



## The Star-Ledger

### Mother's lesson wasn't wrong then or now

Sunday, January 21, 2007

A New Jersey commission has recommended an end to the state's moribund death penalty. Announcement of the commission's findings hit the press at about the time Iraq executed Saddam Hussein and scheduled hangings for his convicted collaborators.

Images of inadvertent decapitation, taunting executioners, profane witnesses and a tyrant's corpse -- rope gashes visible on his neck -- got me once again thinking about the morality of capital punishment.

I learned young that criminals need to be punished but that we Americans sometimes do an especially bad job implementing capital sentences. When I was a child my mother often repeated the story of a man whom executioners tried to electrocute, but who just wouldn't die. "It wasn't his time," she surmised. "The Lord wasn't ready."

At first I piously believed the story but later came to think of it as a religious woman's fable. It turns out that my mother's tale was not only true, it was infamous. She was remembering a genuine event that gripped the country when she was a girl, the ordeal of Willie Francis.

Willie Francis was an African-American teenager, convicted in Louisiana of murdering a pharmacist and sentenced to die in the electric chair. According to recent histories of the case, including Allen Durand's 2006 documentary, "Willie Francis Must Die Again," the state's evidence against Willie was problematic. The dead man's wallet was supposedly found in Willie's pocket when he was picked up on dubious drug charges. Willie's "confession" was garbled, ambiguous and may have been the product of intimidation. At trial, defense counsel failed to put on witnesses or raise objections and changed Willie's plea from not guilty to guilty without his consent. A jury of 12 white men quickly reached a verdict, including a death sentence, following a one-day trial. Some commentators say the jury arrived at its verdict after less than 15 minutes of deliberations.

The date set for the execution was May 3, 1946. Eyewitnesses testified that at the appointed time the electrocutioner turned on the switch and gave it all he had, but Willie did not die. Instead, the youth's lips puffed out and began to swell, his body tensed up, then lengthened. The smell of burning flesh filled the air. Willie cried out for the mask over his eyes to be removed and that he be allowed to breathe. The stunned authorities "took the hood from his eyes and unstrapped him." The execution had been botched. The executioners may have been drunk. Willie walked back to his jail cell.

The case attracted wide attention. Did the equipment malfunction, were the executioners incompetent, was there divine intervention? Louisiana said the problem was equipment failure and wanted a second try.

In his appeal to the U.S. Supreme Court, Willie Francis was ably represented by Louisiana lawyer James Skelly Wright, who would go on to become a famous federal judge. Wright argued that it would be unjust to put Willie through another execution. It would amount to a kind of double jeopardy, a due process violation or tortuous breach of the prohibition against cruel and unusual punishment. Having endured "the psychological strain of preparation for electrocution" to "undergo this preparation again subjects him to a lingering or cruel and unusual punishment," noted the court in summarizing Wright's 8th Amendment argument.

In the end, the Supreme Court sided with Louisiana, by a vote of 5-4. The majority concluded that "the fact that petitioner has already been subjected to a current of electricity does not make his subsequent execution any more cruel in the constitutional sense than any other execution." Willie Francis died in the arms of Old Sparky on May 9, 1947.

Long before I had mature reasons to oppose the death penalty, I had a distaste for it. It was something inflicted on people whose time had not yet come, my mother taught. But eventually the theological objections to capital punishment fed to me in the nursery were supplanted by hard fact and a more secular

philosophy.

The New Jersey commission emphasized the hard facts. The commission persuasively busted the myth that prison is more expensive to taxpayers than death. The death penalty, with its necessary judicial safeguards and automatic appeals processes, is more costly than the sentence of life in prison without the possibility of parole.

But saving money is not all we ought to care about, as the commission recognized in its argument that evolving standards of decency are inconsistent with the death penalty. I have grave concerns about modern trends in incarceration, such as "supermax" prisons that isolate felons 23 hours a day in tiny cells constantly monitored by cameras. But I heartily agree with the commission's conclusion that the public interest in punishment and public safety can be adequately met through the extraordinarily harsh sanction of life imprisonment without parole.

The commission concluded that there is no invidious racial bias in the application of the New Jersey death penalty. New Jersey may be different: Past studies have strongly suggested that African-Americans are more likely to receive the death penalty than whites who commit similar offenses. The possibility of bias and the possibility of the irreversible error of killing an innocent person have always been high on my list of objections to the death penalty.

The hanging of Saddam Hussein and his accomplices underscored the validity of a final objection to the death penalty: It degrades us and encourages us to degrade others. When the state kills, efforts are made these days to approach death with reverence and respect for the law. By using lethal injections we seek the ultimate in clinical tidiness-- a kind of medical humanity. But I believe capital punishments of all sorts -- hanging, firing squads, electrocutions, gas, injections -- still play into basest impulses for ultimate revenge. All capital punishment does to the condemned what Saddam's coarsest tormenters spelled out for us in the grainy unauthorized photographs that appeared on television and the Internet.

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