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[< Previous](#)



[Current Issue](#)  
[Available Issues](#)

Benefits of Registration Include:

Table of Contents

- [Affidavit of Robert Perske \(19 October 2010\)](#)
- [The Scope of the Search](#)

Related Articles

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[Google Scholar](#)

Search for Other Articles By Author

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Search in:

AAIDD Journals

PubMed

Search

[◀ Previous Article](#)   [Volume 49, Issue 3 \(June 2011\)](#)   [Next Article ▶](#)

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Perspectives

Colorado Governor Pardons Joe Arridy

Robert Perske

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On January 6, 2011, Colorado Governor Bill Ritter, Jr., granted “a full and unconditional posthumous pardon to Joe Arridy, who was convicted of killing a 15-year-old Pueblo girl, sentenced to death and executed by lethal gas seven decades ago.” The governor cited that “an overwhelming body of evidence indicates the 23-year-old Arridy was innocent, including false and coerced confessions, the likelihood that Arridy was not in Pueblo at the time of the killing, and an admission of guilt by someone else.”

Volunteer Denver Attorney David Martinez worked on the case for 4 years before organizing his thorough 523-page “Petition for Pardon” and delivering it to the governor. In the petition he used my book *Deadly Innocence* (1995) as his compass. In addition, Martinez spent long hours doing his own exhaustive gathering of the massive amount of evidence and arguments that can be found in his formal petition. Martinez asked me to write my own affidavit, which he included in his larger document.

### **Affidavit of Robert Perske (19 October 2010)**

Robert Perske, being first duly sworn, does depose and state the following:

This is my personal appeal to Governor Bill Ritter, Jr., asking him to issue a posthumous pardon to Joe Arridy, who was wrongly executed on January 6, 1939, in the Colorado State Penitentiary. My reasons for doing so:

1. I came to know and care about hundreds of persons with intellectual disability like Mr. Arridy, and I am convinced that given his functioning level, he could not have even begun to carry out all of the mental and physical acts the prosecutors claimed he did.
2. I got this way after serving as a chaplain from 1959 to 1971 in an institution—exactly like the one in Grand Junction, Colorado, where Mr. Arridy lived. Since then, I have continued to work with these persons on the streets, in courts, and in prisons. Some do commit criminal acts, but most are fumbling and a far reach from having the ability to carefully plan and attack the way someone like Ted Bundy could.
3. I am amazed at how our nation's attitudes toward these persons have changed. When Mr. Arridy was executed, they were seen as subhuman persons and objects of disgust, who needed to be identified and sequestered in their own out-of-the-way colonies. Now, we see them as citizens-in-full-standing. For example, if in 1959, I predicted to my institutional superintendent that in 2010, persons with intellectual disability, like Mr. Arridy, would be seen walking around the neighborhood, sitting in church services, eating in restaurants, studying in local schools, rooting in the stands at local ball games, giving and receiving kindnesses from neighbors—and even sometimes being seen as pains in the

butt like some of our other neighbors are to us. If I predicted all that to my superintendent in 1959, he would have said I was mad.

4. I am astonished by the myriad of laws that were not in place when Mr. Arridy was convicted. *Atkins v. Virginia* (2002) now bans the executions of persons with intellectual disability. *Miranda v. Arizona* (1966) demands that a suspect's constitutional rights be read to him or her and honored. Psychological tests by qualified evaluators must be administered and results reported to the court. Every year, more states are calling for the videotaping of interrogations and confessions so that judges and juries can see and hear for themselves what went on in the interrogation room. The only defense that was used in Mr. Arridy's case was "Not Guilty by Reason of Insanity." Unfortunately, the defense witnesses, all psychiatrists, chose to be academically narrow. They claimed that Mr. Arridy was mentally deficient from birth and, therefore, had never been "sane." Consequently, he was convicted because a jury, aroused by great passion and prejudice in the community, refused to listen to the doctors and decided that he was sane. As for the defense lawyer, he was working against all odds, and it now seems to me to be criminal that he was forced to try such a case in a community so agitated that they were convinced of Mr. Arridy's guilt before a prospective juror walked into the courtroom.
5. I feel that there was a mountain of lies that were never examined and exposed in this case, all leading me to believe the following: Joe Arridy was not with the real killer at the crime scene. There is no solid evidence showing that he was even in Pueblo on that fateful night of the crime. A famous, self-serving sheriff in Cheyenne lied about what was said during his interrogations. Everybody seemed to see Mr. Arridy as a "nobody" and a "throw away" whose life did not matter all that much. The Pueblo police joined the sheriff in the set-up. Mr. Arridy's statement about the color of the victims' clothes and the color of the walls in the murder bedroom was ludicrous when, in earlier psychological tests administered at the institution, he said that Mr. Arridy said red was black and green was blue. The pawnbroker was part of the set-up; he claimed that he sold a gun to Mr. Arridy, a gun that was never found nor used in any crime. There were no explanations offered as to where Mr. Arridy would have obtained money for such a purchase. Then the pawnbroker's lie was obvious when he made a last-minute change regarding the date of the sale. The loquacious famous Cheyenne sheriff, who often reminisced about his being in the posse that brought down the Barker Gang, was the star of the trial, testifying five different times—all without notes and strictly from memory. The real perpetrator, who was later found to be a serial killer and who worked alone in an earlier case, was caught, convicted, and executed.

