

# Capital Punishment

*Strategies for Abolition*

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## 6 On botched executions

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### Introduction

On 21 February 1930, convicted murderer Eva Dugan, 52, was hanged from the gallows of the Arizona State Prison in Florence, Arizona. Witnesses were repulsed when Dugan sprang through the trap door on the gallows with such force that her head snapped off and rolled into a corner of the room. Public outcry over the botched execution was so loud that within four years the Arizona legislature abolished hanging and replaced it with a more 'humane' way of killing: the gas chamber.

Six decades later, the public and policy makers admitted that death by asphyxiation had its own problems. In April 1992, the Arizona gas chamber was mothballed after a horrifying spectacle during the gassing of death row inmate Donald Eugene Harding. Witnesses were sickened by the execution, calling it 'violent' and 'ugly', and reported that Harding was in great pain before his death mercifully came.<sup>1</sup> Consequently, Harding's was the last mandated asphyxiation in Arizona. In November 1992, Arizona voters passed a ballot initiative that gave prisoners then on its death row a choice between gas and lethal injection and authorised lethal injection as the only means of execution for those sentenced to death thereafter.<sup>2</sup>

One might think that in the United States, where technology exists to send astronauts to the moon with perfection, we should be able to shoot people to the hereafter with similar precision. The purpose of the research reported in this paper is to determine whether botched executions are rare events today, or if they are endemic features of the modern practice of capital punishment. We answer that question by examining reports of all executions in the US in the last twenty-five years and assessing whether evidence of botched executions exists. For each apparent case, we record

<sup>1</sup> A more complete description of the Harding execution will be found in the Appendix to this chapter.

<sup>2</sup> Abraham Kwok, 'Injection: The No-Fuss Executioner', *Arizona Republic*, 28 February 1993, p. 1.

the precise ways in which the executions were botched. By documenting the explicit evidence of pain, delay or lingering that occurred during these 'mishaps', we offer an inductive analysis of how the death penalty as currently practised in the US risks violating contemporary standards of moral decency, as well as the constitutional ban against cruel and unusual punishments.

Insofar as this analysis substantiates the argument that botched executions are common, the research may be useful to those who support the total abolition of the death penalty. That is, one route towards the demise of the executioner is to document and publicise the inhumanity and barbarity of the ways in which his work is conducted. People who otherwise support the death penalty may grow uncomfortable with their positions if confronted with direct evidence that executions are bloody, painful and/or torturous.

For this research, we define 'botched executions' as those involving unanticipated problems or delays that caused, at least arguably, unnecessary agony for the prisoner or that reflect gross incompetence of the executioner. Aside from the obvious personal relevance for the condemned prisoner, his loved ones, and witnesses, the larger significance of botched executions rests in their relationship to the constitutional ban on cruel and unusual punishment. This ban is enunciated in the Eighth Amendment: 'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.' Although the Supreme Court has upheld the constitutionality of death as a punishment for certain criminal homicides, it has left open the question of the constitutionality of particular execution methods. The invitation to challenge execution methods was first issued by the Court over a century ago, when, in the first case ever to challenge the death penalty on Eighth Amendment grounds, the Court ruled that the constitutionality of a particular method of execution depended on its ability to guarantee an 'instantaneous and therefore painless death'<sup>3</sup> and that 'punishments are cruel when they involve torture or a lingering death'.<sup>4</sup> But, aside from offering this characterisation, the Court has provided little additional guidance through the years for determining when a method of execution can be considered 'cruel and unusual'. In fact, the Court historically has been reluctant to hear cases, which would have provided an opportunity to clarify the 'cruel and unusual' clause.<sup>5</sup>

Some appellate courts, however, seem willing to revisit the question of the constitutionality of various execution methods. In 2001, for example,

<sup>3</sup> *In re Kemmler*, 136 US 436 at 443–4 (1890). <sup>4</sup> *Ibid.*, p. 447.

<sup>5</sup> Roberta M. Harding, 'The Gallows to the Gurney: Analysing the (Un)Constitutionality of the Methods of Execution' (1996) 6 *Boston University Public Interest Law Journal* 153

the Georgia Supreme Court, in a 5–4 decision, found that death by electrocution violated that state’s constitutional ban on cruel and unusual punishment.<sup>6</sup> In federal court, in a 1996 decision that focused on the constitutionality of the gas chamber, the US Court of Appeals for the Ninth Circuit attempted to specify precise criteria for determining whether an execution method violates the cruel and unusual punishment prohibition.<sup>7</sup> This unanimous decision – ‘the first time in this country’s history that a federal appeals court has held any method of execution unconstitutional’<sup>8</sup> – specified three criteria for judging the constitutionality of a particular execution method. In order to be within constitutional limits, the means of execution must provide a death that is (1) instantaneous, (2) painless and (3) not ‘lingering’.<sup>9</sup> Below, we examine our examples of botched executions to judge the extent to which they violate these three criteria.

### Methods

Between 1977 and 31 December 2001, some 749 inmates were executed in the United States. We have been tracking botched executions during those years, clipping relevant newspaper articles, collecting correspondence from witnesses to executions, and making notes for our files whenever we heard reports about possible blunders and mishaps.<sup>10</sup> These files, which primarily consist of eyewitness accounts of the executions published in news media, provide the foundation for our analysis.

Our list of cases is undoubtedly an underestimate of the true number of state killings that have been botched since 1977.<sup>11</sup> Given the relative privacy in which executions are carried out and the reluctance of prison

<sup>6</sup> *Dawson v. State*, 274 Ga 327 (5 October 2001).

<sup>7</sup> *Fierro v. Gomez*, 865 F Supp 1387 (ND Cal. 1994), *affirmed*, 77 F 3d 301 (9th Cir. 1996). The decision was later vacated by the Supreme Court, not because of any disagreement with the ruling that the gas chamber constituted cruel and unusual punishment, but because California had changed its statute and began to allow inmates to choose between asphyxiation and lethal injection. *Fierro v. Gomez*, 117 S.Ct 285 (1996).

<sup>8</sup> Deborah W. Denno, ‘Getting to Death: Are Executions Constitutional?’ (1997) 82 *Iowa Law Review* 319 at 324.

<sup>9</sup> A more elaborate five-factor test for assessing the constitutionality of particular methods of execution has also been developed. *Ibid.*

<sup>10</sup> Brief vignettes of the botches have been published in various journalistic outlets. Elizabeth Fernandez, ‘All Forms of Execution Produce Horror Stories’, *San Francisco Examiner*, 22 April 1992, p. A14; Michael Radelet, ‘A Slow, Brutal Way to Kill’, *Guardian* (London), 6 April 1995, p. 10; Michael L. Radelet, ‘Poorly Executed’, *Harper’s*, June 1995, pp. 21–2.

<sup>11</sup> Deborah W. Denno, ‘Is Electrocution an Unconstitutional Method of Execution? The Engineering of Death over the Century’ (1994) 35 *William & Mary Law Review* 551 at

personnel to admit and publicise bungles, other cases of botched executions for which no public record exists (or none that has come to our attention) are quite possible. As an increasing number of states allow non-prison personnel to witness their executions, the accuracy of recording botches seems likely to improve. On the other hand, since the vast majority of today's executions in the US are by lethal injection, and few (if any) states allow witnesses to observe the executioners inserting the catheters (when most botches occur), the public may continue to be uninformed about what really happens while prisoners are strapped to the gurneys. While acknowledging the potential under-count in our compilation, we regard our data as being as complete as possible given the public information sources available during the timeframe of our research.

