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## Territory of New Mexico vs. Paula Angel: One Woman's Tragic Journey through Territorial Justice in 1861

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# ***TERRITORY OF NEW MEXICO VS. PAULA ANGEL: ONE WOMAN'S TRAGIC JOURNEY THROUGH TERRITORIAL JUSTICE IN 1861***

Judge M. Christina Armijo\*

## **INTRODUCTION**

One of the most fascinating trials in New Mexico legal history is recorded in the case of *Territory of New Mexico vs. Paula Angel*. Paula Angel was charged with murder in the first degree for killing her paramour Miguel Martin. She was convicted in March 1861 in Las Vegas, San Miguel County, Territory of New Mexico. Judge Kirby Benedict sentenced her to die by hanging. Although Judge Benedict granted her an appeal, he denied her request for a stay of execution. He also ordered that Angel pay the costs of her prosecution. Paula Angel is the first and only woman executed in the Territorial or modern history of New Mexico. She was prosecuted during an era when society was loath to prosecute a woman.

My grandfather, the late District Judge Luis E. Armijo, first told me the story of Paula Angel. The story was first told to him by his grandmother—my great-great-grandmother—herself a young woman at the time of the hanging in 1861 and who witnessed the execution. Hearing this story in my early years piqued my interest in this bizarre chapter of our legal history. Since then, I have learned a great deal more about the *Angel* case and the legal system of New Mexico's Territorial years. I was particularly intrigued that the law of the time did not provide a convicted defendant who was sentenced to death with an automatic stay of execution pending appeal. I wondered how it was, in the evolution of our State's legal history, that a trial judge was permitted by law to sit as an appellate judge in circumstances where he had presided over the trial.

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\* The Honorable M. Christina Armijo serves as Chief Judge of the District of New Mexico. She was appointed to the Federal bench in 2001, after unanimous confirmation by the United States Senate. Prior to her appointment, she served as a judge on the New Mexico Court of Appeals. Judge Armijo received her undergraduate and law degrees from the University of New Mexico. She is an avid student of history. Her family dates to Colonial times in New Mexico. I wish to thank Shaina L. Spreng, Esquire, for her assistance in researching unique aspects of New Mexico history, and for her continued interest in the history of our great state.

My grandfather became a member of the State and Federal bars in 1915. He became a district judge in 1924 and served in that capacity for some thirty-four years. He read the law with former (retired) Territorial Supreme Court Chief Justice Elisha V. Long. Justice Long was appointed by President Grover Cleveland to the position of Chief Justice of the New Mexico Territorial Supreme Court in 1885.<sup>1</sup> When he retired, he relocated to Las Vegas, New Mexico, from Santa Fe and there practiced law. Upon admission to the state and federal bars, my grandfather joined Justice Long in the practice of law for several years.

My family acquired the original handwritten jury instructions given in this case, written in the hand of presiding Judge Kirby Benedict, as well as the original court docket and other documents. I present this article from the perspective of a story that should be told, and as told to me by my grandfather as well as from my subsequent review of these documents. To place this case in the unique context that it deserves, this article provides a brief summary of the structure of the Territorial courts, the evolution of the laws regarding stays of execution, and women serving as jurors.

## I. TERRITORIAL COURTS OF NEW MEXICO

Under the Kearny Code of Laws of 1846, the Territory of New Mexico was divided into three judicial circuits: (1) central, (2) northern, and (3) southeastern.<sup>2</sup> Within each circuit, there was a trial court, denominated the Circuit Court.<sup>3</sup> The Circuit Court had “power and jurisdiction” over (1) “all criminal cases that shall not otherwise be provided for by law;”<sup>4</sup> (2) “exclusive original jurisdiction in all civil cases which shall not be cognizable before the prefects and alcaldes;”<sup>5</sup> and (3) “appellate jurisdiction from the judgments and orders of the prefects and alcaldes in all cases not prohibited by law, and shall possess a superintending control over them.”<sup>6</sup>

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1. LYNN IRWIN PERRIGO, *GATEWAY TO GLORIETTA: A HISTORY OF LAS VEGAS, NEW MEXICO* 153, (Sunstone Press 2010).

2. Kearny Code of Laws, *Courts and Judicial Powers*, § 2 (1846).

3. *Id.* §§ 1, 3.

4. *Id.* § 18.

5. *Id.* Prefects generally had original jurisdiction over probate matters and guardianships. *Id.* § 21. Alcaldes had jurisdiction over: (1) contract disputes in which the amount in controversy did not exceed \$90; (2) actions for trespass and injury to persons or property, in which the amount in controversy did not exceed \$50; and (3) “auditor judgment or confession, where the amount confessed shall not exceed \$100.” *Id.* § 24 (alterations omitted).

6. *Id.* § 18.

The Territory of New Mexico also had an appellate court, the Superior Court.<sup>7</sup> The Kearny Code provided that, “[t]he judges of the superior court shall be ex-officio judges of the respective circuit courts and they shall determine by vote or otherwise, who shall be presiding or chief justice and who shall be first, and who second associate justice.”<sup>8</sup> The Superior Court had “appellate jurisdiction in all cases, both civil and criminal, which may be determined in the circuit court.”<sup>9</sup> Accordingly, the judges of the Circuit Court were, collectively, the justices of the Superior Court. As a very practical matter, this meant that the judges of the Superior Court had appellate jurisdiction over the cases that they presided over as judges of the Circuit Court.

In 1850, Congress enacted the Organic Act Establishing the Territory of New Mexico.<sup>10</sup> Pursuant to Section 10 of the Organic Act, the judicial power of the Territory was “vested in a supreme court, district courts, probate courts, and in justices of the peace.”<sup>11</sup> The Territorial Supreme Court consisted of

a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such time and place as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them.<sup>12</sup>

Thus, under the Organic Act, as under the Kearny Code, the Justices of the Territorial Supreme Court were also the judges of the district courts.

