

Public Executions and

Capital Punishment

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Entertainment

Midnight Facts for Insomniacs

Podcast Transcript

(Note: transcript consists of episode outline)

****PROMO****

Hey insomniacs, so Duncan and I are not quite ready to start shilling for evil corporations yet, but with the approach of a new year we ARE beginning to put out some feelers and arrange strategic partnerships with other podcasts that we enjoy, and maybe eventually even products or services that we actually use and care about. Keep in mind that our Patreon will always include 100% ad-free versions of our show and it's totally affordable, it starts at just \$3 a month.

This episode will feature our first promotion: one of our legit favorite things, a show called the AHC podcast (that stands for the "A-hole Court podcast," except they say the actual word ...and we're an explicit show so I don't know why I wussed out right there). But they're genuinely great, I'm confident that if you like us you're going to enjoy them too. And going forward, don't worry, we're going to have very strict criteria for any

promotions we include in the show, and we promise not to start bombarding you with ads, but we do need to have the resources to grow the podcast, so thank you so much to all of our patrons...and to everyone else, if you can't stand the idea of promos, please consider joining our Patreon and never having to worry about even the briefest interruption of all this MFFI goodness. And now on to today's show.

****END PROMO****

One of our recent episodes was on death rituals, and today's topic is related. This is a *type* of death ritual, a *pre-mortem* ritual that *results* in death. The subject that the Insomniacs chose for today: public executions and the history of capital punishment. Some nice light holiday fare. Put you in the mood to give thanks...be grateful that you haven't been drawn and quartered in a public square. That's always a plus. Every day that goes by in which I am not dismembered in front of a crowd is a blessing.

You can probably guess the etymology of the term capital punishment: capital is from the Latin prefix "cap" for head, as in "decapitate." Aka beheading, which never made sense to me, it should be "de-heading"; beheading sounds like you're adding a head. Like "bejeweled" is adding jewels, or "bespectacled" is adding glasses, if you've been decapitated you need to be headed. *I am missing my head and*

would like to be headed now. Anyway, de-heading has historically been a popular technique for making people dead. It's very effective. Humans are surprisingly durable; you can cut a lot of stuff off of us and we will probably survive, but one of those things is not the head. Techniques for capital punishment, though, are obviously not limited to de-heading. The most popular methods of execution throughout the years have also included hanging, firing squads, electrocution, burning, gas chambers, and lethal injection. There are benefits and drawbacks to each of these techniques, all of which vary depending on whether you are the recipient or provider of the execution.

Duncan, what would your preference be for both sides of the equation? Like if you had to be executed, how would you prefer it happen? And what if you were a dictator and you had to suppress some dissent? How would you go about it? You can't have people questioning your authoritah.

The general trend worldwide and over the course of history has been toward more "humane" methods of execution. Obviously there's a risk of minimizing the deterrent effect when you make the experience more palatable, but you gain the benefit of looking less like a sadistic authoritarian regime. For instance, the guillotine might not seem particularly pleasant, but it was actually developed as a less painful and cruel alternative to hanging or drawing and quartering etc.

I should probably pause and

acknowledge that this is a very controversial topic, and it's ok to have strong opinions...although for once, I don't. I'm conflicted about the death penalty. I'm undecided. And we'll talk a little about our views later but the bottom line is that the international community is just as conflicted as we are. Currently, 55 countries still implement capital punishment, almost exactly half as many as the 109 that have abolished it. But those 55 are some of the larger countries in the world population-wise; more than half of the world's population—fully 60% of humans—live under governments that reserve the right to kill them, for various reasons. And 100% of the people in this room live in a country in which we could be put to death by our government, though at least for now we only have to worry about the death penalty if we commit some especially heinous crime involving aggravated murder...or of course if we are wrongfully accused and convicted, which is a major problem with the death penalty and we'll dive more deeply into the statistics on that later. But yeah, obviously there are no take-backsies with capital punishment. If you spend years in jail for robbery and then some DNA evidence exonerates you, there's at least the option to sue for damages and rebuild your life. On the other hand, if you're proven innocent five minutes after riding the lightning...oops. Thoughts and prayers. Maybe the state will throw a few bucks to the family, but there's no way to put that particular toothpaste

