.

| | |
|------------------------------|---------------------|
| <u>Stanley Jackson</u> | Salvation Army |
| <u>Rev. Wm. G. Gaudinier</u> | Cath. Priest |
| <u>John J. Thompson</u> | Witness |
| <u>Dr. W. W. Council</u> | Jail Phys. |
| <u>George W. Sundberg</u> | Assoc. Press |
| <u>W. C. Owsby</u> | Witness |
| <u>Al Anderson</u> | United Press |
| <u>Lewie Gaffney</u> | Witness |
| <u>George B. Crisp</u> | Witness |
| <u>Edward J. Vollett</u> | Physician |
| <u>Harry T. Holland</u> | Witness |
| <u>Walter L. Helms</u> | Deputy U.S. Marshal |
| <u>Wm. A. Mathews</u> | U.S. Marshal |

Jail house where Nelson Charles was hanged. Document signed by witnesses is superimposed.

An BJS Report

Capital Punishment, 1994

During 1994, 13 states executed 31 prisoners: 14 in Texas; 5 in Arkansas; 2 in Virginia; and 1 each in Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Maryland, Nebraska, North Carolina, and Washington. All were men. Eighteen of the executed prisoners were non-Hispanic whites; 10 were non-Hispanic blacks; 1, a white Hispanic; 1, white—Hispanic ethnicity undetermined; and 1, black—Hispanic ethnicity undetermined. Twenty-three of the executions were carried out by lethal injection, 6 by electrocution, 1 by lethal gas, and 1 by hanging.

From January 1, 1977, to December 31, 1994, a total of 4,557 persons entered state and federal prisons under sentences of death, among whom 51 per cent were white, 40 per cent were black, 7 per cent were Hispanic, and 2 per cent were of other races.

During this 18-year period, a total of 257 executions took place in 24 States. Of the inmates executed, 140 were white, 98 were black, 17 were Hispanic, and 2 were Native American.

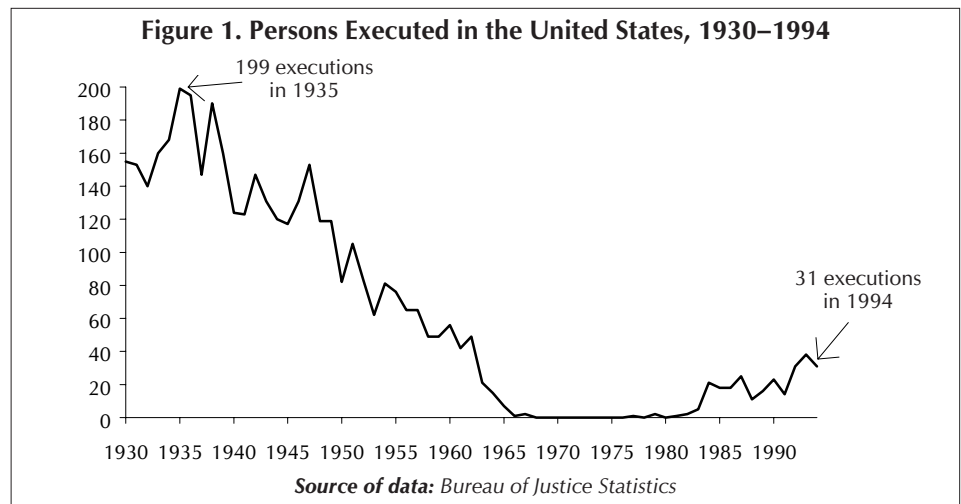
Also during 1977-94, 1,790 prisoners were removed from a death sentence as a result of dispositions other than execution (resentencing, retrial, commutation, or death while awaiting execution). Of all persons removed from under a death sentence, 53 per cent were white, 41 per cent were black, 0.9 per cent were Native American, 0.4 per cent were Asian American, and 5 per cent were Hispanic.

Recent BJS Reports

In addition to the report summarized in the accompanying article, the following recent studies and reports from the Bureau of Justice Statistics are available from the Alaska Justice Statistical Analysis Unit:

"Contract Cases in Large Counties," an examination of the disposition of civil contract disputes based on a sample drawn from the state court jurisdictions of the country's 25 largest counties, NCJ-156664.

"Child Victimization: Violent Offenders and Their Victims," an examination of offenses against children, NCJ-158625.



Characteristics of prisoners under sentence of death

Thirty-four states and the federal prison system held a total of 2,890 prisoners under sentence of death on December 31, 1994, a gain of 161 or 5.9 per cent more than at the end of 1993. The federal prison system count remained steady at six during 1994. Three states reported 39 per cent of the nation's death row population: Texas (394), California (381), and Florida (342). Of the 38 jurisdictions with statutes authorizing the death penalty, New Hampshire and Wyoming had no one under a capital sentence, and Connecticut, South Dakota, New Mexico, and Colorado had 4 or fewer.

Among the 34 states with prisoners under sentence of death at the end of 1994, 20 had more inmates than a year earlier, 6 had fewer inmates, and 8 had the same number. Texas had an increase of 28, followed by California (18), Florida (17), Alabama (15), Pennsylvania (14), North Carolina (12), and Ohio (11). Idaho had the largest decrease (2).

During 1994, the number of blacks under sentence of death increased by 86; the number of whites increased by 68; and the number of persons of other races (Native Americans and Asians or Pacific Islanders) increased by 7.

The number of Hispanics sentenced to death rose from 209 to 224 during 1994. Twenty-five Hispanics were received under sentence of death; 8 were removed from death row, and 1 was executed. Three-fourths of the Hispanics were incarcerated in 4 states: Texas (63), California (55), Florida (32), and Arizona (20).

During 1994, the number of women sentenced to be executed increased from 36 to

41. Five women were received under sentence of death, and none was removed from death row or executed. Women were under sentence of death in 14 states. Nearly half of all women on death row at the end of the year were in Alabama, California, Florida and Illinois.

Men were 98.6 per cent (2,849) of all prisoners under sentence of death. Whites predominated (56.9%); blacks comprised 41.4 per cent; and other races (1.7%) included 23 Native Americans, 17 Asian Americans, and 8 persons of unknown race. (Among those for whom ethnicity was known, 8.4 per cent were Hispanic.)

Among inmates under sentence of death on December 31, 1994, for whom information on education was available, about three-fourths had either completed high school (37.4%) or finished 9th, 10th, or 11th grade (37.1%). The percentage who had not gone beyond eighth grade (15.3%) was about 50 per cent larger than that of inmates who had attended some college (10.2%). The median level of education was the 12th grade.

Of inmates under a capital sentence and with reported marital status, nearly half had never married; somewhat more than a fourth were married when they were sentenced; and nearly a fourth were divorced, separated, or widowed.

Among all inmates under sentence of death, 44 per cent were age 30 to 39 on December 31, 1994, and 73 per cent were age 25 to 44. The median age was 35 years. Less than 1 per cent were younger than 20 and 3 per cent were age 55 or older. The youngest offender under sentence of death was age 17; the oldest was 79. More than half of all inmates under sentence of death at the end of 1994 were age 20 to 29 when they were arrested for their capital offense;

11 per cent were age 19 or younger; and less than 1 per cent were age 55 or older.

Entries and Removals under the Death Sentence, 1977-1994

From 1977, the year after the Supreme Court upheld the constitutionality of revised state capital punishment laws, to 1994, a total of 4,557 persons entered prison under sentence of death. During these 18 years, 257 persons were executed, and 1,790 were removed from under a death sentence by

appellate court decisions and reviews, commutations, or death. (An individual may have received and been removed from under a sentence of death more than once).

Among individuals who received a death sentence between 1977 and 1994, 2,336 (51%) were white, 1,838 (40%) were black, 316 (7%) were Hispanic, and 67 (2%) were of other races. The distribution by race and Hispanic origin of the 1,790 inmates who were removed from death row between 1977 and 1994 was as follows: 940 whites (53%), 735 blacks (41%), 90 Hispanics (5%), and

25 persons of other races (1%). Of the 257 who were executed, 140 (54%) were white, 98 (38%) were black, 17 (7%) were Hispanic, and 2 (1%) were other races.

