

# New York's Death Penalty Saga

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Penfield Public Library

# Colonial Period (1624-1775)

1624 – 1664 New Netherlands Dutch colony

- “Stripping any gardens or planted lands of posts, rails, clapboards or fences”
  - “...punished with the halter until Death ensue.”

1664-1775 British colonial period

# Early American Period

1776 – 1782

- Executions for treason, espionage, army desertion
- Joseph Beattys
  - Sentenced to death at court martial
  - Pardoned by George Washington
  - Continued organizing guerrilla warfare against American troops

# Early American Period

## Laws of 1788, chapter 37

- Murder, treason, rape, buggery, burglary, larceny from a church, arson, mayhem, and certain kinds of forgery and counterfeiting

## Laws of 1796, chapter 30

- Murder and treason

## Laws of 1813, chapter 29

- Added burning of an inhabited dwelling

# Mid-1800s

Murder divided into two degrees, and the death penalty is *accidentally* abolished:

Laws of 1860, chapter 410:

- Mentions murder 1<sup>st</sup> and 2<sup>nd</sup>
  - But doesn't change the language
- Repeals section on method of execution

# Mid-1800s

Laws of 1861, chapter 303:

- All sections repealed by L1860 Chap 410

“...revived, made operative, and declared to be in full force and effect...”

# Mid-1800s

Laws of 1862, chapter 197:

- Repealed BOTH the 1860 and the 1861 laws
- Death mandatory for 1st degree murder and treason
- Method is still hanging

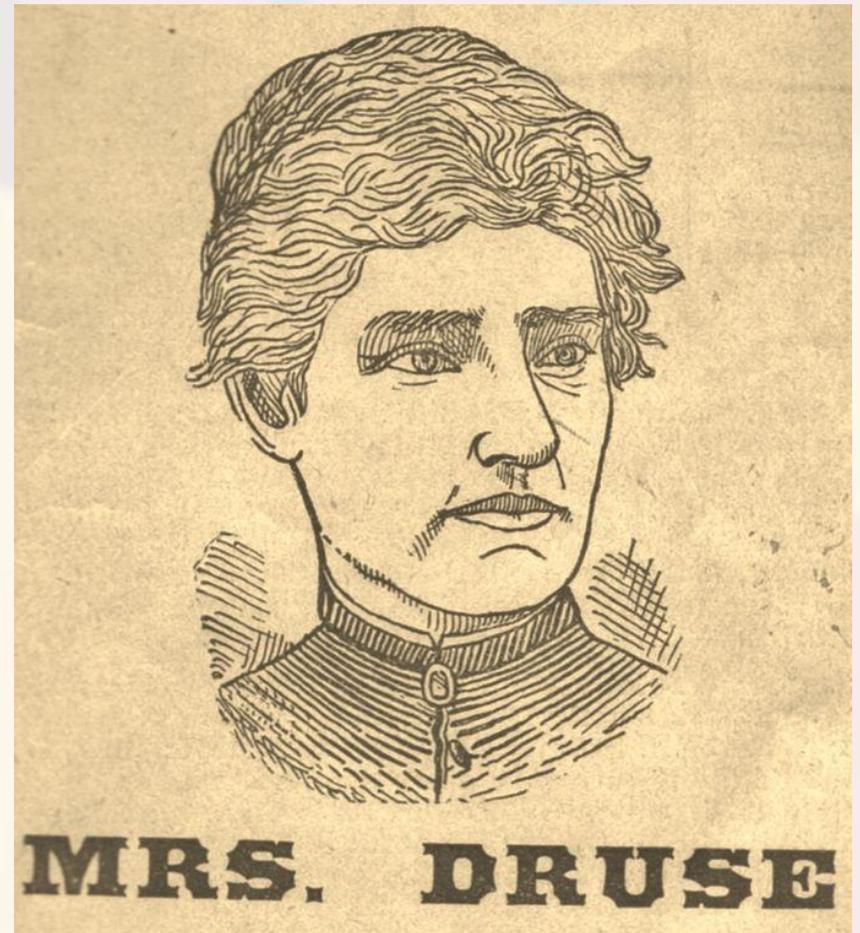
# Late 1800s

Laws of 1881, chapter 442:

- Consolidation of laws into Code of Criminal Procedure
- Hanging continued as form of execution...  
*...for the time being...*

# Roxalana Druse

- In 1864, Roxalana married William Druse, a man 18 years older than her.
- “Roxy,” as she was known, claimed that in 20 years of marriage, “the only day he was a decent man was our wedding day.”



# Roxalana Druse

- William Druse was “reported to be an ill-tempered, abusive, eccentric and lazy individual whose ideas of ‘quality family time’ included beating Roxy with a horsewhip; choking her; threatening to kill her; and chasing her with whatever object he could find as long as it could be used to kill someone.”



Not actually William Druse

# Roxalana Druse

- After berating Roxy yet again on the morning of December 18, 1884, William Druse was murdered in his own home in Warren, NY (Herkimer County).
- The murder was grisly—William was shot several times, but was not yet dead, and so Roxy struck him twice in the head with an axe, then began to dismember and burn the body parts in the family furnace. The ash and bone remains were then dumped in a nearby swamp.

