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THE MODERN ELITE RULING CLASS NOTION OF JUSTICE

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THE MODERN ELITE RULING CLASS NOTION OF JUSTICE

CRUEL AND UNUSUAL PUNISHMENT OF VICTIMS

By

Lester Jackson, Ph.D.

Numbers in parentheses refer to pages and notes in linked sources.

"[T]he death penalty constitutes cruel and unusual punishment. Not for those on death row but for the families of their victims"

---- Report on Connecticut Families' Call for Death Penalty Repeal

"What I would like … is not [repeal] the law, but enforce the law."

---- Marilyn Flax (57), widow of murder victim

"It's difficult if not impossible to defend 29 years for a case to be in the courts."

---- former Kentucky Supreme Court Chief Justice Joseph Lambert

INTRODUCTION

Days apart in early February, two Connecticut events dramatically highlighted how power-abusing elitists have sabotaged the death penalty. First, in the second protracted Petit robbery-rape-arson-murder case, defense attorneys fired a fusillade of motions to spare the life of a client they proclaimed so dangerous that the "public interest" required him to "never again spend a day in free society (4)." Second, a group of murder victim family members called for death penalty abolition, complaining it inflicted greater suffering on ***them*** than murderers. Dr. Gail Canzano asserted: "The death penalty ensnares people in the criminal justice system… result[ing] in … years of suffering … for the families left behind. … [E]very single court appearance re-traumatizes the family…."

This was further vindication of the ruthless strategy of so-called death penalty opponents: protecting barbaric murderers by abusing the legal system to drag out, for decades, cases in which there is no doubt about guilt, torturing victims in the process.

That it was not always this way shows that it does not have to be this way now.

OLD JUSTICE

- President William McKinley died on Sept. 14, 1901, eight days after being shot by **Leon Czolgosz**, who was caught in the act and confessed. On Sept. 23, Czolgosz went on trial and was sentenced to death three days later. He was executed on Oct. 29, 53 days after the crime and 47 after the president's death.
- Unable to get near his first choice (75), President Herbert Hoover, **Giuseppe Zangara** settled on President-elect Franklin Roosevelt. On Feb. 15, 1933, Zangara's errant shot hit Chicago Mayor Anton Cermak, who died on March 6. Caught in the act and having confessed, Zangara was executed on March 20, 1933 after 10 days on death row and 14 days after his victim died.
- On July 2, 1881, **Charles Guiteau** shot President James Garfield, who died on Sept. 19. Immediately caught, Guiteau boasted of his deed. He was placed on trial for murder on Nov. 14 and found guilty on Jan. 25, 1882. After an appeal rejected May 22 and a denied request for an orchestra to play at his hanging, Guiteau was executed on June 30, 1882, nine months after his victim died.
- **William Kemmler** murdered his wife on March 29, 1889 and was sentenced to death 45 days later, May 13. He appealed the new execution method, electrocution, which was upheld by the U.S. Supreme Court May 23, 1890. Even with the aid of high-priced lawyers hired by George Westinghouse, his execution occurred August 6, 1890, 15 months after the murder.
- On March 20, 1927, **Ruth Snyder**, aided by paramour **Henry Gray**, strangled and bludgeoned her husband to death to collect insurance. In fewer than 10 months, January 12, 1928, they were both executed.

There was never any doubt whatsoever about the guilt in these cases. Justice was done – swiftly. This is now inconceivable, both in unpublicized and high-profile cases. In today's murderer-friendly, victim-hostile judicial and legislative environment, incontrovertibly and boastfully guilty assassins and other murderers spend years, even decades, on death row – if sentenced to death at all. Consider the following few of limitless examples.