In 1887, Congress added a third associate justice to the Territorial Supreme Court and a fourth judicial district.<sup>13</sup> Then, in 1890, Congress added a fourth associate justice to the Territorial Supreme Court and a fifth judicial district, “Provided, That the judge who presided at the trial of the cause in the court below shall not sit at the hearing of the same case on appeal, or writ of error, in the supreme court of the Territory.”<sup>14</sup>

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7. *Id.* § 1.

8. *Id.*

9. *Id.* § 8.

10. Organic Act, 9 Statutes at Large 446, Chapter 49 (1850).

11. *Id.* § 10.

12. *Id.*

13. 24 Stat. 428 (1887).

14. 26 Stat. 226, 226–27 (1890).

Finally, in 1904, Congress added a fifth associate justice and a sixth judicial district, again, "Provided, That the judge who presided at the trial of a cause in the court below shall not sit at the hearing of the same case on appeal or writ of error in the supreme court of the Territory."<sup>15</sup> It was not until 1890 that a Territorial Supreme Court Justice was prohibited from presiding over a case in which he had acted as the trial judge. In fact, prior to 1890, he was required to do so by the laws of the Territory.

*A. The Death Penalty in the Territorial Years and Permissive Stays of Execution*

Under the Kearny Code, any person "convicted of the crime of willful murder. . . shall suffer death."<sup>16</sup> The code specified that "[t]he manner of inflicting the punishment of death shall be by hanging the person convicted by the neck until dead, and shall be executed by the sheriff in not less than twenty nor more than thirty days from the time sentence was pronounced."<sup>17</sup>

The Kearny Code provided that "[i]n all cases of final judgment rendered upon any indictment an appeal to the superior court shall be allowed, if applied for during the term at which such judgment is rendered."<sup>18</sup> However,

[n]o such appeal shall stay the execution of such judgment unless the circuit court shall be of opinion that there is probable cause for such appeal, or so much doubt as to render it expedient to take the judgment of the superior court thereof, and shall make an order expressly directing that such appeal shall operate as a stay of proceedings.<sup>19</sup>

Accordingly, there was no automatic stay of execution of a defendant's death sentence pending appeal, unless: (1) the trial court judge determined that there was "probable cause for such appeal" or "so much doubt" regarding the verdict; and (2) the trial court judgment expressly ordered a stay of execution.

Not until January 17, 1862, did the Territorial legislature enact sections 2482 and 2483 of the Compiled Laws,<sup>20</sup> which provided that:

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15. 33 Stat. 542, 542-43 (1904).

16. Kearny Code of Laws, *Crimes and Punishments*, art. I, § 1 (1846).

17. *Id.*, art. III, § 12.

18. Kearny Code of Laws, *Practice of Law in Criminal Cases*, § 23 (1846).

19. *Id.* § 24.

20. *Brooks v. United States*, 6 N.M. 75, 77-78, 27 P. 510, 511 (1891) (internal quotation marks omitted). Following the Kearny Code, there were various compilations of the Territorial laws of New Mexico. There was the "Revised Statutes of the

Section 1. That in future, in all cases of conviction for murder either in the first or any other degree, it shall be, and it is hereby made, the duty of the judge before whom such conviction be had to grant an appeal to the supreme court of the territory: provided, that the party asking said appeal shall make affidavit as now required by law. Section 2. Be it further enacted, that all such appeals shall have the effect of a stay of execution of the sentence of the court until the decision of the supreme court upon said appeal; and whenever the sentence of the district court shall be that of death, or imprisonment for one or more years, the party convicted shall remain in close confinement until the decision of the supreme court shall be pronounced upon appeal; and in all cases of appeals the party taking the appeal shall be entitled to a suspension (prohibicion de la ejecucion) of the sentence by filing a bond in the sum to be fixed by the court, sufficient to secure the due execution of the sentence of the court in case the judgment of the court below shall be affirmed by the supreme court.<sup>21</sup>

This provision provides, expressly and exclusively, in its first section, for appeals in murder cases. According to *Brooks*,

The next section provides for a stay of execution as of course in all murder cases so appealed; but as to convicted murderers sentenced to death, or the imprisonment for one or more years, — that is to death, or imprisonment for any term, as it could not be for less than one year, — it provides that the convict shall remain in close confinement during the pendency of the appeal.<sup>22</sup>

#### *B. Presence of Women in Court Proceedings During Territorial Years*

It appears from the records that two women, Nieves Martinez and Juana Martinez, were summoned by subpoena to testify at trial on behalf of Defendant Angel. The presence of these two female witnesses at trial makes a particular jury instruction given by Judge Benedict even more

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Territory of New Mexico,' completed by Chief Justice James J. Deavenport in 1856." See New Mexico Compilation Commission: *A Brief History of the Compilation and Publication of New Mexico Laws* <http://www.nmcompcomm.us/history.htm> (last visited Jan. 12, 2013). Another compilation "was prepared by a commission over a six-year period and reported to the legislature in 1859. It was adopted by the legislature as the Revised Statutes and Laws of the Territory of New Mexico." *Id.* "The last territorial compilation was authorized in 1884 and published in 1897. It was prepared by three commissioners and certified by Albert B. Fall, solicitor general of the Territory of New Mexico." *Id.*

21. *Brooks*, 6 N.M. at 77–78, 27 P. at 511.

22. *Id.* at 78, 27 P. 510 at 511

noteworthy.<sup>23</sup> This instruction would appear to set a high bar with respect to assessing the credibility of female witnesses. As will be noted from a review of the subpoena issued to these women, the sheriff made his return of service by stating the following: "This is served and returned today March 28, 1861." Curiously, March 28th is two days after the final day of trial on March 26th. The document notes that the subpoena was issued on March 26, the final day of trial. It is unclear from the sheriff's choice of words whether he affected actual service on the women before March 28th and simply returned the receipt of service on that date, or if he affected actual service and made his return on the same date of March 28th. It is presumed that these witnesses testified on behalf of the Defendant; however, reconciliation of the ambiguity created by the sheriff in his choice of words is best left to history.

### 1. A Woman's Right to Vote and Serve on Juries

Unlike most western states,<sup>24</sup> women in New Mexico did not attain the full right to vote until 1920, when the Nineteenth Amendment to the United States Constitution was ratified.<sup>25</sup> The right to serve on a jury would seem to be a natural corollary of the right to vote, but this was not the case in most states.<sup>26</sup>

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23. See *infra* Page 3 of Benedict's Jury Instructions. The instruction stated that "[a] woman who is a witness is as much entitled to be believed when she testifies under oath as is a man when she is not contradicted by other testimony in the case and when her reputation for truth and veracity is not impeached by other witnesses on the trial." *Id.*

24. See Karen M. Morin, *Political Culture and Suffrage in an Anglo-American Women's West*, 19 WOMEN'S RTS. L. REP. 17, 20 (1997) (noting that "by 1918 a total of twenty-one states had passed some form of national women's suffrage, and of these, sixteen, or seventy-six percent, were west of the Mississippi River"); Carolyn B. Ramsey, *Domestic Violence and State Intervention in the American West and Australia, 1860-1930*, 86 IND. L.J. 185, 196 (2011) ("By the end of the nineteenth century, women could vote in four western American states. California granted woman suffrage in 1911, and Arizona, Kansas, Montana, Nevada, Oregon, and Washington followed suit by 1914, six years prior to the ratification of the Nineteenth Amendment to the United States Constitution.").

25. New Mexico was one of the states that ratified the Nineteenth Amendment. See U.S. Const. Amend. XIX, compiled in NMSA 1978, pamphlet 1 (1978), Compiler's note.

26. See Gretchen Ritter, *Jury Service and Women's Citizenship Before and After the Nineteenth Amendment*, 20 LAW & HIST. REV. 479, 482 (2002) ("In a series of cases about women's jury eligibility after suffrage, numerous state courts ruled that the Nineteenth Amendment applied only to voting."); compare *Parus v. District Court*, 174 P. 706 (Nev. 1918) (holding that women were qualified to serve as jurors because they were qualified as electors under the state constitution), with *Commonwealth v. Welosky*, 177 N.E. 656 (Mass. 1931) (holding that women were not qualified

As with women's suffrage, many western states were pioneers when it came to women serving as jurors. "[T]he Wyoming Territory seated its first female jurors in 1870," even though "it made clear that such service was a revocable privilege, not a right."<sup>27</sup> Additionally, "[a]t least five frontier states allowed mixed juries by 1920, with Utah leading the way in 1898."<sup>28</sup>

Unfortunately, New Mexico was not nearly as progressive as its sister states in the west. Women in New Mexico were not qualified to serve as jurors until March 14, 1951, more than thirty years after the ratification of the Nineteenth Amendment, and some ninety years after Angel's trial—a trial where Angel was not tried a jury of her peers.<sup>29</sup>

## II. THE CASE OF PAULA ANGEL

As told to me by my grandfather, Paula Angel was a young woman of nineteen or twenty years of age—the daughter of a prominent family in Las Vegas, New Mexico. She was involved romantically with one Miguel Martin, a young man of about twenty-two years of age—he was the son of a wealthy and very politically powerful family in Santa Fe. Their relationship was fraught with discord. She accused Miguel of mistreating her and of being unfaithful. When he sought to terminate the relationship, she lured him to one final "romantic" encounter. As they embraced, she took a knife from underneath her shawl and stabbed him to death. Paula Angel was indicted for first-degree murder in the killing of Miguel Martin. She was tried, not in a courthouse, with the formal trappings familiar to each of us, but in an old adobe structure equipped with little more than rudimentary tables and chairs and other furnishings. Upon the jury's finding of guilt, Judge Benedict imposed a sentence of death by hanging, as required by law.

### A. Historical Background

Against this backdrop, I wish to provide some historical background and a short biographical history of the trial participants as we begin our

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to serve as jurors, despite the Nineteenth Amendment). Indeed, "[n]ot until 1968 could women serve as jurors in all fifty states." Johanna L. Grossman, Note, *Women's Jury Service: Right of Citizenship or Privilege of Difference?*, 46 STAN. L. REV. 1115, 1137 (1994).

27. Ramsey, *supra* note 24, at 196 n.66 ("[W]omen were subsequently barred from jury service there until 1950.").

28. *Id.*

29. See 1951 N.M. Laws, ch. 129, § 1 ("Every citizen, whether male or female, of the United States over the age of twenty-one (21) years of sound mind. . . [may be] selected or drawn as a juror. . .").



journey through Territorial justice in the year 1861. Territorial District Judge Kirby Benedict presided over the trial.<sup>30</sup> Richard H. Tomkins prosecuted the case.<sup>31</sup> Attorney Spruce McCoy Baird defended Paula Angel.<sup>32</sup> Samuel Ellison was then the Clerk of the Territorial Supreme Court.<sup>33</sup> Sheriff Antonio Abad deHerrera carried out the execution.<sup>34</sup>

The spring of 1861 marked the beginning of the American Civil War, and the events that ensued touched the rugged and remote Territory of New Mexico, a territory so vast in size that it encompassed what are today the states of New Mexico and Arizona. Abraham Lincoln took the oath of office on March 4, 1861,<sup>35</sup> and a day later he received word from the commander of the U.S. troops holding Fort Sumter in Charleston Harbor that there was less than six weeks' supply of food left in the fort.<sup>36</sup> On April 12, 1861, Confederate forces fired on Fort Sumter and the American Civil War began.<sup>37</sup> During the first months after the war began, the attention of politicians and judges, even in the distant Territory of New Mexico, was focused on political dissension created by the influence of the confederacy in the Territory, and specifically, the invasion of New Mexico by Confederate forces.

