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# THE FATAL FALL OF BARRETT SCOTT

## VIGILANTES ON THE NIOBRARA

JAMES W. HEWITT

Vigilante activity, in which a somewhat organized group takes the law into its own hands, has been extant in the United States since the 1700s and reached its zenith on the western frontier during the last half of the nineteenth century.<sup>1</sup> Many a hapless horse thief, or careless cattle rustler, met his end in a hangman's noose, as those who had property sought to protect it from those who had none.

As America moved westward along the great trails, it left courts, judges, law, and order behind. Until new communities could be formed and governments established, something had to be done to protect life and the possessions of those who had them. Vigilante movements were often the answer.<sup>2</sup> They were almost always an effort by the monied class in a settlement to re-create some semblance of a legal system and to protect life and property.

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Although some vigilante activity did not go beyond rhetoric, moral suasion, and threatening notes to malefactors, violence was the usual hallmark of the vigilante movement, and lynch law preceded the common law across much of the frontier. Commentators differ as to whether frontier lawlessness was the cause or the result of the American proclivity toward violence as an effective problem solver, but bodies swinging from tree limbs or railroad whistling posts could lead to sober rumination among the lawless element.<sup>3</sup>

Most vigilante groups, because they were constituted of middle and upper class citizens who were somewhat familiar with a written body of law, had a formal written constitution or articles that members signed. The groups usually organized for a specific purpose, such as driving the cattle thieves out of Keya Paha County, and disbanded when their goal was achieved. Most groups were formed when their members perceived local law enforcement as either ineffectual or non-existent, but, as will be seen later, some operated contemporaneously with the duly constituted authorities.<sup>4</sup>

Organization and duration distinguished the vigilante organization from the lynch mob,

which was spontaneously organized for a particular purpose and immediately disbanded after its purpose had been satisfied or foiled. Vigilantes often accorded their accused a speedy trial, sometimes with appointed counsel. The rate of conviction fell very little short of 100 percent, and pre-sentence investigation was not a familiar concept. Trial, sentencing, and execution of the judgment were virtually simultaneous.

Vigilantism has attracted the attention of many of America's authors. One of the first novels of the West—Owen Wister's *The Virginian*—portrays vigilantes in a favorable light. Cowhands, agents of their property-owning employer, hang a friend who has violated a trust and stolen horses. No lawmen are involved, and the vigilantes are drawn very sympathetically. The reader has little, if any, doubt that those lynched are guilty. In Walter van Tilburg Clark's *The Ox-Bow Incident*, the focus is entirely different. A mob of townsmen hang unfortunate strangers who are ultimately shown to have had no connection with the crime that had been committed and that was not as serious as the mob had believed. Duly constituted authorities are present but ignored.

The two antipodal views of vigilante activity serve to point up that which is good and bad about vigilantism. Where no lawmen are present, resort to self-help can be rationalized. But if there are legitimate representatives of law and order present, there is no justification for ignoring or subverting the legal process. Vigilante activity was rooted in the pernicious notion of "popular sovereignty"—a belief that the people were the real sovereigns, who could take the law into their own hands when it failed to protect them, and who could refuse to obey the law when they believed it to be unjust or oppressive.<sup>5</sup> Such beliefs have spurred on many of the great moments of history, such as the American Revolution, but they do not work well on a day to day basis.

Although in the short run vigilantism may have established or preserved law and order, the net long-term effect would appear to have been detrimental. Richard Maxwell Brown suggests

that vigilantism has subtly but persistently undermined America's respect for law and the legal system by implying that the people may choose when and when not to obey the law. In our culture, trial by jury, rather than trial by combat, is the preferred method of resolving disputes. But if the public has little or no confidence in the judicial system, a feeling that appears to be spreading in the United States, then trial by combat, or at least by force of arms, has a very definite appeal.<sup>6</sup> And that is the essence of the vigilante movement.

#### NEBRASKA VIGILANTES IN THE 1880S

Five counties—Brown, Rock, Holt, Boyd, and Keya Paha—straddle the Niobrara River in north-central Nebraska. The Niobrara and the Keya Paha, one of its major tributaries, offer plenty of water, rugged box canyons, and pine-covered hills; in a phrase, good cattle country. Not many farmers have tried to wrest a living from this wrinkled landscape. And for many years, the ranchers have been as hard and stern as the land.

During the 1880s when horse and cattle thieves plagued the area the locals fought back. At least three vigilante groups were formed in the five county region. They were the Niobrara Mutual Protective Association, headquartered in Brown County and led by A. T. Burnham; a group in Keya Paha County, subsequently known as the Farmer's Protective Association, led by Merritt Taylor, John Sullivan, and Sol Long; and the Holt County Regulators, under the leadership of Mike Coleman and C. C. Dodge.<sup>7</sup> At least seven miscreants met their end at the hands of one or another of the vigilante bands.

There is little doubt that the legally constituted authorities, however well-meaning they may have been, were not of much help. The country was rough, the trails few, the distances considerable. Especially north of the Niobrara, it was a long way to anywhere. Waiting for the sheriff to show up could consume a lot of time.

The courts were functioning, but criminal cases were not their metier. Out of the first

seventy cases to reach the Supreme Court of Nebraska from Holt County, sixty-five were civil and five criminal—and of that five, three involved Barrett Scott.<sup>8</sup> Thus virtually all of the classic indicators of vigilante activity were present, and the ranchers of the Niobrara breaks responded in classic fashion. They formed into groups, swore their oaths, and set out to rid the area of rustlers.

