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Pesach N. Rubenstein Cheats the Hangman: A Case Study of
Punishment and the Death Penalty at Brooklyn's Raymond Street Jail

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Abstract

This paper tells the story of Pesach Rubenstein and how he cheated the hangman in 1876.

Rubenstein was charged, tried, and convicted in Kings County, New York, for the 1875 murder of his 19 year-old cousin, Sarah Alexander. The Rubenstein case is noteworthy in that it received unprecedented media attention in the 1870s, involved the use of rudimentary forensic evidence at the trial, and divided the community on issues of religion, ethnicity, immigration (the victim and defendant were recent Jewish immigrants from Poland), and imposition of the death penalty.

Using a case study approach to analyze the trial transcript, newspaper articles, and historical accounts of the murder investigation, Rubenstein's trial, and his incarceration at Brooklyn's Raymond Street Jail, this article offers a glimpse into the operations of an urban jail in an earlier era when our criminal justice system was in its infancy.

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By all accounts, the investigation into the 1875 murder of Sarah Alexander and the subsequent arrest, trial, conviction, sentencing, and death of her cousin, Pesach Rubenstein were extraordinary, sensational, and took on the spectacle and drama more typical of the televised criminal trials of the late Twentieth Century more than a hundred years later.¹ According to Rischin (1977, p. 89), this “was the first crime of violence attributed to a Jew” in the history of New York City, and that Jews in the city enjoyed a peaceful reputation; “in 1878 Jews numbered 7 in a workhouse population of 1,178; 8 among 485 prison inmates; and 12 among 1,110 house-of-correction inmates” (Rischin, 1974, p. 91). The Rubenstein trial resulted in the publication of several murder pamphlets – true crime books popular in the 1800s – including one entitled *The murdered Jewess, being the life, trial and conviction of Rubenstein, the Polish Jew, for the murder of the beautiful Sarah Alexander, his own cousin! Startling evidence! A shocking crime!* (Barclay & Co., 1876) and another entitled *Thrilling mysteries of the Rubenstein murder, never before brought to light* (Stern, 1876). See Figure 1. The full verbatim trial transcript was also typeset and published in the form of a book within months of the end of the trial (Rubenstein, 1876). The case also gave rise to a street song that was popular with Jewish children for many years entitled “*My name is Pesach Rubenstein*” (Landesman, 1971, p. 32) and, more recently, a play, *Love in a thirsty land*, that was produced in an off-Broadway theatre in 2000 (Van Gelder, 2000). The Rubenstein case was remarkable in that it involved the use of rudimentary forensic evidence at the trial and divided the community on issues of ethnicity, immigration (the victim and defendant were Jewish immigrants from Poland), and imposition of the death penalty.

<< INSERT FIGURE 1 ABOUT HERE >>

The Murder of Sarah Alexander

Early in the afternoon of December 14, 1875, a farm laborer in the village of New Lots in East New York found the body of a beautiful young woman, about the age of twenty, in a snow covered cornfield on the old Schenck Farm about 400 feet south of the Jamaica Plank Road.² The body lay on its back, with hands and arms, now frozen hard, raised over her head as if to ward off blows from an attacker. The woman's face was badly cut, covered in blood, and her eyes wide open. The laborer informed his employer, the farmer who rented the old Schenck Farm, of his discovery, and soon thereafter the police were notified and arrived to investigate. A cursory examination of the death scene, the position of the body, and the nature of the wounds to the face and neck of the body convinced the police officers that the women had been murdered. The coroner was summonsed to the scene, and upon his arrival, made detailed notes of the nature and extent of injuries:

He found a deep wound on the right side of the face, extending from the lobe of the right ear to about the centre of the throat. At the throat termination of the wound the knife, it was thought, had been turned round; for a large piece of flesh was missing and the hole formed by its absence was sufficient to admit one's fist. Another gash was found in the right side of the face, extending from the cheek bone down to the angle of the mouth. On the left side a wound was found which cut the left ear in half, and passing along the throat severed the carotid artery. The hole in the centre of the throat, which the police believe was made by turning the knife in the wound area, was, the Coroner thinks, occasioned by the gnawing of field mice. No other cuts were found on any part of the body, nor were any bruises observable (New York Times, 1875b).

During the course of the crime scene investigation, detectives located a blood-covered knife hidden in a stack of corn not far from the location where the young woman's body was found. The knife appeared to be a cigar-maker's knife with a steel blade about three and one-half inches long and one-quarter inch wide. "On the handle, which [was] of black walnut, were the clearly-defined marks of three slender bloody fingers" (New York Times, 1875b). By order of the coroner, the body was transported to the East New York Station House for identification. Initial speculation by the police detectives and coroner was that the woman was Cuban or Spanish, primarily because of her dark skin color. As word spread through the city of the discovery of the dead beautiful young woman found in East New York, hundreds of people filed through the East New York Station House to view the body that evening, but no one was able to identify the woman (New York Times, 1875a). The next day the young woman's body was moved to the morgue in Brooklyn for a *post mortem* examination and coroner's inquest.

Around noon the next day, a Wednesday, three Russian Poles arrived at the Coroner's office and asked to speak with the Coroner. One of the men, Pesach Alexander, explained in broken English that he believed the dead girl to be his 19 year-old sister, Sarah Alexander, who had been missing from their home on Essex Street since the previous Sunday afternoon. He went on to explain that he had read the description of the dead woman in the daily newspapers, and that the descriptions in the newspapers matched the general description, as well as that of the clothing she was last known to be wearing when he last saw his sister. On Sunday afternoon, she left home to go to her cousin's home on Bayard Street. Sarah had been in the country for about a year-and-a-half, and for the first ten months in New York she lived at the home of her cousin, Israel Rubenstein, until she moved to live with her brother on Essex Street. Mr. Alexander went on to say that Israel Rubenstein told him that on Sunday afternoon, Sarah had visited with him,

his wife, and son Pesach, until about four o'clock. To his knowledge, she left the Rubenstein's home around four o'clock, and has not been seen or heard from since. Later that day, family and friends identified the body in the morgue as that of Sarah Alexander (Brooklyn Daily Eagle, 1875a).

Israel Rubenstein arrived at the Coroner's office soon thereafter. He, too, was concerned that the description of the dead woman reported in newspapers matched that of his missing 19 year-old cousin, Sarah Alexander. Rubenstein mentioned that on Monday morning, the day after he last saw Sarah, his adult son, Pesach, told him that he had a horrible dream about Sarah, saying "Oh, father, I dreamed that I saw Sarah and that she was killed and was ten miles out of New York City, and I thought in my dream that she wanted me to bury her" (Brooklyn Daily Eagle, 1875a). With this, Pesach Rubenstein became the only suspect in the murder of Sarah Alexander.

The Arrest of Pesach Rubenstein

The police learned that Pesach Rubenstein was the oldest of three sons of Israel Rubenstein, and that he was married. His wife remained in their native Poland, but was soon to join Pesach in the United States. Family and friends told the police that Sarah had recently been spending a great deal of time with her cousin, Pesach Rubenstein. When the police realized that Pesach was the only member of Sarah's extended family not to come to Brooklyn to identify the body at the morgue, Detectives David Corwin and George Zundt were sent to New York City to arrest Pesach Rubenstein on suspicion of murder.

Meanwhile, several men who assembled at the morgue identified the body as that of the young woman they each had observed in the company of a dark featured man with a slouched hat on Sunday afternoon riding on the 5:08 Broadway street car from the South Seventh Street

ferry in Brooklyn. One of the men, Augustus Taylor, assured a police inspector that he could identify the man, saying, “I noticed him particularly; he was a thin fellow, very dark featured; had a prominent nose and wore black straggling sidewhiskers and beard, and had a mustache. He wore a slouched hat” (Brooklyn Daily Eagle, 1875g).

When Detectives Corwin and Zundt arrived at the Rubenstein’s home at 83 Bayard Street in New York City, they were unable to locate Pesach Rubenstein. They located his mother working in the family store (a sort of combined jewelry and dry goods store), and a short time later Pesach Rubenstein rushed in from outside, as if being chased into the store. Detective Zundt called out to him that the Coroner wanted him to come over to the morgue to identify the body of his cousin. Rubenstein resisted, arguing that his brothers and father are already at the morgue, and that they can identify it, and saying “Oh, no, no, I don’t want to go” (Brooklyn Daily Eagle, 1875g). The detective grabbed him by the collar, took him down to the Bowery, and over to the morgue. From there, the Coroner ordered that Rubenstein be committed to the Raymond Street Jail and that he be imprisoned there until the Inquest the following week.

The Coroner’s Inquest

The Coroner’s Inquest into the death of Sarah Alexander commenced on the afternoon of December 20, 1875, before Coroner Henry Simms, M.D., and a panel of jurors. Pesach Rubenstein was represented by an attorney, John Mott, and Assistant District Attorney Henry Snell appeared on behalf of the people (Brooklyn Daily Eagle, 1875e). When the prisoner, Rubenstein, was brought into the inquest, the effects of his incarceration at the Raymond Street Jail were immediately obvious:

The prisoner was brought in, smelling exceedingly strong of carbolic acid with which the jail is plentifully disinfected, and appearing to be in a very weakly condition. His coat

was buttoned closely around his chin, and he coughed occasionally in a sepulchral sort of way, perhaps for effect (Brooklyn Daily Eagle, 1875f).

When the Inquest ended, the verdict was read: “We the jury, impaneled to inquire into the cause of the death of Sarah Alexander, do find, that the said Sarah Alexander came to her death by violence at the hands of Pesach N. Rubenstein ... and that the death of the child was consequent upon the death of the mother” (Brooklyn Daily Eagle, 1875f). The Coroner then, through an interpreter, started to ask questions of Rubenstein. Attorney Mott protested that he had not been afforded an opportunity to speak with his client. Arguing that he should be allowed to speak with his client before Rubenstein answered any questions, Mott turned to Rubenstein and said, “My advice to you is to say nothing at all” (Brooklyn Daily Eagle, 1875f). The Coroner then indicated to Rubenstein that any statement he made must be voluntary, to which Rubenstein replied, “My name is Pesach Rubenstein,” and said that he was not guilty of the charge. Coroner Simms then committed Rubenstein to the Raymond Street Jail pending his trial.

The Raymond Street Jail

History of the Raymond Street Jail

The Sheriff of King’s County, New York, operated the county jail in Brooklyn prior to King’s County becoming part of New York City in 1898, and for several years thereafter. In January, 1908, the New York City Department of Correction assumed responsibility for the jail. The King’s County Jail, known as the Raymond Street Jail, opened in 1838, and was built to replace the old county jail at Flatbush, which was destroyed by a fire in November, 1832. The Raymond Street Jail – later renamed the Brooklyn City Prison and then, again renamed, the Branch Brooklyn House of Detention – operated continuously until July 20, 1963, and was

located at the corner of Willoughby Street and Raymond Street in the Fort Greene Park District of Brooklyn. Raymond Street was renamed Ashland Place in 1930.