Territorial judges served under Presidential appointment. The law in the Territory during this time was uncertain despite the Kearny Code. The civil courts existed, yet the presence of the military was obvious and the military was often influential in the outcome of political and judicial affairs. Despite the remoteness of the Territory, the uncertain political events of the East impacted the way of life in the West.

#### *B. Kirby Benedict*

Kirby Benedict was one of the most colorful, if not controversial, members of the Territorial bench in the mid-nineteenth century. Presi-

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30. Luis E. Armijo, *The Only Woman Hung in New Mexico: Judge Armijo Tells Hanging of Paula Angel*, NEW MEXICO LAW (1962), reprinted in NEW MEXICO LAWMAN 40 (Mar./Apr. 1989).

31. *Id.*

32. Robert Torrez, *Paula Angel: The Only Woman Ever Hanged In New Mexico*, New Mexico Office of the State Historian [http://www.newmexicohistory.org/filedetails\\_docs.php?fileID=21393](http://www.newmexicohistory.org/filedetails_docs.php?fileID=21393) (last visited Apr. 15, 2013).

33. *Id.*

34. *Id.*

35. Civil War.Org, Abraham Lincoln's First Inaugural Address, <http://www.civilwar.org/education/history/primarysources/lincolninaugural1.html> (last visited Feb. 20, 2013).

36. U.S. Civil War.com, Fort Sumter, <http://www.us-civilwar.com/sumter.htm> (last visited Feb. 20, 2013).

37. *Id.*

dent Pierce first appointed Benedict to the New Mexico Territorial Supreme Court; President James Buchanan later appointed him to the position of Chief Justice.<sup>38</sup>

Born in Connecticut in 1810, he later read the law with an attorney in Natchez, Mississippi, and also studied French and Spanish.<sup>39</sup> He moved to Illinois in 1835 where he became a member of the Bar of Illinois. There, he became a close friend and confidant of Abraham Lincoln and of Stephen A. Douglas.<sup>40</sup> He and Lincoln practiced law and rode circuit together in Illinois.<sup>41</sup> After Lincoln became President, he reappointed Benedict to his position on the Territorial Court.

Benedict has been described as a man of strong convictions and the courage to express them. For example, he was opposed to secession and was vocal in his support of the Union, even when Confederate forces occupied Santa Fe.<sup>42</sup> He spoke out against the institution of peonage that he found being practiced in the Territory.

Benedict was respected for his punctuality, not only with respect to beginning a hearing at the scheduled time, but also for convening every trial or hearing on the date scheduled. Travel between Santa Fe, where he sat, and Taos, or Santa Fe and Las Vegas, a mere sixty miles away, often took two-and-one-half to three days.<sup>43</sup> Travel was by Concord carriage and horseback.<sup>44</sup> The judge, the prosecutor, and the clerk of court traveled together.<sup>45</sup> They were true circuit riders. One of Benedict's traveling companions offered the following travel advice:

'When one is on wheels, he should be sure he has mules or horses that will never balk going up hill and will go down without alarm. The driver should be patient, steady and alert. The harness ought to be too strong to be broken and the carriage the best of Concords.'<sup>46</sup>

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38. See AURORA HUNT, *KIRBY BENEDICT FRONTIER FEDERAL JUDGE* 70 (The Arthur H. Clark Co. ed., 1961); See also Malcolm Ebright, New Mexico Office of the State Historian, *Kirby Benedict*, <http://www.newmexicohistory.org/filedetails.php?fileID=21287> (last visited Feb. 20, 2013).

39. HUNT, *supra* note 38, at 15–18; See also Ebright, *supra*, note 38.

40. HUNT, *supra* note 38, at 23.

41. Ebright, *supra* note 38.

42. HUNT, *supra* note 38, at 137.

43. *Id.* at 81.

44. Ebright, *supra* note 38.

45. HUNT, *supra* note 38, at 81–83.

46. *Id.* at 83.

In ten years, Benedict only once missed holding court in his district; the missed session occurred when the Confederate forces occupied Santa Fe.<sup>47</sup>

Benedict also believed that the Chief Justice, the prosecutors, and the Court Clerk with whom he rode circuit, were not themselves above the law. In 1859, Benedict fined himself the sum of \$10 for gambling and levied the same amount against his traveling companions, who included the Clerk of the Territorial Supreme Court Samuel Ellison, and Richard H. Tompkins, the Attorney General and chief prosecutor for the Territory.<sup>48</sup> "The owner of the gambling table was fined \$100," and the monies collected went in equal shares to the county and the Territory.<sup>49</sup>

However, Benedict was known to drink heavily, often appearing in court intoxicated.<sup>50</sup> In 1865, individuals seeking Benedict's removal and the appointment of what they termed "a good sober man" wrote a letter to President Lincoln.<sup>51</sup> The letter stated, in part, "The judge has taken to his cups again worse than ever before. He was so drunk when he took his seat on the bench he could hardly sit in his chair and it was with difficulty that he could articulate at all."<sup>52</sup> The conduct was "undignified and brings disgrace upon the court and your administration."<sup>53</sup> Lincoln refused to remove Benedict, and in response to one petition by lawyers sent to him seeking removal, he stated: "Well, gentlemen, I know Benedict. We have been friends for over thirty years. He may imbibe to excess, but Benedict drunk knows more law than all the others on the bench in New Mexico sober. I shall not disturb him."<sup>54</sup>

After President Lincoln was assassinated, Andrew Johnson was sworn in as President. It was President Johnson who yielded to the demands of those seeking Benedict's removal.<sup>55</sup> He was not reappointed to the position of Chief Justice, and thus removed from the Bench in 1866.<sup>56</sup> After his removal, Benedict was sworn in as a member of the bar in 1867.<sup>57</sup> John P. Slough was appointed to the position of Chief Justice in

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47. *Id.* at 81.

