**Capital Punishment:A case study**

Capital punishment, also known as the death penalty, is the state-sanctioned killing of a person as punishment for a crime. The sentence ordering that someone is punished with the death penalty is called a death sentence, and the act of carrying out such a sentence is known as an execution.

Executing someone permanently stops the worst criminals and means we can all feel safer, as they can't commit any more crimes. If they were in prison they might escape, or be let out for good behaviour. Executing them means they're definitely gone for good.

Murder that is willful, deliberate, malicious, and premeditated. Murder in the perpetration of, or in the attempt to perpetrate, any arson, torture, escape, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery.

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OUR RIGHTS ARE UNDER ATTACK

Efforts to erase voting rights, trans rights, and abortion rights for millions of people are escalating across the country. We’re responding on all fronts — from courts to legislatures in all 50 states, D.C., and Puerto Rico — but we need your help to win.

The American Civil Liberties Union believes the death penalty inherently violates the constitutional ban against cruel and unusual punishment and the guarantees of due process of law and of equal protection under the law. Furthermore, we believe that the state should not give itself the right to kill human beings – especially when it kills with premeditation and ceremony, in the name of the law or in the name of its people, and when it does so in an arbitrary and discriminatory fashion.

Capital punishment is an intolerable denial of civil liberties and is inconsistent with the fundamental values of our democratic system. The death penalty is uncivilized in theory and unfair and inequitable in practice. Through litigation, legislation, and advocacy against this barbaric and brutal institution, we strive to prevent executions and seek the abolition of capital punishment.

The ACLU’s opposition to capital punishment incorporates the following fundamental concerns:

The death penalty system in the US is applied in an unfair and unjust manner against people, largely dependent on how much money they have, the skill of their attorneys, race of the victim and where the crime took place. People of color are far more likely to be executed than white people, especially if thevictim is white

The death penalty is a waste of taxpayer funds and has no public safety benefit. The vast majority of law enforcement professionals surveyed agree that capital punishment does not deter violent crime; a survey of police chiefs nationwide found they rank the death penalty lowest among ways to reduce violent crime. They ranked increasing the number of police officers, reducing drug abuse, and creating a better economy with more jobs higher than the death penalty as the best ways to reduce violence. The FBI has found the states with the death penalty have the highest murder rates.

Innocent people are too often sentenced to death. Since 1973, over 156 people have been released from death rows in 26 states because of innocence. Nationally, at least one person is exonerated for every 10 that are executed.

**INTRODUCTION TO THE “MODERN ERA” OF THE DEATH PENALTY IN THE UNITED STATES:**

In 1972, the Supreme Court declared that under then-existing laws "the imposition and carrying out of the death penalty… constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments." (Furman v. Georgia, 408 U.S. 238). The Court, concentrating its objections on the manner in which death penalty laws had been applied, found the result so "harsh, freakish, and arbitrary" as to be constitutionally unacceptable. Making the nationwide impact of its decision unmistakable, the Court summarily reversed death sentences in the many cases then before it, which involved a wide range of state statutes, crimes and factual situations.

But within four years after the Furman decision, several hundred persons had been sentenced to death under new state capital punishment statutes written to provide guidance to juries in sentencing. These statutes require a two-stage trial procedure, in which the jury first determines guilt or innocence and then chooses imprisonment or death in the light of aggravating or mitigating circumstances.

In 1976, the Supreme Court moved away from abolition, holding that "the punishment of death does not invariably violate the Constitution." The Court ruled that the new death penalty statutes contained "objective standards to guide, regularize, and make rationally reviewable the process for imposing the sentence of death." (Gregg v. Georgia, 428 U.S. 153). Subsequently 38 state legislatures and the Federal government enacted death penalty statutes patterned after those the Court upheld in Gregg. Congress also enacted and expanded federal death penalty statutes for peacetime espionage by military personnel and for a vast range of categories of murder.

Executions resumed in 1977. In 2002, the Supreme Court held executions of mentally retarded criminals are “cruel and unusual punishments” prohibited by the Eighth Amendment to the Constitution. Since then, states have developed a range of processes to ensure that mentally retarded individuals are not executed. Many have elected to hold proceedings prior to the merits trial, many with juries, to determine whether an accused is mentally retarded. In 2005, the Supreme Court held that the Eighth and Fourteenth Amendments to the Constitution forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed, resulting in commutation of death sentences to life for dozens of individuals across the country. As of August 2012, over 3,200 men and women are under a death sentence and more than 1,300 men, women and children (at the time of the crime) have been executed since 1976.

