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The Shooting of LITTLE CROW

HEROISM or MURDER?

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NEAR SUNDOWN on July 3, 1863, the crack of firearms abruptly shattered the twilight stillness near Scattered Lake, a group of marshes and ponds a few miles north of Hutchinson in Meeker County. Two Indians jumped for cover. Two white men hid themselves. One of the Indians groaned in pain. All four men dropped to the ground and each pair began to stalk the other.¹

The white men were McLeod County farmers, Nathan Lamson and his son, Chauncey, on their way back from deer hunting. They did not know the Indians, but had spotted them quietly picking raspberries. While the red men continued stuffing themselves with the succulent fruit, not aware that they were watched, Nathan had reacted like a typical frontiersman. Whipping a rifle to his shoulder and taking deliberate aim, he had fired at the elder Indian and wounded him in the hip. The Indians, who had arms with them, quickly returned the fire. Now the two pairs of men hunted each other grimly, knowing that it was kill or be killed.

Skulking through the tall grass, Indian and white suddenly caught sight of each other. Chauncey Lamson instantly exchanged shots with the elder Indian. The white man was unhurt but the Indian fell to

the ground, shot through the chest. When he fell, his young companion ran to his side, tried to make him comfortable, brought him water, and stayed with him nearly an hour until the wounded man gradually grew weaker and died. The young Indian then straightened the dead man's limbs, covered the body with a blanket, and departed swiftly.

During this brief conflict the two Lamsons had become separated. Fearing that more Indians might be nearby, they lay in the grass until they thought it safe to creep away. Each arrived in Hutchinson alone and gave the alarm that Indians were in the vicinity.

At dawn the following day a mixed party of soldiers and civilians set out from Hutchinson and soon found the Indian's body in the raspberry patch where he had fallen. Someone had dressed the corpse in new moccasins and a coat, which later turned out

¹ This account of Little Crow's death is based on the following sources: J. Birney Lamson, "The Killing of Chief Little Crow," in *Minnesota Historical Collections*, 15:366-370, (St. Paul, 1915); Frank B. Lamson, *Condensed History of Meeker County*, 26-28 (Litchfield, 1939?); Kenneth Carley, *The Sioux Uprising of 1862*, 68-70 (St. Paul, 1961); *St. Paul Pioneer*, August 13, 1863; *St. Peter Tribune*, August 19, 1863.

to have been taken from James McGannon, a white settler murdered by red men only two days earlier. The search party callously removed the dead Indian's scalp and went back to town. Later that day the body was loaded on a wagon, brought into Hutchinson, and there tossed into the refuse pit of a slaughterhouse, like an animal carcass.

About a week later some local ghoul pried the corpse's head off with a stick and left this gruesome object "lying on the prairie for some days, the brains oozing out in the boiling sun."²

No one knew at this time who the victim was. He appeared middle-aged; he had curiously deformed forearms; and he had the physiological oddity of a double row of teeth. Although several Hutchinson residents thought that the man looked familiar to them, no one seemed able to identify him positively.³

ON JULY 28, twenty-five days after the shooting, a United States military expedition threw the majesty of its armed might against a supposedly dangerous Sioux encampment near Devil's Lake, North Dakota. When the shot and shell had ceased, it became apparent that the only result was the capture of one nearly starved sixteen-year-old boy named Wowinapa (One that Appareth). By almost unbelievable coincidence he turned out to be one of the two Indians involved in the Hutchinson affray on July 3. The man killed, he admitted sadly, was his father, Chief Little Crow.⁴

This announcement raised a Minnesota

² *Tribune*, August 26, 1863.

³ *Pioneer*, August 13, 1863.

⁴ *Pioneer*, August 13, 1863. Wowinapa's story appears in the *Tribune* of August 24, 1863. He reported that Little Crow realized the futility of fighting the white men of Minnesota, and had returned to the state only to steal horses and provisions for taking his family into another area.

⁵ Captain Bond presented Little Crow's scalp, skull, and bones of one arm to the Minnesota Historical Society, where they are still kept but never displayed.

⁶ *Tribune*, August 26, 1863; Lamson, in *Minnesota Historical Collections*, 15:367.

⁷ *Tribune*, August 26, 1863.

jubilee. In 1863 Little Crow, leader of the 1862 Sioux Uprising, was regarded as the blackest villain in Minnesota history. He was thought to have escaped to the north and to be preparing further trouble for the whites. Now, it appeared, he was dead, and his crafty mind would scheme no longer to terrorize the Minnesota frontier.