The preceding article was derived from Bureau of Justice Statistics report "Capital Punishment 1994," NCJ-158023. Copies of the entire report may be obtained from the Alaska Justice Statistical Analysis Unit or on the World Wide Web from the National Criminal Justice Reference Service (NCJRS) at <http://www.ncjrs.org/>.

Table 1. Prisoners Under Sentence of Death, by Region, State, and Race, 1993-1994

| | Prisoners under sentence of death, 12/31/93 | | | Received under sentence of death | | | Removed from death row (excluding execution) ^a | | | Execution | | | Prisoners under sentence of death, 12/31/94 | | |
|----------------------------|---|--------------------|--------------------|----------------------------------|--------------------|--------------------|---|--------------------|--------------------|--------------------|--------------------|--------------------|---|--------------------|--------------------|
| | White ^b | Black ^b | Total ^c | White ^b | Black ^b | Total ^c | White ^b | Black ^b | Total ^c | White ^b | Black ^b | Total ^c | White ^b | Black ^b | Total ^c |
| United States total | 1,577 | 1,111 | 2,729 | 160 | 136 | 304 | 72 | 39 | 112 | 20 | 11 | 31 | 1,645 | 1,197 | 2,890 |
| Federal ^d | 3 | 3 | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 3 | 6 |
| State | 1,574 | 1,108 | 2,723 | 160 | 136 | 304 | 72 | 39 | 112 | 20 | 11 | 31 | 1,642 | 1,194 | 2,884 |
| Northeast | 68 | 107 | 180 | 7 | 15 | 24 | 3 | 6 | 9 | 0 | 0 | 0 | 72 | 116 | 195 |
| Connecticut | 3 | 2 | 5 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 2 | 2 | 4 |
| New Hampshire | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | 4 | 3 | 7 | 0 | 3 | 3 | 0 | 1 | 1 | 0 | 0 | 0 | 4 | 5 | 9 |
| Pennsylvania | 61 | 102 | 168 | 7 | 12 | 21 | 2 | 5 | 7 | 0 | 0 | 0 | 66 | 109 | 182 |
| Midwest | 207 | 211 | 420 | 19 | 17 | 36 | 8 | 3 | 11 | 1 | 2 | 3 | 217 | 223 | 442 |
| Illinois | 57 | 94 | 151 | 5 | 6 | 11 | 4 | 2 | 6 | 1 | 0 | 1 | 57 | 98 | 155 |
| Indiana | 31 | 16 | 47 | 1 | 1 | 2 | 1 | 0 | 1 | 0 | 1 | 1 | 31 | 16 | 47 |
| Missouri | 47 | 33 | 80 | 5 | 4 | 9 | 1 | 0 | 1 | 0 | 0 | 0 | 51 | 37 | 88 |
| Nebraska | 7 | 3 | 11 | 1 | 0 | 1 | 1 | 0 | 1 | 0 | 1 | 1 | 7 | 2 | 10 |
| Ohio | 63 | 65 | 129 | 7 | 6 | 13 | 1 | 1 | 2 | 0 | 0 | 0 | 69 | 70 | 140 |
| South Dakota | 2 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 2 |
| South | 882 | 610 | 1,512 | 103 | 89 | 195 | 46 | 24 | 71 | 17 | 9 | 26 | 922 | 666 | 1,610 |
| Alabama | 64 | 54 | 120 | 13 | 11 | 24 | 3 | 6 | 9 | 0 | 0 | 0 | 74 | 59 | 135 |
| Arkansas | 20 | 13 | 33 | 5 | 3 | 8 | 0 | 0 | 0 | 4 | 1 | 5 | 21 | 15 | 36 |
| Delaware | 7 | 8 | 15 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 7 | 7 | 14 |
| Florida | 208 | 117 | 325 | 23 | 16 | 39 | 16 | 5 | 21 | 1 | 0 | 1 | 214 | 128 | 342 |
| Georgia | 48 | 48 | 96 | 6 | 0 | 6 | 1 | 4 | 5 | 0 | 1 | 1 | 53 | 43 | 96 |
| Kentucky | 22 | 7 | 29 | 4 | 0 | 4 | 3 | 1 | 4 | 0 | 0 | 0 | 23 | 6 | 29 |
| Louisiana | 14 | 29 | 43 | 3 | 3 | 6 | 1 | 1 | 2 | 0 | 0 | 0 | 16 | 31 | 47 |
| Maryland | 3 | 11 | 14 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 2 | 11 | 13 |
| Mississippi | 20 | 30 | 50 | 2 | 3 | 5 | 2 | 3 | 5 | 0 | 0 | 0 | 20 | 30 | 50 |
| North Carolina | 55 | 42 | 99 | 11 | 15 | 27 | 10 | 3 | 14 | 1 | 0 | 1 | 55 | 54 | 111 |
| Oklahoma | 80 | 33 | 122 | 4 | 7 | 12 | 5 | 0 | 5 | 0 | 0 | 0 | 79 | 40 | 129 |
| South Carolina | 28 | 24 | 52 | 3 | 4 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 31 | 28 | 59 |
| Tennessee | 67 | 30 | 99 | 2 | 2 | 4 | 3 | 0 | 3 | 0 | 0 | 0 | 66 | 32 | 100 |
| Texas | 221 | 140 | 366 | 25 | 17 | 43 | 1 | 0 | 1 | 10 | 4 | 14 | 235 | 153 | 394 |
| Virginia | 25 | 24 | 49 | 2 | 8 | 10 | 1 | 1 | 2 | 0 | 2 | 2 | 26 | 29 | 55 |
| West | 417 | 180 | 611 | 31 | 15 | 49 | 15 | 6 | 21 | 2 | 0 | 2 | 431 | 189 | 637 |
| Arizona | 100 | 14 | 117 | 5 | 2 | 10 | 5 | 1 | 6 | 0 | 0 | 0 | 100 | 15 | 121 |
| California | 217 | 138 | 363 | 11 | 11 | 22 | 2 | 2 | 4 | 0 | 0 | 0 | 226 | 147 | 381 |
| Colorado | 3 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 3 |
| Idaho | 21 | 0 | 21 | 0 | 0 | 0 | 1 | 0 | 1 | 1 | 0 | 1 | 19 | 0 | 19 |
| Montana | 6 | 0 | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | 0 | 8 |
| Nevada | 41 | 23 | 64 | 7 | 1 | 8 | 3 | 3 | 6 | 0 | 0 | 0 | 45 | 21 | 66 |
| New Mexico | 1 | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 2 |
| Oregon | 12 | 0 | 13 | 5 | 1 | 6 | 2 | 0 | 2 | 0 | 0 | 0 | 15 | 1 | 17 |
| Utah | 9 | 2 | 11 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 8 | 2 | 10 |
| Washington | 7 | 3 | 10 | 2 | 0 | 2 | 1 | 0 | 1 | 1 | 0 | 1 | 7 | 3 | 10 |
| Wyoming | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

Note: States not listed and the District of Columbia did not authorize the death penalty as of 12/31/93. Some figures shown for the end of 1993 are revised from those reported in Capital Punishment 1993 (NCJ-150042). The revised figures include 27 inmates who were either reported late to the National Prisoner Statistics Program or were not in custody of state correctional authorities on 12/31/93 (12 in Texas; 5 in Arizona; 3 in Florida; 2 each in Georgia and Illinois; and 1 each in California, North Carolina, and Tennessee), and exclude 19 inmates who were relieved of the death sentence on or before 12/31/93 (3 each in Illinois and Texas; 2 each in Florida, Georgia, and Louisiana; and 1 each in California, Idaho, Kentucky, Maryland, Nevada, North Carolina, and South Carolina).

- a. Includes 8 deaths from natural causes (3 in Florida, 2 in Arizona, and 1 each in California, Illinois, and Pennsylvania), 3 suicides (1 each in Alabama, California, and Florida), and 1 inmate shot to death by a correctional officer (California).
- b. White and black inmates in this table include Hispanics.
- c. Totals include persons of other races.
- d. Excludes persons held under Armed Forces jurisdiction with a military death sentence for murder.

