

**ALASKA HISTORY SHOWS US THAT THE TERRITORIAL
LEGISLATURE WAS RIGHT TO ABOLISH THE DEATH PENALTY IN
1957.**

Respectfully submitted to the members of the House Judiciary Committee: Chair Jay Ramras; Vice-Chair Nancy Dahlstrom; Members John Coghill, Jr., Carl Gatto, Bob Lynn, Max Gruenberg, and Lindsay Holmes, on February 25, 2009, in reference to House Bill 9.

My name is Averil Lerman. I speak to you today to ask that you reject any bill authorizing the death penalty in Alaska.

I come before you today as a legal historian, who spent many years studying the history of the death penalty in Territorial Alaska between 1900 and 1957. My research has included extensive documentary review, in archives, libraries, and private collections. I also collected an oral history from more than 50 people who were involved with or affected by the hangings in the territory.

My research shows that Alaska communities who used the death penalty later came to reject it. In Fairbanks, there were three hangings in the 1920's. After that decade, not one more person was hanged, although homicide in Fairbanks continued. The same thing happened in Juneau, where there were three hangings between 1939 and 1950, and then no further hangings, although homicide in Juneau also continued.

Why did the Territorial Legislature abolish the death penalty in Alaska in 1957? Why did the hangings stop?

My answer is that the reality of the death penalty is very different that what people say it will be. People who don't personally experience all the special things that happen in a death process often think that maybe capital punishment is a good thing -- maybe it will help us reduce violent crime; maybe it is fair to take a life for a life; Maybe it is plain justice. I used to be a person who had no particular exposure to the death penalty - and I used to think the death penalty might be a good idea.

But people who live with a death system in their community start to change their minds after being exposed to it for a while. That's what happened here in Alaska.

Some people change their minds about the death penalty when they see that only the poor go to death row. Rich men don't hang from that rope, or drop from that needle. In Territorial days, rich murderers like Guy Prince and Harry de Groot in Juneau never got a death sentence. The same is true in death states today.

Some people change their minds about the death penalty when they see that non-white people and other minorities are much more likely to go to death row than white people. In Territorial Alaska, the only people hanged after 1904 were non-white or ethnic minorities, although 75% of all murder was

committed by white men.¹ The Fairbanks hangings executed two Alaska Natives and one foreign man from Montenegro, who was perceived as an ethnic minority. The Juneau hangings executed one Indian (probably from the Puget Sound area) and two African-Americans.

Some people change their minds when they see that, although the death penalty is intended initially only for the most heinous murderers, it ends up being imposed on many other criminals as well. In 1929, Constantine Beaver was sentenced to die for killing his good friend during a drunken brawl. Beaver loved his friend, and was overwhelmed with remorse. U.S. Deputy Frank P. Young described hanging Beaver in Fairbanks as "the saddest affair I have had to witness," and resigned shortly thereafter. No further executions were held in Fairbanks.

Some people change their minds when they see what administering death to other people does to the people who have to actually turn the levers of the death process. Even 50 years after participating in one of the Juneau death cases, the people I spoke to were emotional about what had happened to them, and upset about being asked about it. I talked to a man who had, as a young Juneau policeman, been involved with an execution. When I asked if the condemned man had been shaking, he answered angrily, "Not any more than the rest of us." The wife of another patrolman asked me, "Doesn't anyone think about the people who have to do these things?" The same question was raised by jurors at the trial of Eugene LaMoore, who asked the judge if he could decide on the sentence, instead of them, and found out he could not. The death system puts a heavy weight on the backs of a lot of average people, for life.

One person who changed his mind about the death penalty was Supreme Court Justice Harry A. Blackmun. This is what he said:

Twenty years have passed since this court declared that the death penalty must be imposed fairly and with reasonable consistency or not at all, and despite the effort of the states and courts to devise legal formulas and procedural rules to meet this...challenge, the death penalty remains fraught with arbitrariness, discrimination...and mistake..."

From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years I have endeavored...to develop...rules that would lend more than the mere appearance of fairness to the death penalty endeavor...Rather than continue to coddle the court's delusion that the desired level of fairness has been achieved...I feel...obligated simply to concede that the death penalty experiment has failed. It is virtually self-evident to me now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies...²

The same decision was reached by the Alaska Territorial Legislature in 1957. It was a good decision. We should not change it.

¹ K .S. Knell, *A Different Frontier: Alaska Criminal Justice 1935-1965*, University Press of America, Inc., Langham, MD (1991).

² *Callins v. Collins*, 510 U.S. 1141 (dissent) (February 22, 1994).

Biographical Information about Averil Lerman:

Averil Lerman is an attorney and legal historian. She received grants from the National Endowment of the Humanities and from the Alaska Native Justice Center for the oral history of the last three hangings in Territorial Alaska.

Articles on that history, including those written by Ms. Lerman, are available on the internet through the University of Alaska Justice Center in Anchorage. The internet links are:

"Capital Punishment in Territorial Alaska: The Last Three Executions," originally published in *Frame of Reference, Alaska Humanities Forum* 9(1), April 1998.
Online at <http://justice.uaa.alaska.edu/death/alaska/juneauexecutions.html>

"The Trial and Hanging of Nelson Charles," *Alaska Justice Forum* 13(1), Spring 1996.
Online at http://justice.uaa.alaska.edu/forum/13/1spring1996/a_nelson.html

*Ms. Lerman has worked for two decades as a post-conviction, appeal, and habeas attorney for Alaskans convicted of crimes. This work has given her a detailed understanding of the things that go wrong between a crime and an execution, and how innocent people end up on death row. Ms. Lerman has been listed in *Who's Who in the World*, and *Who's Who in American Law*, and *Who's Who of American Women*.*



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"Capital Punishment in Territorial Alaska: The Last Three Executions" by Averil Lerman

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Alaska as a state has never had a death penalty. However, in Alaska's territorial days, eight men were executed under civil authority between 1900 and 1957. This article provides an account of the last three executions in Territorial Alaska between 1939 and 1950: Nelson Charles, Austin Nelson, and Eugene LaMoore.