Both local residents and historians have raised questions about the motivation of the vigilantes. No concrete evidence of chicanery exists, but the vigilantes may not have been entirely altruistic. Instead their enforcement activities may have masked cattle and horse theft or been simply a guise for disposing of unwanted obstacles.<sup>9</sup>

The Keya Paha group, which included Sol Long as one of its leaders, hanged a man named Kit Murphy in November 1883. Murphy, who had a claim in Keya Paha County, north of the Niobrara, had had a dispute with Sol Long over some house logs that Long had cut on Murphy's claim. Vigilantes visited Murphy's home, drove off a young man who was visiting one of Murphy's two daughters, took Murphy out into the country, and hanged him. His body was left dangling for days. Some said Murphy had allowed a thief to corral stolen stock at Murphy's ranch; others said he had attempted to steal a team of mules. Whatever the reason, as soon as he was dead the disputed house logs were hauled away and a new filing was made on his claim.<sup>10</sup>

Long's men were not the only ones who were active. On 10 November 1883, six vigilantes from the A. J. Burnham group took John Wade, father of the notorious "Kid" Wade, from the home of Justice of the Peace Charles Gates, where he had been held pending a hearing on charges of aiding and abetting horse thieves. They placed him in a wagon, took him to an isolated area, formed a firing squad, and shot him. They dug a hole northeast of Newport and buried the body in a fetal position. June rains in 1884 washed away the dirt covering the body and a coroner's jury found death was due to a head wound inflicted by persons unknown. In

December 1883, a wounded horse thief, being cared for in northern Holt County, was hanged by the Holt County Regulators under the command of Mike Coleman, who had been wounded in the ribs in the same affray as the horse thief. When word got out that the thief was recovering, Coleman and six of his band found a tall tree and dispatched the unfortunate.<sup>11</sup>

The most celebrated hanging in the 1883-84 round of vigilantism was that of "Kid" Wade. Kid was a well-known horse thief who had done time in the Iowa State Reformatory and had ridden with the famous "Doc" Middleton gang in 1878 and 1879. He got out of prison in 1882 and soon was back along the Niobrara. His father, John Wade, had a claim just below the confluence of the Niobrara and Keya Paha, in northern Holt County. Late in 1883, the Kid stole several horses near Niobrara and Yankton, Dakota Territory. When his father disappeared, the Kid went into hiding near LeMars, Iowa, approximately two hundred miles east of O'Neill. An informant revealed his whereabouts, and early in January 1884, C. C. Dodge, Mike Coleman, and two other Holt County Regulators went to LeMars to capture him. They returned the Kid to Holt County and exhibited him as a prisoner throughout the county, then took him to Long Pine, in Brown County, a town which had raised considerable sums to assist the vigilantes, and showed him to the hundreds who came to see the famous outlaw.

Meanwhile the Holt County sheriff, who had a warrant for the Kid's arrest, started for Long Pine accompanied by a posse that contained Dodge, Coleman, and other Holt County Regulators. In Long Pine the Regulators met up with some members of A. T. Burnham's Niobrara Mutual Protective Association, and tempers flared. The Burnham vigilantes ultimately let the sheriff's group take the Kid to Bassett, in Rock County, where they stayed the night of 6 February in the hotel barroom, waiting for the morning train. Late that night, a large number of the Burnham vigilantes, exercising their territorial imperative, stormed into the bar, disarmed the sheriff and his party, and took the Kid by wagon to a railroad whistling post on

the east edge of Bassett, where he met his end swiftly and without trial or ceremony of any kind. Passengers on the next day's train were shocked to see his corpse hanging at the trackside.<sup>12</sup>

Burnham, who subsequently became a prominent lawyer in the region, issued a statement on 8 February that was printed in the *Holt County Banner* of 19 February. He noted that three men had been hanged by the two vigilante groups, that many thieves had been caught and turned over to the authorities, and that the ring of horse thieves had been completely broken up. His statement included two classics of vigilante apoloia:

I have always insisted that every man should have a fair and impartial trial, and I believe that if the authorities had done their duty, not a single act of violence would have been committed.

. . .

In the vast amount of work that we have done, we have made mistakes; it would be strange indeed if we have not. But we ask every honest and fair minded citizen to give our acts a careful investigation. What we have done, we have done without compensation, or hope of reward, other than that we may live in Brown County and feel our property is as secure as it would be in any other part of the state or in Iowa or Illinois.<sup>13</sup>

Following the Kid's demise, illicit traffic in livestock dropped off substantially, and the area remained quiet until 1887, when several thefts occurred in Keya Paha County, north of the river and south of the Dakota border. In December of 1888, some cattle were stolen from Merritt Taylor, who had been one of the leaders of the vigilantes in Keya Paha County in 1883. Taylor revived the Farmer's Protective Association and began recruiting. Several suspected thieves were apprehended, interrogated, released, apprehended again, and released again. Letters and telegrams by the score were directed to Governor John Thayer in Lincoln.<sup>14</sup>

Burnham, by now a member of the legislature, took the position that duly constituted authority should handle the matter and pledged to see that appropriate complaints were filed. Thayer visited Keya Paha County in May 1889. A large meeting was held at Springview, and all parties agreed to abide by the law. The governor said he would not call out the militia, and the vigilantes agreed no executions would take place. It was a pledge honored more in the breach than in the observance.

On 29 May 1889 a group of vigilantes called at the home of John Newell, northeast of Springview. Newell was thought to be a friend of some of the cattle thieves, although he was not suspected himself. When the vigilantes arrived, Newell, no friend of theirs, fired a blast from his shotgun. In answer he was riddled with twenty-four separate bullet wounds and died at once. The same evening a group of riders tracked down George Babcock, a suspected thief, at the home of his brother-in-law, approximately two miles from Newell's. The vigilantes demanded that Babcock come forth. He refused. They broke the windows of the home and threw flaming cotton inside. Babcock came out. He was bound and placed on a horse, but he managed to loosen his bonds and, as the party approached a creek, he slid from his horse and submerged himself. The vigilantes rode back and forth firing wildly, but they could not locate Babcock. After they had gone, Babcock returned to the home of his brother-in-law, borrowed a horse, and left the jurisdiction. Governor Thayer offered a reward of \$200 for Newell's killers but none were forthcoming.<sup>15</sup>

On 13 July 1889, A. J. Maupin, a suspected thief, went into Springview carrying a gun. The sheriff found him, seized him, and jailed him in a new steel cell in the county jail. Then the sheriff went home. During the night, vigilantes broke into the jail but could not get into the cell. Frustrated in their purpose, they put their guns through the cell bars and fired, killing Maupin on the spot with fourteen gunshot wounds. Four of the six jurors on the coroner's jury empaneled the next day felt Maupin was killed by gunshot wounds inflicted by the Farm-

er's Protective Association. The other two jurors felt the killers were "parties unknown." Upon instructions from the attorney general, the jurors recorded their split vote and signed the report.<sup>16</sup>

Burnham wrote Governor Thayer, decriing the action of the vigilantes. The coroner also wrote, asking for help. He knew whom to arrest, he said, but the vigilantes had told him he would not be safe if he did. Thayer maintained that the sheriff had to enforce the law and that the governor could do nothing unless asked by county officials. He was not asked. He did nothing.<sup>17</sup>

No prosecution of any vigilante ever took place. The rash of cattle thefts ended, but no thief was ever turned over to the lawful authorities, and no thief was ever apprehended by the law and subjected to prosecution. If the end justifies the means, the vigilantes succeeded in establishing property rights along the Niobrara. It is doubtful, however, that Murphy, the Wades, Newell, Maupin, or Babcock would agree. Most important, the vigilante mind-set, and the general public acceptance of vigilante activity, set the stage for what transpired in the case of Barrett Scott, a blot that still remains on the escutcheon of Holt County.

