ON THIS DAY IN WEST VIRGINIA HISTORY
February 10

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.
"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. 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.

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 enclosure 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.

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 high prices charged for admission.

Between 1899 and 1909, sixty-four men were hanged or electrocuted at the West Virginia Penitentiary, beginning with S.ep Caldwell. Caldwell had been convicted of murdering his ex-wife, Roberta Beck, in Keytown, McDowell County, the previous year, after discovering her with another man. Just after 2:00 p.m. on October 10, in front of fifty spectators, Caldwell became the first man to die at the hands of the state.

Frank Broadus, another murderer executed in McDowell County, had been scheduled for execution at the same time as Caldwell. However, after a personal meeting with the prisoner, Governor Arthur delayed the hanging for thirty days to allow for further investigations into whether the murder of Sherman McFadden had been premeditated. At the time of the murder, Broadus was the constable of a local "law and order organization," formed in response to rampant lawlessness and discrimination in the town of Kinnard. During the thirty-day postponement, the courts determined the shooting had not been accidental, as claimed by the defendant. On November 9, just before Broadus went to the gallows, he warned, "I had whiskey and bad woman alone. I have made my peace with God and I will soon be with him." Over the years, a number of condemned prisoners made similarly direct 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 defense.

Caldwell and Broadus, 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, 62.5 percent of all state-sponsored deaths. During approximately the same period, 1900 to 1960, the total black population of West Virginia averaged about 11.5 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 67 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 Broadus were migrant laborers from the South. Although the percentage 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 1.5 percent in 1880 to 10.7 percent in 1930.

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 after 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 apparently discriminatory justice. During the period from 1899 to 1928, ten African Americans from McDowell County were hanged by the state, compared to only two whites from the county.

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.

A Depression-era 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 Charleston press on August 28, 1931, and within a day, "it was on the front page 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 Astill Eiber 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.

Later that month, Dorothy Lemke of Northfield, 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

![The north Virginia gate, the silent part of the penitentiary, housed the gallows. In 1945, the last prisoners were executed at this gate where the first prisoners arrived in 1869. (Courtesy of State Archives, WVHS)](https://wvhis.org)
Clarksburg, police discovered trunks filled with love letters and Asta Eilers' personal effects. A trail of blood and a pervasive stench led police to the corpse of Eilers, her three children, and Lemia, buried in a drainage ditch beside the garage. Investigators soon discovered Powers had previously served time in other states for decades.

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 "Shoeshine of Clarksburg," 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 saleswoman 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 rugs and 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 tidbits 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.

O nly one occasion has the state executed individuals for the crime of kidnapping. On March 22, 1938, Arvil Paul Adkins, John Travis, and Arnett Allen Booth were hanged for kidnapping Dr. James L. Soden of Huntington. Under the leadership of thirty-four-year-old Boyd, A. Thomas Travis, both twenty-five, abducted Soden, an evangelist minister and missionary to Japan, from his Eight Ave. home and took him to a Wayne County mine. The three abandoned their victim and sent a $50,000 ransom note to Soden's family. Albert and Edgar Hamm discovered Soden, suffering from pneumonia and partial paralysis. All three kidnappers were captured the following day and confessed. Soden died in a Huntington hospital of pneumonia and a cerebral hemorrhage. Ironically, the minister had been an ardent prohibitionist and his abducted blamed his 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 swoon 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. 12

B y the 1940s, many states had adopted a death penalty. In 1949, the state of New York enacted the electric chair, and by 1954, at least one state was already using lethal injection. On February 10, 1949, Democrats Herbert Schubach of Wayne County and Robert E. Roach of Hancock County introduced House Bill 278, converting the means of execution from hanging to the electric chair. Two weeks later, it was passed by a vote of 56 to 20, with 19 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 5, with 15 absent and not voting, and the final Senate vote was 19 to 10, with 3 absent and not voting. 11

On March 20, 1951, twenty-six-year-old Harry Alden Randlett 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 raped O'Brien's death in a barracks
Street parking lot in Charleston around midnight on July 30, 1949. Burdette's attorney, former Charleston mayor D. Boone Dawson and D.L. Salisbury, argued their client had been too intoxicated to have committed the murder. Burdette testified that he and Painter had consumed 4% of whisky 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 justices quickly returned guilty verdicts against the defendants.