The complete issue from which this article is excerpted is available at the Alaska Humanities Forum website, http://www.akhf.org/newsletter/april_1998_vol9_no1.pdf

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CAPITAL PUNISHMENT I

The Last Three Executions

Research for Averil Lerman's *Capital Punishment in Territorial Alaska* was supported with grants from the Alaska Humanities Forum and the National Endowment for the Humanities and assistance from the Alaska Native Justice Center. In addition to studying the documentary record of these cases, which all took place in Territorial Alaska between 1939 and 1950, the author conducted over fifty interviews.

ALASKA HAD A DEATH PENALTY UNTIL 1957, when it was abolished by the Territorial Legislature. Between 1900 and 1957, eight men were legally executed in the Territory, each convicted of murder. Most of the murders were committed by white men, but most of the men who hanged were non-white, and after 1904, all of the men hanged were of minority status. Three were Alaska Natives, two were African-American, and one was a foreigner from Montenegro, viewed as a minority by the citizens who tried him.

In 1957, the Territorial Legislature abolished the death penalty in Alaska, after a prolonged debate and an impassioned speech by abolition sponsor Warren Taylor. According to Vic Fischer, who was

the junior sponsor of the abolition bill, one of the factors motivating abolition was concern about the apparent race bias in the application of the death penalty.

The death penalty was rare in Territorial Alaska, although murder was not uncommon, and the communities that did experience several capital trials and executions appear to have spontaneously refused to impose further executions. In the 1920s, three men were hanged in Fairbanks. After 1929, no other hanging occurred in Fairbanks, although it appears that murder there continued. The same thing happened in Juneau where three men were hanged between 1939 and 1950, but none after that.

Perhaps in these small communities everyone was touched by the crime, the trial, or the hanging, either directly or through a friend, neighbor, or family member. The process was not carried out by some unknown strangers, and that may have influenced the manner in which the communities of Fairbanks and Juneau experienced the use and then the non-use of the death penalty. Many of the people who were interviewed for this article recalled

their experiences with some bitterness, sadness, or uncertainty.

This article discusses the last three executions that took place in Territorial Alaska. They were all in Juneau. One of the executed men was native and the other two were black.

Nelson Charles

NELSON CHARLES was a Ketchikan fisherman. Charles, described in the newspaper accounts as "an Indian" perhaps from the Puget Sound area, had been tried and convicted in Ketchikan for the 1938 murder of his mother-in-law. The crime was committed when both he and his victim had been drinking heavily. Charles himself had summoned the police immediately after the killing, and had taken them to the hillside where the stabbing had occurred. Cecilia Johnson, his victim, had been stabbed in the back and the chest, and had been sexually molested.

Charles was represented at trial by well-known Ketchikan lawyer, A.H. Ziegler, who was appointed by the court on behalf of the indigent defendant. Ziegler is remembered as an intelligent and well-respected attorney, with a sardonic sense of humor. Ziegler, a Democrat, was viewed as "very conservative" on social issues, and was an unlikely champion for an Indian charged with murder. He had served three terms in the Territorial Legislature, and was elected mayor of Ketchikan in the same year as Nelson Charles's trial.

Ziegler was appointed to the case only one week before the trial was to begin. The trial jurors were all white. The defense called no witnesses at the trial aside from the defendant. The jury

Perhaps in these small communities everyone was touched by the crime, the trial, or the hanging, either directly or through a friend, neighbor, or family member.

JIM ELLEN FOUND MURDERED IN STORE

BODY FOUND, THROAT CUT, EAR TO EAR

Negro Arrested Soon After Slaying Is Discovered - Formal Charge Made

Juneau, Alaska - A Negro was charged in connection with the slaying of Jim Ellen, a white storekeeper, here today.

Ellen was shot to death in his store here today. The body was found in the store, and the Negro was arrested soon after the slaying was discovered. A formal charge was made against the Negro.

N TERRITORIAL ALASKA

—by Averil Lerman

deliberated for only four hours before returning a guilty verdict, with a finding that Charles should be punished by death rather than by life in prison.

It does not appear that Ziegler did much pretrial investigation.¹ After his client was sentenced to hang, however, Ziegler tried to compensate for the lack of pretrial work by submitting the affidavit of William H. Caswell, a retired U.S. marshal, who stated that Charles was ordinarily a peaceable man, and that "when not under the influence of liquor he is a quiet, peaceful and polite person and I have never known him to even have an argument or get into trouble of any kind." Caswell continued, stating that he had seen Charles a few days before the murder, and that *he had the same bulging of the eyes and stare and had every appearance of an insane person; that from my experience with the man, my observation of his action and conduct when drunk I am convinced that intoxication produces a condition in his mind of insanity . . .*

THE EVIDENCE was too little, too late. Ziegler's request for a new trial was denied, and Charles was sentenced to hang. No appeal was filed; there was no provision for appointed lawyers on appeal, and like most of the men hanged in Alaska, Nelson Charles had no money, and thus could not afford to bring any appeal from his conviction. Unsuccessful efforts for clemency were made on his behalf by the Alaska Native Brotherhood, through a petition to President Roosevelt.

While Charles was attempting to avoid the scaffold, the U.S. marshal's office in Juneau was trying to figure out how to build a scaffold. The U.S. marshal was William Mahoney. Like others in his position during Territorial times, he was a political appointee, and his second-in-command, Walter Hellan, was often delegated the important tasks. George Sundborg, a young reporter for a local weekly called *The Juneau Independent* recalls seeing the marshal and his deputies pore through the manuals in order to learn their new duty:

They of course had never conducted a hanging, and I think they got a few books out of

libraries somewhere, probably from the U.S. Marshal Service, to tell them how a hanging was to be set up and carried through. And I know that they had done some dry runs with the trap that they built, and had carefully calculated the weight of the victim -- of the accused, so that he wouldn't be dropped so far as to behead him, which sometimes happens in a hanging. I learned at that time.

