



Louisiana ex rel. Francis v. Resweber (1947). [5-4]. Justice Reed...Willie Francis, a colored citizen of Louisiana, was convicted of murder and sentenced to be electrocuted for the crime...The executioner threw the switch but, presumably because of some mechanical difficulty, death did not result...A new death warrant was issued by the Governor and Francis appealed, claiming the protection of the due process clause of the Fourteenth Amendment on the ground that an execution under the circumstances would deny due process to him because of the double jeopardy provision of the Fifth Amendment and the cruel and unusual punishment provision of the Eighth Amendment...The Supreme Court of Louisiana denied the application...We granted certiorari.

Petitioner's suggestion is that because he once underwent the psychological strain of preparation for electrocution, now to require him to undergo this preparation again subjects him to a lingering or cruel and unusual punishment. **Even 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.** The cruelty against which the Constitution protects a convicted man is cruelty inherent in the method of punishment, not the necessary suffering involved in any method employed to extinguish life humanely. The fact that an unforeseeable accident prevented the prompt consummation of the sentence cannot, it seems to us, add an element of cruelty to a subsequent execution...*Affirmed.*

DISSENT: Justice Burton/Douglas/Murphy/Rutledge...Taking human life by unnecessarily cruel means shocks the most fundamental instincts of civilized man...Abhorrence of the cruelty of ancient forms of capital punishment has increased steadily until, today, some states have prohibited capital punishment altogether. It is unthinkable that any state legislature in modern times would enact a statute expressly authorizing capital punishment by repeated applications of an electric current separated by intervals of days or hours until finally death shall result. The Legislature of Louisiana did not do so...

In determining whether the proposed procedure is unconstitutional, we must measure it against a lawful electrocution. **The contrast is that between instantaneous death and death by installments...**Electrocution, when instantaneous, *can* be inflicted by a state in conformity with due process of law. *In re Kemmler*. The Supreme Court of Louisiana has held that electrocution, in the manner prescribed in its statute, is more humane than hanging.

The all-important consideration is that the execution shall be so instantaneous and substantially painless that the punishment shall be reduced, as nearly as possible, to no more than that of death itself. Electrocutation has been approved only in a form that eliminates suffering.

The Louisiana statute...does not provide for electrocution by interrupted or repeated applications of electric current at intervals of several days or even minutes. It does not provide for the application of electric current of an intensity less than that sufficient to cause death. It prescribes expressly and solely for the application of a current of sufficient intensity to cause death and for the *continuance* of that application until death results...There is no statutory or judicial precedent upholding a delayed process of electrocution.

In upholding the statute authorizing electrocution in *In re Kemmler*,...this Court stressed the fact that the electric current was to cause instantaneous death...It was the resulting "instantaneous" and "painless" death that was referred to as "humane."...

If the state officials deliberately and intentionally had placed the relator in the electric chair five times and, each time, had applied electric current to his body in a manner not sufficient, until the final time, to kill him, such a form of torture would rival that of burning at the stake. Although the failure of the first attempt, in the present case, was unintended, the reapplication of the electric current will be intentional. **How many deliberate and intentional reapplications of electric current does it take to produce a cruel, unusual and unconstitutional punishment?...**If five attempts would be "cruel and unusual," it would be difficult to draw the line between two, three, four and five. It is not difficult, however,... to draw the line between the one continuous application prescribed by statute and any other application of the current.

Lack of intent...of the executioner cannot lessen the torture or excuse the result. It was the statutory duty of the state officials to make sure that there was no failure...The remand of this cause to the Supreme Court of Louisiana in the manner indicated would not mean that the relator necessarily is entitled to a complete release. It would mean merely that the courts of Louisiana must examine the facts, both as to the actual nature of the punishment already inflicted and that proposed to be inflicted and, if the proposed punishment amounts to a violation of due process of law under the Constitution of the United States, then the State must find some means of disposing of this case that will not violate that Constitution...