In addition, including more cases of botched executions by using an expanded conceptualisation of 'botched' is conceivable. Indeed, researchers could construct continua of executions ranging from the instantaneous to the prolonged and from the painless to the most distressing, and then debate where to draw the line between those that are and are not 'botched'. The drawback of such an endeavour rests in its focus on the trees and not the forest. From our viewpoint, the more pertinent issue is the existence of botched executions, not whether a given borderline case should or should not be classified as botched. Other researchers have cast their nets more widely and included in their catalogues of botched executions cases that we do not,<sup>12</sup> and some readers will undoubtedly disagree with our view that a given execution was indeed bungled. Again, because of such reasonable differences, we consider our compilation of cases a catalogue of *examples* of botched executions, not a definitive list compiled with entirely objective criteria.

### Findings

In June 1972, executions in the United States were halted when the Supreme Court ruled that capital punishment, as then practised, was arbitrary and capricious, and hence 'cruel and unusual' punishment, a violation of the Eighth Amendment.<sup>13</sup> The decision emptied America's death rows. But four years later, the Court approved revised death penalty

<sup>12</sup> For additional examples of recent executions that were unusual or botched, see Deborah W. Denno, 'Getting to Death: Are Executions Constitutional?' (1997) 82 *Iowa Law Review* 319 at 412–38; Deborah W. Denno, 'When Legislatures Delegate Death: The Troubling Paradox Behind State Uses of Electrocutation and Lethal Injection and What It Says About Us' (2002) 63 *Ohio State Law Journal* 63–261.

<sup>13</sup> *Furman v. Georgia*, 408 US 238 (1972).

Table 6.1 *Botched executions in US capital cases, 1977 to 31 December 2001*

Execution method used and state where botch occurred							
Year	Electrocution	State	Lethal		Asphyxiation	State	Total
			injection	State			
1982	1	VA	0		0		1
1983	1	AL	0		1	MS	2
1984	1	GA	0		0		1
1985	1	IN	1	TX	0		2
1986	0		1	TX	0		1
1987	0		1	TX	0		1
1988	0		1	TX	0		1
1989	1	AL	1	TX	0		2
1990	2	FL, VA	1	IL	0		3
1991	1	VA	0		0		1
1992	0		4	AK, OK, TX (2)	1	AZ	5
1993	0		0		0		0
1994	0		1	IL	0		1
1995	0		1	MO	0		1
1996	0		2	IN, VA	0		2
1997	1	FL	2	OK, SC	0		3
1998	0		3	NV, TX (2)	0		3
1999	1	FL	0		0		1
2000	0		2	FL, MO	0		2
2001	0		1	GA	0		1
Total	10		22		2		34

laws in Texas, Florida and Georgia,<sup>14</sup> and in early 1977 the moratorium on executions ended when Gary Gilmore dropped his appeals and was granted his wish to face a Utah firing squad.

Between then and 31 December 2001, 749 executions have occurred in the US. From these, our research identifies thirty-four examples of executions involving unanticipated problems or delays that caused, or could have caused, unnecessary agony for the prisoner. Appendix 1 to this chapter provides brief descriptions of each case, and our analysis below offers an empirical summary of some of their more significant features. Tables 6.1 to 6.5 pertain to each of our specific goals: (1) documenting the frequency of botched executions and (2) summarising how the cases were botched and the extent to which they involved cruel and unusual conditions of punishment. We address these issues in turn.

<sup>14</sup> *Jurek v. Texas*, 428 US 262 (1976); *Proffitt v. Florida*, 428 US 242 (1976); *Gregg v. Georgia*, 428 US 153 (1976).

*Patterns of botched executions*

Tables 6.1, 6.2 and 6.3 describe the frequency of botched executions. The thirty-four blunders in our catalogue constitute 4.5 per cent of all post-*Furman* executions. Approximately one out of twenty-two executions in the US in the last twenty-five years has been botched. Table 6.1 lists all of these botches chronologically with the state where they took place as well as the method of execution involved.

The data show that the number of errors is remarkably consistent over time. That is, the botched executions are not concentrated in any given time period, but rather are spread throughout the years of the study. After Gilmore's death in 1977, only four additional executions in American jurisdictions occurred through to the end of 1981. Since then, with the exception of 1993, the US has hosted at least one botched execution per year. Multiple botches have taken place in nine of the twenty years since 1981. All of the flawed killings in Texas involved lethal injections, while in Virginia, Florida and Georgia both electrocutions and lethal injections have been bungled. Alabama, Georgia, Illinois, Indiana, Missouri and Oklahoma have each botched two executions; Arizona, Arkansas, Mississippi, Nevada and South Carolina have botched one each. Even with the publicity that some of these botched executions have received, the data do not support arguments that executioners are becoming more skilled or that the number of bungled executions is undergoing significant change. And, interestingly, each time states change the 'preferred' method of execution, usually in response to public demands for a more 'humane' execution method or to constitutional challenges, the number of botches increases under the new method. Table 6.1 documents no botched executions by hanging or firing squad, two botched asphyxiations, ten botched electrocutions and twenty-two botched lethal injections.

The information in Table 6.2 focuses primarily on states where botched executions have occurred, and provides a closer look at the number of total executions and botches by state. These data show more clearly that botched executions have occurred in a wide array of jurisdictions, rather than being concentrated in one or two states or in a single region of the country.

Fourteen states executed ten or more prisoners between 1 January 1977 and 31 December 2001. Eleven of those fourteen hosted at least one botched execution. The only exceptions among the fourteen 'high-frequency' states are Louisiana (twenty-six executions with no known botches), North Carolina (fifteen executions with no known botches) and Delaware (ten executions with no known botches). As Table 6.2 shows, Texas, Virginia and Florida, which are three of the top four executing

Table 6.2 *Rate of botched executions by state, 1977 to 31 December 2001*

States where botches have occurred	Total executions	Total botched executions	Botches as a percentage of total executions
Texas	256	9	3.5%
Virginia	83	4	4.8%
Missouri	53	2	3.80%
Florida	51	4	7.80%
Oklahoma	48	2	4.20%
Georgia	27	2	7.4%
South Carolina	25	1	4.0%
Alabama	23	2	8.7%
Arkansas	24	1	4.2%
Arizona	21	1	4.8%
Illinois	12	2	16.7%
Nevada	9	1	11.1%
Indiana	9	2	22.2%
Mississippi	4	1	25.0%
Total, botch states (14)	645	34	5.3%
Total, remaining states (18)	104	0	0.0%
Total all states	749	34	4.5%

*Note:* Counts are based on the thirty-two states (and federal government) that performed at least one execution between 1977 and 31 December 2001. Of these, fourteen had hosted at least one botched execution in that time period.

states, lead the US in botched executions. Texas has botched at least nine of the 256 executions carried out in its Huntsville death house, Virginia has four botches among its eighty-three executions, and Florida has at least four among the fifty-one death sentences it has administered. In states where bungled executions have occurred, the 'botch rate' is 5.3 per cent. As noted earlier, these mishaps comprise about 4.5 per cent of all executions performed in the United States from 1 January 1977 to 31 December 2001.

Besides occurring across geographic borders, botches occur regardless of the method of execution used. Table 6.3 compares the number of botches with the number of executions by method since 1977. We found no examples of botched hangings or firing squads, but these techniques combined have taken the lives of only five inmates in the last twenty-five years. The gas chamber is also rarely used, with only eleven prisoners seated in them since 1977. Still, almost 20 per cent of executions by asphyxiation have been botched. Perhaps because of this, no state presently

mandates this method. Instead, all inmates condemned to death in states



Table 6.3 *Total executions and botched executions by method, 1977 to 31 December 2001*

Execution method	Number of executions	Number of botches	Botches as a percentage of total by this method	Method used as a percentage of all botches (n = 34)
Hanging	3	0	0.0%	0.0%
Firing squad	2	0	0.0%	0.0%
Asphyxiation	11	2	18.2%	5.9%
Electrocution	149	10	6.7%	29.4%
Lethal injection	584	22	3.8%	64.7%
Total	749	34		

that have gas chambers are permitted to opt for alternative means of execution. Clearly, the gas chamber is an execution method that is on its way to joining the guillotine and the rack as an historical artefact.