Sundborg also learned that, like a firing squad where one of the squad has a blank cartridge, the marshal's deputies were to be insulated from individual responsibility for the act of executing Nelson Charles. Sundborg explained:

And so Walter Hellan, who was in charge of all of this, had told me that, so that the person who actually sprung the trap would not know that he had done it, they set up several, I think four, different ropes that would pull a pin that dropped the trap. And three of them would be false, and one would be the one that actually did it. And so the four men, all of whom were deputy marshals -- the one who did it would not know that it was he who had pulled the one that actually caused this man's death.

THE SCAFFOLD was constructed in a stairwell of the building which housed both the Federal Jail and the marshal's residence. According to Sundborg:

It was a large building which previously had been the capital. And it was a wooden building but very large, and quite attractive. But it had gotten old and it had been supplanted by the federal building, which was across the street from it. It had outside stairways, that is, one went out in the open when going from the second floor to the third floor, and so on. And, the marshal's office had decided that they would do the hanging under one of those stairways, because there was an open space there with quite a drop. And so we went in and they had set up a floor in the place with a trap in the middle of it.

The plan was to permit a drop of four and one-half feet below the level of the trapdoor. Construction of the scaffold was started three days before the hanging.

Charles faced his imminent death calmly. According to the local newspaper, Charles left

behind 13 letters of farewell, one of which was addressed to Marshal Mahoney, stating that the marshal "had treated him kindly and that he did not hold Mahoney in any way to blame for what was about to happen to him."² The paper also reported on Charles's condition on the night before his death: "Nelson Charles was calm throughout the night, jailers said, and ate a hearty breakfast. He slept about an hour and a half."³

The law required the execution to take place in front of 12 witnesses selected by the marshal. Those selected included three journalists, a priest, a minister, two doctors, men from the marshal's office, and several others who had no professional connection to the process (including one man who worked for the Internal Revenue Service).

A rope had been hung from the bottom of the second floor landing to the trapdoor structure that had been built over the open area into which the lower stair descended.

The witnesses were seated on benches beneath the ascending staircase. The marshal came out of the door, and told everyone that there was to be no talking once Nelson Charles came out. Al Anderson, one of the journalists present, recalled hearing someone say, "Jesus Christ, what a way to make a living."

Nelson Charles was brought out of the jail by Mahoney and a deputy. He was a small, dark-skinned man, wearing blue serge trousers, a white shirt, a carefully knotted necktie, and black shoes. Charles's arms and hands were bound tightly to his sides with white straps. As the witnesses watched, Mahoney took another strap and bound Charles's legs together.

Another of the journalists present, John Caffney, wrote a remarkable essay shortly after the execution, in which he recorded details of the event, and some of his reactions to it.⁴ He recounts,

As [Mahoney] finished his task, he stepped back a little; is there anything you'd like to say, Nelson? he asked. We listened as we had never thought a man could listen, listened till our ears would burst, listened while we expected him to say nothing, but hoped he would; we expected a brief negative nod of the dark head. But he

spoke, his voice a half-whisper, barely more: I am innocent of killing my mother-in-law, he murmured. I don't want to hang; I still say I am innocent. His head was bowed forward, you could feel it was the hot tears in his eyes, you could feel his trembling on your own body.

Mahoney pulled a black knit hood over Charles's head, and then took the nose off a peg on the wall, and placed it over Charles' hooded head. Then he stepped back a step, and raised his arm, and softly said, "OK."

Gaffney recorded his own thoughts at that moment:

Had I any thought of a man, a criminal, about to pay for his crime? Any thought of a disreputable and dangerous killer about to give his life for one he had taken? No; nothing like that. Only that a man was about to die, that there, almost within reach, was a man, a man like ourselves; a young man who somewhere had a wife, who had once slept an untroubled sleep, had only the day before laughed and hoped for life. I was aware of some feeling as I sat there then, some unusual feeling that was strange to me; then it was vague, and there was not time to fathom it. But now I know: it was the certainty, the sureness of it. I know for the only time in my life that within minutes this man who now lived as I lived would be dead, a stone, lifeless, cold and stiff. Men have been stricken with fatal diseases and we have known they will die; we have held our buddies in our arms at the front and watched the last breaths spend themselves; but even then there has been hope, and when not hope, the awareness that death might stay away yet awhile. Would it come now, or later, perhaps? But none of that now; nothing less than a miracle can save this fellow, and there are no miracles in this life; we know no other. Soon he will be a stone.

Deputy Marshal Walter Hellan flipped a switch on the wall and there was a clicking sound. Gaffney recalled:

Then, the clicking stopped with the louder sound of the trap's springing. There it was: the square of wood on which he stood fell away and he fell toward the pit, fell then swung. Not a movement, just swing, turning, turning, now right, now left; like a stone on a string, a bit of paper on a cord, held in the air for a kitten to leap at.

The marshal went downstairs to help the doctors climb up a pile of boxes from the floor below to determine whether or not Nelson Charles was still alive. "Dead," was all the second doctor said. The witnesses left.

Al Anderson remembered what happened

Juneau, Alaska April 14th, 1950

we, the undersigned citizens of the United States, and residents of Juneau, Alaska do hereby certify that we witnessed the execution of Eugene LaMoore by hanging at the Federal Jail in Juneau, Alaska, on April 14th, 1950 at 5:15 P.M.