#### THE RISE AND FALL OF BARRETT SCOTT

The Niobrara River forms the northern boundary of Holt County, separating it from Boyd County, its neighbor to the north. Boyd County, which lies along the South Dakota border, has been much in the news of late, as the state of Nebraska proposes to place a low-level radioactive waste disposal facility among Boyd County's rolling hills. Nothing has spurred as much controversy in the area since the trial of those accused of killing Barrett Scott some ninety-five years ago.

Barrett Scott was thirty-six years old when he was elected county treasurer of Holt County in 1888. A Republican, Scott had been a school district treasurer, a contractor, and a teamster prior to his election. He lived north and east of O'Neill. Scott's first term passed without in-

cident, and he was re-elected in 1890. Something must have seemed a bit amiss, however, enough that Scott felt compelled to issue a statement about the strength of the county treasury as he began his second term.<sup>18</sup>

In March of 1892, the Holt County Board began to investigate the county treasurer's office. Although they wanted to count the money in Scott's office, they received an ambiguous opinion from County Attorney E. W. Adams as to their right to do so and abstained.<sup>19</sup> The treasurer of one of the townships appeared before the board and petitioned them to remove Scott from office on the grounds that he had loaned county funds, that he had embezzled county money, and that he had taken county money for the campaign of Joseph Bartley, a Holt County banker and rancher who had successfully campaigned for state treasurer.

The county board, more than thirty members strong, sat as judge and jury. Holt County had switched from a commissioner form of county government to the township supervisor system in 1887. Most of the board members were farmers, and most belonged to the Populist party, which had gained great strength in the late 1880s and early 1890s as a result of drought, agricultural debt, and dissatisfaction with the hard-money policies of the conservative Republicans. Adams, the county attorney, was a Republican, as was Scott.

Scott did not appear at the hearing but was represented by counsel. Henry Murphy and M. F. Harrington, both of O'Neill, represented the petitioner. Neither had any official position in the county, although, as will be seen later, Harrington was the voice of Populism in Holt County, and Murphy subsequently successfully ran for county attorney as a Populist.<sup>20</sup>

When Scott's lawyers brought a court reporter to the hearing, Harrington objected that no one but the county clerk had the right to transcribe the proceedings, but the reporter stayed and reported. The hearing continued for two days, the Populists in control all the way, and Scott was removed from office by a vote of nineteen to ten.<sup>21</sup> The following day the board appointed another Republican, who took the



FIG. 1. Barrett Scott. Photograph courtesy of Nebraska State Historical Society.

oath of office and posted bond. Scott refused to vacate the office.

Rody J. Hayes, the disappointed replacement, filed an application for a writ of mandamus in the supreme court. While it was pending, Scott's lawyers went to the district court with a petition in error. Moses P. Kinkaid, a Republican district judge residing in O'Neill, declined to hear the petition. Alfred Bartow of Chadron, the other judge, ruled that the board had erred and ordered Scott restored to office. Harrington appealed Bartow's order to the supreme court.<sup>22</sup>

Several months later, in September, the supervisors once again removed Scott from office and once again selected Hayes as his successor. Scott once again refused to surrender the office, and Hayes once again went to Lincoln seeking mandamus. Nothing happened.<sup>23</sup>

The supervisors then made a serious mistake. They demanded that Scott increase his bond.

The penal sum of the original bond was increased and additional signatures were garnered. As subsequent events would demonstrate, the alteration of the original instrument without the consent of all of the sureties would operate to invalidate the bond, insofar as the sureties were concerned.<sup>24</sup> Nothing more transpired. Scott remained in office, the supreme court did nothing on Harrington's appeal or Hayes's application for mandamus, and tempers grew shorter. No rain fell all summer. Crop prices dropped through the floor. Banks failed, and many businesses in Holt County closed their doors.

The supervisors pursued Scott's two predecessors as county treasurer and established that both had had shortages. Suits were initiated against each, along with their bondsmen, and ultimately both suits were settled. Since Scott remained in control of the treasurer's office and its books and records, any amount of purported shortage had to be a haphazard determination.<sup>25</sup>

Finally, in July 1893, Scott refused to pay county warrants that were drawing a high interest rate. When the supervisors ordered them paid and Scott continued to refuse, the supervisors applied for a writ of mandamus. Judge Kinkaid overruled Scott's demurrer and set a trial date of 4 August. That morning Scott was seen boarding the train for Sioux City, carrying a little black bag. When next heard from, he was in Mexico.

Meanwhile the local press had been whipping the citizenry into a white hot frenzy. O'Neill had three newspapers at the time, the *Frontier*, the *Sun*, and the *Beacon-Light*. The *Frontier*, the largest, was Republican; the *Sun* was Democratic, and the *Beacon-Light* was Populist.<sup>26</sup> It is apparent to even a casual reader that the editors of the *Frontier* and *Beacon-Light* hated each other. Their invective was strongly reminiscent of William Cowper Brann's *Iconoclast*, a newspaper in Waco, Texas, that achieved a national circulation of 120,000 before its editor was shot and killed. The Baptists in Waco suffered no more at Brann's hand than did the Holt County supervisors under the lash of the *Frontier*.

