

CAPITAL CASES

BY CAROL A. TUROWSKI

The Killers Do Not Go 'Gentle Into That Good Night'

The recent spate of botched lethal executions in Oklahoma, Ohio, and Arizona has many legal experts in the country questioning whether methods used for carrying out these killings violate the constitutional prohibition against cruel and unusual punishment. Over the years, states have used various methods to carry out these deaths from public hangings, to the electric chair, to the gas chamber, to firing squads, and, starting in the late 20th century, to death by lethal injection. The majority of states that still allow capital punishment use the lethal administration of drugs because it is considered the most humane and cheapest method for killing a human being — or is it?

Difficulties Experienced

The problems encountered are varied, complicated, and perplexing. In Oklahoma, a vein could not be located that would allow prison officials to pump the three-drug cocktail into the inmate's blood stream. The staff decided to use a vein near the inmate's groin but covered him with a sheet for privacy, making accuracy of the process difficult. When staff realized the process was going awry, they brought in a doctor and, after several more missteps, the inmate was finally pronounced dead of a heart attack 43 minutes after the process started. The inmate writhed, groaned, and tried to speak as the staff worked to kill him. State officials recently released the report documenting the litany of errors made by the prison and medical staff, but found that the mistakes only amounted to "minor deviations" from the state's execution protocols. In Ohio, after being injected with a new and untested set of drugs, family members reported that the inmate gasped for air

for over 30 minutes, while another inmate felt his "whole body burning" after being injected with a compound from a pharmacy that mixes up the chemicals to order. Most recently, an Arizona inmate took almost two hours to die as he gasped for air while his lawyer filed an emergency stay to halt the execution — he died before the court could rule on the motion.

Many states have enacted secrecy laws that exacerbate the situation. Secrecy laws protect the distributors of the drugs used in executions, lest these companies become targets of the anti-death penalty movement. The drugs used are often hard to obtain because some European countries — knowing the drugs will be used in executions — have enacted a ban on importing them to the United States. These laws also keep the staff required to administer the drugs anonymous, given concerns that their lack of training could result in lawsuits by family members of the executed inmates, but that may change. In the Arizona case, for example, Joseph Wood's attorneys argued in court that their client had a First Amendment right to information concerning the sources of the drugs and their manufacturers, as well as the identity and background of his executors. The Ninth Circuit agreed, but on appeal the U.S. Supreme Court overturned the decision, holding that the State does not have to comply. The execution was carried out several days later with the inmate gasping for air in what witnesses described as a "painful execution."

Wrongful Convictions And Exonerations

Surprisingly, the use of unknown and untested drugs for executions by untrained or inexperienced staff is not the most compelling arguments against the death penalty. Exonerations from death row — an astounding 147 innocent inmates' — have been gathering steam

and presenting the strongest arguments against state-sponsored killings. Some noteworthy cases include Kirk Bloodsworth, Cameron Todd Willingham and Darryl Hunt, to name a few. In March 1984, Bloodsworth was a death row inmate tried and convicted for the brutal rape and murder of a nine-year-old girl in Maryland. The only problem, though, was that Kirk Bloodsworth was innocent. After his case was reversed on appeal, he was retried for the murder and this time sentenced to two consecutive life sentences. Only then did prosecutors agree to perform DNA testing, which determined that he was not the perpetrator. He was exonerated and pardoned in 1993 after spending eight years in prison, two of them on death row.

Cameron Todd Willingham was an inmate in Corsicana, Texas, who was executed for the premeditated murder of his three young girls in an arson fire for which he was tried and convicted. Several days before his execution, his defense attorneys sent Gov. Perry and the Board of Pardon and Parole a report from Gerald Hurst, a nationally recognized arson expert, saying that Willingham's conviction was based on erroneous forensic analysis. Documents

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