# Roxalana Druse

- After William was missing for several weeks, neighbors recalled the “foul odor” that had emanated from the Druse home on the day in question. Roxy was arrested and charged with first-degree murder.

# Roxalana Druse – Murder Trial

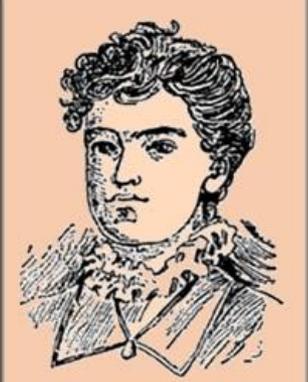
- The case was popular at the time for several reasons:
  - A woman charged with murder was relatively rare at the time;
  - The grisly nature of the crime; and
  - Lack of other entertainment options!
    - Even relatively mundane trials were often front-page news in small towns. Keeping up with happenings of the court was akin to following Twitter for news today.

December 18, 1884,

**“LET’S KILL DAD!”**



ROXALANA DRUSE.

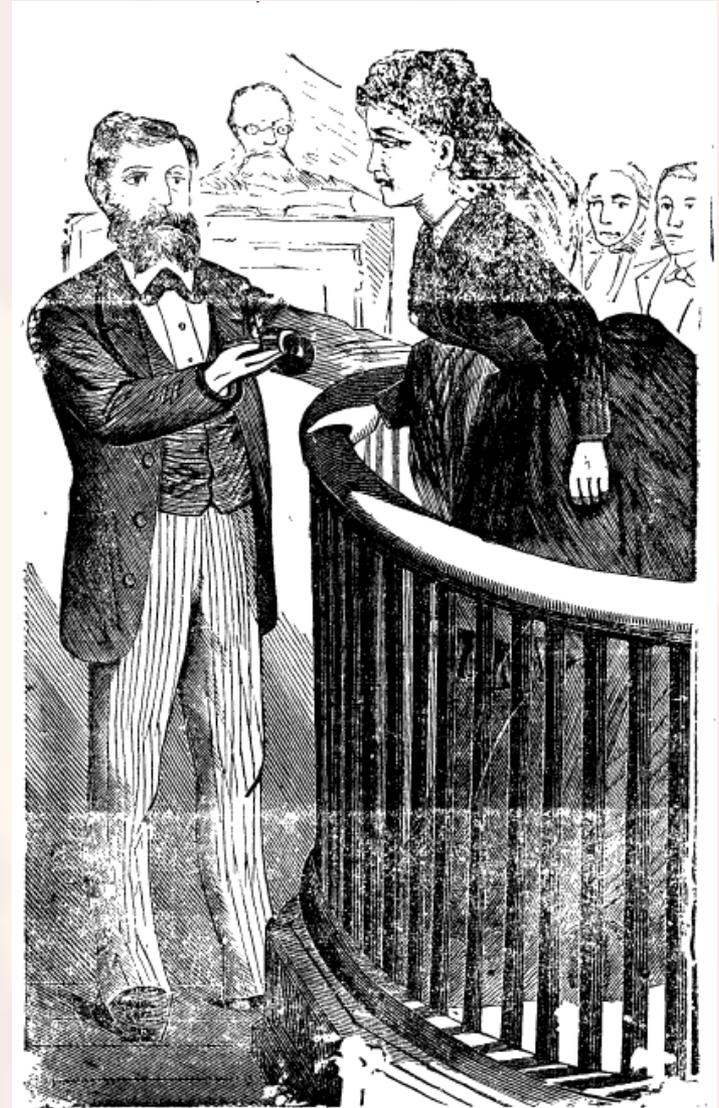


MARY DRUSE.

Roxalana killed her husband because he objected to her gay life, and, according to the records, not only schemed to kill him, but persuaded her daughter, as well as her son and nephew, to help her.

# Roxalana Druse – Murder Trial

- The evidence against her at trial was overwhelming:
  - William's remains were recovered from the swamp, along with a bloody axe;
  - Neighbors testified about seeing and smelling black, foul-odored smoke coming from the Druses' chimney the day of the murder; and
  - Roxy admitted to killing him.



Roxy on the witness stand

# Roxalana Druse – Murder Trial

- Roxalana’s lawyer pursued an “affirmative defense:”
  - Admitted to the killing but argued self-defense;
  - Also introduced extensive evidence of years of abuse at the hands of her husband, which was corroborated by neighbors who testified;
  - The lawyer’s arguments were more than a hundred years before their time; “battered woman syndrome” as a legal defense did not yield any success until the late 1990s.



# Roxalana Druse – Murder Trial



- She was found guilty (by a jury of white men) and sentenced to be executed by the standard method in practice in NYS at the time—hanging.
- Today, Roxy’s presentation of “mitigating factors” would almost certainly lead to a lesser sentence, if not an outright acquittal.

# Roxalana Druse – Condemned to Death

- Women's right groups protested the sentence:
  - Since women could not vote or sit on juries, women's rights groups, which were gaining momentum in NYS at the time, argued that a woman should never be executed.
  - Minors, who also could not vote or sit on juries, were prohibited from being executed at the time.
- General notion among many men and women that executing a woman was inhumane.
- The NYS Legislature considered passing a bill that would have outlawed the execution of women while Roxy was on death row, but ultimately did not act. The governor also refused to grant a pardon.