The *Frontier* was totally unrestrained in its championing of Scott, and its position did not moderate during Scott's adventures in Mexico, his trial, his conviction, or thereafter. The Populists were after Scott, and that was enough for the *Frontier*. Everything the Populists did was bad. The *Frontier* was especially critical of the expanded county board. It railed against the excess cost and inefficiency of the supervisor system of county government. It was probably right, but it could have been more temperate in its approach.<sup>27</sup>

The drought, low agricultural prices, failing banks, and exhortations of the press all served to polarize the Holt County community when it was discovered that Scott had literally gone south with the swag. A letter dated 15 August 1893 and purportedly written by Scott in Mexico was published in the *Sun* two days later. The *Frontier* said it was ridiculous to credit it to Scott, as it was a poor "piece of carpenter work."<sup>28</sup> The letter was basically a jibe at Holt County in which Scott lamented he had not taken the county for more and invited his friends to Mexico to visit him on his \$50,000 plantation. If Scott did write it, it was a serious mistake in judgment that could not have won him any friends.

The county board authorized a \$2000 reward for Scott's apprehension. Sheriff W. P. Cunningham of Santa Fe County, New Mexico Territory, heard of the reward and agreed to find Scott. A warrant for Scott's arrest was sent to Cunningham and on 26 August he and a Mexican law officer arrested Scott in Chihauhau and jailed him in Juarez.<sup>29</sup> It is almost 300 miles from Santa Fe to Juarez, but perhaps things were slow in the law and order business in Santa Fe in 1893.

Scott refused to return to the United States unless he could determine the terms and conditions of his return. Nebraska Governor Lorenzo Crouse asked President Grover Cleveland to send Mexico a warrant for Scott's extradition. After a great deal of maneuvering, during which several of Scott's supporters journeyed to Mexico in an effort to free him, Mexico finally released Scott to Cunningham, who returned

him to O'Neill by train, arriving 7 October 1893. Cunningham and his deputy walked Scott, in handcuffs, from the depot to the jail, carrying their drawn guns.<sup>30</sup> That caused quite a stir in O'Neill.

A grand jury indicted Scott for embezzlement and bound him over for trial in the spring term of the district court. He was released from jail on bond on 19 December.<sup>31</sup> In early January the Nebraska Supreme Court handed down its decision in *Hopkins v. Scott*, overruling Judge Bartow and upholding the county board, which had thrown Scott out of office. The court held Scott's bill of exceptions was invalid, as there was no statutory authority for a bill of exceptions in a trial before the county board. Since there was no bill for the court to review, it presumed that there was sufficient evidence before the supervisors for them to have removed Scott from office, and therefore their decision was affirmed.<sup>32</sup> In the spring of 1894, Scott moved for and was granted a change of venue on his criminal charges. The case was transferred to Antelope County, where after some preliminary skirmishes, trial was postponed to the fall term and Scott was freed on \$70,000 bond.<sup>33</sup>

During the summer of 1894, cattle thefts once again increased in Holt County. Vigilante activity, under the aegis of the Holt County Protective Association, resumed. Suspicion fell on Ralph Hills, an unsavory resident of the northern part of the county, and his son Charlie, both of whom had been in previous trouble with the law. Warrants for their arrest were issued and given to a constable who was, with his assistant, a member of the Protective Association.<sup>34</sup>

On 29 June Ralph and Charlie Hills were arrested and, in the company of the constable and his helper, they headed for the home of the justice of the peace who had issued the warrants. Some two miles from Hills's home, at Burbank's Grove, masked riders stopped the party. A third man who had been arrested with the Hills was released and told to leave the country, which he did, expeditiously. Neither Hills was ever seen again, and no official version of their fate exists. Unofficially, the story per-

sists that both were hanged, the son first and then the father, and both were buried in the area where they were hanged. A second version holds that the bodies were taken to the Niobrara and buried there.<sup>35</sup>

On 2 July some seventy-five vigilantes spent the day in speech-making at Burbank's Grove. Fifty-six signed a resolution warning two suspected miscreants to leave Holt and Boyd counties or suffer the consequences. County Attorney Murphy and Sheriff Hamilton, out searching for clues as to the disappearance of the Hills, learned of the meeting and dropped in unannounced. Murphy cautioned the assemblage against taking the law into their own hands and resorting to violence. A number of the vigilantes complained about the inefficiency of the legal processes, maintaining that the time had come to draw the line.<sup>36</sup> The disappearance of the Hills was never solved.

In August the civil case of Holt County against Scott and his sureties on his second-term bond was tried in O'Neill. The county did not want Judge Bartow to hear the case, fearing he was partial to Scott. Judge Kinkaid refused to handle the matter, so Judge Chapman of Plattsmouth came to O'Neill to preside. The sureties contended that when the county board required Scott to get two additional sureties on his bond, without the knowledge or consent of the first set of sureties, it constituted a material alteration of the bond, discharging all the sureties. Chapman agreed. He dismissed all the sureties and rendered judgment against Scott only, fixing the shortage at \$75,932. Three years later the supreme court reversed and remanded. The case was ultimately settled for \$2000.<sup>37</sup>

The criminal trial of Scott began at Neligh in early September 1894 with County Attorney Murphy and Michael Harrington prosecuting. After thirty-six hours of deliberation, the jury finally returned a guilty verdict, finding the amount embezzled to be \$32,500.<sup>38</sup> Scott's motion for a new trial was overruled on 10 October, and he was sentenced to five years in the penitentiary and fined \$65,000, twice the amount of the embezzlement. Scott applied to the Nebraska Supreme Court for a new trial but re-

mained in jail in Neligh until December, when the supreme court suspended the sentence and freed him on \$40,000 bond. He posted it quickly and returned to O'Neill the second week of December.<sup>39</sup>

On Christmas the Scott family drove a team and carriage to visit friends in Scottville, in the northeastern part of the county, where they had formerly lived. They remained in the area for a week and were apparently spied upon by a number of men historians have assumed were vigilantes. On 30 December witnesses observed a group of men and horses loitering in the abandoned hamlet of Parker, some ten miles northeast of O'Neill and astride the main trail between Scottville and O'Neill.<sup>40</sup>

On the afternoon of 31 December 1894, the Scotts began their return trip to O'Neill. In the carriage were Scott, his wife, their eight-year-old daughter, Fanny, Miss Etta McWhorter, who lived with the Scotts in O'Neill and attended school there, and the driver, Henry Schmidt, Scott's employee and bodyguard. At 2:00 P.M., a traveler on his way to O'Neill a short distance ahead of the Scott party saw a man standing on the wall of an abandoned sod house at Parker. As the Scott carriage reached Parker, approximately a dozen masked and armed men appeared and demanded that they stop. When Scott told Schmidt to whip the team and try to escape, the masked men began to fire. Both horses were shot, catapulting Schmidt out of the buggy when they fell. A bullet creased Scott's neck, and a ricochet struck Miss McWhorter in the back.<sup>41</sup>

