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### ROBERT BALLARD BAILEY

#### Flight to avoid prosecution for drunk driving took him to the brink of execution for murder

**On October 22, 1949**, 56-year-old Rosina Fazio was robbed of cash and diamond jewelry, badly beaten, and left for dead in high weeds beside a street in Charleston. She was found unconscious and taken to a local hospital, where she died on October 25. Before she died, according to her son, Joseph Fazio, she identified her assailant as "Bob, the glass cutter." Based on that allegation a warrant was issued for Robert Ballard Bailey, a 35-year-old Charleston glazier, who had hurriedly left town the day of the murder. Ballard was arrested on October 28 in Palatka, Florida, and charged with the crime.

After his arrest for the Fazio murder, two witnesses reported having seen Fazio in a car driven by Bailey at 3:30 p.m. on the day of the crime. It turned out, however, that at the time, Bailey was several miles from the scene. He was in fact being pursued by the police for drunk driving, and the officers involved in the chase fired several shots into the back of his car, but didn't stop him. He apparently fled only to avoid a drunk driving charge, but to police and prosecutors his flight was further evidence that he had committed the murder. Bailey had been convicted of auto theft in 1933, armed robbery in 1938, and unarmed robbery in 1946 — impulsive crimes, usually committed when drunk, carried out ineptly, and never involving personal violence to the victims.

Bailey was returned to Charleston and tried for first-degree murder. Although the statements from the eyewitnesses fluctuated and there was no evidence of a robbery, with a convicted felon in the dock who had suspiciously fled the state, the jury believed the witnesses over Bailey's alibi defense. On March 9, 1950, Bailey was convicted of first-degree murder, mandating an automatic death sentence under the West Virginia law then in force. The trial judge, Jackson Savage, not convinced of Bailey's guilt, was in tears as he pronounced the mandatory death sentence.

The next day, Savage wrote to Governor Okey L. Patterson recommending executive clemency for Bailey. "I do not believe the State of West Virginia should take the life of any man when there is a question, however slight, of his guilt or innocence," Savage wrote. Patterson did not act and the West Virginia Supreme Court and U.S. Supreme Court denied his appeals. But on death row Bailey was more fortunate than he had been in the courts. Warden Orel J. Skeen took an interest in the case and concluded that Bailey was innocent.

Skeen asked Erle Stanley Gardner, the author of eighty Perry Mason novels and founder of a group known as the Court of Last Resort, to reinvestigate the case. Gardner and a group of colleagues arrived at the Moundsville State Penitentiary just 48 hours before the

scheduled execution. They arranged a polygraph test, which Bailey passed. Soon Gardner interviewed the trial judge and learned of his misgivings about the case, reviewed the case files, and met with Governor Patterson, who issued a reprieve and asked for further investigations.

Upon review, the West Virginia Department of Probation and Parole concluded that Bailey indeed was innocent and recommended that he be pardoned. In 1951, Patterson commuted the sentence to life in prison. In 1960, Governor Cecil H. Underwood granted Bailey a conditional pardon, and six years later Governor Hulett C. Smith dropped the conditions.

— *Researched by Michael L. Radelet*

**Sources:** Erle Stanley Gardner, *The Court of Last Resort*, 1952; *Charleston Gazette*, Oct 25, 1949, Dec 28, 1960; *Charleston Daily Mail*, Mar 8, 9, 10, 1950, Mar 14, 1951; 17 *UCLA Law Review* 535 (1970).



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# INNOCENT CITIZENS WHO CAME CLOSE TO EXECUTION BEFORE ULTIMATELY BEING EXONERATED

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DATE: October 7, 2002

1. Gus Langley, faced 7 different execution dates, two with only minutes to spare, before he was ultimately exonerated in a 1932 Asheville, North Carolina gas station holdup/murder. There was no physical evidence linking Langley to the murder. The prosecution's case relied on informant testimony. Radelet, Bedau, and Putnam, *In Spite of Innocence*, pp. 214-15 (1992 Northeastern University Press). (crime 1932 - exoneration 1936)
2. Labor leader Thomas J. Mooney was convicted and sentenced to death for the deaths of 10 persons killed when a bomb exploded at a 1916 patriotic parade in San Francisco. Mooney came within two weeks of his execution. Despite weak evidence, in the quest to find the murderers, police excluded all other possible suspects. Mooney was tried by the prosecution in the press. Eyewitness identifications were fabricated and one was fabricated to receive a reward. President Woodrow Wilson asked the California governor to commute Mooney's death sentence in the face of worldwide criticism and scant evidence of guilt. Mooney was granted clemency, but for years was unable to obtain relief in the courts, even though, over the years, all the prosecution's evidence fell apart. Finally, in 1939, the California governor, supported by the trial judge, original jurors and a new prosecutor completely exonerated Mooney. Radelet, Bedau, and Putnam, *In Spite of Innocence*, pp. 79-97 (1992 Northeastern University Press). (crime 1916 - exoneration 1939)
3. William Marvin Lindley, was convicted and sentenced to death in 1943 for the murder of a 12 year old California girl whose dying words were: "Don't let that old redheaded man get me, Daddy." Lindley was mistakenly identified by a color blind eyewitness with marginal intelligence as the person he saw the victim fighting off, even though Lindley had an airtight alibi. A jailhouse informant testified falsely that Lindley had confessed to him. After reprieves on the eves of four separate executions, his death sentence was finally commuted. Lindley collapsed and was declared criminally insane. Radelet, Bedau, and Putnam, *In Spite of Innocence*, pp. 39-41 (1992 Northeastern University Press). (crime 1943 - exoneration 1947)
4. Coke and John Brite, faced seven execution dates before they were cleared of wrongdoing in the 1936 deaths of two deputy sheriffs and a harbor captain, who were shot and killed while trying to arrest the two brothers on charges of assault and battery. Post trial investigation revealed suppressed exculpatory evidence indicating that it was the brothers who were attacked and that they did not kill anyone. Radelet, Bedau, and Putnam, *In Spite of Innocence*, pp. 153-55 (1992 Northeastern University Press). (crime 1936 - exoneration 1951)

- **James Fulton Foster**, in the mid-1950's, came within days of execution for a Georgia robbery/murder. He was identified by the widow in an unlawful show-up; his attorneys were appointed only six days before his trial; and he was convicted on the testimony of a jailhouse informant. He was finally exonerated when the real killer confessed. Radelet, Bedau, and Putnam, *In Spite of Innocence*, pp. 23-29 (1992 Northeastern University Press). (crime mid-1950s - exoneration 1957).
- **Harry Dale Bundy**, Three days before Harry Dale Bundy's scheduled execution, a woman read a story about the crime in a detective magazine and recognized a co-defendant, who had confessed to

whole crime. Bundy eventually received a new trial and was acquitted. *See*, M. Radelet, et al., "In Spite of Innocence" 291 (crime 1992 - exoneration 1958).

