

# Virginia death row inmates sue to stop use of electric chair

by Katherine R. Notley

For the first time since the electric chair was introduced in 1890, a U.S. court scheduled an evidentiary hearing to determine whether capital punishment by electrocution constitutes "cruel and unusual" punishment, in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution. The suit was brought last December by Virginia death row inmate Syvasky L. Poyner as a class action "on behalf of himself and all others similarly situated," in federal court in Virginia. *Poyner v. Murray*, as the case is known, "seeks injunctive and declaratory relief against the unconstitutional practices of the defendants in executing prisoners sentenced to death in Virginia by electrocution," according to Poyner's complaint.

The Virginia establishment has a lot riding on the suppression of this suit. In the eight years from 1985-93 that Mary Sue Terry was attorney general, Virginia has become internationally notorious for its rush to executions, including the May 1992 execution of Roger Keith Coleman, whose claim to innocence was very strong. Terry's last execution before resigning her post to run for governor was Charles Stamper, a man who had been confined to a wheelchair since he was crippled in a prison knifing. With this tradition of "Confederate justice," the U.S. Fourth Circuit Court of Appeals dismissed the *Poyner* suit in January 1993, in the course of hearing an appeal from Terry's office regarding a ruling on discovery. Although no dismissal had been requested, the appeals court granted it notwithstanding, terming the suit as "entirely without merit."

## A break in Loudoun County

A break came on Feb. 11 in a capital murder case being heard in Loudoun County, in northern Virginia. Loudoun County Chief Circuit Judge James Chamblin agreed to hold a hearing on whether Virginia's electric chair violates the Eighth Amendment. The five-day pre-trial hearing was set for Feb. 22 in the case of Curtis White, who maintains he is innocent, and would have been the first time in the United States since 1890 that a judge would hear expert testimony on whether the process of electrocution tortures the prisoner before killing him. Chamblin denied Commonwealth's Attorney William Burch's request to cancel the hearing because of the Fourth Circuit's dismissal of *Poyner*. According to the *Richmond Times-Dispatch*, Burch argued that the U.S.

Supreme Court "held more than 100 years ago . . . that death by electrocution is not unconstitutional. The Supreme Court has never deviated from the holding, and, put simply, the constitutionality of execution is not open to debate." Burch's office was seeking \$20,000 in state funds to argue on behalf of the electric chair.

However, Chamblin said in his ruling: "There's just, for some reason, some sort of blind adherence to this rule that came up from the decision of the U.S. Supreme Court back in 1890, that it's not cruel and unusual punishment for execution by electrocution." That ruling was reached, he continued, before the electric chair had ever been used, "without any real findings of fact, without any real factual basis to support it. And certainly science and technology have advanced an awful lot since 1890. And I feel that somewhere a court has got to hear the evidence of what the state of the art is now on the effect of electricity on the human body during the course of execution by electrocution in Virginia."

Within 45 minutes of Judge Chamblin's decision, prosecutor Burch claimed to have discovered "new evidence" which led him to reduce the capital murder charge against Curtis White to first-degree murder, thereby making the hearing moot. Burch refused to comment on the new, mitigating evidence, except to say that he may charge another person. If mitigating evidence does exist, Burch may have intended to suppress it to hang a capital conviction from his belt. Suppressing exculpatory evidence is not new to Burch: According to former Loudoun County Sheriff's Deputy Doug Poppa, he presented evidence to Burch and to Sheriff John Isom showing that Middleburg resident William Douglas Carter was innocent of "malicious wounding" of his ex-wife. That evidence was never provided to the defense or presented at trial, and Carter spent four years in prison before being acquitted in a second trial, last year.

This is serious enough in a case like Carter's, but in Virginia capital murder cases, i.e., where the defendant is facing the death penalty, the defense only has 21 days after conviction to present new evidence that would merit a retrial, a procedure that cost Roger Coleman his life last May. Now the U.S. Supreme Court has upheld such outrageous "procedures," over and above claims to innocence, no matter how compelling.

## Back to the Fourth Circuit

Lawyers for Poyner returned to press the Fourth Circuit Court of Appeals to reconsider its January dismissal of the class action suit. On Feb. 12, attorney Harry M. Johnson III informed the Fourth Circuit that the Loudoun court had ruled that such an evidentiary hearing was necessary and appropriate. Said Johnson: "The court's ruling is especially significant because, only 45 minutes after . . . [Judge Chamblin] explained why he felt compelled to hear evidence about electrocution in Virginia," the prosecutor notified Chamblin that he "was 98% sure" he would be dropping the capital murder charge that had been pending for six months. By reducing the charge, Johnson wrote, "the Commonwealth . . . avoided defending the constitutionality of Virginia's electric chair." The Fourth Circuit denied the motion for reconsideration on Feb. 17.

Poyner, for whom no execution date had been set, is now scheduled to be executed in Virginia's electric chair on March 18.

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## Documentation

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*The following excerpts are from the federal class action suit Poyner v. Murray, filed on Dec. 10, 1992 in Richmond, Virginia.*

### V. Factual allegations

#### Count I

15. The Commonwealth of Virginia uses electrocution as its method of execution. Electrocution involves passing electrical current through the human body until the condemned person is dead. Electrocution was heralded as providing an instantaneous and hence humane and painless death when invented in the late 19th century, but modern medical and scientific evidence demonstrate that it provides neither. Execution by electrocution results in the wanton and unnecessary infliction of pain: Death by electrocution is tantamount to being burned or cooked alive. . . .

17. In general, if the voltage applied to a resistor is too great, the latter will burn out or explode.

18. The objective of the Commonwealth in electrocuting the condemned person is to kill him without causing his body to explode and without allowing the witnesses to see indicia of suffering on his part.

19. The defendants and the Commonwealth strap the condemned person into the chair at the arms, the trunk, and the legs. A mask is placed over his face so that the witnesses will not see the effects of the current reflected upon it. Moreover, the Commonwealth equips him with a diaper to prevent

the witnesses from becoming aware of the effects of the electrical charge on his bladder and bowels.

20. The defendants and the Commonwealth apply one electrode to the condemned person's head, which has been shaved. Between the head and the electrode, the defendants and the Commonwealth place a sponge soaked in a briny solution. The electrode is to pass current against the scalp of the subject, the sponge is to secure the contact and theoretically to alleviate burning of the scalp, and the brine is to improve the conductivity of the sponge.

21. A second electrode (with brine-soaked sponge) is placed on one of the subject's legs.

22. The defendants and the Commonwealth must recognize that the continuous and repeated application of electricity to a conscious human body is extremely painful, and that to apply electricity in such a manner intentionally would constitute cruel and unusual punishment within the meaning of the Eighth Amendment.

23. Therefore, the avowed objective of the defendants and the Commonwealth is to pass sufficient current through the body and brain of the condemned person to render him brain dead or at least instantaneously unconscious without unduly disfiguring the body.

24. However, no one knows the amount of voltage needed to render the condemned person instantaneously unconscious, and the law of the Commonwealth leaves it up to the Director or his designee to determine how much voltage to use. It provides him with no guidelines in this respect.

25. No testing is done to determine resistance of the body of the person to be electrocuted. