

# Minnesota's John Day Smith Law

## *and the Death Penalty Debate*

*In 2001 the editors of Minnesota History named Michael Anderson the winner of the magazine's publication award for the best senior-division History Day paper on a Minnesota topic. The award includes a \$50 prize, the opportunity to be part of the editorial process, and publication in Minnesota History. Anderson, then a tenth grader at White Bear Lake Area High School, selected his topic to fit the 2001 History Day theme of "Frontiers in History: People, Places, Ideas."*

*History Day, a popular and highly regarded academic challenge—more than 700,000 students participated nationwide in 2001—is the fastest-growing social studies enrichment program in Minnesota. Its goal is to engage students and teachers in the excitement of historical inquiry and creative presentation. We hope that Anderson's article will interest all readers and inspire future History Day participants.*

**On December 29, 1854,** Uhazy, a Dakota Indian, was hanged in St. Paul for killing a white woman. An inebriated and boisterous crowd looked on.

Liquor was openly passed through the crowd, and the last moments of the poor Indian were disturbed by bacchanalian yells and cries. Remarks too heartless and depraved . . . were freely bandied by persons . . . carrying with them the instincts of brutes and the passions of ruffians. A half drunken father could be seen holding in his arms a child, eager to see well; giddy, senseless girls and women chattered gaily with their attendants, and old women were seen vieing [sic] with drunken ruffians for a place near the gallows.

According to a reporter for the *Daily Minnesotian*, "Total Depravity was out early. . . . In fact, Total Depravity appeared not to have gone to bed at all," as firearms had been discharged near Uhazy's jail throughout the night.<sup>1</sup>

Public, daytime hangings were the rule for capital offenders in the territorial and early statehood days of Minnesota. However, community leaders came to realize that crowds attended executions primarily for their entertainment value, with the consumption of alcohol and ensuing violent acts a common occurrence. In 1889 the Minnesota legislature passed the John Day Smith law, frequently called the "midnight assassination law," that required the private, nighttime execution of prisoners facing a death sentence. Although Minnesota today no longer has capital punishment, the John Day Smith law opened a new frontier in the public-policy debate over capital punishment. It also led to the passage of similar laws in other states that are still in effect today.

Before states passed these laws, public executions were a "fixture of American society," according to law professor John D. Bessler. They were supposed to serve two purposes: civil and religious. As a civil "ceremony," public execution was supposed to deter crime by demonstrating the authority of the state to punish those who violated the law. As a religious ceremony, it was supposed to demonstrate the danger of sin and provide religious leaders with the opportunity to urge attendees to repent. Commonly, the condemned would be led from jail to a nearby church for a religious service. From the church there would be a procession to the



*State Representative John Day Smith in 1889, the year that his bill became law, and the new Victorian Gothic state capitol where the legislature met, Tenth and Wabasha Streets, St. Paul*

execution site, usually a public square. At the gallows, the sheriff would read the death warrant and a cap would be pulled over the prisoner's head before the trapdoor dropped open. Executions usually occurred in the afternoon. According to Bessler, "Literally thousands of people—including 'entertainers, vendors, pick-pockets, promoters, evangelists, sight-seers, peddlers and medicine

to encourage it. For example, after the 1822 execution of John Lechler in Lancaster, Pennsylvania, 15 people were arrested, including a man who stabbed and killed another in a "drunken brawl at a tavern after both men had just watched Lechler hang." In 1836 in Ohio, shortly after the execution of a man for the murder of his wife, "another man, near the place of execution, murdered his

strung up Charles J. Rinehart, the prime suspect in the murder of a 36-year-old carpenter named John B. Bodell. Rinehart had been kept in a jail in Lexington, Minnesota, freshly built just for him. After about a month and a half, a mob of 60 men surrounded the jail, overpowered the guard, and prepared to take justice into their own hands. Rinehart wrenched the cuffs and several layers of skin off his hands, tore the clamp that held his leg irons out of the floor, broke off one of the iron stove legs, and used it to defend himself from the mob for an hour and a half. In the end, however, Rinehart fainted, was dragged from his cell, and was lynched on the limb of a tree. On April 25, 1859, an armed mob lynched Oscar F. Jackson in Wright County after he had been acquitted of first-degree murder. Governor Henry H. Sibley, Minnesota's first governor after the state was admitted to the Union on May 11, 1858, declared that these "deeds of violence must cease." Not long after Sibley took office, the notorious Ann Bilansky affair "seized first place in the public's interest."<sup>4</sup>