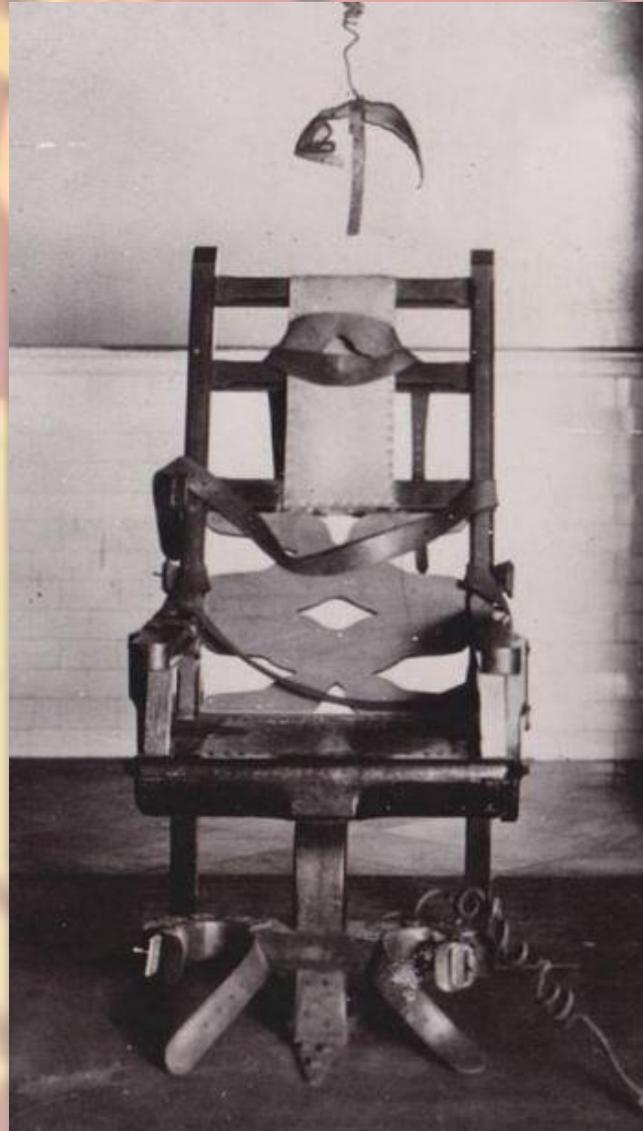
# Roxalana Druse – Last Woman Hanged in New York State

- Roxalana Druse was hanged on February 28, 1887 in Herkimer, NY.
- The hanging did not go well:
  - Being only an estimated 100 pounds, the force of Roxalana's weight was not sufficient to break her neck.
  - She died of suffocation after hanging for 15 minutes.\*

\*The law in effect at the time did not have a mechanism for "re-hanging" if the neck was not broken; it effectively read "hang until dead." As such, there had been a number of "botched hangings" in the years prior to Ms. Druse's execution.

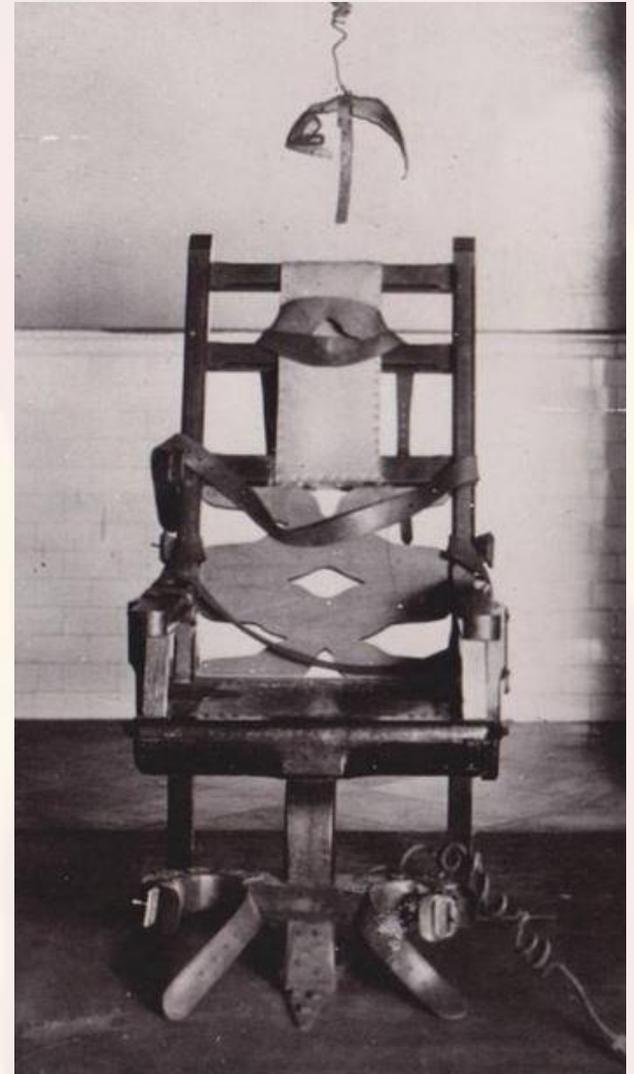


A more “humane” way to kill...



