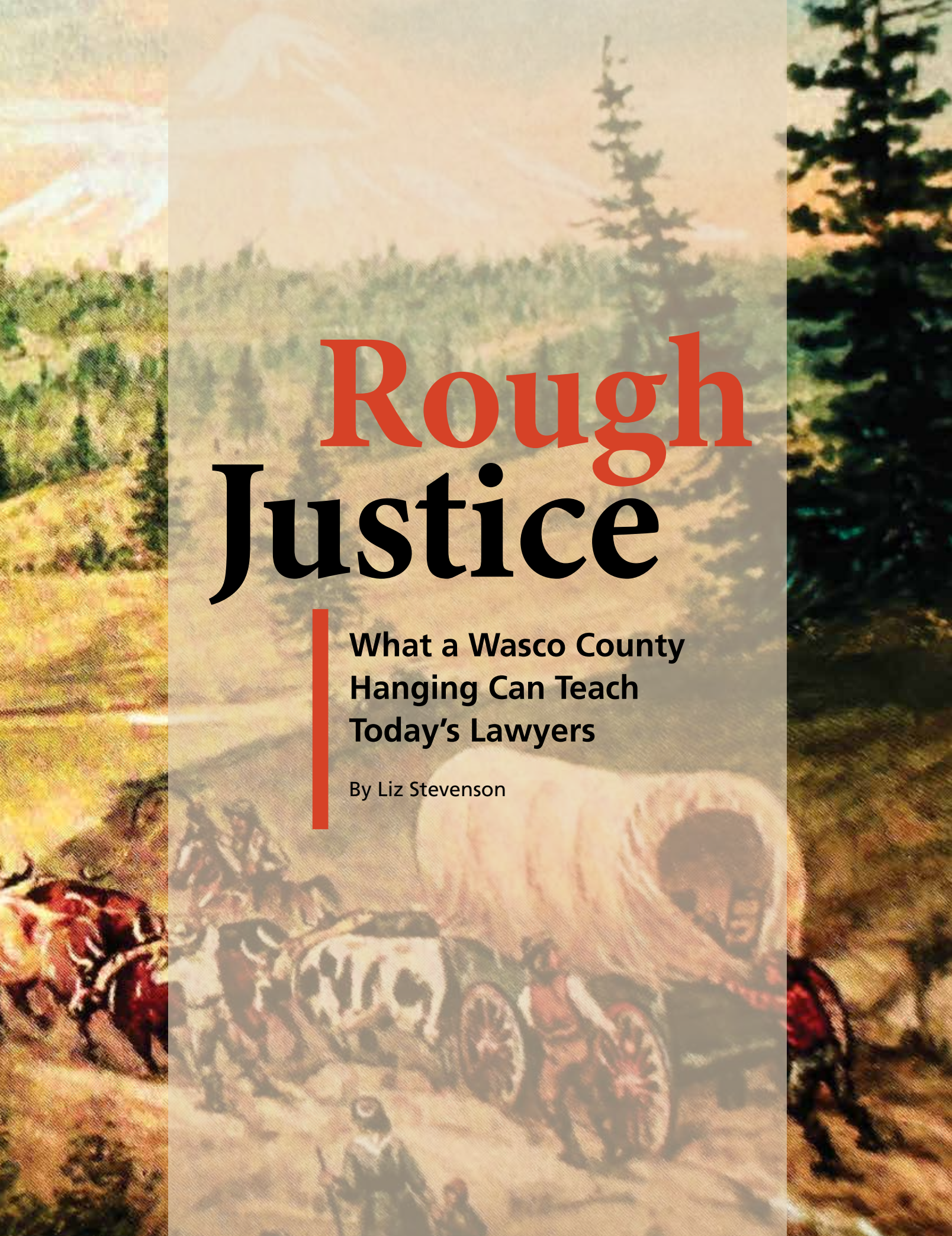




Rough Justice

What a Wasco County Hanging Can Teach Today's Lawyers

By Liz Stevenson

Oregon lawyers reach for precedent instinctively. It is worth remembering, occasionally, how recent some of our profession's most basic protections actually are. In December 1864, a Wasco County jury convicted a man of murder in less than two days, on entirely circumstantial evidence, without ever hearing him testify in his own defense — because the law of the time did not permit it. Two months later, the State of Oregon hanged him in the middle of The Dalles. His case, and the frontier legal system that produced it, is worth a second look: not for what it settles about guilt, which remains genuinely unresolved, but for what it reveals about how far the practice of law in this state has come.