48. *Id.* at 75-76.

49. *Id.* at 76.

50. *Id.* at 185.

51. *Id.* at 184-85.

52. *Id.* at 185.

53. *Id.* at 185.

54. RALPH EMERSON TWITCHELL, *OLD SANTA FE: A MAGAZINE OF HISTORY, ARCHEOLOGY, GENEALOGY AND BIOGRAPHY*, at 85, The Old Santa Fe Press (1914).

55. HUNT, *supra* note 38, at 188, 195.

56. *Id.* at 191.

57. *Id.*

Benedict's place.<sup>58</sup> On December 15, 1867, Chief Justice John P. Slough was killed; he held office for a mere two years before his murder.<sup>59</sup> Benedict and attorney Stephen B. Elkins defended William Logan Rynerson at his trial in the district court for Slough's killing.<sup>60</sup> Benedict's attempt to sustain the private practice of law was unsuccessful. He frequently appeared in court highly intoxicated.<sup>61</sup> His behavior was rude and insulting toward colleagues, and judges before whom he appeared.<sup>62</sup> He was suspended from the practice of law and then disbarred.<sup>63</sup> He died in 1874 after collapsing as he walked down a Santa Fe sidewalk.<sup>64</sup>

### C. *Richard H. Tompkins*

Richard H. Tompkins was the Attorney General of the Territory who prosecuted the Angel case. Born in Louisville, Kentucky, in 1816, he came to New Mexico after being appointed Clerk of the U.S. District Court in 1851.<sup>65</sup> He served as the Clerk of the House of Representatives for the Territory of New Mexico during the Seventh Legislative Assembly in 1857. In 1858, Tompkins was appointed Attorney General for the Territory, but he resigned after he was appointed as U.S. District Attorney in 1858.<sup>66</sup> He was reappointed to that position in 1860. After a few years of private practice of law, in 1880 Governor Lew Wallace appointed him to the position of Territorial Librarian.<sup>67</sup> Tompkins resigned after only two days as librarian, citing "the miserable condition of the library. . .and the insufficient salary" of \$300 per year.<sup>68</sup> Tompkins died in Santa Fe in 1888.<sup>69</sup>

### D. *Spruce M. Baird*

Spruce McCoy Baird defended Paula Angel. He was known to be fluent in Spanish and English. He was a Confederate sympathizer and actively sought to recruit men from the Territory to join the Confederate

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58. *Id.* at 188–89.

59. *Id.* at 191.

60. *Id.*

61. *Id.* at 185.

62. *Id.* at 199.

63. *Id.* at 221.

64. *Id.* at 224.

65. *Id.* at 190.

66. *See id.*

67. Robert Torrez, New Mexico Office of the State Historian, *State Records Center and Archives Ground Breaking*, <http://www.newmexicohistory.org/filedetails.php?fileID=22031> (last visited Jan. 25, 2013).

68. *Id.*

69. HUNT, *supra* note 38, at 190.

forces.<sup>70</sup> After the Angel trial, in March 1862, he was tried for committing libel due to his Confederate sympathies.<sup>71</sup> After hearing the evidence, the district court condemned his property, consisting of several hundred acres in what is now Albuquerque, and ordered it to be sold at auction.<sup>72</sup>

### III. THE VERDICT OF GUILTY AND SENTENCE OF DEATH

The indictment charging Paula Angel with murder in the first degree was returned by the grand jury on March 23, 1861. She pleaded not guilty. She was tried in Las Vegas, Territory of New Mexico, during the March Term of Court, 1861. After trial, on March 26, 1861, a petit jury returned a verdict against her, finding her guilty of murder in the first degree. From the records as reflected in the Court Docket, which we will now review, it appears that on that same day Judge Benedict sentenced her to hanging. The records also reflect that on the same day, March 28th, defense attorney Baird filed a *Motion for Arrest of Judgment*. Judge Benedict overruled the motion. Also on March 28th, attorney Baird prayed an appeal to the Territorial Supreme Court of New Mexico. Judge Benedict granted the appeal, but ordered that the appeal shall in no manner operate as a stay of execution of the sentence. Samuel Ellison, Clerk of the District Court, issued the warrant of execution on April 3, 1861. In that warrant Paula Angel was assessed the costs of the prosecution against her. She was remanded into the custody of Sheriff deHerrera and was ordered held until the 26th day of April, 1861, on which date she was to be taken to some suitable place to be selected by the sheriff—the place to be within one mile of the church within the Town of Las Vegas—and then and there, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, she was to be hanged.

Appended to this article are copies of the original jury instructions written in the hand of Judge Benedict, witness subpoenas, the *Motion in Arrest of Judgment* filed by Attorney Baird, and other records reflected in the Docket. The Instructions are comprised of ten numbered pages, in narrative form, all written in the hand of Judge Benedict. They obviously lack the formality of jury instructions to which we are so accustomed.

So now, I ask the reader to travel back one-hundred-and-fifty-two years to the early spring of 1861, and examine some of the pleadings,

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70. J.J. Bowden, New Mexico Office of the State Historian, *Bairds Ranch Grant*, <http://www.newmexicohistory.org/filedetails.php?fileID=25003> (last visited May 1, 2013).

