

ON THIS DAY IN WEST VIRGINIA HISTORY FEBRUARY 10



Photo by Barbara Jean Cochran

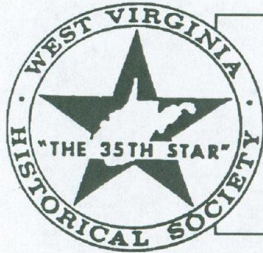
On February 10, 1949, a bill favoring the electric chair over hanging was introduced in the House of Delegates. The legislation was approved on March 12.

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Investigate the Document: (*West Virginia Historical Quarterly*, March 1996)

1. In what year did West Virginia abolish the death penalty?
2. What caused West Virginia to pass legislation to transfer the responsibility of carrying out executions to the West Virginia Penitentiary?
3. What were the two primary methods of execution carried out in West Virginia from 1899-1959?
4. Who was known as the “Bluebeard of Quiet Dell?” Why is he infamous?
5. When were the first two executions via the electric chair carried out in West Virginia?
6. How did Warden Skeen depart from tradition prior to carrying out the execution of Harry Atlee Burdette?
7. When did public opposition to capital punishment gain momentum?
8. What piece of legislation ended capital punishment in West Virginia? What was the nickname of the electric chair used to carry out executions at the West Virginia Penitentiary?

Think Critically: Is capital punishment an effective deterrent to violent crime? What are the pros and cons to capital punishment? List three for each.



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**“Thy Brother’s Blood”:
Capital Punishment in West Virginia**

By Stan Bumgardner and Christine Kreiser

On March 27, 1995, the last thirty-four inmates were transferred from the West Virginia Penitentiary in Moundsville to the new maximum security facility at Mount Olive in Fayette County.¹ Since 1866, the old penitentiary had been home to some of West Virginia’s most nefarious criminals and, beginning in 1899, the site of state-sponsored executions. While West Virginia, in 1965, became the twelfth state in the nation to abolish the death penalty, the debate continues over whether the state has the right to sentence an individual to death.

From early in the history of the Commonwealth of Virginia through the early history of West Virginia, capital punishment was the responsibility of county governments and their sheriffs. In 1899, due to barbaric spectacles that attracted thousands of curious onlookers, West Virginia enacted legislation transferring the charge of executions to the West Virginia Penitentiary. An 1897 hanging in Ripley had provoked the legislature to action. Five thousand people, “pushing, shouting, and raising Cain generally,” turned out near the present site of Ripley High School to watch the hanging of convicted murderer John F. Morgan. Various national newspapers provided accounts of the “strange” scene, reported by a journalist from the *New York Sun*.²

In response to the actions of the crowd and national attention, Republican Delegate John S. Darst of nearby Cottageville introduced legislation banning public executions. The bill specified:

Such punishment shall be executed within the walls of the West Virginia penitentiary and not elsewhere, and within an inclosure to be prepared for that purpose, under the direction of the warden of the penitentiary and the board of directors thereof, which enclosure shall be so constructed as to exclude public view; and the warden of the West Virginia penitentiary or, in case of his death, absence or inability to act, a deputy warden shall be the executioner; and for his services in executing the said sentence, the said warden or deputy warden, shall receive the sum of twenty-five dollars, to be paid out of any fund on hand appropriated for the maintenance and support of the West Virginia penitentiary.³

The bill passed the House of Delegates on February 2, the Senate on February 11, and was approved by Governor George W. Atkinson on February 18. Construction of the brick and stone execution building was completed that same year at a cost of \$6,000. Nationally, public executions by civil authorities continued in some states until 1937, when 500 attended the hanging of a

convicted murderer in Galena, Missouri. The previous year, an estimated 20,000 witnessed a hanging in Owensboro, Kentucky. The small attendance at the Galena execution can be explained by a high price charged for admission.⁴

Between 1899 and 1959, ninety-four men were hanged or electrocuted at the West Virginia Penitentiary, beginning with Shep Caldwell. Caldwell had been convicted of murdering his mistress, Rose Henshaw, in Keystone, McDowell County, the previous June, after discovering her with another man. Just after 1.00 a.m. on October 10, in front of fifty spectators, Caldwell became the first man to die at the hands of the state.⁵

