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## CHAPTER 1

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### INTRODUCTION

As this book goes to press in 2016, democratic governments throughout the world are commemorating the 800th anniversary of the signing of the Magna Carta, which Lord Alfred Denning, the most respected British judge of the twentieth century, described in 1965 as “the greatest constitutional document of all times—the foundation of the freedom of the individual against the arbitrary authority of the despot.”<sup>1</sup> Yet, one type of punishment that is increasingly criticized for its imposition based on “the arbitrary authority of the despot” is the death penalty. While the death penalty today has little in common with the death penalty as it was practiced when the Magna Carta was signed, or even when its 750th or 700th anniversaries were celebrated fifty and one hundred years ago, questions about its use and value seem to be escalating, in Colorado and throughout the world, at exponential rates.

At the time of this writing, at the end of 2015, Colorado’s death penalty had become such a trivial component of the state’s criminal justice system that it is now quite possible that we will never see another execution in

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1. See, e.g., ANTHONY ARLIDGE & IGOR JUDGE, *MAGNA CARTA UNCOVERED* (2014); Magna Carta Trust, *Magna Carta Today: Why Celebrate 800 Years*, accessed July 15, 2016, <http://magnacarta800th.com/magna-carta-today/objectives-of-the-magna-carta-800th-committee/>.

the state. After all, by 2016 there were only three inmates on death row in Cañon City, and the only one who is anywhere close to being put to death is Nathan Dunlap, convicted of killing four people in an Aurora restaurant in 1993.<sup>2</sup> In 2013 Colorado governor John Hickenlooper indefinitely halted his execution, a move that effectively imposed a moratorium on all executions in the state.<sup>3</sup> For murders committed between January 1, 2000 and December 31, 2015, prosecutors sought the death penalty against eighteen men and one woman (plus against one of those men a second time). In 2009 and again in 2013, the Colorado General Assembly came close to passing abolition bills. Its members may do so again in the near future, a current or future governor could commute all the death sentences to prison terms with a stroke of the pen, or the courts could easily tinker with these sentences, rendering Colorado's executioner permanently unemployed. This book will cover the history of Colorado's struggles with the death penalty, but with the death penalty still legally permissible, the final chapter of this history has not yet been written.

## DEFINING AND COUNTING LEGAL EXECUTIONS

To assemble a complete list of Colorado executions, decisions have to be made on how to accurately distinguish a legal execution (performed after a trial under statutory authority) from a lynching (in which a mob or group performs an execution without recognized legal authority). In a seminal book closely related to the death penalty, distinguished Colorado historian Stephen J. Leonard, from Metropolitan State University of Denver, documented some 175 lynchings in Colorado between 1859 and 1919, including two in which the victims were burned to death and one in which a woman was lynched.<sup>4</sup> Sometimes a perfunctory trial before a vigilante court preceded the lynching, but that extralegal trial should not cause today's historians to classify the hanging as a legal execution.

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2. See appendix 2, case no. 17.

3. Karen Augé & Lynn Bartels, *Nathan Dunlap Granted Temporary Reprieve by Colorado Gov. Hickenlooper*, DENVER POST, May 23, 2013, at 1.

4. See Stephen J. Leonard, *Avenging Mary Rose: The Lynchings of Margaret and Michael Cuddigan in Ouray, Colorado, 1864*, COLO. HERITAGE 37 (Summer 1999): 34–47; STEPHEN J. LEONARD, *LYNCHING IN COLORADO, 1859–1919* (2002), at 3 (hereinafter LEONARD).

On the other hand, five cases from 1859 to 1860 that are treated as legal executions in this book arguably could be classified as lynchings,<sup>5</sup> and Leonard does so; but they are included in the inventory of legal executions in this book because they were, in a real sense, at least quasi-legal. Strictly speaking, these five executions occurred without statutory authority. In each, however, the prisoner received a semi-formal trial; lay citizen volunteers acted as judge, defense attorney, prosecutor, and jurors; and there were attempts by those in charge to provide the prisoner with minimal due process protections, such as the opportunity to cross-examine witnesses. The five defendants in these questionable cases were tried, convicted, and condemned to death in forums known as People's Courts and will be discussed in the next chapter.