<i>Thomas L. Buzington</i>	Guard
<i>Harley Leach</i>	Guard
<i>Ed Brunson</i>	Guard
<i>Nelson W. Kelly</i>	Guard
<i>Rev. Ralph E. Baker</i>	Minister
<i>Frank D. Coomans</i>	Witness
<i>Ernest E. Danner</i>	Witness
<i>Bernard Spilke</i>	Witness
<i>Father Sundborg</i>	Minister
<i>Eugene Thorsrud</i>	Assoc. Press
<i>Charles</i>	Doctor
<i>Mike Pasich</i>	Witness
<i>Michael J. Pasich Jr.</i>	Witness
<i>Robert N. Drueman</i>	Press
<i>Roland V. Edwards</i>	Guard
<i>Mr. D. M. ...</i>	U.S. Marshal
<i>LeRoy Thompson</i>	Deputy U.S. Marshal

Witnesses to the execution of Eugene LaMoore.

after the hanging, dropping his voice to quote Mahoney:

And afterwards, I'll never forget, the United States marshal congratulating Walter Hellan on the "... much job, well done." And I think after that, I went downtown to a bar and had a good stiff drink, then came back to my office at the Alaska Daily Press, wrote the story, and everybody stayed away from me because they knew I had enough on my mind.

GEORGE SUNDBORG recalled emerging after the execution from the dark jail into the rainy daylight, and seeing a "... very striking scene, one of the greatest, most striking scenes of my life." There was a ring of several hundred people around the jail:

I was dumbstruck to see that the entire ring — it was on a hillside, and every point of vantage where a person could stand was filled with a Native Alaskan, an Indian. You've probably seen the movies in the old days where the wagon trains are going through a valley, and all of a sudden an Indian will appear on the horizon, and then there would be nothing but Indians all the way around. Well, that was the way it

was on the day of the execution.

The crowd was "absolutely silent."

Nelson Charles had asked that any funeral be conducted by the Salvation Army. He was buried in an unmarked grave in Evergreen Cemetery. His wife was in Ketchikan at the time of the hanging. According to the newspaper, she was serving time on a charge of being drunk and disorderly. He left behind a young daughter as well.

Austin Nelson and Eugene LaMoore

AUSTIN NELSON AND EUGENE LAMOORE were separately convicted of the 1946 murder of a Juneau convenience store owner named Jim Ellen. Both Nelson and LaMoore were African-American.

Jim Ellen owned a small grocery and liquor store on Willoughby Avenue, in the rougher area of Juneau. He lived in the back room of the store premises. A 53 year-old bachelor, he was a Greek immigrant who had come to the United States as a child in 1909, and had been in Juneau since about 1925. Ellen was a veteran of World War I and a member of the

American Legion and the Juneau Elks Lodge. He was a hardy man—and powerful. Stores like his were then, as now, a common target of thieves. The local newspaper reported several previous robberies of Ellen's store in 1937, 1938, and 1944. In one of those instances, Ellen had successfully resisted two armed robbers, who he chased away after a struggle.

The murder of Jim Ellen hit a nerve in post-war Juneau. One former resident, Isabelle McLean, recalled anxiety in the town:

It was just after the war, you know, and there had been a lot of unsettled feeling in Juneau because there were many strangers, many people who had worked various construction jobs during the war, were drifting in and out.

ELLEN'S BODY was found on the floor of his store, on the morning of December 22, 1946. His throat had been cut. Merchandise was scattered around the store, and all of the paper money from the cash register was gone, with one exception. The robber had left on the store counter a check signed over to Jim Ellen by one "Austin Nelson." Austin Nelson was a 24-year-old black man, who had worked at various odd jobs around Juneau. Nelson was immediately arrested on suspicion of murder.

Trial was set for April 10, 1947. Because it was a homicide and Alaska still a territory, the investigation was done by the Federal Bureau of Investigation. Agents interviewed twenty witnesses, and forwarded evidence to a scientific laboratory in Washington, D.C. for testing and analysis. FBI records show that agents sent a radiogram to Washington, stating that they wanted to secretly record conversation between the accused man and his lawyer, which wouldn't be hard, they said, because the elderly lawyer was very deaf, and any conversation with him would have to be pretty loud. Washington responded that the request was ill-advised.

Austin Nelson, in contrast, had no opportunity to conduct an investigation into the charges filed against him. Counsel was not appointed to represent him until ten days before the scheduled trial. Because it was a capital case, the court could appoint two defense lawyers. The first appointment was Henry Roden, one of the grand old men of Alaska law, who had himself served as the compiler of law in the territory. At 73, however, Roden was past his prime, too frail, by one report, to walk up the steep hill to the jail to see his client. Roden told the Court that eight days would be long enough for him to prepare his client's defense, but asked that the court appoint someone to assist him. Joseph A. McLean, who had passed the bar exam just

two months earlier, was appointed as his co-counsel. McLean had studied for the bar by serving for a period of years as an intern to Herbert "Bert" Faulkner, a prominent attorney in Juneau.

NELSON'S TRIAL BEGAN ON APRIL 14, 1947, with the picking of the jury. Seven of the twelve jurors who were chosen for the trial had just served together on another murder jury the week before. Argument by the



*"Like most of the men
hanged in Alaska, Nelson
had no money with which
to pay for an appeal,
and there was no provision
for a public lawyer
for appeal."*



United States Attorney and introduction of evidence began on the next day, and consumed a total of four days.

The main evidence against Nelson was the testimony of a woman named Marguerite "Dolly" Silvers. Silvers had, in fact, been held in jail for a month before the Nelson trial on a high bond, on the grounds that she was a material witness. Such an arrest was extremely unusual, according to one former territorial prosecutor. "The basis for it in this case is not known."

Silvers testified at Nelson's trial that she had seen Austin Nelson in Ellen's shop late on the night of the murder, when she was walking back home after the bars had closed.

Other witnesses testified that Nelson had once owned a straight-edged razor, that a case for such a razor had been found in his rented room, that he had small bloodstains on his clothes, and that he had been seen on Willoughby Avenue on the night of the killing. The government submitted as evidence for the jury's examination a photograph of Ellen lying in a pool of his own blood with his throat cut, a photograph of Ellen lying in the morgue, the blood soaked shirt and pants

that Ellen had died in, and a glass vial containing Ellen's blood. The evidentiary value of the vial of blood is unknown.

