

# Donald Fell case: Bush administration attempts to impose death penalty on Vermont

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A federal court jury in Burlington, Vermont, took less than two hours to find 25-year-old Donald Fell guilty June 24, ending the first phase of his murder trial. The penalty phase, during which prosecutors will press for the death penalty, will begin next week. Fell was convicted on two federal charges that could result in his execution—carjacking with death resulting and kidnapping with death resulting—as well as two lesser federal firearms offenses.

No one has been executed in the New England state since two killers died in the electric chair in 1954. No one has been sentenced to death in Vermont since 1957, a sentence that was later commuted, and no has stood trial facing death since 1962. The state officially abolished the death penalty in 1987. So how is it possible that Fell faces that possibility?

The Bush administration, making use of Clinton-era legislation, is attempting to impose the death penalty on states that have dared to outlaw it or fail to carry it out. Like the proponents of slavery in the pre-Civil War era, the advocates of capital punishment are not content to defend the barbaric practice in areas where it is widely practiced; they feel obliged to aggressively extend its use, even in the face of widespread opposition.

The Fell case is horrifying and tragic, too typically American, in all its dimensions. Donald Fell, sexually abused as a child, abandoned by his mother, a heavily drug-addicted individual from an early age, was a terrible act waiting to happen.

That act unfolded in late November 2000. According to prosecutors, Fell, then 20, and Robert J. Lee, 21, killed Fell's mother and a friend of hers in a Rutland, Vermont, apartment. Seeking to flee town, they abducted Tressa King, 53, outside the downtown supermarket where she worked and drove with her into New York state. There they kicked and beat her to death. The pair were arrested, in the stolen car, a few days later in Arkansas. Lee hung himself at the Northwest State Correctional Facility in Vermont in September 2001. His death was ruled accidental.

Because the case involved the crossing of state lines, federal authorities claimed jurisdiction. "Next," writes Greg Guma of the *Vermont Guardian*, a statewide weekly, "when the U.S. attorney's office made a plea agreement to spare Fell's life—instead offering a lifetime jail sentence with no chance for

parole—US Attorney General John Ashcroft said no way. An eye-for-an-eye conservative, Ashcroft insisted on putting death on the table. The point was the state's right—actually make that the federal government's right to order a state's residents—to kill someone."

In fact, the Fell case was one of 12 plea-bargains in 2002 that Ashcroft rejected and turned into federal death penalty cases, as a petition by Vermonters Against the Death Penalty notes, "specifically targeting states that have abolished capital punishment."

The Fell case has been at the center of efforts to overturn the death penalty. Ruling on a defense motion in September 2002, Federal District Court Judge William K. Sessions III, who is presiding over the current trial, declared the Federal Death Penalty Act of 1994 unconstitutional. He argued that the measure, enacted under and signed by Bill Clinton, deprived defendants of their rights under the Fifth and Sixth Amendments of the Constitution. However, the 2nd US Circuit Court of Appeals in New York reversed Sessions's ruling. Fell's lawyers sought to have the US Supreme Court hear the case; the high court refused, sending the case back to federal court in Vermont.

The guilt or innocence phase of the present trial lasted only four days. Federal public defender Alexander Bunin explained in his opening statement that Fell "accepted responsibility" for Tressa King's death. Bunin did not introduce witnesses of his own, merely asking certain questions of prosecution witnesses, law enforcement officials for the most part, who described the crime scene and Fell's arrest.

The defense team is concentrating on convincing the jury to spare the 25-year-old's life. After the verdict, Bunin commented, "The jury did what was there based on the evidence. Now, we're ready to start the real case"—i.e., the penalty phase. The lawyer noted that Fell understood that the next phase of the trial would determine whether he received life in prison without parole or the death penalty. Bunin told reporters, "He's continued to express remorse. He's sorry for the King family, and he knows what the process is."

In its presentation of the case, the prosecution was as vindictive and bloodthirsty as one might expect. In his closing statement, Assistant US Attorney William Darrow (presumably

no relation to the vehement opponent of capital punishment, the renowned and humane defense attorney Clarence Darrow) displayed crime scene images, played excerpts from Fell's recorded police statements and held up the steel-toed boots that Fell wore when he kicked King. "What Donald Fell did to Terry King was one of the most cruel and remorseless crimes that one could imagine," Darrow asserted.