back in that particular tube. (The most insensitive metaphor for a soul vacating a body, but whatever.) Capital punishment has been practiced by humans since the beginning of recorded history. In America the death penalty was first implemented with the Jamestown colony in Virginia. That was the first *official* implementation...obviously people were being dispatched in the New World left and right, just ask the Native Americans, but the first recorded trial that led to an execution took place in 1608 when Captain George Kendall was executed for treason under vague and still not-fully-understood circumstances. He might have been a mutineer, he might have been a spy for the Spanish, but he was definitely shot full of holes by a firing squad. Since then, the death penalty has been legal in America at the Federal level, and in slightly more than half the states: 27 states still allow for the death penalty while 23 have abolished it, but of those 27 killer states, 7 of them have a moratorium that makes it functionally impossible to execute convicted criminals. So only 20 states are actively implementing the death penalty. And that includes CA. Cool, I guess? Good news for anyone who really hates this podcast...if you murder us, the worst you have to face is life in prison. In fact, if you're going to commit an aggravated murder, I would recommend California, Alaska, Washington, Maine, or Hawaii. There are 15 other options, 15 other

"murder-sanctuary states," if you will—that's how I like to describe them—but those five are the most scenic, so you can enjoy spectacular vistas while dispatching your victims. No one wants to murder people in New Jersey, that's not fun. Interestingly, Virginia is still the leader when it comes to total executions since the 1600s, about 1,390, while Texas is still a bit behind at 1,325. But don't count the Lone Star State out, it's on the move; since 1976, Texas has been the king of capital punishment: Texas has executed some 570 people during that time, compared to Virginia's measly 113. And those are the only two states in double digits; the next closest is Georgia at 75, then Alabama at 66, and California has only managed to kill around 13 people between 1976 and 2019. Kind of embarrassing, really. Just a measly baker's dozen of executions. You might notice that these statistics specifically apply to the time period post-1976; that's because the death penalty was paused in America for 4 years, from '72 to '76. This was a result of a Supreme court case *Furman v. Georgia*, in which the constitutionality of a small group of cases from Georgia was challenged. Basically Georgia was using a sketchy system called "unitary trials" that combined the verdict and sentencing into one process, and the Supreme Court struck down all of those verdicts in a 5-4 decision, which caused executions to be put on pause nation-wide. But the Supreme Court had not actually clarified whether they

were ruling on the constitutionality of the death penalty in general, or just those specific types of trials in the South. "This decision was reached by the suspicion that many states, particularly in the South, were using capital punishment as a form of legal lynching of African-American males, inasmuch as almost all executions for non-homicidal rape in the Southern states involved a black perpetrator... The Furman decision caused all death sentences pending at the time to be reduced to life imprisonment, and was described by scholars as a 'legal bombshell.'" Immediately after the decision, Southern states acknowledged their shameful practice of weaponizing the legal system, collectively apologized for their tragic legacy of racism, and began actively reforming their justice systems. No, that's ridiculous. They immediately began looking for loopholes to get around the ruling. In 1976 the Supreme Court gave the go-ahead for the resumption of capital punishment via the *Gregg v. Georgia* decision, allowing death verdicts to resume as long as the trial and sentencing procedures were separate. You will be shocked to learn that implementation of capital punishment soared, and southern states gleefully resumed convicting and murdering their black residents at an alarmingly high rate. *Shocked* I say. The Supreme Court trend since the *Gregg* decision, however, has been to enact limitations and scale back the number of cases that qualify for the death penalty. In

1977 the Coker v. Georgia decision barred the death penalty in adult rape cases, and in 1980 the bar was raised once again in Godfrey v. Georgia, in which the Supreme Court limited the death penalty to cases involving "aggravating factors." Interesting that all of these cases involved Georgia, with the Supreme Court having to step in and mediate, like settle down, Georgia. And Georgia was like, "You're not my daddy! I'll kill everyone!!" In 2002 the Supreme Court took away the ability of states to execute the mentally challenged, and in 2005 the death penalty was removed as an option for minors, so no one under the age of 18 can be sentenced to death in America. That's so weird to me, if you want to commit a murder, just make sure you do it on the night before your 18th birthday, because you obviously become aware of the consequences of your actions promptly at midnight when you turn 18. Everyone knows that you're a completely different person when you've lived 6,569 days as opposed to 6,570. See, we give you all the good tips on MFFI: make sure you commit murder the night before your 18th birthday, in Alaska or Hawaii. Those are just best practices. Finally, in a controversial 2008 decision, the court officially confined the death penalty to murder cases *period*, removing the ability to apply the death sentence for child rape, which didn't go over super well; the decision was criticized by both presidential candidates Barack Obama and John McCain. Surprisingly, no