Governor, it is fortunate that today a person with intellectual disability similar to that of Joe Arridy could not be executed for a capital crime in Colorado or anywhere else in the United States. Notwithstanding this evolution in the law, the granting of a posthumous pardon of Joe Arridy would be an incredible symbolic gesture of hope and progress to individuals with intellectual disability, many of whom are still classified as mentally

retarded, who continually encounter discrimination in their daily life. Perhaps, and possibly more important, however, such an Executive Action will proclaim to the greater society the progress that Colorado has made and is making in the transformation of humanity for the greater good of all its citizens, independent of intellectual capacity. It is the next step in creating a brighter future by leaving the past behind.

My research was published in *Deadly Innocence*, a book I wrote in 1995 (Nashville: Abingdon Press). Excerpts from the book along with page numbers are cited in this affidavit.

### **The Scope of the Search**

On March 28, 1992, sociologist Richard Voorhees sent me a poem from an out-of-print book in which the poet described a warden weeping as he watched a man in a death row cell playing with a toy train before being walked to a gas chamber ("The Clinic" by Marguerite Young, *Moderate Fables*, 1944).

I sent a copy of the poem to Watt Espy, director of the Capital Punishment Archives, in Headland, Alabama. Espy researched the origins of the poem and found information that tied it to the life and trials of Joe Arridy, who was executed on January 6, 1939, at the age of 23.

During the 2 years after receiving the poem, I traveled up and down the Eastern Slope of the Rocky Mountains from Cheyenne to Pueblo and to Grand Junction on the Western Slope. I discovered newspaper articles by reading old microfilm rolls in *The Pueblo Chieftain*, *The Denver Post*, *The Rocky Mountain News* (Denver), *The Daily Sentinel* (Grand Junction), and *Wyoming Tribune* (Cheyenne). I interviewed archivists and historians at the Regional History Division of Western Colorado (Grand Junction), Wyoming State Archives (Cheyenne), District Archives of the Pueblo Public Library, Local History Center of the Cañon City Public Library, and the Colorado State Archives (Denver).

#### *The Early Years*

Joe Arridy was born to non-English speaking Syrian immigrants in Pueblo, Colorado, on April 29, 1915. He attended the first grade in Bessemer Elementary School. At the beginning of Joe's second year, the principal called on the Arridy family and told them that their son could not learn and asked them to keep him at home. The parents reported that for the next 4 years, Joe stayed around the house. He was a passive but happy child. According to his parents he was the happiest when he was playing all by himself. His favorite pastime was making mud pies and driving nails into pieces of wood (p. 19).

#### *Intelligence Testing and Institutionalization*

At age 10, Joe was committed to the Colorado State Home and Training School for Mental Defectives in Grand Junction. The Binet-Simon Test was administered. The results showed that Joe was unable to repeat four digits (4-3-7-9). When shown the color red, he said it was black and that green was blue. He usually spoke in incomplete

two- or three-word sentences. As the questions became harder to answer, he remained silent. The examiner listed him as “an imbecile with an IQ of 46.” Later, his institutional records showed no critical incident reports. For the most part he was a shy and quiet loner (pp. 27–28).

Nine months later, Joe's father missed his son. He asked that Joe be sent home. The request was granted. Upon his return, Joe took lonely walks all over town. These walks continued for 3 years.

At age 14, the walks came to an end when a probation officer caught a gang of boys performing sexual acts on him. The officer wrote an angry letter to the court, labeling Joe as “one of the worst mental defective cases that I have ever seen.” The court ordered his immediate return to the institution in Grand Junction (p. 31). During the next 7 years at the institution, Joe's records show that he was incapable of working on the farm crews or sitting in classrooms. Therefore, he was given a “day activity,” working side by side with a kindly kitchen worker, “Mrs. Bowers.” She reported that Joe was only capable of “tasks of not too long duration, can wash dishes, do mopping of floors, can do small chores and errands. He depends on others for leadership and suggestions” (p. 39).

