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Cheating death won't halt gears of execution machine

Twenty years ago, Justice Harry Blackmun rejected the death penalty by announcing that he would no longer “tinker with the machinery of death.” Similarly, the abolition of the Illinois death penalty three years ago spared state courts from their own endless tinkering.

Yet the death penalty is still legal in 32 states and in the federal system. And a recent story from Iran reminded me of why we still need to think and talk about it.

A man identified only as Alireza M. was found guilty of smuggling drugs and was sentenced to death. The sentence was carried out last October in a small Iranian town. Alireza spent 12 minutes dangling from a noose suspended by a crane before a doctor declared him dead. Amazingly, the next day the staff at the morgue determined he was still breathing. Nevertheless, authorities ordered that when Alireza had sufficiently recovered, he should be hanged again.

International human rights groups shifted into high gear to stop the execution, and they apparently succeeded. Within a week, Iran's minister of justice announced that Alireza would not be executed.

Despite the oddity of the story, it certainly was not the first botched execution in history. If you have never heard the story of Willie Francis, it is time you did. The best source is Pulitzer Prize-winning author Gilbert King's book, “The Execution of Willie Francis” (2008).

In Louisiana in 1945, 16-year-old Willie Francis was arrested on a drug charge. Although the police quickly realized they had arrested the wrong person, they began to question him about the 1944 murder of a druggist in Willie's hometown of St. Martinville. They claimed that within minutes he confessed to the murder. We will never know for sure because the

police kept no notes or records of the interrogation.

Within six weeks, Willie was indicted and tried for capital murder. His court-appointed lawyers conducted no cross-examination and put on no defense. The jury took 15 minutes to find him guilty.

There was no trial transcript; no one told Willie about the right to appeal; and he never saw his attorneys again.

About eight months later, Willie Francis faced his execution day. A portable electric chair — dubbed Gruesome Gertie — was brought to the town jail in St. Martinville. Willie was strapped into the chair, and the executioner pulled the switch.

During the first 30-second jolt of electricity, Willie's body convulsed and the heavy oak chair actually began to shake and slide across the floor. After the current was switched off, the coroner

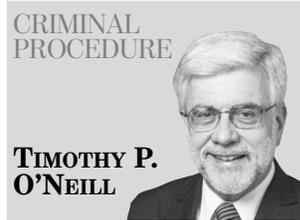
National campaigns were launched by the NAACP, church groups and concerned individuals to stop Louisiana from returning him to the electric chair. Despite this, Louisiana insisted that it would attempt a second execution.

surprisingly announced, “He's breathing.” The power was then turned up to the highest level and the generator delivered another jolt. Again, the body convulsed. But the spectators were shocked to hear Willie yell: “I AM NOT DYING!”

At this point the execution was aborted, and Willie was returned to his cell.

But the strange story of Willie Francis was merely beginning.

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The last resort was to ask the U.S. Supreme Court for relief. A young Washington lawyer born and raised in Louisiana agreed to take the case. His name was J. Skelly Wright, and he would go on to become a legendary judge on the U.S. District Court in

Louisiana as well as the D.C. Circuit Court of Appeals.

Wright filed a cert petition on Francis' behalf. On June 10, 1946, the Supreme Court denied cert. Wright wired Francis' attorneys in Louisiana that the case was over.

What happened next is almost stranger than someone surviving the electric chair. The clerk of the Supreme Court called Wright the next day and said a terrible mistake had been made. The order sheet erroneously listed the petition as “denied” when it should have stated “granted.” The court would take the case.

For a second time, Willie Francis cheated death.

At its conference following oral argument, the Supreme Court preliminarily voted 6-3 to uphold a second execution attempt.

The court had a number of justices known for pro-defense leanings: Hugo L. Black, William O. Douglas, Frank Murphy and Wiley B. Rutledge. But, in yet another odd twist, the justice who was

most profoundly offended by Francis' predicament was Harold H. Burton, a conservative justice who usually favored the prosecution.

He wrote the first draft of a dissent on behalf of Murphy, Rutledge and himself. In language both forceful and eloquent, he contended that the case should be remanded so Louisiana could thoroughly investigate how much Francis suffered during the botched execution and whether a return would constitute cruel and unusual punishment.

The first crack in the majority appeared when Douglas announced that he would join Burton's dissent. One more switch would turn Burton's dissent into a 5-4 majority.

Justice Felix Frankfurter now wavered. He was deeply troubled by the facts of the case. But he finally concluded that he should not let his personal opinion trump the community consensus that he believed defined due process. Consequently, the Supreme Court sent Francis back to the electric chair by a 5-4 vote.

It would probably have been little solace to Francis if he learned that after casting the deciding vote, Frankfurter then made confidential appeals to lawyers he knew in Louisiana to try to stop the execution. Regardless, Willie Francis died in the electric chair on May 9, 1947.

There is one final postscript.

While awaiting the Supreme Court's decision, Wright regularly called the clerk. One day the clerk told him over the phone that the court had reversed and that Wright had won the case.

Elated, Wright jumped in a cab to pick up the opinion. But when he arrived at the clerk's office, he received some shocking news. In a case littered with terrible mistakes, there was now one more.

The clerk had read the wrong result over the phone. He meant to say “affirmed.”

With that single word, J. Skelly Wright, Willie Francis and American justice all suffered one final loss.