The remaining data in Table 6.3 show that the two most commonly used methods of execution in the US today, electrocution and lethal injection, are also the most frequently botched. Our data show a total of ten post-*Furman* botched electrocutions, most often because the inmate did not die instantaneously and needed the application of multiple jolts of electricity. This represents about 6 per cent of all electrocutions carried out in the US since 1977 and almost one-third of our botched execution cases. Since 1982, when lethal injection was first used to execute a prisoner, at least twenty-two cases of bungled executions have involved this method. This represents approximately 4 per cent of all executions by lethal injection and 65 per cent of all the examples of botched executions in our catalogue. As we will discuss in more detail below, the most common reason for these botches is difficulty finding a vein for insertion of the catheter.

Taken together, our data so far suggest that botched executions are not rare. They have occurred regardless of method, in a wide array of jurisdictions, and throughout the twenty-five years of our study. Furthermore, the patterns regarding execution method do not suggest change in the likelihood of such occurrences. Botched executions are indisputably an inherent component of the modern practice of capital punishment.

*An instantaneous, painless and non-lingering death?*

The second goal of our analysis is to evaluate the extent to which and in what ways the botched executions we document violate the Eighth Amendment's ban on cruel and unusual punishment. Three criteria have

been identified by the courts as indicative of a method's ability to provide a death within constitutional limits. The criteria pertain to whether or not death is (1) instantaneous, (2) painful and (3) lingering. Table 6.4 provides data relevant to the first two of these elements and Table 6.5 to the last.

The criteria of an 'instantaneous' and 'painless' death are typically discussed together, under the assumption that if an execution is not instantaneous, then the prisoner is also likely to suffer pain. Moreover, some of the factors that cause non-instantaneous deaths also cause excessive pain for the inmate. Although the two criteria are clearly interconnected, we discuss them separately below.

*Evidence of a non-instantaneous death* As the left-hand panel of Table 6.4 suggests, the type of evidence indicative of a non-instantaneous death is often related to the method of execution employed. When the electric chair is used, multiple jolts of electricity indicate a slow death. Eight of the ten botched electrocutions in our catalogue involved the application of multiple jolts because the initial surge failed to kill the prisoner (case Nos. 1, 2, 4, 6, 11, 12, 14 and 15). The origins of some of these bungles have been identified, but the causes of most remain hotly debated, if not a total mystery. In two cases involving multiple jolts of current (case Nos. 11 and 12), 'human error' on the part of prison officials was to blame. Horace Dunkins' death (case No. 11) was not instantaneous because prison officials improperly connected the cables conducting the electric current. The inappropriate substitution of a synthetic for a natural sponge was the 'inadvertent human error' that contributed to Jesse Tafero's bungled execution (case No. 12). Three jolts of electricity were needed to finally stop his breathing, and these surges caused him to catch fire. In the six remaining electrocutions requiring multiple jolts, the reason why the first surge of electricity failed to kill the inmate was not identified in available information published after the executions.

When lethal injection is the execution method, unanticipated disruptions in the flow of drugs to the inmate is frequently the cause of a prolonged death. Lethal injections typically involve three steps. First, an anaesthetic drug is administered to render the inmate unconscious. Next, a drug is injected that produces paralysis of the respiratory system and muscles. Finally, a drug is given that stops the individual's pulmonary functions. We identify five cases (case Nos. 9, 13, 21, 22 and 28) in which this process was interrupted after the first dose of anaesthetic drugs was administered, thereby causing a gradual rather than an instantaneous death. In Charles Walker's case (case No. 13), the delay was caused by a kink in the plastic tubing and the improper insertion of

Table 6.4 *Number of cases involving evidence that a non-instantaneous and/or painful death occurred (n = 34 botches)*

Execution method	Evidence of a non-instantaneous death			Evidence of a painful death			
	Multiple jolts of electricity	Breakdown in drug sequence	Gaspings for breath	Burns or smoke	Audible distress	Violent movements	Missing a vein
Asphyxiation (n = 2)	n/a	n/a	2	n/a	2	2	n/a
Electrocution (n = 10)	8	n/a	2	6	2	0	n/a
Lethal injection (n = 22)	n/a	5	6	n/a	9	6	12
Total cases	8	5	10	6	13	8	12

the intravenous needle. In John Wayne Gacy's case (case No. 21), it was due to flawed administration of the drugs leading to a chemical reaction that clogged the tubes. And in Emmitt Foster's case (case No. 22), the delay occurred because Foster had been strapped too tightly to a gurney. In the last two cases (case Nos. 9 and 28), the syringe came out of the inmates' arm after the chemicals started to flow. The first of these was Raymond Landry's execution (case No. 9). A spokesperson for Texas Attorney General Jim Mattox attributed the cause to a 'mechanical and physical problem. Landry was very muscular and had "Popeye-type" arms. When the stuff was flowing, it wouldn't go into the veins and there was more pressure in the hose than his veins could absorb.'<sup>15</sup> In the second case (case No. 28), a vein in the arm of Joseph Cannon collapsed and the needle popped out after his execution had begun. A fifteen-minute delay followed while the needle was reinserted.

A third sign of prolonged death, gasping for breath, has occurred across all three types of botched execution methods. A total of ten cases in our catalogue involve inmates who spent a period of time gasping for air before being pronounced dead. Signs of suffocation were observed in both botched asphyxiation cases (case Nos. 3 and 17), in six bungled lethal injections (case Nos. 10, 18, 20, 22, 26 and 33) and in two botched electrocutions (case Nos. 4 and 25).

*Evidence of a painful death* In addition to producing a prolonged death, delays involving multiple jolts of electricity, drug sequence mishaps, and suffocation increase the odds that an inmate will suffer pain while being executed. Assessing pain during execution is somewhat complicated for a number of reasons. As Hillman notes: 'It is difficult to know how much pain the person being executed feels or for how long, because many of the signs of pain are obscured by the procedure or by physical restraints, but one can identify those steps which are likely to be painful.'<sup>16</sup> Hillman lists the following as signs of pain and/or factors occurring during an execution that are likely to cause pain:<sup>17</sup> shouts or screams, perspiration, dilated pupils, withdrawal from stimulus, violent movements, contraction of facial muscles, micturition, defecation, heat, skin burns, asphyxia, and missing or going through a vein. Of these, the right-hand

<sup>15</sup> 'Murderer Executed After a Leaky Lethal Injection', *New York Times*, 14 December 1988, p. 29A.

<sup>16</sup> Harold Hillman, 'The Possible Pain Experienced During Execution by Different Methods' (1993) 22 *Perception* 745 at 745.

<sup>17</sup> This list is based on information regarding the physiology and pathology of various capital punishment methods 'derived from observations on the condemned persons, post-mortem examinations, physiological studies on animals undergoing similar procedures, and the literature on emergency medicine.' *Ibid.*

side of Table 6.4 shows the categories for which we found evidence in our eyewitness accounts of botched executions. We discuss these categories, namely, 'burns or smoke', 'audible distress', 'violent movements' and 'missing a vein', as they occurred in botched asphyxiations, electrocutions and lethal injections. Again, we must keep in mind the (very strong) potential that these accounts are incomplete for a number of reasons, including witnesses' reluctance to report a specific condition (most witnesses work for the prisons and/or strongly support the execution); their inattentiveness, shock or distraction during the execution process; their inability to see the distress signal; and/or the prisoners' inability to physically communicate the sign.

The two cases of asphyxiation (case Nos. 3 and 17) we identify involved deaths that were agitated and distressing. Witnesses to each reported both audible sounds of distress from the inmates as well as violent spasms and movements. The death of Jimmy Gray (case No. 3) was described in these words: 'Jimmy Lee Gray died banging his head against a steel pole . . . while reporters counted his moans.'<sup>18</sup> In the second case, witnesses described Donald Eugene Harding (case No. 17) thrashing and struggling violently for over six minutes against the straps restraining him in the gas chamber.

