

Botched Executions

Prof. Michael L. Radelet

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“With each development in the technology of execution, the same promises have been made, that each new technology was safe, reliable, effective and humane. Those claims have not generally been fulfilled.” -Austin Sarat

It is estimated that 3% of U.S. executions in the period from 1890 to 2010 were botched. In the 2014 book, *Gruesome Spectacles: Botched Executions and America’s Death Penalty*, Austin Sarat, a professor of jurisprudence and political science at Amherst College, describes the history of flawed executions in the U.S. during that period. Sarat reports that over those 120 years, 8,776 people were executed and 276 of those executions (3.15%) went wrong in some way. Lethal injection had the highest rate of botched executions. In his book, he defines a botched execution as follows:

Botched executions occur when there is a breakdown in, or departure from, the “protocol” for a particular method of execution. The protocol can be established by the norms, expectations, and advertised virtues of each method or by the government’s officially adopted execution guidelines. Botched executions are “those involving unanticipated problems or delays that caused, at least arguably, unnecessary agony for the prisoner or that reflect gross incompetence of the executioner.” Examples of such problems include, among other things, inmates catching fire while being electrocuted, being strangled during hangings (instead of having their necks broken), and being administered the wrong dosages of specific drugs for lethal injections.

Method	Total Executions	Botched Executions	Botched Execution Rate
Hanging	2,721	85	3.12%
Electrocution	4,374	84	1.92%
Lethal Gas	593	32	5.4%
Lethal Injection	1,054	75	7.12%
Firing Squad	34	0	0%
All Methods	8,776	276	3.15%

Source: Austin Sarat, “*Gruesome Spectacles: Botched Executions and America’s Death Penalty*” (Stanford Univ. Press 2014).

A report in the Salt Lake City Tribune takes a different view of the suggestion that there have been no botched executions by firing squad since 1890. The paper reports that in September 1951, a Utah firing squad shot Eliseo J. Mares in the hip and abdomen and that it was “several minutes” before he was declared dead. Utah’s May 16, 1879 firing-squad execution of Wallace Wilkerson also was botched. See *Botched Executions in American History*.

Examples of Post-Furman Botched Executions

List compiled by:
Prof. Michael L. Radelet
University of Colorado
Radelet@Colorado.edu

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NOTE: The below is not intended to be a comprehensive catalogue of botched executions, but simply a listing of examples that are well-known. There are 59 executions or attempted executions listed: 2 by asphyxiation, 10 by electrocution, and 47 by lethal injection, including four failed executions that were halted when execution personnel were unable to set an IV line. For information on how we define “botch” and other methodological decisions, see Marian J. Borg and Michael L. Radelet, *On Botched*

Executions, pp. 143-68 in Peter Hodgkinson and William Schabas (eds.), *Capital Punishment: Strategies for Abolition*. Cambridge: Cambridge University Press (2004).

1. August 10, 1982. Virginia. Frank J. Coppola. Electrocuting. 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 odor and sizzling sound of burning flesh, and Coppola's head and leg caught on fire. Smoke filled the death chamber from floor to ceiling with a smoky haze.¹

2. April 22, 1983. Alabama. John Evans. Electrocuting. After the first jolt of electricity, sparks and flames erupted from the electrode attached to Evans's 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's left temple. Two physicians entered the chamber and found a heartbeat. The electrode was reattached 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's lawyer, a third jolt of electricity was applied. The execution took 14 minutes and left Evans's body charred and smoldering.²

3. September 2, 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, criticized state officials for clearing the room when the inmate was still alive. Said noted death penalty defense attorney David Bruck, "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)."³ Later it was revealed that the executioner, Barry Bruce, was drunk.⁴

4. December 12, 1984. Georgia. Alpha Otis Stephens. Electrocuting. "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."⁵ After the first two-minute power surge, there was a 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 23 breaths. A Georgia prison official said, "Stephens was just not a conductor" of electricity.⁶

5. March 13, 1985. Texas. Stephen Peter Morin. Lethal Injection. The Associated Press reported that, 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 45 minutes before they found a suitable vein.⁷

6. October 16, 1985. Indiana. William E. Vandiver. Electrocuting. After the first administration of 2,300 volts, Vandiver was still breathing. The execution eventually took 17 minutes and five jolts of electricity.⁸ 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."⁹

¹ Deborah W. Denno, *Is Electrocuting an Unconstitutional Method of Execution? The Engineering of Death over the Century*, 35 WILLIAM & MARY L. REV. 551, 664 – 665 (1994).

² For a description of the execution by Evans's defense attorney, see Russell F. Canan, *Burning at the Wire: The Execution of John Evans*, in *FACING THE DEATH PENALTY: ESSAYS ON A CRUEL AND UNUSUAL PUNISHMENT* 60 (Michael L. Radelet ed. 1989); see also *Glass v. Louisiana*, 471 U.S. 1080, 1091 – 92 (1985).

³ David Bruck, *Decisions of Death*, THE NEW REPUBLIC, Dec. 12, 1984, at 24 – 25.

⁴ Ivan Solotaroff, *The Last Face You'll Ever See*, 124 ESQUIRE 90, 95 (Aug. 1995).

⁵ *Two Charges Needed to Electrocute Georgia Murderer*, N.Y. TIMES, Dec. 13, 1984, at 12.

⁶ Editorial, N.Y. TIMES, Dec. 17, 1984, at 22.

⁷ *Murderer of Three Women is Executed in Texas*, N.Y. TIMES, March 14, 1985, at 9.

⁸ *Killer's Electrocuting Takes 17 Minutes in Indiana Chair*, WASH. POST, Oct. 17, 1985, at A16.

⁹ *Indiana Executes Inmate Who Slew Father-In-Law*, N.Y. TIMES, Oct. 17, 1985, at 22.

7. August 20, 1986. Texas. Randy Woolls. Lethal Injection. A drug addict, Woolls helped the execution technicians find a useable vein for the execution.¹⁰

8. June 24, 1987. Texas. Elliot Rod Johnson. Lethal Injection. Because of collapsed veins, it took nearly an hour to complete the execution.¹¹

9. December 13, 1988. Texas. Raymond Landry. Lethal Injection. Pronounced dead 40 minutes after being strapped to the execution gurney and 24 minutes after the drugs first started flowing into his arms.¹² Two minutes after the drugs were administered, the syringe came out of Landry's vein, spraying the deadly chemicals across the room toward 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 (sic), said, "There was something of a delay in the execution because of what officials called a 'blowout.' The syringe came out of the vein, and the warden ordered the (execution) team to reinsert the catheter into the vein."¹³

10. May 24, 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 (male) fainted, crashing into and knocking over another witness. Houston attorney Karen Zellars, who represented McCoy and witnessed the execution, thought the fainting would catalyze a chain reaction. The Texas Attorney General admitted the inmate "seemed to have had a somewhat stronger reaction," adding, "The drugs might have been administered in a heavier dose or more rapidly."¹⁴

11. July 14, 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 (who was mildly retarded), the captain of the prison guard opened the door to the witness room and stated "I believe we've got the jacks on wrong."¹⁵ 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 19 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."¹⁶

12. May 4, 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.¹⁷ They attempted to support this theory by sticking a part of a synthetic sponge into a "common household toaster" and observing that it smoldered and caught fire.¹⁸

13. September 12, 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

¹⁰ *Killer Lends A Hand to Find A Vein for Execution*, L.A. TIMES, Aug. 20, 1986, at 2.

¹¹ *Addict Is Executed in Texas For Slaying of 2 in Robbery*, N.Y. TIMES, June 25, 1987, at A24.

¹² *Drawn-out Execution Dismays Texas Inmates*, DALLAS MORNING NEWS, Dec. 15, 1988, at 29A.

¹³ *Landry Executed for '82 Robbery-Slaying*, DALLAS MORNING NEWS, Dec. 13, 1988, at 29A.

¹⁴ *Witness to an Execution*, HOUS. CHRON., May 27, 1989, at 11.

¹⁵ John Archibald, *On Second Try, Dunkins Executed for Murder*, BIRMINGHAM NEWS, July 14, 1989, at 1.

¹⁶ Peter Applebome, *2 Jolts in Alabama Execution*, N.Y. TIMES, July 15, 1989, at 6.

¹⁷ Cynthia Barnett, *Tafero Meets Grisly Fate in Chair*, GAINESVILLE SUN, May 5, 1990, at 1; Cynthia Barnett, *A Sterile Scene Turns Grotesque*, GAINESVILLE SUN, May 5, 1990, at 1; Bruce Ritchie, *Flames, Smoke Mar Execution of Murderer*, FLORIDA TIMES-UNION (Jacksonville), May 5, 1990, at 1; Bruce Ritchie, *Report on Flawed Execution Cites Human Error*, FLORIDA TIMES-UNION (Jacksonville), May 9, 1990, at B1.

¹⁸ Bill Moss, *Chair Concerns Put Deaths on Hold*, ST. PETERSBURG TIMES, July 18, 1990, at 1B.

chemicals from reaching Walker. In addition, the intravenous needle was inserted pointing at Walker's fingers instead of his heart, prolonging the execution.¹⁹

14. October 17, 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's face, drenching Evans's 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.²⁰

15. August 22, 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 one-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.²¹

16. January 24, 1992. Arkansas. Rickey Ray Rector. Lethal Injection. It took medical staff more than 50 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 State's Department of Corrections medical programs 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 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.²²

17. April 6, 1992. Arizona. Donald Eugene Harding. Asphyxiation. Death was not pronounced until 10 1/2 minutes after the cyanide tablets were dropped.²³ 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 6 minutes and 37 seconds. "Obviously, this man was suffering. This was a violent death ... an ugly event. We put animals to death more humanely."²⁴ 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."²⁵ One reporter who witnessed the execution suffered from insomnia and assorted illnesses for several weeks; two others were "walking vegetables" for several days.²⁶

18. March 10, 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 45 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," "scary and ugly." "It was overwhelming, stunning, disturbing — an intrusion into a moment so personal that

¹⁹ *Niles Group Questions Execution Procedure*, UNITED PRESS INTERNATIONAL, Nov. 8, 1992 (LEXIS/NEXUS file).

²⁰ Mike Allen, *Groups Seek Probe of Electrocution's Unusual Events*, RICHMOND TIMES-DISPATCH, Oct. 19, 1990, at B1; Mike Allen, *Minister Says Execution Was Unusual*, RICHMOND TIMES-DISPATCH, Oct. 20, 1990, at B1; DeNeen L. Brown, *Execution Probe Sought*, WASH. POST, Oct. 21, 1990, at D1.

²¹ Karen Haywood, *Two Jolts Needed to Complete Execution*, THE FREE-LANCE STAR (Fredericksburg, Vir.), Aug. 23, 1991, at 1; *Death Penalty Opponents Angry About Latest Execution*, RICHMOND TIMES-DISPATCH, Aug. 24, 1991, at 1; *Virginia Alters its Procedure for Executions in Electric Chair*, WASH. POST, Aug. 24, 1991, at B3.

²² Joe Farmer, *Rector, 40, Executed for Officer's Slaying*, ARKANSAS DEMOCRAT-GAZETTE, Jan. 25, 1992, at 1; Joe Farmer, *Rector's Time Came, Painfully Late*, ARKANSAS DEMOCRAT GAZETTE, Jan. 26, 1992, at 1B; Sonja Clinesmith, *Moans Pierced Silence During Wait*, ARKANSAS DEMOCRAT GAZETTE, Jan. 26, 1992, at 1B; Marshall Frady, *Death in Arkansas*, THE NEW YORKER, Feb. 22, 1993, at 105.

²³ *Gruesome Death in Gas Chamber Pushes Arizona Toward Injections*, N.Y. TIMES, Apr. 25, 1992, at 9.

²⁴ Charles L. Howe, *Arizona Killer Dies in Gas Chamber*, S.F. CHRON., Apr. 7, 1992, at A2.

²⁵ *Id.*

²⁶ Abraham Kwok, *Injection: The No-Fuss Executioner*, ARIZONA REPUBLIC, Feb. 28, 1993, at 1.

reporters, taught for years that intrusion is their business, had trouble looking each other in the eyes after it was over.”²⁷

19. April 23, 1992. Texas. Billy Wayne White. Lethal Injection. White was pronounced dead some 47 minutes after being strapped 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.²⁸

20. May 7, 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.”²⁹ Associated Press reporter Michael Graczyk wrote, “Compared to other recent executions in Texas, May’s reaction to the drugs 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.”³⁰

21. May 10, 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 18 minutes to complete.³¹ Anesthesiologists 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.³²

22. May 3, 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 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 the witnesses could view the corpse.³³ According 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; it was 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.³⁴ In an editorial, the *St. Louis Post-Dispatch* called the execution “a particularly sordid chapter in Missouri’s capital punishment experience.”³⁵

23. January 23, 1996. Virginia. Richard Townes, Jr. Lethal Injection. This execution was delayed for 22 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 Mr. Townes’s right foot.³⁶

²⁷ Wayne Greene, *11-Minute Execution Seemingly Took Forever*, TULSA WORLD, Mar. 11, 1992, at A13.

²⁸ *Another U.S. Execution Amid Criticism Abroad*, N.Y. TIMES, Apr. 24, 1992, at B7.

²⁹ Robert Wernsman, *Convicted Killer May Dies*, ITEM (Huntsville, Tex.), May 7, 1992, at 1.

³⁰ Michael Graczyk, *Convicted Killer Gets Lethal Injection*, HERALD (Denison, Tex.), May 8, 1992.

³¹ Scott Fornek and Alex Rodriguez, *Gacy Lawyers Blast Method: Lethal Injections Under Fire After Equipment Malfunction*, CHICAGO SUN-TIMES, May 11, 1994, at 5; Rich Chapman, *Witnesses Describe Killer’s ‘Macabre’ Final Few Minutes*, CHICAGO SUN-TIMES, May 11, 1994, at 5.

³² Rob Karwath & Susan Kuczka, *Gacy Execution Delay Blamed on Clogged IV Tube*, CHICAGO TRIB., May 11, 1994, at 1 (Metro Lake Section).

³³ 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 the execution. *Witnesses to a Botched Execution*, ST. LOUIS POST-DISPATCH, May 8, 1995, at 6B.

³⁴ Tim O’Neil, *Too-Tight Strap Hampered Execution*, ST. LOUIS POST-DISPATCH, May 5, 1995, at B1; Jim Slater, *Execution Procedure Questioned*, KANSAS CITY STAR, May 4, 1995, at C8.

³⁵ *Witnesses to a Botched Execution*, ST. LOUIS POST-DISPATCH, May 8, 1995, at 6B.

³⁶ *Store Clerk’s Killer Executed in Virginia*, N.Y. TIMES, Jan. 25, 1996, at A19.

24. July 18, 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.³⁷ Smith was given a local anesthetic and the physician twice attempted to insert the tube in 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 49 minutes after the first attempts, and it took another 20 minutes before death was pronounced.³⁸

25. March 25, 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 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.³⁹ 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. May 8, 1997. Oklahoma. Scott Dawn Carpenter. Lethal Injection. Carpenter was pronounced dead some 11 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.⁴⁰

27. June 13, 1997. South Carolina. Michael Eugene Elkins. Lethal Injection. Because Elkins's 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's neck.⁴¹

28. April 23, 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.⁴²

29. August 26, 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.⁴³

30. October 5, 1998. Nevada. Roderick Abeyta. Lethal Injection. It took 25 minutes for the execution team to find a vein suitable for the lethal injection.⁴⁴

³⁷ The involvement of this anonymous physician violated rules of both the American Medical Association and the Indiana State Medical Association. Sherri Edwards & 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, July 19, 1996, at A1.

³⁸ Id.; Suzanne McBride, *Problem With Vein Delays Execution*, INDIANAPOLIS NEWS, July 18, 1996, at 1.

³⁹ Doug Martin, *Flames Erupt from Killer's Headpiece*, GAINESVILLE SUN, March 26, 1997, at 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. Id., at 1252, n. 6. Even the Pope appealed for clemency. Martin, op. cit.

⁴⁰ Michael Overall & Michael Smith, *22-Year-Old Killer Gets Early Execution*, TULSA WORLD, May 8, 1997, at A1.

⁴¹ *Killer Helps Officials Find A Vein At His Execution*, CHATTANOOGA FREE PRESS, June 13, 1997, at A7.

⁴² Cannon was executed for a crime committed when he was 17 years old. 1st Try Fails to Execute Texas Death Row Inmate, ORLANDO SENT., Apr. 23, 1998, at A16; Michael Graczyk, *Texas Executes Man Who Killed San Antonio Attorney at Age 17*, AUSTIN AMERICAN-STATESMAN, Apr. 23, 1998, at B5.

⁴³ Michael Graczyk, *Reputed Marijuana Smuggler Executed for 1988 Dallas Slaying*, ASSOCIATED PRESS, August 27, 1998.

⁴⁴ Sean Whaley, *Nevada Executes Killer*, LAS VEGAS REVIEW-JOURNAL, Oct. 5, 1998, at 1A.

31. July 8, 1999. Florida. Allen Lee Davis. Electrocution. “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.”⁴⁵ His execution was the first in Florida’s new electric chair, built especially so it could accommodate a man Davis’s 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.”⁴⁶ Justice Shaw also described the botched executions of Jesse Tafero and Pedro Medina (q.v.), calling the three executions “barbaric spectacles” and “acts more befitting a violent murderer than a civilized state.”⁴⁷ Justice Shaw included pictures of Davis’s dead body in his opinion.⁴⁸ The execution was witnessed by a Florida State Senator, Ginny Brown-Waite, who at first was “shocked” to see the blood, until she realized that the blood was forming the shape of a cross and that it was a message from God saying he supported the execution.⁴⁹ (See Photos taken after execution—graphic images).

32. May 3, 2000. Arkansas. Christina Marie Riggs. Lethal Injection. Riggs dropped her appeals and asked to be executed. However, the execution was delayed for 18 minutes when prison staff couldn’t find a suitable vein in her elbows. Finally, Riggs agreed to the executioners’ requests to have the needles in her wrists.⁵⁰

33. June 8, 2000. Florida. Bennie Demps. Lethal Injection. It took execution technicians 33 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 continued to work to insert another needle, finally abandoning the effort after their prolonged failures.⁵¹

34. December 7, 2000. Texas. Claude Jones. Lethal Injection. Jones was a former intravenous drug abuser. His execution was delayed 30 minutes while the execution team struggled to insert an IV into a vein. One member of the execution team commented, “They had to stick him about five times. They finally put it in his leg.” Jim Willett, the warden of the Walls Unit and the man responsible for conducting the execution, wrote: “The medical team could not find a vein. Now I was really beginning to worry. If you can’t stick a vein then a cut-down has to be performed. I have never seen one and would just as soon go through the rest of my career the same way. Just when I was really getting worried, one of the medical people hit a vein in the left leg. Inside calf to be exact. The executioner had warned me not to panic as it was going to take a while to get the fluids in the body of the inmate tonight because he was going to push the drugs through very slowly. Finally, the drug took effect and Jones took his last breath.”⁵²

35. June 28, 2000. Missouri. Bert Leroy Hunter. Lethal Injection. Hunter had an unusual reaction to the lethal drugs, repeatedly coughing and gasping for air before he lapsed into unconsciousness.⁵³ 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

⁴⁵ *Davis Execution Gruesome*, GAINESVILLE SUN, July 8, 1999, at 1A.