71. *Id.*

72. *Id.*

court filings, and the jury instructions given in this most interesting case.<sup>73</sup> I begin with an entry from the Docket of the case relating to the Indictment:

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*The Territory*

vs.

*Paula Angel*

**Francisco Lopez, foreman of the Grand Jury ordered by the Court, that said Indictment be filed with the Clerk and warrants issue for said Defendant. The Grand Jury having further business before them again retired to their room to deliberate thereon.**

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Included are copies of two witness Subpoenas, issued in this case. Each original bears the seal of the U.S. District Court for New Mexico and each directs that the witness appear and testify on behalf of the Defendant. One subpoena is issued to JOHN WHITTAKER. Of particular interest is the return of service of the subpoena made by the Sheriff, in the Spanish language. Translated, it reads: "I certify that it was served today the 25th of March, 1861. Signed Antonio Abad Herrera, Alguicil Mayor—for the cost of .50 and \$1.50."

Another single subpoena was issued to NIEVES MARTINEZ and JUANA MARTINEZ, again directing each to testify on behalf of the Defendant. Of interest here again is the return of service made by the Deputy Sheriff in Spanish.

Translated, it reads: "This is served and returned today, March 28, 1861, by the deputized marshal/sheriff Regino Ulibarri, for Antonio Abad Herrera, Chief Marshal/Sheriff, for the cost of .30 and .50."

After close of the evidence, Judge Benedict read the following instructions to the jury. Noted on the reverse of the first instruction is the following:

***TERRITORY vs. PAULA ANGEL INSTRUCTIONS Delivered in open court on this 26th day of March 1861. Signed: Samuel Ellison, Clerk.***

**PAGE 1** (Each page number reflects the number noted by Judge Benedict)

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73. The text that follows is transcribed literally and includes perceived grammatical errors or misprints.

*Territory*

vs.

*Murder of Miguel Martin*

*Paula Angel*

The Court instructs the jury that the witnesses and the arguments of counsel having been heard in this case it now becomes the duty of the Court to direct the jury to the points they have to determine under the law and the evidence in the case.

The Defendant is charged with the murder of Miguel Martin in the 1<sup>st</sup> as defined in the Statute of this Territory and if the testimony proves that Paula Angel is guilty as charged then the jury

**PAGE 2**

are obligated under their oaths to find her guilty of murder in the 1<sup>st</sup> and leave the Court to pronounce the sentence of the law. The jury are as much bound by their oaths and the law to find a woman guilty of murder in the 1<sup>st</sup> degree, equally as much as a man when the proof is such as to require a jury to find her guilty.

It is the duty of the jury to be governed by the law and the evidence in this case and not by what they may imagine outside of what is proven.

**PAGE 3**

A woman who is a witness is as much entitled to be believed when she testifies under oath as is a man when she is not contradicted by other testimony in the case and when her reputation for truth and veracity is not impeached by other witnesses on the trial. The testimony of one witness to the stabbing and wounding is sufficient in this case when such witness is in no manner contradicted by any other witness in the case.

**PAGE 4**

Under the evidence given upon this trial if the jury believes from such evidence that Paula Angel stabbed Miguel Martin with a knife and wounded him in the body and that he died from the wound so given, then the jury must find said Paula Guilty of murder in the 1<sup>st</sup> degree.

It was not necessary in this case to prove that the accused and the deceased had had quarrel or grudges as between each other and that Paula had expressed a premeditated design

**PAGE 5**

or intention in words to murder Miguel. The jury are to believe and to find that Paula premeditated and intended to produce upon and with the person or body of Miguel what followed that is wounding and death unless she has shown by witnesses that she stabbed by accident or in her necessary self defense.

It is sufficient to find that the premeditation from the proof was formed and it matters not whether such premeditation was formed at the time of the stabbing

**PAGE 6**

or hours, days or weeks before.

The jury have the right to consider and believe from the Defendant having about her person and using a large knife and her going to where the deceased was and offering to embrace and did embrace him in her arms in a manner calculated to deceive then and there stabbing him and being seen with the knife bloody in her hands. All this the jury have the right to consider as proof of a premeditated design to assassinate and murder the deceased.

**PAGE 7**

In this case it makes no difference in which hand the Defendant held the knife provided she stabbed the deceased and that he died of the wound.

The Court cannot give any instructions as to any other degree of murder other than the first degree because there is no evidence given in the trial to support or justify as to any other degree.

**PAGE 8**

The jury has to perform their duty under their oath, the law and the evidence and the Court its duty each in their proper place and if the Defendant is guilty according to the evidence the jury just say so and if she merits mercy the Governor of the Territory has the power to grant her mercy and the jury and others have the right to recommend the Defendant to the mercy and pardon of the Governor when they think proper.

**PAGE 9**

In criminal cases all rational doubts are in favor of the accused.

A rational doubt is not a suspicion which a person may have nor what he may imagine to himself outside of the testimony but such a doubt as necessary arises in the mind of the juror from the careful examination of the testimony given under oath upon the trial.

Neither the jury nor the Court have a right to be governed

**PAGE 10**

in their judgments by sympathies they may feel for the misfortunes of the accused nor by feelings of mercy not justified by the evidence.

**END OF INSTRUCTIONS**



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From the Docket, the following appears:

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The Territory  
vs. Murder  
Paula Angel

This day came the Plaintiff by her Attorney General and the said defendant being led to the bar of the court in the custody of the Sheriff and appearing also by counsel, and having plead at a former day of this term thereupon came a jury to wit: Gabriel Rivera, Candido Garcia, Isidro Lopez, Francisco Lucero, Manuel Barela, Antonio Lucero, Faustin Ulibarri, Andres Aguilar, Miguel Lopez, Eugenio Romero, Florencio Gonzales, and Cruz Gutierrez twelve good and lawful men duly elected, tried and sworn the truth to speak upon the issue joined between the parties, after hearing the evidence and the arguments of counsel, and the instructions of the Court, upon their oaths do say, We the jury find the defendant guilty of Murder in the first degree, and thereupon the said defendant was remanded to jail. Entered March 26, 1861.

