

HARNEY COUNTY HISTORY PROJECT

AV-Oral History #299 - Side A

Subject: Marcus Haines Reads Transcript of Ed Oliver Murder Trial of Pete French

Place:

Date: 1898

Interviewer: Marcus Haines

MARCUS HAINES: This is a transcript of the trial of the State versus Ed Oliver. And this is the State's testimony, and the first witness is Emanuel Clark.

STATE VS. OLIVER

States Testimony

EMANUEL CLARK: Saw difficulty between French and Oliver 26th December 1897. French rode in front of Oliver and motioned with whip. (Makes plat of Sagebrush field, Wright field, fences, etc. Explains plat.) Sawhorses clash. Oliver's horse ran against French's horse, turned French's horse around. French rode away westerly, Oliver following, Oliver behind French. Saw Oliver raise arm and lower. Saw him raise arm again, heard report, saw smoke. French fell from horse, Oliver rode away. French looking back towards Oliver at time shot fired. Mr. French dressed same when Coroner arrived as at time shot fired. No weapons on Mr. French, check book, watch, pocketknife, silver, maybe some letters.

WILLIAM GILLIAM: Live at "P" Ranch. Knew French, saw shooting in Sagebrush field December 26, 1897. Did not see Oliver until he and French met. French was motioning or striking with something I took to be whip. French trying to keep Oliver back, Oliver trying to pass him. French started to ride away, Oliver followed, raised arm, saw smoke and then saw French fall. French going westerly when shot, French pacing, Oliver

following behind, trotting or galloping. French leaning forward at time I saw smoke. Oliver rode by French's body. Did not see Oliver stop. I stayed with body (except while I went to supper) all night. French dead when I got to body. Position of body not changed until Coroner came next morning. I was 186 yards away when shot fired. No examination of body or clothing until Coroner came. Tent over body and two pieces saddle blankets over body during the night. Whip lying at French's feet. Identifies whip. Overcoat and gloves on.

ARTHUR COOPER: Live at "P" Ranch. Had been working for French one year and eight months at time Mr. French was killed. I saw shooting on 26th December when Mr. French killed. Left Sod House Ranch that morning, went across river on dam. Pulled two cows out of river. Mr. French cut whip stock then from bunch of willows. Same whip stock as this. Crow called to me to "look there". I looked and saw French, Oliver together. Next saw French riding in westerly direction, Oliver following. Saw Oliver's hand raised, French ducked head and looked back towards right. Saw smoke and heard report of pistol. French fell, Oliver passed on by, went westerly.

FRANK CHACARRATEGUE: Worked for French three years, about six years ago. Worked for him one month before he was killed. Was with him the day he was killed. Saw shooting. Had not known Oliver prior to that time. Mr. French motioned to Oliver to go back. Kept motioning. Oliver would not go back, kept coming up to French. Finally French started away and Oliver followed him and shot him. Mr. French ducked his head and looked back and the man shot him. When I got up to Mr. French, Burt French was there. Mr. French's lips quivered a little after I came up. No weapons there. Little whip was all. Mr. French did not have big stick, had this little whip. I could see the whip. I am positive it was this little whip. I saw pistol in Oliver's hand. Saw him draw pistol from his

clothes somewhere. French's horse pacing and Oliver's horse going faster than French's. Oliver followed French with pistol up before shooting.

DAVID CROW: I saw shooting. Saw men come up together. French seemed to be trying to drive man back away he came. Man would not go. French turned and started away towards west. The man followed French with his arm raised, then shot. Mr. French fell off. The man's horse was jumping away and the man would ride up close to him. Man followed French fifteen or twenty steps before he fired. About twenty steps from French when shot fired. French had on big overcoat and belt, gloves on hands. Saw no weapons. (Identifies whip.) Have never been there since shooting. Saw smoke and heard pistol shot. Did not see this big stick. I remained there about five minutes and then went to "P" Ranch, then on to Winnemucca.

PRIM ORTEGO: (Or Tebo as we know him.) Knew Mr. French. Have been with him since 1877. I was with him 26th December 1897. Saw him killed. We drove cattle up to gate between Sagebrush field and Wright field. Mr. French rode around cattle to open gate. Saw Oliver prior to this time coming from North gate. French went out to him and motioned him back. Oliver charged his horse on Mr. French. Mr. French turned horse and Oliver charged again, trying to lunge him, past him. Saw Oliver go for his gun. French then turned and rode away. Oliver followed him and raised arm. Then fired and Mr. French fell from his horse. Could not see pistol but saw smoke and heard report of pistol. I was 191 yards from where Mr. French and Mr. Oliver had the difficulty. When I saw Oliver rush his horse I stopped and watched. I could tell the difference between the whip and this stick. Did not have this stick. Mr. French leaned forward and was looking back when shot fired. Oliver rode around or to one side of French and looked down, then rode away.