**ACLU OBJECTIONS TO THE DEATH PENALTY:**

Despite the Supreme Court's 1976 ruling in Gregg v. Georgia, et al, the ACLU continues to oppose capital punishment on moral, practical, and constitutional grounds:

Capital punishment is cruel and unusual. It is cruel because it is a relic of the earliest days of penology, when slavery, branding, and other corporal punishments were commonplace. Like those barbaric practices, executions have no place in a civilized society. It is unusual because only the United States of all the western industrialized nations engages in this punishment. It is also unusual because only a random sampling of convicted murderers in the United States receive a sentence of death.

Capital punishment denies due process of law. Its imposition is often arbitrary, and always irrevocable – forever depriving an individual of the opportunity to benefit from new evidence or new laws that might warrant the reversal of a conviction, or the setting aside of a death sentence.

The death penalty violates the constitutional guarantee of equal protection. It is applied randomly – and discriminatorily. It is imposed disproportionately upon those whose victims are white, offenders who are people of color, and on those who are poor and uneducated and concentrated in certain geographic regions of the country.

The death penalty is not a viable form of crime control. When police chiefs were asked to rank the factors that, in their judgment, reduce the rate of violent crime, they mentioned curbing drug use and putting more officers on the street, longer sentences and gun control. They ranked the death penalty as least effective. Politicians who preach the desirability of executions as a method of crime control deceive the public and mask their own failure to identify and confront the true causes of crime.

Capital punishment wastes limited resources. It squanders the time and energy of courts, prosecuting attorneys, defense counsel, juries, and courtroom and law enforcement personnel. It unduly burdens the criminal justice system, and it is thus counterproductive as an instrument for society's control of violent crime. Limited funds that could be used to prevent and solve crime (and provide education and jobs) are spent on capital punishment.

Opposing the death penalty does not indicate a lack of sympathy for murder victims. On the contrary, murder demonstrates a lack of respect for human life. Because life is precious and death irrevocable, murder is abhorrent, and a policy of state-authorized killings is immoral. It epitomizes the tragic inefficacy and brutality of violence, rather than reason, as the solution to difficult social problems. Many murder victims do not support state-sponsored violence to avenge the death of their loved one. Sadly, these victims have often been marginalized by politicians and prosecutors, who would rather publicize the opinions of pro-death penalty family members.

Changes in death sentencing have proved to be largely cosmetic. The defects in death-penalty laws, conceded by the Supreme Court in the early 1970s, have not been appreciably altered by the shift from unrestrained discretion to "guided discretion." Such so-called “reforms” in death sentencing merely mask the impermissible randomness of a process that results in an execution.

A society that respects life does not deliberately kill human beings. An execution is a violent public spectacle of official homicide, and one that endorses killing to solve social problems – the worst possible example to set for the citizenry, and especially children. Governments worldwide have often attempted to justify their lethal fury by extolling the purported benefits that such killing would bring to the rest of society. The benefits of capital punishment are illusory, but the bloodshed and the resulting destruction of community decency are real.

**CAPITAL PUNISHMENT IS NOT A DETERRENT TO CAPITAL CRIMES:**

Deterrence is a function not only of a punishment's severity, but also of its certainty and frequency. The argument most often cited in support of capital punishment is that the threat of execution influences criminal behavior more effectively than imprisonment does. As plausible as this claim may sound, in actuality the death penalty fails as a deterrent for several reasons.

A punishment can be an effective deterrent only if it is consistently and promptly employed. Capital punishment cannot be administered to meet these conditions.

The proportion of first-degree murderers who are sentenced to death is small, and of this group, an even smaller proportion of people are executed. Although death sentences in the mid-1990s increased to about 300 per year, this is still only about one percent of all homicides known to the police. Of all those convicted on a charge of criminal homicide, only 3 percent – about 1 in 33 – are eventually sentenced to death. Between 2001-2009, the average number of death sentences per year dropped to 137, reducing the percentage even more. This tiny fraction of convicted murderers do not represent the “worst of the worst”.

Mandatory death sentencing is unconstitutional. The possibility of increasing the number of convicted murderers sentenced to death and executed by enacting mandatory death penalty laws was ruled unconstitutional in 1976 (Woodson v. North Carolina, 428 U.S. 280).

