

# State ended death penalty in 1853

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Hangman's noose . . . gas chamber  
. . . electric chair . . .

Relics of the past? You can bet your life capital punishment isn't a dead issue.

But the fact that Wisconsin hasn't had it since 1853 can be traced directly to the strong fight against it by a young man who lived in Eagle. He ran for a seat in the state Senate in 1852 so he could carry on his battle.

He was Marvin Henry Bovee, Democrat, farmer, bright and zealous penal reformer. After the Wisconsin legislature outlawed the death penalty, Bovee traveled extensively around the country for the next 35 years in his anti-gallows campaign.

He wrote a book on the subject, "Reasons for the Abolition of Capital Punishment," 328 pages of letters, testimonials and comment published in Chicago in 1873. A copy is available at the Waukesha County Historical Museum.

The story of capital punishment in Wisconsin begins with the territorial statutes of 1839 (Wisconsin became a Territory in April 1836 and a state in 1848). The first paragraph said:

"That every person who shall commit the crime of murder shall suffer the punishment of death for the same."

And anyone who killed someone in a duel was considered guilty of murder, the statute added.

The ninth paragraph said:

"The punishment of death shall in all cases be inflicted by hanging the convict by the neck until he be dead . . ."

After Wisconsin became a state, the Statutes of 1849 provided for the death penalty only for first degree murder (premeditated).

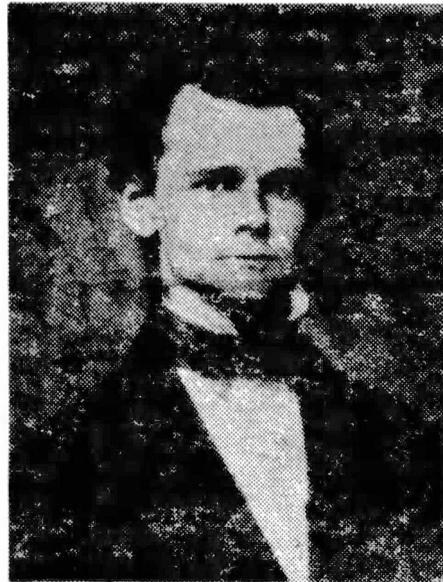
Nobody knows how many persons were executed while Wisconsin was a forest-covered territory. But court records show that, aside from military cases, there were four legal hangings from 1836 through 1852.

Two Indians were hanged during

that time. Their names are unknown. One was executed in 1837 at De Pere for killing a fur trader, Pierre Pauquette, at Portage. The other murdered a Milwaukee land developer, Ellsworth Burnett.

Judge Charles Dunn in Lancaster sentenced Edward Oliver to death in October 1838 for killing John Russell of Cassville.

The last legal execution in Wisconsin was that of John McCaffaray, a Kenoshan who threw his wife



Marvin H. Bovee

Bridget into a cistern July 23, 1850, and held her under water until she drowned.

Her body was recovered right after the murder, and John was tried in May 1851 after a long series of court delays.

On May 23 he was convicted of first degree murder. On Aug. 21 he was hanged in Kenosha to the accompaniment of shouts from a crowd estimated at between 2,000 and 3,000. A motive for the slaying was never established, despite days of testimony before a jury.

In 1851, Marvin Bovee was 24 years old. Born Jan. 5, 1827 to Jacksonian Democrat Matthias J. Bovee and his wife, he came to Waukesha County with the family in 1843. His

father, a lawyer, had served in the New York legislature and as a representative in Congress in 1836.

Matthias bought more than 1,000 acres in Eagle Town, some of which still is occupied by Bovees. One is James "Jarnie" Bovee, 78. His father, Marvin W., was a nephew of Marvin H., the early anti-gallows crusader. James and his son, J. Marty, 43, and their wives live on land at Highways 99 and NNN.

Another relative in this area is James' sister, Mrs. Katherine Bovee Howard, 76, who lives on E. Broadway in Waukesha.