# A more “humane” way to kill...

- The desire for a more humane form of execution had existed for some time, but the botched hanging of Roxalana Druse led to widespread support for ending hanging in NYS.



First electric chair at Auburn, 1890

# The Electric Chair

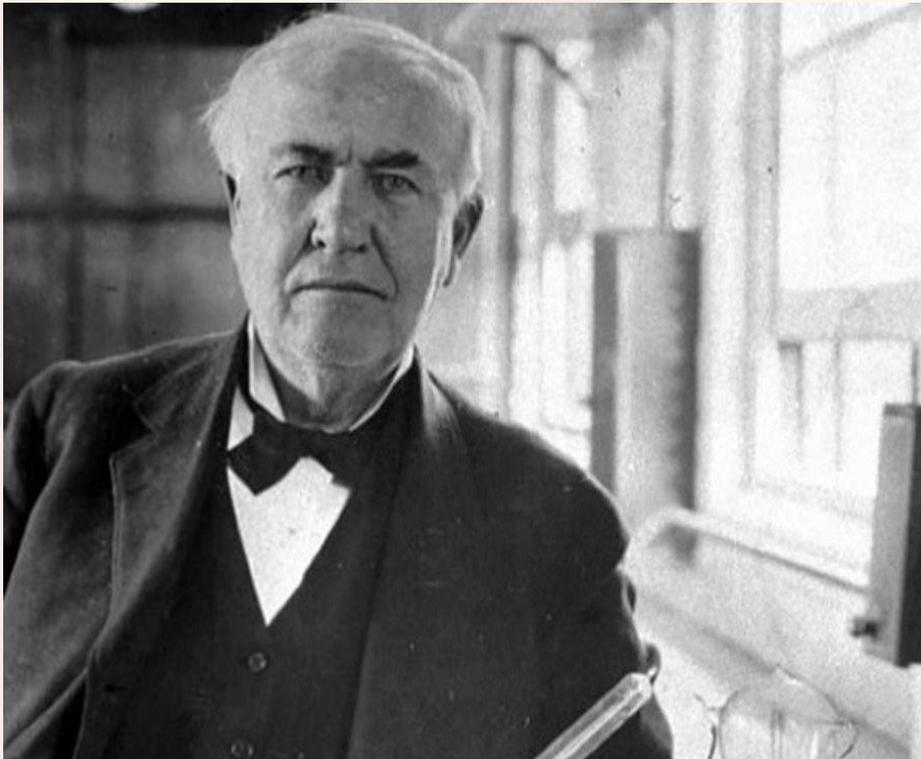


Dr. Alfred Southwick

- Dr. Alfred Southwick, a Buffalo dentist, first conceived of the idea of using electricity as a mode of execution after reading a news report about a drunken Buffalo dockworker who was “instantly” killed when he grabbed the leads of an electric generator.
- In the 1880s, electricity was still a curiosity to most people, but arc lighting had by then been installed in many American cities, serving as street lights.

# The Electric Chair

- Southwick, on the heels of the Roxy Druse execution, convinced the NYS Legislature to fund development of his “electric chair” as a potential replacement for hanging.



- Southwick wrote to Thomas Edison asking for help, but Edison responded that he was opposed to capital punishment in all forms.

# The Electric Chair

- Southwick and a small group of cohorts began experimenting on animals of various sizes.
- Still struggling to get it right, Southwick wrote to Edison a second time.
- This time, Edison referred Southwick to George Westinghouse. Westinghouse, along with Nikola Tesla, were Edison's chief competition. They promoted a different electrical system called alternating current (AC). Edison championed direct current (DC).

# The Electric Chair

- Edison, ever the savvy businessman, realized that associating his system with death was not in his company's best interest, which is why he referred Southwick to his chief rival.
  - Westinghouse flat-out refused to help with a "death device," and refused to sell an AC dynamo to Southwick on those grounds.
- In an ugly chapter of his life known as the "War of the Currents," Edison proceeded to publicly electrocute animals with AC in an effort to prove it was too dangerous for widespread use.
  - As part of these efforts, he secretly funded Southwick's work, and even procured AC dynamos from a secondhand dealer for Southwick's use.

# The Electric Chair

- After “perfecting” the process, Southwick’s project came to fruition:
  - The NYS Legislature passed a law (L. 1888, Ch. 489) which read:

§ 505. The punishment of death must, in every case, be inflicted by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death, and the application of such current must be continued until such convict is dead.

- Hanging was out, “electrocution\*” was in.
  - \*It was a new word, invented by journalists. Edison had suggested using the term “Westinghoused.”