There is no question about the legality of the proceedings that caused ninety-eight other Coloradans to be hanged, gassed, or (in one case) injected with lethal chemicals. Only two of these executions occurred in the past fifty years. The last was that of Gary Lee Davis, who was put to death on the gurney in the Colorado State Penitentiary in Cañon City in 1997.<sup>6</sup> His immediate predecessor to be executed, Luis José Monge, fired his attorneys, forfeited his appeals, and in 1967 became the last prisoner to be asphyxiated in Cañon City's gas chamber.<sup>7</sup> While no one knew it at the time, Monge's execution marked the end of an era in death penalty history for both Colorado and the United States, and there were no more executions anywhere in the fifty states for nearly a decade. Five years after Monge's death, the US Supreme Court handed down its decision in *Furman v. Georgia*,<sup>8</sup> which, in effect, invalidated all but a few death penalty statutes nationwide.<sup>9</sup> Thereafter, most states resisted making the ban permanent and enacted new death penalty statutes—some of which withstood constitutional scrutiny<sup>10</sup>—and in 1977 Gary Gilmore in

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5. See appendix 1 (case nos. 1–5). Indeed, these five cases are included on Leonard's list of Colorado lynchings, so there is some overlap in our work. LEONARD, at 3.

6. See appendix 1, case no. 103.

7. See appendix 1, case no. 102.

8. 408 U.S. 238 (1972).

9. After *Furman* was handed down, there were still some questions about some narrowly defined and/or mandatory capital statutes. MICHAEL MELTSNER, CRUEL AND UNUSUAL: THE SUPREME COURT AND CAPITAL PUNISHMENT 299–302 (1973).

10. *Gregg v. Georgia*, 428 U.S. 153 (1976).



**FIGURE 1.1.** Colorado's modern execution gurney at the Colorado State Penitentiary, used for the execution of Gary Lee Davis in 1997. The security devices on the gurney have been covered so that locking mechanisms are not revealed. Photo courtesy of the Colorado Department of Corrections (Adrienne Jacobson, Public Information Officer).

Utah became the first “post-*Furman*” and “post-Monge” prisoner to be executed in the United States.<sup>11</sup>

Between January 1, 1977 and the end of 2015, there were 1,422 executions in the United States. Only one of these executed inmates—Gary Lee Davis—went to his death in Colorado, although that low “success” rate has not stopped a considerable number of politicians and prosecutors from trying their best and spending millions of dollars to increase the number.<sup>12</sup>

Assembling a comprehensive list of those executed in Colorado’s history is neither a simple nor a straightforward task, but this job has now been completed. Appendix 1, at the end of this book, gives a chronological list of all those who were executed in Colorado and a short description of each case.<sup>13</sup> Before November 1890, Colorado executions occurred in counties, and before 2003 there was never a statewide “master list” that could give students of the death penalty the names, dates, and places where executions were carried out under county authority.<sup>14</sup> The best single source for execution data, both in Colorado and in other states, comes from the scholarship of the late M. Watt Espy, an Alabama researcher whose work in documenting executions is regarded by most scholars as incomplete yet definitive.<sup>15</sup> As a starting point, Espy supplied his data for this project, which included the names and dates

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11. Like Monge, Gilmore dropped his appeals and asked to be executed.

12. For a complete and up-to-date list of all those executed in the United States since 1976, see <http://www.deathpenaltyinfo.org/views-executions>, accessed July 15, 2016.

13. For longer descriptions of each Colorado execution, see R. MICHAEL WILSON, *LEGAL EXECUTIONS IN THE WESTERN TERRITORIES, 1847–1911: ARIZONA, COLORADO, IDAHO, KANSAS, MONTANA, NEBRASKA, NEVADA, NEW MEXICO, NORTH DAKOTA, OKLAHOMA, OREGON, SOUTH DAKOTA, UTAH, WASHINGTON AND WYOMING* 56–66, 205–6 (2010); R. MICHAEL WILSON, *LEGAL EXECUTIONS AFTER STATEHOOD IN ARIZONA, COLORADO, NEVADA, NEW MEXICO, AND UTAH: A COMPREHENSIVE REGISTRY* 96–195 (2012).

14. This list was first made available in Michael L. Radelet, *Capital Punishment in Colorado, 1859–1972*, U. COLO. L. REV. 74 (2003): 885–1010.

15. See, e.g., Francis X. Clines, *A Dismayed Historian of the Gallows*, N.Y. TIMES, Nov. 18, 1992, at A16. Espy passed away in 2009. His papers are now permanently housed in the M. E. Grenander Department of Special Collections and Archives at the University at Albany, SUNY. See <http://library.albany.edu/speccoll/findaids/eresources/findingaids/apap301.xml>, accessed July 15, 2016.

of approximately 90 percent of the executions included in appendix 1. Extensive searches in the Colorado State Archives, Stephen H. Hart Library and Research Center at the Colorado Historical Society (now called History Colorado), the Denver Public Library, and Norlin Library at the University of Colorado Boulder, as well as in several smaller libraries throughout the state, were conducted to supplement the Espy data and to collect information on each execution. In several cases in which the race of the executed prisoner's murder victim was unknown, information was obtained from death certificates from the Health Statistics Section, Colorado Department of Public Health and Environment.