Ann Bilansky was the first person to be legally executed after Minnesota became a state. She was also the first (and to date, the only) woman to be executed in Minnesota. Bilansky was convicted of poisoning her husband, the *Pioneer and Democrat* reported, so that "she might marry or have more unrestrained intercourse with her paramour." On appeal, her conviction was affirmed by the Minnesota Supreme Court. Despite many petitions on her behalf, including a letter from her



*St. Paul jail, 1851–57, which was "about as secure as pasteboard," according to chronicler J. Fletcher Williams*

men' turned out at public hangings." Minnesota, however, appears to have taken a less elaborate approach, usually staging the execution in the jail courtyard during the day, following a short prayer service at the gallows.<sup>2</sup>

Although intended to teach important lessons, public executions often had unanticipated consequences. Instead of deterring crime, Bessler shows, they at times seemed

wife in the same manner." In 1894 a Kansas City resident was hanged for killing his wife, and "five years later, his son was hanged from the same gallows for killing his girlfriend."<sup>3</sup>

### Following the 1854

hanging of Uhazy, public executions in Minnesota primarily took the form of extralegal mob lynchings. For example, in 1858 an unruly mob

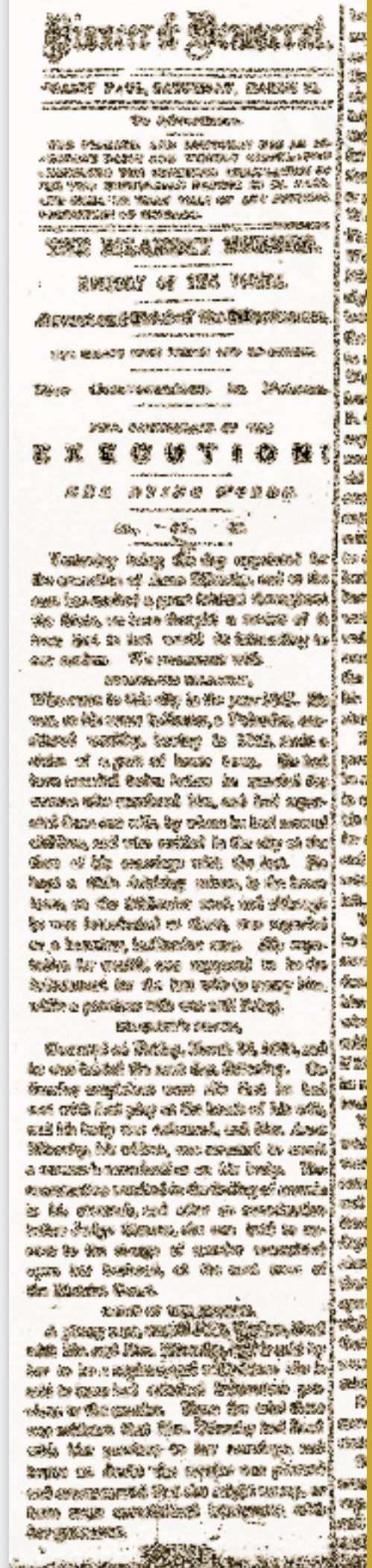
prosecutor, who had come to question the fairness of the trial, then-Governor Alexander Ramsey refused to commute her sentence. Bilansky was executed on March 23, 1860. Before being led to the gallows, she pleaded, "I am willing to meet my God, but I don't want to have a crowd see me die." Her request was not met, though. About 100 people awaited her arrival at the scaffold, and some 25 to 30 women later squeezed into the enclosure that had been erected at the courthouse. Furthermore, the gallows platform was tall enough that the heads of those involved in the execution could be seen above the new fence, and anyone who took the trouble to climb onto a roof or a wagon had a clear view of the hanging.<sup>5</sup>

The Bilansky execution was followed by more, such as the hanging of Henry Kriegler in Albert Lea before a large crowd on March 1, 1861; the December 26, 1862, hangings of 38 Dakota Indians in Mankato on a gallows that held ten prisoners on each side; the hanging of John Waisenen in Duluth on August 28, 1885, before a crowd that saw his hands turn purple; and the double hanging of Peter and Timothy Barrett in Minneapolis on March 22, 1889. Although the Barretts were hanged inside the Hennepin County jail, their execution was hardly private. The local sheriff sent invitations to more than 100 to view the event. In addition, about 5,000 people waited outside and about 2,000 were later allowed to see the gallows.<sup>6</sup>