BURT FRENCH: Reside at "P" Ranch. Am brother of Peter French. Was with Peter French in Sagebrush field on 26th day of December 1897. Saw the shooting. Were putting cattle in field. My brother opened gate and rode back towards me, met Oliver. Told Oliver, "I have cautioned you not to come on my land. I want you to leave at once." Oliver rode up to him and would not turn back. My brother then said, "I will drive you off." Oliver reached for pistol and my brother rode away. Oliver followed him, snapped pistol at him. When pistol snapped my brother turned back and Oliver then fired and my brother fell. Never spoke. Never had weapon of any kind. Never had this stick. Only had whip. Never saw my brother strike Oliver with anything.

JOHN McKINNON: I am Sheriff of this County. I arrested defendant December 27th, 1897 in this County, at Mrs. Simmons' place. He had pistol at house. He put it in his waistband of his pants. I asked him for it and he gave it to me, saying same pistol he used. Said in same condition (pistol exhibited), (no empty shell in pistol), (one cartridge in cylinder). Produced clothing worn by Mr. French and exhibited same. Identified whip in his custody.

ANDREW LITTRELL: Live at Sod House. Saw body of Peter French in Sagebrush field on evening 26th December 1897. Took tent up to stretch over the body. Saw body at same place in same condition and position the next morning. Saw clothing on him, saw pockets examined. No weapons of any kind.

DR. MARSDEN: Identifies clothing. Held autopsy, described wound. Described manner in which Mr. French dressed. Heavy overcoat buttoned except top button. Broad belt on and buckled up over the overcoat, gloves on, overshoes, scarf about neck.

W. T. STEPHENS: Coroner. Identifies clothing. No weapons. Clothing introduced.

GEORGE SIZEMORE: Present at inquest. Identifies clothing. Shows hole in hat,

describes how clothing worn. I searched clothing and body and found nothing in shape of weapon, only small pocketknife, closed.

H. E. THOMPSON: Was present at inquest. Described condition and position of French's body and manner in which dressed.

J. H. NEAL: Made survey and measurements. Also made diagram on plat. Introduced plat. Places pointed out to him by those who were present. Plat is correct representation as shown and represented to him. I am practical surveyor. Used solar compass. Made survey December 31, '97 and January 1, '98.

REUB HEWIT: Was member of last grand jury. Identifies pistol as pistol in evidence before grand jury. Saw pistol opened in grand jury room. No empty shell, one cartridge in chamber, which would explode by cocking pistol and pulling the trigger if pistol works okay.

State Rests at 11:15 A.M. May 26th, 1898

STATE VS. OLIVER

Defense

J. P. KENNEDY: Saw Burt French Portland, January 2, '98. Conversation with Burt French at that time relation to death of Mr. Pete French. Burt French said, "I don't like to say anything against my brother, but I can't blame Oliver for doing as he did." That is substantially what he said.

ALVA SPRINGER: Live on Blitzen River. Known Oliver seven or eight years. Knew Mr. French since 1888. Was present when Mr. Neal surveyed meander line in April 1887. Heard talk between Oliver and French at that time. French said in Oliver's presence, "Here sits a little man who has nothing to say. You were in my field the other day. Whenever the time comes right and I catch you there, I will fix you." Mr. French appeared

very angry. Several present, Cummings, Hardisty, L. B. Springer, Hardisty boy, maybe others.

L. B. SPRINGER: Live at old Sod House. Present in April when survey of meander line made. Heard talk between French and Oliver. French said, "Little man whittling, I told you in Burns not to come in my field. If I ever catch you right, damn you, I'll fix you."

PRES SMYTH: Live Diamond, since '87. Knew French in lifetime. Saw difficulty between French and my brother fall 1891. State what occurred. (Objection sustained).

MARCUS HAINES: Apparently Pres Smyth, Albert Ward, Harrison Seward, Alonzo Seward, and Henry Houston all had difficulty with French at some time or another. But the defense attorney over rules here, and the objections was sustained, so they didn't get to tell any of this information.

ALBERT WARD: Live below Happy Valley. Knew French since 1885. Present at altercation between French and George Hill September 15, '95. State what occurred. (Objection sustained.)

HARRISON SEWARD: Live Barren Valley. Lived in Diamond Valley from '86 to '96. Knew French since 1886. Ever have altercation with Mr. French? If so, state what said and did. (Objection sustained.)

ALONZO SEWARD: Same matter as attempted to be shown by Harrison Seward. (Objection sustained.)