The Keeper of the Jail

The month of December, 1875, would turn out to be the beginning of a period of excitement at Brooklyn's Raymond Street Jail. On December 6, 1875, prisoners John and Thomas Loughrey escaped from the jail. The Loughrey brothers were then on trial in federal court for criminal counterfeiting charges; they had been arrested the previous summer for making and passing counterfeit nickels. Although federal prisoners, they were being held at the Raymond Street Jail at the request of the United States Marshal. When the Loughrey brothers first arrived at the Raymond Street Jail on August 3, 1875, they were placed in the main portion of the jail. About two weeks later, however, the jailers at the Raymond Street Jail – then known as keepers – received instructions from Deputy United States Marshal B. W. DeClue that the Loughrey brothers were to be moved to a less-secure part of the Raymond Street Jail known as the debtors' room. As this was an unusual request, Deputy Keeper Thomas A. Stinson went to the office of the United States Marshal asking for a clarification, and was instructed that he should obey the order. Stinson returned to the jail and moved the Loughreys to the debtor's room, on the top floor of the main jail building, where they remained until their escape four months later (Brooklyn Daily Eagle, 1875c). Later that month, the Sheriff Elect of King's County, Albert Daggett, appointed Stinson as the Keeper of the Raymond Street Jail (Brooklyn Daily Eagle, 1875b). See Figure 2. The Loughreys were captured two months later by Keeper Stinson himself, who – after spending considerable sums of his own money in their pursuit – traced them to a rooming house at the corner of 27th Street and 4th Avenue in Manhattan (Brooklyn Daily Eagle, 1876g).

<< INSERT FIGURE 2 ABOUT HERE >>

Stinson was no stranger to the controversy, excitement, and politics of the Raymond Street Jail. In September, 1873, he had threatened to quit his job as a deputy keeper at the jail in protest to special treatment and favors granted to a female prisoner, Kate Stoddard, by the Sheriff, Aras G. Williams. Much to Stinson's chagrin, Stoddard had been placed in a spacious apartment within the jail instead of a cell and was clearly receiving special favors from Sheriff Williams. The incident was reported in a newspaper article under the not-so-subtle headline "Jail Affairs" (Brooklyn Daily Eagle, 1873a). Stoddard was being held on a murder charge and was indicted by the Grand Jury soon thereafter. She was later committed to the State Lunatic Asylum for Insane Criminals at Auburn, New York (Brooklyn Daily Eagle, 1874a). A month later, in October, 1873, Sheriff Williams was indicted for fraudulently charging Kings County for the board of nonexistent prisoners and dividing the proceeds with justices of the local court. Sheriff Williams maintained that rumors of false vouchers being submitted by the jail to the county were traced to Keeper Howard Conrady, who Williams claimed made the false allegations against the sheriff in retaliation for being terminated from his position as head Keeper of the Raymond Street Jail. Stinson sided with Sheriff Williams in the dispute, and provided an affidavit on his behalf during the ensuing investigation by the District Attorney (Brooklyn Daily Eagle, 1874b). In the end, after a year long investigation, in November, 1874, the District Attorney entered a *nolle prosequi* in the case, and Sheriff Williams remained in office until the end of his term in January, 1876, when Daggett assumed the office of Sheriff of King's County.

Life at the Raymond Street Jail in the mid-1870s

The prisoners at the Raymond Street Jail were roused daily at 6 a.m. and instructed to clean their cells before breakfast. A breakfast of bread and coffee was served daily at 7 a.m. A

dinner of soup and bread, or meat, potatoes, and bread, was served daily at noon. Supper, served daily at 6 p.m., consisted of coffee and bread. Fish was served on Fridays. The jail charged the county a fee of 37 cents daily as board for each prisoner. There were fourteen cells on each tier. The tiers were secured by two large iron doors, the outer door typically left open during the day. At night, both iron doors were secured shut with bolts kept in place heavy brass locks. A few prisoners on each tier, known as hallmen, were detailed to work, passing water into cells, scrubbing floors, and cooking, in exchange for having the privilege of being able to walk the corridor freely. The first and third tiers were typically occupied by more than 100 prisoners – drunks and disorderlies – serving terms of ten to twenty-nine days. A sentence of 29 days was the longest that a prisoner could be sentenced to a county jail in New York in the 1870s. The second tier housed about 75 pretrial prisoners, as well as those awaiting action of the Grand Jury or sentencing. On average, each month about 800 prisoners were received and discharged at the Raymond Street Jail in the mid-1870s (Brooklyn Daily Eagle, 1873b). During Rubenstein’s stay in the Raymond Street Jail, the number of prisoners incarcerated there “did not fall very far below 300 per day on average,” and fluctuated from a low of around 275 prisoners to a high of 360 prisoners (Brooklyn Daily Eagle, 1876e). A separate building at the Raymond Street Jail housed female prisoners. On average, about 90 women occupied 27 cells. Most of the women were committed to the jail for 10 day sentences under the intoxication law. Many of these women prisoners were known as “rounders,” because as soon as they were released from the jail they got drunk and were recommitted time and again to the Raymond Street Jail. Most of the women prisoners worked scrubbing and cleaning the prison. Due to constant overcrowding, up to 6 women often shared a cell, although they were routinely allowed to walk the tier and go from

cell to cell during daytime hours when their cell doors remained unlocked and open (Brooklyn Daily Eagle, 1876d).

In the Summer months, the Raymond Street Jail became a horrible place. A reporter with the *Brooklyn Daily Eagle* wrote of a jail tour with Keeper Stinson in August of 1876:

Keeper Stinson and the reporter then started on a tour of inspection. On coming out of the office a strong smell of chloride of lime gave the reporter's nasal organ a twinge. Then a blast of tar odor come sweeping along after the manner of a miniature tornado. Finally, and worst of all, after getting into the corridor of the male prison, came the prince of all bad smells – a conglomeration of smells that could neither be analyzed nor described – a something that would have made a draft from on offal boat a most delicious perfume. “What is that smell, Stinson?” asked the reporter. “That’s the prisoners,” he calmly replied. “The heat brings it out. Rags, perspiration, and filth are the ingredients.” The reporter began to look for the door. “Don’t be in a hurry to go, you haven’t seen it all yet,” said Stinson. It seems that the reporter hadn’t. To judge from the noise that was being made everywhere around, he hadn’t heard all either. The corridor, though entirely vacant, was about as lively a place as one could wish to get into, so far as the noise and confusion went. The atmosphere was terribly and oppressively warm. It was impossible to catch a breath of fresh air. Sleep for the prisoners was out of the question ... men, stripped to nakedness, [were] either lying on the floor or picking vermin from their bodies (Brooklyn Daily Eagle, 1876f).