Frank Broadnax, another murderer convicted in McDowell County, had been scheduled for execution at the same time as Caldwell. However, after a personal meeting with the prisoner, Governor Atkinson delayed the hanging for thirty days to allow for further investigation into whether the murder of Sherman McFadden had been premeditated. At the time of the murder, Broadnax was the constable of a local "law and order organization," formed in response to rampant lawlessness and drunkenness in the town of Kimball. During the thirty-day commutation, the courts determined the shooting had not been accidental, as claimed by the defendant. On November 9, just before Broadnax went to the gallows, he warned, "Let bad whiskey and bad women alone. I have made my peace with God and I will soon be with him." Over the years, a number of condemned prisoners made strikingly similar declarations. Since the press was rarely granted personal interviews with the prisoners, it is unknown whether these statements were coincidental or fabricated by prison officials or the clergy.⁶

Caldwell and Broadnax, the first two men executed by the state, were also the first two African Americans put to death. By the time West Virginia abolished capital punishment, a total of

forty African Americans had died in the execution building, 42.5 percent of all state-sponsored deaths. During approximately the same period, 1900 to 1960, the total black population of West Virginia averaged about 5.7 percent. The disproportionate number of African Americans executed was particularly high during the first thirty years of the century. By 1928, thirty-one of the fifty-one men executed were black, nearly 61 percent of the total. During the last thirty years of the death penalty, the percentage of blacks executed dropped to 26.5, still considerably higher than the average state population.

Both Caldwell and Broadnax were migrant laborers from the South. Although the percentage

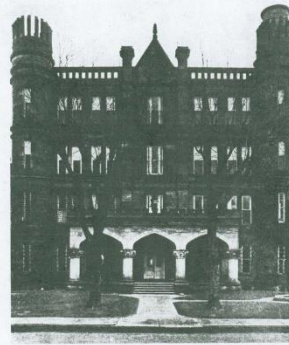


The north wagon gate, the oldest part of the penitentiary, housed the gallows. In 1995, the last prisoners were escorted out of this gate where the first prisoners arrived in 1866. [Courtesy of Susie Davis]

of black population in West Virginia remained fairly steady, the southern coalfields saw a dramatic increase near the turn of the century. McDowell County experienced an influx of migrant laborers, increasing its black population from 0.1 percent in 1880 to 30.7 percent in 1910. The towns that supported the booming coal industry attracted not only migrant laborers but drifters, gamblers, and other criminal elements. One of these was the legendary John Hardy, convicted of murdering another black man. Under the old county system, he was hanged in Welch in 1894 before a crowd of thousands. While race relations were not as volatile in West Virginia as in the Deep South, blacks, often impoverished and

lacking social standing, still bore the brunt of an apparently discriminatory justice system. During the period from 1899 to 1928, ten African Americans from McDowell County were hanged by the state compared to only two whites from that county.⁷

As the economic depression, evident in the southern coalfields in the 1920s, spread throughout West Virginia in the early 1930s, there was a marked increase in murders punished by execution. In a notable reversal of the previous thirty years, only three of the twenty-three men executed between 1928 and 1938 were African American and comparatively few of these crimes occurred in the southern part of the state.



In 1866, the legislature authorized the establishment of the penitentiary at Moundsville and construction of the Administration Building. Between 1864 and 1866, the Ohio County Jail in Wheeling was utilized as the state prison. [WV State Archives, WVSA]

Depression-weary nation craved bigger-than-life events and the press fed a steady diet of the lurid details of grisly crimes. On March 18, 1932, West Virginia's most famous mass murderer, Harry Powers, was hanged. The story first hit the Clarksburg press on August 28, 1931, and within a day, "it was on the front pages of most of the newspapers of the country." Powers, the proprietor of a neighborhood grocery store in the Broad Oaks section of Clarksburg, allegedly corresponded with two widows, using the pseudonym Cornelius O. Pierson. In July, Pierson abducted first Asta B. Eicher and then her three children from their home in Park Ridge, Illinois. When neighbors questioned the disappearance, Pierson told them the children were in Europe.⁸