Three men dragged Schmidt away while the leader pulled Scott from the carriage, giving Miss McWhorter the opportunity to scratch the leader's hand several times. When the leader demanded that Scott tell him where the Holt County money was, Scott replied that he would do so in O'Neill. As Mrs. Scott pleaded for her husband's life, the leader stated several times that they would not kill Scott—all they wanted was the money.<sup>42</sup>

The gang tied Schmidt and Scott, placed them in a wagon, and started crosscountry toward the northeast. Scott told his wife, who

was also in the wagon, that the leader was George Mullihan, known to be one of the Holt County vigilantes.<sup>43</sup> The party soon split into two groups. Scott and Schmidt were blindfolded and forced to lie down in the bed of the wagon where they were covered with the lap robe from Scott's carriage. Mrs. Scott and the two girls were placed in the interceptors' buggy and driven off to the southeast, accompanied by a rider. After dark their captors left them on the prairie and they made their way to a farmhouse. By midnight they had been taken to O'Neill.<sup>44</sup>

In the meantime the party with Scott and Schmidt continued driving northeast until they came to an abandoned farmhouse. Schmidt and Scott were separated. After approximately an hour, the leader told Schmidt that the mob would free him. They gave Schmidt Scott's buffalo coat and unloaded shotgun, blindfolded him, and placed him in a two-wheeled cart in which they carried him for several miles in the general direction of O'Neill. There his captors ordered him to walk the rest of the way. When he arrived in O'Neill after midnight, he rang the fire bell and told those who responded of his ordeal. He said he had managed to work his blindfold off and had recognized the driver of the cart as Mose Elliott, another of the vigilantes.<sup>45</sup>

When the sheriff came to the Scott home during the early morning hours both Mrs. Scott and Schmidt apparently told him they could not identify any of the assailants, although both subsequently were able to identify at least two of the group. George Mullihan and Mose Elliott were arrested in the next two days and brought to O'Neill, together with Mert Roy and Jim Pinkerman, two other known vigilantes. Mullihan was taken to the Scott home, where he was masked. Mrs. Scott, Fannie, and Miss McWhorter all tentatively identified him as one of the attackers, although they had been told in advance that the masked man was George Mullihan. He had a scratched hand. All four of the men were charged with assault and killing the horses but were released by the county judge, an ardent Populist, on bonds of \$1200 each.<sup>46</sup>

In the week after the arrests, several people told stories about what some vigilantes had been

doing on 31 January. Mullihan was identified by the passerby as the man standing on the wall at Parker just before Scott's carriage arrived. Rumors began to circulate that Scott's body was in the Niobrara and there was talk of dragging the river below the Whiting bridge.

While the details of Scott's fate remain unknown, most knowledgeable residents of the area believe Scott was hanged at the abandoned farmhouse, and that his body was then taken some fifteen miles northwest, over the Whiting bridge on the Niobrara to the Boyd County shore, and dropped through a hole in the ice into the river.<sup>47</sup>

The Holt County Board offered a reward of \$500 for finding Scott. The Odd Fellows and Knights of Pythias—Scott was a member of both—each offered \$100.<sup>48</sup> A number of people, led by the *Beacon Light*, espoused the theory that either Scott was not dead, that it was all a hoax designed to let him flee with his boodle, or, that if he were dead, it was at the hands of his friends, who did not want him to reveal the fact that he had loaned them money he had taken from county coffers.<sup>49</sup>

On 19 January six of Scott's friends, including Whiting himself, went to the Whiting bridge. They cut the ice on the north bank and, beginning eighty yards below the bridge, dragged upstream. At 3:00 P.M. they found Scott's carriage lap rope. At 9:00 P.M. they found Scott's body in seven feet of water, ten feet out from the bank. The body was perfectly preserved—no doubt because of the extreme cold—and had a rope around the neck that had been cut off at about three feet. Scott's arms were bound behind his back.<sup>50</sup>

Once the body was found, murder warrants were issued for Mullihan, Elliott, Roy, and Fred Harris, who were arrested and jailed pending their preliminary hearing. Feeling ran so high in O'Neill that Sheriff Hamilton gave the prisoners their guns so that they might be protected against a lynch mob, but no mob appeared. The preliminary hearing began on 28 January 1895 and ran for several days. Attorney General A. S. Churchill, from Lincoln, headed the prosecution, assisted by County Attorney Murphy,

and R. R. Dickson and H. M. Uttley, both of O'Neill and both of whom had represented Scott in many of his legal battles. Michael Harrington, his young brother, James, and T. V. Golden of O'Neill represented the accused.<sup>51</sup>

The state called some forty witnesses, the defense none. The parties agreed that the state would stop at this point and that the defendants would be bound over. The state opposed releasing the defendants on bail, but County Judge McCutchan released Mullihan, Elliott, and Harris on bonds of \$3000, and Roy on bond of \$1000. McCutchan issued a very unusual statement to the press, praising the character of all the defendants and saying that if the parties had not agreed to the bind over he would have dismissed the charges against Roy and that he felt all of the defendants would be able to establish an alibi.<sup>52</sup> His alibi prediction was without the benefit of any evidence offered by the defendants, but his prognostication ultimately proved correct.