### GENERAL PATTERNS IN COLORADO EXECUTIONS

Using this methodology, and including the five executions that resulted from decisions made by People's Courts, a total of 103 legal executions between the beginning of 1859 and the end of 2015 were identified. Only men were executed,<sup>16</sup> all of whom were convicted of murder.<sup>17</sup> Table 1.1

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16. Although Colorado has never executed a woman (and this research project has not identified any woman sentenced to death in Colorado's history), there was at least one lynching that claimed the life of a woman. On January 19, 1884, Michael and Margaret Cuddigan were lynched in Ouray after being arrested (on skimpy evidence) of killing a ten-year-old foster child who was in their care. Margaret was twenty-one at the time of her death and was seven months pregnant. See Stephen J. Leonard, *Avenging Mary Rose*, 37; LEONARD, at 73–86. There is also a possibility that a Hispanic woman was lynched in Trinidad in 1873. LEONARD, at 74.

17. Although every person legally executed in Colorado since 1859 was convicted of murder, there were other crimes that at one time or another also carried the death penalty. A mandatory conviction of first-degree murder and a discretionary death penalty was legislated for those convicted of causing a death by anarchy. See COLO. REV. STAT. § 40-23-14 (1963). The 1861 Session Laws mandated that those performing abortions in which the woman died also faced a mandatory conviction for murder and a discretionary death penalty. See *id.*, § 40-2-23. The 1861 session laws made the death penalty mandatory for those convicted of perjury that resulted in the conviction and execution of an innocent person. Act of Nov. 5, 1861, § 80, 1861 Colo. Terr. Sess. Laws 290, 306. See also COLO. REV. STAT. § 35-1717 (1908). In 1939, in the wake of the 1932 New Jersey kidnapping of the son of aviator Charles Lindbergh, the General Assembly made kidnapping in which the victim suffers bodily harm a capital offense. See Act of Apr. 3, 1939, § 1(a), 1939 Colo. Sess. Laws 319. Finally, prisoners serving a life sentence faced a death sentence for assault while attempting to escape. "Every person undergoing a life sentence in the state penitentiary who, while escaping or attempting to escape, commits an assault with intent

summarizes these executions, breaking them into five categories: (1) county authority, pre-statehood (ten cases), (2) county authority after statehood (fifteen cases), (3) hangings under state authority (forty-five cases), (4) asphyxiations under state authority in the gas chamber (thirty-two cases), and (5) the only execution since 1967, Colorado's sole lethal injection.<sup>18</sup> Table 1.1 also lists the date of the offense, date of execution, the day of the week on which the execution occurred, and the number of months between the crime and the execution.

As shown in Table 1.1, on eight occasions, two men were executed on the same day<sup>19</sup> and twice the state executed three people on a single day.<sup>20</sup> One of the double executions claimed the lives of Louis and John Pacheco, who are the only brothers to be executed in the state.<sup>21</sup> Table 1.2 categorizes some of the data from Table 1.1 so that various trends by decade can be examined. During the 1930s—the busiest decade for Colorado's executioners—twenty-five executions took place, seven in 1930 alone. Colorado's execution total was also in double figures in the 1880s (thirteen), the 1890s (twelve), and the 1940s (thirteen). There were, however, only ten executions in the last half of the twentieth century and only ten executions from 1950 through 2015. In contrast, in the past twenty years (1996–2015), Texas, with 427 executions, has averaged twice that number *per year*. As Bob Grant, one of Colorado's top death penalty prosecutors over the past three decades, has regularly pointed out, debating the death penalty in Colorado is a lot different than debating it in Texas.

Table 1.2 also collapses data from Table 1.1 to calculate the average time between the crime and the execution. Prior to 1869, when there were few places to confine prisoners, executions typically occurred within two months of the crime. During the next ninety years, prisoners' executions generally occurred within one or two years of the capital offense. By the 1960s, however, the average prisoner in Colorado waited

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to commit bodily injury upon the person of another with a deadly weapon or instrument, or by any means of force likely to produce great bodily injury, shall be guilty of a felony, and upon conviction thereof, be punishable by death." COLO. REV. STAT. § 40-7-49 (repealed).

18. In 1988 Colorado changed its method of execution from the gas chamber to lethal injection. See Act of May 29, 1988, § 1, 1988 Colo. Sess. Laws 671.

