

The Case for Firing Squads

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Arizona succeeded in killing Joseph Rudolph Wood III on July 23, 2014, the day after the Supreme Court lifted a stay that had been issued by the Ninth U.S. Circuit Court of Appeals. The state administered 15 injections of midazolam and hydromorphone over nearly two hours. It was, at the time, the longest execution in U.S. history.

That record is now eclipsed by the failed execution of Christa Pike, who survived two injections of pentobarbital, to the apparent surprise of the Tennessee officials administering them. One can only hope that this disturbing episode will cause reconsideration of our half-century-long experiment with lethal injection, but I'm not so sure. Wood's execution generated extensive publicity, including a "60 Minutes" [segment](#) in which I, then a Ninth Circuit judge, was interviewed, and then nothing happened. Almost every death-penalty state, along with the federal criminal code, [designates](#) lethal injection as the sole or default method of execution.

It wasn't always so. For much of the 20th century, states used hanging, the gas chamber, the electric chair and occasionally firing squads. Then, in 1977, Oklahoma authorized lethal injection. Texas first used it in 1982 when it executed Charles Brooks Jr. The other capital punishment states quickly fell in line.

Why this sudden transformation? After the Supreme Court struck down all existing death-penalty laws in [Furman v. Georgia](#) (1972) for lacking certain procedural safeguards that the justices invented, 35 states retooled their laws to adopt such procedures. In 1977 Utah executed Gary Gilmore by firing squad, the first execution after the moratorium. But opponents continued to challenge executions, including execution methods, as painful or degrading.

Perhaps states thought lethal injection would fare better in court because it resembled a familiar medical procedure. Perhaps they wanted executions to look less medieval. Either way, the appeal was obvious: Put the prisoner on a gurney, attach tubes, administer drugs, and invite the public to imagine that death arrives cleanly and quickly, without anyone getting blood on his hands.

Appearances, however, aren't reality. Lethal injection was a terrible choice, practically and philosophically. It borrows medicine's costume without the people and safeguards that make medicine work. Physicians are barred by the American Medical Association's ethics code from participating in executions; similar constraints apply to nurses. The job therefore falls to law-enforcement personnel, who must obtain the drugs, find a vein, insert a catheter, and administer the substances in the right quantities and sequence. If the first attempt fails, they try again. In Wood's case, 14 times.

The supply problem makes matters worse. Drug manufacturers have refused to sell their products for executions. States have resorted to Rube Goldberg-like schemes to obtain drugs from abroad, sometimes under false pretenses, or have used drugs that are expired or improperly stored. The state wants the appearance of a modern medical procedure but can't reliably obtain the materials or expertise that real medicine requires.

Nor is there an accepted protocol guaranteed to produce a quick, painless death. Drug companies test medications to heal people, not kill them. States have improvised, sometimes using drugs known to cause severe pain and administering sedatives to blunt it. Sedatives don't always work, and there is good reason to believe that some prisoners suffer; Ms. Pike actually told us so. Over the years there have been numerous botched executions, as documented in gruesome detail by law professor Corinna Lain in her recent book, "Secrets of the Killing State: The Untold Story of Lethal Injection."

The philosophical problem is more fundamental: Execution by lethal injection is dishonest. It dresses an execution in the reassuring garb of medicine, encouraging us to mistake a state killing for a clinical event. Medicine seeks to preserve life; execution ends it. This blurring of what are diametrically opposite functions is epistemologically perilous and morally repugnant.

Which is why I applaud Defense Secretary Pete Hegseth's decision to execute Nidal Hasan by firing squad. As I [argued](#) at the time of the Wood execution: "Eight or ten large-caliber rifle bullets fired at close range can inflict massive damage, causing instant death every time. There are plenty of people employed by the state who can pull the trigger and have the training to aim true. The weapons and ammunition are bought by the state in massive quantities for law enforcement purposes, so it would be

impossible to interdict the supply. And nobody can argue that the weapons are put to a purpose for which they were not intended: firearms have no purpose other than destroying their targets. Sure, firing squads can be messy, but 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."

The intervening decade has reinforced my views. Deserving as Mr. Hasan may be of his punishment, no one merits a lingering, possibly excruciating death. I have some doubts whether livestreaming the execution is advisable, but Mr. Hegseth should be commended for his honesty, and for showing Mr. Hasan mercy.

Mr. Kozinski served as a judge on the Ninth Circuit, 1985-2017.

A lethal injection table is shown in Salt Lake City, Aug. 8, 2024. Rick Bowmer/Associated Press

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