Source: Bureau of Justice Statistics

An NIJ Report

Alternative Sanctions in Germany

In the years preceding its political reunification, Germany experienced benefits brought about by the gradual judicial adoption of alternative sanctions. From about midcentury, the emphasis on imprisonment, or, in the case of youthful offenders, *jungendarrest* (a short-term incarceration lasting from 2 days to 4 weeks), gave way to alternative measures: suspensions, probation, community service, and a system of day-fines instituted in the 1970s. Between 1982 and 1990, incarceration of juveniles decreased more than 50 per cent—from 9,500 to 4,500 cases; during the same period, adult imprisonment dropped from 39,000 to 33,000.

Research in Germany indicates that youthful offenders sent to prison had higher rates of recidivism than those given alternative sanctions. Removing youths from society—even when incarceration included job training—appeared to negatively affect their ability to find employment when released. Among youths who received alternative sentences, rates of recidivism were affected by judges' and social workers' attitudes and communication abilities. Low recidivism rates were positively correlated with officials' beliefs in their clients' rehabilitation and their ability to communicate supportively with offenders.

Effects of imprisonment

Studies conducted by the Criminological Research Institute of Lower Saxony explored individual and regional disparities in sentencing and sought to determine the effects of sentencing practices on offending patterns and career criminality. Results showed that the number of offenders per 100,000 inhabitants increased by 7 per cent in regions where imprisonment was the sentencing norm and decreased by 13 per cent in regions that opted for alternative sentencing. Although unable to establish a cause and effect relationship, researchers also found a correlation between the decline in imprisonment of young offenders over a 4-year period and a significant drop in cases of burglary—a crime viewed as a barometer of societal violence, typically committed by those well along in their criminal careers.

In another study, researchers looked at what happened to young offenders imprisoned in the 1970s. Although prison combined with job training was thought to be a promising rehabilitation, the recidivism rate for young offenders in the early 1980s was

between 70 and 80 per cent. Although only about 40 per cent were unemployed when they committed the offenses that resulted in incarceration, within 3 months of release, offenders' unemployment rate was 60 per cent. In spite of intensive job training and good intentions, prisons were believed to destroy post-release opportunities for normal living.

In another study, interviews with juveniles found that the strongest deterrents to crime for most youths were fear of being caught by the police and the negative reactions of parents and society. Fear of punishment was not mentioned by these youths as a factor militating against criminal behavior.

These findings suggest that when youths are imprisoned for offenses, they are more likely to later embrace criminality than are young people given alternative sanctions. As a result of these studies, judges began to avoid giving prison sentences to the extent possible.

The role of the judiciary

In Germany, judges have lifetime appointments and are the sole arbiters in the disposition of cases involving youthful offenders between the ages of 18 and 20. These offenders may be dealt with under adult or juvenile law, but most judges prefer the latter because it offers multiple options and wider sentencing discretion. For example, under juvenile law, a judge has the latitude to issue a community service order to a youth convicted of homicide, if mitigating circumstances are found.

After reviewing some 2,000 case dispositions, researchers assigned judges to one of two groups: "authoritarian" judges and "liberal" judges who were deemed more communicative, more positive in their expectations of offenders, and milder in their sentencing approach. Social workers who were responsible for monitoring community service sentences were similarly categorized. The rates at which offenders disobeyed judicial orders were analyzed according to the type of judge and social worker involved in their cases:

- In cases where both the judge and social worker were liberal, offender disobedience was 6.5 per cent.
- In cases where the judge was liberal and the social worker was authoritarian, offender disobedience was 11.3 per cent.
- In cases where the judge was authoritarian

and the social worker was liberal, offender disobedience was 14.4 per cent.

- In cases where both the judge and social worker were authoritarian, offender disobedience was 27.3 per cent.

Social workers were also asked to predict outcomes for their clients before they began serving their sentences: liberal social workers had positive expectations, while the authoritarian types predicted failure. In general, offenders' behavior correlated with social workers' attitudes. Recidivism rates were similarly affected; for example, of 426 cases reviewed in which the offender was under the age of 20, sentencing by liberal and authoritarian judges resulted respectively in 23.9 and 33.5 per cent recidivism.

After Munich's judiciary was informed of these research findings, the judges engaged a psychologist to observe and analyze their on-the-job attitudes, behavior, and demeanor. Some judges modified their behavior, while others switched from criminal to civil law. Subsequent widespread dissemination and publication of these research results effected further change in Germany's sentencing policies and practices. A close collaboration among community groups, social workers, police, prosecutors, churches, academia, and the judiciary produced alternative programs—often financed through fines imposed on offenders—that emphasized a holistic approach to corrections and productive social worker/client relationships.

Other research findings reveal that, contrary to supposition, the increased presence of females within the legal and criminal justice professions had no impact on the decarceration movement. The first women entering these arenas were as punishment-oriented as men. However, further research has shown that female law students (now numbering around 50 per cent of the class) are generally less punitive than their male counterparts. As the proportion of female to male practitioners grows, imprisonment rates may be affected.

Future research

German researchers are planning investigations into several areas of criminal justice, including victim surveys to uncover pockets of unreported crime, such as family violence and protection rackets; prisoner studies, with scheduled follow-up, to gain insight into the prison experience and learn how agencies formed to help ex-prisoners

are functioning; police surveys to explore how officers handle and define crime; and analyses of data from blind questionnaires on police violence.

The German system of criminal justice, characterized by judicial immunity to politics and close relationships between criminologists, judges, and prosecutors permits objective investigations into criminal justice problems and practices. It also permits criminal justice professionals to affect public

policy. For example, when politicians wanted to change the law to increase mandatory imprisonment of juveniles, 153 German judges and prosecutors publicly objected to the change on the bases of their experiences and research findings.

This article is based on a presentation made as part of the National Institute of Justice's Research in Progress Seminar Series by Christian Pfeiffer, Director of the

Kriminologisches Forschungsinstitut Niedersachsen and president of Germany's Juvenile Court Judges organization. Copies of the entire document, "Alternative Sanctions in Germany: An Overview of Germany's Sentencing Policies," may be obtained from the Alaska Justice Statistical Analysis Unit or on the World Wide Web from the National Criminal Justice Reference Service (NCJRS) at <http://www.ncjrs.org/>.

Public Safety: Shared Responsibility

The responses made by Alaska village residents to a survey on public safety and law enforcement reveal, either directly or implicitly, a widespread sense that issues of public safety, including policing, are best approached with as much local participation as possible. Overall, village residents view the responsibility for control of crime and certain other community safety concerns as shared between the Alaska State Troopers and local entities, such as Village Police Officers, Village Public Safety Officers, and village, IRA and traditional councils. Questions concerning the quality of life in the villages reveal that a general satisfaction with community life coexists with an articulated understanding of social problems.

The survey, which was conducted on-site, examined local attitudes toward public safety in villages throughout the state. One hundred and seventy-five residents from 28 villages were interviewed. Table 1 presents the villages surveyed by regional corporation. (A previous *Forum* article, "Village Alaska: Community Characteristics and Public Safety," (Winter 1996), discussed the demographics and governing structures of the communities surveyed and presented information on the design of the survey.)