Rubenstein’s Incarceration at the Raymond Street Jail

Immediately following his arrest on December 16, 1875, Rubenstein was jailed at the Raymond Street Jail. He was housed in Cell No. 2 with two other prisoners; one was committed

to the Raymond Street Jail for a sentence of twenty-nine days on a disorderly conduct charge, and the other was awaiting transfer to the Penitentiary to serve a lengthy sentence. Rubenstein had great difficulty adjusting to his incarceration and, for religious reasons, did not eat meat and refused to eat food prepared by strangers. The keepers at the jail seemed oblivious to his religion-based dietary restrictions, although they did allow some food to be brought into the jail by Rubenstein's family. Otherwise, Rubenstein limited his food intake to bread and water. The morning after Rubenstein was committed to the Raymond Street Jail pending the Coroner's Inquest, a reporter from the *Brooklyn Daily Eagle* was granted access by Keeper Stinson to interview Rubenstein and his cellmates. The reporter spoke first with two prisoners sharing the cell with Rubenstein. They complained that they had been unable to sleep the previous night due to Rubenstein's antics. At one point during the night, Rubenstein "appeared to have lost control of himself, and lying down upon the floor began to roll about like one in agony" (Brooklyn Daily Eagle, 1875d). Convinced that Rubenstein was seriously ill, his cellmates alerted the keepers, who summonsed Dr. Warner Shepard, a physician, to examine Rubenstein. Dr. Shepard concluded that Rubenstein's illness was primarily the result of nervous excitement, and gave a medication to calm him until morning. The cellmates also told the reporter that they had spoken to Rubenstein the previous night about his relationship with Sarah Alexander. One of the prisoners spoke German, and when Rubenstein's garbled English could not be understood, the conversation continued in German. They had asked Rubenstein if he was the father of Sarah's unborn child, to which they claim Rubenstein replied, "yah, yah!" (Brooklyn Daily Eagle, 1875d).

The conversation between the reporter and the two prisoners sharing Cell No. 2 with Rubenstein took place in hushed tones, with the reporter standing in the tier hallway outside the

cell, and the prisoners in their cell, with their faces pressed against the trap of the cell door. As their discussion ended, the reporter called Rubenstein over to the cell door. Rubenstein came over and, with one of his cellmates acting as an interpreter, answered the reporter's questions in German. Rubenstein told the reporter of his dream, that he had dreamed in his sleep that Sarah Alexander had been killed ten miles out of New York City. At the conclusion of the interview with the reporter, Rubenstein asked for a piece of paper to write a note, and asked that the reporter deliver it to a friend. Rubenstein explained, through the prisoner interpreting his German to English, that in the note he was asking his friend to bring him certain items used in his religious devotions that would be found in the synagogue where he worshipped. No sooner than he finished writing the note did Keeper Stinson arrive and take the note, saying that he needed to know what Rubenstein had written in the note, and that he would have a friend who was fluent in German translate it for him. The newspaper reporter complained to Sheriff Williams, arguing that Stinson "violated both law and ordinary decency," while noting that it was "a very characteristic thing for Stinson to do" (Brooklyn Daily Eagle, 1875d). Later that day, an article appeared in the evening edition of the *Brooklyn Daily Eagle* where the reporter commented:

It has not been customary for keepers of the jail to open the letters of prisoners for the amusement or edification or loafers, but Mr. Stinson has initiated what may be called a new departure. If this affair is permitted to pass unaddressed, Mr. Stinson will become the custodian of half the family secrets in this city, and no prisoner will be able to communicate with friends in the outer world, except by purchasing the service of the self constituted postman in the jail (Brooklyn Daily Eagle, 1875d).

Rubenstein's Trial

Rubenstein's trial commenced on January 31, 1876, just seven weeks after Sarah Alexander was found dead in a cornfield in the village of New Lots in East New York, and lasted eleven days. The trial was heard by a panel of four judges, one of whom served as the presiding judge and the other three serving as associate judges, composing the Court of Oyer and Terminer. Twelve jurors, all white males, were impaneled. The District Attorney and one assistant represented the people as prosecutors, and Rubenstein was represented by a team of two defense lawyers, Mott, and one of his colleagues, Beach.

Throughout Rubenstein's period of incarceration at the Raymond Street Jail – both before and during his trial – his health remained poor. On the first day of his trial, during jury selection, Rubenstein was observed sitting in the courtroom using “his handkerchief to wipe blood from his mouth; that came from his lung affection” (Barclay & Co., 1876, p. 27). Later in the trial, during the defense's case, Dr. Joseph Weiner, testified that he was Rubenstein's physician and that he had treated him the previous year for Bright's Disease, a kidney disorder, and for hemorrhaging of the lungs (Rubenstein, 1876, pp. 210-211). As his trial drew to a close, on the ninth day, a Thursday, Rubenstein fainted in the courtroom, and was helped by a court officer into a chair near an open window. Rubenstein's family thought that the fainting incident was the result of his continued refusal to eat the food prepared at the jail, and Dr. Shepard was of the opinion that there was nothing physically wrong with Rubenstein that a few good meals could not cure.