A considerable time between the imposition of the death sentence and the actual execution is unavoidable, given the procedural safeguards required by the courts in capital cases. Starting with selecting the trial jury, murder trials take far longer when the ultimate penalty is involved. Furthermore, post-conviction appeals in death-penalty cases are far more frequent than in other cases. These factors increase the time and cost of administering criminal justice.

We can reduce delay and costs only by abandoning the procedural safeguards and constitutional rights of suspects, defendants, and convicts – with the attendant high risk of convicting the wrong person and executing the innocent. This is not a realistic prospect: our legal system will never reverse itself to deny defendants the right to counsel, or the right to an appeal.

Persons who commit murder and other crimes of personal violence often do not premeditate their crimes.

Most capital crimes are committed in the heat of the moment. Most capital crimes are committed during moments of great emotional stress or under the influence of drugs or alcohol, when logical thinking has been suspended. Many capital crimes are committed by the badly emotionally-damaged or mentally ill. In such cases, violence is inflicted by persons unable to appreciate the consequences to themselves as well as to others.

Even when crime is planned, the criminal ordinarily concentrates on escaping detection, arrest, and conviction. The threat of even the severest punishment will not discourage those who expect to escape detection and arrest. It is impossible to imagine how the threat of any punishment could prevent a crime that is not premeditated. Furthermore, the death penalty is a futile threat for political terrorists, like Timothy McVeigh, because they usually act in the name of an ideology that honors its martyrs.

Capital punishment doesn't solve our society's crime problem. Threatening capital punishment leaves the underlying causes of crime unaddressed, and ignores the many political and diplomatic sanctions (such as treaties against asylum for international terrorists) that could appreciably lower the incidence of terrorism.

Capital punishment has been a useless weapon in the so-called "war on drugs." The attempt to reduce murders in the drug trade by threat of severe punishment ignores the fact that anyone trafficking in illegal drugs is already risking his life in violent competition with other dealers. It is irrational to think that the death penalty – a remote threat at best – will avert murders committed in drug turf wars or by street-level dealers.

If, however, severe punishment can deter crime, then permanent imprisonment is severe enough to deter any rational person from committing a violent crime.

The vast preponderance of the evidence shows that the death penalty is no more effective than imprisonment in deterring murder and that it may even be an incitement to criminal violence. Death-penalty states as a group do not have lower rates of criminal homicide than non-death-penalty states. Use of the death penalty in a given state may actually increase the subsequent rate of criminal homicide. Why? Perhaps because "a return to the exercise of the death penalty weakens socially based inhibitions against the use of lethal force to settle disputes…. "

Prisoners and prison personnel do not suffer a higher rate of criminal assault and homicide from life-term prisoners in abolition states than they do in death-penalty states. Between 1992 and 1995, 176 inmates were murdered by other prisoners. The vast majority of those inmates (84%) were killed in death penalty jurisdictions. During the same period, about 2% of all inmate assaults on prison staff were committed in abolition jurisdictions. Evidently, the threat of the death penalty "does not even exert an incremental deterrent effect over the threat of a lesser punishment in the abolitionist states." Furthermore, multiple studies have shown that prisoners sentenced to life without parole have equivalent rates of prison violence as compared to other inmates.

Actual experience thus establishes beyond a reasonable doubt that the death penalty does not deter murder. No comparable body of evidence contradicts that conclusion.

Furthermore, there are documented cases in which the death penalty actually incited the capital crimes it was supposed to deter. These include instances of the so-called suicide-by-execution syndrome – persons who wanted to die but feared taking their own lives, and committed murder so that the state would kill them. For example, in 1996, Daniel Colwell, who suffered from mental illness, claimed that he killed a randomly-selected couple in a Georgia parking lot so that the state would kill him – he was sentenced to death and ultimately took his own life while on death row.

