

THE EXECUTION OF

Anthony Chebatoris

By Aaron J. Veselenak

In 1846 Michigan outlawed capital punishment for murder, becoming the first jurisdiction in the English-speaking world to do so. Why then did a hanging take place in Milan on 8 July 1938?

The scene that unfolded that fateful Wednesday morning, September 29, 1937, in the Chemical State Savings Bank in Midland, Michigan, had all the intensity, action and drama of a Hollywood gangster flick. The players, however, were not silver-screen bad-boys Jimmy Cagney, Humphrey Bogart or Edward G. Robinson.

At approximately 11:30 A.M. two gunmen entered through the front doors of Chemical State Bank. Twenty-eight-year-old Jack Gracy and thirty-seven-year-old Tony Chebatoris, both from Detroit, had extensive criminal records. They were intent on looting the weekly Dow Chemical Corporation payroll then being processed. Gracy wore a hat and overcoat, concealing a sawed-off shotgun. Chebatoris, wearing a hat and a short, blue denim jacket, was armed with a .38-caliber Smith & Wesson revolver.

Weeks before the planned heist, Gracy cased the bank. The job would be a cinch.

The two men, who had met in the state prison in Jackson serving sentences for previous crimes, drove north from Hamtramck in separate cars. One car was stolen; the other belonged to an acquaintance of both men. Gracy and Chebatoris met near Corunna. They abandoned the second car and drove together to Midland.

Entering Chemical State Bank, Gracy approached sixty-five-year-old bank president Clarence H. Macomber, who was standing up front talking to his twenty-two-year-old daughter Clair, a bank employee. He jabbed the gun barrel into the

president's ribs. Instinctively, Macomber grabbed the gun. As the two men struggled, Chebatoris shot Macomber. Forty-five-year-old cashier Paul D. Bywater rushed to aid his boss. Chebatoris shot Bywater, a bullet tearing into his intestines. Realizing their plan had gone awry, the would-be robbers fled the bank.

Dentist Frank L. Hardy, whose second-floor office was in the mattress store next to the bank, heard the commotion. Grabbing a .35-caliber deer rifle kept oiled and loaded in his office for just such an event (bank robberies and holdups occurred regularly in America during the 1930s), Hardy thrust his rifle through the window screen and opened fire on Gracy and Chebatoris, who by then were racing down Benson Street in their getaway car. Chebatoris was at the wheel.

Hardy's first shot struck the car's fender; another went through a door; the third passed through the rear window, hitting Chebatoris in the left arm, causing him to lose control. The car careened into a parked car on the other side of the street. The collision knocked Gracy out the passenger's-side door. A wounded Chebatoris, with rifle in hand, helped his fallen buddy up. Frantically, the men's eyes searched wildly for the source of the bullets. Spotting a uniformed man standing at the corner, Chebatoris shot from the hip, severely wounding fifty-five-year-old truck driver Henry J. Porter of Bay City. The bandits then intercepted a car driven by a woman with a baby. The woman fled in terror, carrying the child. Hardy shot again, trying to hit the gas tank. Gracy and Chebatoris fled from the car and continued on foot to a bridge

spanning the Tittabawassee River. They attempted to hijack a Nehil Lumber Company truck, but as Gracy stood on the running board, Hardy, nearly 150 yards away, aimed and squeezed off another round. It was a direct hit. Sensational accounts of the day claimed the back of Gracy's head was blown off. He died instantly.

Chebatoris ran west along the Pere Marquette Railroad tracks attempting to pirate two more vehicles. He was apprehended a few blocks away by several townsmen and road construction workers as he sat exhausted in the second car. Midland County sheriff Ira M. Smith arrived on the scene and placed Chebatoris under arrest.



Anthony Chebatoris

Federal Bureau of Investigation officers arrived at the scene shortly after. It was clear from the beginning that Chebatoris would be charged with a federal, not a state, offense. Chebatoris had violated the National Bank Robbery Act, passed in 1934 in response to the rash of bank robberies during the Great Depression. The feds had jurisdiction in any holdup of a bank that was a member of the Federal Deposit Insurance Corporation or Federal Reserve System. Chemical Bank belonged to both. The law also provided for the death penalty in the event an innocent person was killed. Immediately after the bungled heist, speculation arose that Chebatoris might be hanged should one of his victims die.

Upon learning of her son's death, Gracy's mother collapsed. She claimed he was a "good boy" and would never be involved in such an act. His record, though, suggested otherwise. As a juvenile Gracy was arrested for bicycle and auto thefts and escaped from the Boys' Industrial School in Lansing. In 1923 he was sent to the state prison for armed robbery. He was paroled in 1926 but returned after a second armed robbery. He also spent time at a branch prison in Marquette for planning an escape.