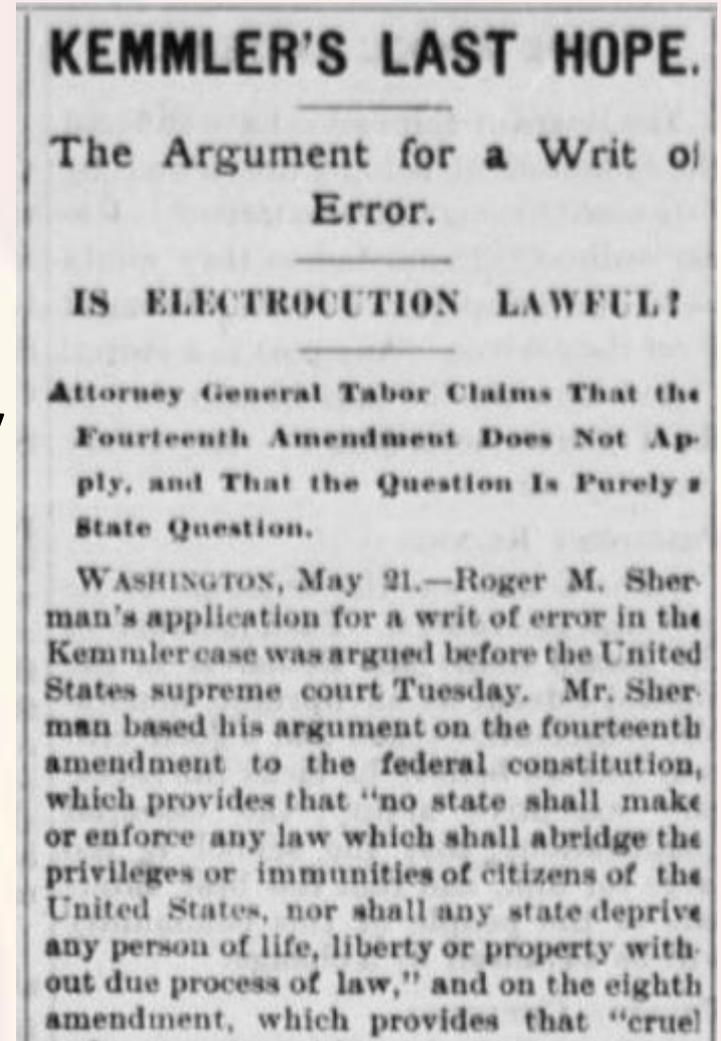
# William Kemmler

- William Kemmler was convicted of killing his lover with an ax in Buffalo on March 29, 1889.
- His guilt was not in doubt; he immediately went to neighbors and confessed to his crime.
- On May 13, 1889, he was sentenced to death.



# William Kemmler

- George Westinghouse, fully aware of the damage that might be done to his business if Kemmler was electrocuted, hired Roger M. Sherman, a former United States Attorney to appeal Kemmler's case.
- The appeal was taken all the way to the U.S. Supreme Court. (136 US 436).



# William Kemmler

- During the appeals, Kemmler's lawyers argued:
  - "Death by electricity" was cruel & unusual punishment in violation of the Eighth Amendment.
  - That death would not be "instant," as NYS's attorneys argued. Instead, they argued it would result in Kemmler being "tortured to death."
  - Questioned the specific mechanics of administering the current, such as the voltage required and the need for wet sponges, etc.

# William Kemmler

- The courts all ruled against Kemmler:
  - Courts conceded that the proposed punishment was “unusual,” but could not be considered cruel because death would be “instant.”
  - Would result in “instantaneous...painless death.”



Supreme Court c. 1890

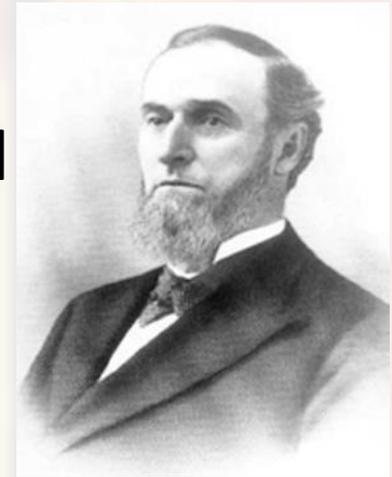
# Execution of William Kemmler

- On August 6, 1890, William Kemmler became the first person ever put to death by means of the electric chair.
- The electrocution did not go as planned.



# Execution of William Kemmler

- Kemmler was strapped in and 1,000 volts were passed through his body for 17 seconds.
- At this point one doctor declared him dead and Dr. Southwick, who was in attendance to see the first use of his invention, stood up to declare:
  - “We live in a higher civilization from this day...”
    - He never finished the line, because at that moment...



Dr. Alfred Southwick

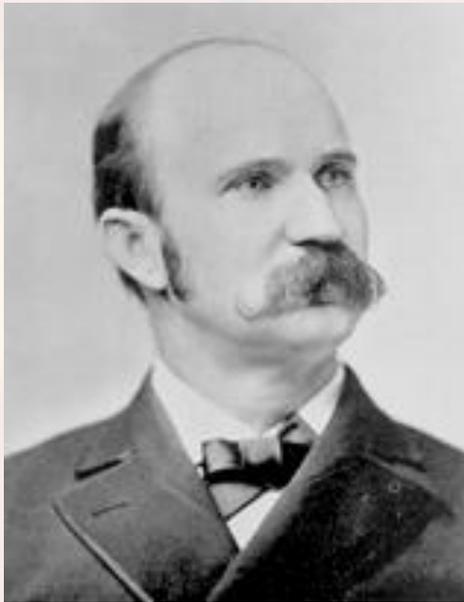
# Execution of William Kemmler

- ...Kemmler let out a gasp, and began groaning. He was clearly not dead.
- Shouts rang out from prison officials to “start the current, again!”
- However, due to the primitive nature of the dynamos in use, they needed several minutes to recharge.
- A few minutes later, after Kemmler’s groaning became “unbearable,” *2,000 volts* were administered for over two minutes, causing “a horrible odor to permeate the death chamber.”
  - I’ll spare you rest of the details...