Although inflicting the death penalty guarantees that the condemned person will commit no further crimes, it does not have a demonstrable deterrent effect on other individuals. Further, it is a high price to pay when studies show that few convicted murderers commit further crimes of violence. Researchers examined the prison and post-release records of 533 prisoners on death row in 1972 whose sentences were reduced to incarceration for life by the Supreme Court's ruling in Furman. This research showed that seven had committed another murder. But the same study showed that in four other cases, an innocent man had been sentenced to death. (Marquart and Sorensen, in Loyola of Los Angeles Law Review 1989)

Recidivism among murderers does occasionally happen, but it occurs less frequently than most people believe; the media rarely distinguish between a convicted offender who murders while on parole, and a paroled murderer who murders again. Government data show that about one in 12 death row prisoners had a prior homicide conviction. But as there is no way to predict reliably which convicted murderers will try to kill again, the only way to prevent all such recidivism is to execute every convicted murderer – a policy no one seriously advocates. Equally effective but far less inhumane is a policy of life imprisonment without the possibility of parole.

CAPITAL PUNISHMENT IS UNFAIR

Constitutional due process and elementary justice both require that the judicial functions of trial and sentencing be conducted with fundamental fairness, especially where the irreversible sanction of the death penalty is involved. In murder cases (since 1930, 88 percent of all executions have been for this crime), there has been substantial evidence to show that courts have sentenced some persons to prison while putting others to death in a manner that has been arbitrary, racially biased, and unfair.

Racial Bias in Death Sentencing

Racial discrimination was one of the grounds on which the Supreme Court ruled the death penalty unconstitutional in Furman. Half a century ago, in his classic American Dilemma (1944), Gunnar Myrdal reported that "the South makes the widest application of the death penalty, and Negro criminals come in for much more than their share of the executions." A study of the death penalty in Texas shows that the current capital punishment system is an outgrowth of the racist "legacy of slavery." Between 1930 and the end of 1996, 4,220 prisoners were executed in the United States; more than half (53%) were black.

Our nation's death rows have always held a disproportionately large population of African Americans, relative to their percentage of the total population. Comparing black and white offenders over the past century, the former were often executed for what were considered less-than-capital offenses for whites, such as rape and burglary. (Between 1930 and 1976, 455 men were executed for rape, of whom 405 – 90 percent – were black.) A higher percentage of the blacks who were executed were juveniles; and the rate of execution without having one's conviction reviewed by any higher court was higher for blacks. (Bowers, Legal Homicide 1984; Streib, Death Penalty for Juveniles 1987)

In recent years, it has been argued that such flagrant racial discrimination is a thing of the past. However, since the revival of the death penalty in the mid-1970s, about half of those on death row at any given time have been black. More striking is the racial comparison of victims. Although approximately 49% of all homicide victims are white, 77% of capital homicide cases since 1976 have involved a white victim.

Between 1976 and 2005, 86% of white victims were killed by whites (14% by other races) while 94% of black victims were killed by blacks (6% by other races). Blacks and whites are murder victims in almost equal numbers of crimes – which is a very high percentage given that the general US population is 13% black. African-Americans are six times as likely as white Americans to die at the hands of a murderer, and roughly seven times as likely to murder someone. Young black men are fifteen times as likely to be murdered as young white men.

So given this information, when those under death sentence are examined more closely, it turns out that race is a decisive factor after all.

Further, studies like that commissioned by the Governor of Maryland found that “black offenders who kill white victims are at greater risk of a death sentence than others, primarily because they are substantially more likely to be charged by the state’s attorney with a capital offense.”

The classic statistical study of racial discrimination in capital cases in Georgia presented in the McCleskey case showed that "the average odds of receiving a death sentence among all indicted cases were 4.3 times higher in cases with white victims." (David C. Baldus et al., Equal Justice and the Death Penalty 1990) In 1987 these data were placed before the Supreme Court in McCleskey v. Kemp and while the Court did not dispute the statistical evidence, it held that evidence of an overall pattern of racial bias was not sufficient. Mr. McCleskey would have to prove racial bias in his own case – a virtually impossible task. The Court also held that the evidence failed to show that there was "a constitutionally significant risk of racial bias...." (481 U.S. 279) Although the Supreme Court declared that the remedy sought by the plaintiff was "best presented to the legislative bodies," subsequent efforts to persuade Congress to remedy the problem by enacting the Racial Justice Act were not successful. (Don Edwards & John Conyers, Jr., The Racial Justice Act – A Simple Matter of Justice, in University of Dayton Law Review 1995)

In 1990, the U.S. General Accounting Office reported to the Congress the results of its review of empirical studies on racism and the death penalty. The GAO concluded: "Our synthesis of the 28 studies shows a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty after the Furman decision" and that "race of victim influence was found at all stages of the criminal justice system process..."

