

## The execution of Gary Gilmore.

As of December 31st, 1976 there had been no executions in the USA for nine and a half years, after the Supreme Court suspended the death penalty in 1968. The previous execution was that of 48 year old Luis Jose Monge who was put to death in Colorado's gas chamber on June 2nd, 1967. In the landmark case of *Furman v Georgia* in 1972 the Supreme Court invalidated all states' death penalty statutes on the grounds of arbitrariness and they had to rewrite their statutes as a result.

The new guidelines allowed for the introduction of aggravating and mitigating factors at the sentencing phase of trials. The new statutes were approved in 1976 in the case of *Gregg v. Georgia*, clearing the way for a resumption of executions.

The first post *Furman* execution was carried out the following year in the glare of worldwide media interest. On Monday January 17th, 1977, 36 year old Gary Mark Gilmore (opposite) was put to death by firing squad in Utah. Gilmore's execution was voluntary and he put up a strenuous campaign to be allowed to die. The American Civil Liberties Union (ACLU), among other groups, put up an equally strenuous fight to prevent the execution, seeing it as "opening the floodgates" for future ones. Utah Governor Scott Matheson wanted to grant a stay but found that he didn't have the power to. The ACLU



managed to persuade U S District Court Judge Willis Ritter to grant a stay just 7 hours before the scheduled execution. This caused Robert B. Hansen, the Utah Attorney General and other officials from his office to fly to Denver, Colorado where they were able to get Ritter's ruling overturned by the 10th Circuit Court of Appeals, just 8 minutes before Gilmore was due to die. ACLU lawyers in Washington DC attempted to file last minute appeals with the US Supreme Court but these were dismissed.

For the first time in Utah, an execution was to take place under cover, in the grounds of the Utah state prison at Point of the Mountain near Salt Lake City.. In one corner of the disused cannery building, an old office arm chair had been set up on a small stage. Behind it was a sheet of plywood, a mattress and sandbags to prevent bullets ricocheting. 26 feet in front of it was a sail cloth screen with five 2 1/2 x 6 inch rectangular openings which concealed the firing squad. A sixth opening of 3 inches square was for use by the squad leader, who would give the signal to the others to fire. Inside the screened area was a wooden rail for the squad members to rest their rifles on. The squad was made up of anonymous volunteers from the police and corrections officers.

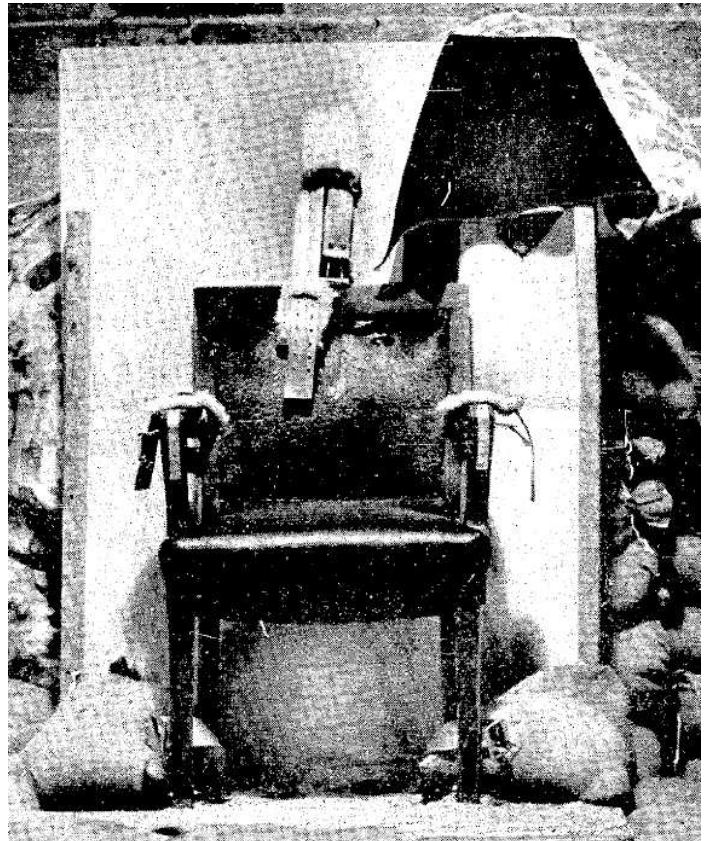
Gary chose shooting, rather than hanging because he feared the latter would be botched. He requested that he be allowed to die standing up and without a blindfold or hood. Both these requests were denied.

He was given a final breakfast of eggs, hamburger, potatoes and coffee. At 7.53 am he was taken from his cell in the maximum security block by prison van for the half mile journey to the execution area

The execution was to be witnessed by Warden Sam Smith, several corrections officers, the State Medical Examiner and four witnesses of Gilmore's choosing. They were his uncle, Vern Damico, Larry Schiller, a film producer and his two attorneys, Ronald Stanger and Robert Moody. A fifth witness was to be his girlfriend, Nicole Barrett, but she had been admitted to a mental hospital after her suicide attempt (see later).

Journalists were not permitted to view the execution and had to wait in an adjacent area of the prison complex. The witnesses went by car to the execution room and when they arrived Gary was already seated in the chair and secured with nylon straps. He was allowed a few moments to speak to each of them. All witnesses were offered pieces of cotton wool to use as ear plugs.