**7. Isadore Zimmerman** was convicted and sentenced to death for the 1937 murder of a New York police officer killed during robbery of Lower east side restaurant. His death sentence was commuted on the morning of his execution by a governor citing doubts about Zimmerman's guilt which was based on perjured testimony and prosecutorial misconduct. Zimmerman was finally exonerated 25 years after the officer's death. Radelet, Bedau, and Putnam, *In Spite of Innocence*, 43-55 (1992 Northeastern University Press). (crime 1937 - exoneration 1962)

**8. Robert Ballard Bailey**, sentenced to death for the 1949 murder of a woman from a prominent West Virginia family, received a last minute commutation before he was ultimately cleared of all involvement in the murder. The prosecution's case relied on informant testimony. Radelet, Bedau, and Putnam, *In Spite of Innocence*, pp. 247-49 (1992 Northeastern University Press). (crime 1949 - exoneration 1966)

**9. Lloyd Eldon Miller, Jr.** falsely confessed, after hours of threatening interrogation, to the 1955 brutal sexual assault and murder of an 8 year old Canton, Illinois girl. Miller's confession was inconsistent with the actual physical evidence. His trial was infected with prejudicial pretrial publicity. He was represented by inexperienced defense counsel. Inadequate investigation was conducted. The prosecution witnesses perjured themselves. The prosecution intentionally suppressed exculpatory evidence. Miller was ultimately freed after 11 years of incarceration, but not before he had faced seven execution dates, and once came within 7 ½ hours of execution. Radelet, Bedau, and Putnam, *In Spite of Innocence*, pp. 141-52 (1992 Northeastern University Press). (crime 1955 - exoneration 1967)

**10. Paul Imbler**, who was sentenced to death for a 1961 Los Angeles market robbery/murder, came within two days of execution. The prosecution's case against Imbler relied upon unreliable physical evidence and the testimony of an ex-convict eyewitness, who had been a mental patient and who had lied about his background. The prosecution knew the eyewitness lied about his background. Radelet, Bedau, and Putnam, *In Spite of Innocence*, pp. 250-252 (1992 Northeastern University Press). (crime 1961 - exoneration 1971)

- **Larry Hicks was convicted in 1978 was sentenced to death in Indiana. Two weeks prior to his scheduled execution, with the help of volunteer attorney, Hicks received a stay. The Playboy Foundation became interested in this claim of innocence and supplied funds for a reinvestigation after he passed lie detector tests. At retrial, Hicks was acquitted and released after evidence established Hicks's alibi and showed that eyewitness testimony against him at his original trial was perjured. See M. Radelet, et al., "In Spite of Innocence" 313 (crime 1978 - exoneration 1980).**

**12. Joseph Green Brown came within thirteen hours of execution for a Florida robbery/murder in which the prosecution knowingly allowed material false testimony to be introduced at trial. The Eleventh Circuit granted a new trial. The state decided not to retry the case and Brown was released. Radelet, Lofquist and Bedau, *Prisoners Released from Death Row Since 1970 Because of Doubts About Their Guilt*, 13 T. M. Cooley L.Rev. 907, 929 (1996). (crime 1974 - exoneration 1987)**

**13. Half-brothers William Riley Jent and Earnest Lee Miller, sentenced to death for rape/murder, came within 16 hours of execution in 1983 before receiving a stay from a federal judge. Their convictions were based largely on the testimony of three eyewitnesses, whose testimony became suspect upon re-examination of the autopsy report which indicated that the crime could not have occurred in the manner the witnesses testified. When the victim was finally identified, long after the brothers' convictions, the victim's boyfriend, who was suspected of killing another girlfriend, became the chief suspect. The prosecution also suppressed exculpatory evidence. The brothers were ultimately exonerated. Radelet, Lofquist and Bedau, *Prisoners Released from Death Row Since 1970 Because of Doubts About Their Guilt*, 13 T. M. Cooley L.Rev. 907, 943 (1996). (crime 1979 - exoneration 1988)**

**14. Randall Dale Adams came within a week of execution for the murder of a Dallas police officer. He was ultimately fully exonerated mainly as a result of the documentary The Thin Blue Line. Radelet, Bedau, and Putnam, *In Spite of Innocence*, pp. 60-73 (1992 Northeastern University Press). (crime 1973 - exoneration 1989)**

**15. Clarence Lee Brandley, an African American janitor, was convicted and sentenced to death for the sexual assault and murder of a 16 year old white female student who was at the highschool where Brandley worked with a visiting volleyball team. Racism and fear in the community, despite the paucity of evidence, lead to Brandley's arrest and prosecution. Prosecution witnesses were coached by the prosecution. Some exculpatory evidence disappeared and other exculpatory evidence was intentionally suppressed by the prosecution. A witness with evidence favorable to the defense was**

**threatened by the prosecution. Brandley came within days of execution. He was ultimately completely exonerated. Radelet, Bedau, and Putnam, *In Spite of Innocence*, pp. 119-36 (1992 Northeastern University Press). (crime 1980 - exoneration 1990)**

**16. John Henry Knapp was sentenced to death in Arizona for the arson-murders of two of his daughters. Knapp falsely confessed under extensive interrogation. Over the years, Knapp was scheduled for execution five times, once coming within 48 hours of execution. In 1987, new scientific tests indicated that the fire had been accidentally set by one of the children. He was**

granted a new trial and ultimately plead guilty to time served and was released from prison. Radelet, Lofquist and Bedau, *Prisoners Released from Death Row Since 1970 Because of Doubts About Their Guilt*, 13 T. M. Cooley L.Rev. 946-47 (1996). (crime 1974 - exoneration 1991)