Later that month, Dorothy Lemke of Northboro, Massachusetts, became Pierson's next victim. Meanwhile, Illinois investigators traced the name Cornelius O. Pierson to a Clarksburg post office box. On August 28, Harry Powers was arrested. Upon searching the garage at his home in Quiet Dell, outside

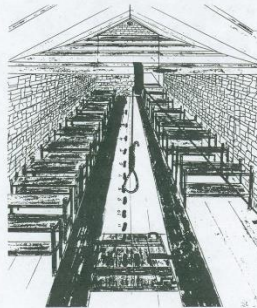
Clarksburg, police discovered trunks filled with love letters and Asta Eicher's personal effects. A trail of blood and a pervasive stench led police to the corpses of Eicher, her three children, and Lemke, buried in a drainage ditch beside the garage. Investigators soon discovered Powers had previously served time in other states for defrauding widows.⁹

Powers' trial was held in a specially constructed courtroom at Moore's Opera House in Clarksburg, and the jury returned a guilty verdict in only two hours. Powers, known nationally as the "Bluebeard of Quiet Dell," maintained his innocence until the very end, despite claims by prison guards that he had confessed to the five murders as well as the killing of salesman Dudley C. White in 1928. Both Powers and White had worked for the same carpet company in Clarksburg and Powers had taken over the agency following White's disappearance. Powers told the authorities that White had stolen some missing sweepers and left the state with the company's profits. Police later discovered the sweepers in Powers' garage. They were convinced that Powers had obtained the sweepers from White and was about to return them to the company.¹⁰

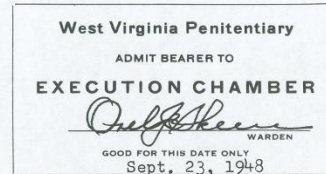
There are two interesting sidelights to this story. First, Powers was married and shared the Quiet Dell home with his wife. Her possible involvement in the crimes apparently was never investigated. Second, former Clarksburg author Davis Grubb used the name Harry Powell for one of the characters in his classic novel, *Night of the Hunter*, set in Depression-era Moundsville. Like Powers, Powell played upon the affections of a widow and killed her for money.

On only one occasion has the state executed individuals for the crime of kidnapping. On March 22, 1938, Arvil Paul Adkins, John Travis, and Arnett Allan Booth

were hanged for kidnapping Dr. James I. Seden of Huntington. Under the leadership of forty-six-year-old Booth, Adkins and Travis, both twenty-five, abducted Seden, an evangelical minister and missionary to Japan, from his Eighth Avenue home and took him to a Wayne County mine. The three abandoned their victim and sent a \$50,000 ransom note to Seden's family. Albert and Edgar Ronk discovered Seden, suffering from pneumonia and partial paralysis. All three kidnappers were captured the following day and confessed. Seden



This drawing of the noose and trap door at the penitentiary was sketched by inmate Leo Johnson. The footsteps mark the last thirteen steps a condemned prisoner walked. Johnson, who served time at both Moundsville and the Huttonsville Correctional Center, sketched several scenes in color of penitentiary life for the autobiography of Freeman Collins, who in 1993 was the "oldest living prisoner in the West Virginia prison system." [Courtesy of Leo Johnson DOC 11257, Huttonsville Correctional Center, Huttonsville, WV]



Shown is a pass to the execution of Matthew Perison, the next-to-last prisoner hanged at the penitentiary. Witnesses to an execution were generally restricted to the victims' immediate family; the press; and the clerk of courts, law enforcement officials, and prosecuting attorney from the county where the crime was committed. Warden Orel J. Skeen denied a request for a pass to the 1948 execution of Lemuel Steed, the last prisoner hanged at Moundsville, citing, "your name would indicate feminine gender. In that event it is not our policy to admit women to the execution chamber." Women may not have been permitted to attend executions, but two were sentenced to death in the 1930s and 1940s. Both sentences were commuted to life in prison. [WV Penitentiary Records, WVSA]

died in a Huntington hospital of pneumonia and a cerebral hemorrhage. Ironically, the minister had been an ardent prohibitionist and his abductors blamed their actions on the influence of alcohol. The hanging of Adkins, also known as Pete Adams, was botched when the trap door was sprung prematurely, sending the condemned man plummeting headfirst onto the concrete floor. Guards carried the severely injured man back up the steps on a stretcher only to be dropped through the trap door again with a noose around his neck. The execution of the three kidnappers was considered the most sensational event at the penitentiary since the hanging of Harry Powers six years earlier.¹¹