19. See appendix 1, case nos. 7, 8, 15, 16, 31, 32, 39, 40, 54, 55, 59, 60, 72, 73, 78, and 79.

20. See appendix 1, case nos. 35–37 and 63–65.

21. See appendix 1, case nos. 72 and 73.

**TABLE 1.1.** Chronology of Colorado executions—1859–2015 (ordered by date of execution)

<i>Case</i>	<i>Name</i>	<i>Date of crime</i>	<i>Date of execution</i>	<i>Day of execution</i>	<i>Months between crime and execution</i>
COUNTY AUTHORITY—PRE-STATEHOOD—HANGING (N = 10)					
1	Stoefel	04-07-1859	04-09-1859	Saturday	0
2	Young	03-12-1860	03-15-1860	Thursday	0
3	Gredler	06-12-1860	06-15-1860	Friday	0
4	Gordon	07-20-1860	10-06-1860	Saturday	3
5	Waters	11-30-1860	12-21-1860	Friday	1
6	Van Horn	Oct. 1863	12-18-1863	Friday	2
7	Foster	01-05-1866	05-24-1866	Thursday	5
8	Stone	01-05-1866	05-24-1866	Thursday	5
9	Smith	02-16-1868	02-18-1870	Friday	24
10	Myers	08-10-1871	01-24-1873	Friday	17
EXECUTIONS IN COUNTIES—STATE LAW—HANGING (N = 15)					
11	Miller	08-26-1876	02-02-1877	Friday	6
12	Nunez	10-04-1877	03-14-1879	Friday	17
13	Simms	01-25-1880	07-23-1880	Friday	6
14	Salisbury	04-29-1880	06-17-1881	Friday	14
15	Rosengrants	06-18-1880	07-29-1881	Friday	13
16	Gilbert	10-02-1880	07-29-1881	Friday	10
17	Coleman	07-05-1881	12-16-1881	Friday	5
18	Woods	05-25-1882	06-23-1882	Friday	1
19	Garcia	04-15-1883	12-20-1884	Saturday	20
20	Hibbard	Nov. 1883	04-24-1885	Friday	17
21	Clements	08-17-1885	12-03-1885	Thursday	4
22	Minich	10-13-1884	02-05-1886	Friday	16
23	Green	05-19-1886	07-27-1886	Tuesday	2
24	Femenella	03-11-1888	08-23-1888	Thursday	5
25	Ortiz	03-30-1889	07-16-1889	Tuesday	4
STATE AUTHORITY—CAÑON CITY—HANGING (N = 45)					
26	Griego	06-03-1890	11-08-1890	Saturday	5
27	Joyce	07-04-1890	01-17-1891	Saturday	6

*continued on next page*

TABLE 1.1.—*continued*

<i>Case</i>	<i>Name</i>	<i>Date of crime</i>	<i>Date of execution</i>	<i>Day of execution</i>	<i>Months between crime and execution</i>
28	Davis	01-07-1891	09-22-1891	Saturday	8
29	Smith	June 1891	12-14-1891	Monday	6
30	Lawton	08-17-1891	05-06-1892	Friday	9
31	Jordan	01-23-1893	05-11-1895	Saturday	28
32	Augusta	07-19-1892	05-11-1895	Saturday	34
33	Taylor	01-19-1895	12-13-1895	Friday	11
34	Ratcliff	05-06-1895	02-07-1896	Friday	9
35	Holt	11-20-1895	06-26-1896	Friday	7
36	Noble	11-20-1895	06-26-1896	Friday	7
37	Romero	11-20-1895	06-26-1896	Friday	7
38	Galbraith	03-09-1904	03-06-1905	Monday	12
39	Andrews	12-31-1903	06-16-1905	Friday	18
40	Arnold	12-31-1903	06-16-1905	Friday	18
41	Johnson	04-08-1905	09-13-1905	Wednesday	5
42	McGarvey	09-24-1906	01-12-1907	Saturday	4
43	Alia	02-23-1908	07-15-1908	Wednesday	5
44	Lynn	05-14-1908	10-08-1908	Thursday	5
45	Wechter	02-11-1911	08-31-1912	Saturday	19
46	Hillen	10-24-1913	06-24-1915	Thursday	20
47	Quinn	10-24-1914	01-28-1916	Friday	15
48	Cook	03-09-1912	02-26-1916	Saturday	48
49	Bosko	04-11-1919	12-10-1920	Friday	20
50	Borich	03-31-1922	08-18-1922	Friday	5
51	McGonigal	06-01-1922	04-26-1924	Saturday	23
52	Shank	09-16-1925	09-18-1926	Saturday	12
53	Casias	06-19-1926	11-12-1926	Friday	5
54	Noakes	07-21-1926	03-30-1928	Friday	20
55	Osborn	07-21-1926	03-30-1928	Friday	20
56	Ives	11-22-1928	01-10-1930	Friday	14
57	Weiss	02-14-1929	05-28-1930	Wednesday	15
58	Fleagle	05-23-1928	07-10-1930	Thursday	26
59	Royston	05-23-1928	07-18-1930	Friday	26