During the trial, the prosecution called forty-seven witnesses, and the defense called seventy-one witnesses. Many of the defense witnesses were recent immigrants, and did not speak English. The court provided translators for witnesses who spoke various languages, including Hebrew, German, and Polish. A number of witnesses declined to testify under oath, for religious

reasons, but each agreed to testify under affirmation, when the court explained that would suffice. Other witnesses were willing to swear to tell the truth when testifying, but took the oath while wearing their hats. All of these issues, each related to tenets of the Jewish faith, caused a great deal of confusion in the courtroom, and there was a concern that the jurors would be prejudiced against Rubenstein. The racial, ethnic, and religious overtones of the trial were addressed in the charge to the jury by Presiding Justice Calvin Pratt:

It is true, as stated by the counsel for the prisoner, that the law throws its shield around every person charged with crime. It respects no person, age or condition; the high, the low, the rich, the poor, the white, the black, the Jew, the Gentile, when they come to the bar of justice are entitled to the same consideration, the same proof, and the same measure of justice; all are alike under its protection and amenable to its demand (Rubenstein, 1876, p. 330).

Additionally, at the request of Rubenstein's lawyers, Judge Pratt also included in his charge to the jury a specific instruction relating to the ethnicity and religion of any defense witness: "that the jury have no right to discredit any witness because of his race or faith as an Israelite, nor because of the manner of the administration of the oath, nor because of any prejudice for any reason against that class of citizens" (New York Times, 1876d).

On the eleventh day of the trial, February 12, 1876, the jury deliberated for a little more than an hour before returning with a guilty verdict. Although it was a Saturday, the presiding judge, Judge Pratt, insisted on sentencing Rubenstein that afternoon, despite the complaints of two Jewish lawyers appearing on behalf of Rubenstein's synagogue, who explained that it was the Sabbath and requested that formal sentencing be deferred until some other day (Barclay & Co., 1876, pp. 44-45). The judge then announced the sentence of the court; Rubenstein was

sentenced to death by hanging on Friday, March 24, 1876, between the hours of nine o'clock in the morning and two o'clock in the afternoon, at the Raymond Street Jail. The judge signed Rubenstein's death warrant on February 14, 1876.

Rubenstein in the Condemned Cells at the Raymond Street Jail

Following his conviction, Rubenstein was moved to one of the two condemned cells at the Raymond Street Jail where murderers were housed while awaiting execution. The condemned cells, Cells No. 13 and 14, were located in the middle tier of the main jail building, at the far end of the corridor. A wooden gate divided the two condemned cells from the other cells on the tier. Here, Rubenstein was closely watched by the keepers, and his visitors were no longer allowed to bring him food for fear that they would poison him prior to his execution date (New York Times, 1876e). Inside the wicket (the roughly ten foot deep area of the corridor behind the wooden gate), the floor of the corridor was covered with prison blankets, so as to soften the footsteps of the keepers walking outside the condemned cells. Sheriff Daggett detailed two deputies, Lyons and Howard, to watch Rubenstein continuously, one of whom was to sit in this little enclosed space in the corridor directly opposite Rubenstein's cell (Cell No. 14). Howard and Lyons rotated their duties, so that one of them was watching over Rubenstein at all times; Howard worked a fourteen hour shift from 8:00 a.m. to 10:00 p.m. daily, and Lyons worked the overnight shift watching Rubenstein from 10:00 p.m. until 8:00 a.m. Rubenstein's cell door was left open, so that the keeper sitting within the wicket could closely watch Rubenstein's movement. Rubenstein spent much of his time in the cell praying, and occasionally spoke, in English, to the keepers assigned to keep watch over him. (Brooklyn Daily Eagle, 1876m). In retrospect, there was a general lack of understanding of Judaism and Rubenstein's expressions of

his Jewish faith. A reporter from the *Brooklyn Daily Eagle* who visited Rubenstein in the condemned cells observed his religious practices and later wrote:

Rubenstein was at his prayers. The typhillin [sic: tephillin] which contains the ten commandments was bound round his head, and his right hand was covered with straps wound round his arm in a peculiar manner. A large book printed in Hebrew characters lay open upon his knee, and was chanting his prayers in a monotonous tone (Brooklyn Daily Eagle, 1876n, p. 4).

On another occasion, one of the keepers told a reporter that, while praying in his cell, Rubenstein “yelled and danced like a lunatic more than he did like a Christian” (Brooklyn Daily Eagle, 1876k). See Figure 3.

<< INSERT FIGURE 3 ABOUT HERE >>

A major point of contention for the keepers at the jail was Rubenstein’s refusal to eat non-kosher food (or, as they expressed it, Rubenstein’s refusal to eat food that had been prepared by strangers). A few days after Rubenstein was transferred to the condemned cells, the undersheriff, Colonel Stegman, and Keeper Stinson met with Rubenstein to discuss the prisoner’s dietary restrictions. Rubenstein asked that his family and friends be allowed to continue bringing him food prepared according to the rules of his faith. Colonel Stegman refused the request, as there was a fear that Rubenstein’s family and friends would assist Rubenstein to commit suicide by poisoning his food in an effort to avoid the executioner’s gallows. After some deliberation, they reached a compromise that seemed to satisfy the jailers’ desire to maintain security, as well as one that would not violate the rules of Rubenstein’s faith; they decided that Rubenstein would be allowed to cook his own food in his cell. Colonel Stegman arranged for a gas stove large enough to bake his fish and bread to be set up in his cell, and told Rubenstein that

he was only allowed to use the stove when a keeper was with him in his cell. Keeper Stinson agreed to buy him flour and all the necessary materials to make bread, pike or white fish, oil, vinegar, etc. (Brooklyn Daily Eagle, 1876l).