17. Andrew Lee Mitchell, who came within five days of execution, for the robbery-murder of a Texas fireworks salesman, was exonerated when the Texas Court of Criminal Appeals unanimously found that two exculpatory statements showing that the victim had still been alive hours after Mitchell had allegedly killed him had been suppressed by the sheriff's department. Mitchell was released after spending 13 years on death row. Radelet, Lofquist and Bedau, *Prisoners Released from Death Row Since 1970 Because of Doubts About Their Guilt*, 13 T. M. Cooley L.Rev. 907, 950-51 (1996). (crime 1981 - exoneration 1993)

- Frederico Martinez Macias came within two days of execution before he was finally exonerated for the 1983 murder of a Texas man during a burglary. The prosecution's case relied heavily upon an uncharged alleged co-conspirator and jail house informants that Macias had confessed to the crime. Macias received a new trial when it came to light that because of ineffective trial counsel, two alibi witnesses and eyewitnesses who could have testified that Macias was not present were not called to testify. A grand jury refused to re-indict Macias. Radelet, Lofquist and Bedau, *Prisoners Released from Death Row Since 1970 Because of Doubts About Their Guilt*, 13 T. M. Cooley L.Rev. 907, 948-49 (1996). (crime 1984 - exoneration 1993)
- Joseph Spaziano received a stay 16 days before his scheduled execution for the 1973 murder of an Orlando, Florida hospital clerk when the state's star witness, a drug addicted teenager, recanted his hypnotized "refreshed-memory"interrogation testimony that he thought he recalled Spaziano describing the murder. Spaziano was granted a new trial and he ultimately pleaded no contest to second degree murder and was sentenced to time served. S. Freedberg, "Florida leads the nation in wrongful death sentences with 20. What has become of these survivors?" *St. Petersburg Times*. (crime 1976 - exoneration 1997)
- Kerry Max Cook came within 11 days of execution for the killing of Linda Jo Edwards in 1978. After three trials, and repeated appellate court findings of prosecutorial misconduct, Cook plead guilty to a reduced charge and was released. He continued to maintain his innocence. Recent DNA from the victim matched that of an ex-boyfriend, not Cook. (crime 1978 - exoneration 1997)

21. Anthony Porter, received a stay five days before his scheduled execution, not because of questions about his innocence, but because he had an I.Q. of 51 and there were questions about his competence to be executed for a 1982 Chicago double homicide. Northwestern University journalism students took it upon themselves to reconstruct the crime, and determined that the murders could not have occurred in the manner which prosecution witnesses testified. The journalism students further reinvestigated the case and discovered witnesses who knew Porter did not commit the murders and witnesses who led them to the real killer who confessed on videotape. Armbrust, "Chance and the Exoneration of Anthony Porter," *Machinery of Death: The Reality of America's Death Penalty Regime*, p. 157 ((Routledge 2002). (crime 1982 - exoneration 1999)

- **Lloyd Schlup came within 9 hrs. of execution before the Missouri governor ordered a stay to further investigate. *New York Times*, 1/24/95. Upon retrial, in 1999, Schlup agreed to plead guilty to second degree murder to avoid the danger of another death sentence. Schlup's appellate lawyer, Sean O'Brien, said he remained convinced of Schlup's innocence (crime 1985 - exoneration 1999).**
- **Ron Williamson, who was convicted and sentenced to death for the sexual assault and murder of an Ada, Oklahoma woman, came within 5 days of execution, before being exonerated through DNA evidence. The prosecution against Williamson relied on informant testimony and unreliable hair evidence. The prosecution also failed to turnover to the defense exculpatory evidence. Scheck, Neufeld and Dwyer, *Actual Innocence*, pp. 130-57 (Doubleday 2000). (crime 1988 - exoneration 1999)**
- **Earl Washington came within nine (9) days of execution before Virginia Governor Douglas Wilder commuted his sentence for a 1982 rape/murder in 1994. DNA tests confirmed that Washington did not rape the victim, who had lived long enough to state that there was only one perpetrator of the crime. Subsequent additional DNA results, in 2000, again excluded Washington as the rapist and Virginia Governor Jim Gilmore granted Washington an absolute pardon. Statement of Governor Jim Gilmore Regarding the Pardon of Earl Washington, 10/2/00; *New York Times*, 10/3/00; and *Washington Post*, 9/24/00, 10/4/00, and 2/15/01. (crime 1982 - exoneration 2000)**
- **Eric Clemmons was sentenced to death for a 1985 murder which occurred in a Missouri prison. After losing all his appeals in state court and his initial appeal in federal court, Clemmons had called his mother to make his funeral plans. But new attorneys convinced a federal appeals court to reverse themselves and grant a new trial, partly because of issues and evidence that Clemmons had filed himself. When all the new evidence was presented at re-trial, the jury acquitted him in 3 hours on February 18, 2000. *Kansas City Star*, 2/27/00. (crime 1985 - 2000)**
- **Donald Paradis, after spending 14 years on Idaho's death row, was released from prison 20 years after his death sentence. The federal court of appeals determined that Paradis was denied a fair trial because prosecutors withheld potentially exculpatory evidence. Paradis was scheduled for execution three times before his sentence was commuted to life imprisonment in 1996 by the Idaho governor who had doubts about Paradis' guilt. *Death Penalty Information Center* [www.deathpenaltyinfo.org/innocothers.html](http://www.deathpenaltyinfo.org/innocothers.html) (2002). (crime 1981 - exoneration 2001)**