Such an important matter of identification required proof, and on August 16, 1863, the body of Little Crow was exhumed for examination at Hutchinson. John W. Bond, a captain of volunteers, inspected the remains and finally kept parts of them as historical curiosities. What the dead man's several wives and numerous children thought of this is not recorded.⁵

Upon inspection, the arms of the headless trunk showed old fractures above both wrists. When younger, Little Crow had been shot through the wrists in the course of an armed struggle for supremacy within the Kaposia band of Sioux. A tribal medicine man succeeded in saving the arms, contrary to the expectations of a military surgeon who had volunteered to amputate both hands, but the injuries never healed properly and Little Crow's forearms remained malformed and withered. He usually tried to hide the deformity by wearing long sleeves or wrist bands.⁶

Not satisfied with this meager proof, Captain Bond wanted to see the Indian's severed head, and Dr. John Benjamin accordingly took the investigator into a garden where "in a large dinner-pot, filled with a strong solution of lime, was the head of the veritable" Little Crow. Although, as Bond wrote, "I did not meet a person in the town — not even Chauncey Lamson — who thought it was his body," there was now no doubt that a chance encounter had brought death to the Sioux Uprising's archfiend.⁷

The same quirk of fate propelled the Lamsons into prominence as heroes. On February 24, 1864, Governor Stephen R. Miller signed into law an act of the legislature awarding Nathan Lamson five hundred dollars, which he collected speedily, for "great

service to the State." Chauncey received seventy-five dollars in payment for Little Crow's scalp.⁸

THERE IS no question that the shooting was a popular act at the time and that it gave the State of Minnesota great relief. Was it lawful, however? Or, was it murder? Anglo-American law is very finicky about persons who go about shooting other persons.

In 1863 Minnesota law defined murder in the first degree as the killing of a human being "when perpetrated with a premeditated design to effect the death of a person killed." Premeditation only requires intending to do what has been done. Nathan Lamson's action in deliberately drawing a bead on Little Crow would not seem to be the operation of chance. Under the law of that day homicide could be justifiable but only if committed "when resisting any attempt to murder" or to do severe bodily harm, or when "attempting . . . to apprehend any person for any felony committed; or lawfully suppressing any riot, or in lawfully keeping and preserving the peace." To shoot an unknown Indian who was quietly eating raspberries simply does not qualify as justifiable under any of the statutory classes.⁹

In warfare, however, the civil law of murder does not apply, and the authorized combatant is ordered to do what the law forbids him to do in peacetime. Was a war going on against the Sioux in Minnesota in 1863? One is compelled to answer, no.

Organized fighting in the state ended with the battle of Wood Lake on September 23, 1862. Acts of the 1863 legislature refer to the Sioux War as something in the past. The legislature authorized the governor to call out the militia for frontier defense or to relocate the Sioux, but the governor did not see fit to do so. When Congress abrogated the Sioux treaties it did not declare war against the tribe. It is true that when Little Crow was shot, a military expedition was looking for him, but this was more in the nature of a *posse comitatus* to catch him and bring him to trial for his crimes in 1862. To decide

when a war has ended in a case when no formal treaty results is a vexing question for the most experienced international lawyer, but the circumstances of 1863 make the conclusion almost inescapable that Minnesota and the Sioux were not at war in that year.¹⁰

Even if a state of war had existed in 1863, the Lamsons' action could not be defended as legal. They were mere civilians, who under international law have no right to take up arms against the enemy and who will be hanged summarily if they do. The ordinary law of murder would apply to them.¹¹

IN SPITE of what frontiersmen would undoubtedly regard as legal quibbles, the whites generally felt that there was open season on red men—a point of view which an order by the adjutant general of Minnesota heartily encouraged. Sporadic and murderous Indian raids in 1863 led to its promulgation on July 4, the day after Little Crow's death. The order enlisted a corps of volunteer scouts to scour the woods for Indians "for the more complete protection of our frontier and the extirpation of the savage fiends who commit these outrages." Scouts received a twenty-five-dollar bounty for each male Sioux scalp; two weeks later a modified order awarded twenty-five dollars for