In six of the ten botched electrocutions, eyewitnesses reported burning flesh and smoke (case Nos. 1, 2, 6, 12, 25 and 31). In Virginia in 1982, Frank J. Coppola's (case No. 1) head and leg caught on fire, filling the death chamber with a smoky haze. When John Evans (case No. 2) was electrocuted in Alabama in 1983, sparks and flames erupted from an electrode attached to his leg and from under the hood near his left temple. In Indiana, the same fate was suffered by William E. Vandiver (case No. 6) in 1985. Three similar cases have occurred more recently in Florida. When Jesse Tafero (case No. 12) was executed in 1990, six-inch flames erupted from his head. In Pedro Medina's 1997 execution (case No. 25), a crown of foot-high flames shot from under the headpiece. Similar to Tafero's case, the flames were reportedly caused by the improper application of a sponge to Medina's head. Aside from the errors associated with the improper application of sponges in the Tafero and Medina cases, no explanations have ever been reported for the burning and smoking of Coppola's, Evans' or Vandiver's bodies.

In 1999, after introducing a new electric chair, Florida executed Allen Lee Davis (case No. 31). According to an autopsy report, the electrocution left burns on Davis' head, face and leg. In addition, the event was marked by audible signs of distress, as Davis began moaning while blood oozed from his nose, spread onto his chest, and left a stain the

size of a dinner plate on his shirt.<sup>19</sup> Florida officials claimed the blood was due to a 'typical nosebleed'. In an appeals case brought by the next intended victim of Florida's new electric chair, Florida Supreme Court Justice Leander Shaw offered an alternative opinion. After reviewing evidence regarding the electrocution procedure, including the tightness and positioning of leather straps placed against Davis' nose, mouth and then entire face, Shaw commented that 'the color photos of Davis depict a man who – for all appearances – was brutally tortured to death by the citizens of Florida'.<sup>20</sup>

One final electrocution case involved audible signs of distress. When Virginia executed Wilbert Lee Evans (case No. 14), moans were heard as blood veins exploded from the electrical surge, drenching Evans in blood as he died. Corrections officials offered various explanations for the bungle, including Evans' large nose and his high blood pressure, supposedly worsened by a pork-rich diet during the week before his execution. Ultimately, the mishap was attributed to a nosebleed brought on by Evans' high blood pressure.

During lethal injections, pain is a likely consequence of missing or going through a vein during insertion of the catheter that delivers the lethal drugs. This has occurred in twelve of the twenty-two botched lethal injections in our catalogue (case Nos. 5, 7, 8, 16, 19, 23, 24, 27, 29, 30, 32 and 34). In three cases (case Nos. 5, 7 and 19), the inmates had a history of drug abuse that had damaged their veins. In Rickey Ray Rector's case (case No. 16), the damaged veins were caused by a long history of taking prescribed antipsychotic medications. Two other inmates, Elliot Rod Johnson (case No. 8) and Richard Townes Jr (case No. 23), had collapsed veins, and another, Tommie J. Smith (case No. 24), simply had veins that were too small for an easy injection. In Michael Eugene Elkins' case (case No. 27), the procedure was botched because Elkins' body had become swollen from liver and spleen problems, making it extremely difficult to find a good vein. In the executions of Roderick Abeyta (case No. 30) and Bennie Demps (case No. 32), prison technicians described 'having trouble finding a vein' in which to insert the intravenous drips.

Aside from the pain caused by their veins being repeatedly jabbed, inmates in several cases of botched lethal injections have exhibited other signs of distress. In six cases (case Nos. 10, 18, 20, 22, 26 and 33), witnesses observed violent movements including spasms, convulsions and heaving during the execution process. Audible sounds of distress were heard in nine cases (case Nos. 9, 10, 16, 18, 20, 26, 28, 32 and 33) as inmates died groaning, moaning, choking and/or weeping. The causes identified for some of these bungles have already been discussed (case

Table 6.5 *Evidence of a lingering death: time of execution (n = 31)*

Minutes until death	Execution method			Total	Percentage of total
	Asphyxiation	Electrocution	Lethal injection		
4 to 5 minutes	0	2	1	3	10%
6 to 10 minutes	1	2	1	4	13%
11 to 15 minutes	1	3	3	7	23%
16 to 20 minutes	0	2	2	4	13%
21 to 30 minutes	0	0	3	3	10%
31 to 45 minutes	0	0	3	3	10%
over 45 minutes	0	0	7	7	23%
Total	2	9	20	31	100%

*Note:* The data in Table 6.5 are based on thirty-one cases. Given available information, we could not determine the time until death for three cases in our catalogue (case No. 1, an electrocution, and case Nos. 7 and 10, both lethal injections).

Nos. 9, 16, 22, 28 and 32) and include trouble finding veins, problems inserting needles into large, damaged or swollen veins, or strapping the inmate too tightly to the gurney. In other cases (case Nos. 10, 18 and 20), state officials vaguely attributed the bumbles to the prisoners' 'unusually violent reactions' to the lethal drugs. No explanations were ever offered for the mishaps in the cases of Carpenter (case No. 26) and Hunter (case No. 33).

*Evidence of a lingering death* In addition to being non-instantaneous or painful, deaths that are 'lingering' may also violate the Eighth Amendment. Although this standard may seem analogous to the 'instantaneous' criterion, the courts have distinguished between the two. According to Harding, the prohibition against a lingering death 'actually augments the instantaneous death requirement. When examining the constitutionality of a particular method, a court must examine objective evidence, primarily the amount of time that passes before an individual actually expires.'<sup>21</sup> On the basis of a prior case dealing with the lingering death standard, the Ninth Circuit Court of Appeals ruled in *Fiero v. Gomez* that execution procedures lasting for more than two minutes were in violation of the constitutional ban against cruel and unusual punishment.<sup>22</sup> The data in Table 6.5, therefore, focus on the time interval

<sup>21</sup> Roberta M. Harding, 'The Gallows to the Gurney: Analyzing the (Un)Constitutionality of the Methods of Execution' (1996) 6 *Boston University Public Interest Law Journal* 153 at 162.

<sup>22</sup> *Ibid.*, p. 169.

that passed between the start of the execution method and the inmate's reported time of death.

In three of the cases (case Nos. 1, 7 and 10), we could not locate sufficient information to determine the amount of time that passed during the execution process. Information from the remaining thirty-one cases indicates that the shortest executions among these took approximately four minutes to complete (Medina, case No. 25, and Hunter, case No. 33). Hence, even the shortest cases in our catalogue appear to have violated the 'lingering death' criteria as defined in *Fiero v. Gomez*. The two longest executions among our cases are those of Tommie J. Smith (case No. 24) and Jose High (case No. 34). The states of Indiana and Georgia needed sixty-nine minutes to perform these lethal injections. In approximately 77 per cent of the cases (twenty-four out of thirty-one), death took longer than ten minutes to occur; in one-third (ten out of thirty-one, or 32 per cent), the inmate was still alive for over half an hour after the execution began.

With regard to each method, the patterns in Table 6.5 suggest two general conclusions: first, no method is immune from causing a lingering death; and, secondly, lethal injection produces the most lingering of deaths. Among our cases, the longest asphyxiation lasted eleven minutes (Harding, case No. 17), the longest electrocution lasted nineteen minutes (Dunkins, case No. 11), and the longest lethal injections (Smith, case No. 24, and High, case No. 34) took sixty-nine minutes to complete. With two exceptions (May, case No. 20, and Hunter, case No. 33), all of the lethal injection cases for which we have data involved deaths that took longer than ten minutes to occur. Sixty per cent (twelve out of twenty) lasted longer than twenty minutes, and in half (ten out of twenty), the inmates were alive for more than thirty minutes after the lethal injection procedure had begun.