**The Barrett executions,** together with the "broadcast" of "the sickening details" of the event, led reformers to introduce bills against capital punishment in the state legislature. Ten days after the Barrett hangings, a bill for complete abolition of the death penalty, sponsored by Representative Charles R. Davis of St. Peter and previously "indefinitely postponed," was resurrected and debated. The details of the hangings led Representative Frank E. Searle of St. Cloud, who had previously favored the death penalty, to change his views. Representatives John Day Smith and Eugene G. Hay, both of Minneapolis, also supported the bill. Nevertheless, it still met fierce opposition and again was indefinitely postponed—only this time by a close vote.<sup>7</sup>

As a compromise between keeping capital punishment and eradicating it, Representative Smith introduced a bill on March 29, 1889, to outlaw public executions. In the final version of his bill, executions were to occur "before the hour of sunrise" and "within the walls of the jail" or within an enclosure taller than the gallows. The bill also required that the prisoner be kept in solitary confinement after being condemned to die, with a limited number of visitors permitted. The only people allowed to be present at an execution were the sheriff and his assistants, a clergyman or priest, a physician, three persons chosen by the prisoner, and a maximum of six others designated by the sheriff.

*Detailed coverage of the sensational Bilansky case and execution, Daily Pioneer and Democrat, March 24, 1860*



# DISPLAYED HIS NERVE TO THE VERY LAST

## Williams Strangled to Death Ropes Being Too Long and Body Had to Be Held Up by Deputies Standing on the Scaffold

(BY ST. PAUL DISPATCHERS)

ST. PAUL, Minn., April 12.—The execution of John Williams, a man who had been sentenced to death for the murder of a woman, took place today at the state prison here. The execution was carried out by hanging, and the scene was witnessed by a large number of people.

Williams, who was 35 years old, was taken to the gallows at 10 o'clock in the morning. He was dressed in a dark suit and a white shirt. He was accompanied by his attorney, who was standing by his side throughout the proceedings.

The execution was carried out by a deputy sheriff, who raised the ropes and allowed Williams to fall. Williams was strangled to death, and his body was held up by two other deputies standing on the scaffold.

The execution was witnessed by a large number of people, including members of the press and the general public. The scene was described as being very quiet and orderly.

Williams was buried in the prison cemetery at 11 o'clock in the morning. His body was placed in a coffin and lowered into the ground. The burial was also witnessed by a large number of people.

CHRONOLOGY OF THE EXECUTION

At 10:15—John Williams, 35 years old, was taken to the gallows at the state prison here. He was dressed in a dark suit and a white shirt. He was accompanied by his attorney, who was standing by his side throughout the proceedings.

At 10:30—The execution was carried out by a deputy sheriff, who raised the ropes and allowed Williams to fall. Williams was strangled to death, and his body was held up by two other deputies standing on the scaffold.

At 10:45—Williams was buried in the prison cemetery at 11 o'clock in the morning. His body was placed in a coffin and lowered into the ground. The burial was also witnessed by a large number of people.

At 11:00—The execution was over, and the scene was described as being very quiet and orderly.

Finally, the bill forbade newspapers to print an account of the execution beyond the fact that it had happened. Violations of the law were to be punishable as misdemeanors. The bill was passed by nearly unanimous votes in both the House and the Senate, signed by the governor, and took effect on April 24, 1889. Representative Smith said the law was "intended to promote morality." He said that it was "degrading to humanity to witness executions the way they are sometimes conducted in the country." In short, the bill was designed to protect the masses from the unwholesome effects of public executions. Angry newspaper editors, however, called it the "midnight assassination law."<sup>8</sup>

**The nighttime executions** that immediately followed the passage of the bill—Albert Bulow in Little Falls and Thomas Brown in Moorhead in 1889, William Brooker in Pine City in 1890, William Rose in Redwood Falls, and Adelbert Goheen in Fergus Falls in 1891—aroused little public complaint. However, newspapers, including the *St. Paul Dispatch* and *Brainerd Journal*, harshly criticized the so-called midnight assassination law for failing to accomplish its purposes and resulting in misleading and even false accounts of the executions. Editors around the state also continued to publish stories about the executions without penalty.<sup>9</sup>

*Gory details from the St. Paul Dispatch, February 13, 1906, published in violation of the John Day Smith law*

Ironically, it was the publication of details about a botched hanging, in violation of the John Day Smith law, that brought an end to capital punishment in Minnesota. On February 13, 1906, at 12:31 A.M., William Williams was hanged for the murder of Johnny Keller, but the rope was six inches too long and Williams hit the floor below the gallows' trapdoor. He was still alive because his neck did not break in the fall. Three deputies then grabbed the rope and

held Williams off the floor as he choked to death. "After waiting 14½ minutes after the drop, Coroner A. W. Miller, Dr. J. Ohage, Dr. George Moore and Dr. Charles A. Wheaton stepped to the hanging figure and after a short examination pronounced the man dead," the *Pioneer Press* reported.<sup>10</sup>