By the 1940s, many states had adopted what were considered by some to be less inhumane means of execution. In 1890, New York first instituted the electric chair, and by

1924, at least one state was already using lethal injection. On February 10, 1949, Democrats Herbert Schaubach of Wetzel County and Robert E. Roach of Hancock County introduced House Bill 228, converting the means of execution from hanging to the electric chair. Two weeks later, it was passed by a vote of 64 to 20, with 10 absent and not voting. The Senate amended the bill to prohibit the use of the electric chair for all those awaiting the death penalty at that time. In March, the House passed the amended bill 70 to 9, with 15 absent and not voting, and the final Senate vote was 19 to 10, with 3 absent and not voting.¹²

On March 26, 1951, twenty-six-year-old Harry Atlee Burdette and thirty-two-year-old Fred Clifford Painter became the first men to be executed in the penitentiary's electric chair. Both were convicted of the first degree murder of soft drink salesman Edward C. O'Brien. The two allegedly stomped O'Brien to death in a Summers

Street parking lot in Charleston around midnight on July 30, 1949. Burdette's attorneys, former Charleston mayor D. Boone Dawson and D. L. Salisbury, argued their client had been too intoxicated to have premeditated the murder. Burdette testified that he and Painter had consumed 4½ pints of whiskey and nearly a case of beer since 11:00 on the morning of the incident. Burdette added that he had blacked out the moment the altercation began and came to in jail the next day. Apparently, Burdette and Painter had attacked O'Brien to steal a fifth of wine. Salisbury argued during Painter's trial that his client was legally insane, due to cerebral syphilis, and that he was under the influence of alcohol and drugs. In both trials, the juries quickly returned guilty verdicts against the defendants.¹³

Originally, Burdette's electrocution was scheduled for April 1950, and Painter's was set for the following June. Unsuccessful appeals delayed the executions and Warden Orel J. Skeen set a March 23, 1951 date for both. Shortly after their convictions, Burdette and Painter were baptized in a creek near Charleston, and with March 23 being Good Friday, Governor Okey Patteson stayed the executions until the following Monday. A third man, Robert Ballard Bailey, was also to be put to death on that day for the murder of Charleston tavern keeper Rosina Fazio, the mother of Charleston restaurateur Joe Fazio. On March 22, Patteson commuted Bailey's death sentence to life imprisonment.¹⁴

Due to the publicity surrounding the state's first use of the electric chair, Warden Skeen departed from tradition and granted reporters interviews with the convicted men one hour before the execution. After a last meal, Burdette was strapped into the chair at 9:02 p.m. Following one electric shock, Dr. Charles A. Zeller pronounced him dead after a period of three minutes and forty-eight seconds. Guards placed Painter in the chair at 9:10. The first surge merely knocked him



EXECUTED, in the Intermediate Court of Sumner County, West Virginia, Robert Ballard Bailey was, upon verdict of jury, found guilty of murder of the first degree, and, on the sixth day of March, eleven hundred fifty, Robert Ballard Bailey was sentenced by the said court to die by electrocution at the West Virginia Penitentiary on Friday, the eleventh day of June, eleven hundred fifty, between the hours of six o'clock P.M. and twelve o'clock midnight and

Robert Ballard Bailey was first scheduled to die in West Virginia's electric chair in June 1950. Following a number of unsuccessful appeals, including the U.S. Supreme Court, Governor Okey Patteson commuted Bailey's sentence to life, noting circumstantial evidence and the conflicting testimony of witnesses. This reprieve was due in part to the efforts of Perry Mason creator Erle Stanley Gardner, who took a personal interest in the case. Ten years later, Governor Cecil Underwood granted Bailey a conditional parole. [WVSA]

unconscious, requiring another jolt. At 9:19, Painter was pronounced dead. Three separate bolts had been pushed by prison employees, although only one conveyed current, so nobody would know who had delivered the fatal shock. As a sidelight, during the commotion on the day of the executions, two prisoners escaped from the penitentiary.¹⁵