*continued on next page*

TABLE 1.1.—*continued*

<i>Case</i>	<i>Name</i>	<i>Date of crime</i>	<i>Date of execution</i>	<i>Day of execution</i>	<i>Months between crime and execution</i>
60	Abshier	05-23-1928	07-18-1930	Friday	26
61	Herrera	06-29-1929	08-20-1930	Wednesday	14
62	Moya	01-27-1930	12-12-1930	Friday	11
63	Ray	03-14-1930	01-30-1931	Friday	11
64	Walker	03-14-1930	01-30-1931	Friday	11
65	Halliday	03-14-1930	01-30-1931	Friday	11
66	Foster	July 1931	12-11-1931	Friday	5
67	Farmer	01-06-1931	03-18-1932	Friday	14
68	Maestas	09-09-1931	05-27-1932	Friday	9
69	Moss	03-10-1932	03-10-1933	Friday	12
70	Jones	Oct. 1932	12-01-1933	Friday	14
STATE AUTHORITY—CAÑON CITY—ASPHYXIATION (N = 32)					
71	Kelley	10-17-1933	06-22-1934	Friday	8
72	L. Pacheco	02-27-1934	05-31-1935	Friday	15
73	J. Pacheco	02-27-1934	05-31-1935	Friday	15
74	Belongia	12-16-1934	06-21-1935	Friday	6
75	McDaniels	07-15-1935	02-14-1936	Friday	7
76	Aguilar	08-15-1936	08-13-1937	Friday	12
77	Arridy	08-15-1936	01-06-1939	Friday	29
78	Catalina	03-15-1938	09-29-1939	Friday	18
79	Agnes	11-20-1937	09-29-1939	Friday	22
80	Leopold	12-04-1938	12-08-1939	Friday	12
81	Coates	10-13-1938	01-10-1941	Friday	27
82	Stephens	10-09-1939	06-20-1941	Friday	20
83	Sukle	09-30-1939	05-22-1942	Friday	32
84	Fearn	04-22-1942	10-23-1942	Friday	6
85	Sullivan	01-09-1942	09-20-1943	Monday	20
86	Honda	05-03-1942	10-08-1943	Friday	17
87	Potts	04-03-1943	06-22-1945	Friday	27
88	Silliman	01-22-1944	11-09-1945	Friday	22
89	Martz	12-06-1943	11-23-1945	Friday	24

*continued on next page*

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TABLE 1.1.—*continued*

<i>Case</i>	<i>Name</i>	<i>Date of crime</i>	<i>Date of execution</i>	<i>Day of execution</i>	<i>Months between crime and execution</i>
90	Brown	05-12-1945	05-23-1947	Friday	24
91	Gillette	12-26-1946	06-20-1947	Friday	6
92	Battalino	07-07-1947	01-07-1949	Friday	18
93	Schneider	09-20-1947	12-16-1949	Friday	27
94	Berger	01-26-1948	10-26-1951	Friday	45
95	Martinez	11-28-1954	09-07-1956	Friday	21
96	Graham	11-01-1955	01-11-1957	Friday	14
97	Leick	12-01-1953	01-22-1960	Friday	74
98	Early	04-25-1958	08-11-1961	Friday	40
99	Wooley	06-16-1959	03-09-1962	Friday	33
100	Hammil	08-27-1958	05-25-1962	Friday	45
101	Bizup	03-25-1960	08-14-1964	Friday	53
102	Monge	06-29-1963	06-02-1967	Friday	47
STATE AUTHORITY—CAÑON CITY—LETHAL INJECTION (N = 1)					
103	Davis	07-21-1986	10-13-1997	Monday	135

four years after the crime before his execution. Before the 1970s, the longest time between the commission of the crime and execution came in the case of Leroy Adolph Leick, executed in January 1960 after a six-year battle fought mainly over his mental competence for execution.<sup>22</sup> Gary Lee Davis, the only person in Colorado executed after 1967, lived for just over eleven years after his crimes, ten of them on death row. In sharp contrast to the time on death row served by those executed prior to 1972, the average time between sentencing and execution for the 1,320 inmates executed in the United States from 1977 to 2012 was eleven years, four months; for the 43 inmates executed in 2012, fifteen years, ten months; and for the 39 inmates sent to their deaths in 2013, fifteen-and-a-half years.<sup>23</sup>

22. See appendix 1, case no. 97.

23. Tracy L. Snell, *Capital Punishment, 2013—Statistical Tables*, table 10, BUREAU OF JUSTICE STATISTICS, Dec. 19, 2014 (NCJ 245789). This time span would be even longer if those who gave up their appeals and asked to be executed were removed from the analysis. Of the 1,422 people executed in the United States between 1977

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TABLE 1.2. Colorado executions by decade, 1859–2015 (N = 103)