On or about Sept. 1, 1864, on the Cañon City-Eugene City trail out on Willow Creek east of present-day Madras, two travelers were shot dead at a campsite.[1] One man, apparently out hunting for supper, was shot through the head, his rifle undischarged in his hand. The second, preparing supper with a frying pan, was shot as well, his revolver still holstered. A third man in their party, tending the horses nearby, hid in the brush rather than risk being the next victim. That night he crept back to the empty campsite, then rode two days without saddle, spurs or leggings, through a snow-and-rain storm, without food, across the Cascade Mountains, following the McKenzie River to reach his father's home and report what he had seen.

Henry Anderson Deadmond was that third man. A posse from Lane County assembled on his account, led by Jesse Cox, and rode out to Willow Creek on Deadmond's own directions. The dead were soon identified as Crawford Isbell, a California miner, and George Meek, a Lane County rancher.[2] Cox later admitted he made the trip half-expecting Deadmond himself to be trailing them — Deadmond and his brother Riley had a local reputation for rough company, including an association with a miner known for hard drinking and worse.[3] Cox found the men exactly where Deadmond said they would be. He searched the bodies and later itemized for Isbell's family exactly what he found — $1,123 — and exactly what the four searchers charged the estate for their trouble.[4]

Deadmond did not return to the scene, and Cox's suspicion hardened. Cox rode on to Dalles City to alert the sheriff of Wasco County, whose jurisdiction covered the crime. Sheriff Charles White found Deadmond at Bridge Creek, a stop on the Dalles City-Cañon City Military Road, and arrested him, along with a companion who was released shortly after.[5] Deadmond remained jailed until the circuit court's December term. On Dec. 14, a grand jury indicted him for first-degree murder.[6]

An Unlikely Defender

Colonel Nathaniel Hawthorne Gates defended him — a Democrat, entrepreneur and sometime-lawyer from Ohio who, by most accounts, had never defended a murder case in his life. Gates's Dalles City interests ran more to commerce than to courtrooms: He owned a hotel establishment in town and had a hand in several other frontier start-up ventures. His standing rested on his years as a legislator — he had been presiding officer of the Territorial Legislature in 1859, the year Oregon entered the Union — rather than on any record as a trial attorney. In a more settled jurisdiction, a hotelier-turned-politician would not have been the one standing between a defendant and the gallows. But this was Wasco County in 1864, where the machinery of frontier justice ran on whoever was on hand and willing. Whatever mix of civic duty or conviction brought Gates to the case, he did not treat it as a formality.

On Dec. 17, Gates requested subpoenas for three witnesses who would testify that any money seen on Deadmond in the weeks after the killings was his own — proceeds from selling his interest in a mining claim. Deadmond had documentation of the sale, and it went into the trial record. No one could locate the witnesses in time, and they were never produced. However, the state did stipulate as to their intended testimony, a concession that did little good for the defendant.[7]

A Defendant Who Could Not Speak

The Deady Code, adopted into Oregon law that same year, made first-degree murder — killings that were willful, deliberate and premeditated, or committed by specified aggravated means — a capital offense.[8] But 1864 procedure carried an older and more consequential rule: A criminal defendant was legally incompetent to testify on his own behalf. The reasoning, straightforward and cynical, held that anyone with a direct stake in a case's outcome could not be trusted to tell the truth — his word was worthless to a jury, or worse, actively misleading. Layered atop this was the separate, older privilege against compelled self-incrimination. Between the two rules, Henry Deadmond was silenced twice over: first as an incompetent witness, then as someone who could not be made to speak against his own interest even if he wished to.

> "1864 procedure carried an older and more consequential rule: A criminal defendant was legally incompetent to testify on his own behalf."

What Deadmond might have said survives only secondhand — in a letter he wrote his friend and business partner William Pennington in the days after the killings, describing strangers riding into camp and doing the deed while he hid with the horses.[9] A jury weighing a man's life against his word never heard that word directly, never gauged his composure, never watched him account for the gaps that troubled Jesse Cox. They received instead a letter one later chronicler called "cold" and full of odd asides — cattle brands, mining money — read into the record by others, filtered through others' judgment of what it meant.[10] Rules barring criminal defendants from testifying on their own behalf were gradually abolished across American jurisdictions over the following decades. In December 1864, in Wasco County, the old rule operated at full force, on a capital case, with 11 days between indictment and verdict.

