



## USA: 'He is still alive'

### Another 'botched' execution, this time in Arizona

For at least the third time this year, an execution in the USA has not gone as planned. Following "botched" lethal injections in [Ohio](#) in January and [Oklahoma](#) in April, the latest execution gone awry and to be added to a [list](#) of more than 40 other such executions in the USA since 1982, occurred in Arizona on 23 July. The execution – of Joseph Wood, sentenced to death for two murders committed in 1989 – took over an hour and a half to complete. According to witnesses, the prisoner repeatedly gasped for an hour and 40 minutes before being pronounced dead.

The execution – apparently using two drugs, midazolam and hydromorphone – took so long that lawyers for Joseph Wood had time to file an emergency motion in US District Court during it. In the motion, the lawyers wrote:

"The Arizona Department of Corrections began the execution of Joseph Rudolph Wood III at 1.52pm. At 1.57pm, ADC reported that Mr Wood was sedated, but at 2.02 he began to breathe. At 2.03 his mouth moved. Mr Wood has continued to breathe since that time. He has been gasping and snorting for more than an hour. At 3.02, staff rechecked for sedation. He is still alive. This execution has violated Mr Wood's Eighth Amendment right to be executed in the absence of cruel and unusual punishment. We respectfully request that this court use the lifesaving provisions required in its protocol."

According to reports, the lawyers telephoned US Supreme Court Justice Anthony Kennedy who declined to intervene, and also called three Justices on the Arizona Supreme Court. The District Court had not responded to the emergency motion by the time Joseph Wood was declared dead at around 3.49pm. Following the execution, the federal judge issued an order directing the state to "immediately preserve all physical evidence related to the body of Joseph Rudolph Wood III".

A spokesperson for the Department of Corrections denied that there had been "snorting or gasping", claiming that the prisoner "was asleep" during the execution. State Governor Janice Brewer issued a statement in which she emphasised the "lawfulness" of the execution and adopted something of a retributive tone:

"I am concerned by the length of time it took for the administered drug protocol to complete the lawful execution of the convicted double murderer, Joseph Wood. While justice was carried out today, I directed the Department of Corrections to conduct a full review of the process. One thing is certain, however, inmate Wood died in a lawful manner and by eyewitness and medical accounts he did not suffer. This is in stark comparison to the gruesome, vicious suffering that he inflicted on his two victims – and the lifetime of suffering he has caused their family."

In the 2008 *Baze v. Rees* ruling in which the US Supreme Court upheld the three-drug lethal injection method then being used by most of the USA's death penalty states, senior Justice John Paul Stevens noted that "it is the retribution rationale that animates much of the remaining enthusiasm for the death penalty" in the USA. Certainly, retributive sentiment has 'animated' some of the public response to the news of the Wood execution. For example, the online comments to the Arizona Republic's coverage of the execution included the following:

"It's not botched! He's dead, he didn't deserve any mercy."

"Yes we should be able to put these animals down faster and more efficiently. Why not use the same thing that they use for dogs?"

"They should have cyanide as a back up... electric chair as a back up to the back up. I'm not shedding any tears...he got what he deserved."

"I hope he suffered, why should murders [sic] get an easy way out."

"Was it any worst (sic) than his victims went through??? I say bring back hanging or the elec. chair."

"He should be killed 1989 would save tax payers money"

"Good. The more horrific the better. This monster deserves nothing less."

“2 hours, 4 hours, who cares now he will do something useful, decompose.”

“I hope he suffered greatly!!”

“It should take at least 4-6 hours of painful suffering.”

“He should have been put in a corner and shot 20 times slowly so he could also feel the pain!”

The Arizona governor and other officials should perhaps reflect on the sort of attitudes – antithetical to human rights – that the state’s use of the death penalty feeds.

In his dissent against the 1976 *Gregg v. Georgia* ruling that allowed executions to restart in the USA under new laws, Justice Thurgood Marshall considered the question of societal retribution as justification for judicial killing. The “mere fact that the community demands the murderer’s life in return for the evil he has done”, he wrote, “cannot sustain the death penalty”. In any society that purports to respect human dignity, he argued, the notion of the “taking of life ‘because the wrongdoer deserves it’ surely must fall, for such a punishment has as its very basis the total denial of the wrongdoer’s dignity and worth.”

The gloss of dignity lethal injection paints on the death penalty has generally spared witnesses the more grotesque sights and smells of state killing by other methods and spared officials the political and judicial fallout from such killing. While one of the drugs that was traditionally used in three-drug protocols, pancuronium bromide, before states [faced problems](#) obtaining drugs, was literally a chemical mask – paralysing the prisoner to protect the state’s “interest in preserving the dignity of the procedure” (*Baze v. Rees*) – lethal injection more generally, regardless of the number of drugs used, or their brand, masks the reality of the death penalty in a quasi-medical procedure. In any event, what happened to Joseph Wood once again strips away the myth of the ‘humane’ execution.

Two days before the execution, the Chief Judge on the US Court of Appeals for the Ninth Circuit wrote in the case:

“Using drugs meant for individuals with medical needs to carry out executions is a misguided effort to mask the brutality of executions by making them look serene and peaceful... But executions are, in fact, nothing like that. They are brutal, savage events, and nothing the state tries to do can mask that reality... If we as a society want to carry out executions, we should be willing to face up to the fact that the state is committing a horrendous brutality on our behalf”.

Suggesting a return to the more “primitive” method of firing squad executions if states insisted on continuing with the death penalty, Chief Judge Alex Kozinski said that “if we are willing to carry out executions, we should not shield ourselves from the reality that we are shedding human blood. If we, as a society, cannot stomach the splatter from an execution carried out by firing squad, then we shouldn’t be carrying out executions at all”. It, of course, may be the case that there are some proponents of the death penalty (including some of those who have recently written comments on the *Arizona Republic* website) who would support a move away from lethal injections to previous methods. But human rights leadership demands something more constructive. The answer to the problems of the death penalty does not lie in switching methods of executions, it lies in turning the switch to the execution chamber off altogether.

Of course, the cruelty of the death penalty is not confined to what goes on in the death chamber. Holding someone under a threat of death – for years or even decades – can hardly be described as the conduct of a state adopting a progressive approach to criminal justice or human rights. However the state chooses to kill the prisoner – and whether the execution goes according to plan or not – does not change the fact that this is a punishment incompatible with fundamental human rights principles. Strap prisoners down in order to kill them with one brand or type of drug rather than another does not render the act compatible with human dignity. Execute an innocent person with a bullet instead of by chemical poison, and the error is not eradicated. Kill by noose rather than in the electric chair a prisoner whose death sentence is marked by discrimination or arbitrariness, and the unfairness does not die with the condemned. It is still cemented into irreversible permanence.

The ‘humane’ execution by lethal injection is an illusion. That a fair death penalty system can be constructed is a delusion. This was the word used by US Supreme Court Justice Harry Blackmun when he announced in 1994 that he had concluded that the “basic question – does the system accurately and consistently determine which defendants ‘deserve’ to die? – cannot be answered in the affirmative... Rather than continue to coddle the Court’s delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed.”

This failure was inevitable. The experiment within the experiment – ‘refining’ the method of execution in a bid to find a ‘humane’ one – was likewise always doomed to fail. The only question now is, how much more evidence of this failure does officialdom in the USA need before they pull the plug on the whole shameful exercise?