MODERN JUSTICE

- On Nov. 5, 2009, Maj. **Nidal Malik Hasan** shot 45 mostly military people, killing 13 and wounding 32. After 17 months, it remained uncertain whether Hasan would face capital charges or even be court-martialed. Although apprehended in the act of murdering, he is, in today's argot, still merely an "accused" murderer.
- On April 19, 1995, **Timothy McVeigh** bombed a federal building in Oklahoma City, murdering 168 innocent people. He boasted of his guilt. Nevertheless, he was not executed until June 2001. Had he not dropped his appeals, there is no telling how many more years would have elapsed; indeed, he might still be alive after 16 years, which is routine nowadays.
- On parole from a sentence for beating a neighbor to death, **Robert Alton Harris** kidnapped and murdered two boys, one "crouching and screaming," and "giggled …, saying he had blown … Baker's arm off. [He] amused himself by imagining be[ing] a police officer … report[ing] the boys' deaths to their families. … [He] laughed, commented he had really blown the boy's brains out, and then flicked the bits of flesh into the street." Executed after "only" 14 years, the *New York Times* bitterly attacked the Supreme Court's "Rush to Kill."
- **John Jacob Dougan** made several tape recordings bragging about the 1974 murder of an 18-year-old boy, which were mailed to the victim's mother as well as to the media: "He was stabbed in the back, in the chest and the stomach, ah, it was beautiful. You should have seen it. Ah, I enjoyed every minute of it. I loved watching the blood gush from his eyes." 37 years later, Dougan remains on death row.
- Spared a death sentence for murder, this mercy enabled **Clarence Ray Allen** to communicate with and order associates outside prison to murder witnesses against him. It took another 26 years to execute him.

No ground for delay is too preposterous in today's courts. So shameless are death penalty opponents that, after being kept alive to have a second bite at the murder apple that cost three more innocent lives, Allen's lawyers actually argued (n362) he should not be executed because just thinking about the prospect might cause him to have a heart attack. In this vein, two justices have taken seriously the abolitionist demand that any murderer who succeeds in gaming the system for decades should be rewarded for the delay he himself

has caused – by voiding his death sentence because execution would be cruel and unusual punishment after so long. In other words, grant mercy to the parent killer on the ground that he is an orphan.

In 1882, Guiteau got nowhere with his demand for an orchestra to accompany his permitted pre-hanging reading of his poetry, which he insisted would be "very effective" with music. Today, when judges take seriously the claim that a brutal murderer should be spared execution because he won a dance contest or would not be a threat in prison because he "only preyed on elderly women," Guiteau's demand, alone, would likely be good for a delay of a year or two.

Equally absurd but far more serious is the routine argument that a murderer never intended that anyone be murdered, even when he showed up with a loaded gun and a lethal knife, planned an armed robbery, stabbed his rape victim 53 times (93-4) or smuggled a chest filled with guns into a prison to help two convicted murderers escape. In the Petit case, lawyers argue Joshua Komisarjevsky never intended (3) for anyone to be murdered, but they fail to explain why, if this is so, he deserves an actual life sentence in "the public interest." (There is evidence, from his own cell phone, that he was an active, willing participant. His partner probably could not have committed the crimes alone, nor even tried.)

Such absurdities help explain why the point has been reached where Virginia is held up as a veritable death penalty paradise (8) by some capital punishment supporters because it can execute the clearly guilty in an average of "only" seven years; and why former Kentucky Chief Justice Lambert conceded that it is "difficult if not impossible" to defend multi-decade cases. But given judicial obtuseness regarding victims, it is, first, vital to stress that these cases further victimize the law-abiding in the name of purported "due process" for the most brutal lawless.

VICTIMIZING VICTIM FAMILIES

Murder victimizes survivors in two ways: (1) the loss and pain of family members and others who care about the homicide victim; and (2) the agony inflicted by the modern travesty of justice system.