⁴⁶ *Provenzano v. State*, 744 So.2d 413, 440 (Fla. 1999).

⁴⁷ *Id.*

⁴⁸ *Id.* at 442 – 44.

⁴⁹ Mary Jo Melone, *A Switch is Thrown, and God Speaks*, ST. PETERSBURG TIMES, July 13, 1999, p. 1B.

⁵⁰ Ron Moore, *At Last I can be with my Babies*, SCOTTISH DAILY RECORD, May 4, 2000, at 24.

⁵¹ Rick Bragg, *Florida Inmate Claims Abuse in Execution*, N.Y. TIMES, June 9, 2000, at A14; Phil Long & Steve Brousquet, *Execution of Slayer Goes Wrong; Delay, Bitter Tirade Precede His Death*, MIAMI HERALD, June 8, 2000.

⁵² Sarah Rimer, *Working Death Row*, N.Y. TIMES, Dec. 17, 2000, at 1.

⁵³ David Scott, *Convicted Killer Who Once Asked to Die is Executed*, ASSOCIATED PRESS, June 28, 2000.

violent and agonizing death.”⁵⁴ However, three reporters who witnessed the execution did not substantiate these observations, with two reporting that Hunter simply coughed several times and the third stating that he saw no violent reaction to the drugs.⁵⁵

36. November 7, 2001. Georgia. Jose High. Lethal Injection. 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.⁵⁶

37. May 2, 2006. Ohio. Joseph L. Clark. Lethal Injection. It took 22 minutes for the execution technicians to find a vein suitable for insertion of the catheter. But three or four minutes thereafter, as the vein collapsed and Clark’s arm began to swell, he raised his head off the gurney and said five times, “It don’t work. It don’t work.” The curtains surrounding the gurney were then closed while the technicians worked for 30 minutes to find another vein. Media witnesses later reported that they heard “moaning, crying out and guttural noises.”⁵⁷ Finally, death was pronounced almost 90 minutes after the execution began. A spokeswoman for the Ohio Department of Corrections told reporters that the execution team included paramedics, but not a physician or a nurse.⁵⁸

38. December 13, 2006. Florida. Angel Diaz. Lethal Injection. After the first injection was administered, Mr. Diaz continued to move, and was squinting and grimacing as he tried to mouth words. A second dose was then administered, and 34 minutes passed before Mr. Diaz was declared dead. At first a spokesperson for the Florida Department of Corrections claimed that this was because Mr. Diaz had some sort of liver disease.⁵⁹ After performing an autopsy, the Medical Examiner, Dr. William Hamilton, stated that Mr. Diaz’s liver was undamaged, but that the IV catheters (which had been inserted in both arms) had gone through Mr. Diaz’s veins and out the other side, so the deadly chemicals were injected into soft tissue, rather than the vein. Two days after the execution, Governor Jeb Bush temporarily suspended all executions in the state and appointed a commission “to consider the humanity and constitutionality of lethal injections.”⁶⁰ In 2014, pictures from the autopsy of Mr. Diaz’s body, along with a long article describing his painful death, were published in *The New Republic*.⁶¹

39. May 24, 2007. Ohio. Christopher Newton. Lethal Injection. According to the Associated Press, “prison medical staff” at the Southern Ohio Correctional Facility struggled to find veins on each of Newton’s arms during the execution. Newton, who weighted 265 pounds, was declared dead almost two hours after the execution process began. The execution “team” stuck Newton at least ten times with needles before getting the shunts in place where the needles are injected.⁶²

40. June 26, 2007. Georgia. John Hightower. Lethal Injection. It took approximately 40 minutes for the nurses to find a suitable vein to administer the lethal chemicals, and death was not pronounced until 7:59, 59 minutes after the execution process began.⁶³

41. June 4, 2008. Georgia. Curtis Osborne. Lethal Injection. After a 55-minute delay while the U.S. Supreme Court reviewed his final appeal, prison medical staff began the execution by trying to

⁵⁴ Letter from attorney Cheryl Rafert to Missouri Governor Mel Carnahan, June 30, 2000.

⁵⁵ Tim O’Neil, *Lawyer Says Client Convulsed Violently During Execution; But Three Reporters Say It Did Not happen*, St. Louis Post Dispatch, July 6, 2000.

⁵⁶ Rhonda Cook, *Gang Leader Executed by Injection; Death Comes 25 Years After Boy, 11, Slain*, Atlanta Journal-Constitution, November 7, 2001, at 1B (MetroSection).

⁵⁷ Adam Liptak, *Trouble Finding Inmate’s Vein Slows Lethal Injection in Ohio*, New York Times, May 3, 2006; John Mangels, *Condemned Killer Complains Lethal Injection ‘Isn’t Working,’* Plain Dealer (Cleveland), May 3, 2006.

⁵⁸ Terry Aguayo, *Florida Death Row Inmate Dies Only After Second Chemical Dose*, New York Times, Dec. 15, 2006.

⁵⁹ Adam Liptak & Terry Aguayo, *After Problem Execution, Governor Bush Suspends the Death Penalty in Florida*, New York Times, Dec. 16, 2006.

⁶⁰ Ben Crair, *Photos from a Botched Lethal Injection*, The New Republic, May 29, 2014, available at

⁶¹ Associated Press, May 24, 2007.

⁶² Lateef Mungin, *Triple Murderer Executed After 40-minute Search for Vein*, Atlanta Journal-Constitution, June 27, 2007.