Despite the publishing ban, local newspapers reported graphic stories of the botched execution. This time, the newspapers that did so—the

*St. Paul Pioneer Press*, *St. Paul Dispatch*, and *St. Paul Daily News*—were criminally indicted. Although the papers were found guilty of the misdemeanor and fined \$25.00 each, the newspaper accounts ensured that Williams was the last person to be executed in Minnesota. Public outrage caused governors to commute all subsequent death-penalty sentences until capital punishment was abolished five years later, in 1911, by the Minnesota legislature.<sup>11</sup>

*Governor Adolph Eberhart and the 1911 legislature that outlawed capital punishment in Minnesota*



## By the time the 1911

legislative session convened, the criminal-justice system's view of incarceration had shifted to focus on reform, with punishment taking on a secondary role. This inclination was fueled by mounting evidence that capital punishment did not deter crime and by the firm belief that there would be more convictions for first-degree murder if capital punishment were abolished. The general consensus was that juries were less inclined to convict defendants of first-degree murder, either out of conscience or out of fear of the barbarity of the punishment. Consequently, when a bill was introduced by Representative George A. Mackenzie of Sibley County to abolish capital punishment, it passed in the House by a vote of 95 to 19. The bill encountered some delay in the Senate but ultimately passed, 35 to 19.<sup>12</sup>

Although most other states did not follow Minnesota's lead in abolishing capital punishment, many did enact laws mandating private nighttime execution primarily because of the outcome of two court cases that originated in Minnesota. In *Holden v. Minnesota* (1890), condemned murderer Clifton Holden's attorney argued before the U.S. Supreme Court that the John Day Smith law was an unconstitutional *ex post facto* law, as its provisions contradicted the law in effect at the time of Holden's crime. In affirming Holden's conviction on December 8, 1890, the high court stated that laws requiring private, nighttime executions were "regulations which the Legislature, in its wisdom, and for the public good, could legally prescribe" and

were constitutional. In *State v. Pioneer Press Co.*, decided on February 21, 1907, the *St. Paul Pioneer Press*, which had been indicted for publishing accounts of the Williams hanging, also challenged the constitutionality of the John Day Smith law. The Minnesota Supreme Court upheld the law, stating, "The evident purpose of the act was to surround the execution of criminals with as much secrecy as possible, in order to avoid exciting an unwholesome effect on the public mind." *Holden* and *Pioneer Press* essentially showed that restricting newspaper coverage of public executions for the public good was not unconstitutional and, according to Bessler, "signaled to the nation's lawmakers that laws requiring private, nighttime executions were constitutionally permissible."<sup>13</sup>

## The Holden and Pioneer

*Press* cases led to the proliferation of laws similar to Minnesota's John Day Smith law in other states. For example, in 1893 Connecticut enacted a law that required executions to be performed before sunrise and within the walls of the state prison. Other states soon followed with laws containing some or all of Minnesota's provisions: Massachusetts in 1898, North Dakota in 1903, Virginia in 1908, Washington in 1909, Alabama and Texas in 1923, Louisiana in 1952, and Delaware in 1994. Today, all 38 states that have capital punishment conduct executions in private. Although journalists have limited access, television cameras are forbidden.<sup>14</sup>

In addition to protecting the masses from excesses associated

with public executions and shaping the private manner in which executions are performed today, the John Day Smith law is believed to have affected the debate on the continued use of the death penalty in the United States. All other industrialized democracies in the world except Japan have abandoned capital punishment. Serious questions exist as to the fairness of the death penalty and its application, particularly to minority and indigent defendants. Yet executions occur behind prison walls in the middle of the night and television cameras are banned, so people must rely on "second-hand accounts . . . from newspapers and magazines to form an opinion about the propriety of capital punishment," Bessler argues. By "sanitizing" news accounts for the purpose of protecting the masses, the midnight assassination laws "have literally blinded Americans to the reality of what happens behind prison walls."<sup>15</sup>

Public debate over the evolution of government-sponsored executions from publicly viewed events to closed proceedings came to the forefront with the execution of Timothy McVeigh on June 11, 2001. McVeigh was convicted of masterminding and carrying out the bombing of an Oklahoma City government building in which 168 persons were killed. The execution was a significant, newsworthy event not only because of the severity of McVeigh's crime but also because it was the first execution to be carried out by the federal government since 1963. Although Attorney General John Ashcroft authorized the use of closed-circuit television so that the execution could

be viewed by family members of the victims, the execution site was closed to the general public, and no recording of the event was retained. The ruling by a federal judge denying the request of a company seeking to webcast the execution makes it unlikely that the public will ever be permitted to view an execution.<sup>16</sup>

### The 1889 John Day Smith

law opened a new frontier in the debate as to how government-sponsored executions should be conducted.