Although the concept of 'lingering' is certainly open to interpretation, the time intervals in all thirty-one cases clearly fall outside of the Court's two-minute objective definition in *Fiero v. Gomez*. Hence, even if one were to discount the evidence of pain and of a non-instantaneous death already discussed, each of these thirty-one executions appears to have violated the Eighth Amendment on the lingering death standard alone.

### Conclusions

The data presented in this analysis lead to two significant conclusions. First, botched executions take place with regular frequency. Their occurrence in different jurisdictions, at different times, and regardless of execution method indicates that they are endemic to the modern practice of



capital punishment, and they will continue to be for as long as the punishment remains in use. The second noteworthy conclusion is that these botches are not simply minor flaws indicating a 'less than perfect' execution. Rather, the cases are major blunders that often cause prolonged and painful deaths, and usually after relatively long periods of time once the execution process has begun.

With approximately one out of every twenty-two executions botched, America's executioners cannot guarantee their ability to cause deaths that are instantaneous, painless and non-lingering. These three criteria were adopted by the Ninth Circuit Court of Appeals for its test of the constitutionality of the gas chamber in 1996.<sup>23</sup> Should the Supreme Court do likewise today, the inevitability of botched executions will present a very serious threat to the constitutionality of capital punishment.

Of course, the inevitability of botched executions does not mean that a particular method of execution violates the Eighth Amendment unless and until the US Supreme Court says it does. Possibly, then, botched executions will have their most important consequence in the arena of public opinion. Already the public has voiced a strong preference for lethal injection over other methods of execution,<sup>24</sup> but this support will undoubtedly erode as the public becomes more aware of the inevitability, and increased likelihood, of serious botches with this 'humane' method of killing. This could lead to new execution methods; if the death penalty survives for another two or three decades our children may find themselves debating death by laser or by some other novel method.

Then again, our children may come to believe that no humane way to execute can be found. As with evidence that documents the pervasiveness of racial bias in the administration of the death penalty<sup>25</sup> and the pervasiveness of innocent prisoners on death rows,<sup>26</sup> the above evidence of botched executions shows yet again that the death penalty involves making godlike decisions and taking godlike actions without godlike wisdom or skills.

<sup>23</sup> *Fierro v. Gomez*, 77 F 3d 301 (9th Cir. 1996).

<sup>24</sup> For example, a 1998 opinion poll in Florida conducted for the New York Times Regional Newspapers found that just over half of the respondents favoured replacing electrocution with lethal injection, while only 22 per cent advocated keeping the electric chair. Alan Judd, 'Poll: Most Favour New Execution Method', *Gainesville Sun*, 18 February 1998, p. 1.

<sup>25</sup> United States General Accounting Office, 'Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities', GAO/GGD-90-57 (1990).

<sup>26</sup> Michael L. Radelet, William S. Lofquist and Hugo Adam Bedau, 'Prisoners Released from Death Rows Since 1970 Because of Doubts About Their Guilt' (1996) 13 *Thomas M. Cooley Law Review* 907.

### Appendix 1 Descriptions of botched executions

1. 10 August 1982, Virginia, **Frank J. Coppola**, electrocution. Although no media representatives witnessed the execution and no details were ever released by the Virginia Department of Corrections, an attorney who was present later stated that it took two 55-second jolts of electricity to kill Coppola. The second jolt produced the odour and sizzling sound of burning flesh, and Coppola's head and leg caught fire. Smoke filled the death chamber from floor to ceiling with a smoky haze.<sup>27</sup>
2. 22 April 1983, Alabama, **John Evans**, electrocution. After the first jolt of electricity, sparks and flames erupted from the electrode attached to Evans' leg. The electrode burst from the strap holding it in place and caught on fire. Smoke and sparks also came out from under the hood in the vicinity of Evans' left temple. Two physicians entered the chamber and found a heartbeat. The electrode was re-attached to his leg, and another jolt of electricity was applied. This resulted in more smoke and burning flesh. Again, the doctors found a heartbeat. Ignoring the pleas of Evans' lawyer, a third jolt of electricity was applied. The execution took fourteen minutes and left Evans' body charred and smouldering.<sup>28</sup>
3. 2 September 1983, Mississippi, **Jimmy Lee Gray**, asphyxiation. Officials had to clear the room eight minutes after the gas was released when Gray's desperate gasps for air repulsed witnesses. His attorney, Dennis Balske of Montgomery, Alabama, criticised state officials for clearing the room when the inmate was still alive. Death penalty defence attorney David Bruck stated: 'Jimmy Lee Gray died banging his head against a steel pole in the gas chamber while the reporters counted his moans (eleven, according to the Associated Press).'<sup>29</sup> Later, it was revealed that the executioner, Barry Bruce, was drunk.<sup>30</sup>
4. 12 December 1984, Georgia, **Alpha Otis Stephens**, electrocution. 'The first charge of electricity . . . failed to kill him, and he struggled to breathe for eight minutes before a second charge carried out his death sentence.'<sup>31</sup> After the first two-minute power surge, there was a

<sup>27</sup> Deborah W. Denno, 'Is Electrocution an Unconstitutional Method of Execution? The Engineering of Death over the Century' (1994) 35 *William & Mary Law Review* 551 at 664–5.

<sup>28</sup> For a description of the execution by Evans' defence attorney, see Russell F. Canan, 'Burning at the Wire: The Execution of John Evans', in Michael L. Radelet (ed.), *Facing the Death Penalty: Essays on a Cruel and Unusual Punishment* (Philadelphia, PA: Temple University Press, 1989), p. 60; see also *Glass v. Louisiana*, 471 US 1080 at 1091–2 (1985).

<sup>29</sup> David Bruck, 'Decisions of Death', *New Republic*, 12 December 1984, pp. 24–5.

<sup>30</sup> Ivan Solotaroff, 'The Last Face You'll Ever See' (August 1995) 124 *Esquire* 90 at 95.

<sup>31</sup> 'Two Charges Needed to Electrocute Georgia Murderer', *New York Times*, 13 December 1984, p. 12.

- six-minute pause so his body could cool before physicians could examine him (and declare that another jolt was needed). During that six-minute interval, Stephens took twenty-three breaths. A Georgia prison official said: 'Stephens was just not a conductor [of electricity].'<sup>32</sup>
5. 13 March 1985, Texas, **Stephen Peter Morin**, lethal injection. Because of Morin's history of drug abuse, the execution technicians were forced to probe both of Morin's arms and one of his legs with needles for nearly forty-five minutes before they found a suitable vein.<sup>33</sup>
  6. 16 October 1985, Indiana, **William E. Vandiver**, electrocution. After the first administration of 2,300 volts, Vandiver was still breathing. The execution eventually took seventeen minutes and five jolts of electricity.<sup>34</sup> Vandiver's attorney, Herbert Shaps, witnessed the execution and observed smoke and the smell of burning. He called the execution 'outrageous'. The Department of Corrections admitted the execution 'did not go according to plan'.<sup>35</sup>
  7. 20 August 1986, Texas, **Randy Woolls**, lethal injection. A drug addict, Woolls helped the execution technicians find a useable vein for the execution.<sup>36</sup>
  8. 24 June 1987, Texas, **Elliot Rod Johnson**, lethal injection. Because of collapsed veins, it took nearly an hour to complete the execution.<sup>37</sup>
  9. 13 December 1988, Texas, **Raymond Landry**, lethal injection. Pronounced dead forty minutes after being strapped to the execution gurney and twenty-four minutes after the drugs first started flowing into his arms.<sup>38</sup> Two minutes after the drugs were administered, the syringe came out of Landry's vein, spraying the deadly chemicals across the room towards witnesses. The curtain separating the witnesses from the inmate was then pulled, and not reopened for fourteen minutes while the execution team reinserted the catheter into the vein. Witnesses reported 'at least one groan'. A spokesman for the Texas Department of Correction, Charles Brown, said, 'There was something of a delay in the execution because of what officials called a

<sup>32</sup> Editorial, *New York Times*, 17 December 1984, p. 22.