candidate has ever publicly come out as being soft on child rape. I mentioned that capital punishment is legal at the federal level, and maybe I should quickly explain for anyone who doesn't know: individual states can charge people with crimes committed within their borders, but the Federal government can also press charges if those crimes crossed state lines or involve the military or public officials etc.. And there are a few other specific crimes that fall directly under the Federal umbrella: kidnapping, child porn, credit fraud, tax evasion, obscenity...there's a sizable list of crimes on which the federal government has effectively called dibs. So for instance, if a victim was kidnapped prior to their murder, the federal government can pursue charges independently or in some cases add to existing state charges. However, there had only been three federal executions between the resumption of the death penalty in 1976 and the inauguration of the Trump administration. All three of those executions were during the George Bush presidency; one of them was Timothy McVeigh and honestly, for me it's tough to argue against that one. He was the Oklahoma City bomber. But after the presidency of George W. Bush, there was a moratorium on the Federal Government implementing the death penalty and it lasted all the way up until the Trump administration. During his 2016 campaign Trump had promised to revoke the death penalty moratorium, but after winning the

Electoral College (though losing the popular vote), the Trump administration executed only seven convicts during the four years between the night he won the election and the night he lost the next one. However, as soon as he lost the 2020 election—and he *did* lose the election; it's amazing we have to say that—after he lost the election his administration scrambled to execute as many convicts as possible during those last few months while also pardoning a bunch of Trump's white-collar-criminal friends and then inciting an attack on the capital; it was a busy time for Trump. So many things to do. I've got criminals to pardon, an insurrection to incite, and antifa **to frame for it**. I'm swamped. I'm not a big fan of antifa, either, but they did not storm the capital. In all, Trump managed to execute 13 convicts before the moratorium was reinstated under President Biden. And I should say, my political leanings are probably obvious by now but I checked out a list of the 16 people who have been federally executed since the 70s, and...wow. I tend to cross the aisle on random issues, and this might be one of them...it's hard for me not to side with death penalty supporters in these cases, because these are some of the worst of the worst. We're talking about killers like Alfred Bourgeois, who was sentenced to death for assault, sexual abuse, and rape of his 2-year-old daughter. Or Wesley Ira Purkey, convicted for the "Kidnapping, rape, and murder of 16-year-old Jennifer

Long in 1998. Purkey...dismembered and burned her body and scattered the remains into a septic pond. He was also convicted of the murder of 80-year-old polio patient, Mary Ruth Bales, in state court." You're gonna kill an 80-year-old with polio? How impatient are you, man? Just wait a while. And then there was the only woman executed by federal courts since the 1970s: Lisa Marie Montgomery, who in 2004 strangled pregnant acquaintance Bobbi Jo Stinnett to death and cut the fetus out of her womb. The two women had met in a chatroom for fans of rat terriers called Ratter Chatter...the victim was a dog breeder, and Montgomery pretended to be a prospective client to gain access to her house...the child survived, how crazy is that. Anyway, I can't really argue with executing anyone on the federal list, it seems like the Feds have traditionally only executed the worst of the worst. Of course the problem—for me, at least—is that Federal executions are just a drop in the bucket; you have a ton of people being sentenced to death in places like Texas under sketchy circumstances, and as we'll see later there have been convicts on death row who were exonerated right before they could be unjustly executed...it's a very thorny issue. So obviously, we Americans have a long and complicated history with capital punishment, and the United States is also an innovator in death penalty technology; in 1888 New York doctor Julius Mount Bleyer developed the

lethal injection cocktail that consists of a barbiturate, paralytic, and potassium solution. According to Wikipedia, he "praised it as being cheaper than hanging." I did a ton of searching to try to find the rationale for this...hanging seems pretty thrifty to me. How expensive was rope in the 1800s? Were they importing silkworm rope from the orient? You can reuse a noose, I'd assume. Is that considered bad form? Is the noose supposed to be buried with the convict? It can't be some kind of "politeness" issue, can it? Noose stays with the convict, that's just good manners. If you're hanging people left and right for stealing horses or whatever, I doubt you're worried about being disrespectful to the deceased. So yeah, I don't have a solid answer regarding the finances of hanging vs lethal injection. But interestingly, lethal injection was initially rejected as an option when it was proposed by Bleyer in the 1800s—maybe because they checked the guy's math ("cheaper than hanging my ass")—and instead, lethal injection would first be implemented by the Nazis in WWII, so a great pedigree for this particular execution method. I would think association with the Nazis would be a disqualifying factor, but nope. Lethal injection wouldn't be used in America until after the death-penalty pause of the 1970s, when Texas switched from electrocution to lethal injection in 1977. Ironically, even though it's supposedly the most humane and somehow affordable version of capital punishment, it has

proven remarkably difficult to implement...since 2016 many states have struggled to obtain the drugs for lethal injection because the suppliers of those products—including Pfizer and pretty much all European suppliers—for some reason don't want their drugs to be associated with incarceration and death. Weird.

Apparently, the term "death-cocktail" doesn't go over well with focus groups and advertisers. However, some of those death-penalty-loving states have proved remarkably innovative when it comes to obtaining that sweet sweet murder juice...they can't figure out how to balance their budgets or feed their citizens, but they get super creative when it comes to emptying out their prisons the hard way. And not just via the traditional drug cocktail; currently, Wyoming and Utah are considering bringing back firing squads while Nebraska has switched to their own version of the drug cocktail which includes fentanyl and diazepam. I can't be too mad at that one, that sounds pretty amazing. Pro tip: if you want to get super high and go out with a bang and you can't afford fentanyl and you're in Nebraska, there are options. And you're willing to kill people. It's a very specific scenario, but you never know. We're just providing info here.

Some of the other countries that still implement CP (that's capital punishment; CP if you're nasty) include the US, Japan, India, Taiwan, Egypt, and China (which as we learned

recently on an After Midnight episode is the most enthusiastic and prolific executioner of its own citizens). Out of European and Eastern European countries, only Belarus hasn't fully abolished capital punishment. Belarus in fact executed a convict just last year, in spite of the disapproval of its neighbor-states. Typical. Typical Belarus. If there's one thing I know about Belarus it's that it has not abolished capital punishment. That's literally the one thing I know about Belarus.

One of the reasons the death penalty has been historically popular is that all of the other alternatives are less convenient and potentially more dangerous. If you're a government or monarch and you want to keep criminals off the streets, you have a few options: You can banish or exile them, but that's risky, because sometimes they sneak back in, often harboring a bit of a grudge. So maybe you build prisons instead...in that case you have to spend resources creating secure facilities to house criminals, staff those facilities, pay for food and medical care to keep them alive, it's a whole thing. But why would you bother with any of that when you can eliminate the problem via a literal flip of a switch, or the swing of an axe? Or more creative and sadistic methods if you're into that kind of thing, plus, bonus, when you kill your enemies there's the aforementioned deterrent effect...after a few state-sponsored murders it is theoretically less likely

that your citizens will *commit* murders because now they know you're not fucking around. Of course, for the deterrent effect to work, you have to get the word out, which is where *public* executions come into play. For authoritarian regimes, killing criminals in public is just sensible policy. And not just criminals... dissidents, dissenters, undesirables... anyone who isn't on board with the party line can be dispatched in a public square with as much pageantry as you deem appropriate; you can make it a party. Or at least an event. Get dressed up and get your tickets for the execution gala, just don't sit in the splash zone. RIP Gallagher.

Public executions started going out of fashion in the latter half of the 19th century, and were abolished worldwide by the late 20th. The last public execution held in America took place in Owensboro Kentucky in 1936. 26-year-old Rainey Bethea confessed to the rape and murder of a 70-year-old woman, and the jury sentenced him to hang after deliberating for 4 1/2 minutes. I do think he was guilty, and it was a pretty horrific murder, but the entire trial lasted approximately three hours and was definitely a farce. They were fixin to kill this guy from minute one. The execution was also notable for a couple of other reasons: the sheriff responsible for administering the execution was a woman, which was a first for a public execution in America, and the man who eventually offered his services to execute the execution, so to speak—former police

officer Arthur L Hash—was visibly drunk. The entire event turned into a media circus, and contributed to the demise of public executions nationwide.