To lay persons, this may seem too obvious to mention. But not to many judges. The idea that, on behalf of convicted murderers, the courts cruelly punish murder victim families flies in the face of the denial they are victims at all. In a virtually unreported but highly revealing statement, Justice Stevens calls it a "misnomer" to label as "victims" the family members and others who love and care about murder victims because they are merely "third parties." Really?! Consider these few examples:

- David Brewer raped, strangled and stabbed Sherry Byrne 15 times; he slit her throat. This "ruined the lives of everyone close to her." Her mother was hospitalized and divorced; her husband, who "wanted to die," was twice hospitalized for psychiatric care.
- One mother stated: "When Shannon died, we died."
- Dr. William Petit considered suicide because he lost: "a wife and two wonderful daughters, where you're defined by your family. … children are the jewels … all your hopes for the future are in your children… Your wife is your partner, your team-mate … ***you lose it all***.'
- It is unlikely that Stevens will descend from his ivory tower to face Diana Harrington, who flatly declared (368-75) herself "a victim" of the brutal murders of her sister, brother-in-law, niece and nephew.

Also, Stevens finds it "troubling" (7) to "rouse jurors' sympathy for the victims and increase jurors' antipathy for the capital defendants." Indeed, if some justices (once a majority) had their way, victims' families would have the courthouse doors slammed in their faces.

Solicitude for murderers and callous unconcern for victims go a long way toward explaining why judges have no qualms inflicting cruel and unusual punishment on the latter.

Justice Ginsburg suffers stress and cries; and Justice Blackmun found executing barbaric criminals "particularly excruciating" (153). Yet one can search in vain for similar expressions by them about victims. Hence, on behalf of those whose guilt is uncontested, these justices often have compounded geometrically the anguish of losing loved ones. That is why family members have said it is they who endure cruel and unusual punishment.

Justice Stevens worried that it might take 11 minutes rather than 7 for a condemned killer to die. But he voted to stay the execution of Earl Wesley Berry to decide only if lethal injection, previously advocated by Stevens as a lethal gas substitute, was inhumane. The justices voting for this stay said nothing about further victimizing the family of Berry's brutally murdered victim. A local paper called it cruel ***not*** to execute Berry: "ironic that a man who beat and stomped to death a woman now hopes the justice system will save him from a death he believes is 'cruel and inhumane.'" The daughter referred (n319) to suffering caused by "hav[ing] to deal with court proceedings and appeals processes" for two decades.

Although executing the most barbaric murderers causes stress, tears and excruciation for the likes of Ginsburg and Blackmun, they are heedless of the torment expressed by a son 30 years after his father was murdered: "It never ends for families … It's just not right that it goes on and on." Having waited 25 years for execution of her family's murderer, Harrington (367) said the "loss of loved ones is enough agony that one should bear, much less the constant reminders of the criminal's appeals, protests and constant complaints …."

Doubly victimized – and Stevens denies they are victims at all!!

Now, judicially, legislatively or both, the Petit survivors are likely to suffer elite contempt for victims.

THE PETIT ROBBERY-RAPE-ARSON-MURDERS

This case has been reported widely, in detail. Briefly, in July 2007, Komisarjevsky and Stephen Hayes broke into the home of Dr. William A. Petit. They forced his wife to withdraw money from a bank, brought her back, tied up, sexually attacked, doused with gasoline and burned alive her and her 11 and 17-year-old daughters. They also attacked Dr. Petit, who survived.

Two points are especially significant.

First, because there is no doubt whatsoever as to guilt of either perpetrator, this case shows clearly how the legal system has been debased into a weapon to torture already victimized loved ones of victims of the clearly guilty. Although Komisarjevsky's lawyers conceded (4) he is so dangerous that permanent incarceration is required, they sought four months for jury selection alone, followed by two more months before his trial finally begins, while accusing (3) the trial judge of "cringing accommodation to …. speed demanded by the victim…." For his part, the judge pointed out (6): "By the time the jury in this [second] case is impaneled, over four years will have elapsed since the crime."