The “midnight assassination” law was meant to promote morality, and it did protect the public from the unwholesome and sometimes violent effects of public executions. Minnesota abandoned capital punishment in 1911, removing the need for the landmark legislation, but not before two Supreme Court cases affirming the law paved the way for similar laws in other states. This moved the site of state-sponsored executions from public squares to secluded prison chambers. However, in the

present day, when problems in applying death-penalty laws raise questions about the fairness of capital punishment, the limitations on media coverage imposed by the John Day Smith law may have had a negative effect on honest public debate about the grisly reality of the death penalty. As news commentator Ted Koppel stated in 1995, “If what society wants is the death penalty, then let us at least have the decency to be fully conscious of what we are doing and why.”<sup>17</sup> 🌀

## Notes

1. *Daily Democrat* (St. Paul), Dec. 29, 1854, p. 2; *Daily Minnesotian* (St. Paul), Dec. 30, 1854, p. 2; John D. Bessler, *Death in the Dark: Midnight Executions in America* (Boston: Northeastern University Press, 1997), 30–31; Jane Lamm Carroll, “Native Americans and Criminal Justice on the Minnesota Frontier,” *Minnesota History* 55 (Summer 1996): 52–54.
2. Bessler, *Death in the Dark*, 23, 25–26, 27–28; Walter N. Trenerry, *Murder in Minnesota* (St. Paul: Minnesota Historical Society Press, 1985), 40.
3. Bessler, *Death in the Dark*, 23, 28–29.
4. John D. Bessler, “The Midnight Assassination Law’ and Minnesota’s Anti-Death Penalty Movement, 1849–1911,” *William Mitchell Law Review* 22 (1996): 586–87; Trenerry, *Murder in Minnesota*, 3–10, 13–19, 25.
5. Bessler, “Midnight Assassination Law,” 596–98; Matthew Cecil, “Justice in Heaven: The Trial of Ann Bilansky,” *Minnesota History* 55 (Winter 1997–98): 351, 361–63; *Daily Pioneer and Democrat* (St. Paul), Mar. 24, 1860, p. 3; *State of Minnesota v. Ann Bilansky*, 3 Minn. 246 (1859); Trenerry, *Murder in Minnesota*, 219.
6. Bessler, “Midnight Assassination Law,” 600–01, 618–19; Trenerry, *Murder in Minnesota*, 219–21.
7. Bessler, “Midnight Assassination Law,” 622–24, quoting the *St. Paul Pioneer Press*.
8. Bessler, “Midnight Assassination Law,” 581, 624–27.
9. Bessler, “Midnight Assassination Law,” 629–32, 635, 637, 641–42.
10. *St. Paul Dispatch*, Feb. 13, 1906, p.

3; Trenerry, *Murder in Minnesota*, 163; *Daily Pioneer Press*, Feb. 13, 1906, p. 1.

11. Trenerry, *Murder in Minnesota*, 164–67.
12. Bessler, “Midnight Assassination Law,” 690–92, 695–96.
13. Bessler, *Death in the Dark*, 56–59; Bessler, “Midnight Assassination Law,” 702; *Holden v. Minnesota*, 137 U.S. 483 (1890); *State v. Pioneer Press Co.*, 100 Minn. 173 (1907), 175.
14. Bessler, “Midnight Assassination Law,” 702–03.
15. Stephen C. Thaman, “Is America a Systematic Violator of Human Rights in the Administration of Criminal Justice?” *Saint Louis University Law Journal* 44 (Summer 2000): 1000; Stephen B. Bright, “Discrimination, Death and Denial: The Tolerance of

Racial Discrimination in Infliction of the Death Penalty,” *Santa Clara Law Review* 35 (1995): 433–35; Bessler, “Midnight Assassination Law,” 703–04.

16. “The Execution of Timothy McVeigh,” [www.cnn.com/specials/2001/okc/](http://www.cnn.com/specials/2001/okc/); *New York Times*, Apr. 12, 2001, A27; Carl S. Kaplan, “Request to Webcast McVeigh Execution is Denied,” *New York Times Cyber Law Journal*, Apr. 20, 2001.

17. Koppel, quoted in Bessler, *Death in the Dark*, 195.

*All images are from MHS collections. The jail description is from Williams, A History of the City of Saint Paul to 1875 (1876; reprint, St. Paul: Minnesota Historical Society Press, 1983), 281.*



*Scaffold inside the Hennepin County jail, 1895*





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