

Offbeat Oregon

Law's options in frontier Oregon were rough, not always ready

By FINN J.D. JOHN
FOR THE SENTINEL

Note: The stories in this column are from very early in Oregon history. They started out as true stories, but were then passed around over campfires and cracker barrels for several years before someone got around to writing them down. So as they present themselves to us today, they are part history and part folklore.

If ever there was a great time and place in which to be a criminal, it was the frontier Oregon Territory.

Of course, if a committee of vigilantes got hold of you, all bets were off. And, of course, those convicted of actual murder had plenty to worry about ... unless they were well-connected enough to dodge the noose. But for those lucky outlaws who fell into the hands of legitimate authorities and were sent to jail or prison, the outlook was pretty rosy.

From 1861 to 1876, every man committed to the Oregon State Penitentiary for 'life' either escaped or

was pardoned," writes historian and newspaper columnist Erik Bromberg, quoting from the U.S. Federal Writers Project's "Oregon Oddities" article of 1939-1941. "Some who escaped were recaptured and then pardoned."

One problem was, in a brand-new society still in the process of building or importing the things it needed to thrive, spending valuable resources on things like escape-proof jails was hard to justify, especially if there were only one or two criminals a year who needed to be warehoused in them. So once a community had built one, its taxpayers hated to see it go unused.

That appears to have been the motive for Tillamook County's eagerness to convict a Tillamook man on charges of having stolen some hogs, back in 1865.

The man — whose name isn't mentioned in the newspaper source — appeared at the offices of the Oregon Statesman in Salem and buttonholed the newspaper's editor, Joseph Gaston. His story: he had been falsely accused of stealing some hogs.

"But I am not guilty!" he told the editor. "Bears ate those hogs, but I am not able to prove it."

"Now, I am your only subscriber in Tillamook," he added, "and I want you to get me a pardon from the governor."

Gaston passed the request upline to the paper's publisher, D.W. Craig, who decided that, in light of the value of having a paying subscriber in Tillamook County — in a fine position to help or hinder efforts to get more — he would do what he could.

So he escorted the innocent convict over to the governor's house and introduced him to Gov. A.C. Gibbs.

"But," Gov. Gibbs objected, after hearing the story, "if you are convicted, what are you doing here in Salem?"

His guest explained that he'd been lodged in Tillamook County's brand-new jail, its first public building, in which the community took considerable pride. It was a stout structure made of big fir logs. It was quite impregnable — it would take a man with an ax days to chop a hole in it big enough to escape through. But ...

"I crawled up the inside logs, pushed the shakes aside, and escaped from the roof," the man explained.

The governor told him he couldn't issue a pardon without the paperwork from the trial, including something documenting that he had in fact been convicted. The man seemed at a loss.

"But governor," he said, "there was no writing done at the trial. The justice of

the peace just listened to the hog owner's story, and when I started to tell about the bears doin' it he said I was guilty and put me in that new jail."

Without any paperwork, the governor couldn't issue a pardon. So, instead, he wrote a letter suggesting that the accused had been imprisoned without due process of law.

The man was jubilant. "That's as good as a pardon," he said. "Nobody in Tillamook will know what due process of law means!"

If that last detail sounds farfetched, it's not. There are several reasons to suspect that this story is, at the very least, "augmented" — but that's probably not one of them. Legal talent was rare in frontier Oregon, and not widely distributed throughout the state. And even if a far-flung community like Tillamook did have a resident attorney, there was no real reason to believe he was not an idiot.

The usual process for becoming a lawyer was to basically serve an internship with a practicing attorney until one felt ready to take on the job; then, an examination would be conducted by representatives of the bar. That examination could be extremely rigorous, or ... not. Historian Bromberg cites an article in the Washington Law Review (April 1942) that tells the story of Winfred S. Ebey, a customs clerk in Port Townsend, in 1855, who was examined by three respected attorneys.

"The only examination I passed," Ebey said, "consisted of a single question by Mr. (Frank) Clark, who asked me if I had any good brandy in the Customs

House!"

Ebey replied that he did, and broke it out; and everyone presumably drank a toast to the future success of the new attorney, whose request for admission to the bar had just been promptly and unanimously approved.

Another creative work-around for lack of jail facilities — one that would be unconstitutional today, thanks to the 14th Amendment — came out of Polk County in 1852. A man named Hiram Everman was convicted of being an accessory to a murder committed by his brother William.

William was sentenced to be hanged, and Hiram was sentenced to three years in prison. The only problem was, Polk County had no access to a prison — the Oregon State Penitentiary had just opened the year before in Portland, but apparently wasn't available for Hiram to move into.

So on the day of William's hanging, Hiram was literally auctioned off as an indentured servant — literally a temporary slave.

His contract was bought by a farmer named Theodore Prather. Hiram worked his three years, at the end of which Prather gave him (per the terms of the agreement, apparently) a horse and \$20. With the aid of these he journeyed to Douglas County, settled down, raised a family, and had no further trouble with the law.

Another twist on the "prison labor" theme — an ironic one — comes from Bellingham, up at the north end of what was then the Washington Territory, in 1884. One of the local banks had just installed a

vault with a special time-clock door lock, new and gleaming and state-of-the-art.

The vault lock promptly failed, and nothing the banker or anyone he knew tried could get it to open.

Of course, a bank that has no access to its vault isn't of much use, so the banker was very worried. He asked the Whatcom County Sheriff if he had any ideas or advice.

"I have a prisoner up in the brick building that I haven't been able to keep locked up," the sheriff replied. "He picks the locks and goes in and out as he pleases. I'll go up to the jail and pick him up — if he's still in."

The prisoner was soon on the scene and looking the lock over. Sure, he told the banker; he could pick the lock. But he wouldn't do it unless the banker and sheriff left the room while he did so. He didn't intend to reveal his professional secrets.

Reluctantly, both men did; and a few minutes later, the prisoner emerged and told them the door was open.

The next morning, the sheriff found the prisoner was gone from the county jail, and apparently gone for good — he'd taken all his things with him. And over at the bank, when the vault was opened for the day's business, the banker found a note in it.

It was an invoice for the previous day's lock-picking services, for \$7.50 — and it was marked as paid.

No one ever saw the lock picker again. But, given the size of the wad he could have lifted from the bank vault while he was in there collecting his \$7.50 fee, apparently everyone was impressed enough with his honesty and restraint that he was not pursued.

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