#### *Railroad Boxcar Riding*

At age 22, Joe and a few other inmates watched men riding on top of railroad boxcars that passed the institution. Together they wandered off the institution grounds and jumped on boxcars. They took the 24-hour ride through the mountains to Pueblo. Later they took the trip back. Joe was last seen in Grand Junction on the evening of August 13, 1936. He was believed to have jumped onto a boxcar either that night or the next morning (p. 41).

After that, Arridy disappeared from sight until he walked up to the kitchen car of a railroad work gang on August 20 in the East Railroad Yards of Cheyenne, Wyoming. He was dirty and hungry. Mr. and Mrs. Glen Gibson, the kitchen workers, took him in, helped him wash up, and gave him clean clothes. For 6 days he washed dishes. When the crew moved to Archer, east of Cheyenne, Arridy was not allowed to go with them. On August 26, 1936, Mrs. Gibson drove Arridy back to the Cheyenne railroad yards and left him there (pp. 104–105).

#### *Rape and Murder in Pueblo*

On Saturday evening, August 15, 1936, slightly before or after midnight, Dorothy Drain, 15, and Barbara Drain, 12, were bludgeoned about their heads while sleeping together in the same bed at 1536 Stone Avenue in Pueblo. Dorothy was raped and beaten to death. Barbara, near death, was rushed to Saint Mary Corwin Hospital. She survived. Later, she identified Frank Aguilar as the attacker at his trial. She was not present at Joe Arridy's trial. She did not even identify Joe Arridy as a co-attacker (pp. 42–43, 78).

#### *Cheyenne Sheriff Gets a Confession From Arridy*

On August 26, 1936, shortly after Mrs. Gibson dropped Arridy off in the Cheyenne railroad yards, he was arrested by two railroad detectives and turned over to Sheriff George Carroll. Carroll, like law officers in all of the towns up and down Colorado's

Eastern Slope, was actively picking up suspects and interrogating them regarding the attacks on the Drain girls in Pueblo.

After an hour and a half of questioning, Carroll called a reporter and told him that he had just received a complete confession for the Pueblo crime from Arridy. He recited to at least one reporter a long series of wordy, complete sentences that Arridy purportedly uttered. According to Carroll, Arridy was the lone killer, and he committed the crime with a club.

#### *Pueblo Police Chief Is Shocked*

At first, when Chief J. Arthur Grady received news of the confession, he was shocked. The real killer, Frank Aguilar, a former Works Project Administration (WPA) worker who had been supervised by the Drain girls' father, had already been arrested for the crime. He had been arrested during the funeral of Dorothy Drain. The Pueblo police had even recovered the weapon used in the crime. It was the head of a hatchet with nicks that matched the wounds on the girls. The Pueblo police kept all this evidence confidential because Aguilar vehemently denied committing the crime.

Following this, Sheriff Carroll changed his story. After conducting another interrogation, he then reported to the press that a hatchet—not a club—was used in the crime. He also claimed that Arridy did not commit the crime alone. According to Carroll, Arridy simply said in two words that he did it “with Frank.”

Sheriff Carroll was an individual who was known to talk long and loud about being in the posse that finally caught up with and finished off the notorious Barker gang. Now during his regular announcements to the press, he performed at his long-winded best. Carroll had been totally verbal in his interrogations of Arridy; nothing was written down on paper nor was any confession signed. The alleged confessions and changes in them were dictated daily to reporters (pp. 42–51). In essence it was then claimed that the crime was a two-person job. The physical evidence pointed to Aguilar but law officials somehow felt that Arridy's confession was needed to complete the case.

#### *Aguilar is Quickly Convicted and Executed*

Aguilar's trial came quickly, starting on December 15, 1936, exactly 4 months after the crime. It ended 7 days later. Arridy was never present in the Aguilar trial and Sheriff Carroll had no large part in it either.

On the night before Aguilar's final court day, he caved in and told his defense lawyer that he did indeed commit the crime. The next morning, Aguilar's attorney passed the information to the judge and petitioned him to change Aguilar's plea to “Not Guilty by Reason of Insanity.” The judge overruled the motion and speedily sentenced Aguilar to death (pp. 74–79).

After the death sentence was announced, Aguilar was brought face to face with Mrs. R. O. McMurtree, 58, who identified him as the lone attacker in a similar crime that happened 2 weeks earlier and just three blocks away from the Drain crime. She and her aunt, Sally Crumpley, 72, were sleeping in the same bed when Aguilar attacked. He beat

them on the head as he had done to the Drain sisters. Like Dorothy Drain, Sally Crumpley was bludgeoned to death (pp. 45, 79).