Texas was prepared to execute Duane Buck on September 15, 2011. Mr. Buck was condemned to death by a jury that had been told by an expert psychologist that he was more likely to be dangerous because he was African American. The Supreme Court stayed the case, but Mr. Buck has not yet received the new sentencing hearing justice requires.

These results cannot be explained away by relevant non-racial factors, such as prior criminal record or type of crime, as these were factored for in the Baldus and GAO studies referred to above. They lead to a very unsavory conclusion: In the trial courts of this nation, even at the present time, the killing of a white person is treated much more severely than the killing of a black person. Of the 313 persons executed between January 1977 and the end of 1995, 36 had been convicted of killing a black person while 249 (80%) had killed a white person. Of the 178 white defendants executed, only three had been convicted of murdering people of color. Our criminal justice system essentially reserves the death penalty for murderers (regardless of their race) who kill white victims.

Another recent Louisiana study found that defendants with white victims were 97% more likely to receive death sentences than defendants with black victims.[1]

Both gender and socio-economic class also determine who receives a death sentence and who is executed. Women account for only two percent of all people sentenced to death, even though females commit about 11 percent of all criminal homicides. Many of the women under death sentence were guilty of killing men who had victimized them with years of violent abuse. Since 1900, only 51 women have been executed in the United States (15 of them black).

Discrimination against the poor (and in our society, racial minorities are disproportionately poor) is also well established. It is a prominent factor in the availability of counsel.

Fairness in capital cases requires, above all, competent counsel for the defendant. Yet "approximately 90 percent of those on death row could not afford to hire a lawyer when they were tried.") Common characteristics of death-row defendants are poverty, the lack of firm social roots in the community, and inadequate legal representation at trial or on appeal. As Justice William O. Douglas noted in Furman, "One searches our chronicles in vain for the execution of any member of the affluent strata in this society"(408 US 238).

Failure of Safeguards

The demonstrated inequities in the actual administration of capital punishment should tip the balance against it in the judgment of fair-minded and impartial observers. "Whatever else might be said for the use of death as a punishment, one lesson is clear from experience: this is a power that we cannot exercise fairly and without discrimination."(Gross and Mauro, Death and Discrimination 1989)

Justice John Marshall Harlan, writing for the Court in Furman, noted "… the history of capital punishment for homicides … reveals continual efforts, uniformly unsuccessful, to identify before the fact those homicides for which the slayer should die…. Those who have come to grips with the hard task of actually attempting to draft means of channeling capital sentencing discretion have confirmed the lesson taught by history…. To identify before the fact those characteristics of criminal homicides and their perpetrators which call for the death penalty, and to express these characteristics in language which can be fairly understood and applied by the sentencing authority, appear to be tasks which are beyond present human ability." (402 U.S. 183 (1971))

Yet in the Gregg decision, the majority of the Supreme Court abandoned the wisdom of Justice Harlan and ruled as though the new guided-discretion statutes could accomplish the impossible. The truth is that death statutes approved by the Court "do not effectively restrict the discretion of juries by any real standards, and they never will. No society is going to kill everybody who meets certain preset verbal requirements, put on the statute books without awareness of coverage of the infinity of special factors the real world can produce."

Evidence obtained by the Capital Jury Project has shown that jurors in capital trials generally do not understand the judge's instructions about the laws that govern the choice between imposing the death penalty and a life sentence. Even when they do comprehend, jurors often refuse to be guided by the law. "Juror comprehension of the law… is mediocre. The effect [of this relative lack of comprehension of the law]… is to reduce the likelihood that capital defendants will benefit from the safeguards against arbitrariness built into the… law."

Discretion in the criminal justice system is unavoidable. The history of capital punishment in America clearly demonstrates the social desire to mitigate the harshness of the death penalty by narrowing the scope of its application. Whether or not explicitly authorized by statutes, sentencing discretion has been the main vehicle to this end. But when sentencing discretion is used – as it too often has been – to doom the poor, the friendless, the uneducated, racial minorities, and the despised, it becomes injustice.

Mindful of such facts, the House of Delegates of the American Bar Association (including 20 out of 24 former presidents of the ABA) called for a moratorium on all executions by a vote of 280 to 119 in February 1997. The House judged the current system to be "a haphazard maze of unfair practices."

