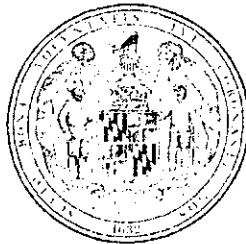


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Date: 3-2-09
Pages: 10 (including this cover sheet)
Subject: 1962 Report of Committee on
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7-12-61

**REPORT OF THE
COMMITTEE ON CAPITAL
PUNISHMENT**

**TO
THE LEGISLATIVE COUNCIL
OF MARYLAND**



October 3, 1962

COMMITTEE ON CAPITAL PUNISHMENT

HARRY A. COLE

SAUL A. HARRIS (Deceased on August 11, 1962)

RICHARD H. LERCH

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RALPH G. MURDY, *Chairman*

STANDLEY L. RICHARDSON

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CHARLES M. SEE

R. LEE BENSON, *Reporter*

Appointed by the Legislative Council of Maryland

Address Communications to
311 City Hall
Baltimore 2, Maryland

LETTER OF TRANSMITTAL

October 3, 1962

The Honorable George W. Della, Chairman
Legislative Council of Maryland
City Hall
Baltimore 2, Maryland

Dear Senator Della:

Enclosed is the report of the Committee on Capital Punishment which was appointed by you. We appreciate this opportunity to serve you and the members of the Legislative Council and the General Assembly. Our work on this controversial subject has been pleasant and instructive to all of us.

May I also take this occasion to thank personally the members of the Committee who have volunteered their time and energy not only in attending meetings but in undertaking various projects at my request.

The Committee greatly appreciates the assistance of the following persons whose contribution to our work was most valuable:

1. James A. McCafferty Criminologist, Federal Bureau of Prisons, who as an interested Maryland citizen, analyzed the data supplied by Mr. Bernard Schulte.

2. Vernon L. Peppersack, Warden, Maryland Penitentiary, who with the wholehearted cooperation of his superior, James W. Curran, Acting Commissioner, Department of Correction, provided access to the records of the Penitentiary.

3. Bernard F. Schulte, criminal record clerk at the Maryland Penitentiary whose experience and industry provided the Committee with the best available statistical compilation of Maryland's life prisoners, and of those prisoners condemned to death within the past 26 years.

4. The Prisoners Aid Association of Maryland for their thorough report on capital punishment which furnished much valuable information to the Committee.

The Committee notes with regret the death during the course of our deliberations of the Honorable Saul A. Harris, State's Attorney of Baltimore City. The final report of the Committee, therefore, does not include the participation of Mr. Harris.

In conclusion, we shall be available to discuss the contents of the report with you and the members of the Council and the General Assembly whenever requested.

Sincerely yours,

RALPH G. MURDY, Chairman
Committee on Capital Punishment

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I.

BRIEF HISTORY OF CAPITAL PUNISHMENT IN MARYLAND

Ralph G. Murdy

The use of the death penalty in Maryland in the last three hundred years has seen fundamental changes in the reason and mode of its application. Since the settlement of Maryland in 1634 the use of the death penalty at public hangings to punish crimes which included stealing and witchcraft has narrowed until the present day when executions are confined largely to murder and rape and take place in seclusion. Since 1923 executions have been performed at the Maryland Penitentiary and since 1957 the method has been lethal gas.

Colonial Hangings

In the Maryland colony early records show only three cases of capital punishment for murder and one for petty treason. Two of these were masters accused of beating servants to death and one was a slave accused of causing the death of his mistress, technically termed petty treason. The remaining case was a woman convicted of killing her illegitimate infant to conceal its birth.

Petty treason was considered a much more serious offense than murder in 17th century Maryland. Accordingly, when a certain slave was found guilty by the Provincial Court of petty treason (causing the death of the wife of his master, Colonel Nathaniel Utie, at Spesutie Island on October 4, 1665), he was sentenced by Governor Charles Calvert as follows: "You, Jacob, shall be drawn to the gallows at St. Mary's and there hanged by the neck until you are dead." Being drawn to the gallows added the indignity of being dragged on the ground behind a horse or cart from the jail to the gallows, and was copied into the Colony's laws from England, although hanging was generally substituted by tacit consent. In accordance with tradition Maryland's early laws also specified beheading rather than hanging for a Lord of Manor, to manifest respect.

On October 9, 1685, Rebecca Fowler was hanged for the practice of witchcraft. John Cowman almost met the same fate as Rebecca when convicted for witchcraft except that the Governor stayed his execution after providing that the Sheriff *first* take Cowman to the gallows and place the rope about his neck. This was done to make Cowman realize he was obligated to the lower house of the Assembly for interceding in his behalf.