HENRY HOUSTON: Live Pueblo Precinct. Slight acquaintance with Mr. French. Went to "P" Ranch to get work in 1897. State if French assaulted you. If so, what he said and done. (Objection sustained.)

GEORGE MARSHALL: Live near old Sod House. Know Oliver. Knew French since 1885. Worked for him fall 1886. Was present about four years ago when branding cattle

about three miles from Oliver. French there and Oliver came while I was there. Mr. French rode up to me and asked me who coming. He said, "I think that's Ed Oliver," and rode on saying, "I'll beat the head off of him some-time." I thought Mr. French mad, and when Oliver came up I asked him if he was going home, and went with him, thinking that by his going home I could avoid any fight or trouble.

FAY COMEGYS: Live near Sod House. Know Ed Oliver. Saw him 26th December '97. Saw him first in morning and again about 2 or 3 o'clock. Saw pistol Oliver had that afternoon. (Identifies the pistol in evidence.) Mr. Oliver showed pistol, took pistol out of his pocket and broke it. Empty shell and one cartridge in pistol. Shell fell on floor and Jim Simmons picked it up. Oliver was riding buckskin horse. Hauled rock for Haines at Narrows with this same horse in fall before that time.

R. T. HUGHETT: I know where Sagebrush field is. I was opposite side of river from Sagebrush field during day of 26th December 1897, about two and a half miles from the gate at Wright house. Heard cattle bawling that day, the cattle that were being driven in south end of Sagebrush field. Cattle about five miles away from me when I heard them bawling. Think band of mixed cattle would make more noise when checked up than when moving along.

WILLIAM GILLIAM: Re-called for cross-examination. Impeaching question. Conversation with Comegys.

SID COMEGYS: Know Gilliam. Saw him and rode to Burns with him to attend preliminary examination. Conversation about killing of Mr. French. Gilliam say, "Off horse". Crow say, "Look there." Gilliam said, "Got on horse just in time to see shot fired," or words to that effect.

DR.VOLP: Live in Burns, Oregon. Eight years practicing physician and surgeon.

Examined Mr. Oliver latter part December 1897. Found swelling right side of head. Blue ring under right eye. Swelling or bruise on right thumb. All injuries slight, no abrasions.

MRS. OLIVER: I am wife of defendant. Live at Rock Ford. In December lived at The Narrows, at my father's, Mr. Simmons. Up late Christmas and got up about 9 o'clock on 26th. My husband had breakfast about 10 o'clock. My husband left and started to Rock Ford about 1 o'clock to look after cattle. Left horseback. Was there when my husband came home, about sundown. Sheriff came early next morning. Husband at home until sheriff came. Have four children.

JOHN SKEIN: Live at Narrows. Knew French. Was at Sagebrush field evening of 26th December. Went to Sod House Ranch, thence to field. Went when they took wagon or hack to the place where Mr. French killed. Tent over body when I got there. Took wagon within 15 to 25 feet of tent.

E. L. OLIVER: I live at Rock Ford. Am defendant. Lived Rock Ford off and on nine years. Homestead is patented, one and one-quarter mile above Rock Ford land, 12 miles from Simmons'. Own no lands in dispute by Frenchglen Company. Frenchglen Company owned land surrounding my headquarters for about three years. No road out. I know Sagebrush field. On last Christmas stopping at Mrs. Simmons. I looking after Mrs. Simmons' cattle. Had Christmas tree Christmas night. Up late and did not get up till 9 o'clock. Left house about 11 o'clock, 26th, after horse. Went to George Curtis'. Horses in his pasture. Stayed Curtis' till after dinner. Then started to Rock Ford place. Knew Mr. French about nine years. Worked for him off and on for three years. Worked for him last, three years ago last December. Took homestead August ten years ago. Two years ago here to convention, Burns Hotel, talking to Cawfield. French said, "Here Oliver, here bill for \$300. Pay that and you can have road. God damn you I'll just shoot you first time I