<sup>33</sup> 'Murderer of Three Women is Executed in Texas', *New York Times*, 14 March 1985.

<sup>34</sup> 'Killer's Electrocution Takes 17 Minutes in Indiana Chair', *Washington Post*, 12 October 1985, p. A16.

<sup>35</sup> 'Indiana Executes Inmate Who Slew Father-In-Law', *New York Times*, 17 October 1985, p. 22.

<sup>36</sup> 'Killer Lends a Hand to Find a Vein for Execution', *Los Angeles Times*, 20 August 1986, p. 2.

<sup>37</sup> 'Addict Is Executed in Texas for Slaying of 2 in Robbery', *New York Times*, 25 June 1987, p. A24.

<sup>38</sup> 'Drawn-out Execution Dismays Texas Inmates', *Dallas Morning News*, 15 December 1988, p. 29A.

- “blow out”. The syringe came out of the vein, and the warden ordered the [execution] team to reinsert the catheter into the vein.’<sup>39</sup>
10. 24 May 1989, Texas, **Stephen McCoy**, lethal injection. He had such a violent physical reaction to the drugs (heaving chest, gasping, choking, back arching off the gurney, etc.) that one of the witnesses fainted, crashing into and knocking over another witness. Houston attorney Karen Zellars, who represented McCoy and witnessed the execution, thought the fainting would catalyse a chain reaction. The Texas Attorney General admitted the inmate ‘seemed to have a somewhat stronger reaction’, adding ‘[t]he drugs might have been administered in a heavier dose or more rapidly’.<sup>40</sup>
  11. 14 July 1989, Alabama, **Horace Franklin Dunkins Jr**, electrocution. It took two jolts of electricity, nine minutes apart, to complete the execution. After the first jolt failed to kill the prisoner, the captain of the prison guard opened the door to the witness room and stated: ‘I believe we’ve got the jacks on wrong.’<sup>41</sup> Because the cables had been connected improperly, it was impossible to dispense sufficient current to cause death. The cables were reconnected before a second jolt was administered. Death was pronounced nineteen minutes after the first electric charge. At a post-execution news conference, Alabama Prison Commissioner Morris Thigpen said: ‘I regret very, very much what happened. [The cause] was human error.’<sup>42</sup>
  12. 4 May 1990, Florida, **Jesse Joseph Tafero**, electrocution. During the execution, six-inch flames erupted from Tafero’s head, and three jolts of power were required to stop his breathing. State officials claimed that the botched execution was caused by ‘inadvertent human error’ – the inappropriate substitution of a synthetic sponge for a natural sponge that had been used in previous executions.<sup>43</sup> They attempted to support this theory by sticking a part of a synthetic sponge into a ‘common household toaster’ and observing that it smouldered and caught fire.<sup>44</sup>

<sup>39</sup> ‘Landry Executed for ‘82 Robbery-Slaying’, *Dallas Morning News*, 13 December 1988, p. 29A.

<sup>40</sup> ‘Witness to an Execution’, *Houston Chronicle*, 27 May 1989, p. 11.

<sup>41</sup> John Archibald, ‘On Second Try, Dunkins Executed for Murder’, *Birmingham News*, 14 July 1989, p. 1.

<sup>42</sup> Peter Applebome, ‘2 Jolts in Alabama Execution’, *New York Times*, 15 July 1989, p. 6.

<sup>43</sup> Cynthia Barnett, ‘Tafero Meets Grisly Fate in Chair’, *Gainesville Sun*, 5 May 1990, p. 1; Cynthia Barnett, ‘A Sterile Scene Turns Grotesque’, *Gainesville Sun*, 5 May 1990, p. 1; Bruce Ritchie, ‘Flames, Smoke Mar Execution of Murderer’, *Florida Times-Union* (Jacksonville), 5 May 1990, p. 1; Bruce Ritchie, ‘Report on Flawed Execution Cites Human Error’, *Florida Times-Union* (Jacksonville), 9 May 1990, p. B1.

<sup>44</sup> Bill Moss, ‘Chair Concerns Put Deaths on Hold’, *St Petersburg Times*, 18 July 1990, p. 1B.

13. 12 September 1990, Illinois, **Charles Walker**, lethal injection. Because of equipment failure and human error, Walker suffered excruciating pain during his execution. According to Gary Sutterfield, an engineer from the Missouri State Prison who was retained by the state of Illinois to assist with Walker's execution, a kink in the plastic tubing going into Walker's arm stopped the deadly chemicals from reaching Walker. In addition, the intravenous needle was inserted pointing at Walker's fingers instead of his heart, prolonging the execution.<sup>45</sup>
14. 17 October 1990, Virginia, **Wilbert Lee Evans**, electrocution. When Evans was hit with the first burst of electricity, blood spewed from the right side of the mask on Evans' face, drenching Evans' shirt with blood and causing a sizzling sound as blood dripped from his lips. Evans continued to moan before a second jolt of electricity was applied. The autopsy concluded that Evans suffered a bloody nose after the voltage surge elevated his high blood pressure.<sup>46</sup>
15. 22 August 1991, Virginia, **Derick Lynn Peterson**, electrocution. After the first cycle of electricity was applied, and again four minutes later, prison physician David Barnes inspected Peterson's neck and checked him with a stethoscope, announcing each time 'He has not expired.' Seven-and-a-half minutes after the first attempt to kill the inmate, a second cycle of electricity was applied. Prison officials later announced that in the future they would routinely administer two cycles before checking for a heartbeat.<sup>47</sup>
16. 24 January 1992, Arkansas, **Rickey Ray Rector**, lethal injection. It took medical staff more than fifty minutes to find a suitable vein in Rector's arm. Witnesses were kept behind a drawn curtain and not permitted to view this scene, but reported hearing Rector's eight loud moans throughout the process. During the ordeal, Rector (who suffered from serious brain damage) helped the medical personnel find a vein. The administrator of the state's Department of Corrections medical programmes said (paraphrased by a newspaper reporter): 'the moans did come as a team of two medical people that had grown to five worked on both sides of his body to find a vein.' The

<sup>45</sup> 'Niles Group Questions Execution Procedure', United Press International, 8 November 1992 (LEXIS/NEXUS file).

<sup>46</sup> Mike Allen, 'Groups Seek Probe of Electrocution's Unusual Events', *Richmond Times-Dispatch*, 19 October 1990, p. B1; Mike Allen, 'Minister Says Execution Was Unusual', *Richmond Times-Dispatch*, 20 October 1990, p. B1; DeNeen L. Brown, 'Execution Probe Sought', *Washington Post*, 21 October 1990, p. D1.

<sup>47</sup> Karen Haywood, 'Two Jolts Needed to Complete Execution', *Free-Lance Star* (Fredericksburg, VA), 23 August 1991, p. 1; 'Death Penalty Opponents Angry About Latest Execution', *Richmond Times-Dispatch*, 24 August 1991, p. 1; 'Virginia Alters its Procedure for Executions in Electric Chair', *Washington Post*, 24 August 1991, p. B3.

administrator said: 'That may have contributed to his occasional outbursts.' The difficulty in finding a suitable vein was later attributed to Rector's bulk and his regular use of antipsychotic medication.<sup>48</sup>