In its 1996 survey of the death penalty in the United States, the International Commission of Jurists reinforced this point. Despite the efforts made over the past two decades since Gregg to protect the administration of the death penalty from abuses, the actual "constitutional errors committed in state courts have gravely undermined the legitimacy of the death penalty as a punishment for crime." (International Commission of Jurists, Administration of the Death Penalty in the United States 1996)

In 2009, the American Law Institute (ALI), the leading independent organization in the U.S. producing scholarly work to clarify, modernize and improve the law, removed capital punishment from its Model Penal Code. The ALI, which created the modern legal framework for the death penalty in 1962, indicated that the punishment is so arbitrary, fraught with racial and economic disparities, and unable to assure quality legal representation for indigent capital defendants, that it can never be administered fairly.

Thoughtful citizens, who might possibly support the abstract notion of capital punishment, are obliged to condemn it in actual practice.

CAPITAL PUNISHMENT IS IRREVERSIBLE

Unlike any other criminal punishments, the death penalty is irrevocable. Speaking to the French Chamber of Deputies in 1830, years after having witnessed the excesses of the French Revolution, the Marquis de Lafayette said, "I shall ask for the abolition of the punishment of death until I have the infallibility of human judgment demonstrated to me." Although some proponents of capital punishment would argue that its merits are worth the occasional execution of innocent people, most would hasten to insist that there is little likelihood of the innocent being executed.

Since 1900, in this country, there have been on the average more than four cases each year in which an entirely innocent person was convicted of murder. Scores of these individuals were sentenced to death. In many cases, a reprieve or commutation arrived just hours, or even minutes, before the scheduled execution. These erroneous convictions have occurred in virtually every jurisdiction from one end of the nation to the other. Nor have they declined in recent years, despite the new death penalty statutes approved by the Supreme Court.

Disturbingly, and increasingly, a large body of evidence from the modern era shows that innocent people are often convicted of crimes – including capital crimes – and that some have been executed.

In arson was the cause of the fire. There simply was no reliable evidence that the children were murdered. Yet even with these reports in hand, the state of Texas executed Mr. Willingham. Earlier this year, the Texas Forensic Science Commission was poised to issue a report officially confirming these conclusions until Texas Governor Rick Perry replaced the Commission’s chair and some of its members. Cameron Todd Willingham, who claimed innocence all along, was executed for a crime he almost certainly did not commit. As an example of the arbitrariness of the death penalty, another man, Ernest Willis, also convicted of arson-murder on the same sort of flimsy and unscientific testimony, was freed from Texas death row six months after Willingham was executed.

In 1985, in Maryland, Kirk Bloodsworth was sentenced to death for rape and murder, despite the testimony of alibi witnesses. In 1986 his conviction was reversed on grounds of withheld evidence pointing to another suspect; he was retried, re-convicted, and sentenced to life in prison. In 1993, newly available DNA evidence proved he was not the rapist-killer, and he was released after the prosecution dismissed the case. A year later he was awarded $300,000 for wrongful punishment. Years later the DNA was matched to the real killer.

In Mississippi, in 1990, Sabrina Butler was sentenced to death for killing her baby boy. She claimed the child died after attempts at resuscitation failed. On technical grounds her conviction was reversed in 1992. At retrial, she was acquitted when a neighbor corroborated Butler's explanation of the child's cause of death and the physician who performed the autopsy admitted his work had not been thorough.

In 1990, Jesse Tafero was executed in Florida. He had been convicted in 1976 along with his wife, Sonia Jacobs, for murdering a state trooper. In 1981 Jacobs' death sentence was reduced on appeal to life imprisonment, and 11 years later her conviction was vacated by a federal court. The evidence on which Tafero and Jacobs had been convicted and sentenced was identical; it consisted mainly of the perjured testimony of an ex-convict who turned state's witness in order to avoid a death sentence. Had Tafero been alive in 1992, he no doubt would have been released along with Jacobs. Tafero’s execution went horribly wrong, and his head caught on fire during the electrocution.

In Alabama, Walter McMillian was convicted of murdering a white woman in 1988. Despite the jury's recommendation of a life sentence, the judge sentenced him to death. The sole evidence leading the police to arrest McMillian was testimony of an ex-convict seeking favor with the prosecution. A dozen alibi witnesses (all African Americans, like McMillian) testified on McMillian's behalf that they were together at a neighborhood gathering, to no avail. On appeal, after tireless efforts by his attorney Bryan Stevenson, McMillian's conviction was reversed by the Alabama Court of Appeals. Stevenson uncovered prosecutorial suppression of exculpatory evidence and perjury by prosecution witnesses, and the new district attorney joined the defense in seeking dismissal of the charges.