Chebatoris, a native of Poland and its own jail system, had spent fifteen of the previous seventeen years in prison. His troubles began in 1920. As a driver for the Packard Motor Car Company, he robbed a cashier on their way to the bank. He was sent to prison and then paroled in 1926. He returned to prison after a second robbery and remained there for repeated offenses that marked most of his life. At the time of his arrest in Midland, Chebatoris

At approximately 11:30 a.m. Anthony Chebatoris and Jack Gracy entered through the front door of the Chemical State Bank intent on looting the weekly Dow Chemical Corporation payroll.



Jack Gracy

was wanted in Pennsylvania for bank robbery and felonious assault. He was also suspected of crimes in Kentucky.

Forty-eight-year-old Hardy attained hero status among townsfolk, law enforcement officials and the press for his quick action. It was a role he did not relish. "Don't make a hero out of me in this thing," he stated. "I like to hunt, and I like to play bridge. Today, I'd say I liked bridge better." The small-town dentist thought for a moment, then added with a twist of irony, "You know it's a funny thing, but that parked car the bandits ran into is owned by Violet Verner. Her father was the sheriff who got me to taking my gun to work."

Clarence Macomber was the most fortunate of the three gunshot victims. He suffered a mere flesh wound. Bywater and Porter were seriously hurt. Bywater recovered; Porter succumbed to his wounds on October 11 at Mercy Hospital in Bay City. With his death the charges of bank robbery and assault were changed to murder, setting the stage for an unusual string of events in Michigan history.

U.S. District Attorney John C. Lehr planned to seek the death penalty. Porter's widow opposed the action and she appeared in U.S. District Court on October 19, while a grand jury deliberated whether to indict Chebatoris for murder. Wearing black, she was accompanied by her sister, Mrs. John Rosentreter. Rosentreter claimed her brother-in-law once wanted Chebatoris spared death in the event he died. Dr. H. B. McCrory, who had treated Porter, disagreed. He claimed that one of the last things Porter had said to him was, "It's too bad one of us [including Bywater] can't kick off so they can hang the dirty rat."

On Tuesday, October 26, Chebatoris was brought to trial in U.S. District Court in Bay City. Judge Arthur J. Tuttle presided. Tuttle, a distinguished-looking man of sixty-five, had twenty years' experience on the federal bench. A former U.S. congressman, prosecutor Lehr had been on the congressional committee that drafted the law under which the defendant was being tried. He was assisted by John W. Babcock, Dell H. Thompson, president of the Bay County Bar Association, and James K. Brooker were appointed to defend Chebatoris.

During the three-day trial the prosecution called thirty-four witnesses. The defense called none. The case against

Tony Chebatoris was solid. The swarthy, brooding man never took the stand. If there was a gentle, remorseful side to Chebatoris, the jury of seven women and five men never saw it. He was even reluctant to discuss the case with his attorneys, maintaining a defiant attitude toward them as well. During the trial he told one of them, “I haven’t a friend in the world. My wife has divorced me. I’d rather die than go back to prison.”

While seeking the death penalty, Lehr made an impassioned statement to the jury, calling Chebatoris a “brutal, ruthless killer—a sly, sneaking human beast. . . . This is no time for foolish sympathy. You have the responsibility of protecting innocent American citizens against bandits, gangsters and ruthless beasts.” The defense countered that capital punishment was a relic of the Middle Ages and “fast losing favor.”

On Thursday, October 28, the jury returned a guilty verdict and imposed the death penalty. The guilty vote was reached unanimously on the first ballot. It took until the seventh ballot to decide on the death penalty. According to Judge Tuttle, “It was absolutely just, as well as encouraging to the cause of justice and also a deterrent to the underworld. The verdict for a man who takes the life of another man could not have been just with any other penalty than death.”

Chebatoris became the first person in the nation to be sentenced to death under the Bank Robbery Act. He was the first to face death for a crime committed in Michigan in nearly a hundred years and the first ever to be sentenced to death by a Michigan jury.

During the trial Chebatoris was held in the Saginaw County Jail. In the early morning hours of Friday, the condemned man, alone in his cell, attempted suicide, slashing his wrists and throat with a rusty razor blade. When guards rushed in to stop him, he fought for the blade. Finally disarmed, Chebatoris was taken to a Saginaw hospital for stitches. How he obtained the weapon is not known.