Originally, Burdette's execution was scheduled for April 1950, and Painter's was set for the following June. Unsuccessful appeals delayed the executions and Wardell Ovi L. Skene set a March 23, 1951 date for both. Shortly after their convictions, Burdette and Painter were transported to a creel 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 Fears, the mother of Charleston restaurateur Joe Fears. On March 22, Patteson commuted Bailey's death sentence to life imprisonment.

Due to the publicity surrounding the state's first use of the electric chair, Wardell Ovi L. Skene departed from tradition and granted reporters interviews with the condemned one hour before the execution. After a last meal, Burdette was strapped into the chair at 8:55 p.m. Following one electric shock, Dr. Charles A. Zeller pronounced him dead after a period of three minutes and forty-eight seconds. Painter placed Painter in the chair at 9:10. The first surge merely knocked him unconscious, requiring another jab. At 9:19, Painter was pronounced dead. Three separate buttons had been pushed by prison employees, although only one conveyed current, so nobody would know who had delivered the fatal shock. As a result, during the ceremonies on the day of the executions, two prisoners escaped from the penitentiary.

The state acted in the role of executioner for the final time on April 3, 1959. Eimer David Brunner was convicted of murdering a wealthy Huntington woman during a break-in on May 7, 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 Stevens. Convicted of murder in 1961, Stevens was still awaiting execution when the state abolished the death penalty in 1965.

In the time West Virginia mandated state-sponsored executions in 1899, Michigan (1843), Rhode Island (1852), Wisconsin (1853), Iowa (1872), Maine (1876), and Colorado (1879) 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 squared war with the "legalized murder" of convicted criminals, suggesting that both derecho human life. In 1918, Moundsville lawyer J. Howard Hoy published an anti-capital punishment tract entitled Crime and Its Punishment and made it to every judge and every legislator in the State of West Virginia with apparently no good result. Hoy assured 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."

Hoy also used his pamphlet to decry the unanswerable and overcrowded conditions at the West Virginia Penitentiary. In addition to 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 Pocatello, Utah, and a branch of the men's penitentiary at Florenceville in 1917, in addition to the increased institutionalization of the criminally insane at state hospitals. Another anti-capital punishment movement...
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. Barbour of Kanawha County and Robert K. Holmes of Fayette County introduced House Bill 517 to repeal the death penalty. Initially, the House passed the bill by a vote of 82 to 13, with 3 absent and not voting. One of the few dissenters was Republican Fred 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 provisions prohibiting paroles under certain circumstances of persons under sentence of life imprisonment. This provoked a dissent from a number of House Democrats who had originally supported the act. D. P. Gwinn 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 inhuman to sentence an individual to life in prison without a chance for parole. Following heated debate, the House passed the bill by a vote of 110 to 16 on March 11 and the Senate approved the act the following day. Governor Hatfield Smith signed the bill into law, which went into effect ninety days from its passage.

With the enactment of House Bill 517, death sentences were reduced to life imprisonment in West Virginia ward for a number of years. Nationally, the work of the National Association for the Advancement of Colored People (NAACP) Legal Defense and Educational Fund, Inc., sparked a de facto moratorium on the death penalty in 1967. On June 20, 1972, United States Supreme Court Chief Justice Warren Burger resolved the cases of Furman v. Georgia, Jackson v. Georgia, and Bland v. Texas, with the following concurring opinion, "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." Death penalty opponents felt vindicated. "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 those states with the cases of Gregg v. Georgia, Georgia v. Proffitt, and Georgia v. Furman. 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 repealing 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.

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 effect 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 crih out unto me from the ground. And now art thou turned out of 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 singer Rubin "Hurricane" Carter's 1967 murder conviction by an all-white jury, Bob Dylan wrote of a "land where justice is a game." In this game, the concept 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 ability 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 or not other citizens should live or die?

While recent statistics indicate that crime is decreasing, the death penalty nationally has reached staggering proportions. The War on Drugs, enacted in the early 1980s, greatly intensified the 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 an area bereft of other industries, economically leaving 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 transcends first and foremost in the enactment and enforcement of laws. White
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]