catch you going into that place. You damn son-of-a-bitch whenever I catch you in right place I'll fix you." Next time, at meander survey, "Whenever I catch you in right place I'll fix you." Very angry, calling son-of-a-bitch. Hear of French difficulties with Seward, Smyth, and Hill. (Objection sustained.) Remember occurrence at corral when Mr. Marshall there and asked to come home and stay with me over night. Have 40 or 45 head cattle and 15 head horses. Mrs. Simmons has 135 head of cattle. Heard French gone to Chicago with cattle, before Christmas. Did not know Mr. French had returned from Chicago at time I went into Sagebrush field 26th December. Three-quarters of a mile from home, heard cattle bawling. I knew French or his men left word for everybody to come into field and get their cattle when rounding up. When I heard cattle, I rode out to little elevation and could see cattle. I then went into Sagebrush field. Traveled south along fence. Went to see if any my cattle or Mrs. Simmons' cattle there. Within two hundred yards from French when I first saw him. French stopped when he saw me. Then he went out to fence and got down. Thought he opened gate. Then come back around cattle and then came directly to me. Knew French carried pistol. (Identifies pistol. Says his.) When he got in thirty or forty yards I saw he had stick. Thought a whip stick. Said, "You jug bellicose harass me to death. I'll make example of you." French beating me. Said, "I'll kill you," reached for gun. I jerked pistol and fired as quickly as possible. Did so because I thought he would kill me. He said he would kill me, and reached for his gun. I only pulled trigger once. Fired very quickly. French's horse facing north and my horse southeast when I fired. After shot fired French's horse turned west and so did mine and each traveled in almost a line. French's horse paced twenty-five or thirty feet before he fell off.

JEFF CAWLFIELD: Live at Narrows five years. Acquainted with Oliver. Knew Mr. French. Remember democratic convention two years ago. Saw Oliver that day. Saw Mr.

French. Heard conversation, French and Oliver. Mr. French said, "Oliver, I want to speak to you. I understand you have been going into my ranch. Here's bill and cost. You god damn son-of-a-bitch if I catch you going in my field again I'll just shoot you. I'll fix you." Reached for Oliver as if to catch him.

FAY COMEGYS: Mr. French told me could ride with "Chino" or could come in field any time when working cattle for us. I told this in Oliver's presence.

R. T. HUGHETT: Generally understood settlers could come in field and get cattle when "rounding up" or "working" cattle. Since land suit between Frenchglen Company and settlers, Mr. French has for-bidden anyone going through field or trespassing on Frenchglen Company's lands.

GEORGE MARSHALL: Mr. French told me settlers could come in field anytime when working cattle. I went to see him at French Hotel and made that arrangement with him.

JOHN McKINNON: Had subpoena for Louis Marshall. Could not find him. Know where he is now. Take three days to get him here. Heard last night where Marshall was.

ALVA SPRINGER: My understanding settlers come and gather their cattle at any time. Saw fence down so that cattle could get in. Saw gate open on east side of Sagebrush field.

JAMES WOOD: Live where I do day's work. Stopping at Narrows last of December. Went with Skein to Sagebrush field evening after Mr. French killed. I went horseback, behind wagon. Left there about half past nine. Tent over Mr. French's body. Went in gate north of where body was. Rode within 15 or 20 feet of tent. I stepped on stick; end flew up, struck Skein. Said, "In barb fence." I want to pick up stick. Skein said, "Leave alone. Maybe valuable." Saw stick two days afterwards. About same place. Would know it. George Hayes took it. Saw no other stick. (Identifies stick.)

WILLIAM DUNN: Live three miles east of Narrows. Know Oliver. Knew French. Have some cattle. About two years ago, conversation with Mr. French, was angry. Said, "Riding in field got to stop. Oliver has ranch in field. I'll kill him. That's what I'll do."

REBUTTAL

WILLIAM GILLIAM: Got off my horse when Mr. French started around cattle. After getting on horse, perhaps three to five minutes, not longer, saw Mr. French and Mr. Oliver together. Was on my horse all time till shooting over. Don't remember telling Sid Comegys anything about getting off my horse.

GEORGE SIZEMORE: Threw stick out of wagon morning after Mr. French killed. Think it was this stick or one very similar.

DR. MARSDEN: Looked around over the ground when shooting occurred morning after the shooting. Saw no such stick as "exhibited".

EMANUEL CLARK: Sent wagon up to where corpse lay night Mr. French killed. Same wagon we used in making survey. Had a stick, a fence stay, end sharpened. A stick similar to this one. Used it for a flagpole in making the survey.

Coroner's inquest held December 27, 1897 at Sod House Ranch. Present were Coroner T. W. Stephens, Cas Hays, J. C. Hays, H. E. Thompson, A. Littrell, J. Pierce and Andrew Graf. They found that Peter French met death by gunshot wounds by hands of Ed L. Oliver.

Indictment found on May 18th, 1898, charging Edward L. Oliver with crime of manslaughter. Bail set at \$10,000 was raised by H. M. Horton, J. W. Jones, Dean Horton, H. E. Cheatham, H. B. Simmons, J. W. Curtis, R. H. Brown, Byron Terrill, H. S. Kelley,

Charles Anderson and J. T. Ware.

Bench warrant issued on May 18, 1898 and Ed L. Oliver arrested by Sheriff A. J. McKinnon on same day.

Jury found defendant not guilty as charged in indictment.

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