Having sized up the public mood in Holt County, Churchill returned to Lincoln after the preliminary hearing and arranged for Senator Watson of Otoe County to introduce a bill in the legislature allowing the state to have a change of venue when the attorney general had reasonable cause to believe that public sentiment in a county was so strongly in favor of an accused that a conviction would be impossible. The Republicans had a majority in the legislature, and the bill passed, but it was vetoed by Governor Silas Holcomb, a Populist. An effort to pass it over the veto was discussed but ultimately abandoned.<sup>53</sup>

After the bill failed, Churchill decided to dismiss the case in Holt County and refile in Boyd County, since the body had been found there. He dismissed the case on 19 March. County Attorney Murphy objected but Judge Kinkaid sustained the motion. The sheriff of Boyd County came to O'Neill for the accused, and additional warrants were filed charging Harry Stanton, August Oberle and James Pinkerman, all known vigilantes. By agreement the defendants waived preliminary hearing and were each

released on \$5000 bail. Murphy appealed the dismissal of the Holt County cases to the supreme court, but when the supreme court ruled against him in late May, trial was set to begin in Boyd County on 13 June. Understandably, there was a strong body of feeling in Boyd County that they were being asked to wash Holt County's dirty linen at an estimated cost to Boyd County of ten to fifteen thousand dollars.<sup>54</sup>

The players in the drama were an interesting lot. Churchill, from Omaha, had been elected attorney general in 1894. He was a strong Republican, and throughout the conduct of the trial and its preliminaries he was repeatedly chastized for political partisanship. He was obviously astute enough politically to take the temperature of Holt County, and attempted to counter it by refile in Boyd County. Moses P. Kinkaid, also a Republican, was the darling of the *Frontier*, which had been touting him as a congressional candidate for several years. Born in West Virginia, he graduated from the University of Michigan in 1876 and practiced law in Illinois and South Dakota before coming to O'Neill in 1882. He was elected to the legislature the same year, and in 1887 was appointed by Governor Thayer as a district judge in the ten-county Twelfth Judicial District. He stayed in office until 1900, and in 1902 was elected to Congress from the Sixth Congressional District. He remained in Congress until his death in 1922. A lifelong bachelor, he is best known for the Kinkaid Act, which promoted the settlement of Nebraska's sandhill area. As his career demonstrates, he, too, was politically astute. The most interesting of the trial protagonists was Michael F. Harrington, whose adherents worshipped him and whose detractors despised him. He was born in Ontario, Canada, in 1860, and came to Holt County in the mid 1880s when he was approximately twenty-five years old. He started in the farm loan business, read law in Kinkaid's law office, and then joined first B. L. Snow and then G. M. Cleveland in the practice of law before opening his own office.<sup>55</sup> In the eight years after Harrington was admitted to the bar in 1887, he took twenty-eight cases

to the Supreme Court of Nebraska and was successful on appeal nineteen times. Those are career totals for most lawyers today.<sup>56</sup>

Harrington started out as a Democrat but soon became a Populist and was apparently a powerful orator, giving campaign speeches for his party all over Holt County. Although written records do not show what he had done to incur the wrath of the *Frontier*, there is little question but that he was number one on the newspaper's hate list. The trouble appears to have started with Harrington's assistance to County Attorney Murphy whom the *Frontier* had been assailing for his inability to handle all of the county's legal problems. Every time Harrington assisted Murphy the *Frontier* questioned how Harrington would be paid and why the county board would be willing to pay him.<sup>57</sup>

Finally on 26 October 1893, the *Frontier* let Harrington have both barrels. In a front page story it jeered:

Mike Harrington at the head of the "reform" movement in Holt County. It is enough to make a horse laugh. Any man who knows anything at all about Mike's record in the land business knows that he robbed the companies he represented on the one hand and the men who borrowed money from him on the other. It was catch 'em both ways with Mike, and nothing was too crooked for him to undertake.

The *Frontier* continued its attack on the fourth page:

Harrington commits forgery, defrauds widows and orphans and attempts to beat poor husbandmen out of their farms, but still the independents receive him with open arms and install him as captain of their brigade. Can this be reform?

The paper utilized three full columns to point out just how Harrington had committed forgery, defrauded a widow, and attempted to beat a poor husbandman out of his farm.<sup>58</sup> The facts recited by the *Frontier*, if true, certainly made a prima

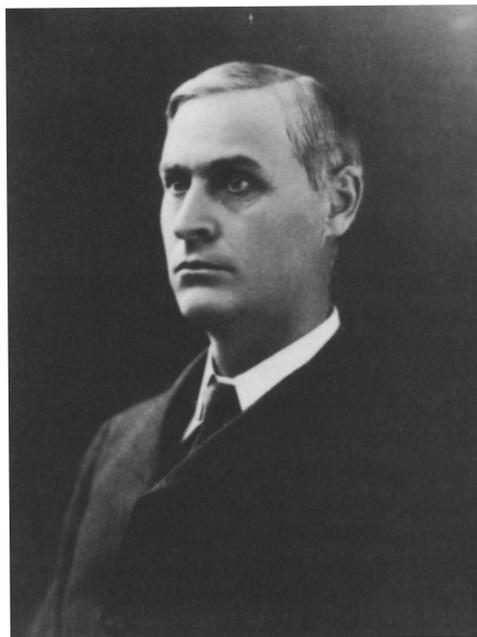


FIG. 2. Michael F. Harrington. Photograph courtesy of Nebraska State Historical Society.

facie case, but if Harrington responded to the *Frontier* in any way, his response was never noted in its columns.

Not everyone agreed with the *Frontier*. Holt County historian Nellie Snyder Yost states that Harrington was reputed to be "generous to a fault." Arthur Mullen, a protege of Harrington and later a very prominent Nebraska Democrat as well as a historian, remembered waiting on a station platform in Fremont with Judge Kinkaid to catch a late train back to O'Neill the day after Barrett Scott was abducted. Kinkaid told Mullen that he was concerned about what might happen in O'Neill, because Harrington was out of town and only Harrington had the strength of character to keep the two warring factions from each other's throats.<sup>59</sup> One thing about Harrington that everyone—even the *Frontier*—acknowledged was his legal ability. He was clearly the best in town, if not in the whole area, as he proved in the trial of Barrett Scott's killers.

