Cheating death won’t halt gears of execution machine

T

wenty years ago, Justice Harry Blackmun rejected the death penalty by announcing that he would no longer "tinker with the machinery of death." Similarly, the abolition of the Illinois death penalty three years ago spared state courts from their own endless tinkering. Yet the death penalty is still legal in 32 states and in the federal system. And a recent story from Iran reminded me of why we still need to think and talk about it.

A man identified only as Alireza M. was found guilty of smuggling drugs and was sentenced to death in 2010. The sentence was carried out last October in a small Iranian town. Alireza spent 12 minutes dangling from a noose suspended by a crane before a doctor declared him dead. Amazingly, the execution was switched off, the coroner declared him dead. Amazingly, the execution was switched off, the coroner.

Within a week, Iran ordered that when Alireza had sufficiently determined he was still breathing. The next day the staff at the morgue returned to his cell. The power was then rejected the death penalty.

The court had a number of justices: Hugo L. Black, William O. Douglas, Frank Murphy and Wiley B. Rutledge. But, in yet another odd twist, the justice who was most profoundly offended by Francis' predicament was Harold H. Burton, a conservative justice who usually favored the prosecution.

He wrote the first draft of a dissent on behalf of Murphy, Rutledge and himself. In language both forceful and eloquent, he contended that the case should be remanded so Louisiana could thoroughly investigate how much Francis suffered during the botched execution and whether a return would constitute cruel and unusual punishment.

The first crack in the majority appeared when Douglas announced that he would join Burton's dissent. One more switch would turn Burton's dissent into a 5-4 majority.

Justice Felix Frankfurter now wavered. He was deeply troubled by the facts of the case. But he finally concluded that he should not let his personal opinion trump the community consensus that he believed defined due process. Consequently, the Supreme Court sent Francis back to the electric chair by a 5-4 vote.

It would probably have been little solace to Francis if he learned that after casting the deciding vote, Frankfurter then made confidential appeals to lawyers he knew in Louisiana to try to stop the execution. Regardless, Willie Francis died in the electric chair on May 9, 1947.

There is one final postscript. While awaiting the Supreme Court's decision, Wright regularly called the clerk. One day the clerk told him over the phone that the court had reversed and that Wright had won the case.

Elated, Wright jumped in a cab to pick up the opinion. But when he arrived at the clerk's office, he received some shocking news. In a case littered with terrible mistakes, there was now one more. The clerk had read the wrong result over the phone. He meant to say “affirmed.”

With that single word, J. Skelly Wright, Willie Francis and American justice all suffered one final loss.

National campaigns were launched by the NAACP, church groups and concerned individuals to stop Louisiana from returning him to the electric chair. Despite this, Louisiana insisted that it would attempt a second execution.

The last resort was to ask the U.S. Supreme Court for relief. A young Washington lawyer born and raised in Louisiana agreed to take the case. His name was J. Skelly Wright, and he would go on to become a legendary judge on the U.S. District Court in Louisiana as well as the D.C. Circuit Court of Appeals.

Wright filed a cert petition on Francis' behalf. On June 10, 1946, the Supreme Court denied cert. Wright wired Francis' attorneys in Louisiana that the case was over.

What happened next is almost stranger than someone surviving the electric chair. The clerk of the Supreme Court called Wright the next day and said a terrible mistake had been made. The order sheet erroneously listed the petition as “denied” when it should have stated “granted.” The court would take the case.

For a second time, Willie Francis cheated death.

At its conference following oral argument, the Supreme Court preliminarily voted 6-3 to uphold a second execution attempt.

The court had a number of justices known for pro-defense leanings: Hugo L. Black, William O. Douglas, Frank Murphy and Wiley B. Rutledge. But, in yet another odd twist, the justice who was