Several of the village survey questions concerned quality of life perceptions: In this community, do you generally feel safe from harm? Overall, do you like living here or would you prefer to live somewhere else? Do you think that this community is a good place to raise children? The responses to these questions and others reveal widespread satisfaction with the interviewees' communities as places to live. Over 90 per cent of those interviewed felt safe from harm in their individual communities. In addition, over half felt that their communities were at least as safe as when they were children and that local crime had decreased or stayed the same over the last five years. A strong majority—85 per cent—felt their communities were good places to raise children. Comments explaining this

| | Total population | | Total population |
|------------------------------------|------------------|----------------------------------|------------------|
| Ahtna Inc. | | Cook Inlet Regional Corp. | |
| Copper Center | 449 | Chickaloon | 145 |
| Aleut Corp. | | Tyonek | 154 |
| Nelson Lagoon | 83 | Doyon Ltd. | |
| Bering Straits Native Corp. | | Ft. Yukon | 580 |
| Stebbins | 400 | Shageluk | 139 |
| White Mountain | 180 | Tanacross | 106 |
| Bristol Bay Native Corp. | | Venetie | 182 |
| New Stuyahok | 391 | Koniag Inc. | |
| Togiak | 613 | Karluk | 71 |
| Calista Corp. | | Port Lions | 222 |
| Akiachak | 481 | NANA Regional Corp. | |
| Chuathbaluk | 97 | Noatak | 333 |
| Eek | 254 | Noorvik | 531 |
| Lower Kalskag | 291 | Selawik | 596 |
| Napakiak | 318 | Shungnak | 223 |
| Quinhagak | 501 | Sealaska Corp. | |
| Tuntutuliak | 300 | Hydaburg | 384 |
| Chugach Alaska Corp. | | Klawock | 722 |
| Port Graham | 166 | | |

Source of data: Alaska Department of Community and Regional Affairs; based on 1990 census data.

satisfaction varied but often reflected traditional ties to family and place:

I love living here. Everything is wonderful—the people, subsistence, the area, most of my family is here.

It's good for the children because everyone knows everyone and if someone sees a kid that might be getting hurt, they help.

Yes, good for kids for hunting and Native lifestyle: elders teach kids how to cut fish and the schools teach hunting. It's not good because of no sewer and water and sickness—but they're getting it now.

Because I live and grow up here. Good—subsistence for us all year round.

Freedom to go out in woods—choices of how to lead life.

This is a strange question. It's where I come from—it's beautiful.

Other questions sought information about specific community problems: Considering all of the things that affect people in rural Alaska, what do you feel is the most serious problem facing people living in your community? How much of the crime in this community do you feel is caused by alcohol? By illegal drugs? The responses to these questions reveal that the social problems associated with alcohol and illegal drugs are viewed as serious by residents from all the villages surveyed. Over 75 per cent of those interviewed identified alcohol, illegal drugs, or both, as the most serious community problem. Moreover, the explanatory comments provided by the interviewees indicate that when residents do not

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feel safe in their villages, their concerns are often associated with excessive consumption of alcohol and the presence of firearms:

When the town is sober—it's very safe. When it's drunk—it's not safe. People get drunk or high with firearms and no one is willing or capable of intervening.

. . . some people get violent when they get drunk. . . .

Sometimes—I don't feel safe because of firearms and booze.

Over half of the respondents—57 per cent—felt that almost all crime in their community was caused by alcohol.

However, although residents in all regions cited alcohol as a serious community problem, they gave differing responses when questioned about other possible problems. Communities in relatively close proximity often exhibited very different concerns. Table 2 presents data on the specific problems residents were asked to evaluate.

When questioned about responsibility for public safety and community problems, interviewees expressed, in several ways, that such problems are best handled with as much local involvement as possible.

Tables 3, 4, and 5 present some of the questions and responses indicative of this attitude. For example, almost 37 per cent of the respondents indicated village police or public safety officers should play a lead role in controlling crime, while less than 17 per cent believed the lead should be the responsibility of the Alaska State Troopers (Table 3).

To help with the most commonly cited community problems—alcohol and drug abuse—respondents in general believed local institutions—the family, elders, schools, the village council—would be most effective (Table 4).

The emphasis on local responsibility did not indicate a disregard for state structure—either laws or agencies. The repeatedly expressed sense that community problems are best comprehended and addressed from local perspectives coexists with recognition and respect for the role of the Alaska State Troopers, particularly in dealing with serious crime. Respondents were asked specifically: What do you expect the Alaska State Troopers to do for your community? The following comments are typical of the responses:

Provide technical and logistical support. Work with tribal government to interpret laws and what to do.

Solve major crime problems. Be good if they are working with us but have to know our jurisdiction and know their jurisdiction.

Table 2. Problems in the Community

Now, I will read you a list of problems that may or may not occur here. For each problem I read, please tell me if it is not a problem, a small problem, a medium-sized problem, or a large problem here.

| | Number of respondents | Per cent | | Number of respondents | Per cent |
|-----------------------------|-----------------------|----------|----------------|-----------------------|----------|
| Burglary | | | | | |
| Not a problem | 30 | 17.2% | Not a problem | 58 | 33.7% |
| Small problem | 66 | 37.9 | Small problem | 23 | 13.4 |
| Medium problem | 47 | 27.0 | Medium problem | 24 | 14.0 |
| Large problem | 26 | 14.9 | Large problem | 53 | 30.8 |
| Don't know | 5 | 2.9 | Don't know | 14 | 8.1 |
| Total | 174 | | Total | 172 | |
| Property destruction | | | | | |
| Not a problem | 38 | 21.7% | Not a problem | 23 | 13.1% |
| Small problem | 58 | 33.1 | Small problem | 44 | 25.1 |
| Medium problem | 48 | 27.4 | Medium problem | 64 | 36.6 |
| Large problem | 24 | 13.7 | Large problem | 31 | 17.7 |
| Don't know | 7 | 4.0 | Don't know | 13 | 7.4 |
| Total | 175 | | Total | 175 | |
| Vehicle theft | | | | | |
| Not a problem | 85 | 48.9% | Not a problem | 32 | 18.4% |
| Small problem | 57 | 32.8 | Small problem | 62 | 35.6 |
| Medium problem | 17 | 9.8 | Medium problem | 51 | 29.3 |
| Large problem | 10 | 5.7 | Large problem | 23 | 13.2 |
| Don't know | 5 | 2.9 | Don't know | 6 | 3.4 |
| Total | 174 | | Total | 174 | |
| Juvenile crime | | | | | |
| Not a problem | 26 | 14.9% | Not a problem | 38 | 21.7% |
| Small problem | 51 | 29.1 | Small problem | 68 | 38.9 |
| Medium problem | 50 | 28.6 | Medium problem | 32 | 18.3 |
| Large problem | 42 | 24.0 | Large problem | 21 | 12.0 |
| Don't know | 6 | 3.4 | Don't know | 16 | 9.1 |
| Total | 175 | | Total | 175 | |
| Illegal drug use | | | | | |
| Not a problem | 12 | 6.9% | Not a problem | 34 | 19.4% |
| Small problem | 31 | 17.9 | Small problem | 55 | 31.4 |
| Medium problem | 54 | 31.2 | Medium problem | 39 | 22.3 |
| Large problem | 63 | 36.4 | Large problem | 21 | 12.0 |
| Don't know | 13 | 7.5 | Don't know | 26 | 14.9 |
| Total | 173 | | Total | 175 | |
| Selling drugs | | | | | |
| Not a problem | 26 | 15.0% | Not a problem | 32 | 18.3% |
| Small problem | 31 | 17.9 | Small problem | 55 | 31.4 |
| Medium problem | 35 | 20.2 | Medium problem | 45 | 25.7 |
| Large problem | 59 | 34.1 | Large problem | 24 | 13.7 |
| Don't know | 22 | 12.7 | Don't know | 19 | 10.9 |
| Total | 173 | | Total | 175 | |
| Alcohol abuse | | | | | |
| Not a problem | 3 | 1.7% | Not a problem | 88 | 50.3% |
| Small problem | 16 | 9.1 | Small problem | 44 | 25.1 |
| Medium problem | 43 | 24.6 | Medium problem | 16 | 9.1 |
| Large problem | 111 | 63.4 | Large problem | 8 | 4.6 |
| Don't know | 2 | 1.1 | Don't know | 19 | 10.9 |
| Total | 175 | | Total | 175 | |
| Homebrew alcohol | | | | | |
| Not a problem | 80 | 46.0% | | | |
| Small problem | 33 | 19.0 | | | |
| Medium problem | 14 | 8.0 | | | |
| Large problem | 22 | 12.6 | | | |
| Don't know | 25 | 14.4 | | | |
| Total | 174 | | | | |

Come around more, not just when something happens.

Participate. Come by once monthly to show the kids they aren't all bad.