Many vigilantes attended the entire trial, and Nellie Snyder Yost claims that all the counsel were armed.<sup>60</sup> On the first day, Boyd County Attorney Wills dismissed all charges against Mert Roy, Jim Pinkerman, August Oberle, and Harry Stanton, leaving only George Mullihan, Mose Elliott, and Fred Harris as defendants. More than one hundred jurors were examined. The defendants had fifty-four peremptory challenges, the state eight. Harrington managed to empanel a man whom he had successfully defended against a murder charge only a few years before. The grateful ex-client was seated after the state had exhausted all its peremptory challenges.<sup>61</sup>

Harrington's defense was based on alibi, on the theory that Dell Akin and other friends of Scott were really the killers because they did not want Scott to talk—a theory that had some adherents even years later—and on the principle that Boyd County had no jurisdiction because there was no showing that the killing had taken place there.<sup>62</sup> The state case consumed several days. Some of the key state witnesses unfortunately proved ambivalent in their identification of the defendants. For reasons that have never been satisfactorily explained, Henry Schmidt, the abducted driver, did not even appear at the trial, although the defense allowed his testimony at the preliminary hearing to be introduced. Harrington moved for a directed verdict at the end of the state's case on the ground that venue had not been proved, but Kinkaid overruled the motion, holding that venue was a question for the jury.<sup>63</sup>

Harrington called many alibi and character witnesses, including Holt County Judge McCutchan. The jury soon acquitted all three defendants on the first ballot. The *Frontier* and the *Butte Gazette* credited the victory to Harrington, although not in complimentary terms.<sup>64</sup>

Things slowly returned to normal, but the incident has not been forgotten. As Arthur Mullen said more than fifty years ago:

O'Neill still fixes a period by saying, "That was the year when Barrett Scott \_\_\_\_." For the story of Barrett Scott is more than an

individual happening. It is the saga of the West in the early Nineties.<sup>65</sup>

#### CONCLUSION

No one can state with certainty who killed Barrett Scott. Some say the Holt County vigilantes, while others believe Scott's own friends did him in. The vigilantes seem a more likely choice. They were active in the area, having killed men within the previous six months. They had clearly indicated to the county attorney that they felt the time had come to take the law into their own hands because they did not think much of the forces of law and order. Scott's assailants constantly demanded to know the whereabouts of the Holt County money. Vigilantes protect their property and act when they believe the forces of law and order will not or cannot.

Scott's friends and bondsmen, on the other hand, would seem to have had little to gain from killing Scott. They had been absolved of any financial liability by Judge Chapman's decision in the bond case. Even if Scott told all he knew, doctrines of *res judicata* and collateral estoppel would protect them. Even though Chapman's decision was ultimately overturned, it was not until 1897, some two and a half years after Scott's death.

Scott certainly acted very cavalierly with county money. He seemed to have funds even as schools in Holt County closed, veterans lost their pensions, and taxes skyrocketed. Perhaps the right man was hanged, but for the wrong reason and in the wrong fashion. Embezzlement is not a capital crime. Those who take the law into their own hands only serve to diminish general respect for law and order, and everyone is the loser. In the Scott case, the pilfered funds were never recovered—making it an exercise in futility.

The legal system appears to have been working well if somewhat slowly. Scott was held to have been properly ejected from office, was tried and sentenced for embezzlement, and was on his way to five years in the penitentiary. O'Neill had an active bar, and the citizenry were fre-

quently in court on a wide range of civil matters. The Scott case thus represented a retrogression from the civilized utilization of the legal process to a more barbaric concept of the law of the jungle, where fang and claw are the determinants. It is doubly regrettable that the vigilantes killed Barrett Scott. He lost his life unnecessarily through a process that ignored a working legal system. The killing did not protect property—that had already been stolen—or retrieve any of it. The hanging of Barrett Scott was not the work of a group seeking to maintain some rudimentary system of law and order on a lawless frontier. The hanging was an act of retaliatory anger in defiance of the duly constituted legal authorities. Such acts create festering wounds that can ultimately break down the moral fiber of an entire community. America is a nation of laws, and cannot brook their calculated disregard.

We can hope that north-central Nebraska has shaken off the fallout from Barrett Scott's death. But as the Niobrara region faces what many residents perceive to be a threat to its life and property from the construction of a low-level nuclear waste facility, the shade of Barrett Scott must be restless.

#### NOTES

1. The first vigilante movement began in South Carolina in 1767. Three fifths (190) of all vigilante movements took place after 1860, and five sevenths (511) of all deaths attributable to vigilante activity occurred after 1860. Richard Maxwell Brown, *Strain of Violence* (New York: Oxford University Press, 1975), pp. 96, 102.
2. *Ibid.*, pp. 96-97; William E. Burrows, *Vigilante* (New York: Harcourt, Brace, Jovanovich, 1976), pp. 16-17.
3. See, for example, Frederick J. Turner, *The Frontier in American History* (New York: Holt, Rinehart & Winston, 1962), p. 212; W. Eugene Hollon, *Frontier Violence* (New York: Oxford University Press, 1974), p. ix; Brown, *Strain of Violence* (note 1 above), p. 5; Burrows, *Vigilante* (note 2 above), p. 278.
4. Burrows, *Vigilante* (note 2 above), pp. 13-14; Brown, *Strain of Violence* (note 1 above), pp. 108-10.
5. Brown, *Strain of Violence* (note 1 above), pp. 62, 152; Burrows, *Vigilante* (note 2 above), p. 17.
6. Brown, *Strain of Violence* (note 1 above), pp. 132-33; Burrows, *Vigilante* (note 2 above), p. 280.
7. Harold Hutton, *Vigilante Days* (Chicago: Swallow Press, 1978), p. 8.
8. *Nebraska Reports*, vols. 1-45. The three cases involving Scott were *In Re Barrett Scott*, 38 Neb. 502 (1893); *State v. Crinklaw*, 40 Neb. 759 (1894); and *Hoxie v. Scott*, 45 Neb. 199 (1895).
9. Hutton, *Vigilante Days* (note 7 above), p. 40; Nellie Snyder Yost, *Before Today* (O'Neill: Miles Publishing Co., 1976), p. 63.
10. Hutton, *Vigilante Days* (note 7 above), pp. 59-61; Nellie Snyder Yost, *The Call of the Range* (Denver: Sage Books, 1966), p. 270.
11. Hutton, *Vigilante Days* (note 7 above), pp. 62-63, 81.
12. *Ibid.*, pp. 86-102; Yost, *Before Today* (note 9 above), p. 60.
13. *Holt County* [O'Neill, Nebraska] *Banner*, 19 February 1884.
14. Hutton, *Vigilante Days* (note 7 above), pp. 131-42.
15. *Ibid.*, p. 152.
16. *Ibid.*, p. 155.
17. *Ibid.*, pp. 157-58.
18. *Ibid.*, p. 193.
19. *Ibid.*, p. 196.
20. Supervisors Record, Holt County, Book D, pp. 466, 471. Since there was a county attorney in place, Nebraska law precluded the county from paying either Murphy or Harrington. See *Brome v. Cumming County*, 31 Neb. 362 (1891).
21. Supervisors Record, Holt County, Book D, pp. 466, 471-74, 483-95, 497-99, 504.
22. *Scott v. Golden et. al.*, Case #2435, District Court of Holt County.
23. Supervisors Record, Holt County, Book D, p. 562.
24. See *Stoner v. Keith County*, 48 Neb. 279 (1896); *First Nat'l Bank of Omaha v. Goodman*, 55 Neb. 418 (1898).
25. Hutton, *Vigilante Days* (note 7 above), p. 201; according to Arthur F. Mullen, *Western Democrat* (New York: Wilfred Funk, 1940), pp. 67-68, "Shortages in public offices were so common in those days that the party in power—it was the Republican in most of the Nebraska counties—had worked out a system of protecting officeholders by giving them successors who would not spill the beans."
26. Yost, *Before Today* (note 9 above), p. 108.
27. When Scott fled to Mexico, the *Frontier* had some second thoughts, however. "The Frontier has always had the most implicit confidence in Mr. Scott, but we are compelled at last to admit that things are looking decidedly blue." O'Neill [Nebraska] *Frontier*, 10 August 1893; 20 July 1893.
28. O'Neill [Nebraska] *Sun*, 17 August 1893; O'Neill *Frontier*, 24 August 1893.
29. O'Neill *Sun*, 12 October 1893.