On November 30 Chebatoris was formally sentenced to death by Judge Tuttle. The execution date was set for July 8, 1938, allowing seven months for an



appeal. Chebatoris was told by his lawyers at sentencing that he had neither the money nor grounds for an appeal, so one was never made. Tuttle also determined that the sentence be carried out within the walls of the Federal Detention Farm in Milan, Michigan, where Chebatoris was being held. This caused a stir. In 1846, during a lengthy revision of the state’s entire penal code, Michigan became the first English-speaking government in the world to abolish capital punishment for murder.

The law convicting Chebatoris specified that states with death penalty statutes were to carry out the federal sentence within their boundaries. Technically, Michigan was a death-penalty state. The same revision of codes in 1846 that struck the death penalty for murder left death intact for treason. The death penalty for treason was later repealed but reenacted in 1931, during another revision of the state penal code. The obscure law had never been used, but Lehr made sure Tuttle was aware of the provision.

U.S. Marshal John J. Barc, in charge of the execution, obtained G. Phil Hanna, a sixty-four-year-old farmer from Epworth, Illinois, with seventy-one hangings to his credit, to conduct the hanging. Sheriff Chester A. Pyle of White County, Illinois, would assist.

Forty years earlier Hanna launched a personal crusade to make hangings painless after witnessing a botched one that subjected the condemned to a slow, tortuous strangling. Hanna professed, “It is not a nice thing to see a man die—or to have a part in executing him. My point is that if men are to be put to death, it should be done mercifully. I would rather supervise a hanging and have it done correctly than to attend to my farm chores and read that another hanging has been bungled by an inexperienced sheriff.” Years earlier, he tested weights and distances to determine the proper distance a man should fall. He also commissioned a Missouri firm to make a special rope.

As the execution date neared, the Chebatoris case once again became big news. Midland County sheriff Ira M. Smith was asked to spring the gallows’ trap door. He agreed to the job, in part influenced by the 1935 murder of Midland County sheriff’s deputy Earl Martindale. The murderer was “serving a life sentence,” Smith

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said. “That amounts to about 12 years in Michigan. Then he’ll be out again. I am glad the public will be assured that Chebatoris will never be freed again.” He later added, “I think it is the wish of most of the people of Midland County that Chebatoris be out of the way permanently, and since they elected me sheriff of the county, I feel it is only a part of my duty to see that the death sentence is carried out.”

On June 22, 1938, barely two weeks before the scheduled hanging, Michigan governor Frank Murphy asked President Franklin D. Roosevelt to move the execution to another state. Michigan’s chief executive noted, “There hasn’t been a hanging in Michigan for 108 years. If this one is carried out in Michigan, it will be like turning back the clock of civilization.” Although sympathetic to the request, Roosevelt claimed the law was fairly clear and little could be done to prevent the hanging in Michigan. He referred the matter to U.S. Attorney General Homer Cummings.

The last execution in Michigan had taken place in Detroit on September 24, 1830, seven years before Michigan became a state. The hanging, just outside the local jail, was quite a spectacle. The condemned was innkeeper Stephen Simmons, a large man found guilty of beating his wife to death in a drunken rage. Bleachers were built to accommodate the large, festive group of spectators gathered around the gallows. A band played. However, before the trap was sprung, Simmons gave a rousing speech before a hushed crowd. He pleaded for mercy and condemned alcohol. The repentant man ended by singing a hymn. The crowd’s emotions were considerably stirred and after the hanging they tore down the gallows. The event had a lasting impact on Michigan.

Cummings requested that Judge Tuttle rule on Murphy’s request. On Thursday, July 7, the day before the execution, Tuttle declared:

An able and fearless United States attorney fairly presented this case to a qualified jury of five men and seven women, all good citizens of the state of Michigan. On October 28, 1937, that jury had the courage and wisdom to return the just verdict which directed that Chebatoris be punished by death. That just verdict having been returned, the law was mandatory



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in three respects, namely that the penalty should be death, that it should be by hanging, and that it should be within the state of Michigan. These last two requirements resulted from the fact that Michigan has one statute providing the death penalty by hanging. If the sentence had been different in any one of those three respects, it would have been unlawful.

I have neither the power nor the inclination to change the sentence. If I did have the power to do so, I think it would be unfair to suggest that the people of a neighboring state are less humane than are the people of our own state of Michigan. This federal court is enforcing a federal law in Michigan for an offense against the United States, committed in Michigan.

Governor Murphy was outraged and declared:

I deplore the fact that this execution is taking place within our state, where for more than a century there hasn’t been a legal execution. It has always seemed to me that Michigan could take pride in being the first commonwealth on this earth to abolish capital punishment. I don’t think it against the interests of the people of this state to oppose its revival by having the federal government come in here, erect a scaffold and hang a man by the neck until he is dead. . . . I think the federal government should have arranged for the execution elsewhere—if it was to take place anywhere.”