Rubenstein continued to complain of severe stomach aches, even after he began preparing and cooking his own meals. Stinson suggested that it was because he “feeds like a hog ... overloading his stomach,” and told a reporter that “Rubenstein eats as much at one meal as an ordinary man would eat in two days; he literally stuffs himself” (Brooklyn Daily Eagle, 1876p). A reporter summarized Rubenstein’s eating habits:

On his Sundays Rubenstein never talks and never cooks anything. From sundown on Friday to sundown on Saturday he is perfectly speechless. ... He cooks on Friday afternoon what will last during his Sabbath. This is what he fixed up yesterday: fourteen eggs fried in Jewish Kasha butter, a white fish, fried, and weighing about three pounds, and beside this he had two loaves of bread, each weighing about three pounds, two large Jewish cakes, some sweet oil and apples. ... He spent all his time since yesterday sundown in eating and praying (Brooklyn Daily Eagle, 1876p)

Meanwhile, Sheriff Daggett made arrangements with officials from neighboring Queens County to obtain their gallows to be used in the execution of Rubenstein at the Raymond Street Jail (Barclay & Co., 1876, p. 50). Joel Stevens, the undersheriff in New York County, was appointed to supervise the hanging of Rubenstein. Due to a scheduling conflict (the execution of John Dolan at the Tombs Prison in Manhattan was set to take place at the exact same time as Rubenstein’s execution), Stevens didn’t plan on being present for Rubenstein’s hanging at the Raymond Street Jail. Instead, Stevens decided to “superintend the erection of the gallows and instruct the men as to the working of the ropes and arranging of the weights” (Brooklyn Daily

Eagle, 1876m). This could have proven disastrous, as Stevens was associated with several botched executions. In one such instance, Stevens prematurely gave the signal to the hangman to cut the rope immediately after placing a noose around the neck of convicted murderer John Real, but before pulling a black cap over Real's head and face. Real, who had not yet made a final statement, was jerked into the air in a horrific display for the assembled audience. A subsequent examination by the attending physician at the execution determined that Real had not been killed by the sudden jerk, as intended, but rather died a slower death by strangulation (New York Times, 1870). In another botched execution supervised by Stevens, a malfunction of the ropes in the gallows caused William Sindram, a convicted murderer, to die a slow death by strangulation after struggling for over twenty minutes as he dangled from the end of the rope a few feet off the ground (New York Times, 1882b). In both the Real and Sindram executions, the gallows erected under the supervision of Stevens malfunctioned in ways that resulted in slow and painful deaths instead of the intended method: immediate death by a broken neck.

Rubenstein's attorneys, Mott and Beach, scrambled to file papers in court that would stay the execution pending an appeal. They needed to file papers with the Clerk of the Court within 30 days of the date of Rubenstein's conviction, and were not certain that the court stenographer would finish transcribing the verbatim trial transcript before the filing deadline. On the last possible day, March 13, 1876, Mott filed a Motion for a Writ of Error and Stay of Proceedings pending a decision from the General Term of the Supreme Court of New York. As a matter of law, however, a writ of error from the Oyer and Terminer Court was not a writ of right in the 1870s and was issued solely at the discretion of one of the trial court judges (Brooklyn Daily Eagle, 1876i).³ On March 15, 1876, Judge Pratt denied the Exceptions to the Judgment and Application for a Writ of Error and Stay of Execution. Judge Pratt was overruled, however, when

Judge Brady issued a Stay of Proceedings on March 18, 1876. Sheriff Daggett and the Office of District Attorney were served with copies of the order that same day (only six days prior to Rubenstein's scheduled execution by hanging on March 24, 1876). A month later, on April 22, 1876, Attorney Mott served the Office of District Attorney with a Notice of Argument on Appeal stating that argument on the defendant's appeal was placed on the calendar of the General Term of the Supreme Court of New York at Poughkeepsie for the second Monday of May. When the Court's calendar was called on May 8, 1876, the case was set for oral argument on the next Friday, despite efforts by Mott to postpone oral argument until the General Term of the Supreme Court was sitting in Brooklyn in September (New York Times, 1876c).

For the first few months that Rubenstein occupied Cell No. 14, the other condemned cell, Cell No. 13, was unoccupied. That changed on April 11, 1876, when Andreas Fuchs was convicted of the murder of William H. Simmons. Fuchs' murder trial was just as sensational as the Rubenstein trial, but for different reasons. Simmons was murdered on January 29, 1876. Initially, police only found Simmons' "trunkless head" wrapped in a German newspaper. When detectives went to question Fuchs about the murder, they went to Fuchs' house "and found him in the very act of chopping up Simmons' body. A portion of it he had already burned, and in a pot on the stove the liver and lungs of the murdered man were stewing" (New York Times, 1882a). Fuchs was tried for murder in the same courtroom where Rubenstein's trial had taken place, immediately after the conclusion of Rubenstein's trial in February, 1876. Upon his conviction, Fuchs was sentenced to be executed by hanging at the Raymond Street Jail on June 2, 1876 (Brooklyn Daily Eagle, 1876h).⁴ Fuchs and Rubenstein soon became friends:

At the back of each cell run the steam pipes, and consequently prisoners are enabled to converse easily in adjoining cells through the aperture through which these pipes pass.

Soon after Fuchs was imprisoned in this cell, he and Rubenstein commenced to talk together. They were both under the sentence of death, and Fuchs speaks the same language that Rubenstein does and they therefore become somewhat friendly. They have discussed each others' cases with evident freedom, although Rubenstein on his part never admitted he was guilty. The keepers say that as early as four or five o'clock in the morning when all else in the jail is quiet, these two condemned men will commence to talk through the hole in the wall and in whispers (Brooklyn Daily Eagle, 1876o).