30. Hutton, *Vigilante Days* (note 7 above), p. 209.
31. *O'Neill Frontier*, 21 December 1893.
32. 38 Neb. 661 (1894).
33. *O'Neill Sun*, 26 April 1894.
34. Hutton, *Vigilante Days* (note 7 above), p. 290.
35. *Ibid.*, pp. 290-91; Yost, *Before Today* (note 9 above), p. 60.
36. *Omaha World Herald*, 27 January 1895, p. 5.
37. *Holt County v. Scott et. al.*, 53 Neb. 176 (1897), *O'Neill Frontier*, 5 January 1899. It is very difficult to reconcile the decision in *Scott* to that in *Stoner v. Keith County* (note 24 above). The fact that Scott was a convicted felon may have made the difference. Both cases remain good law today in Nebraska, although *Scott* seems more in accord with the majority of courts.
38. *O'Neill Sun*, 20 September 1894.
39. Arthur Mullen (*Western Democrat* [note 25 above], p. 69) contended that State Treasurer Joseph Bartley, one of the beneficiaries of Scott's largesse in loaning county funds, had been loaning money to supreme court members, and that Bartley was instrumental in getting the court to release Scott on bail. See also *O'Neill Sun*, 13 December 1894.
40. Hutton, *Vigilante Days* (note 7 above), pp. 221-27.
41. *Ibid.*, p. 228.
42. *O'Neill Frontier*, 7 February 1895.
43. Hutton, *Vigilante Days* (note 7 above), p. 229.
44. *O'Neill Frontier*, 3 January 1895.
45. *Ibid.*
46. *O'Neill Frontier*, 10 January 1895; *O'Neill Sun*, 10 January 1895.
47. Hutton, *Vigilante Days* (note 7 above), p. 231. Nellie Snyder Yost, however, tells a different version in *Before Today* (note 9 above), p. 61. She states that Scott was hanged from the Whiting bridge, and that when he was dead, the rope was cut and the body fell into the Niobrara. She states that it was the remainder of the rope, still tied to the bridge, that led searchers to the Niobrara to look for Scott's body. The Hutton version seems more plausible. Scott was known to have been at the farmhouse. Schmidt saw him there. The farmhouse was abandoned. The bridge was not. Some passers-by might have been anticipated, even on New Year's Eve. Yost cites no evidence in support of her position, and it seems believable that the vigilantes would have preferred to transport a dead body, incapable of an outcry, rather than a clever captive who might have escaped or cried out. Ever since the time of Macbeth, "If it were done when 'tis done, then 'twere well it were done quickly."
48. The supervisors apparently started at the \$3000 level but there was no support, *O'Neill Frontier*, 17 January 1895. Thomas Hudson, who found the body, sued to collect the reward from the IOOF, and won. See *Elkhorn Valley Lodge No. 57, IOOF v. Hudson*, 59 Neb. 672 (1900), an opinion written by former Governor Silas A. Holcomb.
49. *O'Neill [Nebraska] Beacon Light*, 11 January 1895; Will H. Spindler, *Rim of the Sand Hills* (Mitchell, South Dakota: Education Supply Co., 1941), pp. 299-300.
50. *O'Neill Frontier*, 24 January 1895.
51. *O'Neill Sun*, 31 January 1895; Hutton, *Vigilante Days* (note 7 above), p. 245.
52. *O'Neill Frontier*, 7 February 1895.
53. *O'Neill Beacon Light*, 22 March 1895.
54. Hutton, *Vigilante Days* (note 7 above), pp. 253-54.
55. Yost, *Before Today* (note 9 above), pp. 28, 36.
56. *Nebraska Reports*, vols. 21-45.
57. *O'Neill Frontier*, 27 July 1893. "We have always been under the impression that a prosecuting attorney could have no legal assistance without an order of the court, but in the mandamus proceedings against Scott we see that M. F. Harrington is associate counsel. Who will pay him, the county board?" cf. *Frontier*, 3 August 1893; 24 August 1893; 31 August 1893; 19 April 1894; 26 July 1894.
58. *O'Neill Frontier*, 26 October 1893.
59. Yost, *Before Today* (note 9 above), p. 36; Mullen, *Western Democrat* (note 25 above), p. 71.
60. Yost, *Before Today* (note 9 above), p. 62.
61. Strange as it may seem, having a captive juror does not appear to be an ethical violation, as it is presumed the juror acted according to law. *Strickland v. Washington*, 466 U.S. 668 (1984) *rehearing denied*, 467 U.S. 1267 (1984).
62. Hutton, *Vigilante Days* (note 7 above), p. 256; Spindler, *Rim of the Sand Hills* (note 49 above), pp. 299-300.
63. See *State v. Vejvoda*, 231 Neb. 668 (1989). Kinkaid was correct.
64. *O'Neill Frontier*, 4 July 1895; *Butte [Nebraska] Gazette* quoted in *Frontier*, same date.
65. Mullen, *Western Democrat* (note 25 above), p. 61.