A Thin Case, Quickly Tried

The trial began Dec. 21 and ended Dec. 23 with a guilty verdict. The case against Deadmond was entirely circumstantial. No one saw him fire a shot; no weapon was traced to him. The prosecution's rob-

bery theory required money to have vanished — yet Isbell's $1,123 was recovered essentially intact and distributed among the men who found it, not carried off by a killer. If Deadmond murdered two men for money, he did a poor job of taking it, and he had, by his own account and his own paperwork, sold a mining interest for a sum sufficient to remove any motive at all. One rumor held that Deadmond was known in the upper country as a road agent[11] (a 19th century frontier term for bandit) — notable, since he was also employed guarding wagon trains carrying gold along that road. In the spring of 1864, he had been shot in the cheek during an attack on one such train that wounded seven men.[12] That guard work Deadmond did for the gold trains existed at all because The Dalles–Canyon City road ran directly through Native American territory that was actively being fought over by Chief Paulina leading a diverse band of Native Americans protesting the takeover of territory by settlers. Whatever the jury made of any of this, they did not have long to weigh it.

Judge J.G. Wilson sentenced Deadmond to hang on Feb. 17, 1865.

> "A capital defendant tried today has a constitutional right to testify in his own defense — Oregon itself abolished this rule by statute in 1880 — 16 years too late for Henry Deadmond."

A Losing Fight for Clemency

Gates and his law partner Tuthill did not stop working. They organized five petitions for clemency to Governor A.C. Gibbs, gathering 268 signatures across Dalles City, Cañon City and Lane County.[13] A counter-petition organized by George Meek's brother drew 112 signatures, and two individual letters urged the governor toward execution — one a rambling account tying Deadmond to a Lane County man's unrelated violent history,[14] the other a curt note from one of the trial's own prosecutors: "The evidence was very clear, and the jury were not out twenty minutes. I think if any man deserved hanging, it is the one who murders his fellow travelers for their money. That is Henry Deadmond."[15]

Yet the trial record never established how much money, if any, went missing from George Meek — no one recorded what he was carrying, and estimates offered after the fact by acquaintances ranged widely and without documentation, from one associate's guess of roughly a thousand dollars each from Isbell and Meek[16] to a soldier's secondhand account of three thousand dollars taken from Meek alone.[17] What is documented is that Deadmond had roughly five dollars in his pocket when arrested.[18]

The governor did not intervene. Deadmond was executed Feb. 17, 1865, as scheduled. A reporter described soldiers escorting him to the gallows erected in the middle of Dalles City, before a crowd that included women and children; the hanging took 18 minutes. The reporter praised the sheriff for "the manner in which the execution was conducted" and for his "kind attention" to the prisoner throughout confinement.[19] That praise sits oddly against the scene it follows. Deadmond, for his part, gave the crowd nothing: By every account he remained composed to the end, never confessing, never wavering.

An Estate No One Could Close

Gates did not quit even after the execution. He filed Deadmond's probate estate and claimed, on the estate's behalf, Deadmond's one-third interest in property at Bridge Creek, co-owned with Pennington.

Getting an accounting proved difficult — traveling to and from Bridge Creek itself was an adventure, and the same war that had already put a bullet in Deadmond's cheek eventually drove Pennington's family out of Bridge Creek entirely. After years of proceedings, Gates petitioned to close the estate. Nothing was ever recovered.[20]

Today's Lessons

Did Deadmond kill Meek and Isbell? Although he was convicted of it, the evidence is thin. A robbery in which most of the money is later found intact is a strange robbery. A guilty man who rides two days through a storm to report his own crime, at real risk to his health, is a strange guilty man. No stolen money ever surfaced among Deadmond's known associates, and if he was as solvent as his own paperwork suggests, the case never established what he stood to gain.