⁶³ Rhonda Cook, *Executioners had Trouble Putting Murderer to Death: For 35 Minutes, They couldn’t find good Vein for Lethal Injection*, Atlanta Journal-Constitution, June 4, 2008.

find suitable veins in which to insert the IV. The executioners struggled for 35 minutes to find a vein, and it took 14 minutes after the fatal drugs were administered before death was pronounced by two physicians who were inside the death chamber.^[64]

42. September 15, 2009. Ohio. Romell Broom (pictured, after execution attempt). Lethal Injection (failed). Efforts to find a suitable vein and to execute Mr. Broom were terminated after more than two hours when the executioners were unable to find a useable vein in Mr. Broom's arms or legs. During the failed efforts, Mr. Broom winced and grimaced with pain. After the first hour's lack of success, on several occasions Broom tried to help the executioners find a good vein. "At one point, he covered his face with both hands and appeared to be sobbing, his stomach heaving."⁶⁴ Finally, Ohio Governor Ted Strickland ordered the execution to stop, and announced plans to attempt the execution anew after a one-week delay so that physicians could be consulted for advice on how the man could be killed more efficiently.⁶⁵ The executioners blamed the problems on Mr. Broom's history of intravenous drug use. Mr. Broom died in December 2020 of COVID-19 contracted on Ohio's death row.

43. September 27, 2010. Georgia. Brandon Joseph Rhode. Lethal Injection. After the Supreme Court rejected his appeals, "Medics then tried for about 30 minutes to find a vein to inject the three-drug concoction." It then took 14 minutes for the lethal drugs to kill him. The execution had been delayed six days because a prison guard had given Rhode a razor blade, which Rhode used to attempt suicide.⁶⁶

44. January 16, 2014. Ohio. Dennis McGuire. Lethal Injection. McGuire gasped for air for some 25 minutes while the drugs used in the execution, hydromorphone and midazolam, slowly took effect. Witnesses reported that after the drugs were injected, McGuire was struggling, with his stomach heaving and fist clenched, making "horrible" snorting and choking sounds.⁶⁷ In a lawsuit filed after the execution, Mr. McGuire's family alleged that the inmate experienced "repeated cycles of snorting, gurgling and arching his back, appearing to writhe in pain," the lawsuit said. "It looked and sounded as though he was suffocating."⁶⁸

45. April 29, 2014. Oklahoma. Clayton D. Lockett. Lethal Injection. Despite prolonged litigation and numerous warnings from defense attorneys about the dangers of using an experimental drug protocol with the drug midazolam, Oklahoma went ahead and scheduled the executions of Clayton Lockett and Charles Warner. Plans for the execution and the drugs used were cloaked in secrecy, with the state refusing to release information about the source and efficacy of the lethal drugs, making it impossible to accurately predict the effects of the combination of drugs. Nonetheless, Oklahoma Governor Mary Fallon pressured the Courts to allow the execution, a bill was introduced in the Oklahoma House of Representatives to impeach the Justices who had voted to stay the execution, and the state Supreme Court allowed the executions to go forward.

Mr. Lockett was the first who was scheduled to die. An hour before the execution began, the governor was notified that the executioner (a "phlebotomist") was having problems finding a usable vein, but she did not intervene. After an hour, a vein was finally found in Mr. Lockett's "groin area," and the execution went forward. Ten minutes after the administration of the first drug, a sedative, the physician supervising the process (whose very presence violated ethical standards of several medical organizations) announced that the inmate was unconscious, and therefore ready to receive the other two drugs that would actually kill him. Those two drugs were known to cause excruciating pain if the recipient was conscious. However, Mr. Lockett was not unconscious. Three minutes after the latter two drugs were injected, "he began breathing heavily, writhing on the gurney, clenching his teeth and straining to lift

⁶⁴ Alan Johnson, *Effort to Kill Inmate Halted — 2 Hours of Needle Sticks Fail; Strickland Steps In*, Columbus Dispatch, Sept. 16, 2009.

⁶⁵ Bob Driehaus, *Ohio Plans to Try Again as Execution Goes Wrong*, New York Times, Sept. 17, 2009; Stephen Majors, *Governor delays execution after problems with convict's veins*, CantonRep.com/The Repository, Sept. 16, 2009.

⁶⁶ Greg Bluestein, *Georgia Executes Inmate Who Had Attempted Suicide*, Associated Press, Sept. 27, 2010.

⁶⁷ Erica Goode, *After a Prolonged Execution in Ohio, Questions over 'Cruel and Unusual'*, New York Times, Jan. 17, 2014.

⁶⁸ Family Sues in Protracted Ohio Execution, Associated Press/New York Times, Jan 25, 2014.

his head off the pillow.”⁶⁹ Officials then lowered the blinds to prohibit witnesses from seeing what was going on, and 15 minutes later the witnesses were ordered to leave the room.

Twenty minutes after the first drugs were administered, the Director the Oklahoma Department of Corrections halted the execution and issued a two-week stay (later extended by extensive litigation) for the execution of Mr. Warner. Mr. Lockett died 43 minutes after the execution began, of a heart attack, while still in the execution chamber.⁷⁰

46. July 23, 2014. Arizona. Joseph R. Wood. Lethal Injection. After the chemicals (midazolam and hydromorphone) were injected, Mr. Wood repeatedly gasped for one hour and 40 minutes before death was pronounced. During the ordeal, Mr. Wood’s attorneys filed an emergency appeal to a Federal District Court and placed a phone call to Supreme Court Justice Anthony Kennedy in a failed effort to halt the botched execution. Meanwhile, a spokesperson for the Arizona Attorney General’s office claimed that Mr. Wood was asleep and was simply snoring. In the days before the execution, defense attorneys won a stay from the U.S. Court of Appeals for the Ninth Circuit on their motion to compel the state to reveal the source of the drugs and the training of the executioners. However, this stay was later overturned by the Supreme Court.⁷¹ A reporter for the *Arizona Republic* who witnessed the execution, Michael Kiefer, said that he counted 640 gasps from Wood before he finally died.⁷²

47. December 9, 2015. Georgia. Brian Keith Terrell. Lethal Injection. “[I]t took an hour for the nurse assigned to the execution to get IVs inserted into both of the condemned man’s arms. She eventually had to put one into Terrell’s right hand. Terrell winced several times, apparently in pain.”⁷³

48. February 3, 2016. Georgia. Brandon Jones. Lethal Injection. After spending 24 minutes unsuccessfully trying to insert an IV into Jones’ left arm, the executioners spent 8 minutes trying to insert it in his right arm and, when that failed, they again attempted to insert it in his left arm. They then asked a physician to violate several codes of medical ethics for assistance, and he or she spent 13 minutes inserting and stitching the IV near Jones’ groin. Six minutes later, Jones’ eyes popped open. He was 72 years old at the time of his execution.⁷⁴