Europe may seem a bit more progressive when it comes to the death penalty, but I was shocked to learn that the last public execution in Europe took place in 1977 via guillotine.

A Tunisian pimp living in France named Hamida Djandoubi was convicted of torturing and strangling one of his prostitutes. He also beat her and put a cigarette out on her genitals in front of a bunch of other women...it was awful, fuck that guy, and I wish his punishment had been more painful.

The death penalty in France would be abolished in 1981, four years later.

But even though the public version of capital punishment is no longer a thing in the western world, plenty of countries are still trigger-happy with the DP...that's Death Penalty, but sounds like something else. I said CP before; that sounds like child porn and DP sounds like you know what. I need to reign in my acronyms. Most countries these days reserve the death penalty for convicted murderers, but of course there's no requirement to set the bar that high...

35 countries have authorized the death penalty for non-violent drug offenses, many in Southeast Asia, countries like Thailand and Vietnam...in Vietnam getting caught with more than 1.3 pounds of heroin results in

immediate execution. Pro tip, Vietnamese junkies: keep it under a pound, stay safe out there. In 2020, China, Saudi Arabia, and Iran combined for only 30 drug executions; that was way down from a high of 755 in 2015. Of course that was mostly due to Covid, so, Iranians, don't bust out your bongs and hookahs just yet.

According to Harm Reduction International, more than 3,000 people worldwide are currently on death row for drug offenses, and presumably governments will be working through their backlogs now that the pandemic is receding. It's tough to find a bright side to Covid, but hey, it was good for imprisoned Saudi Arabian crackheads, while it lasted. Incidentally, and this is true, Donald Trump has recently stated that if re-elected he would call for legislation authorizing the death penalty for drug offenders here in America, so that's awesome. Half of my high school senior class would've been wiped out. What a fucking idiot. Every meth-head I know is a MAGA voter, he's eliminating his base. And then of course there are countries with theocratic governments, where religion rules. "...In some countries – such as Afghanistan, Brunei, Iran, Mauritania, Nigeria, Pakistan and Saudi Arabia – violations of blasphemy laws can carry the possibility of the death penalty." So, for many countries the bar for execution is set at first-degree murder, but for others it's murder and/or talking smack about imaginary sky-people. I feel like if you're going to put people to death for

disrespecting non-real entities, you should execute people for murdering their imaginary friends. *You used to always talk to Bongo, where did he go? Produce Bongo or die.*

On a related note, "Twenty-two countries [have] laws against apostasy, the act of abandoning one's faith." So don't change your mind if you live in Brunei. You know the saying: Once you go Islam, you never go back...because Brunei will freakin' kill you. Isn't that a saying? Pakistan sentenced 17 people to death for blasphemy in 2019, "including a university lecturer accused of having insulted the Prophet Muhammad verbally and on Facebook."

On Facebook. He was posting dank memes of Muhammed. Only the dankest of memes will get you executed. Interestingly, the Pakistani government has yet to actually execute anyone for blasphemy.

They're just sentencing people to years of anxiety, making them wait to be executed, that's pretty harsh.

"Goodnight Wesley, I'll most likely kill you in the morning." Everything reminds me of the Princess Bride.

The death penalty historically has had a few misfires. Not so much in the modern era because we are extremely determined to finish the job (as we'll cover soon), but in the past there were people who survived their executions. Most involved hangings.

My favorite story comes from Fiji in 1872 and concerns a man named

Antonio Franks who would become known as "The man Franks." Not a good sign when the media doesn't bother with your last name. Shows how much anyone cares about you. "Looks like they're gonna kill that man Franks. Nice weather today." Franks was a sailor who murdered a shipmate during an on-deck brawl over a woman, and was sentenced to be hung. The scene is described in a Fiji Times article from the same year, and summarized by a website called The Week. "the execution took place hours after it was scheduled because the sheriff didn't find the established time convenient. The rope they'd set out got wet in the rain, and had to be held over a fire to dry. [nothing better for structural integrity than toasting some plant fibers] ...after placing it over Franks' head he had the utmost difficulty in making it fit anything like tight, but not nearly so tight as it should have been. Franks dropped, but after three minutes of silence started moving and talking, asking to be put out of his misery. Since his hands were improperly tied, he managed to reach up and pull the rope from his throat, forgiving those around him for the "black job" they'd made of his execution. Finally an official cut Franks down. He landed with a thud, as no one had thought to ease him to the ground. After watching such a spectacle, no one wanted to go through it again, and Franks was spared death." Yeah. The executioners were like, round 2? And everyone was like, *I'm good. This public killing was*