Henry Roden made no opening argument on behalf of his client. Nelson put forward an alibi defense to the effect that, although he had been downtown that Saturday night, and had been walking on Willoughby Avenue, he had nothing to do with Ellen's death. One of the witnesses gave highly persuasive testimony in support of Nelson's alibi. He stated that Nelson had been with him for much of the evening, spending some time at a downtown bar, and visiting friends for a drink at a local hotel, and walking down the Avenue to try to collect a debt from a friend. That witness was Eugene LaMoore, a black, 42-year-old fisherman married to a Juneau Tlingit woman with whom he had three young children. As remembered by one of the jurors at Nelson's trial, LaMoore's testimony was detailed and credible:

He made a tremendous witness. He was just straightforward. Looked at everybody, looked the prosecuting attorney right in the eye, straightforward answers, no hesitation, very sincere. You couldn't help but believe him.

But LaMoore's credibility with the jury was short-lived. Without advance notice, the prosecutor asked LaMoore if, twenty years before, he had been convicted of a felony in California. LaMoore denied it. The next morning, LaMoore returned to the courtroom and corrected his testimony of the previous day, admitting to a 1927 conviction. As a young man, LaMoore had, in fact, been convicted of robbery.

LaMoore's failure to admit the conviction, however, destroyed his credibility with the jury regarding everything else he had said about Austin Nelson. Even 50 years later, the scene was vivid in the mind of one of the men who served on Nelson's jury:

As far as LaMoore was concerned, I think the rest of the jury felt like I did. They were stunned when [United States Attorney] Gilmore brought him back in because I think we believed the guy when he testified the first time around. He was just ... -- if anybody could have saved this guy's neck, it was [LaMoore].

Nelson's lawyers argued that the case was purely circumstantial, that the Government had never explained the problematic facts that none of the money taken from the store was found, that no murder weapon had been found, and that the murderer's bloody footprints, which had been found on the linoleum floor of the store, and cut out by the police, had never been introduced by the prosecutor.

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Capital Punishment

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After 2 1/2 hours of deliberation on Friday, April 18, the jury returned with a verdict of guilty. As required by law, the jury was also charged with deciding whether Nelson should be sentenced to life in prison or sentenced to hang. The jury's verdict was death.

Before imposing sentence, Judge Pratt asked Austin Nelson if he had anything to say on the subject. Nelson's answer was transcribed by the court reporter:

Yes I have, your Honor. Your honor, I was prosecuted and condemned for a crime I have not committed. I haven't the least idea of what it is all about. I knew nothing about it. I guess I have been prosecuted for somebody else. I am innocent. That is all. ... If it is possible for a new trial, there is an attorney I can get to take the trial. He isn't here, but I am positive he will take it to prove my innocence, because I absolutely don't know anything about it.

Forced to respond to this disconcerting dialogue, Judge Pratt answered:

The jury has found you guilty, Mr. Nelson, and they made that finding without the recommendation that you were guilty without capital punishment. Having so found you guilty, there is only one sentence the Court can pronounce, and that is the sentence of death.

Therefore, it is the sentence and judgment of the Court that you suffer the death penalty by hanging by the neck until dead, upon the 1st day of July, 1947. Please sit down.

Nelson persisted:

Your honor, is there no way for me to get a new trial whatsoever?

The Judge told him to ask his attorney, and, again, to sit down.

Nelson's conviction was not appealed. Like most of the men hanged in Alaska, Nelson had no money with which to pay for an appeal, and there was no provision for a public lawyer for appeal.

On the day Eugene LaMoore came back into court to change his testimony regarding the conviction twenty years earlier, he was arrested by the U.S. marshal and charged by the local FBI agent with committing perjury. The fact that he had retracted that statement the following day was disregarded. Bond on the perjury charge was set at \$10,000, a very high bond in 1947.

LaMoore was incarcerated in the federal jail, in a cell by himself, shackled in leg irons - a short length of chain with iron bracelets on each side which were locked around each of his ankles, and later shackled to a ball and chain. He was repeatedly interviewed by the FBI agent and by local law enforcement

authorities, not about the perjury charge for which he had been charged and imprisoned, but about the murder of Jim Ellen. LaMoore denied any involvement.

The government attorneys and investigators continued to interrogate LaMoore, who had no attorney nor any ability to obtain an attorney. Shortly before Nelson was to be hanged, they brought Nelson and LaMoore together in the jail for the first time since LaMoore's arrest. Their efforts paid off: On July 1, 1947, the day that Austin Nelson was supposed to die, Eugene LaMoore signed a typed confession stating that he, too, had participated in the robbery of Jim Ellen, and that, during the robbery, Nelson had killed Ellen, although LaMoore had begged him not to.