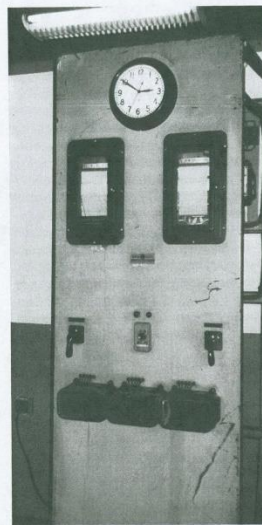
The state acted in the role of executioner for the final time on April 3, 1959. Elmer David Brunner was convicted of murdering a wealthy Huntington woman during a break-in on May 27, 1957. Although convicted one month later, two appeals to the West Virginia Supreme Court and one to the United States Supreme Court delayed the execution for nearly two years. Appeals saved the life of another Huntington man, Ernest

Stevenson. Convicted of murder in 1961, Stevenson was still awaiting execution when the state abolished the death penalty in 1965.

By the time West Virginia mandated state-sponsored executions in 1899, Michigan (1846), Rhode Island (1852), Wisconsin (1853), Iowa (1872), Maine (1876), and Colorado (1897) had already abolished the death penalty. Opposition to capital punishment first gained momentum in West Virginia during the Progressive movement in the years preceding American involvement in World War I. During the 1910s, a number of midwestern and western states abolished the death penalty, perhaps a reaction to the millions being killed on European battlefields. Opponents of the death penalty equated war with the "legalized murder" of convicted criminals, suggesting that both devalued human life. In 1918, Moundsville lawyer J. Howard Holt published an anti-capital punishment tract entitled *Crime and Its Punishment* and mailed it to "every judge and every legislator in the State of West Virginia with apparently no good result." Holt asserted that society is ultimately to blame for creating criminals and put forth a frequently stated argument against the death penalty: "THE ONLY PROPER OBJECT OF PUNISHMENT IS THE REFORMATION OF THE CRIMINAL."¹⁶

Holt also used his pamphlet to decry the unsanitary and overcrowded conditions at the West Virginia Penitentiary. Among other allegations, he noted some men had been locked in solitary confinement for up to five years. Overcrowding was somewhat alleviated by the establishment of the Women's Penitentiary at Pence Springs in 1929 and a branch of the men's penitentiary at Huttonsville in 1937, in addition to the increased institutionalization of the criminally insane at state hospitals.

Another anti-capital punishment movement



The control panel for the electric chair was photographed during a tour of the penitentiary after it closed in 1995. Three guards were assigned to operate the controls during both hangings and electrocutions. Other guards were placed in charge of securing leg and arm straps. [Courtesy of Susie Davis]

developed in the state in the 1950s, in part, through the efforts of minister and journalist Shirley Donnelly. Unsuccessful bills were introduced into the House of Delegates in 1955, 1957, 1959, and 1963. In 1965, Democrats Jesse S. Barker of Kanawha County and Robert K. Holliday of Fayette County introduced House Bill 517 to repeal the death penalty. Initially, the House passed the act by a vote of 82 to 15, with 3 absent and not voting. One of the few dissenters was Republican Forrest M. Buck of Tyler County, who claimed capital punishment was a deterrent to serious crimes against children. The Senate approved an amended version of the original bill, striking out the provision "prohibiting parole under certain circumstances of persons under sentences of life imprisonment." This provoked dissent from a number of House Democrats who had originally supported the act. D. P. Given of Webster County voted against the

amended act because of the case of an axe murderer in his home county and his belief the amendment had been drafted too quickly. Robert F. Stewart of Marshall County brought up the continuing argument that the parole system was too lenient. Don Smith of Cabell County feared the early release of convicted murderers but at the same time believed it was inhumane to sentence an individual to life in prison without a chance for parole. Following heated debates, the House passed the bill by a vote of 63 to 37 on March 11 and the Senate approved the act the following day. Governor Hulett Smith signed the bill into law, which went into effect ninety days from its passage.¹⁷

With the enactment of House Bill 517, debate over capital punishment in West Virginia waned for a number of years. Nationally, the work of the NAACP Legal Defense and Educational Fund, Inc., sparked a de facto moratorium on the death