49. December 8, 2016. Alabama. Ronald Bert Smith, Jr. Lethal Injection. Smith (a former Eagle Scout and Army reservist) was convicted of a 1994 murder of a convenience store clerk, and his jury at trial (after anti-death penalty citizens were removed) voted 7-5 to recommend a punishment of life imprisonment without parole. Alabama, however, requires neither unanimity nor a majority jury vote before the trial judge can sentence a defendant to death. Smith heaved, gasped and coughed while struggling for breath for 13 minutes after the lethal drugs were administered, and death was pronounced 34 minutes after the execution began. He also “clenched his fists and raised his head during the early part of the procedure.” Alabama used the controversial sedative midazolam (a “valium-like drug”) in the execution.⁷⁵

50. October 19, 2017. Alabama. Torrey McNabb. Lethal Injection. It took 35 minutes for the lethal injection (midazolam) to end Mr. McNabb’s life.⁷⁶ McNabb’s attorney said Friday that his movements during the middle of the execution, that included moving his arm and rolling his head back

⁶⁹ Bailey Elise McBride & Sean Murphy, Oklahoma Inmate Dies after Execution is Botched, Associated Press, Apr. 29, 2014.

⁷⁰ Eric Eckholm, One Execution Botched, Oklahoma Delays the Next, New York Times, Apr. 29, 2014.

⁷¹ Erik Eckholm, Arizona Takes Nearly 2 Hours to Execute Inmate, New York Times, Jul. 23, 2014.

⁷² Bob Ortega, Michael Kiefer, & Mariana Dale, Execution of Arizona Murderer Takes Nearly 2 Hours, The Republic, July 23, 2014.

⁷³ Rhonda Cook, Georgia Executes Brian Keith Terrell after Struggling to Find Vein, Atlanta Journal-Constitution, Dec. 9, 2015.

⁷⁴ Chris McDaniel, Georgia Executioners Struggled To Set IVs In Recent Lethal Injections: Executioners took nearly an hour set the IVs in two recent lethal injections, according to timelines obtained by BuzzFeed News through public records requests and eyewitness accounts, BuzzFeed News, Feb. 16, 2016.

⁷⁵ Kent Faulk, Alabama Death Row Inmate Ronald Bert Smith Heaved, Coughed for 13 Minutes During execution, AL.com, Dec. 8, 2016.

⁷⁶ *Torrey McNabb’s Final Words for Alabama Before Execution: ‘I Hate You,’* Montgomery Advertiser, Oct. 20, 2007, <https://www.montgomeryadvertiser.com/story/news/local/2007/10/20/torrey-mcnabb-final-words-for-alabama-before-execution-i-hate-you/>; Kim Chandler, *Alabama Inmate Defiant Before Execution for Killing Officer*, Associated Press, Oct 20, 2017;

and forth after a consciousness check, showed problems with the sedative used by the state. ... McNabb's family members and attorneys who witnessed the execution expressed concerns to each other that he was still conscious during the lethal injection. "He's going to wake up," one of his relatives whispered."

51. November 15, 2017. Ohio. Alva Campbell. Lethal Injection (failed). "The execution team first worked on both of Alva Campbell's arms for about 30 minutes Wednesday while he was on a gurney in the state's death chamber and then tried to find a vein in his right leg below the knee. ... About 80 minutes after the execution was scheduled to begin, the 69-year-old Campbell shook hands with two guards after it appeared the insertion was successful. About two minutes later, media witnesses were told to leave without being told what was happening. ... Gary Mohr, head of the Ohio Department of Rehabilitation and Correction, ... [then] called off the execution after talking with the medical team [saying] 'It was my decision that it was not likely that we're going to access veins.' ... Prison officials brought Campbell into the death chamber in a wheelchair and provided him a wedge pillow on the gurney, which was meant to help him breathe. Campbell has suffered from breathing problems related to a longtime smoking habit. His attorneys said he has required a walker, relied on a colostomy bag and needed breathing treatments four times a day."⁷⁷ Less than four months later, on March 3, 2018, Campbell died on death row of his terminal medical conditions.

52. February 22, 2018. Alabama. Doyle Lee Hamm. Lethal Injection (failed). Despite several warnings from defense counsel that it would be impossible to find a vein in which to insert the catheter (Hamm suffered from advanced lymphatic cancer and carcinoma), the State went forward with the execution. For 2.5 hours, the executioners tried to find a vein, leaving Hamm with a ten-twelve puncture marks, including six in his groin and others that punctured his bladder and penetrated his femoral artery. Finally, approaching a midnight deadline that prohibited further attempts, the execution was called off. Alabama Corrections Commissioner Jeff Dunn later told reporters, "I wouldn't necessarily characterize what we had tonight as a problem."⁷⁸ [NOTE: On March 5, 2018, attorneys for Doyle Hamm submitted a preliminary report from an anesthesiologist who evaluated Hamm on February 25. WARNING: Report contains graphic images and descriptions.] On November 28, 2021, Mr. Hamm, still in prison, died from his lymphoma and cranial cancer.⁷⁹

53. October 28, 2021. Oklahoma. John Marion Grant. Lethal Injection. After the first drug was administered (midazolam), Mr. Grant convulsed and vomited for several minutes, leading members of the execution team to wipe the vomit from his face and neck. Associated Press media witness Sean Murphy said that "Grant's body shook and jerked nearly two dozen times before vomit spurted from his mouth and spilled down his neck."⁸⁰ In addition, the autopsy report (on file with DPIC) found pulmonary edema and intramuscular hemorrhaging of the tongue (p. 2). Prior to the execution, Mr. Grant's legal team (along with attorneys for some two-dozen other Oklahoma death row inmates) had argued that the state's three-drug lethal injection protocol would cause unnecessary and excruciating pain. Said Robert Dunham, executive director of the Death Penalty Information Center, "Oklahoma knew full well that this was well within the realm of possible outcomes in a midazolam execution. It didn't care ... and the Supreme Court apparently didn't either."⁸¹

54. May 11, 2022. Arizona. Clarence Dixon. Lethal Injection. "Troy Hayden, a media witness from Fox News, said the execution team had trouble getting IVs into Dixon, who grimaced and appeared to be in pain while this was happening. ... Hayden said execution team members took 25 minutes to insert IVs into Dixon's body, eventually resorting to making an incision and inserting an IV into Dixon's

⁷⁷ Andrew Welsh-Huggins, *Ohio Calls Off Execution after Failing to Find Inmate's Vein*, Associated Press, Nov. 15, 2017.