# Execution of William Kemmler

- Quotes on the execution:
  - “I must say there is nothing in the old method (hanging) so revolting as the scene I have witnessed this morning.”
    - Dr. George Shrady
  - “No one can depict in words the apparent horrible sufferings of that poor devil. I would not think \$1,000 an inducement for witnessing another electrocution.”
    - C.R. Huntley
  - “They would have done better with an axe”
    - George Westinghouse
  - Future executions will go more smoothly, “without the scene at Auburn today.”
    - Thomas Edison

# The Executions Continued



Gov. David B. Hill

- Despite the horrifying execution of Kemmler, NYS politicians, including Governor Hill, refused to repeal or alter the statute ordaining use of the electric chair.
- They did, however, *severely* limit the ability of the press to report on subsequent executions.
- Believed that the press had “sensationalized” the Kemmler execution in order to sell more papers.

# Chester Gillette – An American Tragedy

- Chester Gillette was born to a wealthy family in Montana; he eventually became a manager at his uncle's skirt factory in Cortland, NY in 1905.
- Gillette began a sexual relationship with a clerical worker at the factory, Grace Brown, and she became pregnant.
- Brown began pressuring Gillette into marriage.



Grace Brown and Chester Gillette

# Chester Gillette – An American Tragedy

- Gillette apparently felt that marrying Brown would ruin his place in Cortland's "high society."
- In July 1906, Gillette asked Brown to accompany him on a vacation to Big Moose Lake in the Adirondacks.
  - It is assumed Brown thought Gillette would propose or actually marry her on this trip.
- Instead, Gillette, recalling that Brown had told him she could not swim, rowed her out in the middle of the lake, hit her over the head with a tennis racket, and pushed her overboard.
- He was apprehended and charged with murder within three days. (Did not cover his tracks well).

# Chester Gillette – An American Tragedy

- His trial was an absolute sensation:
  - Love letters read aloud;
  - National press coverage:



**GILLETTE MAKES STATEMENT.**  
Alleged Murderer of Grace Brown Says Drowning of Girl Was Accidental.



**GILLETTE'S TRIAL IS OF ABSORBING INTEREST TO WOMEN.**  
[At every session in the Herkimer County Court House, great numbers of women crowd into the court room, where they remain all day in the eagerness to hear all the details in the famous case.]

*Chester Gillette Is Executed; Admits to Spiritual Advisers He Killed Former Sweetheart*

CHESTER E. GILLETTE, WHO WAS ELECTROCUTED TODAY.

**Gillette's Warning**

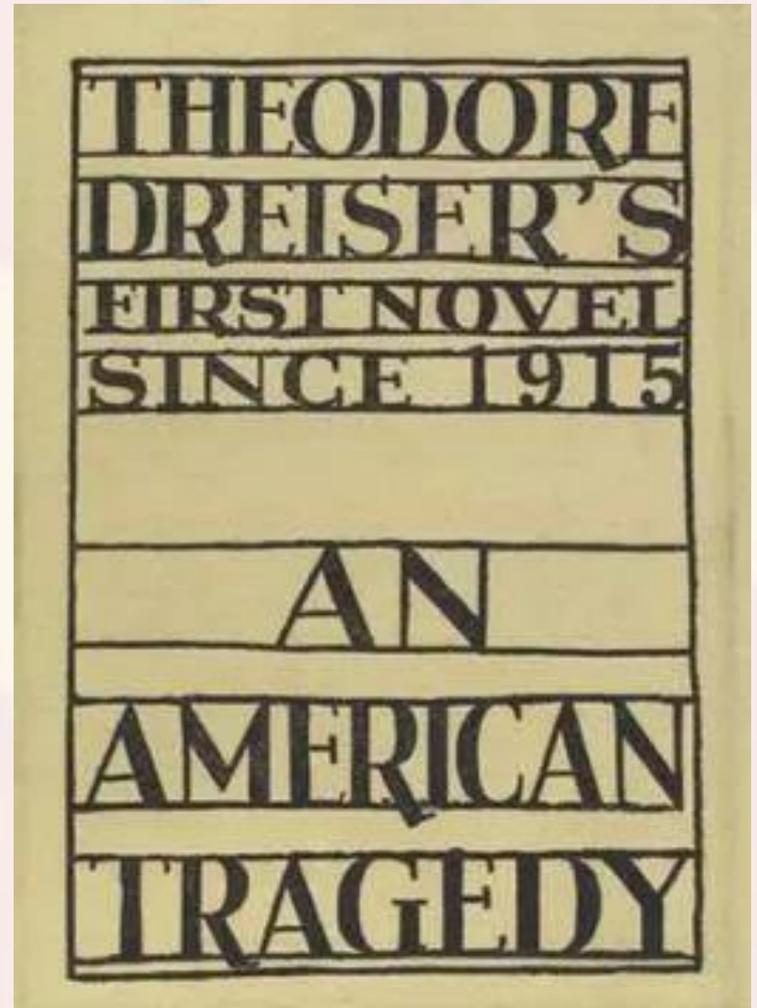
In the shadow of the valley of death it is my desire to do everything that would remove any doubt as to my having found Jesus Christ, the personal Saviour and unfailing friend. My only regret at this time is that I have not given him the pre-eminence in my life while I had the opportunity to work for him. If the young men of this country could only know the joy and pleasure of a Christian life, I know they would do all in their power to become earnest, active Christians, and would strive to live as Christ would have them live. There is not one thing I have left undone which will bar me from seeing my God, knowing that my sins are forgiven, for I have been free and frank in my talks with my spiritual adviser, and God knows where I stand. My task is done, the victory won.  
CHESTER E. GILLETTE.