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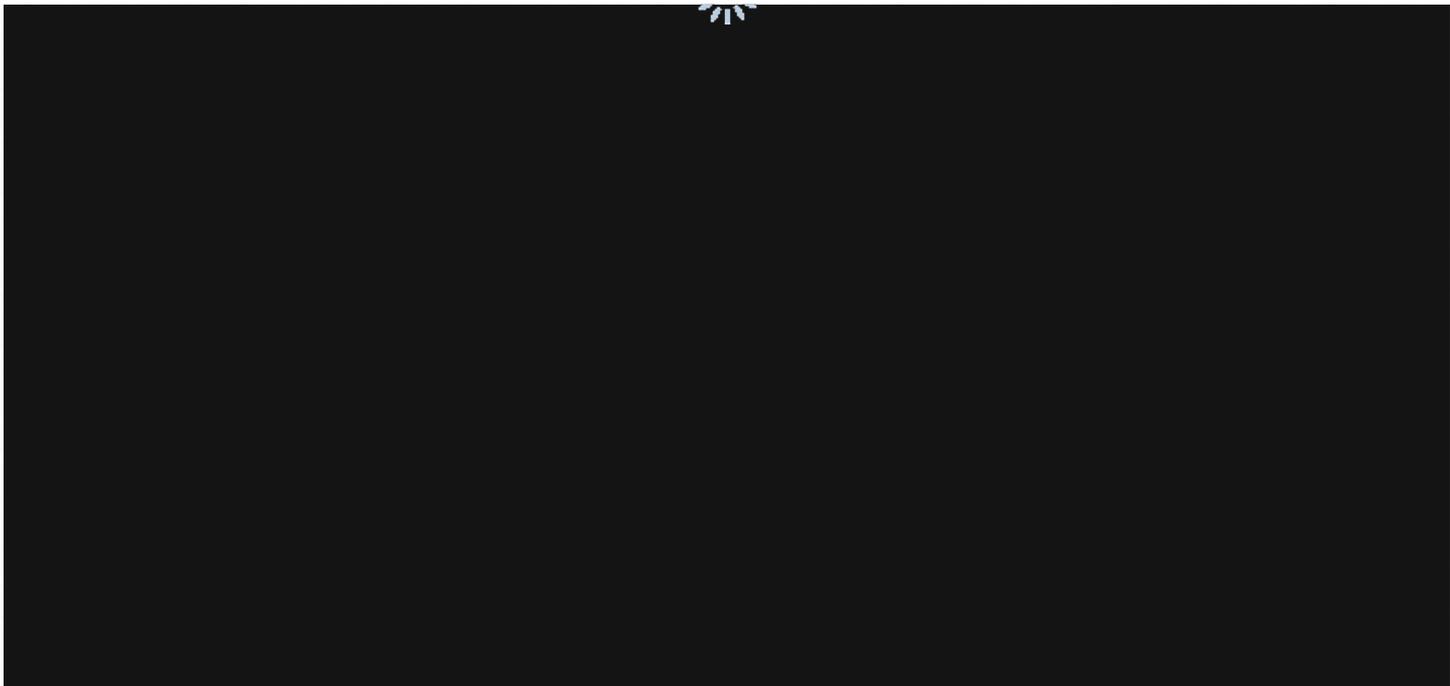
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Charleston Daily Mail (Newspaper) - October 31, 1950, Charleston, West Virginia

PAGE FOUR Bailey Tries High Tribunal Appeal Submitted To Supreme Court Continued from Page One show that the man could not have been present when Mrs Fazio was beaten robbed and thrown from an automobile and left to die in THE Fazio with some other people that the affiant stated to t l Pie that Robert Ballard Fazio the father of Joe Fazio took from behind the counter a sickle and the said Dominic Fazio said to the affiant that she talked Woman Hysterical l oof After MSI Reserve Calls Issued DAILY MAIL TUESDAY EVENING OCTOBER 1950 After the man in the green car was Joe Mary Moore 23 of 815 Fazio and at that time Dominic Court Pleaded guilty to i tion of probation Monday in mediate court and received a tence of years in the state woman's prison at Pence Springs Gov Patteson Emphasizes Necessity For All To Vote the outskirts of the city It is also contended that Bailey's tional rights were violated and that the refusal of the state court to grant a new trial is in conflict rulings of the supreme court Bailey who was in of Florida after a nationwide Smith and that Mr hunt was convicted primarily on said toat he had too much and that the case was she became hysterical in court closed and then sometime after after the sentence was passed and after being quieted down was led to the county jail When the bailiff returned he reported that she had asked for a razor blade saying she wanted to cut her throat cussion was had at the Place Dominic Fazio asked the affiant to come back the next morning at 10 o'clock by herself but affiant says she did not go Deponent further says that about two weeks ago she was at Fazio s Beer place together with Carhn Smith and was discussing Jie case of Robert Ballard Bailey Orders To Duty End In W Va District Orders to active military ice have been issued for what may be the last contingent of West ginia army reservists to be called indicted for breaking and entering a downtown dress shop and theft of several dresses more necessary than even that every citizen vote In casting our ballot we doing more than choosing a Registration Law Continued from Page One permit the submission of be entitled to exercise the right of suffrage The court indicated it would hand down an early decision ing facts and testimony SECTION I Article IV of the con- A Walt the state held was a dying declaration of Mrs in which she identified Bailey as her killer been over on the Boulevard to buy something and that they wanted for it and affiant says she asked Mr Fazio what it was and his daughter Stella Fazio walked over It is contended by Bailey's behind the counter and picked up Eel that the trial court erred or pistol and said this admitting the statement in he bought She had the gun dence as a dying declaration toward affiant and Mr proper foundation for was not laid Death Continued from Page One Boettiger awoke was sitting d We are giving t he defiant answer of free men to those who would enslave he said The governor issued a campaign statement appealing for a heavy Democratic vote in the November 7 election Upon the outcome he said will ne s struct ons to order no more depend whether our great to duty even to fill previous l tic unfulfilled program and our quotas The only enlisted courageous foreign policy reservists who may now be called are certain medical and gence specialists he said This call includes two con- of medical technicians the open window said er a short struggle leaped out Wash l Some men of the combat arms Boettiger are also included in this call continue bold shall HE CALLED for re-election of West Virginia's six fine liberal congressmen and of the party's three statewide candidates and nominees for the legislature He praised the 1949 legislature saying it gave West Virginia one of the most worthwhile far-reaching and humane legislative grams in the history of our The governor added that the Democrats substantial registered majority voters in the state will count for nothing unless the Democratic provides persons except those therein disqualified may vote but hi addition thereto the constitution provides that all such persons must be registered for voting in accordance with laws to be enacted by the legislature said The act of the Continued from Page One Monday night was devoted to the activity of the smaller children as they marched from home to home throughout the city demanding he continued does not seek to compel any person to vote at any election but if he does not vote within a period of three years then he must in order to vote at a sub