	Number of executions	Average number of months between crime and execution
1859	1	0.0
1860–69	7	2.3
1870–79	4	12.8
1880–89	13	9.0
1890–99	12	11.4
1900–09	7	9.6
1910–19	4	25.5
1920–29	7	15.0
1930–39	25	14.5
1940–49	13	20.8
1950–59	3	26.7
1960–69	6	48.7
1970–79	0	—
1980–89	0	—
1990–99	1	135
2000–09	0	—
2010–15	0	—

TABLE 1.3. Day of the week of executions (N = 103)

	1859–1889	1890–2015
Sunday	0	0
Monday	0	4
Tuesday	2	0
Wednesday	0	4
Thursday	5	3
Friday	15	57
Saturday	3	10
Total	25	78

Table 1.3, also collapsing case-by-case data from Table 1.1, shows that about 70 percent of Colorado executions (N = 72) occurred on Fridays. This finding holds for both executions under county authority (1889 and earlier) and those conducted in and after 1890 under state authority. This occurred because Colorado statutes required that the trial judge, or the state Supreme Court if the case was appealed, designate a week during which the execution should be conducted. The sheriff or warden, however, had discretion to determine the exact day and hour. The Colorado Supreme Court defined that “week” as beginning at midnight Saturday and ending at midnight the following Saturday.<sup>24</sup> Friday executions allowed the prisoner to live most of the

and December 31, 2015, 143 (10.1 percent) gave up their appeals and asked to be put to death. <http://www.deathpenaltyinfo.org/views-executions>, accessed July 15, 2016.

24. *In re Tyson*, 22 P. 810, 812 (Colo. 1889); *Mora v. People*, 35 P. 179, 182 (Colo. 1893).

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week and eliminated the need for those employees involved in the execution to work on weekends.<sup>25</sup>

Table 1.4 shows that three-quarters of those executed in Colorado—79 out of 103—were sentenced to death for killing one victim. Five were convicted of killing four people, including three codefendants who killed four people during a bank robbery in Lamar in 1928.<sup>26</sup> In 1957 the state executed John Gilbert Graham, the only person put to death for killing more than four people, after his conviction for blowing up an airliner in 1955.<sup>27</sup>

Before being moved to Cañon City, hangings were popular social events. Table 1.5 displays the estimated attendance at executions conducted in public and open to all interested citizens. The accuracy of these estimates is debatable, but there is no doubt that hangings were popular social events, often attracting several thousand spectators—some of the biggest crowds ever assembled at the time—from the local community and distant towns and cities.<sup>28</sup> As discussed below, by the 1880s, the popularity of executions and their festive atmosphere prompted politicians to turn them into private events. The largest crowd to witness an

TABLE 1.4. Number of homicide victims for each executed inmate\*

<i>Number of victims</i>	<i>Number of cases (N = 103)</i>	<i>Case numbers</i>
1	79	—
2	15	7-8, 21, 28, 38, 48, 49, 50, 51, 52, 67, 72-73, 83, 88
3	3	34, 93, 98
4	5	58-60, 66, 102
44	1	96

\* These numbers reflect only the number killed in the time immediately surrounding the capital homicide. The defendant might not have been convicted of, or sentenced to death for, each of the murders. Nor do these tallies reflect prior homicides.

25. Another explanation with religious origins was brought to my attention by Prof. John Bessler: “There is no recorded explanation of why executions in the United States took place only on Fridays. Historians believed that after Christ’s crucifixion occurred on that day, ecclesiastical courts began fixing Friday for legal executions. The custom continued in England and was brought to the United States.” APRIL MOORE, *FOLSOM’S 93: THE LIVES AND CRIMES OF FOLSOM PRISON’S EXECUTED MEN* 205 (2013).

26. See appendix 1, case nos. 58-60.

27. See appendix 1, case no. 96.

28. One cannot help but wonder how crowds of this size managed before the invention of porta-potties.

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TABLE 1.5. Attendance at selected public hangings

<i>Date</i>	<i>Defendant</i>	<i>Location</i>	<i>Spectators (est.)</i>
04-09-1859	Stoefel	Denver	1,000
06-15-1860	Gredler	Denver	3,000-4,000
10-06-1860	Gordon	Denver	Several thousand
12-18-1863	Van Horn	Central City	Thousands
05-24-1866	Foster & Stone	Denver	"Not less than 3,000"
02-18-1870	Smith	Central City	2,000
01-24-1873	Myers	Denver	3,000
03-14-1879	Nunez	Pueblo	1,200-1,500
07-23-1880	Simms	Fairplay	800
06-17-1881	Salisbury*	Colo. Springs	Over 1,000
07-29-1881	Rosengrants & Gilbert	Leadville	5,000
12-20-1884	Garcia	Pueblo	4,000
12-03-1885	Clements	Saguache	5,000
02-05-1886	Minich	Leadville	7,000
07-27-1886	Green	Denver	15,000-20,000
08-23-1888	Fermenella*	Buena Vista	1,500
UNKNOWN NUMBER OF WITNESSES			
03-15-1860	Young	Denver	
12-21-1860	Waters	Denver	
02-02-1877	Miller	W. Las Animas	
12-06-1881	Coleman*	Gunnison	
06-23-1882	Woods	Durango	
04-24-1885	Hibbard	Trinidad	
07-16-1889	Ortiz	Antonito	