In comments made about the role of the Alaska State Troopers several major themes can be perceived: villagers see a need for better communication between the village and the troopers; residents would prefer troopers to be present in the villages more often; they would like troopers to develop greater understanding of local customs and characteristics; and they would like troopers and local authorities to work together more closely. Respondents indicated particular appreciation for those troopers who had made efforts to become acquainted with a village by making other than routine visits and by attending community functions.

Although survey questions focused primarily on public safety issues—and hence, policing efforts—many respondents also expressed concerns about inadequate communications between other state institutions, such as the courts and corrections, and village authorities. One interviewee expressed a wish that state authorities would “send

representatives out to rural areas to see what is happening before they decide their fate for them.”

The sense of a shared responsibility is also illustrated by interviewees’ responses when questioned on how those who commit crimes in the village should be handled. The following comments are typical:

Depends on the crime. 1. Misdemeanors—arrests and community work service. 2. Felony—to Alaska State Troopers.

They first should be handled by village and if the village can't handle it, refer it to the state.

If the crimes aren't serious—pay and do community work. For serious crimes, call the troopers.

Arrest—stealing with gun; murder, etc. Community work—break-ins; vandalism; stealing without guns.

Misdemeanors should be handled locally. Also youth problems like drinking. We should be allowed to establish tribal courts.

Start with the community; serious crimes and people who do things over and over should have to go to Alaska State Troopers.

Respondents consistently suggested work service and restitution as preferred approaches in dealing with offenders, particularly those committing less serious offenses, with incarceration viewed as an ultimate punishment.

As described in the previous *Forum* article also based on this study, “Village Alaska: Community Characteristics and Public Safety,” many of the villages surveyed have established individualized local mechanisms, sometimes extralegal, for handling some problems of social control. The use of such practices follows consistently from the expressed preferences discerned by

Table 4. Groups Helpful in Stopping Drug and Alcohol Abuse

Which of the following groups do you think can do the most to help in stopping drug and alcohol abuse?

| | Number of respondents | Per cent |
|------------------------|-----------------------|----------|
| Family | 103 | 15.1% |
| Schools and teachers | 100 | 14.7 |
| Elders | 81 | 11.9 |
| Village council | 72 | 10.6 |
| Treatment centers | 59 | 8.7 |
| Village police | 56 | 8.2 |
| Tribal courts | 55 | 8.1 |
| Alaska State Troopers | 43 | 6.3 |
| Churches | 43 | 6.3 |
| Community watch groups | 31 | 4.6 |
| State courts | 12 | 1.8 |
| Businesses | 7 | 1.0 |
| Other | 18 | 2.6 |
| Total | 680 | |

Note: A total of 174 interviewees responded to this question; multiple responses were permitted.

this survey for community leadership with regard to social problems.

The village survey was part of a larger project conducted for the Department of Public Safety under a grant from the Office of Justice Programs, U.S. Department of Justice. The report on which this article is based, *Public Safety and Policing in Alaska Native Villages*, is available from the Justice Center. The report includes quantitative summaries of responses to the survey as well as a transcript of individual comments.

Table 3. Responsibility for Control of Crime and Community Problems

Who do you think should handle most of the crimes and community problems in this village?

| | Number of respondents | Per cent |
|-------------------------------|-----------------------|----------|
| Village Police | 45 | 14.1% |
| Village Public Safety Officer | 73 | 22.8 |
| State Troopers | 54 | 16.9 |
| IRA council | 38 | 11.9 |
| Village council | 28 | 8.8 |
| Traditional council | 35 | 10.9 |
| City council | 23 | 7.2 |
| Someone else | 24 | 7.5 |
| Total | 320 | |

Note: A total of 173 interviewees responded to this question; multiple responses were permitted.

Table 5. Community Involvement

Do you think the people in your community should have more, the same or less involvement in dealing with village public safety problems?

| | Number of respondents | Per cent |
|------------------|-----------------------|----------|
| Less | 3 | 1.7% |
| Same involvement | 30 | 17.4 |
| More | 135 | 78.5 |
| Don't know | 4 | 2.3 |
| Total | 172 | |

Justice Center Web Sites Move

As part of changes on the University of Alaska Anchorage computer system, the Justice Center web site has moved to a new address:

<http://www.uaa.alaska.edu/just/>

The Justice Center web site is a one-stop guide to Alaska, national, and international justice and legal information available on the Internet. It also includes articles from past issues of the *Alaska Justice Forum* and information about Justice Center research and the Justice B.A. and Paralegal Certificate Programs. The Justice Center web site was recently named to the “Top 5% of all Web Sites” by Point Communications.

A companion site, “Introduction to American Justice,” designed by Justice Center faculty member Darryl Wood, is also moving to a new address:

<http://local.uaa.alaska.edu/~afds/w/justice.html>

Especially designed for students in Justice 110 “Introduction to Justice” classes, this site is an interactive primer for learning about the American justice system, with comprehensive class lecture notes and pointers to resources in all aspects of the Alaska and U.S. justice systems.

The old addresses for both sites will stop working in August 1996.

Nelson Charles (continued from page 1)

apparent race bias in the application of the death penalty.

The larger effort undertaken by this author, from which this article has been excerpted, focuses on the last three capital trials resulting in hangings in Alaska, which occurred in Juneau between 1939 and 1950. The history of the death penalty in Territorial Alaska raises numerous questions. Why was the death penalty so rarely applied? Is it simply coincidence that there were only single decades—the 1920s in Fairbanks and then 1939 through 1950 in Juneau—in which hangings occurred, or was this phenomenon related to social stresses, to a particular judge or prosecutor, or to other factors? Did race affect the application of the death penalty? At what stage or stages of the process of arrest, charge, trial, sentence, or post-conviction could race have been a factor? What impact did the death penalty have on the people who came into contact with it, whether as government employees or as persons connected with the murder victim or the man convicted of the murder? And finally, why was the death penalty, so rarely used, abolished?

Fully answering these questions is beyond the scope of this particular article, but they have contributed to its context. What follows is an account of the 1938 trial in Ketchikan of Nelson Charles and of his hanging in Juneau in 1939.

The Murder of Cecilia Johnson

The first man to be hanged in Juneau under the auspices of the Territorial Court was Nelson Charles; he was executed in 1939 as punishment for murdering his mother-in-law, Cecilia Johnson, in Ketchikan the previous year. Charles was a Native fisherman, the father of a young daughter, and a veteran of World War I. Newspaper and oral accounts suggest that he was not originally from Alaska, but rather from the Puget Sound area. Charles was known as a peaceful, easy-going man, except that when intoxicated he seemed to have a liquor-induced mania. At the time of his trial and execution Charles was 37 years old.

The murder of Cecilia Johnson occurred on September 4, 1938, on a hillside behind Tatsuda's Store (a grocery store which still exists). At the time that area of Ketchikan was known as "Indian Town," because it was largely populated by the non-white residents. Ketchikan was, in the 1930s, as racially divided as any small town in Georgia during the same period. Indians and Alaska

Natives were barred from white schools, white churches, and many white businesses. Segregated seating areas were enforced in the movie theater. When a Native family was served in a restaurant, it was not unusual for the proprietor to close the curtains so that white customers would not be discouraged from entering.

It was a common belief at the time of these events that Alaska Natives and other indigenous Americans were particularly susceptible to alcohol and that alcohol caused in them a severe reaction. However, this problem was not viewed with much interest or sympathy in some quarters, but rather was seen as an indicator of the inferiority of the Natives. In April 1938 the *Ketchikan Alaska Chronicle* published the following note titled "Firewater Trouble." It appears to have been derived from a nationally syndicated column:

Canada has asked Uncle Sam to please see that its Indian wards get no firewater when they come visiting on this side, but is doubtful if the request will get anywhere. The Indian bureau and state department favor complying, but the treasury and justice departments, who would have to do the nurse-maiding, can't see it at all. They have enough headaches as it is keeping the whoopee juice away from U.S. Indian wards.