Stealing property valued over twelve pence in colonial Maryland was Grand Larceny and punishable by death. However, by demonstrating the ability to read one could claim "benefit of clergy" and be granted the right to escape execution. Developed from a medieval right of clergy to be tried by Ecclesiastical rather than Civil Courts, this exemption was allowed only once to laymen who were branded on the hand to prevent attempts to repeat the exemption. In this manner Pope Alvey escaped execution in 1666 for stealing and killing a cow belonging to Colonel William Evans. Another man condemned to death for stealing was pardoned on condition he serve thereafter as a common hangman. Similar to the procedure with

Cowman, the pardon was kept secret until *after* the prisoner had been carried to the place of execution and the rope placed about his neck.

"An Act Concerning Religion" passed in 1649, frequently referred to as the Toleration Act, provided punishment by death for blasphemy and denial of the divinity of Christ or the Holy Trinity. The Acts of October 26, 1723, made a third conviction for blasphemy punishable by death without benefit of clergy.

On January 6, 1810, the criminal code was revised to limit punishment by death for crimes of first degree murder, rape, arson, and treason, while benefit of clergy was forever revoked. The major difference when compared with present laws was that a conviction for first degree murder brought a mandatory sentence of death and this continued until 1908 when the law was amended to permit life imprisonment.

In 1818 two mail robbers hanged in Baltimore became the first men in the City's history executed by a drop and trap door. Formerly the condemned stood on a cart which was driven from under them, leaving them to strangle. The trap door was introduced by the United States Marshal "from a laudable respect to humanity."

Gallows Hill

During the early centuries, executions in Maryland were performed by public hanging, generally at a gallows close to the county jail. There is a tale that at one period the City of Baltimore executed its condemned at a site known as Gallows Hill, purported to have been located near the present intersection of Chase and Aisquith Streets and Harford Avenue.

In 1807 and 1808 Baltimore mobs held mock hangings, the first of which was announced for Gallows Hill, not further described, while the second took place on Hampstead Hill, now Patterson Park. At the same time, we know that beginning in 1808, all Baltimore City hangings so far identified, took place in the jail yard. A raised platform was used to insure good observation until 1873. From 1873 until 1913, a secluded part of the yard property was used and on January 3, 1913, the first inmate was hanged inside. The last inmate hanged at the jail met his end on April 6, 1923.

No Doubts

Hangings at the Baltimore City Jail were infrequently recorded in the Annual Reports of the Board of Visitors until near the beginning of this century. From the reports we can see some hesitation in hanging women, but unlike New York State which turned to electrocution in 1890, Maryland then had little doubt about the continued effectiveness of the rope for capital offenders. One such notation was made by Warden John R. Bailey on December 31, 1897, "I cannot help but speak of the fact regarding Peter Monahan, the noted wife murderer, whose execution on the the 13th day of August last, was carried out to the letter of the law without a jar or hitch in any of the proceedings."

Warden Bailey's successor, Warden Charles E. Smith, noted a quadruple hanging on the morning of July 28, 1899.

Warden James T. Doyle noted in his report of January 1, 1903, that the sentence of death pronounced against Mary Jackson for the murder of her husband was commuted to life imprisonment on February 4, 1902, "through the intercession of the Board."

Isaac Winder Case

A hanging which took place at the Towson Jail in Baltimore County on March 30, 1906, was said to have been witnessed by an estimated crowd of 2,000 people. Notes were made from a contemporary account in the *Baltimore American*.

William Charles Winder, age 17, Negro, 2211 Hunter Alley, Baltimore, was arrested by city detectives on December 22, 1905, and was said to be one of two men who assaulted and killed Frederick T. Rinehart, age 65, keeper of the tollgate on Dulaney's Valley pike, about two miles north of Towson at 11:30 p. m. on Thursday, December 21, 1905. Isaac Winder, age 34, an uncle of William Winder, was captured the following day north of Phoenix. The Winders said they had been drinking and both admitted the robbery attempt, although each initially accused the other of shooting Rinehart. At his trial, Isaac Winder admitted shooting Rinehart but claimed it was self-defense after Rinehart had shot him in the stomach. He was found guilty of first degree murder and sentenced to be hanged on March 30, 1906. His nephew, William Winder was tried at Bel Air and sentenced on February 20, 1906, to serve 18 years in the Maryland Penitentiary for murder in the second degree.

After two unsuccessful attempts to escape from the Towson Jail, Isaac Winder discovered a lever to open his cell door without a key and ran from the jail about 9 p. m., March 5, 1906. An armed posse led by the Chief of Police, Abraham T. Streett of Baltimore County and Sheriff Jacob Elliott set out to corner Winder near Cockeysville and later, Hersch "Hurricane" Branch of Suffolk, Virginia, was employed to lead a search with his bloodhounds. Pursuit was fruitless and after some of the men following the famous Southern detective became intoxicated, the affair ended in a disgraceful fiasco much to the disgust of Branch. Winder was finally recaptured on a farm near Loch Raven on March 20, 1906, by Chief Streett after fifteen days of liberty and held in Baltimore City Jail because rumors of lynching had reached Baltimore County authorities.