surprisingly distasteful. Not the family-friendly adventure that we had anticipated. The man Franks was subsequently presumed dead when a ship to which he was assigned, the Marion Rennie, was lost at sea. You can't outsail karma.

So now we dive into the controversial stuff...what are the arguments for and against capital punishment? Let's start with the arguments *for*, because those are simple and obvious. Retribution: an eye for an eye. If you murder someone, there's no way to make amends or provide restitution...how could you possibly pay a debt to society or to the family of the victim when you've taken something that can never be replaced? The only appropriate and sufficient resolution, some people argue, is to take a life in exchange for a life. There's also the "rabid dog" argument. This is the idea that there are some criminals who are irredeemable and keeping them alive is pointless and most likely dangerous. A rabid dog can't be placated, rehabilitated, or reasoned with, and isn't going to get better. There's no cure and there's no point in keeping the dog alive, because there's no upside...taxpayers have no choice but to feed and house the rabid dog until it dies, or escapes, or spreads its infection. I find this argument rude and insensitive but also somewhat compelling. I'm not saying prisoners are like dogs but the rabies analogy strikes a chord with me. I think narcissism is the most dangerous trait

in humans; if you haven't followed this case look up a guy name Darrel Brooks who was recently sentenced to life in prison for running over a bunch of people at a parade in Wisconsin.

Check out the antics he pulled at the trial, the man is incapable of sympathy for other humans and sees himself as a victim, and in my opinion he—and people like him—are not capable of reform.

On the other hand, there's a remarkably simple and obvious legal argument against capital punishment: "An eye for an eye" is no longer the law of the land, so why would we implement it for one single offense? If a criminal gets convicted of assault, we don't sentence that person to be assaulted. We don't rape rapists, so why are we killing killers? Abolitionists also point to the 8th Amendment to the Constitution, which prohibits cruel and unusual punishment. Many people feel that being told the exact date you're going to be killed and having to count down the days to your demise is cruel and unusual. Knowing exactly when you're going to die is a kind of torture, let's be honest. (Of course, living in a secure facility with three meals a day and dying via fentanyl injection is arguably preferable to the twisted shit that a lot of killers put their victims through, but let's set that aside for now.) There *have* been steps taken to make executions more humane, as we've discussed, but it's hard to argue that there *haven't* been plenty of cruel and unusual

executions, even in the modern era. The process of executing a criminal is nowhere near an exact science. Over the course of history there have been some horrific fuckups that resulted in truly grisly, traumatic scenes and these have spanned every type of execution, from lethal injection to gas chambers to the electric chair. Some examples from deathpenalty.org: "April 22, 1983. Alabama. John Evans. Electrocution. 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"

"Sept. 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)." Later it was revealed that the executioner, Barry Bruce, was drunk."

"April 6, 1992. Arizona. Donald Eugene Harding. Asphyxiation. Death was not pronounced until 10 1/2 minutes after the cyanide tablets were dropped. 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."

Just one more, there are tons of these.

"December 13, 1988. Texas. Raymond Landry. Lethal Injection...Two minutes after the drugs were administered, the syringe came out of Landry's vein, spraying the deadly chemicals across the room toward witnesses....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." It's

not a great sign when a screwup is so common that you have a name for it.

And of course, horrific execution-fiascos are not just a thing of the past. Statistics from American executions between 1977 and 2001 revealed an approximately 5% rate of so-called botched executions, in which something went wrong. That "something" could include delays or problems that "caused, at least arguably, unnecessary agony for the prisoner or that reflect gross incompetence of the executioner." Now they use the word "arguable" because you can't really say for sure. There's no "how would you rate your execution" survey that can be administered posthumously. Also, this is kind of a weird definition of the word "botched." Botched implies that something didn't work...like a botched robbery attempt. But no state has ever fully given up and let the prisoner live...I couldn't find a single modern American instance in which the state didn't try again after a botched execution, or wasn't in the process of rescheduling the execution when the convict died of natural causes. So technically the American system of capital punishment has a 100% success rate.