sequent tion Such a requirement is not a gifts as guarantees against tricks They were out in thousands and warmly received in homes m l where And t hey collected a Democratic voters go to and inflicts no punishment 7 upon the sick the lame assortment of candy fruit wiches and money Police said th ere had been some scattered reports of older children to properly destruction but they had been at a minimum The recreation department's RFD 1 BO X 83 West Richard Childers Putney Recruit William L Scott of In- gram Branch SAID and Dr It is further argued that the only nu whn further the statem ent persons who were Mrs two sons and daughter-in-law and that the says that she statement was made two days be- fore she died in St Francis pital here MR PETTRY also points out it was a real revolver And affiant further says that she has not been back there since for the reason that she is afraid of bodily harm Affidavits supporting the story of Goldie Moore were sworn to by that the only evidence in the case Rowlands and Carlin Smith that Mrs Fazio was robbed came and are incorporated in the from her son Joe Fazio who his mother told him that she was MR n t robbed It is argued that the c ast affer wi ment was made in Italian and state the assertion that she was robbed after witnessing the a mere opinion and sion and not a statement of f act The further contends that the driver of an ambulance that took Mrs Fazio to the pital testified that Dominic Fazio took something pocketbook from R osina Fazio resembling the person ut their orders were issued last day prior to Defense Secretary Marshall's order to cease the up of reservists the colo nel said Those included in this latest call their reporting dates and stations To Ft Knox Sergeant Harlan B on Nov Whitney psychiatric clinic of New Yor k Hospital but he refused But Dr Williams was confident they'd persuade him to take psychiatric treatment in time the hotel cian said Boettiger met the only daughter of the late president in 1932 during a presidential campaign trip He was then the White House Privates First D of the Chicago Tribune Th ey Belle and R married in 1935 Shamblin of Gallagher He later became publisher of Warren E Foster BUSINESS BRIEFS Hoffman Named Valve Sales man Hoffman has been H named toe were among the top six from the Cincinnati sales district of division Ford Motor Co in the latest three-month f a sal es con- Salesmen riod test nf fh are compEting in each 23 sales districts throughout the country other class of ers contend We have always had in this state from the time of its tion down to the present tration laws of some form all of which have been attacked at some time or another during their ence e ither by persons who did Crude Oil not wish to comply therewith or maybe by those who hope to gain Elswick of and Rt 1 Liverpool Jackson county j re presentative for the Valve Corporals: Edward L Dean 1635 Slon of St John R Chapman Co His appointment is I Wilbur H Meadows part of a company sales expansion Ave E including an independent sales organization which will con- on promoting control valves Seattle Wash the famed Court of Last Sf and years his wife was of a group of men who in- terest themselves in doubtful cases After the test was given by one of the nation's foremost lie det ector experts Earle Stanley Gardner of the court expressed the belief that Bailey was innocent and said that associate editor with him In 1945 they leff Seattle and went to Phoenix where they launched The Times HER MARRIAGE to Boettiger was her second She had two dren by New York broker Cu rtis Dall from whom she was divorced the tests conclusively proved rhe two Dall children the man had no guilty and Curtis Buzzie of the death of Mrs F azio lived in UIP mii Warden Orel Skeen of the on and several veteran guards have expressed doubt that Bailey is guilty Bailey has contended from th e time of his arrest that he knew nothing of the death and declared that at the time he allegedly tally injured the woman and health robbed her of he wa s in an- other part of the city being chased joy police on a charge of speeding and drunken driving When he was arrested in Florida he had about in hi s possession Fate of Nurse ONE OF the affidavits contained in the petition is that of Goldie Moore 28 of Elk Two Mile Rt 6 who said she knew all the i n the case She swore in part that on Oct 22 1949 on Saturday afternoon be- tween the hours of 5 and o'clock that she had left her home in a car with George Rowland going to the A P Super ket in Charleston when she reached the rock quarry close to the incinerator on Elk Two Mile road she saw a b lack Dodge dan sitting there and Mrs Rosina Fazio was sitting in said car and a man was sitting in the car with a striped cap resembling a road cap an d the affiant definitely says that the man sitting in the car with Mrs Rosina Fazio was not Robert Ballard Bailey Deponent further avers and says that sh e came to the A P Super Market in Charleston West Virginia and returning to her home at the Rock Quarry where she had seen Mrs Fazio and some man there was a green car and affiant says that she saw Joe Fazio a son of Mrs Rosina Fazio sitting in the green car and that it was about 6 o'clock w hen she saw Joe Fazio sitting at the Rock been a teacher at car that near Naoma and Miss about the same place where was a student in classes hp Rosina Fazio had been sitting He is a former Marshall av athlete divorced from his had wife and the father of two Deponent further says that she i scho ol e a the definitely knows that the man Miss Tabor is of Garrett Tabor owner of the bor Lumber Co at and came to Charleston Sept 17 to enter the Mc Millan hospital lived in the White House from 1933 to 1935 Before their divorce the gers had one child John Jr 11 who lives with his mother Boettiger fil ed divorce ings against Anna on July 6 1949 charging mental cruelty which he said caused mental anguish that seriously impaired his mental and va J ohn G Crusse East Irland L Petty Rt 4 Milton Billy L Woolen of Taplin To Ft Meade Md on Nov Sergeant First Class William A Field of Ft Pleasant Serg eant Frederick L Fisher Coal Fork Corporals: Harold F Vincent Pike James D Bancroft Privates First James 3 Nelson Webster Springs L Philips Jr Fay etteville liam R Flowers Rt 1 wood Charles R Ramsey 1 Box 7 Beckley Clyde mond Hinton Kenneth R Metal of Mt Gay company an- The increase the was due to the mand for increased supplies f ae Allowing prices for producers came effective Oct Allegany district oil in 3 be lines SOD Bradford I distri ct oil in Bradford lines National Bradford district i Transit Co at p m nnd las Department workers have ar- ranged for scores of games dances and many individual contests The parties will be at the lowing Kanawha City playground recreation center South Hills junior high school playground Cabell junior hi gh athletic field Capitol Hill playground Donnally St ground Stonewall Jackson personal advantage by not complying therewith Bigley ANY LAW which is y d Legion field able uniform and impartial SW C S Jones counsel for Simms ana Gillespie argued that the Morris Staats 38 of Route 6 Charleston plea ded to at- breaking and N Y Stock Market Noon Air Alleg L Stl Allied Ch Am Can Am Cyan P quotations Elliott Continued from Page One Mrs Vaughn said her family has done nothing toward drawing the warrant against as she Daniel and said as far Ray T Lee Ridge O r v i 1 e L McCallister Rt 60 Ward Billy E Osborne Rt 1 view Danny H Pittman Harry W Reaser Berea SHE FILED a TO Ft Meade Md on Nov Ing desertion and was granted a divor ce three weeks later Am Pwr Am Had S S Am Stl Fds Am T i T Am Too Am Viscose Am Wat Wk 25 Vi Fed Dep SL Gen Bak Oil Press S Car Ath Wo olen Anaconda Arm Meanwhile Boettiger had his interest in The Arizona Times to Mrs sold the paper in August 1948 and entered the radio business on the west coast Later she had been pointed editor of a national Publishing ly magazine The Woman by the Farrell in New York Boettiger's first marriage

