



UNITED STATES OF AMERICA

Arkansas schedules eight executions for 10-day period

Over the course of 36 days in the state of Arkansas, USA, eight men were executed for murder – two were put to death on 8 January, two on 5 February, and four on 12 February.

That was *91 years ago*, in 1926.

In 1926, the death penalty was a common punishment across the world. By 1948, when the Universal Declaration of Human Rights was adopted, there were still only eight countries that had abolished the death penalty for all crimes. Today, some 141 countries have abolished the death penalty in law or practice. A handful of countries account for the vast majority of executions worldwide each year.

In the past decade, the USA has been moving slowly away from the death penalty. There is a long way to go, but death sentences are down, executions are down, and the number of abolitionist states is up. Last year saw the lowest national execution total in the USA in a quarter of a century.

Recent news from Arkansas is a serious blot on this landscape.

On 27 February 2017, Arkansas Governor Asa Hutchinson signed proclamations scheduling eight executions to take place within a 10-day period in April 2017. Don Davis and Bruce Ward are scheduled to be killed on 17 April; Ledelle Lee and Stacey Johnson on 20 April; Marcel Williams and Jack Jones on 24 April, and Jason McGehee and Kenneth Williams on 27 April.

In the face of legal challenges brought by the condemned men's lawyers, perhaps the state will not manage to carry out some or all of these executions. But in an increasingly abolitionist world, it is shocking enough that it intends to.

The last time two executions were carried out on the same day in the same state was in [August 2000](#) (Texas). Two executions were due in Oklahoma on 29 April 2014, but the second was postponed after the first went [wrong](#) (see below).

The last time that eight executions were carried out in a month in the USA occurred two decades ago. Texas killed 16 inmates in May and June 1997, eight in each month. Texas accounted for half of the country's 74 executions that year; its 37 executions in 1997 were more than the number were carried out across the entire country in 2014, 2015 or 2016.

Forty-eight per cent of all executions in the USA since judicial killing resumed in 1977 under new capital statutes took place in the 10 years from 1997 to 2006. Five states have legislated to abolish the death penalty since then – New Jersey (2007), New Mexico (2009), Illinois (2011), Connecticut (2012) and Maryland (2013).¹ The USA's growing isolation on this issue was expressly noted in these states as their governors signed the abolitionist bills passed by the legislature into law.

If Arkansas carries out these eight executions in April, it would in 10 days add 30 per cent to its total judicial death toll of the past four decades. It would be killing nearly a quarter of its current death row population.

The last execution in Arkansas – its 27th since 1977 – was carried out on 28 November 2005.

Like many states, in recent years Arkansas has faced [problems](#) sourcing chemicals for its lethal injection protocols and implementing protocols that pass constitutional muster on judicial review.

On 23 June 2016, the Arkansas Supreme Court upheld the state's three-drug execution protocol, under which the prison

¹ Also, in 2007 the last death sentence in New York State was commuted, following a 2004 court ruling that its capital law violated the state's constitution. In 2016, the Delaware Supreme Court in 2016 ruled that Delaware's capital sentencing law was unconstitutional

authorities select either a barbiturate or midazolam for use as a sedative, followed by vecuronium bromide as a paralytic agent, and then potassium chloride to induce fatal cardiac arrest. On 21 February 2017, that US Supreme Court declined to take the case, over the dissent of two of the Justices, who pointed out that in such a three-drug process:

“The first drug is critical; without it, the prisoner faces the unadulterated agony of the second and third drugs. The second drug causes an extremely painful sensation of crushing and suffocation, but paralyzes the prisoner so as to mask any outward sign of distress, thus serving States’ interest in preserving the dignity of the procedure. And the third drug causes an excruciating burning sensation that is equivalent to the sensation of a hot poker being inserted into the arm and traveling with the chemical up the prisoner’s arm and across his chest until it reaches his heart. Execution absent an adequate sedative thus produces a nightmarish death: The condemned prisoner is conscious but entirely paralyzed, unable to move or scream his agony, as he suffers what may well be the chemical equivalent of being burned at the stake.”²

The two dissenters continued:

“Science and experience are now revealing that, at least with respect to midazolam-centered protocols, prisoners executed by lethal injection are suffering horrifying deaths beneath a ‘medically sterile aura of peace.’ Even if we sweep aside the scientific evidence, we should not blind ourselves to the mounting first-hand evidence that midazolam is simply unable to render prisoners insensate to the pain of execution. The examples abound. After Ohio administered midazolam during the execution of Dennis McGuire in January 2014, he ‘strained against the restraints around his body, and . . . repeatedly gasped for air, making snorting and choking sounds for about 10 minutes.’ The scene was much the same during Oklahoma’s execution of [Clayton Lockett](#) in April 2014. After executioners administered midazolam and declared him unconscious, Lockett began to writhe against his restraints, saying, ‘[t]his s*** is f***ing with my mind,’ ‘something is wrong,’ and ‘[t]he drugs aren’t working.’ When Arizona executed [Joseph Rudolph Wood](#) in July 2014 using a midazolam-based protocol, he ‘gulped like a fish on land.’ A witness reported more than 640 gasps as Woods convulsed on the gurney for more than an hour and a half before being declared dead. Finally ... Alabama executed Ronald Bert Smith. Following the dose of midazolam, Smith ‘clenched his fist’ and was ‘apparently struggling for breath as he heaved and coughed for about 13 minutes’... These accounts are especially terrifying considering that each of these men received doses of powerful paralytic agents, which likely masked the full extent of their pain. Like a hangman’s poorly tied noose or a malfunctioning electric chair, midazolam might render our latest method of execution too much for our conscience – and the Constitution – to bear.”

The Supreme Court majority’s refusal to intervene prompted the Arkansas Attorney General to write to Governor Hutchinson asking him to set execution dates for the eight men who had brought the legal challenge to the protocol. Having done so, the Governor said that he did not anticipate “problems in the procurement of the drugs that are necessary” for the executions. On 2 March 2017, the Arkansas Supreme Court issued a clarification that there was no stay of execution in place for the eight men.

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. Whatever method the state chooses for killing 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 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.

Dissenting from the 2015 *Glossip v. Gross* ruling on the use of midazolam in lethal injection, Justice Stephen Breyer argued that the time had come for the Supreme Court to consider the constitutionality of the death penalty *per se*, not just aspects of it. Pointing to evidence of arbitrariness, geographical and racial bias, wrongful convictions in capital cases, and the cruelty of prolonged confinement on death row, Justice Breyer, joined by Justice Ruth Bader Ginsburg, argued that the death penalty had likely fallen into unconstitutionality. The serious problems in the death penalty’s application meant that now “most places within the United States have abandoned its use”. The Constitution, Justice Breyer noted, “forbids punishments that are cruel and unusual... [I]n the last two decades, the imposition and implementation of the death penalty have increasingly become unusual.”

It is not too late for Arkansas to abandon a resumption of executions after more than a decade without them. It should look to a future without the death penalty, not back to 1926 or any other year marked by a punishment that belongs in the history books.

² *Arthur v. Dunn*, 21 February 2017, Justice Sotomayor, joined by Justice Breyer, dissenting from the denial of certiorari (internal quotation marks omitted). The two Justices pointed to this dissent (on an Alabama case) when objecting to the Court’s refusal to take the Arkansas case.