⁷⁸ Tracy Connor, *Lawyer Describes Aborted Execution Attempt for Doyle Lee Hamm as 'Torture'*, NBC News, Feb. 25, 2018; Roger Cohen, *Death Penalty Madness in Alabama*, New York Times, Feb. 27, 2018.

⁷⁹ Sam Roberts, *Doyle Hamm, Who Survived a Bungled Execution, Dies in Prison at 64*, New York Times, Nov. 30, 2021.

⁸⁰ Jaclyn Peiser and Christine Armario, *Oklahoma Death Row Inmate Convulsed, Vomited During Lethal Injection, Witness Says, As State Resumes Executions*, Washington Post, Oct. 29, 2021.

⁸¹ *Id.*, see also Adam Liptak, *After Supreme Court Lifts Stay, Oklahoma Executes Inmate*, New York Times, Oct. 28, 2021.

groin. Dixon was grimacing and appeared to be in pain while the execution team attempted to insert the IVs.”⁸²

55. June 8, 2022. Arizona. Frank Atwood. Lethal Injection. Mr. Atwood had to assist his executions in finding a suitable vein for his execution. *Arizona Republic* reporter *Jimmy Jenkins*, who witnessed the execution, called it “surreal.” “I have witnessed life. And I have witnessed death. But nothing could have prepared me for the surreal spectacle I witnessed during the execution of Frank Atwood.” Atwood, age 65, had a degenerative spinal condition and had to be wheeled to the gurney in a wheelchair. ““After a few minutes and what appeared to be several attempts [to insert the needle], the execution team inserted an IV and catheter into Atwood’s left arm. ... The execution team tried and failed to get the IV into his right arm several times.” Atwood then suggested to the executioners that they try to insert the needle in his hand. That did the job. The total execution took approximately 30 minutes.”⁸³

56. July 28, 2022. Alabama. Joe Nathan James, Jr. Lethal Injection. Rejecting pleas from the two daughters and the brother of the homicide victim, Faith Hall, Governor Kay Ivey ordered the execution to proceed. The execution was scheduled for 6:00 p.m. Central time, but for reasons that the Alabama Department of Corrections (ADOC) failed to directly address, the execution was delayed for three hours. Prison officials asserted that the delay was a result of attempting to comply with the execution protocol without initiating a cut-down procedure and that “nothing out of the ordinary” had occurred during the delay. A private autopsy later demonstrated that ADOC’s representation was false.

The autopsy findings, described by reporter Elizabeth Bruenig in an August 15, 2022 exposé in *The Atlantic*, documented multiple failed attempts by the ADOC execution team to set an intravenous execution line, puncture wounds in Mr. James arm muscles that appeared to be unrelated to efforts to insert the IV, multiple unexplained incisions, and bleeding and bruising around Mr. James’ wrists where he was strapped to the gurney. Bruenig called the execution “lengthy and painful,” and a doctor who attended the autopsy said the execution team that carried it out “was unqualified for the task in a most dramatic way.”⁸⁴

The estimated 3 to 3½ hours between the initiation of efforts to set the execution IV to the time of James’ death was the longest botched lethal-injection execution since the method came into use in the U.S. in 1982. The human rights group Reprieve, which funded the private autopsy, said it had reviewed information on 275 botched U.S. executions since 1890 and found that the interval between the start of James’ execution and his death was the longest on record involving any method of execution.⁸⁵

While the unexplained delay was taking place, prison officials subjected two female reporters to clothing examinations, deeming the skirt one witness had worn when covering prior executions “too short” to gain admission to the prison. After the reporter found other clothing to wear, prison officials further delayed media entry into the facility by then telling her that she could not wear open-toed shoes. The same prison officials subjected a second veteran female reporter to a clothing inspection.

Reporters were subsequently left in the prison transport van for nearly 2½ hours, without any explanation for this additional delay. The media witnesses were ultimately seated in the execution viewing room at 8:57 p.m. and the curtain to the execution chamber was raised at 9:02 p.m. Multiple reporters noted that James’ eyes were closed and he lay motionless on the gurney. He was non-responsive when an execution team member read him his death warrant at 9:03 and asked him if he had any final words. At 9:04 officials began administering the execution drugs through an IV that was already in place in

⁸² Jimmy Jenkins Chelsea Curtis, *Arizona Executes Clarence Dixon for 1978 Murder of Deana Bowdin*, AZ Central, May 12, 2002.

⁸³ Death Penalty Information Center, *In ‘Surreal’ Event, Possibly Innocent Death-Row Prisoner Helped Arizona Executioners Find a Vein After They Failed to Set IV Line*, June 15, 2022.

⁸⁴ Elizabeth Bruenig, *Dead to Rights*, *The Atlantic*, August 14, 2022; Amy Yurkanin, *Joe Nathan James suffered a long death’ in botched Alabama execution, magazine alleges*, *AL.com*, August 14, 2022.

⁸⁵ Ramon Antonio Vargas, *Alabama subjected prisoner to ‘three hours of pain’ during execution – report*, *The Guardian*, August 15, 2022.

James' left arm when the curtain was raised. Reporters indicated that "James blinked and his eyes fluttered briefly" after the drugs were injected. He was pronounced dead at 9:27 p.m.

The next day, ADOC's public information officer, Kelly Betts, indicated via email that the delay had resulted from difficulties in establishing the execution IV line. Prison authorities provided no explanation for James' non-responsiveness. On the night of the execution, Commission Hamm specifically denied that the execution team had sedated James, a representation Betts repeated to the media the next day. Asked if James had been fully conscious when the execution curtain opened, Betts stated, "I cannot confirm that."⁸⁶

The private autopsy found puncture wounds and bruising around James' knuckles and wrists, which doctors said suggested that execution team members had tried and failed to insert IV lines in those locations. The autopsy also documented puncture wounds in James' musculature that, Emory University anesthesiologist Joel Zivot said, were "not in the anatomical vicinity of a known vein."

"It is possible that this just represents gross incompetence, or some, or one, or more of these punctures were actually intramuscular injections," Zivot explained. "An intramuscular injection in this setting would only be used to deliver a sedating medication," Zivot said.

On the inside of James's left arm, the autopsy examiners found a jagged incision, which Zivot concluded was likely from a "cutdown" — a deep cut in the skin made to expose a vein. "I can't tell if local anesthetic was first infused into the skin, as slicing deep into the skin with a sharp surgical blade in an awake person without local anesthesia would be extremely painful," Zivot explained.