ended in divorce in 1933 His third Mrs Lunn has a daughter knew the police were still looking for him MONDAY following disclosure of Victoria 5 by a previous the girl's disappearance an aunt came to Charleston and obtained a warrant charging Daniel with Daniel has for a number of years Peach Creek Ronald W Charles J Ref Dolin Loc Lake Charles F Payne ville Elmer F Burdette wood Paul S Evans Arnoldsburg Corporals: Frederick R Belton Logan Clifford W Gandee Clio Carl D Stewart Jesse Denver O Stone Banco Wesley L Walker car Dry Beckley Harry D Cleo L Bendix Avn Beth Stl Boeing Air Bo en Borg-Warner Mfg Foods GM Gen Pub Ut 41 Goodyear Gt No Pf Greyhound Gulf Hud Mot 99 III Cent Oil Radio Rem Rep lir TA tempted un constitutional because j Tuesday it impossible for the on Nov They contended the for dropping names of is defective because it leaves Associated Commodity Index to a poll clerk to indicate whether a person has voted to fraud and is con- This leaves the voter without protection since he gets no re- showing that he has voted Jones said CASIO SAID that it is not the act of the county court which prevents voting is the act the voter in failing to exercise granted him of voting B in the event that 388.76 lies today declined to Previous day month ago 181.09 ye Low 11926 average equals Chi Livestock C HICAGO Oct 31 ne Cole Glen be 47 B Rnd Inspir Cop Harv Int Nick lilt Kenno Lch V BH LOP Glass Ligg Sc My Lorillard Mack Monsanto Mont Ward Murphy Murray Nash Nat Bisc 43 Simmons Sinclair Oil Soc Vac 73 Southern Co South Pac So Hv Std G E Oil 67 Std NJ Etude Swift 81 Texas Co Tide Wao lib UN Pnc 56 Daniel Edward B Eddy also Byrle Currence Richwood Privates First Parley V 212 Tennessee Ave Charleston Evan W Freeman Lewisburg Larry A Hedrick Ban Cave James L Amburgey C Ruark the and Bobby L Nelson of most colorful columnist is in the Blue Pennant Daily family of outstanding Chicago Cp Chrysler Coca-Cola Col Gas Col Carb Com Credit Edis Cons Edison Cont Mot Cont Oil Cru Stl Curt Pub man sitting in the black Dodge sedan at the Rock Quarry was not ert Ballard Bailey that his face was full and he seemed to be fat man Deponent further says that about two or three weeks ago she was at Beer Garden or Genoa's Tavern and she was ing about the death of Mrs Rosina OFFICE EQUIPMENT SUPPLY UNBELIEVABLE PRICES DESKS NEW DESK REDUCED Chairs New Sir Back 0 Swivel REG PRICE FILES NEW IETTER t CARD 2 GREATLY REDUCED MACHINES GUARANTEED ADDING up up CASH REDUCED school of nursing Her reported disappearance set off a five-state alert to be on the lookout for the couple TWO FRIENDS of Miss Tabor Patsy Webb and Ruth with whom she had graduated from Marsh Fork high school companied her on a walk to the of Charleston Sunday night They said they were sitting in the restaurant of the bus terminal when Daniel approached and spoke to them They related hat after talking for a time they told their former teacher that they must be home by 10 p m and that he volunteered to drive them to the home in the 1300 block of Lee street UPON REACHING the home Miss Bulmer and Miss Webb said they got out of the rear seat of l the automobile and that Miss bor started to get out of the front seat when Daniel grabbed her by the arm and requested that she wait a minute The two girls said they were approaching the front steps of the home when they heard Miss call for help and started back to the car They said lei then drove rapidly away The incident was immediately brought to the attention of hospital administrative authorities and police and the parents of the girl were Informed Donald P Chambers James W Browning j Nat Dairy Nat NYC W No Co Amn Avn 37 iNo Pnc i SOW Edison Ohio Oil Otis El Packard 22 Penney Penh HP Pepsi-Cola Phila El 1 4 You Citi Phillips Pet Unit Air L United Carb Unit Cp Unit Gas Imp US Rubber US Smelt USS Warner Br West Un E West Air Bke Westing Elcc Wheel Sll New White Mot White EM Willys Ovid lh h T CURBS Registration laws were created for the purpose of preventing fraud and especially repeating in voting The framers of our tion created qualifications for voters and then provided that all possessing these qualifica- must be registered in cordance with the registration laws to be thereafter enacted by the legislature before the voter would and Sh 10 4 28 52 13 31 48 va 46 82 V 19 4 A A STHMA SUFFERERS FIND CURB FOR MISERY TO ASTHMA ATTACKS RUSHED New hop or from pwo amo thia not amount to only few pennie per dose only s with strict guarantee br At COHEN'S DRUG STORES For A Late Gift OPEN EVENINGS till 8 P M McCORMICK JEWELERS CONVENIENT TERMS 2 STORES In the Villoge at Kanawha City And Washington St at Bigley EXPERT WATCH REPAIR NOTED THROAT REPORT ON TEST OF CAMEL Not one single case of throat irritation due to smoking CAMELS My throat sure gets a workout so It's easy to see why I smoke the mild Yes these were the findings of noted specialists after a total ot weekly examinations of the throats of hundreds of men and women who smoked and only 30 consecutive days R J Co N C MAN OF A THOUSAND VOICES master liant creator of comic Lind Hayes even adds lar song recordings to his vocal repertoire Radio night clubs and keep this show man from coast to coast CASH OR DOCUMENT BOXES NOW you have a- domestic up-to-the-minute psychology col- j umn In the Daily Mail Legal Notice TYPEWRITER TABLES Pric NOW MOBILE FILES Price NOW OPEN EVENINGS DURING SALE to EASY TERMS FURNITURE MART VA ST r PH NOTICE OF ZONING AMENDMENTS HEARING The Common Council of the of South Charleston will on the 17th day of November 1950 meet in the Council Chambers of the Municipal Building for the purpose of considering the amending of the Zoning Ordinance as 11 Amend Section V dence District In re- gards to so as to read Provided that in the case of a lot separately owned and previously laid out and shown on a filed map of a width of 50 feet -or less at the front building line etc 121 Amend Section VI dence District B in re- gards to requirements so as to read Except that in the case of a lot separately owned and previously laid out of a width of 40 feet or less etc 131 Amend Section X by adding thereto the following All of the foregoing requirements of section with respect to building in the Heavy Industry Section Designated as H Industrial be suspended and that no building permit be required from said Heavy Industries until further order of the Council I By Willis A Taylor Recorder DAILY schedule of shows and rehearsals puts a lot of strain on my voice so mildness is very important to me My cigarette is Camel The Mildness Test proved Camels agree with my The Camel Test is the sensible test I might add No tricks I didn't have Star of stage and television to decide on one puff or one quick inhale or exhale I took my time and enjoyed Camel's fine flavor day after day for 30 days And believe me I found out sure just how mild and good tasting a cigarette can It's no wonder to me that more people smoke Camels than any other your own 3 MILDNESS Test n MH WORE SMOKE CAMELS fan any other cigarette i