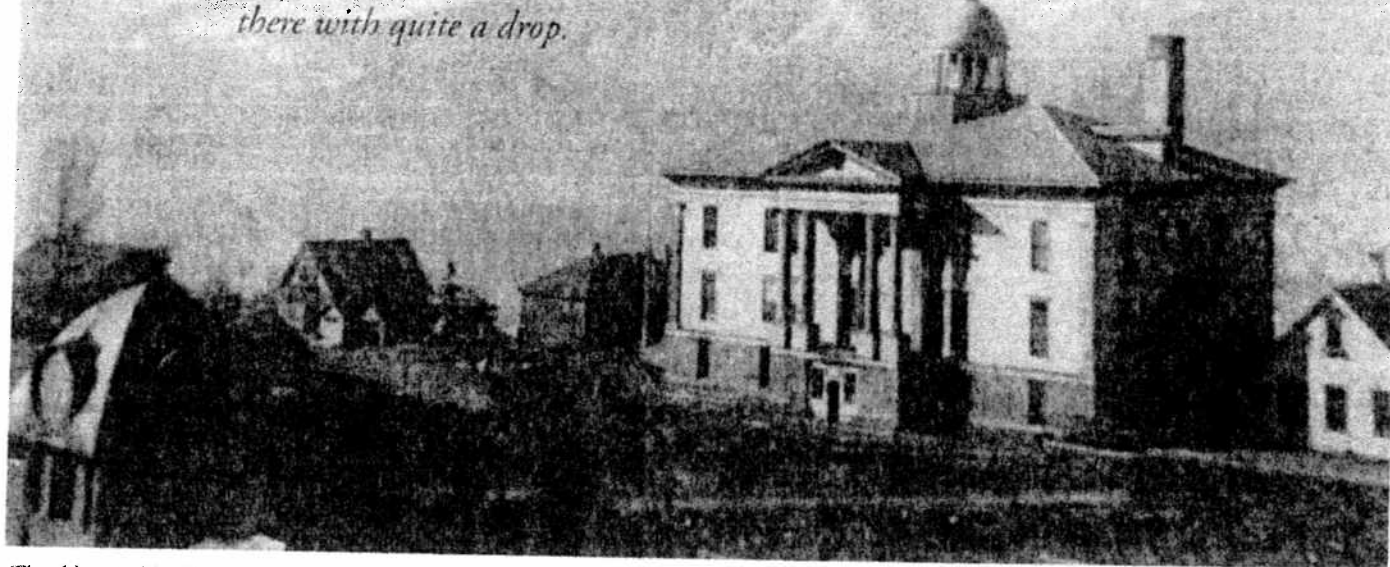
Nelson's hanging was postponed; the Government said that he was now a necessary and material witness against LaMoore, who was charged with first degree murder. A grand jury indicted LaMoore for murder on January 6, 1948, nine months after he had been jailed on the perjury complaint. On January 12, Henry Roden and Joseph McLean, the same two lawyers who had represented Austin Nelson, were appointed to represent LaMoore. LaMoore's trial began two weeks later, on February 2, 1947. It took three days.

The government's case against LaMoore hinged completely on the confession he had given at the federal jail. No murder weapon was introduced. No money from the robbery was introduced. Two witnesses testified that, on the night of Ellen's murder, LaMoore was wearing a coat that he didn't have any longer. One policeman testified that there had been bloody footprints on the floor of Ellen's store, which looked to be about the same size as LaMoore's feet. But the linoleum flooring with those footprints that had been cut out by the police on the day of the murder was never introduced by the government, and there was no explanation offered for its absence.

The only critical evidence against LaMoore was the confession. But at trial LaMoore retracted the confession. He testified that after he had been implicated by Nelson (which only occurred in the final days before Nelson's scheduled hanging), the two had been brought together in the jail, and Nelson had burst into tears, apologized for telling lies, and had begged for help saving his life:

[Nelson] would not sit down. He stood behind his chair and cried and called himself many dirty names. He told me to forgive him, 'but help me save my life.' It hurts me to say this. He said, 'Help me save my life. It will come out all right.'

The Marshal's office had decided they would do the hanging under one of the [outside] stairways because there was an open space there with quite a drop.



The old capital building housed the federal jail and the marshal's residence. It was eventually torn down to make room for the new state office building.

LaMoore said that he decided to help Nelson. At trial, in response to questioning by the prosecutor about whether or not his confession was true, the following exchange took place:

Q: You told [Deputy U.S. Marshal Hellan] a lie, did you?

A: *That was a lie. He asked me to swear to it, and I refused.*

Q: Did you mean to lie to him?

A: *To help that boy save his life if possible.*

Q: And your admitting to Mr. Hellan that you participated with him in the robbery and the murder, you thought you helped Austin Nelson by that?

A: *He is alive, isn't he?*

Q: Well, yes.

A: *It undoubtedly helped.*

Q: Your making that statement got him a stay of execution?

A: *That man was framed, and you know it.*

Q: Just answer the questions."

Then the prosecutor asked:

Q: Didn't you think you were taking a chance to help?

A: *I take a chance walking across the streets.*

Q: You were willing to take that chance?

A: *I have took chances before."*



"I remember it was not a nice day. There was a feeling of malaise, or dourness, or maybe the best word is the German word, angst."



LaMoore also claimed that his confession was obtained by a ruse. His defense attorneys put forth uncontroverted evidence that LaMoore's confession was only obtained after Hellan called on one of the most prominent lawyers in Juneau to come down to the jail and talk to LaMoore in connection with the unfired murder charge. That lawyer was Herbert L. "Bert" Faulkner. Bert Faulkner was probably the most famous lawyer in Juneau at the time; he represented the banks, fish processors, and other big businesses. Before he

had entered the practice of law, Faulkner had been a deputy U.S. marshal. He was close friends with George Folta, the newly appointed federal judge, and he had close ties with the federal prosecutor's office.

According to LaMoore's testimony, Bert Faulkner met with LaMoore privately, and then they called in Hellan, and Bert Faulkner sat down with LaMoore and typed the statement that LaMoore dictated.

LaMoore testified that he had believed Faulkner to be his attorney, and that when Faulkner told him to give the statement, he did so.

Faulkner denied LaMoore's testimony. He testified that he told LaMoore he would not be his attorney, but that he was just coming to see him because he had been requested to do so.

LaMoore's junior attorney, Joseph McLean, had expected that Henry Roden would take on the venerable Mr. Faulkner, since Faulkner was a close friend of McLean's father, as well as McLean's teacher and mentor. But when the moment for cross-examination came, Roden poked McLean in the side with his elbow, and told him to "go to it." McLean asked a few weak questions of his teacher, and sat down.¹⁴ He never got before the jury the fact that Faulkner was a close friend of Deputy Marshal Walter Hellan, and

EUGENE LAMOOORE HANGED

Convicted Slayer Goes to Gallows Here Pleading He Is Innocent

Pleading his innocence to the last, Eugene La Moore alias Austin Rollap, 42-year-old convicted slayer, went to the gallows at the Federal Jail here this morning for his part in the murder and robbery of groceryman Jim Ellen.

La Moore, a slim 5 feet 10 inch tall Negro, was dropped through the trap at 5:16 a.m., as Protestant and Catholic ministers spoke final words of prayer for his soul. The condemned man faced his hangman bravely and calmly as he made his final peace with God.

