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## They Escaped the Hangman. By Francis X. Busch.

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## BUFFALO LAW REVIEW

THEY ESCAPED THE HANGMAN. By Francis X. Busch. Indianapolis: Bobbs-Merrill Co., Inc., Pp. 301. \$3.75.

At the outset it should be made clear that this book is not a legal text. It is rather a "truth is stranger than fiction" account of four *causes celebres* from the annals of American jurisprudence. It was without a doubt written for popular consumption, and the author has succeeded in relating four noteworthy trials in a manner designed to allow the lay reader to become the "thirteenth juror".

This third volume of *Notable American Trials* develops the trials of Caleb Powers for the murder of a Kentucky governor, of Albert Patrick for the murder of the wealthy William Rice, of Frances Hall for the murder of her cleric husband and his paramour, and of Hans Haupt for treason against the United States. In each case the death penalty was sought; in each case the executioner was cheated. The author indicates this was bought in each case by the mishandling of our criminal justice.

In the trials of Caleb Powers for the murder of William Goebel, pretender to the gubernatorial chair of Kentucky in 1900, all of the latent defects of our judicial system—partial judge, stacked jury wheel, partisan appellate court, paid witnesses—came to the fore. At that time the citizens of Kentucky were in the throes of a hot political war. The Republicans succeeded in capturing the executive offices by popular vote, but the Democrats, of whom Goebel was the head, invoked a statute which placed the election machinery in the hands of a Democratic legislative committee, and declared the Democrats the duly elected officials. The two parties squared off for battle. Goebel was shot, and died a few hours after he took the oath of office. Powers, the Republican Secretary of State, was indicted along with lesser officials for the crime. He was tried three times before a Democratic judge and jury. Three times the Republican Court of Appeals found prejudicial error and remanded the case for a new trial. On the fourth trial Powers' attorneys succeeded in getting an impartial judge and a jury picked from a wheel which had not been packed. A hung jury resulted; the case was dismissed. During the course of the trials, which went on for eight years, a Republican governor assumed office. After a public hearing he granted Powers an unconditional pardon.

The multimillionaire William Rice died at the age of 84 presumably of natural causes. Subsequent evidence indicated that his death might have been induced by one Albert Patrick. Patrick, an attorney of dubious reputation, had represented clients who were seeking to relieve Rice of some of his millions. Although

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Patrick was no close friend of Rice, he produced documents after the millionaire's death by which Rice made him a trustee of a large portion of the Rice estate. Patrick was tried for the murder of Rice. The prosecution relied on the testimony of experts that the documents were forged and that an autopsy indicated that the inhalation of chloroform caused Rice's death. Charles Jones, personal secretary to Rice, corroborated this testimony declaring that he administered chloroform to Rice on the orders of Patrick, who had a plan to acquire a large portion of Rice's estate through a forged will. The defense denied this and called its own expert witnesses who testified Rice could have succumbed to a respiratory disease. Patrick was found guilty and sentenced to die in the electric chair. He was later pardoned by Governor Dix, who felt a fair trial had not been accorded the defendant. The Medico-Legal Society of New York had made a study, the results of which concluded that the condition of Rice's lungs as found on post-mortem could not have been caused by chloroform. The author presents no facts upon which the reader could reach this conclusion, so there is reason to believe there are pertinent facts missing from this account.

By far the most vividly described of the four trials is the Hall-Mills murder case. No detective "whodunit" could be more thrilling. All of the elements of the sensational were present, so the newspapers have made the facts of this case common knowledge. The case is not noteworthy because a member of the clergy and his choir singer girl friend were found slain and his socially prominent wife was indicted but because it illustrates the impossibility of attaining criminal justice when local authorities are inept. The trial was held over four years after the crime was committed. The evidence submitted by the prosecution was gathered together by a special prosecutor after two different county officials had directed investigations. The initial investigation had been badly bungled, and many of the clues which might have led to a conviction were either allowed to fall into the hands of newspaper reporters or were completely ignored. The murdered victims had to be exhumed twice, because the autopsies were slipshod. Important papers, including affidavits of witnesses, were missing. Material witnesses changed their testimony. It was a foregone conclusion that the jury would return an acquittal for the murdered man's wife. Fairness to Mrs. Hall would preclude the seed of doubt as to her innocence implanted by the author, for under our jurisprudential system the jury's verdict rules out her guilt.

The uniqueness of the Hans Haupt Treason case is perhaps indicated by the infrequency of such cases before our highest

court. Before the Haupt case reached the United States Supreme Court, that tribunal had never reviewed and affirmed a conviction for treason. Hans Haupt was the father of Herbert Haupt, one of eight German agents who succeeded in landing on United States soil in 1942 for the purpose of committing acts of sabotage. These agents were apprehended some ten days after their landing, before they inflicted any damage. In the interim period Herbert Haupt spent about a week with his parents at their home in Chicago. Hans Haupt was charged with harboring the German saboteur, knowing full well he was an enemy agent. He was tried twice. The United States Court of Appeals reversed on the grounds that, among other reasons, the lower court erred in the admission of the defendant's confession which was secured by the arresting officer before he had strictly complied with a Federal statute requiring the arresting officer to take the defendant before the nearest United States commissioner. A conviction was secured at the second trial without the confession, and it was upheld on appeal. Although the Federal Constitution makes conviction for treason nigh unto impossible, Hans Haupt was thus convicted of this high crime and was sentenced to life imprisonment rather than the death penalty upon recommendation from the jury.

It is to be lamented that the *Notable American Trials* series cannot be compared favorably with *Notable British Trials*. The background material, the court transcript of the trial, the unbiased editing of each case which makes up the latter series have warranted placing them on the library shelves. The same cannot be said for these volumes written by Mr. Busch.

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