\* Three executions were held within the fences of local jails and hence were only "semi-public."

execution assembled in Denver in 1886 and watched as Andrew Green slowly strangled to death.

Finally, Table 1.6 shows the race of the defendant and the victim in Colorado death penalty cases. Ten of those executed were African American, and fifteen others were members of other racial or ethnic minorities (Hispanic, Asian, or "other"). In other words, nearly a quarter of those put to death in Colorado (25/103) were members of racial or ethnic minority groups. No white person has ever been put to death in

**TABLE 1.6.** Defendant-victim racial/ethnic combinations\*

<i>Race of defendant and victim</i>	<i>Number</i>
W-W	76
H-W	7
B-W	6
W-B&W	1
Other-W	2
B-B	4
H-H	5
W-H	1
A-A	1
TOTAL	103

W = white; B = black; H = Hispanic; A = Asian

Colorado for a crime that victimized an African American.

### SENTENCED TO DEATH BUT NOT EXECUTED

In the course of this research, approximately one hundred cases were found in which men in Colorado were sentenced to death but never executed. There is no evidence that any woman has ever been sentenced to death in the state. These cases, ordered by the year in which the death sentence was imposed, are listed in appendix 2. However, this list is no doubt incomplete.<sup>29</sup> Some inmates who were sentenced to death may have had their sentences commuted even before reaching the prison, others may have died of natural causes soon after the death sentence was imposed, some of these cases were not appealed or even reported in newspapers that are accessible today, or for other miscellaneous reasons they have disappeared into history. Interestingly, while cases that resulted in an execution are relatively easy to identify, those where a death sentence was imposed but not carried out are not found in any central source,

29. Research of this sort has been made possible only in the past few years, as newspapers have become increasingly digitized and searches are becoming easier. As more and more digitized newspapers become available, this list will no doubt be expanded. Currently, by far the best place to access newspapers (digitalized or on microfilm) is at the Stephen H. Hart Library in Denver.

I found one case where it was reported that the defendant was sentenced to death, when in fact he was not, showing that one cannot always believe everything that is printed in the newspaper. In September 1878, the *Rocky Mountain News* reported that Wright Dunham was found guilty of murder and would therefore be sentenced to death. *Dunham to Die: Found Guilty of Murder in the First Degree*, ROCKY MTN. NEWS, Sept. 27, 1878, at 4. See also *Murder at Deer Trail*, PUEBLO WEEKLY CHIEFTAIN, May 2, 1878, at 1. However, at sentencing in October 1878, Dunham was sentenced to life. *Dunham Sentenced for Life*, ROCKY MTN. NEWS, Oct. 22, 1878, at 4. Apparently, the earlier coverage of the case was just an ambiguous prediction or an assumption that he would be sentenced to death.

and those who committed the murders—perhaps as it should be—have been forgotten. Executing an inmate guarantees that he or she will be remembered forever.

To identify these cases, I searched in Westlaw, Lexis, and the Colorado Historic Newspapers Collection<sup>30</sup> for terms such as “sentenced to death” or “sentenced to be hanged.” This strategy is admittedly hit-and-miss. Once a lead was uncovered, it was not uncommon for the relevant names to be misspelled or information about the case (e.g., date of offense, date of death sentence) to be too cryptic to use. Also useful were the Colorado State Penitentiary Records housed at the State Archives in Denver.<sup>31</sup> These records are microfilmed copies of handwritten entries for each prisoner ever housed in the Colorado State Penitentiary, which opened in Cañon City in 1871. However, going through the microfilmed copies of these records is extremely time-consuming, the handwriting is often impossible to read, and the quality of the copies is often poor. Nonetheless, this source did contain information on perhaps a dozen cases.

For the Denver cases, the indexes to the *Denver Post* and the *Rocky Mountain News* proved to be indispensable.<sup>32</sup> These indexes are digitized copies of typed 3 × 5 cards compiled by scores of researchers and volunteers over the years, originally filed in the Western History Collection of the Denver Public Library. Although these indexes are incomplete and have virtually no information on cases outside the Denver metropolitan area, they are invaluable.