GRACE BROWN, THE VICTIM.

**MOOSE LAKE, N. Y.**  
Landscape where Grace Brown's Body was Found.

# Chester Gillette – An American Tragedy

- Chester Gillette was executed in the electric chair at Auburn on March 30, 1908.
- Theodore Dreiser was a “newspaperman” in NYC at the time of the incident.
- Years later in 1925, Dreiser completed *An American Tragedy*, which was based on the Gillette-Brown murder.



# 20<sup>th</sup> Century

Laws of 1933, chapter 773:

- **Kidnapping** added
- 1st degree murder, treason, and kidnapping



## WANTED

INFORMATION AS TO THE  
WHEREABOUTS OF



### CHAS. A. LINDBERGH, JR.

OF HOPEWELL, N. J.

### SON OF COL. CHAS. A. LINDBERGH

World-Famous Aviator

This child was kidnaped from his home  
in Hopewell, N. J., between 8 and 10 p. m.  
on Tuesday, March 1, 1932.

#### DESCRIPTION:

Age, 20 months	Hair, blond, curly
Weight, 27 to 30 lbs.	Eyes, dark blue
Height, 29 inches	Complexion, light
Deep dimple in center of chin	
Dressed in one-piece coverall night suit	

ADDRESS ALL COMMUNICATIONS TO

COL. H. N. SCHWARZKOPF, TRENTON, N. J., or  
COL. CHAS. A. LINDBERGH, HOPEWELL, N. J.

ALL COMMUNICATIONS WILL BE TREATED IN CONFIDENCE

March 11, 1932

COL. H. NORMAN SCHWARZKOPF  
Supt. New Jersey State Police, Trenton, N. J.

# 20th Century

Laws of 1937, chapter 67:

- Jury may recommend lifetime sentence in lieu of death for both degrees of murder, and kidnapping
- *Not binding on the court*
- Death still mandatory for *premeditated* 1st degree and treason



# The 1960s

State of New York Temporary Commission on the Penal  
Law and Criminal Code

1962 - 1968

# The 1960s

Laws of 1963, chapter 994:

- Completely eliminated mandatory death
- Jury recommendation for life imprisonment now *binding* on the court
- Two stage trial procedure, guilt and punishment

# Eddie Lee Mays

STATE OF NEW YORK—DEPARTMENT OF CORRECTIONS	
Name <u>Eddie Lee Mays</u>	
Aliases <u>Eddie Lee May</u>	
Term <u>EXECUTION</u>	Date of
Crime <u>Verd Murder 1st</u>	Judge
Criminal Act <u>Shot &amp; killed Maria Marini .38</u>	
<u>Bar and Grill night-and stole less than</u>	
Transfer	
Discharge	
Date of Crime <u>3-23-61</u>	
Jail Time <u>223 days</u>	
Height <u>5</u> ft. <u>7 1/2</u> in.	
Weight <u>131</u> lbs.	
Build <u>med slim</u>	
Nativity <u>Winstonburg, NC</u>	
Occupation <u>laborer</u>	
<u>Amer Negro</u>	
Scars & Marks <u>light colored pigment in skin</u>	
Associates <u>Bryant Brooks; Jose Fernandez</u>	
	CRIMINAL

- Eddie Mays was the last person put to death by the state of New York.
- At the time, no one knew it would be the last execution.
- Mays had stated that “he’d rather fry than spend the rest of his life in prison.”

# The 1960s

Laws of 1965, chapter 321:

- Murder in 1st degree limited:
  - Victim is peace officer or
  - Inmate serving at least 15 years to life or
  - Inmate escapee
  - Capital punishment prohibited under age 18
  - Consideration of mitigating circumstances allowed

# The 1960s

Laws of 1967, chapter 791:

- Intentional, felony and depraved indifference murders eligible for death penalty
- Age prohibition, over 18

# The 1960s

Laws of 1968, chapter 949:

- Depraved indifference murder *removed* from capital crimes

Laws of 1971, chapter 1205:

- Killing employee of local jail or correctional institution *added*

# 20th Century

1972 U. S. Supreme Court – Furman v. Georgia  
(408 US 238)

Death penalty statutes as written illegal under

- 8<sup>th</sup> Amendment
  - Cruel and unusual punishment
- 14th Amendment
  - Depriving a person of life, liberty, or property without due process of law

because application was arbitrary and capricious



William Henry Furman

# 20th Century

1972 U. S. Supreme Court – Furman v. Georgia  
(408 US 238)

- 1 page per curiam
  - 5 separate concurring opinions
  - 4 separate dissenting opinions
- Reasoning differed: too discretionary; too arbitrary; discriminatory against poor; discriminatory against minorities; morally wrong

# 20th Century

- *Furman* called into question the 39 existing state death penalty laws
- In response, many states enacted revised legislation to satisfy constitutional concerns
- The New York Legislature was convinced that its statute was dissimilar enough from the Georgia statute to pass Constitutional muster
- They were **wrong**...