The prosecutor claimed that Fell's actions did not appear to be those of a drunken person. "They [Fell and Lee] went out into the night looking for prey," continued Darrow. "[Fell] was making cold-blooded, rational decisions."

In his closing remarks, Bunin countered that nothing about the night of the murders had been planned. He argued that Fell used crack cocaine that night, and that his actions indicated that he was not in his right mind. After King was killed, Fell and Lee drove to Wilkes-Barre, Pennsylvania, where they both grew up. "Where did they go?" asked Bunin. "The only place in the world where everybody knows them."

According to the *Rutland Herald*, the public defender also disputed prosecution claims that his client showed no emotion when police questioned him. Speaking of the audio recordings, Bunin commented, "Are you listening to a robot or are you listening to a scared 20-year-old?"

Assistant US Attorney Stephen Kelly was given the last word to the jury. "Donald Fell was doing what has always done—not accepting responsibility, blaming others and minimizing his role. He needs to accept full responsibility. You need to hold him accountable."

In American courtrooms these days, there is no shortage of pronouncements from prosecutors about "individual responsibility." This is the piety of the well-heeled, who work in comfortable, air-conditioned offices, preaching to those unfortunates who never had a chance in life.

Fell's life is a horror story. In an editorial, the *Rutland Herald* observed, "The story of Donald Fell is a hideous chronicle of neglect and abuse. The word dysfunctional seems too antiseptic to apply to his family, which exposed him from early childhood to alcohol and drug abuse."

When Fell was 13, several years after his father abandoned the family, the newspaper continued, "his mother, Debra Fell, did not return home on Christmas Eve and Fell and his sister wrapped their own presents. In the morning, their mother was passed out on the couch, and they opened their presents without her. Later she woke and said she would go to the store to buy a ham, and never came back.

"From an early age, Fell was drinking from a keg of beer in the basement. For a time, Fell was left in the care of a man who sexually abused him. By the time he was in the sixth grade he was taking cocaine that he stole from his mother and LSD."

According to court documents, a doctor who evaluated him said Fell was "the most drug-abusing and chronically intoxicated individual" of the 1,500 people he had ever examined.

Fell was consumed with rage for this mother. Before the tragic events of late November 2000, he beat her up on several occasions.

If Fell, according to the state's esteemed representative, Mr. Kelly, "needs to accept full responsibility," then Mr. Kelly and American society need to "accept full responsibility" for what they did to Fell. We won't hold our breath. Responsibility is entirely a one-way street in the US at the moment.

Fell planned to kill himself in the aftermath of the crime. He told authorities that before leaving Wilkes-Barre, he thought of obtaining heroin and a needle. According to the *Herald's* account, he said, "I don't like needles myself," adding that he had never done heroin. "But I was going to get some, and I was going to fill a needle up and when the cops pulled us over...I was going to stick it in my arm and just go deep, you know what I mean. But, I could find none." Fell told the detective interviewing him he would have killed himself. "In fact I would have been much more happy," he said. He also told authorities, "I don't feel like I want to be alive right now. I feel like a worthless piece of [expletive]."

Protests against the death penalty continue in Burlington. "Many people are feeling that this is Vermont, and we made the decision that we don't want to have the death penalty," Joseph Gainza, president of the Vermont chapter of the American Friends Service Committee, a Quaker group that opposes the death penalty, told the *New York Times*. "Vermonters on the jury should not decide whether or not a person dies at the hand of the state."

On the opening day of the trial, Vermonters Against the Death Penalty organized a press conference across the street at a Unitarian church, addressed by Vermont's Bishop Kenneth Angell, Burlington Mayor Peter Clavelle, former Vermont governors Phil Hoff and Madeleine Kunin, and Rabbi Joshua Chasan. Angell asserted that "As civilized people we need to find solutions that are not as uncivilized" as putting people to death. Burlington Unitarian Leader Gary Kowalski accused Bush administration officials of pursuing capital punishment in the Fell case to "improve their statistics" and prove that justice is "color blind and even-handed."



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