Cecilia Johnson, aged 58, was Native. She and her husband were in Ketchikan along with their adult daughter, Rosie; Nelson Charles, Rosie's husband; and Nelson and Rosie's young daughter. The family, who was staying with friends in the area, seemed to be celebrating a successful fishing harvest. According to trial testimony, Cecilia Johnson had been steadily drinking whiskey on her husband's fishing boat for at least three days before her death. She was known to be a heavy drinker and was greatly affected by liquor. In the afternoon of September 4, 1938, Nelson Charles and Cecilia Johnson were seen going up the hill behind the store. Shortly after six o'clock that evening, Charles phoned the Ketchikan police from a public phone in the Barbecue, a restaurant near the Federal Building. He told the patrolman who answered the phone that he had stabbed his mother-in-law with a butcher knife and stated he would wait for them at the restaurant. When the police arrived, Charles took them up the hill to where Johnson's body was lying. She had been stabbed in the back and chest and had been sexually molested with an empty bottle. Charles said that his mother-in-law had been drinking and had said she was going to kill him; that she had tried to stab him with a butcher knife; and that he only stabbed her after this attack. Charles was arrested and taken to the federal jail. Funeral services were held for

| Persons Executed in Alaska | | | |
|--|-----------|---------------------|---------|
| Year | City | Name | Race |
| 1902 | Nome | Fred Hardy | White |
| 1903 | Sitka | Homer Bird | White |
| 1921 | Fairbanks | Mailo Segura | Unknown |
| 1921 | Fairbanks | "John Doe" Hamilton | Native |
| 1929 | Fairbanks | Constantine Beaver | Native |
| 1939 | Juneau | Nelson Charles | Native |
| 1948 | Juneau | Austin Nelson | Black |
| 1950 | Juneau | Eugene LaMoore | Black |
| 1957 Death penalty abolished in Alaska | | | |
| 1959 Alaska statehood | | | |

Cecilia. Johnson at the Presbyterian Church three days later.

Charles spent six months in jail before a grand jury was impaneled. An indictment was issued against him on April 1, 1939. During that period, he had no lawyer. After the indictment Federal Territorial Judge George Alexander appointed Ketchikan attorney Adolph H. Ziegler to defend Charles on the first-degree murder charges; he gave him a week to prepare for trial. On April 11, 1939, jury selection for Charles' trial began.

The Trial

By the time of Nelson's trial, the defense attorney, Adolph Ziegler, had been practicing law for more than twenty years and was a prominent member of his community. He had been elected to a seat in the house of the Territorial Legislature in 1929, 1931, and 1935, and he served on the Territorial Board of Education for fourteen years. At or around the time of the Nelson Charles trial, Ziegler was mayor of Ketchikan, a position to which he had been elected in 1938. Although a Democrat, he was viewed as very conservative on social issues—and an unlikely champion for an Indian charged with murder.

The U.S. Attorney was Assistant District Attorney George W. Folta, also an experienced lawyer, who, like Ziegler, had never attended law school, but had learned the law through an apprenticeship. By the time of the Charles trial, Folta had been practicing law in the Territory for eleven years. He was known as a zealous and aggressive prosecutor. (Nine years later, Folta would be appointed to fill the single judicial appointment in the First Division of the Territory of Alaska, the seat then held by Judge Alexander, but of course neither Folta nor Alexander knew that in 1938.)

The jury assembled for the trial of Nelson Charles was all white. The government asserted that Charles had confessed to stabbing Johnson and that he had also sexually assaulted her with a bottle, either before or after she died. Joe Johnson, the husband of the victim, testified that his wife had been

drinking heavily for days before her death, and that “alcohol stayed in her system for a long time.” The trial of Nelson Charles took four days.

At closing argument, the prosecutor argued to the jury that it had to return a death verdict. He said that he had never before sought a death penalty, but that execution was necessary here. He told the jury that a sentence other than death might mean nothing more than a six or seven year jail term. He said that, if the jury returned a verdict without recommending capital punishment, it meant that capital punishment in Alaska was a dead letter in the law. Death was justified, argued the U.S. Attorney, not because Charles had intended to kill Cecilia Johnson—an argument that would have been hard to make under the circumstances of Charles’ profound intoxication at the time of the crime. Rather, he said, death was justified because the law permitted a capital murder conviction where a murder occurred during the commission or attempted commission of a rape, even without intent to kill.

According to the local newspaper account, Ziegler did not make the closing argument for the defense, but instead left it to his partner, W.B. King, to present the argument to the jury. If this account is correct, it is surprising, since there is no other evidence of King’s involvement in preparing or litigating the case. (Ziegler’s own lengthy memoir of his life at the bar contains no mention of his own work on this case.)

The jury was expressly instructed by the judge that the race of the defendant and of the victim should not be relevant to its verdict. The jury was also instructed to remember that the killing of an Indian “was as much of an offense as the killing of any one of you would have been.”

The case went to the jury at lunchtime on Friday, April 14, 1938. After four hours they returned a verdict, finding Charles guilty of first degree murder. The jury also decided that the penalty for the crime would be death.

Post-Conviction

The week after the trial, Ziegler filed a “Motion for New Trial.” He made several strong arguments, but the main challenge was based on a claim of newly discovered evidence. This evidence was the testimony of a retired U.S. Marshal, William H. Caswell, who lived in Ketchikan. In an affidavit, Caswell stated that he had known Charles for many years and that, “when not under the influence of liquor he is a quiet, peaceful and polite person and I have never known him to even have an argument or get into trouble of any kind.” He said that

Charles’s behavior and appearance were, however, transformed when he was intoxicated and that he had seen Charles in this state a few days before Johnson was killed:

I met him on the street in Ketchikan within a few days prior to [the date of the murder], that he was drunk at the time; that after he passed me on the street, close to the Federal Building in Ketchikan, Alaska, he turned around and hailed me and came up to me; that he was drunk and commenced crying and apologized to me for being intoxicated; that at said time he had the same bulging of the eyes and stare and had every appearance of an insane person; that from my experience with the man, my observation of his action and conduct when drunk I am convinced that intoxication produces a condition in his mind of insanity. . . .

Caswell stated that his experience in law enforcement had led him to conclude that some people when intoxicated had no idea what they were doing:

From my personal observation, and with the firm conviction and belief in my judgment, based on long experience with similar cases, that the defendant at the time of the commission of the crime charged against him was crazy drunk and entirely irresponsible for his conduct and actions.

Caswell also stated that he had approached Folta with this information on the last day of Charles’s trial, but, by the time he talked to Ziegler on that day, the case had already gone to the jury.

The post-verdict submission of Caswell’s affidavit raises troubling questions about Ziegler’s preparation for this case and about the court system practices of the time. As a senior, white, law-enforcement officer speaking so favorably about Charles, Caswell would probably have had a powerful effect on the all-white jury. His testimony might well have been the difference between a verdict for first or second degree murder or between a sentence for life and a sentence for death.

However, it appears certain from the court records and newspaper accounts that Ziegler did not undertake any significant investigation into the case against Charles. He was appointed only days before the case came to trial, at a time when he had to present not only this case to the visiting court, but also numerous other matters for other clients, both paying and indigent. When the federal judge came to town, lawyers had to work around the clock, preparing case after case, until the court left town for another six months. Small towns like Ketchikan had few lawyers, which meant that the burden of representing indigent defendants weighed heavily on each of them. The trial record suggests that Ziegler knew almost nothing about his client, or about the government’s case, at the start of the trial.

In the middle of the trial, he asked for a recess so that he could look for records from the coroner’s office, and he tried to obtain from Folta witness statements the government had received months before. Ziegler had not located even the most obvious evidence relating to his client. It is obvious he did not know about Caswell, either. Although Ziegler argued strongly against the government’s case, according to published accounts of the trial, he put forward not a single witness on Charles’ behalf, aside from the testimony of Charles himself.

Ziegler’s “Motion for a New Trial” was denied by Judge Alexander on April 29, 1939. On the same day, Nelson Charles was sentenced to “be hanged by the neck until he be dead, at Juneau, Alaska.”

Ziegler delayed the hanging by filing a “Notice of Appeal” in May 1939. But, according to the court file, he never wrote or submitted an appeal brief expanding on the points he raised. Money, or lack of money, probably accounted for his abandoning the appeal. In capital cases where indigents were convicted of first degree murder, it was rare that any appeal was ever filed, since there was no provision made for any free legal representation beyond trial, and the out-of-pocket costs that might be incurred were substantial, including the preparation of a transcript of the trial as well as the necessity of traveling by boat to California to argue the case to the Appeals Court.