"I did not kill Jim Ellen," he began his final speech. "I have never taken innocent blood," he declared but indirectly implied that he had killed on other occasions. La Moore had a long and colorful criminal record.

Law enforcement officers explained that La Moore honestly believed that he had not killed Ellen at the victim's grocery store on Willoughby Avenue, Dec. 22, 1946. They said, however, that all evidence proved that he had hit Ellen on the head and that his partner Austin Nelson, had done the actual killing by slitting the victim's throat with a knife. Nelson had implicated La Moore in the crime before he himself went to the gallows here on March 1, 1948.

La Moore was convicted by a local Federal District Court jury in February 1946 but his execution was delayed until today by the long process of appeal. The execution was final at 5:31 a.m., when Dr. C. C. Carter pronounced him officially dead. He is survived by a wife and three children, all residents of Juneau.

Administering the last rites were Rev. Ralph E. Baker, of the Bethel Tabernacle and the Rev. Leo J. Sweeney and the Rev. John E. Garr both of the Catholic Church. Extermination later today was private.

La Moore was the ninth man to be legally executed in the history of U. S. government in Alaska. This was the third in Juneau.

(Continued from page 1)

that Landner had close ties with the marshal's office from his own early years as a deputy marshal, or that Landner had close ties with the prosecutor's office even then.

Dolly Silvers, the witness who had been jailed for a month before the Nelson trial to make sure she was available, was called by La Moore's attorney to testify. She stated that she had walked down Willoughby Avenue on that night, and had seen into the lighted windows of Jim Ellen's store, where she saw Jim Ellen with only one other man, Austin Nelson. No one else was there, she said. This was the same thing she had stated at the request of the prosecutor at Nelson's trial. Now, however, the same testimony was unwelcome by the prosecutor. He attacked her, suggesting that she was a drunk, and unreliable.

Austin Nelson had been kept alive at the request of the prosecutor on the grounds that "it would be impossible to prove a murder charge against La Moore without the testimony of said Austin Nelson." He was expected to be "the Government's star witness" by the Juneau newspaper, in its first report of the La Moore trial. Although he was alive in the federal jail across the street from the courthouse in which La Moore's trial was held, Nelson was never called to testify at the trial by the government. No explanation for his absence was made. The government never told the jury (and apparently never told the defense either) that after Nelson's trial, Nelson directed agents to \$1,181 in the bathroom ceiling in Austin Nelson's rooming house. The FBI also found a straight-edged razor there. La Moore's lawyers could have used this information to argue that Nelson, having all the money in his possession, was the sole perpetrator.

During deliberations the jury sent the judge a note asking whether or not the judge could decide on the punishment. Judge Folta responded with a note stating that the jury had to do that. A death verdict was returned five hours later. On hearing the verdict, Eugene La Moore burst into tears.

On February 10, less than a week after the end of the La Moore trial, the court scheduled the execution of Austin Nelson for March 1.

Nelson was hanged in the federal jail at 5:40 on the morning of March 1, 1948. He fought all the way from his cell to the scaffold, according to witnesses, and blacked the eye of Deputy U. S. Marshal Sidney Thompson. Walt Sinn, a city policeman who assisted with the execution, recalled how Thompson was behind Nelson, and leaned forward when Nelson leaned forward, and then was surprised by Nelson's suddenly throwing his head back-

ward, to strike Thompson in the face.

After Nelson was put on the scaffold, Sinn descended into the basement, below the scaffold. He waited for Marshal Mahoney to touch a switch above him, which illuminated a light bulb below. At that signal, Sinn was to pull the rope opening the trapdoor.

When the light bulb flashed, Sinn tripped the trapdoor. He recalled that Nelson dropped down right in front of him.

There was no reflex action whatsoever, except I can remember hearing fluid hit the floor, and it turned out of course that he was ... urinating. It was very quiet except for that.

He remembered being surprised at how long it took before Nelson's heart stopped beating:

A doctor, I can't remember if it was Doctor Whitehead or another of the local doctors was there with a stethoscope and remained there, and as I remember, the heart beat for quite some time it seems to me, eleven minutes or something? I was surprised at what good condition that man was, he was a strong and young man, so possibly that was why.

One woman, a young social worker in Juneau at the time, whose husband would later be one of the first State Troopers in Alaska, remembered the day on which Nelson was hanged:

To me, it seemed that the hanging cast a pall over the whole town. I remember it was not a nice day. There was a feeling of malaise, or dourness, or maybe the best word is the German word, angst. That was my impression at the time.

NELSON WAS BURIED in an unmarked grave in Evergreen cemetery. One man, now a hundred years old, remembers the burial.

I was pallbearer for both of those boys (Nelson and La Moore). The funeral was right out there in that little cemetery in Juneau. There was a priest or a minister. Nelson, he was Catholic. Eugene La Moore, I don't know what religion he was. But they buried him out there.

We didn't take the Catholic in church. When we goes up there, my car was taking the pallbearers. The hearse had the body. The priest said, 'There's no need taking them in the church, nobody's there except the hearse driver.' We gets in my car and goes out there, and the father puts cross on his grave. And that's the truth.

AN UNSUCCESSFUL APPEAL was brought from Eugene La Moore's conviction by Joseph McLean, who received no fee or reimbursement of the cost for traveling to San Francisco to argue the case.

La Moore was hanged in the federal jail on April 14, 1950, just after 5:00 a.m. Two of the men who assisted in the hanging were

drifted from the Juneau city police beat that they usually walked at night. "Was LaMoore trembling?" I asked one of the former patrolmen. He answered, with what seemed like a touch of remembered bitterness, "Not any more than the rest of us." Even Marshal Mahoney looked shaken up, he said. Once LaMoore was standing on the scaffold, the two city patrolmen both retreated down the corridor to the furthest point from the actual execution, unwilling witnesses to the final act. The widow of the other patrolman who had been there that night recounted how disturbing the whole thing had been to her husband. She asked, "Doesn't anyone think about the people who have to do these things?"

