

128 years after the first US electrocution

# Tennessee revives “Old Smokey,” the electric chair, for an execution

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**August 6, 1890, Auburn, New York:** William Kemmler, 30, a vegetable peddler in the slums of Buffalo, was the first person in the US to die by electrocution. He was convicted and sentenced to death for murdering his girlfriend with a hatchet following a drinking binge.

After Kemmler was strapped into the electric chair, 1,000 volts of AC current were passed for 17 seconds through the electrodes attached to his skull. This rendered him unconscious but failed to stop his heart and breathing. After the attending physicians confirmed that Kemmler was still alive, one cried out: “Have the current turned on again, quick, no delay,” but the generator needed time to recharge. After a delay, the prisoner received a 2,000-volt AC shock that killed him.

According to witnesses, blood vessels under Kemmler’s skin ruptured and bled and areas around the electrodes on his head singed. Saliva dripped down his beard as he grasped for air. The smell of burnt flesh filled the room. Both witnesses and a sheriff fled the execution chamber in horror. The procedure lasted about eight minutes.

**May 9, 1947 , Angola, Louisiana:** Willie “Lucky” Francis was convicted of the murder of pharmacist Andrew Thomas in St. Martinville. Francis was a 16-year-old with a stutter at the time of the murder. Despite two questionable confessions and incompetent legal counsel, he was sentenced to death by an all-white jury.

On May 3, 1946, Francis survived his first meeting with “Gruesome Gertie,” as the electric chair was known at the infamous Angola State Penitentiary. The executioners, an intoxicated prison guard and an inmate, had improperly set up the chair, botching the wiring. Francis reportedly cried out from behind his leather hood, “Take it off! Take it off! Let me breathe”! and “I’m n-n-not dying!” Governor Jimmie Davis ordered the teenager returned to the chair six days later.

The US Supreme Court rejected Francis’ appeal that subjecting him to another execution would constitute cruel

and unusual punishment as prohibited by the Eighth Amendment to the US Constitution. The court held that “accidents happen for which no man is to blame.” Francis was returned to the chair on May 9, 1947. This time it achieved the goal of death.

**November 1, 2018, Nashville, Tennessee:** Edmund Zagorski, 63, was put to death for shooting two men and slitting their throats during a drug deal. He was the first person in Tennessee since 2007 to be executed in the electric chair, known as “Old Smokey.” Asked if he had any last words, the prisoner cried out: “Let’s roll!”

A reporter who witnessed the execution said Zagorski occasionally smiled as he was strapped down, a sponge was placed on his head, and his face was shrouded. Witnesses said he clenched his fists as the electricity was applied and his body appeared to rise, but he did not move once the execution was over.

## A desperate effort to maintain the death penalty

What did these three condemned prisoners have in common? All were killed by having their bodies strapped to the electric chair and dealt a lethal current of electricity. And the US Supreme Court refused to stop each of their executions.

In William Kemmler’s case in 1890, the first execution by electric chair in the US, the high court ruled that electrocution substantially reduced risks of pain or a “lingering death” when compared to execution by hanging. Had Kemmler survived the gruesome eight-minute execution, he would have strongly disagreed with the justices’ opinion. As it turned out, the more “modern” method of electrocution did not appear to reduce the inmate’s suffering.

Willie “Lucky” Francis failed to die after his executioners—who according to witness affidavits were “so drunk it would have been impossible for them to know what they were doing”—did not apply the proper jolt of electricity. After this botched execution, attorney Bertrand DeBlanc took on his case. The young lawyer was actually best friends with the victim in the case, Andrew Thomas, and the white citizens of the small Cajun town were not pleased.

DeBlanc argued before the Supreme court that his client’s Fifth, Eighth and Fourteenth Amendment rights had been violated. Among those rights violated were equal protection under the law, double jeopardy (being brought to the execution chamber twice), and cruel and unusual punishment (as evidenced by the failed execution).

The court rejected Francis’ appeal. Justice Felix Frankfurter characterized Francis’ ordeal in the electric chair as an “innocent misadventure.” The court wrote in its decision that “accidents happen for which no man is to blame,” and that such “an accident, with no suggestion of malevolence,” did not violate the Constitution. In rejecting the last-minute appeal, the court noted the “grave nature of the new allegations” and encouraged the lawyers to pursue the matter in state court. But Louisiana executed Francis the next day before the case could be pursued.

Because Francis’ case never made it back to the Supreme Court, the ruling has stood as precedent. In a 2008 case before the high court, Kentucky death row inmates Ralph Base and Thomas Bowling argued that their executions by lethal injection would constitute “cruel and unusual punishment.” They said that Kentucky’s three-drug cocktail used for lethal injection carried an unnecessary risk of inflicting pain during their execution.

The Supreme Court upheld Kentucky’s method of lethal injection as constitutional by a 7-2 vote. Chief Justice Roberts echoed Justice Frankfurter’s views more than six decades earlier, writing in the plurality opinion that Louisiana’s first attempt at executing Francis was an “isolated mishap,” which, “while regrettable, does not suggest cruelty.”

Justice Clarence Thomas, concurring in the judgment, also referred to the Francis case, writing: “No one suggested that Louisiana was required to implement additional safeguards or alternative procedures in order to reduce the risk of a second malfunction.”

More significantly, Thomas wrote, “The Eighth Amendment’s prohibition on the “inflict[ion]” of “cruel and unusual punishments” must be understood in light of the historical practices that led the Framers to include it in the Bill of Rights,” but that “it is clear that the Eighth Amendment does not prohibit the death penalty.” He went on to write that the amendment was meant to prohibit the

most “horrid modes of torture.” The implication was that the death penalty, carried out in a “civilized” way, such as by lethal injection, does not constitute “cruel and unusual punishment.”

In the Edmund Zagorski case, the Supreme Court on Thursday denied a request for a stay. Zagorski was one of 33 inmates who filed a lawsuit claiming that the drug cocktail used in lethal injections caused the condemned to suffer. In their request for a stay by the high court, Zagorski’s attorneys had argued that it was unconstitutional to force him to choose between the electric chair and lethal injection. The request was rejected.

In dissent, Justice Sonia Sotomayor wrote that Zagorski’s decision to opt for the electric chair, which is allowed in Tennessee for inmates whose crimes occurred before 1999, was “not because he thought that it was a humane way to die, but because he thought that the three-drug cocktail that Tennessee had planned to use was even worse.” She added, “Given what most people think of the electric chair, it’s hard to imagine a more striking testament... to the legitimate fears raised by the lethal-injection drugs that Tennessee uses.”

The Supreme Court has never ruled execution by the electric chair or by lethal injection to be unconstitutional. While it has ruled that execution for crimes committed as a juvenile and execution of the mentally impaired is unconstitutional, it has time and again upheld the constitutionality of the death penalty itself. In so doing, it defends the ultimate retribution to be utilized by the ruling class, in the face of opposition by the vast majority of the industrialized world and growing resistance to the barbaric practice within the US itself.

The consistent upholding of the death penalty by the high court—whether by lethal injection, electrocution, hanging, firing squad or some newly devised “humane” method—is a measure of the value of such brutal punishments for the ruling elite, to be used against the working class as it strikes back against growing social inequality and attacks on its basic social rights.



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