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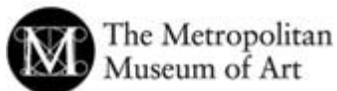
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## FOREWORD

IN THE SPRING OF 1950, Orel J. Skeen, warden of the state penitentiary at West Virginia and a quietly competent Southern gentleman whose code of honor is his guiding star, found himself in an embarrassing predicament. He was required by law to execute a prisoner, Robert Ballard Bailey, who Skeen felt was not guilty.

The prisoner had exhausted all of his legal remedies. Hopeless, penniless, helpless, the man was marking time in his narrow cell, awaiting his grim appointment with the electric chair.

Then Warden Skeen remembered *Argosy* Magazine's so-called "Court of Last Resort." He put through a telepredicament.

*Argosy's* investigating committee, made up of Harry Steeger, president of *Argosy*; Dr. LeMoyne Snyder, an M.D. and an attorney-at-law, specializing in forensic medicine and investigations; Alex Gregory, one of the most competent polygraph (lie detector) experts in the coun the Washington State Penitentiary at Walla Walla, Washington; Bob Rhay, prison psychologist; Raymond Schindler, the inter detective; and Erle Stanley Gardner, lawyer and author, made a hurried study of the Bailey case.

Time was short, hours were limited, minutes were ra at some of the available witnesses.

Harry Steeger, president of *Argosy* Magazine and Popular Publications, despite the problems incident to get dropped everything and hopped a plane, joined the group in Moundville, and then went to Charleston to take part in the investigation there.

It was a period of hectic strain. The investigators on the ground were conferring with other members of the committee by long-distance telephone, correlating information, frantically trying to get a comprehensive picture of a case which, even at the start of that investigation, seemed to contain hopeless contradictions.

At the exact time when eyewitnesses identified Bailey, cold sober, as having been in one part of Charleston com positive in their identification, placed Bailey as being staggering drunk several miles away.

The police had tried to arrest Bailey for drunken driv which only an intoxicated man would dare take, finally managed after a long chase to give police the slip.

There can be no doubt as to Bailey's identity on this occasion. His automobile, the back of it riddled with bullets, is mute testimony to that.

Yet at this exact minute eyewitnesses placed Bailey at the scene of the murder.

Despite the speed with which the investigation was con truthfully say they felt the facts in the case warranted a reprieve of the condemned man so that there could be a further, more detailed, investigation.

Rather diffidently, at about 11:45 on this Saturday morning, the committee telephoned the office of Governor Okey L. Patteson of West Virginia, spoke to the Governor's secretary, Rosalind Funk, and explained their position to her.

Mrs. Funk asked to have ten minutes within which to confer with the Governor, and asked the committee to call back for an answer.

Governor Patteson's answer was typical of the man.

The time was summer, the weather was warm. The Gov mountain country. Also, Governor Patteson had already studied the evidence in the Bailey case and was firmly convinced that Robert Ballard Bailey was guilty of first-degree murder. But he said, in effect, "If you fellows who are donating your time without compensation are willing to sacrifice your week cause of justice, I'll sacrifice my week-end."

So the committee met Governor Patteson and Rosalind C. Funk, who had also given up her afternoon off, at 1:15 p.m. on Saturday afternoon. The state capitol building was deserted. Power had been cut off so the air-condition uncomfortably warm and close, but Governor Patteson, his secretary, and Warden Skeen sat there during that whole Saturday afternoon examining the evidence we had uncovered bit by bit and piece by piece.

And at the end of that session, when darkness was de "All right, you've convinced me there should be a further investiga appoint an officer of the West Virginia State Police to co-operate with your com Virginia. When you have completed your investigation I want you to report to me. I still think Robert Bailey is guilty, but I have heard enough to con vince me there should be a more complete investigation."

It was a matter of weeks before that investigation was concluded. But there is no point in recounting the facts of the Bailey case, because the purpose of this foreword is to give the reader some idea of the character of one pub thoughts of political expediency when a matter of fairness and justice is involved.

Suffice it to say that at the conclusion of a long and ar stating that his reason for doing so was a growing doubt as to whether Bailey could have been guilty of the murder, calling on the state police to reopen its investigation of the case, and to start from scratch once more with a completely open mind.

It is not every governor who would have sacrificed the much-needed rest and recreation period to investigate the case of a penniless prisoner who had been convicted on seemingly overwhelming evidence.

The author of this book has been much impressed with the character of Governor Patteson, his fairness, his un all political considerations when a matter of justice is involved. As long as we have men such as he in positions of power in the United States we have nothing to fear.