Governor Hulett Smith signed HB 517 into law in March 1965, surrounded by supporters of the bill (left to right): Delegate Jesse Barker of Kanawha County; Reverend L. E. Crowson of Fayette County; Senator Paul Kaufman of Kanawha County; and Delegate Robert Holliday of Fayette County. Holliday was a vocal opponent of capital punishment, fending off a movement to reinstate the death penalty in 1969. Throughout his legislative career spanning four decades, Holliday continued to fight for penal reform and served as Senate chair of the Legislative Oversight Committee on the Regional Jail and Correctional Facility Authority. [WVSA]



penalty in 1967. On June 29, 1972, United States Supreme Court Chief Justice Warren Burger resolved the cases of *Furman v. Georgia*, *Jackson v. Georgia*, and *Branch v. Texas*, with the following order, "The Court holds that the imposition and carrying out of the death penalty in these cases constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments." Despite Burger's own dissent on the case, the ruling that became known simply as *Furman v. Georgia* was the law of the land until 1976. Two days before the nation's bicentennial, the Supreme Court upheld the constitutionality of capital punishment in three states with the cases of *Gregg v. Georgia*, *Jurek v. Texas*, and *Proffitt v. Florida*. That same day, the court overturned mandatory death penalty laws in North Carolina and Louisiana. In 1977, Gary Gilmore's execution by a Utah firing squad became the first use of capital punishment by a civil authority in the United States since 1968. A number of states responded by reinstating or altering their existing capital punishment laws. Despite West Virginia's reputation of having the lowest crime rate in the country, the number of violent crimes rose dramatically during the 1980s and early 1990s, prompting increased interest in capital punishment.¹⁸

Capital punishment proponents use statistics indicating that the death penalty is a deterrent to crime, while those opposed to capital punishment have their own statistics demonstrating that it has had no effect on crime. Furthermore, expensive and time-consuming legal appeals detract from any possible effectiveness the punishment might have and generally prove more costly than imprisonment. The existence of a death penalty did not deter any of the ninety-four men executed in the state from committing their crimes; yet, others would argue that many more violent acts would have been carried out without the capital punishment law.

In the biblical passage, when God asks the whereabouts of Abel, Cain replied, "Am I my brother's keeper?" God responded, "What hast thou done? the voice of thy brother's blood crieth unto me from the ground. And now art thou cursed from the earth, which hath opened her mouth to receive thy brother's blood from thy hand." Society's obligation to act as its "brother's keeper" remains the integral question of government. Several factors cloud the issues of criminal justice and capital punishment. Reflecting on African-American boxer Rubin "Hurricane" Carter's 1967 murder conviction by an all-white jury, Bob Dylan wrote of a "land where justice is a game." In the 1990s, this game of criminal justice is played with increasingly higher stakes, as evidenced by the recent O. J. Simpson trial. The importance of quality lawyers takes on greater significance, as does the inability of those with low incomes to afford such representation. A majority of individuals currently awaiting the death penalty fall under this category. Given this expensive game of criminal justice, is it fair to ask citizens to determine whether other citizens should live or die?

While recent statistics indicate that crime is decreasing, the prison population nationally has reached staggering proportions. The War on Drugs, escalated in the 1980s, greatly intensified the perennial problem of overcrowding in penal institutions and added fuel to the fire of the pro-capital punishment argument. As prison construction and staffing became the growth industry of the early 1990s, the phrase "brother's keeper" has taken on a cruel new meaning. New prisons mean employment in areas bereft of other industries, inextricably linking desperately needed jobs with a questionable system of corrections. Society's responsibility to itself has been the essential debate of all governments and their citizens. This debate manifests itself most often in the enactment and enforcement of laws. While

neither the death penalty nor stiffer prison sentences have proven to be absolute deterrents, society will continue to grapple with the balance between crime's most effective and yet humane punishment.



Nicknamed "Old Sparky," the West Virginia Penitentiary electric chair was supposedly constructed by an inmate who was an electrician. Fifty years earlier, the state had contracted with a private citizen, Milton Koontz of Fayetteville, to erect the penitentiary gallows. [Courtesy of Leo Johnson DOC 11257, Huttonsville Correctional Center, Huttonsville, WV]