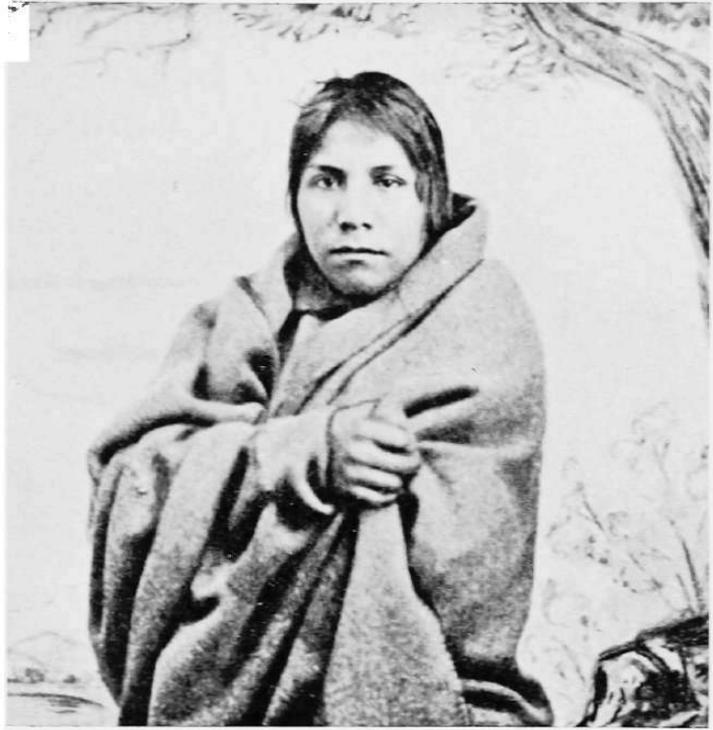
⁸ Minnesota, *House Journal*, 1864, p. 74; *Senate Journal*, 1864, p. 172; *Special Laws*, 1864, p. 352; Kenneth Carley, *The Sioux Uprising of 1862*, 70 (St. Paul, 1961). The original draft for Lamson's reward, showing his endorsement, is in the State Auditors' Collection, State Archives, St. Paul.

⁹ Minnesota, *Statutes*, 1858, c. 89, sec. 2, 5. See also *State of Minnesota v. Henry H. Scott*, in 41 *Minnesota* 365.

¹⁰ See general orders no. 59 and 74 in Adjutant General, *Reports*, 1862, appendix, 250, 263; joint resolution no. 12 in Minnesota, *General and Special Laws*, 1863, appendix, 269; *General Laws*, 1863, p. 101, 124; United States, *Statutes at Large*, 12:652, 819.

¹¹ For a contemporary summary see Stephen V. Benét, *A Treatise on Military Law*, 12, 15, 102 (New York, 1863). For a convenient outline, see also George Schwarzenberger, *A Manual of International Law*, 82 (London, 1950). The only exception is the so-called *levee en masse*, which refers to the spontaneous uprising of civilians to oppose invading forces—something that does not occur when two men go out hunting deer.

PORTRAIT of Wowinapa
taken shortly
after his capture



killing a hostile Sioux warrior without having to show the scalp. Independent scouts who registered with the adjutant general could act outside the corps, roving the woods alone and picking off redskins as they went. They would be paid seventy-five dollars for each Sioux warrior killed, an amount later increased to two hundred dollars.¹²

These orders doubtless confirmed ordinary citizens in the view that they had a right—in fact, a positive duty—to kill Indians on sight without fear of punishment by the authorities. The orders themselves, however, had one slight infirmity: they were utterly void. Unless the legislature authorizes A to kill B, the governor and the adjutant general may not pretend to allow and encourage A.

The question came before the Minnesota Supreme Court in 1868 when the defendant

in a murder case tried to use one of the 1863 orders as a defense. Rejecting the argument indignantly, the court pointed out that without legislative sanction such orders were absolutely unlawful, and went on to castigate the state's executive officers, who had induced misguided people to commit crimes in reliance upon those orders.¹³ If killing in reliance upon the adjutant general's orders would be murder under the law in force in 1863, obviously killing an Indian before any orders were issued would be an even stronger case of murder. Thus Little Crow was tendered a posthumous apology.

One must reach the conclusion that in strict law the Lamsons were provocateurs and murderers. Are they nevertheless entitled to some glory in their deed? The answer will depend upon who writes history. Other killers have trod the paths of greatness for a moment and gained renown for their crime itself, daring all and risking all before multitudes; but, to shoot an unsuspecting stranger peaceably stuffing his mouth with fresh raspberries . . .

¹² General orders no. 41 in Adjutant General Reports, 1863, appendix, 132; Minnesota, *Executive Documents*, 1863, p. 192.

¹³ *State of Minnesota v. John Gut*, in 13 *Minnesota* 357 (Gil. 330).



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