Marvin H., who had five brothers and three sisters, taught school for a time in Eagle Town. He first held public office in 1852 when he was chosen town chairman.

He was elected County Board chairman when it was organized.

On Sept. 10, 1852, Waukesha County Democrats chose him in a caucus to run for the state Senate. Henry Danforth Barron, editor of the weekly "Waukesha Democrat" and for whom Barron County was named, supported Bovee.

Barron also was a New Yorker, as were many men then in the legislature.

Bovee defeated the Fourierite land reform candidate, H. H. Van Amringe of Mukwonago, and the incumbent Whig candidate, Dr. E. B. West.

The Democrats were in the majority in the 1853 session of the legislature. Bovee and the other Waukesha County senator, G. R. McLane, agreed on abolishing capital punishment.

Christopher Latham Sholes, inventor of the typewriter and editor of the Kenosha Telegraph, and who had covered the McCaffaray trial and execution, was in the Assembly. He had started an unsuccessful fight there against the death penalty in 1852, and was ready for another go at it.

Another helper in the cause was Edward Lees, assemblyman repre-

senting Ottawa, Mukwonago, Eagle and Genesee towns. He and Bovee combined forces to write the proposed legislation.

Besides the Kenosha paper, they were supported by the Waukesha Democrat, the Wisconsin Argus of Madison and the Milwaukee Daily Free Democrat.

Lees introduced Bovee's repealer bill in January 1853, and it was passed, 36 to 28, Mar. 9. On July 8, the Senate passed it, 14 to 9, and two days later Gov. Leonard Farwell signed it as Chapter 103 of the Wisconsin Statutes. It made life imprisonment the penalty for first degree murder and abolished the death sentence.

Bovee never ran for office again. For five years after his legislative victory, he concentrated on farming and keeping in touch with penal reformers around the country. By the winter of 1858-59 he was crusading in Illinois. Public executions were outlawed there in 1859.

In 1859-60 Bovee carried his battle to his native New York in a campaign that lasted almost five months. He was backed by editor Horace Greeley of the New York Tribune, William Cullen Bryant of the Evening Post and the Rev. Henry Ward Beecher. New York ousted the death penalty by 1862.

Bovee's crusade also took him into Massachusetts, where he won the personal support of Henry Wadsworth Longfellow.

In 1862, at 35, Bovee married Laura Doud of Amsterdam, N.Y., and they became the parents of Maude and Rollin J. Bovee traveled a bit for his campaign during the Civil War, but devoted more time to it and his book when the war ended.

In the late 1870s, Bovee sold most of his farming interests in Eagle Town and moved his family to Whitewater. From then on his principal campaigning was for prison reform, and he kept his hand in Democratic Party affairs.

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Bovee died May 7, 1888 in Whitewater at 61. The local newspaper's obituary said the strain on his mind and body had become too great. "Melancholia came on, with but occasional improvement, his strength steadily failing until the end," it said.

To judge from the current national upsurge of public sentiment in favor of capital punishment, much of his work outside Wisconsin was in vain.

A recent Harris poll showed 59 per cent of those questioned favor reinstatement of the death penalty and 63 per cent thought it was a more effective deterrent to crime than any other form of punishment.

Nineteen states that once had outlawed capital punishment have reinstated it,

and seven others are about to vote on it.

Wisconsin's legislators haven't shown much enthusiasm for reviving capital punishment.

The state Senate Judiciary-insurance Committee voted 3 to 0 in January to recommend the full Senate postpone a death penalty bill indefinitely. That, in effect, kills it. Sen. Roger Murphy, R-Waukesha, was one of the three who voted.

A bill calling for a state referendum on the death penalty is before the Assembly State Affairs Committee. Chairman Ed Jackamonis, D-Waukesha, says he doubts the committee will recommend a referendum.

There has been "no great public demand" for the revival, so the committee has allowed the bill to languish, he said.