In 1985, in Illinois, Rolando Cruz and lethal injection is the primary method of execution. The condemned prisoner is led – or dragged – into the death chamber, strapped into the chair, and electrodes are fastened to head and legs. When the switch is thrown the body strains, jolting as the voltage is raised and lowered. Often smoke rises from the head. There is the awful odor of burning flesh. No one knows how long electrocuted individuals retain consciousness. In 1983, the electrocution of John Evans in Alabama was described by an eyewitness as follows:

"At 8:30 p.m. the first jolt of 1900 volts of electricity passed through Mr. Evans' body. It lasted thirty seconds. Sparks and flames erupted … from the electrode tied to Mr. Evans' left leg. His body slammed against the straps holding him in the electric chair and his fist clenched permanently. The electrode apparently burst from the strap holding it in place. A large puff of grayish smoke and sparks poured out from under the hood that covered Mr. Evans' face. An overpowering stench of burnt flesh and clothing began pervading the witness room. Two doctors examined Mr. Evans and declared that he was not dead.

"The electrode on the left leg was re-fastened. …Mr. Evans was administered a second thirty second jolt of electricity. The stench of burning flesh was nauseating. More smoke emanated from his leg and head. Again, the doctors examined Mr. Evans. [They] reported that his heart was still beating, and that he was still alive. At that time, I asked the prison commissioner, who was communicating on an open telephone line to Governor George Wallace, to grant clemency on the grounds that Mr. Evans was being subjected to cruel and unusual punishment. The request …was denied.

"At 8:40 p.m., a third charge of electricity, thirty seconds in duration, was passed through Mr. Evans' body. At 8:44, the doctors pronounced him dead. The execution of John Evans took fourteen minutes." Afterwards, officials were embarrassed by what one observer called the "barbaric ritual." The prison spokesman remarked, "This was supposed to be a very clean manner of administering death."

The introduction of the gas chamber was an attempt to improve on electrocution. In this method of execution the prisoner is strapped into a chair with a container of sulfuric acid underneath. The chamber is sealed, and cyanide is dropped into the acid to form a lethal gas. Execution by suffocation in the lethal gas chamber has not been abolished but lethal injection serves as the primary method in states which still authorize it. In 1996 a panel of judges on the 9th Circuit Court of Appeals in California (where the gas chamber has been used since 1933) ruled that this method is a "cruel and unusual punishment." Here is an account of the 1992 execution in Arizona of Don Harding, as reported in the dissent by U.S. Supreme Court Justice John Paul Stevens:

"When the fumes enveloped Don's head he took a quick breath. A few seconds later he again looked in my direction. His face was red and contorted as if he were attempting to fight through tremendous pain. His mouth was pursed shut and his jaw was clenched tight. Don then took several more quick gulps of the fumes.

"At this point Don's body started convulsing violently.... His face and body turned a deep red and the veins in his temple and neck began to bulge until I thought they might explode. After about a minute Don's face leaned partially forward, but he was still conscious. Every few seconds he continued to gulp in. He was shuddering uncontrollably and his body was racked with spasms. His head continued to snap back. His hands were clenched.

"After several more minutes, the most violent of the convulsions subsided. At this time the muscles along Don's left arm and back began twitching in a wavelike motion under his skin. Spittle drooled from his mouth.

"Don did not stop moving for approximately eight minutes, and after that he continued to twitch and jerk for another minute. Approximately two minutes later, we were told by a prison official that the execution was complete.

“Don Harding took ten minutes and thirty one seconds to die." (Gomez v. U.S. District Court, 112 S.Ct. 1652)

The latest mode of inflicting the death penalty, enacted into law by more than 30 states, is lethal injection, first used in 1982 in Texas. It is easy to overstate the humaneness and efficacy of this method; one cannot know whether lethal injection is really painless and there is evidence that it is not. As the U.S. Court of Appeals observed, there is "substantial and uncontroverted evidence… that execution by lethal injection poses a serious risk of cruel, protracted death…. Even a slight error in dosage or administration can leave a prisoner conscious but paralyzed while dying, a sentient witness of his or her own asphyxiation." (Chaney v. Heckler, 718 F.2d 1174, 1983).

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