Aguilar's execution came quickly. On August 15, 1937, just 2 days short of the first anniversary of Dorothy Drain's murder, Aguilar was executed (p. 119). On the same day, Sheriff Carroll and two railroad detectives received a \$1000 reward for making the arrest of Joe Arridy in Cheyenne (p. 118)

#### *Sheriff Carroll Takes Leadership in Arridy Case*

Later, in Arridy's trial, Sheriff Carroll became the star of the case. He spoke in his heroic over-wordy style. According to the press, he did not speak from a single note. He simply testified from memory. After announcing Arridy's first confessions to reporters and Chief Grady, two Pueblo detectives sped through the night to Cheyenne. The next morning, they joined in another interrogation, with Carroll at the lead. Then they drove back to Pueblo (pp. 47–51).

Later that day, Carroll drove Arridy to Pueblo (pp. 55, 99). He was present at the Pueblo Police Station when Arridy and Aguilar were brought together. He took leadership when Arridy was taken to the Drain home, where the crime was reenacted (pp. 50–56). He was present at the prison in Cañon City when Aguilar gave a signed confession that marginally included Arridy's initials in the lower left margin on the first page a lower left column. That confession was printed in its entirety in the *Pueblo Chieftain* but was withdrawn and never heard in a court (pp. 60–66).

During the prosecutor's evidentiary presentations, Sheriff Carroll took the stand five times. The transcript shows how Carroll was allowed to launch forth as a riveting storyteller. He testified that Arridy was in complete control of his thoughts and spoke in clear sentences that described the colors on the walls in the bedroom and the colors of the nightgowns the girls wore, and even the colors of the dresses the girls would be wearing when they went to Sunday church services (pp. 93–101).

The Joe Arridy that Carroll described was a far cry from the Arridy who often spoke in unfinished sentences and did not know who Franklin Delano Roosevelt was; nor did he know what a hatchet was or that his own father was present in the courtroom (pp. 83–91).

#### *Arridy's Attorney Loses in a Sanity Hearing*

The lone defense attorney argued that Arridy was “Not Guilty by Reason of Insanity.” The question before the court was, “Does Joe Arridy have the capacity to tell good from evil and right from wrong?” If not, he should be found to be insane and not guilty. Three psychiatrists testified that Arridy did not know right from wrong, but they balked by saying that he was not insane. According to them, one needed to be “normal” first before ever being insane, and they claimed that Arridy had never been normal.

The jury deadlocked at six to six, but an hour later, they voted that Arridy would have to go on trial for murder. Almost every word of the trial was being transcribed by *The Pueblo Chieftain*; it printed a banner heading that said, “Alienists [Psychiatrists] Testify

Arridy Has Mind of a Six-Year-Old—State Hospital Physicians Tell Jury Boy's Not Insane—Just an Imbecile” (p. 42).

*At Trial, Defense Refuses to Conduct an Evidentiary Defense*

As strange as it may seem today, the defense attorney had conducted no investigation into the case. At the beginning of the trial, he announced that he would not present an evidentiary defense and would only cross-examine witnesses for the prosecution. He then requested that the judge set aside the earlier sanity trial verdict and that he be given permission to argue a sanity case one more time. Furthermore, he asked permission to make his opening argument after the prosecution had completed its evidentiary case. The judge agreed to all of these conditions (p. 92).

The same three psychiatrists testified again. This time the physician superintendent of the Grand Junction institution added his voice. They presented the same “he does not know right from wrong, but he can't be insane because he has never been normal” arguments exactly like they did in the earlier sanity trial (pp. 112–115).

Once again, Sheriff Carroll voiced his views without their veracity ever being challenged. After he touted his 30 years of experience and claimed that he interrogated Arridy for “6 or 7 hours,” the prosecutor asked him, “Based on your experience [is] Joe Arridy capable of distinguishing right from wrong?” Carroll responded, “I think there is no doubt, whatever, but what he is” (p. 115).

A verdict of guilty was rendered on April 17, 1937. Arridy was sentenced to death (p. 115).

For a year and a half, a pro bono “Citizen Lawyer” Gail Ireland fought valiantly to save the life of Joe Arridy. During that period, Ireland managed to get at least six stays (pp. 129–135). On January 6, 1939, at 6:15 p.m., the Colorado Supreme Court voted 4-3 to deny the last petition. Governor Teller Ammons called the warden at 6:30 p.m. and ordered that the execution be carried out.

The chaplain administered the Roman Catholic Church's “Last Rites for a Child.” It called for the chaplain to recite each phrase of “The Lord's Prayer,” two words at a time with Arridy repeating them: “Our father... our Father... who art... Who art... all the way to the amen” (pp. 132–135).

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