The Death of Rubenstein: Cheating the Hangman

On the afternoon of May 8, 1875, Rubenstein was informed that the General Term in Poughkeepsie had refused to strike his case from the court's calendar and postpone the case until the September General Term, when the full court would be in session in Brooklyn, as his attorneys had hoped. Rubenstein's mood seemed to worsen when hearing the news, and seemed to be exceptionally nervous (Brooklyn Daily Eagle, 1876c). Rubenstein complained that he wasn't feeling well, and Dr. Shepard prescribed tincture of iron and cough medicine. Keeper Stinson checked on Rubenstein at eleven o'clock that evening, and found Rubenstein sleeping on his mattress. The following morning, May 9, Deputy Howard was at his post in the wicket outside Rubenstein's cell. According to Howard, Rubenstein ate a piece of dry bread for breakfast around seven o'clock while lying on his side, and then he rolled over and laid perfectly still for several hours. At ten o'clock, Howard heard a loud moan from within Rubenstein's cell. He went into the cell to check on Rubenstein and found him wedged between his mattress and the wall and breathing heavily. Howard immediately directed two hallmen to help carry Rubenstein into the hallway and, noticing that Rubenstein was in distress, rang the alarm for Keeper Stinson. When Stinson arrived at the condemned cells moments later, he saw that

Rubenstein was foaming at the mouth. Stinson immediately directed a deputy keeper to run to the hospital down the street and bring a physician back to the jail to attend to Rubenstein. Rubenstein's heavy breathing continued for a few minutes, and he died prior to the physician's arrival at the jail a short time later (New York Times, 1876a). Just as the keepers had feared, Rubenstein had cheated the hangman and avoided execution at the gallows. A *post mortem* examination by Dr. Shepard found that Rubenstein "literally starved himself to death" (Brooklyn Daily Eagle, 1876j, p. 4); "in effect Rubenstein committed suicide" (Barclay & Co., 1876, p. 58).

Discussion and Conclusion

The Rubenstein case provides a rich depiction of the criminal justice system, capital punishment, and jails in urban America in the 1870s. As a case study, a number of important points can be gleaned from this historical account of the Rubenstein case. It offers a rich depiction of our corrections system in an earlier era in the development of the criminal justice system. For the reasons discussed below, this case study is relevant to students and scholars of the history of prisons and punishment in the United States.

First, there is a rich and dynamic history in the development and recognition of constitutional rights for prisoners and, more specifically, individuals convicted of capital crimes. Notions of constitutional due process that were novel in the mid-1870s are a staple of our jurisprudence now. Many of these issues were not settled in the law for over a century after the Rubenstein case, and some are still routinely disputed in the courts of the United States. In the Rubenstein case, there was outrage by a newspaper reporter when the keeper of the jail, Stinson, intercepted a letter that Rubenstein had written and handed to a jail visitor (the same reporter) to hand-deliver to a friend. The reporter complained that the keeper had appointed himself the postman and that, in their opinion, it was not appropriate for a jail official to read the personal

correspondence of a prisoner. Since the late 1940s, a long line of federal court cases has established that prison officials can place reasonable restrictions on prisoner mail and prisoners' use of the postal system (Palmer & Palmer, 1999). To the extent that a jail/prison restriction on the use of the postal service by prisoners impinges on any Constitutional right pursuant to the 1st Amendment, the Supreme Court has held that prison restrictions on an inmate's manner of use of the mail is constitutionally permissible if any such restriction in a institutional policy is reasonably related to a legitimate penological interest ("Turner v. Safley," 1987). In the Rubenstein case, the prisoner was bypassing the use of official mail in order to sneak a letter to someone outside of the jail. Certainly, in retrospect, there was a legitimate penological interest in the nature of jail security that makes the acts of the keeper appropriate, and legal, in intercepting and reading the outgoing letter.

Second, prison/jail health services for prisoners were, and to a great extent remain today, woefully inadequate. It is undisputed that the general knowledge and practice of medicine bears little resemblance today to the standards of the 1870s. Nevertheless, the Rubenstein case bears many similarities to problems that exist today in prisons and jails throughout our country. When Rubenstein was incarcerated at the Raymond Street jail, the media accounts of jail conditions cited throughout this paper provide rich historical accounts and accurate record of poor hygiene, unsanitary conditions, rodent infestation, inadequate medical staff, and poor access to appropriate medical care. Although the science of medicine and, in many respects, the medical care and treatment of prisoners in the jails and prisons throughout this country, have evolved tremendously since the late 19th Century, the nature and extent of inadequacies in prison healthcare described in the media accounts of Rubenstein's incarceration and death at Brooklyn's

Raymond Street Jail in 1876 permeate the corrections system today (see, e.g., Elsner, 2004; Herivel & Wright, 2003; McDonald, 1999).

Third, the criminal justice system in this country has struggled with issues of fundamental fairness and due process as it relates to the impact of racial/ethnic discrimination on criminal trials. These issues were not borne of the 1960s and the civil rights movement, and have not been limited to discrimination against African Americans. Many of these issues raised in the Rubenstein case are today problematic in our criminal justice system. For example, there is a potential that, today, persons of Middle-Eastern heritage would not receive a fair trial for certain crimes due to extreme prejudices and a moral panic within our country related to perceptions of stereotypical terrorists (Cohen, 2002). The mere fact that the chief trial judge in the Rubenstein case found it necessary to offer specific instructions to the jury cautioning them not to consider the defendant's religion in their deliberations (see discussion above), shows that these problems have long had the potential of negatively, and unfairly, impacted on the ability of defendants to obtain a fair trial in our system of criminal justice. Indeed, the criminal courts continue to struggle with racial and ethnic tensions in high profile criminal trials.

Fourth, this case study exemplifies a quandary that exists more than 130 years after Rubenstein's trial and conviction: the death penalty and methods of execution of prisoners are imperfect, fraught with error, and the subject of litigation (see, e.g., "Baze v. Rees,," 2008). As discussed above, many botched executions occurred in this country – and more specifically, in New York State – occurred in the late 19th Century. This was complicated by the fact that in the 1870s, at least in New York State, executions of prisoners were carried out at the local county jails, and not at a designated state correctional facility with specially-trained staff, equipment, and experience in conducting the executions. Thus, the historical media accounts show that

throughout our history in this country error in carrying out state-sanctioned execution of prisoners has always had the potential of resulting in excruciatingly painful deaths, coupled with horrific public and graphic displays of legally-sanctioned deaths, as a direct result of botched executions that are largely hidden from the knowledge of the general public.