Murphy’s comments led a reporter to ask if this wasn’t like asking a neighbor to chloroform Murphy’s sick dog in the neighbor’s backyard. Murphy retorted, “If the neighbor was in the habit of chloroforming dogs in his backyard, one more or less probably wouldn’t disturb him.”

Murphy was correct in that regard. The state of Illinois had offered one of its electric chairs to carry out the execution. Frank Sain, warden of Chicago’s notorious Cook County Jail, claimed, “Our chair is ready for your use any time. We’ll make no charge of course. Always glad to oblige a neighbor.”

Michigan’s rebellious chief executive ended the interview with a prophecy, “I always have been, and always will be, against capital punishment. I think the time is not far distant when it will be prohibited in every

state in the union.” A few years earlier, as governor general of the Philippines, Murphy commuted the death sentences of three men to life imprisonment.

Chebatoris was oblivious to the political maneuverings before his scheduled execution and remained indifferent and hostile. An atheist, he turned away the prison chaplain the day before his execution, declaring, “You can’t do anything for me.” During his last night, Chebatoris was visited by his former wife, daughter and her baby, son-in-law, sister and two brothers. He ate his last meal heartily after rejecting the customary special one. Conscientious of socialist doctrine from his extensive readings in prison, Chebatoris declared, “I’ll eat what the other fellows eat.”

Shortly after 5:00 A.M. on Friday, July 8, 1938, Anthony Chebatoris arrived at the gallows, accompanied by guards and priest Leo Laige of Ypsilanti. Twenty-three people were present, including police commissioner Henrich A. Pickert of Detroit, Wayne County sheriff Thomas C. Wilcox, U.S. Marshal John J. Barc, warden John J. Ryan, five deputy marshals, three physicians and three reporters. Dr. Hardy declined an offer to attend. Chebatoris ascended the thirteen steps to the eighteen-foot-tall gallows’ platform ten feet above the ground. He smiled—some said it was a sneer—at Phil Hanna and asked, “Are you Mr. Hanna?”

“I am.”

“Then I know it will be a good job.”

Guards strapped Chebatoris’s legs and arms as he stood over the trap. At 5:07 A.M. a black hood was placed over his head and the noose fastened in place. At 5:08 A.M. Hanna gave the command. At 5:21 A.M. Chebatoris was officially pronounced dead. “It was a dignified execution, properly carried out,” proclaimed Hanna. Governor Murphy disagreed, calling it “a blot on Michigan’s civilized record.”

The press never learned that three hours before the execution, warden John Ryan made a frantic phone call to the home of James V. Bennet, director of the United States Bureau of Prisons. Hanna and three friends had arrived drunk, hardly able to walk. He then threatened to abandon his duty and pack up his equipment if his friends were not allowed to witness the execution. Bennet reminded Ryan that no one but official witnesses were allowed to view the

execution. Ryan tried to reason with the belligerent man but to no avail. Bennet warned Ryan that if the matter could not be resolved, he personally would have to conduct the hanging according to regulations. Ryan objected: “No, sir, I’m against the whole business anyway. We haven’t had a hanging here in the state in a hundred years, and the whole institution’s on edge. You and the attorney general can have this job right now.”

The distressed warden, however, came up with a plan. Believing the hangman was too inebriated to know if his friends would be in the darkened execution chamber, Ryan told Hanna they would be allowed to witness from the back of the room. Satisfied, Hanna agreed to carry out the execution. Afterward, when he asked his pals what they thought of his job, the men complained they had been prevented from watching.irate, Hanna berated the warden. Ryan promptly threw the men out the prison doors.

Anthony Chebatoris was one of thirty-four men and two women executed in the twentieth century by the U.S. government. Fifteen were electrocuted, twelve were hanged and seven were gassed. The most famous were Julius and Ethel Rosenberg who were electrocuted at New York’s Sing Sing Prison, on June 19, 1953, for conspiring to commit espionage. James Dalhover, also imprisoned in Milan with Chebatoris, was electrocuted in Indiana on November 18, 1938. The last federal execution was at Iowa State Penitentiary on March 3, 1963, when Victor Feguer was hanged for kidnapping.

Currently, there are eighteen men under sentence of death by the federal government. All are there for murder, most in connection with the drug trade. Oklahoma City bomber Timothy McVeigh is the best known. Over four hundred fifty inmates have been executed by state governments since the U.S. Supreme Court’s 1976 *Gregg v. Georgia* decision reinstated capital punishment.

Michigan is one of only twelve states without the death penalty. ■



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