## OUTLINE OF THE FOLLOWING CHAPTERS

The book is organized in roughly chronological order, with exceptions here and there for discussions of events or cases that took several years to unfold. Chapter 2 begins when the city of Denver was founded and Euro-Americans first started to settle in the area. Very soon after the city was formed the hangings began, and five cases in which men were exe-

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30. See Colorado Historic Newspapers, <http://www.coloradohistoricnewspapers.org/>, accessed July 15, 2016,.

31. *Corrections Records*, COLORADO STATE ARCHIVES, accessed July 15, 2016, <https://www.colorado.gov/pacific/archives/corrections-records>.

32. See University of Colorado Boulder Libraries, accessed July 15, 2016, <http://ucblibraries.colorado.edu/how/newspapers.htm>.

cuted after being sentenced to death by People's Courts are recounted. Colorado was recognized as an official territory of the United States in 1861, and the next section looks at the ten cases that ended in hangings prior to statehood in 1876. Counties continued to hang people for thirteen years thereafter, with some of the hangings becoming rambunctious public spectacles, which partially fueled abolitionist sentiments in the late 1880s. Meanwhile, the General Assembly continued to tinker with Colorado's death penalty statute and moved executions to a central location in Cañon City, where they are still held today. Prison officials also invented a hanging machine, where the inmate was launched upwards rather than made to fall through a trap door, as well as a rather complex hydraulic apparatus that allowed the prisoner to stand on a platform, where his weight would trigger a device that effected his hanging without any involvement by an executioner or other prison personnel. The chapter ends when the death penalty ended: the 1897 formal abolition of the death penalty in Colorado.

The twentieth century did not begin happily for death penalty opponents, as several lynchings persuaded the General Assembly to bring back the death penalty in 1901. Chapter 3 begins with this reenactment of capital punishment, which clearly was done in an effort to reduce the number of lynchings, not to reduce homicide rates or render help to the families of the victims. This chapter takes us through the debates over the death penalty regularly held in the State Capitol building in the twentieth century, although the primary change made by the General Assembly was to scrap the hanging machine and install a gas chamber in 1933. After Colorado executed Luis José Monge in 1967, executions both in Colorado and throughout the United States stopped, and it seemed for a time like the ban would be permanent.

Chapter 4 describes the efforts made in Colorado after 1967 to ensure that its death penalty would not go away. The state enacted a revised death penalty statute in 1974, and the national moratorium on executions ended in 1977. Twenty years later, Gary Lee Davis was executed via lethal injection in Cañon City. As of the end of 2015, he and Monge remain the only two people executed in Colorado in the last fifty years.

Plenty of politicians, prosecutors, and citizens are unhappy with the fact that Colorado's execution gurney is collecting dust, although as described in chapter 5, public and political support for the death penalty

has been quite volatile. This chapter brings us into the twenty-first century and that century's first major death penalty event. In 2002 the US Supreme Court threw out Colorado's use of three-judge panels, which had been introduced in 1995, largely because legislators thought that juries were too hesitant to impose death sentences. With falling homicide rates, increasing public ambivalence about capital punishment, and the exponential rise in the cost of death penalty prosecutions, only three inmates were added to Colorado's death row in the first fifteen years of the new century (one of whom has since been resentenced to life).

Most significantly, in 2013 Gov. John Hickenlooper announced, in effect, that no one would be executed as long as he was in office, and chapter 6 takes us into the Hickenlooper era. In 2014 he not only announced that he had become a firm opponent of the death penalty, but he was also reelected to another four-year term. Supporters of the death penalty tried to make his anti-death penalty stand an issue in the election, but their antagonism had little or no effect. On the other hand, two of the three inmates on Colorado's death row were put there as a result of their roles in the murder of the son of a current state legislator, Rhonda Fields, and her son's fiancée. In 2010 Fields was elected to the Colorado House of Representatives. She has vowed to keep fighting until those two murderers are executed and is running for a seat in the Colorado Senate in 2016.

The final chapter, an epilogue, does not report the end of the death penalty story in Colorado, although numerous signs indicate that it might very well go away in our lifetimes. A case that might have major effects on future debates is that of James Holmes, convicted of killing a dozen people in an Aurora movie theater in 2012. At trial in the summer of 2015, almost everyone agreed that Holmes was severely mentally ill, but he failed in his bid to be found not guilty by reason of insanity. Nonetheless, three jurors were sufficiently concerned about the severity of his mental illness that the jury failed to reach a unanimous sentencing decision, so Holmes was spared a trip to death row. A generation ago many claimed we needed the death penalty to deter criminal homicides, but no one has ever seen capital punishment as a deterrent to schizophrenia.

And so there are many unanswered questions about the future of the death penalty in Colorado. Perhaps the best way to make predictions is to look where we have been.