As the date of execution grew closer, the Alaska Native Brotherhood, the most politically significant Native group in Southeast Alaska, petitioned President Franklin Roosevelt to commute Nelson’s sentence from death to life in prison. Such petitions filed by others on behalf of convicted white murderers sentenced to death had previously been successful. This petition focused on the fact that Charles was known as a fine man when sober and had never become intoxicated until after prohibition was repealed. The petition stated that Charles had enlisted for service in the First World War after lying about his age and that he had then fought in major battles in France. The petition was denied.

Preparation for the Hanging

While Charles was, without any legal assistance, attempting to avoid the scaffold, the U.S. Marshal’s office in Juneau was trying to figure out how to build a scaffold. Execution by hanging is not as simple a matter as it might at first appear to be. A “good” hanging is one in which the person executed dies quickly from a broken neck.

Please see Nelson Charles, page 10

Nelson Charles (continued from page 9)

To insure this result, a greased and stretched rope is used. If the rope is too elastic, the victim dropped from the scaffolding will fall, and then will be bounced upward (as happens, for example, in the sport of bungee jumping). A rough and abrasive rope will prevent the noose from sliding quickly downward around the victim's neck, possibly resulting in a loose "catch" at the bottom of the fall and a slow death by strangulation. Strangulation, taking a period of over 10 minutes, may also be caused if the noose is not properly placed to apply maximum pressure along the spine, or if the drop between the length of the rope and the open trapdoor in the scaffolding is inadequate. Too long a drop, however, may also interfere with the intended result, since the pressure of a long fall applied to the spinal column may result in decapitation. Avoiding decapitation requires evaluation of the victim's weight and strength.

The U.S. Marshal in Juneau, where the hanging was to occur, was William Mahoney. Because there had never been an execution in Juneau, Mahoney had never before had occasion to study the technology of hanging. The Office of the U.S. Marshal was on the daily beat of George Sundborg, then a young reporter on a local weekly called *The Juneau Independent*, and a stringer for the Associated Press. Sundborg recalls seeing the Marshal and his deputies pore through the manuals in order to learn their new duty:

Several weeks ahead of the date of the hanging, the Office of the U.S. Marshal was making preparations there for it. . . . They of course had never conducted a hanging, and I think they got a few books out of libraries somewhere, probably from the U.S. Marshal Service, to tell them how a hanging was to be set up and carried through. And I know that they had done some dry runs with the trap that they built, and had carefully calculated the weight of the victim—of the accused, so that he wouldn't be dropped so far as to behead him, which sometimes happens in a hanging, I learned at that time.

Like men on a firing squad, one of whom has a blank cartridge in his rifle, the Deputy Marshals were insulated from individual responsibility for the act of executing Nelson Charles. Sundborg explained:

And so Walter Hellan, who was in charge of all of this, had told me that so that the person who actually sprung the trap would not know that he had done it, they set up several, I think four, different ropes that would pull a pin that dropped the trap. And three of them would be false, and one would be the one that actually did it. And so the four men, all of whom were Deputy Marshals—the one who did it would not know that it was he who had pulled the one that actually caused this man's death.

(On the day after the hanging, Deputy Marshal Walter Hellan complained that Sundborg should not have published the names of the four deputies who held the strings, that revealing even that much responsibility was too much.)

The scaffold was constructed in a stairwell of the building which housed both the federal jail (men on the ground floor, women on the second) and the Marshal's residence (on the third floor). The building had at one time been the territorial capitol, and still displayed its initial purpose with a colonnaded entrance and a small, latinate cupola at its peak. Instead of building a gallows, the Marshal decided to make use of the architecture of the building itself. Sundborg described the federal jail and the plan worked out by Mahoney:

It was a large building which previously had been the capitol. And it was a wooden building but very large, and quite attractive. But it had grown old and it had been supplanted by the federal building, which was across the street from it. It had outside stairways, that is, one was out in the open when going from the second floor to the third floor, and so on. And [the Marshal's office] had decided that they would do the hanging under one of these stairways because there was an open space there with quite a drop. And so we went in and they had set up a floor in the place with a trap in the middle of it.

The plan was to permit a drop of four and one-half feet below the level of the trapdoor. Construction of the scaffold was started the day before the hanging.

Charles faced his imminent death calmly. According to the local newspaper, Charles left behind thirteen letters of farewell. One, addressed to Marshal Mahoney, stated that the Marshal "had treated him kindly and that he did not hold Mahoney in any way to blame for what was about to happen to him." Whether or not Charles himself was fully literate is not clear: the newspaper reports that he had written the numerous letters, but that his last two letters were dictated by him to Salvation Army Captain Stanley Jackson "as he waited the last hour." The paper also reported on Charles' condition on the night before his death, almost as if to reassure the public about a hospital patient recovering from some serious illness: "Nelson Charles was calm throughout the night, jailers said, and ate a hearty breakfast. He slept about an hour and a half."

Federal law required that the execution be witnessed by at least twelve people. The Marshal had approached this issue with surprising solemnity. The witnesses selected received printed invitations, which, according to George Sundborg, looked almost like engraved wedding invitations, printed on blue paper tickets. The invitations were sought after. Al Anderson, a writer for the

Alaska Daily Press and a stringer for the United Press Service, received an invitation from Mahoney. More than fifty years later, he still remembered with astonishment the extent to which others envied him for it.

Consistent with traditional execution protocol, Marshal Mahoney invited a number of journalists to witness the hanging. These included George Sundborg, Al Anderson, and John Gaffney, a young reporter who worked for Anderson. The others included a Catholic priest, a Salvation Army minister, Marshal Mahoney, two of his deputies, and two doctors, who were retained to confirm the death of Nelson Charles. Three other witnesses were apparently unrelated either to law enforcement or to the press; they included an employee of the Internal Revenue Service, a well-known criminal defense attorney, and another, unidentified, man.

The best account of the hanging of Nelson Charles was written by John Gaffney, the young reporter who worked with Al Anderson. Gaffney wrote the account, not for the newspaper, but in a private essay shortly afterwards, an essay which he kept for more than 50 years.

Gaffney and Anderson walked from the newspaper office up to the federal jail, careful to arrive before the 8:30 a.m. deadline. They handed over their blue tickets at the gate of the jail yard and entered the ground floor entrance of the old building. Each witness was required to sign three forms, which were laid on a table near the door. The group of witnesses milled around until one of the doctors, who was late, was telephoned.

Once the doctor arrived, all of the witnesses were taken outside again and walked single file around to the side of the building, where the trapdoor had been placed under the large staircase that led from the ground up to the second floor. A second set of stairs descended to the basement level. A rope had been hung from the bottom of the second floor landing to the trapdoor structure that had been built over the excavated area into which the lower stair descended. Two small benches had been placed on the wooden platform, ten feet from the trapdoor that would open into the pit below. Gaffney described what he saw:

Directly in front of the first bench there ahead of me was a wire screening, not fine wire, but wire with holes big enough for eggs to go through, big enough so that if you didn't think about the wire you forgot it was there. In front of us was a pit about fifteen feet deep, formed by the stairway and the basement. The floor of the basement was of concrete; the concrete was black looking and wet. Then, opposite us, across the pit, was a little platform; about twelve feet by five feet; in the center of the platform was the trap.

The rope was attached to a wide plank which had been nailed firmly to the side wall of the building. A door opened from the building onto the platform.

The witnesses seated themselves on the benches. From nearby came a loud sound of regular dripping, either melting snow or water in pipes. The Marshal came out the door and told everyone to refrain from talking once Nelson Charles came out. Then he left. There were only a few further remarks from the witnesses assembled, waiting. Al Anderson recalls hearing someone say, "Jesus Christ, what a way to make a living." Gaffney wrote:

There were more sounds at the doorway. This would be it. First the marshal appeared, his arm holding someone else's arm, his body half-hiding another man. Then, slowly, so slowly, three of them were there; the marshal, a deputy, and between them, a man, a native, whom I had never seen before; he was the man. . . . He stood there, not more than fourteen or fifteen feet away, looking at us. He looked as we had expected, like the full-blooded native he was. He wore blue serge trousers, black shoes, a white shirt, and a dark tie, well knotted and in place.