Fifth, although only tangentially mentioned in this case study, the sheriff and keeper of the jail were under constant pressures related to budget matters, funding the operations of the jail, maintaining a safe jail environment, personnel issues, inadequate and unsafe buildings that house the jail, etc. Many of these problems continue to exist in many jurisdictions throughout our country. In many respects, the corrections system in this country – from jails to prisons – is antiquated and constantly in need of systemic reform.

Finally, as demonstrated in this article, mass media accounts offer a rich and historical source of experiences from times gone by (Fisher-Giorlando & Dotter, 2003). It is noteworthy that the instant research would have been difficult, if not implausible, just a few years ago. Recent preservation efforts have resulted in the digitization of *Brooklyn Daily Eagle* and *New York Times* newspapers dating from the 1800s, making this research a reality. Although the relevance of this type of historical research is often overlooked by criminologists today, this case study clearly fits within the newsmaking criminology paradigm of criminological research (see, e.g., Barak, 1995). It offers an example – and template for future research – how technological advances in archival research can and should promote historical newsmaking criminology research.

Notes

¹ The names of Sarah Alexander and Pesach Rubenstein are spelled various ways in historical accounts of the murder and subsequent trial, including Sara Alexander for the victim, and various forms of the defendant's name, including Pasach Rubenstein, Pasach Nisun Rubenstein, Pesach Nisan Rubenstein, Pesach Nissin Rubenstein, Pesach Nathan Rubenstein, Pesach N. Rubenstein, Pasach N. Rubenstein, Pesach Rubinstein, P. Nathan Rubenstein, and Nathan Rubenstein. In this article, the parties are referred to throughout as, respectively, Sarah Alexander and Pesach Rubenstein.

² East New York was, and is, a neighborhood in the eastern part of Brooklyn, New York, just west of Jamaica, Queens, New York.

³ Under new York law in 1876, writs of error from the Oyer and Terminer Court were of right only in the case of money judgments (Brooklyn Daily Eagle, 1876i). At that time, only in New York County, where capital cases were tried in the General Sessions, were judgments for death by execution stayed as a matter of right when a writ of error was filed (New York Times, 1876b).

⁴ Fuchs' sentence was commuted on May 26, 1876, by Governor Samuel J. Tilden (on the recommendation of the trial judge, Judge Pratt, and District Attorney Britton) to a term of life imprisonment (Brooklyn Daily Eagle, 1876a). Following the commutation of his sentence, Fuchs was taken by Keeper Stinson on a train to the State Prison at Sing Sing (Brooklyn Daily Eagle, 1876b). He was later transferred to the State Prison at Auburn, where he died in July, 1882 (New York Times, 1882a). As an aside, Governor Tilden was the Democratic candidate for President of the United States in 1876, and lost the election to the Republican candidate, Rutherford B. Hayes.

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Author Biographical Sketch

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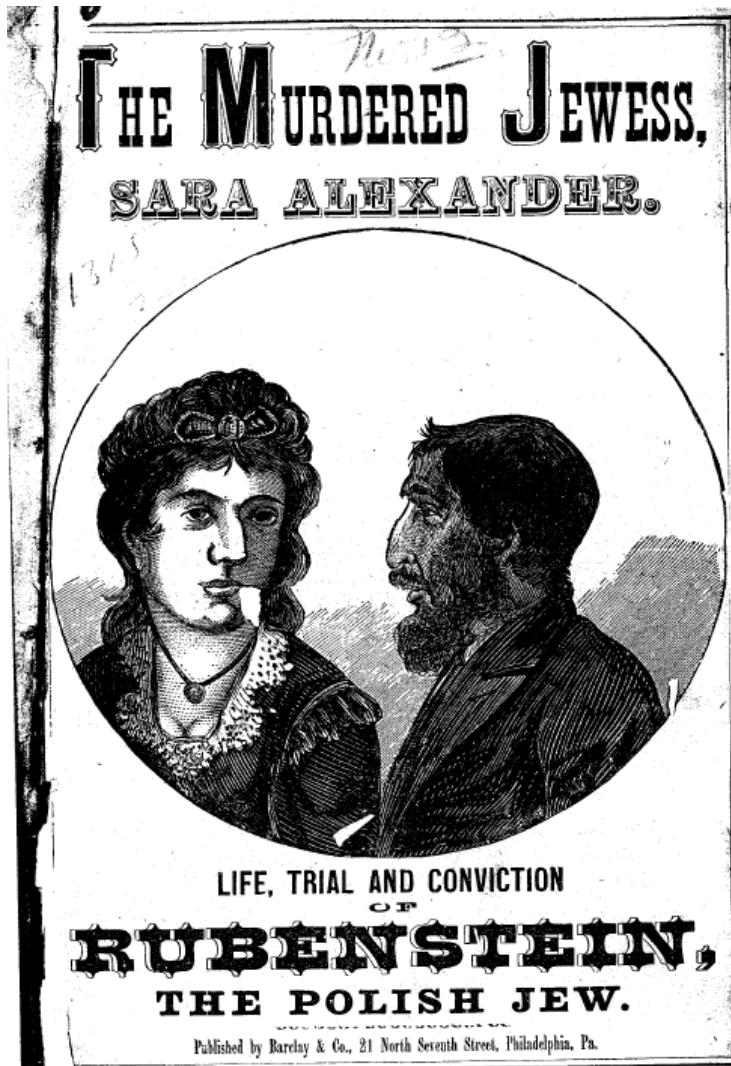


Figure 1

Cover of a murder pamphlet published in 1876 about the Rubenstein trial. Sarah Alexander (on the left) and Pesach Rubenstein (on the right) are depicted in the drawing (reprinted from Barclay & Co., 1876).



Figure 2
Thomas A. Stinson, Keeper of the Raymond Street Jail, Brooklyn, New York, circa 1876.



Figure 3

A drawing of “Rubenstein at his very peculiar religious devotions” in his condemned cell at the Raymond Street Jail (reprinted from Barclay & Co., 1876, p. 48).