"In a medical setting, ultrasound has virtually eliminated the need for a cutdown," Zivot said, "and the fact that a cutdown was utilized here is further evidence that the IV team was unqualified for the task in a most dramatic way."⁸⁷

57. September 22, 2022. Alabama. Alan Eugene Miller. Lethal Injection (failed). Mr. Miller alleged that he had designated nitrogen hypoxia, which Alabama had authorized in 2018 as an alternative to lethal injection, as the method of his execution but that Alabama Department of Corrections (ADOC) personnel had lost his designation form. During his challenge to the state's decision to use lethal injection, state prosecutors suggested that ADOC could execute him by lethal gas. But when the federal district court gave them a firm deadline to declare if they were ready to proceed by nitrogen hypoxia, ADOC indicated that it could not do so. On September 19, 2022, the district court issued a preliminary injunction enjoining Alabama from executing Miller "by any method other than nitrogen hypoxia." On the afternoon his scheduled execution, a divided panel of the U.S. Court of Appeals for the Eleventh Circuit denied the state's motion to set aside the injunction. At about 9:15 p.m. Central time, the U.S. Supreme Court issued a 5-4 ruling that vacated the injunction, leaving Alabama approximately 2½ hours to carry out the execution before the warrant expired.⁸⁸

The execution then began, but after failing to properly insert the catheter for at least 90 minutes (while puncturing Mr. Miller with a needle approximately 18 times), ADOC Commissioner John Hamm ordered the executioners to stop. Thereafter, Mr. Miller asked the federal courts to prohibit Alabama from trying again to put him to death.⁸⁹ On November 28, 2022, the State agreed that it would no

⁸⁶ See Death Penalty Information Center, *Alabama Execution of Joe Nathan James Marred by Failures to Set IV Line, Embarrassing Dress-Code Controversy, and Disrespect of Victim's Family*, July 29, 2022; Evan Mealins, ADOC 'cannot confirm' if Joe Nathan James Jr. was fully conscious before his execution, *Montgomery Advertiser*, August 2, 2022.

⁸⁷ Elizabeth Bruenig, *Dead to Rights*, *The Atlantic*, August 14, 2022.

⁸⁸ Death Penalty Information Center, *Federal Court Orders Alabama to Preserve Evidence of Botched Attempted Execution of Alan Miller*, September 26, 2022; Ivana Hrynkiw, Alabama not ready to use nitrogen hypoxia for Sept. 22 execution, *AL.com*, September 15, 2022; Kim Chandler, Alabama says its [sic] not ready to execute by nitrogen hypoxia, *Associated Press*, September 15, 2022.

⁸⁹ Kim Bellware & Derek Hawkins, *Execution Halted at Last Minute when Ala. Prison Staff Can't Find Vein*, *Washington Post*, September 23, 2022; Death Penalty Information Center, *Alan Miller Asks Federal Court to Bar Alabama from Second Attempt to Execute Him by Lethal Injection*, October 19, 2022.

longer attempt to execute Mr. Miller by lethal injection and that any future attempt to put him to death would be by means of nitrogen hypoxia.⁹⁰

58. November 16, 2022. Stephen Barbee. Texas. Lethal Injection. Mr. Barbee's disabled arms were unable to be straightened out so the needle with the deadly drugs could be properly inserted. Earlier Mr. Barbee's attorney had filed motions to stop the execution because these problems were foreseeable. His death was finally pronounced approximately 90 minutes after he was strapped in the gurney.⁹¹

59. November 16, 2022. Arizona. Murray Hopper. Lethal Injection. "For the third time since resuming the death penalty this year, the Arizona Department of Corrections struggled to insert the intravenous needles that deliver lethal drugs during an execution. ... Witnesses ... reported seeing execution team members attempt and fail to insert IVs into both of Hooper's arms before finally resorting to inserting a catheter into Hooper's femoral vein near his groin."⁹²

60. November 17, 2022. Kenneth Eugene Smith. Alabama. Lethal Injection (failed). The execution began just after 10:00 pm, but was called off at 11:21 when prison officials determined that they did not have enough time to set a second IV line before the death warrant expired at midnight. Mr. Smith's attorneys reported that he had been strapped to the gurney at 8:00 and was not removed until four hours later. They claimed that after two hours, "an IV team entered the execution chamber and began repeatedly jabbing Mr. Smith's arms and hands with needles, well past the point at which the executioners should have known that it was not reasonably possible to access a vein."⁹³ The Alabama Prisons Commissioner said "the people attempting to carry out the execution had tried to insert a line into 'several locations' without success." Earlier on the day of the execution, an appeals court halted so his attorneys could argue that Alabama's execution procedures could lead Mr. Smith to suffer an illegally "cruel" death. Nonetheless, the U.S. Supreme Court (with three dissenting votes) overturned that decision and ordered the execution to go forward. At trial, Mr. Smith's jury voted 11-1 in favor of a life sentence rather than the death penalty, but the trial judge rejected this recommendation and instead imposed a death sentence.⁹⁴

Five days after the botched (attempted) execution, Alabama Governor Kay Ivey halted all executions in the state and ordered a "top-to-bottom review" of the state's execution procedures, although the investigation appears to be far from an objective review conducted by neutral parties. Said the governor, "I don't buy for a second the narrative being pushed by activists that these issues are the fault of the folks at Corrections or anyone in law enforcement, for that matter. I believe that legal tactics and criminals hijacking the system are at play here."⁹⁵

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ENDNOTES

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⁹⁰ See *Joint Stipulation and Agreement*, Miller v. Hamm, U.S. District Court for the Middle District of Alabama, Civil Action 2:33-cv-00506-RAH (Nov 28, 2022).

⁹¹ Jolie McCullough, *Texas' Execution of Stephen Barbee was Prolonged while Officials Searched for a Vein*, The Texas Tribune, November 16, 2022.

⁹² Jimmy Jenkins, Miguel Torres, & Angela Cordoba Perez, *In Murray Hopper Execution, Arizona Struggles with Lethal Injection for 3rd Time*, Arizona Republic, November 16, 2022.

⁹³ Ivana Hrynkiw, *Alabama Inmate Describes Failed Execution Attempt: Unknown Injections, Repeated Attempts to Start IV*, November 28, 2022.

⁹⁴ Nicholas Bogl-Burroughs, *Alabama Again Cancels an Execution Over Delays Inserting IV Lines*, N.Y. Times, November 17, 2022.

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