

Center For Constitutional Rights

Criminal Justice Issues and Prisoners' Rights

<https://ccrjustice.org/home/blog/2017/04/25/arkansas-death-penalty-horror-show>

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Arkansas horror show continued last night with the first double execution carried out in the state since September 1999, of Jack Harold Jones and Marcel Williams.^[1] No state had performed a double execution in close to 17 years. Until this month, Arkansas appeared to be one of the states who had abandoned the death penalty, having not executed anyone since 2005.

But last Thursday, Ledell Lee, who had long claimed his innocence and was denied simple DNA testing as requested by [attorneys with the Innocence Project and the ACLU](#), readied himself to be the first condemned man to die ahead of the spate of executions scheduled by the State of Arkansas. In an effort that had been both [publicly](#) and [judicially criticised](#), the state pushed on with its ruthless plan to rush through eight executions before the expiration date on April 30th for its supply of Midazolam, a sedative used as the first injection in the state's three-drug execution process. For a moment last week, it had felt like the multiple legal challenges and negative publicity might have stalled the process long enough for the expiry date to pass, when stays were granted to Don D. Davis, [Bruce Ward](#), [Jason McGehee](#) and [Stacey Johnson](#). You could be forgiven for thinking the state didn't *seriously* want to carry out the executions but rather wanted the political capital of appearing tough on crime. Quite the contrary: [Arkansas Governor Asa Hutchinson](#) and [Arkansas Attorney General Leslie Rutledge](#) *wanted* to do this and were prepared to spend immense state resources and garnered national and global attention doing so.

At 11.56pm last Thursday, Ledell Lee was pronounced dead. The medieval machinery of Arkansas death penalty system had creaked back to life, after being halted for over a decade. The state had vigorously pursued various legal avenues, eventually coming before the U.S. Supreme Court. At 11.33pm Justice Neil Gorsuch cast the [deciding vote](#) refusing to grant Mr. Lee a stay. Gorsuch's first high profile decision on the Court. It didn't take long for Gorsuch to have blood on his hands. Less than half an hour after the decision, Mr. Lee was dead.

Independent volunteers waited in the unit, keen to perform their macabre civic duty: witnessing the execution. Last night, [Darla Jones \(no relation\) watched the execution](#) of the man who killed her mother. Under [Arkansas execution protocols](#), the family of condemned people are not permitted to be present to witness the death of their loved one. One can assume this prohibition is because the spectacle of the execution is primarily intended to bring the victims family comfort. Following the execution of her mother's killer last night, Mrs. Lacey Phillips Silk thanked both the governor and Attorney General and said Mr. Jones execution [gave our family some justice](#). Perhaps it would sour the moment somewhat if they were confronted with the morally confounding experience of witnessing the trauma of the condemned persons family while they watched *their* loved one being executed. More so if it resulted in a [botched execution](#). Both the condemned and the victims family undoubtedly suffer tremendous pain at the killings of their loved ones. And yet the planned, drawn out and arbitrary nature of the killings by the state over the last week seem to discount the suffering imposed on the condemned persons family. The [recent report released by the Fair Punishment Project](#) emphasises how Arkansas' planned execution list has been defined by mental illness, intellectual disability, and bad lawyering in the decades leading up to this point.

The state should permit all stakeholders a seat in the witness room, requiring the victims family to see the impact of the execution on the (similarly) innocent family of the condemned man. Excluding the suffering of the condemned persons family implies that the family of the person being executed is somehow less innocent than that of the victims family.

The U.S. has experienced a 90% [decline in death sentences](#) since 1998.^[2] The law is a living and adapting human mechanism. It is flawed, inconsistent, and slow moving. It is often the last to catch up with civil society's standards. The evolution of these standards can be seen in what has historically been deemed to be cruel and unusual punishment within the meaning of the Eighth Amendment. It took until 2002 in [Atkins v. Virginia](#) for the U.S. Supreme Court to determine that it was cruel and unusual to execute the mentally retarded, to use the language of the case. An intellectually disabled man on death row (in a southern state near Arkansas) told me he had been scheduled to die and taken to the unit where the execution was to be performed on multiple occasions. Eventually the state conceded that executing him was cruel and unusual because of his intellectual disability. Many of those put through that experience are low functioning and obviously intellectually impaired. His experience stood out as being particularly cruel to me, for individuals of any intellectual ability, and yet it is routine that the condemned are not sure of their fate until sometimes minutes before it is scheduled to occur.

Despite the events of the past two weeks, we are living in the twilight era of the death penalty. When former Assistant District Attorney (ADA) Dale Cox in Caddo Parish famously declared in a 2015 interview with the New York Times [We need to kill more people](#), the winds of change blew through Louisiana and the state saw a dramatic decline in death cases. The public was shocked by Cox's comment and amid pressure he [withdrew from the DA race](#). Anti-death-penalty sentiments were also stoked by the recent exoneration of [Rodrigus Crawford](#) in Louisiana, the man whose death Cox cavalierly considered necessary for the ends of justice. The death penalty has time and again been proven to be too costly, both morally and financially.

Perhaps the arbitrariness of Arkansas schedule will finally make an already inhumane practice too distasteful for some voters; it could actually aid in the overall goal of total abolition. Time will tell. Mercifully, activity in the execution chamber of the Arkansas

Department of Corrections will again grind to a halt on April 30 after their drug supply expires and the state is forced to find an alternative drug or means of execution. For Mr. Ledell, Mr. Jones, and Mr. Williamson, time was not on their (or their families) sides. We can only hope that Kenneth Williams and his family are spared this suffering this Thursday, when he is scheduled to die.

[Please donate](#) to help cover funeral costs and travel expenses for the indigent families of the executed men.

[1] The most recent double execution occurred in August 2000 in Texas.

[2] From 295 death sentences in 1998 to 30 in 2016, <<https://deathpenaltyinfo.org/documents/FactSheet.pdf>>

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