Second, most murder victim families and trials receive very little attention; here there has been enormous coverage. However, while the coverage has been unique, the suffering inflicted by the dysfunctional nature of the American "justice" system is not unique at all. Elites – not only judges but elected legislators – have callous contempt for victims, be they publicized or unknown. Prior to signing the highly unpopular Illinois death penalty repeal, Gov. Quinn refused even to meet with the mother of a viciously raped, tortured and murdered girl. Connecticut's elected governor and legislators strove mightily to show their scorn for democracy generally and Dr. Petit particularly by trying to repeal capital punishment even before Komisarjevsky could be tried. That appears to have been temporarily averted. But those who side with murderers are relentless and promise to come back after the trial, so that the public and Dr. Petit will sooner or later receive their contempt. Repeal is "inevitable," they promise.

Much delay results from duplicitous abolitionist legislators who seek to deceive the public by voting for popular death penalty legislation only after they insert poison pill provisions to render it ineffective. Such politicians will not fix the system (8) to enable enforcement when their true goal is to make this impossible.

If prominent victims can be tortured, what chance is there for those who suffer unnoticed?

Dr. Petit, his family and friends already have endured not only agony from the barbaric crime, but also from the system. Tragically, this seems likely to continue.

TORTURING THE INNOCENT TO SAVE THE GUILTY

For years, death penalty abolitionists have tried to convince the public that there have been rampant executions of the innocent – even in recent years, with multiple layers of appeals and procedural restrictions. This repeatedly (7-19) has been refuted. In reality, nearly all death penalty litigation lasting decades (374) involves the sentence, not guilt. Even justices who have done the most to undermine capital punishment concede: "a substantial claim of actual innocence [is] extremely rare. … [C]hallenges to … death [sentences] are routinely asserted … [But] …claims of actual innocence are rarely successful."

Alleged innocence is just a convenient propaganda tool irrelevant to the true objective. Abolitionists do not oppose the death penalty for fear of executing the innocent. They oppose executing the guilty, period. Hence, they fear seeking the truth, lest it limit endless duplicative litigation to drag out any case – regardless of savagery and number of murders committed, recidivism, and overwhelming weight of evidence.

Leading opponent Bryan Stevenson called it "misguided" (25) to focus on the "wrongly convicted." Carol and Jordan Steiker warned against "too much enthusiasm" for innocence. They cautioned that DNA tests used to attack the death penalty, by claiming "exonerations," ultimately would provide additional support for and "salvage capital punishment" by establishing guilt conclusively.

So the main weapon is not to claim innocence but to incessantly manipulate the legal system, tying it in knots. Justice Scalia observed (12, 17): "It is just a game, after all." The name of the game is: *delay, delay, delay.* When sentence challenges fail, much more delay is caused by litigating execution methods (16-20) for murderers who have inflicted maximum drawn out torture on their victims. As noted, any absurd argument will do.

Endless delays not only cause huge expenditures (not necessarily more than life imprisonment) and strain judicial resources; far worse, as documented above, they further torture already victimized survivors. Opponents thereby seek to compel death penalty supporters to surrender to total abolition. Having grossly abused the system, abolitionists use that very abuse (6) as an argument to end the abuse by ending capital punishment. On March 25, PBS premiered a "documentary," *No Tomorrow*, again arguing the death penalty is too costly – based on the case of a brutal triple killer "neither sympathetic nor plausibly innocent"!

Abolitionists will never admit to having anything but compassion for victims, even purporting to act for their benefit. For example, Komisarjevky's lawyers feigned concern for the Petit family in the very flood of motions attacking that family (e.g. (6), as the "Petit posse") – contending (3) that not granting a motion would "do a disservice to… the surviving victim and the victims' loved ones and supporters." In declaring a 300-pound man's rape of an 8-year-old girl, requiring painful surgery, insufficiently depraved to warrant the death penalty, a 5-4 U.S. Supreme Court claimed (32) to lessen the victim's ordeal of aiding prosecution – as though she would not have to testify in a non-capital trial!

Gov. Corzine (NJ) said he signed a death penalty repeal to spare loved ones from being "more deeply hurt by long delays and endless appeals…."