It is, therefore, with a sense of pride in citizenship that the writer recalls Governor Patteson's action in the case of Robert Ballard Bailey, and this book is in appreciation dedicated to:

HONORABLE OKEY L. PATTESON, THE GOVERNOR OF WEST VIRGINIA

A. A. Fair,  
a pen name for Erle Stanley Gardner

CHAPTER ONE

I WAS IN THE OUTER OFFICE, standing by the files, doing some research on a blackmailer, when he came in, all six feet of him.

He wore a plaid coat, carefully tailored, pleated slacks, and two-tone sport shoes. He was built like a secondhand - soda straw, and I heard him say he wanted to see the senior partner. He said it with the air of a man who always demands the best, and then settles for what he can get.

The receptionist glanced at me hopefully, but I was dead pan. Bertha Cool was the "senior" partner. "The *senior* partner?" she asked, still keeping an eye on me.

"That's right. I believe it is B. Cool," he announced, glancing toward the names painted on the frosted glass of the doorway to the reception room.

She nodded and plugged in to B. Cool's phone. "The name?" she asked.

He drew himself up importantly, whipped an alligator-skin card case from his pocket, took out a card, and presented it to her with a flourish.

She puzzled over it for a moment as though having difficulty getting it interpreted. "Mr. Billings?"

"Mr. John Carver Billings the—"

Bertha Cool answered the phone just then, and the girl said, "A Mr. Billings. A Mr. John Carver Billings to see you."

"The Second," he interposed, tapping the card. "Can't you read? The Second!"

"Oh, yes," she said, "the Second."

That evidently threw Bertha Cool for a loss. Apparently

she wanted an explanation.

"The Second," the girl repeated into the phone. "It's on his card that way, and that's the way he says it. His name is John Carver Billings, and then there are two straight lines after the Billings."

The man frowned impatiently. "Send my card in," he ordered.

The receptionist automatically ran her thumbnail over the engraving on the card and said, "Yes, Mrs. Cool," into the telephone.

Then she hung up and said to Billings, "Mrs. Cool will see you now. you may go right in."

"Mrs. Cool?" the man said.

"Yes."

"That's B. Cool?"

"Yes. B. for Bertha."

He hesitated perceptibly, then straightened his plaid sport coat and walked in.

The receptionist waited until the door had closed, then looked up at me and said, "He wants a man."

"No," I told her, "he wants the *senior* partner."

"When he asks for you what shall I tell him?"

I said, "you underestimate Bertha. She'll find out how much dough he has, and if it's a sizable chunk she'll ask me in for a conference. If it isn't a big wad and

John

Car

out of here on his ear."

She looked very demure. "You're so careful with your anatomical distinctions, Mr. Lam," she said without smiling.

I went back to my office.

In about ten minutes the phone rang.

Elsie Brand, my secretary, answered, then glanced up and said, "Mrs. Cool wants to know if you can come into her office for a conference."

"Sure," I said, and gave the receptionist a wink as I walked past and opened the door of Bertha's private office.

One look at the expression on Bertha's face and I knew everything was fine. Bertha's little, greedy eyes were glit said, "this is John Carver Billings."

"The Second," he amended.

"The Second," she echoed. "And this is Mr. Donald Lam, my partner."

We shook hands.

I knew from experience that it took cold, hard cash to get Bertha to assume that ingratiating manner and that cooing, kittenish voice.

"Mr. Billings," she said, "has a problem. He feels that perhaps a man should work on that problem, that it might—"

"Be more conducive of results," John Carver Billings the Second finished.

"Exactly," Bertha agreed with a cash-inspired alacrity of good humor.

"What's the problem?" I asked.

Bertha's chair squeaked as she moved her hundred and sixty-five pounds around so as to pick up the newspaper clipping on the far corner of her desk. She handed it to me without a word.

I read:

#### KNIGHT DAY'S COLUMN—DAY AND NIGHT

BLOND BEAUTY DISAPPEARS. FRIENDS FEAR FOUL PLAY. POLICE SKEPTICAL.

*Maurine Auburn, the blond beauty who was with "Gabby" Garvanza at the time he was shot, has myster make an investigation.*

The police, however, who feel that the young woman was considerably less than co-operative during their in inclined to feel that Miss Auburn, who kept her own counsel so successfully a few nights ago, is about business of her own. So far as police are concerned, her failure to pick up milk bottles from the doorstep of her swank little bungalow in Laurel Canyon is a matter of official indifference. In fact, officers pointed out quite plainly that Miss Auburn resented having police "stick their noses" into her private life a few days ago, and the police intend to respect her de privacy whenever possible.

The story as given to police by "friends" is that three days ago Maurine Auburn, who was the life of the party at a well-known nitery, became peeved at her escort and walked out.

Nor did she walk out alone.

Her departure was prefaced by a few dances with a new acquaintance whom she had met for the first time at the night club. The fact that she left the place with this newfound friend, rather than with members of her own party, is a circumstance which police consider to be without es the young woman, however, regard it as a matter of the greatest importance. Detectives are frank to state they do not consider this occurrence unique in the life of the mysterious young woman who was so singularly unobservant when Gabby Garvanza was on the receiving end of two leaden slugs.

When milk bottles began to pile up on Miss Auburn's doorstep, the peeved and jilted escort, whose name is be should be done. He went to the police—perhaps for the first time in his life. Prior to that time, as one of the officers expressed it, the police had gone to him.

In the meantime, his Garvanza, who has so far recovered that he has been definitely pronounced out of danger, con hospital and, despite his convalescence, continues to employ three special nurses.

After coming out of an anesthetic at the hospital following the operation which resulted in removing two bul patiently to police inquiries, then, by way of helpful co-operation, said, "I reckon somebody who had it in for me must have taken a coupla shots at me."

Police consider this a masterly understatement of fact and point out that as an aid to investigative work it is somewhat less than a valuable contribution. There was a distinct feeling at headquarters that both Gabby Garvanza and Miss Auburn could have been much more helpful.

*I dropped the clipping back on Bertha's desk and looked at John Carver Billings the Second.*

"Honestly," he said, "I never knew who she was." "You're the pickup?" I asked.

*He nodded.*

*"And Maurine left the nitery with you?"*

"It really wasn't a night club. This was late in the afternoon."

Bertha's greedy eyes flashed at me. Her jeweled hand surreptitiously strayed toward the cash drawer. "Mr. Billings has paid ..."

#### Plik z chomika:



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