The day before the hanging, Winder's minister filed for an entertainment license in Baltimore City in order to exhibit Winder's body for a ten cent admission charge. Although the minister explained the need to collect burial expenses for the family, his application was denied. There was an extraordinary demand for admission to the execution and by ten o'clock on the morning of the execution day, scenes of wild disorder prevailed in Towson. At 10:30 a. m. over a thousand persons had assembled into a mob outside the jail. Finally, a mob crashed through the wooden stockade which had been erected and joined the four hundred ticket holders inside while some people climbed trees and roofs in the vicinity for a vantage point. The trap was sprung at 11:38 a. m. after an eight-minute struggle by Winder with his executioners witnessed by a pressing crowd estimated at 2,000.

Hanging of William Lee

Another hanging which took place later in 1906 has been described as the strangest execution in Maryland's history.

William Lee, a Negro, was accused of the crime of rape in Somerset County and tried in Baltimore on July 5, 1906, because feeling ran so high against him in his own county. He was convicted in three hours and Governor Edwin Warfield promptly scheduled Lee's hanging for July 26, 1906. Although the law required the execution in Somerset County, its exact location was kept a secret.

Learning of unrest and rumors of a possible lynching, the Governor quietly ordered the Somerset County Sheriff to report to him in Baltimore on July 25th. Late that evening, the prisoner in custody of Sheriff Brown and his deputies, together with a strong guard of Baltimore detectives, his spiritual advisor, and some reporters sailed out into Chesapeake Bay on the official steamer Governor McLane. After they were well offshore, sealed orders from the Governor were read and the party landed on Smith Island, a part of Somerset County, to carry out the sentence of hanging by means of the portable gallows aboard the steamer. This was done in the early morning hours of July 26, 1906, in the presence of the sailing party and some local fishermen.

Maryland Penitentiary

In 1922, after nearly two decades of disorder at hangings, the General Assembly changed Maryland's statutes to centralize hanging of convicted felons at the Maryland Penitentiary. The intention of the legislation introduced by Senator David G. McIntosh of Baltimore County was to relieve the counties of Maryland and the City of Baltimore from curious mobs that frequented hangings and attempted to make public affairs of the same. This change became effective for all crimes committed on or after January 1, 1923.

Acts of the Special Session of the Maryland General Assembly of 1933 relieved Worcester County from payment of \$6,028.09 charged by the Maryland Penitentiary for guarding, feeding and keeping committed prisoner Euel Lee. Furthermore, the Legislature provided the State of Maryland would henceforth pay the expenses of detaining all offenders sentenced to death.

In 1951, the General Assembly passed legislation which placed the responsibility for fixing the week of execution in the hands of the trial judge rather than in the Governor. It also required the trial judge to reset the week of execution after all pleas to higher courts had been heard. After sentence has been passed the Governor may issue a stay of execution on three grounds: (1) That the person sentenced to death is pregnant; (2) That the individual has been found to be insane; and (3) Other cause. In addition to this legislation, the Governor has a constitutional power to grant reprieves and pardons.

Lethal Gas

In April 1955, the Governor signed into law an act which requires that death shall be imposed in legal executions by the admission of lethal gas. The provisions of the law apply to offenses which occurred on or after June 1, 1955, and the first execution by this method took place at 10:00 p. m., June 28, 1957. Since then three other men have been executed by lethal gas.

Between June 1, 1923, and September 1, 1962, Maryland executed 79 men at the Maryland Penitentiary. Of these, 62 were Negro and 17 were white. The crimes for which they were executed were as follows:

	Number	White	Negro
RAPE	27	6	21
MURDER	52	11	41
TOTAL	79	17	62

II.

MARYLAND STATUTES PROVIDING FOR CAPITAL PUNISHMENT

The following sections of Article 27 of the Annotated Code of Maryland (1957 Edition as amended from time to time), permit the imposition of the death penalty as specified:

Section 12. Assault with intent to rape (punishable in the discretion of the court by death, life imprisonment, or a term of not less than two nor more than 20 years; the jury in its verdict may specify "without capital punishment", in which case the sentence may not be the death penalty and may not exceed 20 years).

Section 461. Rape (death, life imprisonment or not less than 18 months nor more than 21 years; jury may specify "without capital punishment", in which case the sentence may not be the death penalty and may not exceed 20 years).

Section 462. Carnal knowledge of child under 14 or insane woman of any age (same penalties as specified for rape in Section 461).

Section 337. Kidnapping (death or not more than 30 years).

Section 338. Kidnapping children under 16 (same penalty as specified for kidnapping in Section 337).

Section 413. First degree murder, which is defined in the Code to be murder perpetrated by poison, lying in wait, or by any kind of wilful, deliberate and premeditated killing, or committed in the perpetration of or attempt to perpetrate, arson, rape, sodomy, mayhem, robbery, burglary, or escape or attempt to escape from the Maryland Penitentiary, House of Correction, Baltimore City Jail or from any jail or penal institution in any of the counties (death penalty or life imprisonment; jury may specify "without capital punishment", in which case sentence shall be life imprisonment).