17. 6 April 1992, Arizona, **Donald Eugene Harding**, asphyxiation. Death was not pronounced until ten-and-a-half minutes after the cyanide tablets were dropped.<sup>49</sup> During the execution, Harding thrashed and struggled violently against the restraining straps. A television journalist who witnessed the execution, Cameron Harper, said that Harding's spasms and jerks lasted six minutes and thirty-seven seconds. 'Obviously, this man was suffering. This was a violent death . . . an ugly event. We put animals to death more humanely.'<sup>50</sup> Another witness, newspaper reporter Carla McClain, said: 'Harding's death was extremely violent. He was in great pain. I heard him gasp and moan. I saw his body turn from red to purple.'<sup>51</sup> One reporter who witnessed the execution suffered from insomnia and assorted illnesses for several weeks; two others were 'walking vegetables' for several days.<sup>52</sup>
18. 10 March 1992, Oklahoma, **Robyn Lee Parks**, lethal injection. Parks had a violent reaction to the drugs used in the lethal injection. Two minutes after the drugs were dispensed, the muscles in his jaw, neck and abdomen began to react spasmodically for approximately forty-five seconds. Parks continued to gasp and violently gag until death came, some eleven minutes after the drugs were first administered. Tulsa World reporter Wayne Greene wrote that the execution looked 'painful and ugly', and 'scary'. 'It was overwhelming, stunning, disturbing – an intrusion into a moment so personal that reporters, taught for years that intrusion is their business, had trouble looking each other in the eyes after it was over.'<sup>53</sup>
19. 23 April 1992, Texas, **Billy Wayne White**, lethal injection. White was pronounced dead some forty-seven minutes after being strapped

<sup>48</sup> Joe Farmer, 'Rector, 40, Executed for Officer's Slaying', *Arkansas Democrat-Gazette*, 25 January 1992, p. 1; Joe Farmer, 'Rector's Time Came, Painfully Late', *Arkansas Democrat Gazette*, 26 January 1992, p. 1B; Sonja Clinesmith, 'Moans Pierced Silence During Wait', *Arkansas Democrat Gazette*, 26 January 1992, p. 1B; Marshall Frady, 'Death in Arkansas', *New Yorker*, 22 February 1993, p. 105.

<sup>49</sup> 'Gruesome Death in Gas Chamber Pushes Arizona Toward Injections', *New York Times*, 25 April 1992, p. 9.

<sup>50</sup> Charles L. Howe, 'Arizona Killer Dies in Gas Chamber', *San Francisco Chronicle*, 7 April 1992, p. A2.

<sup>51</sup> *Ibid.*

<sup>52</sup> Abraham Kwok, 'Injection: The No-Fuss Executioner', *Arizona Republic*, 28 February 1993, p. 1.

<sup>53</sup> Wayne Greene, '11-Minute Execution Seemingly Took Forever', *Tulsa World*, 11 March 1992, p. A13.

- to the execution gurney. The delay was caused by difficulty finding a vein; White had a long history of heroin abuse. During the execution, White attempted to assist the authorities in finding a suitable vein.<sup>54</sup>
20. 7 May 1992, Texas, **Justin Lee May**, lethal injection. May had an unusually violent reaction to the lethal drugs. According to one reporter who witnessed the execution, May 'gasp[ed], coughed and reared against his heavy leather restraints, coughing once again before his body froze'.<sup>55</sup> Associated Press reporter Michael Graczyk wrote: 'Compared to other recent executions in Texas, May's reaction was more violent. He went into a coughing spasm, groaned and gasped, lifted his head from the death chamber gurney and would have arched his back if he had not been belted down. After he stopped breathing, his eyes and mouth remained open.'<sup>56</sup>
  21. 10 May 1994, Illinois, **John Wayne Gacy**, lethal injection. After the execution began, the lethal chemicals unexpectedly solidified, clogging the IV tube that led into Gacy's arm, and prohibiting any further passage. Blinds covering the window through which witnesses observed the execution were drawn, and the execution team replaced the clogged tube with a new one. Ten minutes later, the blinds were then reopened and the execution process resumed. It took eighteen minutes to complete.<sup>57</sup> Anaesthesiologists blamed the problem on the inexperience of prison officials who were conducting the execution, saying that proper procedures taught in 'IV 101' would have prevented the error.<sup>58</sup>
  22. 3 May 1995, Missouri, **Emmitt Foster**, lethal injection. Seven minutes after the lethal chemicals began to flow into Foster's arm, the execution was halted when the chemicals stopped circulating. With Foster gasping and convulsing, the blinds were drawn so that the witnesses could not view the scene. Death was pronounced thirty minutes after the execution began, and three minutes later the blinds were reopened so that the witnesses could view the corpse.<sup>59</sup> According

<sup>54</sup> 'Another US Execution Amid Criticism Abroad', *New York Times*, 24 April 1992, p. B7.

<sup>55</sup> Robert Wernsman, 'Convicted Killer May Dies', *Item* (Huntsville, TX), 7 May 1992, p. 1.

<sup>56</sup> Michael Graczyk, 'Convicted Killer Gets Lethal Injection', *Herald* (Denison, TX), 8 May 1992.

<sup>57</sup> Scott Fornek and Alex Rodriguez, 'Gacy Lawyers Blast Method: Lethal Injections Under Fire After Equipment Malfunction', *Chicago Sun-Times*, 11 May 1994, p. 5; Rich Chapman, 'Witnesses Describe Killer's "Macabre" Final Few Minutes', *Chicago Sun-Times*, 11 May 1994, p. 5.

<sup>58</sup> Rob Karwath and Susan Kuczka, 'Gacy Execution Delay Blamed on Clogged IV Tube', *Chicago Tribune*, 11 May 1994, p. 1 (Metro Lake section).

<sup>59</sup> Because they could not observe the entire execution procedure through the closed blinds, two witnesses later refused to sign the standard affidavit that stated they had witnessed

to William 'Mal' Gum, the Washington County Coroner who pronounced death, the problem was caused by the tightness of the leather straps that bound Foster to the execution gurney; they were so tight that the flow of chemicals into the veins was restricted. Foster did not die until several minutes after a prison worker finally loosened the straps. The coroner entered the death chamber twenty minutes after the execution began, diagnosed the problem, and told the officials to loosen the strap so the execution could proceed.<sup>60</sup> In an editorial, the *St Louis Post-Dispatch* called the execution 'a particularly sordid chapter in Missouri's capital punishment experience'.<sup>61</sup>

23. 23 January 1996, Virginia, **Richard Townes Jr**, lethal injection. This execution was delayed for twenty-two minutes while medical personnel struggled to find a vein large enough for the needle. After unsuccessful attempts to insert the needle through the arms, the needle was finally inserted through the top of Townes' right foot.<sup>62</sup>
24. 18 July 1996, Indiana, **Tommie J. Smith**, lethal injection. Because of unusually small veins, it took one hour and nine minutes for Smith to be pronounced dead after the execution team began sticking needles into his body. For sixteen minutes, the execution team failed to find adequate veins, and then a physician was called.<sup>63</sup> Smith was given a local anaesthetic and the physician twice attempted to insert the tube into Smith's neck. When that failed, an angio-catheter was inserted in Smith's foot. Only then were witnesses permitted to view the process. The lethal drugs were finally injected into Smith forty-nine minutes after the first attempts, and it took another twenty minutes before death was pronounced.<sup>64</sup>
25. 25 March 1997, Florida, **Pedro Medina**, electrocution. A crown of foot-high flames shot from the headpiece during the execution, filling the execution chamber with a stench of thick smoke and gagging the two dozen official witnesses. An official then threw a switch

the execution. 'Witnesses to a Botched Execution', *St Louis Post-Dispatch*, 8 May 1995, p. 6B.

<sup>60</sup> Tim O'Neil, 'Too-Tight Strap Hampered Execution', *St Louis Post-Dispatch*, 5 May 1995, p. B1; Jim Slater, 'Execution Procedure Questioned', *Kansas City Star*, 4 May 1995, p. C8.

<sup>61</sup> 'Witnesses to a Botched Execution', *St Louis Post-Dispatch*, 8 May 1995, p. 6B.

<sup>62</sup> 'Store Clerk's Killer Executed in Virginia', *New York Times*, 25 January 1996, p. A19.