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***Motion in Arrest of Judgment:*** Delivered in Open Court March 27, 1861.

*The Territory of New Mexico*  
*County of San Miguel*  
*In the District Court*  
*March Term A.D. 1861*

*The Territory*  
vs. ss. *Indictment for Murder*  
*Paula Angel*

In this case Defendant by her counsel moves the Court that the judgment of the Court be quashed because the matters in the Indictment herein or thereby set forth are not of sufficient in law and for other reasons apparent upon the face of the record.

S/ S.M. Baird  
Attorney for Defendant.

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The Territory  
vs. Murder  
Paula Angel

This cause came on again to be heard upon the motion of the said defendant by her counsel for an Arrest of Judgment in

this prosecution, which being argued by counsel as well for the said plaintiff as for the said defendant, and the Court being fully advised in the premises, is of opinion that the matters and things in the said Indictment contained, as the same are therein set forth, are sufficient in law to sustain the verdict in said cause. It is therefore considered by the Court that said motion be and the same is hereby overruled.

Entered March 28, 1861. County of San Miguel.

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The Territory  
vs. Murder  
Paula Angel

This day came again the Territory by her Attorney General, and the defense was again led to the bar of the court in the custody of the Sheriff. Whereupon she was asked by Court if she had anything to say why the sentence of the Court should not be imposed upon the verdict herein and therefore the said Defendant said nothing. Wherefore, it is considered by the Court, that the said Defendant Paula Angel, be remanded to the jail of this County of San Miguel, to be securely kept in the custody of the Sheriff and by whatever chains and shackles that shall be necessary to secure the person of the said Paula Angel, until Friday, the twenty sixth day of April next, and that on said twenty sixth day, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of the said day the Sheriff of said county take the body of the said Paula Angel, to some suitable place, to be by said Sheriff selected within one mile of the Church, within the town of Las Vegas in said county, and that there and then between the said hour on said day, the said Paula Angel, be hung by the neck until she shall be dead.

It is further adjudged by the Court, that the said Defendant pay the costs of this prosecution to be taxed and that execution issue therefore, and that warrant of execution issue.

Entered this 28th day of March, 1861.

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Territory  
vs. Murder  
Paula Angel

This day came again the Territory by her Attorney General and the Defendant being again led to the bar of the Court in the custody of the Sheriff and the said Defendant prays an appeal to the Supreme Court, which is granted by the Court, and it is Or-

dered by the Court, that the said appeal shall in no manner operate as a stay of execution of the sentence in this cause, but that said sentence shall be duly executed, as before ordered.

It is ordered by the Court that Antonio Abad deHerrera be allowed nine dollars and eighty one cents for stationary and fuel furnished by him for the use of the Court at its present term, which shall be paid by the county.

Ordered by the Court that all Indictments, causes, motions and recognizances, not otherwise disposed of be and hereby are continued until the next term.

Ordered that Court adjourn until Court in cause.

S/KIRBY BENEDICT, Chief Justice and Judge.

Entered 28th by of March 1861.

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### CONCLUSION

Paula Angel's execution was carried out on April 26, 1861.<sup>74</sup> I could find no records or news accounts of this case during the pendency of the prosecution and trial. Perhaps the focus of attention at that time, and in the months that followed, was on the outbreak of the Civil War and its potential impact on the Territory. Notably, the Territorial legislature enacted sections 2482 and 2483 of the Compiled Laws,<sup>75</sup> which provided for an automatic stay of execution in murder cases pending appeal, only nine months later on January 17, 1862. One must ask: Was the enactment of these laws prompted by the realization of this woman's swift execution during the pendency of her appeal? Was her appeal even pursued in light of the trial court's denial of a stay of execution?

What is certain though, in the eyes of this author, is the frivolity of the trial court's act in granting Angel's appeal and refusing to stay the execution. In commenting on Judge Benedict's decision to grant Angel an appeal but deny her request for a stay of execution, my grandfather quite correctly observed that the grant of an appeal was "nothing more than a silly gesture on the part of the Court."<sup>76</sup>

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74. HUNT, *supra* note 38, at 76-77.

75. See *supra* Part IA.

76. Armijo, *supra* note 30.

True Bill

# Witness Subpoena



**Jury Instructions Delivered by the Honorable Kirby  
Benedict, Chief Justice and Judge of the First  
Judicial District of the Territory of New Mexico in  
Open Court March 26, 1861**

*Verdict*  
" *Paula Angel*  
*Murder*  
  
*Given open court*  
*26. day of March 1861*  
*John L. Hines*  
*Clk*

**Jury  
Instructions**

*Verdict*  
" *Murder of Miguel Martin*  
*Paula Angel*  
The Court instructs the jury  
That the instructions and the argu-  
ments of counsel having been heard  
in this case it now remains the  
duty of the Court to direct the jury  
to the points they have to determine  
under the law and the evidence  
in this case. The deft is charged  
with the murder of Miguel Martin  
in the 1<sup>st</sup> degree as defined in the  
Statute of this Territory and  
if the testimony proves that  
Paula Angel is guilty as  
charged then the jury

## Jury Instructions cont.

are obligated under their  
oath to find her guilty of  
murder in the 1<sup>st</sup> degree and  
leave the Court to pronounce  
the sentence of the Law—  
The jury are as much bound by their  
oath and the law to find a  
woman guilty of murder in  
the 1<sup>st</sup> degree, equally as much  
as a man when the proof  
is such as to require a jury  
to find her guilty  
It is the duty of the jury to  
be governed by the law & the evi-  
dence in this case and not  
by what they may imagine  
but find what is proven