Gary sat very still while Warden Smith read out the execution order and looked over at the screen concealing the shooters and possibly to see if Nicole had made it. After the death warrant had been read to him he was asked if there was anything he wanted to say and uttered the famous line "Let's do it." Fr. Thomas Meersman, the Catholic chaplain administered the last rights and then a black hood was drawn over Gary's face (this is on the back of the screen behind the chair in the photo) Gary then said to Fr. Meersman: "Dominus vobiscum" ("The Lord be with you.") to which he replied, "Et cum spiritu tuo" ("And with your spirit") while the doctor pinned the white target over his heart.



Gary was shot at 8:05 a.m. (9.05 am CST) by five volunteers using Winchester Model 94 lever action repeating rifles loaded with Winchester Silver Tip 150-grain .30-30 caliber cartridges. Only four of the rifles were loaded with live ammunition, the fifth contained a blank round so that the firing squad would, at least in theory, not know who had fired the fatal shots.

As the volley of four bullets hit him, his body moved slightly, his head turned to the left and his hands were observed to move. Blood oozed from under the black T shirt and ran down onto his white pants and onto the floor. After 20 seconds all movement had ceased. The prison doctor checked for a heartbeat and took Gary's pulse.

Ken Shulsen, administrative assistant to the director of the Department of Corrections announced the execution to waiting journalists, saying "the order of the 4th Judicial Circuit has been carried out."

Outside the prison, a group of about 60 death penalty opponents stood in silence in 20 degree temperatures. Many of them had been there all night. Other groups held similar vigils in other parts of the United States.



The last journey for Gilmore ended at the University of Utah Medical Center.

Dr. Serge M. Moore, Utah's Chief Medical Examiner carried out the autopsy at 10.45 am., lasting three hours. Afterwards he told reporters that all four bullets had hit Gillmore's heart within two inches of each other and that he had taken two minutes to die. A witness reported seeing movement in his body for 15 – 20 seconds after the shots were fired and that he continued breathing during this time. In accordance with Gillmore's wishes, his corneas, pituitary gland, liver and kidneys were donated for medical research.

Vern Damico told reporters afterwards that "He got his wish. He did die and he died with dignity." After autopsy, Gary's body was claimed by Damico for cremation. The ashes were scattered over Provo where Gary had been living.

Robert B. Hansen, Utah's Attorney General commented afterwards "Justice has been served. No death can be elevating and there is much sadness when anyone dies. But I am definitely more sorrowful about the two victims families that the fact that Mr. Gilmore is no longer alive."

Henry Schwarzchild, New York coordinator of the National Coalition against the Death Penalty and director of ACLU Capital Punishment Project issued a statement accusing Mr Hansen of being an accomplice to judicial homicide. In the usual way of death penalty opponents Schwarzchild made no mention of the two totally innocent victims or

their families, but went on to claim that Mr. Hansen should be held in contempt of court for allowing the execution preparations to proceed after judge Ritter had granted a stay.

Gary Gilmore had been convicted of the murder by shooting using a 22 caliber Browning automatic pistol of Provo motel clerk, 26 year old Bennie Bushnell on July 20th, 1976. He was sentenced to death on October 7th, 1976 after a three day trial. He was also responsible for the murder of 24 year old gas station attendant, Max Jensen, the previous day in Orem, although he was not tried for this crime. He however confessed to it in a letter to his girlfriend, Nicole Barrett. Both murders took place during armed robberies and were completely unnecessary. At the time of the killings, Gilmore was on parole from a 12-year sentence for armed robbery. Gary was a very impatient person, both in his crimes, committed to get money to buy a truck and also in obtaining his execution.



Max Jensen



The murder weapon



Nicole Barrett

On November 1st, 1976, Gary told the sentencing judge, Fourth District Circuit Judge Robert Bullock, "You sentenced me to die. Unless it is a joke or something, I want to go ahead and do it. It's my decision." The execution was initially set for November 15, 1976, but this was stayed by the then governor who referred it to the Utah Board of Pardons. A second date of December 6th was also stayed when Gary's mother lodged an appeal with the Supreme Court.

On November 16th, both Gary and Nicole took a drug overdose in a suicide pact. Both survived. Gary later made a second attempt.

His execution, which was headline news worldwide, was graphically described in Norman Mailer's book and subsequent film "The Executioner's Song" with Tommy Lee Jones as Gary. The execution scene is very well done. The complete film is available on YouTube and I can recommend it.

It was the first execution in Utah since 1960 when James W. Rogers was shot for killing a fellow miner in San Juan County.

Although executions had now resumed they got off to a very slow start with only six between January 1977 and July 1982. Strangely four out of the first six were voluntary on the part of the inmate (marked with a “v” in the table below).

No.	Date	Name	State	Method
1v	01/17/77	Gary Mark Gilmore	Utah	Firing Squad
2	05/25/79	John Arthur Spenkelink	Florida	Electrocution
3v	10/22/79	Jesse Walter Bishop	Nevada	Lethal gas
4v	03/09/81	Steven Timothy Judy	Indiana	Electrocution
5v	08/10/82	Frank James Coppola	Virginia	Electrocution
6	12/07/82	Charlie Brooks Jr.	Texas	Lethal Injection
7	04/22/83	John Louis Evans	Alabama	Electrocution
8	09/02/83	Jimmy Lee Gray	Missouri	Lethal gas

With the exception of Texas, states continued to use their previous method of execution. Texas decided to switch to lethal injection from the outset.