<sup>63</sup> The involvement of this anonymous physician violated the rules of both the American Medical Association and the Indiana State Medical Association. Sherri Edwards and Suzanne McBride, 'Doctor's Aid in Injection Violated Ethics Rule: Physician Helped Insert the Lethal Tube in a Breach of AMA's Policy Forbidding Active Role in Execution', *Indianapolis Star*, 19 July 1996, p. A1.

<sup>64</sup> *Ibid.*; Suzanne McBride, 'Problem with Vein Delays Execution', *Indianapolis News*, 18 July 1996, p. 1.



- to manually cut off the power and prematurely end the two-minute cycle of 2,000 volts. Medina's chest continued to heave until the flames stopped and death came.<sup>65</sup> After the execution, prison officials blamed the fire on a corroded copper screen in the headpiece of the electric chair, but two experts hired by the governor later concluded that the fire was caused by the improper application of a sponge (designed to conduct electricity) to Medina's head.
26. 8 May 1997, Oklahoma, **Scott Dawn Carpenter**, Carpenter was pronounced dead some eleven minutes after the lethal injection was administered. As the drugs took effect, Carpenter began to gasp and shake. 'This was followed by a guttural sound, multiple spasms and gasping for air' until his body stopped moving, three minutes later.<sup>66</sup>
  27. 13 June 1997, South Carolina, **Michael Eugene Elkins**, lethal injection. Because Elkins' body had become swollen from liver and spleen problems, it took nearly an hour to find a suitable vein for the insertion of the catheter. Elkins tried to assist the executioners, asking 'Should I lean my head down a little bit?' as they probed for a vein. After numerous failures, a usable vein was finally found in Elkins' neck.<sup>67</sup>
  28. 23 April 1998, Texas, **Joseph Cannon**, lethal injection. It took two attempts to complete the execution. After making his final statement, the execution process began. A vein in Cannon's arm collapsed and the needle popped out. Seeing this, Cannon lay back, closed his eyes, and exclaimed to the witnesses, 'It's come undone.' Officials then pulled a curtain to block the view of the witnesses, reopening it fifteen minutes later when a weeping Cannon made a second final statement and the execution process resumed.<sup>68</sup>

<sup>65</sup> Doug Martin, 'Flames Erupt from Killer's Headpiece', *Gainesville Sun*, 26 March 1997, p. 1. Medina was executed despite a life-long history of mental illness, and the Florida Supreme Court split 4–3 on whether to grant an evidentiary hearing because of serious questions about his guilt. This puts to rest any conceivable argument that Medina could have been guilty 'beyond a reasonable doubt'. *Medina v. State*, 690 So 2d 1241 (1997). The family of the victim had joined in a plea for executive clemency, in part because they believed Medina was innocent. *Ibid.*, p. 1252, n. 6. Even the Pope appealed for clemency. Martin, above.

<sup>66</sup> Michael Overall and Michael Smith, '22-Year-Old Killer Gets Early Execution', *Tulsa World*, 8 May 1997, p. A1.

<sup>67</sup> 'Killer Helps Officials Find a Vein at His Execution', *Chattanooga Free Press*, 13 June 1997, p. A7.

<sup>68</sup> Cannon was executed for a crime committed when he was seventeen years old. '1st Try Fails to Execute Texas Death Row Inmate', *Orlando Sentinel*, 23 April 1998, p. A16; Michael Graczyk, 'Texas Executes Man Who Killed San Antonio Attorney at Age 17', *Austin American-Statesman*, 23 April 1998, p. B5.

29. 26 August 1998, Texas, **Genaro Ruiz Camacho**, lethal injection. The execution was delayed approximately two hours due, in part, to problems finding suitable veins in Camacho's arms.<sup>69</sup>
30. 5 October 1998, Nevada, **Roderick Abeyta**. It took twenty-five minutes for the execution team to find a vein suitable for the lethal injection.<sup>70</sup>
31. 8 July 1999, Florida, **Allen Lee Davis**. 'Before he was pronounced dead . . . the blood from his mouth had poured onto the collar of his white shirt, and the blood on his chest had spread to about the size of a dinner plate, even oozing through the buckle holes on the leather chest strap holding him to the chair.'<sup>71</sup> His execution was the first in Florida's new electric chair, built especially so that it could accommodate a man of Davis' size (approximately 350 pounds). Later, when another Florida death row inmate challenged the constitutionality of the electric chair, Florida Supreme Court Justice Leander Shaw commented that 'the color photos of Davis depict a man who – for all appearances – was brutally tortured to death by the citizens of Florida'.<sup>72</sup> Justice Shaw also described the botched executions of Jesse Tafero and Pedro Medina (qv), calling the three executions 'barbaric spectacles' and 'acts more befitting a violent murderer than a civilized state'.<sup>73</sup> Justice Shaw included pictures of Davis' dead body in his opinion.<sup>74</sup> The execution was witnessed by a Florida state senator, Ginny Brown-Waite, who at first was 'shocked' to see the blood, until she realised that the blood was forming the shape of a cross and that it was a message from God saying he supported the execution.<sup>75</sup>
32. 8 June 2000, Florida, **Bennie Demps**. It took execution technicians thirty-three minutes to find suitable veins for the execution. 'They butchered me back there', said Demps in his final statement. 'I was in a lot of pain. They cut me in the groin; they cut me in the leg. I was bleeding profusely. This is not an execution, it is murder.' The executioners had no unusual problems finding one vein, but because Florida protocol requires a second alternate intravenous drip, they

<sup>69</sup> Michael Graczyk, 'Reputed Marijuana Smuggler Executed for 1988 Dallas Slaying', Associated Press, 27 August 1998.

<sup>70</sup> Sean Whaley, 'Nevada Executes Killer', *Las Vegas Review-Journal*, 5 October 1998, p. 1A.

<sup>71</sup> 'Davis Execution Gruesome', *Gainesville Sun*, 8 July 1999, p. 1A.

<sup>72</sup> *Provenzano v. State*, 744 So 2d 413 at 440 (Fla 1999).

<sup>73</sup> *Ibid.* <sup>74</sup> *Ibid.*, pp. 442–4.

<sup>75</sup> Mary Jo Melone, 'A Switch is Thrown, and God Speaks', *St Petersburg Times*, 13 July 1999, p. 1B.

continued to work to insert another needle, finally abandoning the effort after their prolonged failures.<sup>76</sup>

33. 28 June 2000, Missouri, **Bert Leroy Hunter**. Hunter had an unusual reaction to the lethal drugs, repeatedly coughing and gasping for air before he lapsed into unconsciousness.<sup>77</sup> An attorney who witnessed the execution reported that Hunter had 'violent convulsions. His head and chest jerked rapidly upward as far as the gurney restraints would allow, and then he fell quickly down upon the gurney. His body convulsed back and forth like this repeatedly . . . He suffered a violent and agonizing death.'<sup>78</sup>
34. 7 November 2001, Georgia, **Jose High**. High was pronounced dead some one hour and nine minutes after the execution began. After attempting to find a useable vein for '15 to 20 minutes', the emergency medical technicians under contract to do the execution abandoned their efforts. Eventually, one needle was stuck in High's hand, and a physician was called in to insert a second needle between his shoulder and neck.<sup>79</sup> According to records from the Georgia Department of Corrections, it took a total of thirty-nine minutes to insert the IV.

<sup>76</sup> Rick Bragg, 'Florida Inmate Claims Abuse in Execution', *New York Times*, 9 June 2000, p. A14; Phil Long and Steve Brousquet, 'Execution of Slayer Goes Wrong; Delay, Bitter Tirade Precede His Death', *Miami Herald*, 8 June 2000.

<sup>77</sup> David Scott, 'Convicted Killer Who Once Asked to Die is Executed', *Associated Press*, 28 June 2000.

<sup>78</sup> Letter from attorney Cheryl Rafert to Missouri Governor Mel Carnahan, 31 December 2001.

<sup>79</sup> Rhonda Cook, 'Gang Leader Executed by Injection', *Atlanta Constitution*, 7 November 2001, p. 1B.