However, speaking of recent botched executions, on November 18th, just about a week ago from when we're recording this show, the scheduled execution of killer-for-hire Kenneth Eugene Smith in Alabama was

temporarily called off due to complications. "...prison staff tried for about an hour to get the two required intravenous lines connected to Kenneth Eugene Smith, 57...they established one line but were unsuccessful with a second line after trying several locations on Smith's body. Officials then tried a central line, which involves a catheter placed into a large vein...In September, the state called off the scheduled execution of [another inmate] Alan Miller because of difficulty accessing his veins. Miller said in a court filing that prison staff poked him with needles for more than an hour, and at one point they left him hanging vertically on a gurney before announcing they were stopping."

Imagine being viciously and repeatedly poked with needles by people who are actively trying to kill you, you're just physically suffering while waiting to die, and then they're like, meh, not today. We'll try again later. But maybe this is what these people deserve? I always have sympathy until I find out what they were convicted of. It's such a tough issue. Hard to have sympathy but also weirdly hard not to have sympathy. So as of today there have been three botched attempts to execute Kenneth Eugene Smith, and on November 21st Alabama Governor Kay Ivey actually called for a moratorium on executions until the prison system can get its act together. This follows a similar move by Tennessee. According to the associated press: "Earlier this year, after Tennessee Governor Bill Lee

halted a lethal injection in April because he learned the drugs hadn't been tested as required, he ordered an independent investigation and paused all executions through the end of the year." Time will tell whether this is just a bump in the road or a harbinger of things to come. As far as I'm concerned, there is no reason to believe that these moratoriums will turn into anything permanent, but I guess we'll see.

Now let's get to maybe the most compelling argument against the death penalty, and we've touched on it a couple times already. And this is the main reason that I struggle with supporting capital punishment. Just because you're convicted of a crime doesn't mean you're guilty. In the 49 years between 1973 and today, 186 death row prisoners have been exonerated by DNA evidence or other vindicating circumstances. Let that sink in. That averages out to almost 4 people a year who would have been wrongly executed if they hadn't been proven innocent in time to save them, so just imagine how many innocent people were killed *before* the 70s. Now technically there is no proof that anyone who has actually been executed was innocent; no one has been posthumously exonerated. But that's because we don't continue to investigate cases after the convicted perpetrator has been dispatched. It's inconceivable to me (and that word *does* mean what I think it means)...inconceivable that innocent

people haven't been executed. In our justice system, the standard for conviction only requires determining that the suspect is guilty "beyond a reasonable doubt" but doubts are subjective, and so is reasonableness. I fully believe that jurors try to do their best...I served as a juror on a murder trial and someday I'll tell that story, but I can attest to the fact that jurors are mostly well-intentioned and always imperfect.

So, bottom line, here's my stance: for particularly heinous crimes, if there is DNA evidence and if there is some way to 100% verify that we have the right person, I am in favor of the death penalty. But I don't see how we can possibly adhere to that standard consistently. Evidence can be faked, people can be framed. Even DNA evidence can be manipulated by the police or scientists or doctors if they have a vendetta. And once we execute someone, there's no opportunity to try to make it up to them if exonerating evidence comes out. Execution is final, it's irreversible, and I just don't know how we get around the fact that there's no room for error. The only counterargument is the "you have to break a few eggs to make an omelet" defense. Which sounds incredibly brutal and harsh, because it is, but that's the equation each country has to weigh: assuming that the death penalty keeps society safer—and that's a big "if"—or even if it just makes us all collectively feel better, is it OK that occasionally an innocent person slips through the cracks? Most

of the western world has said no, but I think if you support the death penalty, that's kind of the only argument you have. There's no way to be 100% sure that someone is guilty, even in the case of confessions. So I find myself leaning toward abolition, but then I ask myself, do I want Dylan Roof and Darrel Brooks to live a long healthy life in prison? No. Those guys are 100% guilty and I personally want them off the face of the planet. It's really hard, and there are no easy answers. And I'm interested to hear the opinions of all you insomniacs, so head over to the discord and maybe you can convince us one way or the other.

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