## Jury Instructions cont.

3  
A woman who is a witness is as  
much entitled to be believed  
when she testifies under  
oath as is a man when  
she is not contradicted by  
other testimony in the case  
and when her reputation  
for truth and veracity is  
not impeached by other  
witnesses on the trial  
The testimony of one witness  
to the stabbing and murder  
is sufficient in this case  
when such witness is in-  
no way contradicted  
by any other witness in  
the case

## Jury Instructions cont.

Under the evidence given  
upon this trial if the  
jury believe from <sup>the</sup> evidence  
that Paula Angel stabbed  
Miguel Martin with a knife  
and ~~was~~ did him in the  
body and that he died from  
the wound so given then the  
jury must find said  
Paula guilty of murder  
in the 1<sup>st</sup> degree

It was not necessary in this  
case <sup>to prove</sup> that the accused and  
the deceased had had  
quarrel or <sup>between each other</sup> feud and  
that Paula had expressed  
a premeditated design

## Jury Instructions cont.

or intention in words to murder  
Miguel. The jury are to be  
- as are to find that Paula  
premeditated and intended  
to produce upon and hit to  
the person or body of Miguel  
what follows that is murder  
ing and death unless this  
has shown by evidence that  
the stabbing by accident or in  
her necessity. If defense  
It is sufficient to find that  
the premeditation from the  
proof was formed and it is  
material not whether such  
premeditation was formed  
at the time of the stabbing



## Jury Instructions cont.

6-  
 or from any other source before  
 the jury has the right to consid-  
 er the same before from the de-  
 fendant about his person  
 and using a large knife  
 and his pin. To show the  
 accused was and offering  
 to commit and did commit  
 him in his arms in a  
 manner calculated to die.  
 them and then holding his  
 and being seen with the  
 knife closely in his hands  
 all this the jury have the  
 right to consider as proof  
 of a premeditated design  
 to ~~commit~~ murder the  
 deceased

## Jury Instructions cont.

7  
 In this case it makes no  
 difference in which hand  
 the deft held the knife  
 provided he stabbed the  
 deceased and that he  
 died of the wound.  
 The Court cannot give  
 any instruction as to  
 any other degree of  
 murder other than the  
 first degree because  
 there is no evidence  
 given in the trial  
 to support a jury  
 as to any other degree

## Jury Instructions cont.

68  
The jury is to perform  
their duty under their  
oath the law and the  
evidence and the  
court its duty each  
in their proper place -  
and if this draft is guilty  
according to the evidence  
the jury must say so  
and if the merits of the case  
the prisoner has the power  
to grant her mercy  
and the jurymen then  
have the right to recommend  
- send the draft to the mercy  
and pardon of the Governor  
if which they should be

## Jury Instructions cont.

9.  
In criminal cases a  
rational doubt is in  
favor of the accused.  
A rational doubt is not  
a suspicion which a person  
may have nor that he  
may imagine to himself  
outside of the testimony  
but such a doubt as  
naturally arises in the  
mind of the juror from the  
conflicting testimony of  
the witnesses or from other  
facts upon the trial.  
Neither the jury nor  
the court have the  
right to be guided by

## Jury Instructions cont.

10 8  
in their prayer etc by  
sympathies they may  
feel for the misfortune  
of the accused now  
by feelings of mercy  
not prompted by the  
wisdom

## Verdict

The Jurors of the County of Santa Fe, New Mexico,  
do hereby certify that on the 2nd day of March 1891  
at the Court House of the County of Santa Fe, New Mexico,  
a Jury of the County of Santa Fe, New Mexico, was sworn  
and appeared before the Court and being placed on  
a former day of this term of the Court have a good  
and true verdict returned, and the same being read  
Alfonso L. Lugo, Manuel Lugo, Antonio Lugo,  
Augusto Lugo, Andres Lugo, Miguel Lugo,  
Eugenio Lugo, Placido Lugo and the Jurors  
having gone and heard the evidence and  
seen the facts and after the evidence and  
arguments of counsel and the instructions of the  
Court upon their oath do say that the jury find  
the defendant guilty of murder in the first degree  
and therefore the said defendant was remanded to  
prison.

The Grand Jury now assembled at the Court  
House of the County of Santa Fe, New Mexico, do  
present the following true bill of indictment  
to wit:

At the City of Santa Fe, New Mexico, County of Santa Fe,  
March 26, 1891.

**Defense Attorney  
S.M. Baird's Post-  
Trial Motion in  
Arrest of Judgment**

The Territory of New Mexico  
County of Bata Miguel  
For the District Court  
March Term 1861  
The Territory of New Mexico  
County of Bata Miguel  
vs. Paula Angel  
In this case defendant  
by her counsel moves the court  
that the judgment of the court be  
quashed because the indictment  
in this indictment begins as having  
set forth one act of sufficient  
in law and for other  
reasons apparent upon the  
face of the record.  
S. M. Baird  
Attorney at Law  
Motion in  
Arrest of  
Judgment  
Baird appears this  
27th of March 1861  
Jan. 8. 1861  
M. L.

**Denial of Post-Trial Motion**

The Territory of New Mexico  
vs. Paula Angel  
Murder  
This cause came on again to be heard upon the motion  
of the said defendant by her counsel for an arrest of judgment  
in this prosecution, which being argued by counsel, as well as  
the said plaintiff, as for the said defendant, and the court being  
fully advised in the premises, is of opinion that the matter  
and things in the said indictment contained, or the same  
therein set forth, are sufficient in law to sustain the ver-  
dict in said cause. It is therefore considered by the court  
that said motion be and the same is hereby overruled.  
S. Day, March 28. 1861. County of Santa Miguel S. D.

[illegible][illegible]