



Death by Installments

By Roger A. Stetter

Many years ago, I was shocked to read about the case of a black juvenile offender by the name of Willie Francis who is best known for being the first recipient of a failed execution by electrocution in the United States. He was sentenced to death by the State of Louisiana in 1945 for allegedly murdering Andrew Thomas, a pharmacist in St. Martinville who had once employed him. Since no one had witnessed the crime and the gun allegedly used to kill Thomas was allegedly lost in the mail, the State's evidence consisted almost entirely of Francis's confession, taken when he was 15 years old. During his trial, the court-appointed defense attorneys offered no objections, called no witnesses and put up no defense. Two days after the trial began, Francis was convicted of murder and sentenced to death. No appeal was filed.

Instead of transporting condemned criminals to a central prison, Louisiana executed its citizens "on the spot," moving a portable electric chair from town to town on a truck operated out of the state penitentiary at Angola. The electric chair failed to kill Willie Francis, apparently having been set up by a drunken prison guard and an inmate. After the switch was thrown, and the supposedly lethal current entered his body, the condemned boy was heard to scream, "Take it off! Take it off! Let me breathe!" The sheriff then halted the execution and Francis was returned to his prison cell to await further action by the authorities. Eventually, the issue was presented to the U.S. Supreme Court of whether it violated the Constitution to put a defendant through the agonies of electrocution twice. Writing for four members of the Court, Justice Stanley Reed concluded that there was no constitutional bar to another attempt at execution:

The fact that an unforeseeable accident prevented the prompt consummation of the sentence cannot, it seems to us, add an element of cruelty to a subsequent execution The situation of the unfortunate victim of this accident is just as though he had suffered the identical amount of mental anguish and pain in any other occurrence, such as, for example, a fire in the cell block.

Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 464 (1947). In a concurring opinion, Justice Felix Frankfurter wrote:

I cannot bring myself to believe that for Louisiana to leave to executive clemency, rather than to require, mitigation of a sentence of death duly pronounced upon conviction for murder because a first attempt to carry it out was an innocent misadventure, offends a principle of justice "rooted in the traditions of conscience of our people."

Id. at 470 (citation omitted).¹ Willie Francis was successfully executed the following year.²

Our country, nearly alone among developed countries in the world that have not abolished capital punishment, is still a long way from carrying out the death penalty without unnecessary suffering.³ Last year saw at least three botched executions — in Arizona, Oklahoma and Ohio — resulting in the convicts gasping for breath in apparent distress during their drawn-out executions by lethal injection.⁴

The execution of Joseph Wood in Arizona, put to death for the murders of his former girlfriend and her father in 1989, was perhaps the most ghastly. Injected with drugs that were

supposed to be lethal with one injection, Wood ultimately received 15 injections and his execution lasted almost two hours. The procedure lasted so long that Wood's lawyers were able to seek an emergency stay of execution but he died before the judge could make a ruling.

Clayton Lockett was executed last year for the murder and rape of a young woman in Oklahoma. He suffered a heart attack after a failed execution lasting almost 45 minutes, during which he writhed, groaned, convulsed and spoke during the process, and attempted to rise from the execution table 14 minutes into the procedure, despite having been declared unconscious. Inexpert placement of an injection line into Lockett's groin caused the lethal drugs to course through local tissue rather than directly into his bloodstream. (The same flawed lethal injection protocol was subsequently adopted in Louisiana.)

Ohio death row inmate, Dennis McGuire, was put to death for the 1989 murder of a 22-year-old woman. McGuire gasped, choked, clenched his fists and appeared to struggle against his restraints for about 10 minutes after the administration of a two-drug lethal injection cocktail. It took 26 minutes for him to die.

The United States has wrestled for decades with the issue of capital punishment and, while no one should minimize the severe trauma and loss to the families of murder victims, executions do not help these people heal nor do they end their pain. The extended process prior to executions prolongs the agony of families. The infliction of the death penalty, arbitrary and plagued by delay, does nothing to deter the murder of innocents,⁵ and the cost of death penalty cases far exceeds the expense of life imprisonment without pardon or parole.⁶ There is also the problem of people sentenced to death for crimes they did not commit, only some of whom have been exonerated based upon DNA evidence or other factors.⁷

In Cold Blood, the 1967 film based on Truman Capote's book of the same name, should dispel any illusion that the death penalty can be administered humanely. Viewing the final scene of the movie — the hanging of two convicts from a scaffold inside a prison building in the dead of night — is a truly awful spectacle and a harrowing experience.⁸

As evidenced by the Willie Francis case and many more recent examples, botched executions are a recurring problem in the United States and a painful reminder that capital punishment is the wrong choice for a society which prides itself on equality and fairness. An 18th century Italian philosopher and criminologist, Cesare Beccaria, aptly summed the matter up in these words: "*The punishment of death is pernicious to society, from the example of barbarity it affords.*" Cesare Beccaria, *An Essay on Crimes and Punishments* (1764) (The Federalist Papers Project), at p. 40.

FOOTNOTES

1. Deeply troubled by his decisive vote, Justice Frankfurter wrote to his old Harvard Law School roommate, Louisiana attorney Monte Lemann, and asked him to use his influence with Louisiana Gov. Jimmie Davis to have the death sentence commuted to life imprisonment, but to no avail. See, Gilbert King, *The Execution of Willie Francis* (2008), at pp. 233-37.

2. Perhaps the best account of the Willie Francis case is in Barrett Prettyman, Jr.'s book, *Death and the Supreme Court* (1961), at pp. 90-128.

3. Japan, South Korea and the United States are the only established democracies in the world that still conduct executions. The U.S. Supreme Court has limited capital punishment to aggravated murders committed by mentally competent adults but has never ruled the death penalty to be per se unconstitutional. It is still legal in 36 states and for federal crimes, including murder, treason, espionage and crimes under military jurisdiction, such as desertion during

wartime. The Death Penalty Information Center provides a comprehensive online database and history of capital punishment, dating back to Colonial times. The first recorded execution in the colonies was that of Captain George Kendall who was executed in the Jamestown colony of Virginia in 1608 for acting as a spy for Spain.

4. Electrocution was the preferred method of execution during the 20th century. Lethal injection, permissible in all states which still retain capital punishment, is now the standard method of execution.

5. The homicide rate in those states with the death penalty is almost double the rate of those states without the death penalty.

6. A tiny fraction of convicted murderers, most of them poor and black, are executed in the United States each year, with death row inmates who lose the “lethal lottery” spending an average of 16 years between the date of their crimes and their execution date. Since 1976, more than 75 percent of the murder victims in cases resulting in execution were white, even though nationally only 50 percent of murder victims generally were white. In Louisiana, the odds of a death sentence are 97 percent higher for those whose victim was white than those whose victim was black. In Texas, which far exceeds any other state in the number of executions per year, a death penalty case costs about three times the cost of imprisoning someone in a maximum security cell for 40 years.

7. Since 1976, 150 persons have been exonerated from death row, largely through the work of The Innocence Project, a national organization dedicated to exonerating wrongfully convicted people through DNA testing and reform of the criminal justice system.

8. If governments want to kill people legally, they should do it where we can see it.

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