After the hanging of Eugene LaMoore, the U.S. marshal's office made arrangements with the State of Washington. If there were to be any more executions, they would be done there, and not in Juneau.

The marshal's office had had enough.

Like Nelson Charles and Austin Nelson, Eugene LaMoore was buried in an unmarked grave in Evergreen Cemetery. His wife put her two sons and daughter into an orphanage. Her family in Juneau would have nothing to do with them. She died young, perhaps of alcohol-related complications. According to the recollection of LaMoore's daughter, LaMoore's sister adopted two of the children, but her request to adopt the third child was denied, on the grounds that the third child was so light-skinned as to appear white, and she was black.

BETWEEN 1939, when Nelson Charles was hanged, and 1950, when Eugene LaMoore was hanged, there were many other homicides in Juneau and in Southeast Alaska, but none of the other wrongdoers was executed. Forrest Smith was sentenced in 1939 to serve

20 years for murder in a dispute related to Smith's wife, Guy Prince, a rich man who lived off the income of a trust fund set up for him by his wealthy California family, got 20 years for strangling his wife with a nylon stocking in 1946. George Meeks, convicted of the robbery and murder of a construction worker, was sentenced to life in prison in 1948. All of these men were white.

There were no more hangings in Juneau or anywhere else in the Territory, even during the seven year period before the death penalty was abolished by the Legislature in 1957. ■

Averil Lerman is an attorney whose practice focuses on criminal appeals. She is on the Humanities Forum's Speaker's Bureau, and has lectured on a variety of topics including historical research, the death penalty, and racial issues in public policy. She lives with her family in Anchorage.

Endnotes

1. Kermit S. Kynell: *A Different Frontier: Alaska Criminal Justice, 1935-1965*, University Press of America, Lanham, MD, 1991.
2. Only two of the men hanged during this period were white. Fred Hardy, executed in Nome in 1902, and Homer Bird, executed in Sitka in 1905.
3. After the executions of Hardy and Bird, three men were hanged in Fairbanks: Maïlo Segata, in 1921; John Doe Hamilton in 1921, and Constantine Beaver, in 1929. After that time, there were no more hangings in Fairbanks.
4. Telephonic interview with Vic Eisenet, March 1994.
5. Interviews with V.A., U.S., T.S.
6. Per remarks made by Juneau attorney Norman Bartfield at a memorial service in honor of A.H. Ziegler on May 28, 1972. Transcript of service housed with historical records in the visiting judge's chambers in the Old Federal Building in Anchorage, Alaska.
7. Interview with G.S., June 2, 1994, in Seattle, Washington.
8. *Daily Alaska Empire*, 7, 1939.
9. A. Lerman "The Trial and Hanging of Nelson Charles," 15. *Alaska Justice Forum* No. 1, University of Alaska Anchorage, Spring 1996.
10. Interview with George Sandborg, in Seattle, June 1994.
11. *The Daily Alaska Empire*, November 7, 1939.
12. *The Daily Alaska Empire*, November 10, 1939.
13. *The Daily Alaska Empire*, November 10, 1939, p. 1.
14. This essay, titled "Thoughts Inspired by an Execution," was recently published as the epilogue to *Frontiers of Justice: The Death Penalty*, edited by C. Whitman & J. Zimmerman, Biddle Publishing Co., Brunswick, ME (1997).
15. Tony Simon, the owner of a similar store in Douglas, was killed in 1942 during an apparent burglary. A Native man, William Paddy, was convicted of murdering Simon, and was sentenced to hang by the trial jury. His death sentence was commuted to life after a successful request for clemency in March of 1945.
16. *The Daily Alaska Empire*, November 26, 1937.
17. Isabelle McLean, interviewed in Seattle, Washington in June, 1994.
18. Telephone interview with Judge Sebastian Bucklew, in September, 1995.
19. Interview with Curtis Shattuck, October, 1994.
20. By contrast, bond was set at \$3500 when a perjury charge was brought against Deputy U.S. Marshal Salme Thompson in 1953. Thompson was charged and convicted for lying on a grand jury investigating corruption in Ketchikan. U.S. Attorney Pat Gilmore, Jr., the prosecutor who obtained death verdicts against Nelson and LaMoore, was barred from participating in the grand jury investigation by Federal Judge George Foltz. Gilmore left the U.S. Attorney's Office shortly thereafter, and returned to his home in Ketchikan as described by Judge James Fitzgerald in an interview in June, 1994. According to one of Gilmore's fellow Ketchikan lawyers, Judge Foltz treated Gilmore with barely restrained contempt after those events.
21. Testimony of Eugene LaMoore, transcript of trial of Eugene LaMoore, Case No. 2472-B, p. 122.
22. LaMoore trial transcript, p. 126.
23. LaMoore trial transcript, p. 125.
24. Interview with Joseph A. McLean, June 1994 at his home in Seattle, Washington.
25. Affidavit of U.S. Attorney Pat Gilmore, Jr., filed on June 30, 1947 in connection with the motion to stay the execution of Austin Nelson.
26. *The Daily Alaska Empire* February 2, 1948.
27. The reasons for the decision not to call Nelson are not known. It could be speculated, however, that the prosecutor was not sure what Nelson would say, since the only time that Nelson had ever admitted that he himself was involved in Fllen's murder was immediately preceding the day first scheduled for his execution. At all other times, including the day on which he was in fact hanged, Nelson claimed he was innocent. Such a witness might not further the government's case against LaMoore, especially where there was a confession already signed by LaMoore.
28. *The Daily Alaska Empire* February 5, 1948, p.1.
29. Interview by telephone with Harriet Botelho, in October, 1994.
30. Telephone interview with Jasper Frambaugh, in February, 1995.
31. Interview with P. C., in October, 1994.
32. Telephone interview with Gladys Bvingtoia, in Anchorage, October 1994.
33. Interview with Hartley "Pete" Crosby, at his home in Juneau, October 7, 1994.