For Oregon lawyers today, the more durable lesson may not be about Deadmond's guilt at all. It is about the distance between 1864 and now. A capital defendant tried today has a constitutional right to testify in his own defense — Oregon itself abolished this rule by statute in 1880 — 16 years too late for Henry Deadmond, but a reminder that the change came from the Legislature, not from any court that reviewed his case.[21]

Direct appellate review, indigent defense standards and the requirement of qualified, dedicated capital counsel are now baseline expectations rather than accidents of who happened to be available in town. None of that existed for Henry Deadmond. What he had instead was Colonel Gates — a hotelier by trade, a legislator by reputation, and, for one case in December 1864, the only thing standing between a client and the gallows — who kept working the case for years after the state had already had its say. ■

Liz Stevenson is a former criminal defense attorney in The Dalles and later a health administrator at Oregon Health & Science University.

ENDNOTES

1. Trial record, *State of Oregon v. Henry Deadmond*, Wasco County Circuit Court, Oregon State Archives, Salem, Oregon.
2. "Supposed Murder," *Morning Oregonian*, September 23, 1864, p. 4.
3. Crawford Isbell papers, 1864-1865. Available at Special Collections and University Archives, University of Oregon Libraries.
4. Id.
5. *Oregon Statesman*, October 10, 1864, Page 4, Image 4.
6. Trial record, *State of Oregon v. Henry Deadmond*, Wasco County Circuit Court, Oregon State Archives, Salem, Oregon.
7. Id.

Guidance You Can
Rely On

Responding to a Bar complaint can be overwhelming. Reuter Corbett LLP provides confidential representation and strategic guidance to attorneys navigating disciplinary and professional responsibility matters. Our attorneys draw on decades of experience, including work within State Bar regulatory offices, to deliver clear counsel and strong advocacy.

REUTER CORBETT LLP

the LAWYERS' LAWYERS

No Obligation Confidential Consultations Available

503-874-6166 | reutercorbett.com

8. General Laws of Oregon, 1843-1872. Compiled and Annotated by Matthew P. Deady and Lafayette Lane, 1874.
9. Trial Record, *State of Oregon v. Henry Deadmond*, Wasco County Circuit Court, Oregon State Archives, Salem, Oregon.
10. Diane L. Goeres-Gardner, Necktie Parties: Legal Executions in Oregon 1851-1905, (Caxton Press, January 1, 2005), p. 49-54.
11. Oregon Historical Society Research Library, scrapbook 112, p. 127, February 25, 1865.
12. Stories of Early Years; An Account of Pioneer Makers of History in Old Wasco County, Carson Masiker, 1911 (unpublished). Accessed at *https://sites.rootsweb.com/~westklic/cmeyears.htm*
13. Addison C. Gibbs Collection, Series B: Official and Family Papers circa 1853-1866, Request for Pardons (1865-1866) Box/Folder 7/8, Oregon Historical Society Research Library, Portland, Oregon.
14. Addison C. Gibbs Collection, Series B: Official and Family Papers circa 1853-1866, Request for Pardons (1864) Box/Folder 7/7, Oregon Historical Society Research Library, Portland, Oregon.
15. Addison C. Gibbs Collection, Series B: Official and Family Papers circa 1853-1866, Request for Pardons (1865-1866) Box/Folder 7/8, Oregon Historical Society Research Library, Portland, Oregon.
16. Crawford Isbell papers, 1864-1865. Available at Special Collections and University Archives, University of Oregon Libraries.
17. Letter from Constantine Humphrey to J. Isbell, Crawford Isbell papers, 1864-1865. Available at Special Collections and University Archives, University of Oregon Libraries.
18. Letter from Jesse Cox to J. Isbell, Crawford Isbell papers, 1864-1865. Available at Special Collections and University Archives, University of Oregon Libraries.
19. "Execution of Henry Deadmond," *Oregonian*, February 20, 1865, p. 3.
20. Probate File, In re: Henry A. Deadmond, Wasco County Circuit Court, Oregon State Archives, Salem, Oregon.
21. Codes and General Laws of Oregon § 1365, at 800 (William Lair Hill comp., 2d ed. 1892).

Fire Loss Claims?

- 18 years experience as a General Contractor.
- Experienced fire and casualty insurance adjuster.
- Available to represent the insured party in maximizing recovery from the insurer.
- Fees contingent on increased recovery.



Millard & Bragg
Attorneys at Law, PC

503-305-7806
419 5th Street Oregon City, OR 97045
www.millardlaw.com

Admitted to Practice in Oregon and Washington