# 1973-1995 – NY without a Death Penalty

1973 – People v. Fitzpatrick (32 NY2d 499)

- NY Court of Appeals rules that NY's death penalty statute is indeed unconstitutional, based on the recent *Furman* decision

Laws of 1974, chapter 367:

- Mandatory death penalty for murder in the 1st degree
  - Police and corrections officers
  - Inmates who murder while serving 15 years to life, or during a period of escape

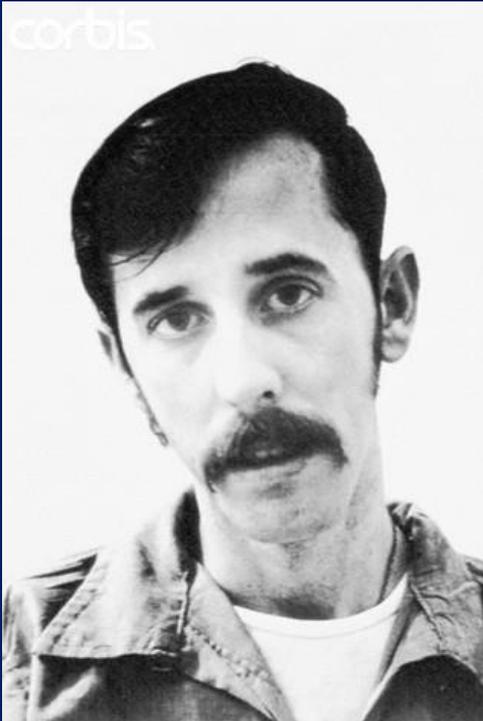
# 1973-1995

1976 U.S. Supreme Court – Gregg v. Georgia

(428 US 153)

Newly constructed GA statute ruled constitutional

- Separate proceedings for determining guilt and punishment
- Adequate guidance for juries as to sentencing (list of aggravating factors)
- Allowance for mitigating factors
- Automatic appellate review



Troy Gregg

# 1973-1995

1976 U.S. Supreme Court – Woodson v. North Carolina (428 US 280)

- Death penalty isn't in all circumstances cruel and unusual
- However, *mandatory* death penalty for all murder 1st is unconstitutional
- Jurors hesitate to convict because of mandatory death penalty
- Unlimited jury discretion objected to in *Furman* is not cured by removing all sentencing power from jury.

# 1973-1995

## 1977 NYS Court of Appeals – People v. Davis (43 NY2d 17)

- Struck down mandatory capital punishment for the murder of police or corrections officer in the line of duty
- Penal Law 60.06 doesn't allow consideration of mitigating factors

## 1984 NYS Court of Appeals – People v. Smith (63 NY2d 41)

- Struck down cap punish for murder committed by inmate serving 15 to life
- Penal L 60.06 doesn't consider each individual circumstances

# 1973-1995

The NYS Legislature passed a death penalty bill every single year, 1977 - 1994

- Governor Carey vetoed every one from 1977-1982
- Governor Cuomo (Mario) vetoed every one from 1983-1994



# NYS Reestablishes the Death Penalty

## Laws of 1995, chapter 1

- Allows imposition of death penalty for 1st degree murder:
  - Killing police/peace officer, correctional employee, judge
  - Inmate serving 15 years to life or while escaped from custody
  - Intentionally causing death of 2 or more persons
  - Contract murder, violent felony murder, etc.
- Separate sentencing proceedings, considering aggravating and mitigating factors.
- Capital Defender Office
- Lethal injection



George Pataki

# NY Courts Strike Down

2004 NYS Court of Appeals – People v. LaValle (3 NY3d 88)

- NY's newest death penalty statute violates due process under NYS Constitution (Art. I, sec. 6)
- “Deadlock” instruction:
  - Unless jury unanimous for death or life without parole, judge will sentence defendant to life imprisonment *with* parole in 20-25 years
- Risk of juror coercion to choose death sentence out of fear that deadlock will result in eventual release of defendant.
- A coerced sentence is arbitrary and unreliable.

Death penalty may not be imposed under present capital murder statute.

# NY Courts Strike Down

- 2007 NYS Court of Appeals – People v. Taylor (9 NY3d 129)
  - Last existing death sentence reduced to life in prison
- 2008 – Gov. Paterson issues executive order requiring removal of all execution equipment from state facilities

The image features four yellow silhouettes of horses in a running or galloping pose, positioned behind vertical grey bars. The horses are arranged in a line from left to right. The background is a solid reddish-pink color. The text "The End" is centered over the horses.

The End