Despite this faux concern for victims, those who most stridently oppose the death penalty as cruel and unusual punishment for the guilty have absolutely no compunction about perverting the law to impose such punishment upon the innocent. And so much the better if a public relations coup can be extracted from even a few tortured victims seemingly experiencing Stockholm Syndrome – so that, rather than protesting the abuse inflicted upon them, they submissively join their tormenters to seek abolition of the death penalty on the precise ground that it is cruel and unusual punishment for them instead of convicted murderers.

WAS THE OLD JUSTICE WORSE THAN THE NEW?

"The demands of justice have been satisfied," began the long July 1, 1882 front-page *New York Times* report on the Guiteau execution. Today, the same paper deems it injustice to execute even a presidential assassin proud of his deed. Nevertheless, countless polls show the 1882 *Times* closer to 2011 public values.

Other than abolitionists, few would deny that justice requires not only prevention of convicting the innocent

but also protecting the law-abiding and expeditiously meting out punishment deemed just by society (not judges or elite newspapers). Yet, those who now dominate the legal system have no use for an ancient maxim: "justice delayed is justice denied." For them, justice delayed *is* justice. However, Chief Justice Burger worried that delay would "drain even a just judgment of its value," thereby undermining essential public confidence in the courts.

The Sixth Amendment provides: "the accused shall enjoy the right to a speedy and public trial." Decades ago, the Supreme Court held that the right to a public trial is not confined to the accused because the public has a right to be informed. By the same token, if the securing public safety is the first duty of government, justice demands a right to a speedy trial for the public as well as the accused. On its face, it is grievously unjust when, as in the Petit case, it takes more than four years to bring to trial a defendant whose lawyers seek life imprisonment in the "public interest" while complaining about too much speed. Is that what the Constitution's Framers had in mind? Did their concept of justice intend defendants to have two rights, both to speed *and* endless delaying tactics subjecting victimized survivors to endless ordeals? Was such cruel punishment of victims "usual" when the Constitution was adopted?

Ironically, it is the innocent who benefit from speed, while interminable delay is the ally of the guilty at the expense of justice for their victims. The examples provided here, both old and new, involve the indisputably guilty. Whatever the claimed defects of the old justice system, today's safeguards (9-12) make wrongful conviction in capital cases rare at worst, leaving abolitionists in a desperate futile search for an actual execution of an innocent person. By tragic contrast, murders are far from rare: 738,000 homicides in 38 years!

Also far from rare is decades-long litigation aimed, as noted, at saving the guilty, not avoiding conviction of the innocent. The whole purpose of abolitionist tactics is to prevent all executions, using every ludicrous pretext either to void death sentences or keep murderers alive until natural death.

Is it justice when fresh victims are murdered by previously convicted recidivists, causing yet more suffering (3, 10) for loved ones? (The Petit savagery was committed by paroled recidivists.) Is it justice to inflict cruel and unusual punishment on victims in order to enable the barbaric guilty to avoid just punishment?

Surely, there is much to be said for the old legal system. Moreover, by maintaining modern protections for the innocent and abolishing judicial and legislative subterfuges to avoid justly punishing the guilty, a combination of the best of the old and the new can be created.

CONCLUSION: Surrender or Fight?

What can be done about a travesty of justice system declared "impossible to defend" by a state chief justice?

Gail Canzano and Marilyn Flax, quoted at the outset, make clear the choice: Repeal the law or enforce the law. Indefensibly surrender to the indefensible or fight to make the system defensible.

Surrender is especially unjustified because, with great consistency for a very long time, capital punishment has had overwhelming public support, notwithstanding that very many have bought the repeatedly refuted claim that innocents are executed. The only choice is to fight – to fight those fanatically devoted to brutal murderers and unconcerned about victims.

The first step in that fight is to inform the public of the intolerable abuses shown here. The media have egregiously failed. Rectifying that failure is the purpose of this article.

Lester Jackson has written articles showing how the media has enabled the Supreme Court to undermine the death penalty. He views mainstream media misrepresentation and suppression of the truth as essential to harmful judicial activism. A former college teacher, he has a Ph.D. in Political Science.