Charles's arms and hands were bound tightly to his sides with white straps. As the witnesses watched, Mahoney took another strap and bound Charles's legs together. Gaffney wrote:

As he finished his task, he stepped back a little; is there anything you'd like to say, Nelson? he asked. We listened as we had never thought a man could listen, listened till our ears would burst, listened while we expected him to say nothing, but hoped he would; we expected a brief negative nod of the dark head. But he spoke, his voice a half-sob, whispering, barely more: I am innocent of killing my mother-in-law, he murmured. I don't want to hang; I still say I am innocent. His head was bowed forward, you could feel if not see the hot tears in his eyes, you could feel his trembling in your own body.

Assisted by two men, Charles shuffled inch-by-inch to the edge of the trap. He then refused to proceed, and had to be lifted onto the center of the trapdoor by Marshal Mahoney and his deputy, Walter Hellan.

Mahoney took a small black hood from under his vest. He began to pull it over Charles's head. Too small, it got caught on Charles's right ear. "Fix my ear," he asked softly. The newspapers reported these as Charles's last words.

Mahoney took the noose off a peg on the wall and placed it over Charles's hooded head. He drew the loop tight around Charles' neck and placed the knot of the noose just behind his right ear.

Watching these preparations, John Gaffney noted his own reaction:

Had I any thought of a man, a criminal, about to pay for his crime? Any thought of a disreputable and dangerous killer about to give his life for one he had taken? No; nothing like that. Only that a man was about to die; that there, almost within reach, was a man, a man like ourselves; a young man who somewhere had a wife, who had once slept an untroubled sleep, had only the day before laughed and hoped for life.

I was aware of some feeling as I sat there then, some unusual feeling that was strange to me; then it was vague, and there was not time to fathom it. But now I know; it was the certainty, the sureness of it. I knew for the only time in my life that within minutes this man who now lived as I lived would be dead, a stone, lifeless, cold and stiff. Men have been stricken with fatal diseases and we have known they will die; we have held our buddies in our arms at the front and watched the last breaths spend themselves; but even then there has been hope, and when not hope, the awareness that death might stay away yet awhile. Would it come now, or later, perhaps? But none of that now; nothing less than a miracle can save this fellow, and there are no miracles in this life; we know no other. Soon he will be a stone.

Having arranged the noose, Marshal Mahoney stepped back a step, raised his arm, and softly said, "OK." Walter Hellan, the Deputy Marshal, flipped a switch on the wall next to him. Gaffney remembered:

The deputy reached somewhere toward the back wall and at once a clicking noise commenced. It was loud in the quiet, widely spaced clicks, which seemed seconds apart, loud yet muffled, un-mechanical sounding clicks; the water near me dripped on, drip, drip, click, click, drip, click, drip, click.

Then, the clicking stopped with the louder sound of the trap's springing. There it was; the square of wood on which he stood fell away and he fell toward the pit, fell then swung. Not a movement, just swung, turning, turning, now right, now left; like a stone on a string, a bit of paper on a cord, held in the air for a kitten to leap at.

Nobody spoke; they stared at the swinging form below them. According to the witnesses, after the drop, Charles neither moved nor made any sound. The Marshal walked off the platform and went downstairs to help one of the doctors climb up a pile of boxes to determine whether or not Nelson Charles was still alive. Then the other doctor made his examination. "Dead," was all he said once he reached the body swinging from the rope.

The wooden wall that had been nailed up onto the side of the staircase was removed by men outside. The witnesses were asked to leave. As they walked through the gate, a black hearse pulled through the gate towards the jail. One of the newspapers reported that the body was recovered not by cutting the noose from the rope, but instead by pulling it back up through the trap.

Al Anderson, dropping his voice to a gravelly drawl to quote Mahoney, remembered what happened after the hanging:

And afterwards, I'll never forget, the United States Marshal congratulating Walter Hellan on the "smooth job, well done." And I think after that that I went downtown to a bar and had a good stiff drink, then came back to my office at the *Alaska Daily Press*, wrote the story, and everybody stayed away from me because they knew I had enough on my mind.

The *Daily Alaska Empire* commended the job done by Marshal Mahoney and his deputies: "The execution was carried out smoothly and expertly, although it was the first ever held in Juneau."

Nelson Charles had asked that a funeral be conducted by the Salvation Army. He was buried in an unmarked grave in Evergreen Cemetery, the only graveyard in Juneau. This writer has not yet discovered what happened to his wife and his daughter.

Conclusion

Nelson Charles's case, by itself, is not representative of all the other capital cases tried in Territorial Alaska. Unlike some of the men hanged in the Territory, Charles was clearly implicated in the homicide for which

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Editor: Antonia Moras
 Editorial Board: John Angell, Cassie Atwell, Allan Barnes, Robert Congdon, Richard Curtis, Kimberly Martus, Lisa Rieger, Nancy Schafer, Lawrence Trostle, Darryl Wood
 Typesetting and Layout: Melissa S. Green

Justice Center, John Angell, Director

Alaska Justice Statistical Analysis Unit, Allan Barnes, Director

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Nelson Charles
(continued from page 11)

he was executed. The question for the jury was not whether Charles had stabbed Cecilia Johnson, but whether he had intended to kill her, whether he had acted in self-defense, and whether her death occurred during an attempted assault. Unlike some men hanged in the Territory, Charles had an experienced attorney who made an attempt to mount a legal defense during the trial. And, unlike several other men hanged before abolition of the death penalty, Charles could speak English, as could the witnesses called by the state.

Murder was not as uncommon as some might suppose in Southeast Alaska in the late 1930s. In June 1937 a man was arrested for having drowned his two sons. In August 1937 a cannery worker was killed by another cannery worker. In December 1937 a man killed his 17-year-old son. In January 1938 another woman, the mother of three, was killed. It is clear Southeast Alaska had a number of murders.

Why Charles was the only man executed during this period is not clear. Male violence against women was not unusual in that time,

any more than it is unusual today. Initial research suggests that, in general, the slaying of a woman by a man was not itself generally grounds for a death penalty. The husband who killed the mother of three, for example, was sentenced to life imprisonment. A wealthy white man in Juneau who strangled his wife with a stocking in 1946 was sentenced to twenty years. The history of homicide in the Territory shows that, although men murdered women not infrequently, no man other than Nelson Charles was hanged for the murder of a woman.

How much difference would it have made to Charles and to all the other Natives hanged after 1903 if they had been tried before a judge and a jury drawn from “Indian Town”? The Alaska Native Brotherhood petition filed on behalf of Nelson Charles suggests that, in the Indian community, Charles was condemned for his crime, but was also recognized as a man who was valued and respected when he was not poisoned by drink. The petition suggests that a Native jury would have sentenced Charles to life imprisonment, and not to death.

There is no question that white juries frequently sentenced white murderers to life

in prison and not to the gallows. The court records contain the files of several such cases tried in Southeast Alaska at approximately the same time. One such case was that of George Harrison Meeks, convicted in 1946 for the robbery and slaying of Clarence Campbell in Juneau. The Assistant U.S. Attorney who prosecuted Meeks, Robert Boochever—now a senior judge of the Ninth Circuit Court of Appeals—has said in an interview with the author that, in his opinion, Meeks would have been hanged if he had been black.

Would Charles have been in a different position if the jury, the prosecutor, the defense attorney, and the judge had not all come from the white Alaska population, the same population that did not want to mingle with Natives, did not want to integrate the schools, and did not want to sit together at the movie theater on Saturday night? The fact of the racial divide is undisputed. But what were its consequences?

This is a question as timely today as it was fifty years ago, and further research needs to be done on these questions.

Averil Lerman is an attorney and legal historian.

Alaska Justice Forum
Justice Center
University of Alaska Anchorage
3211 Providence Drive
Anchorage, AK 99508

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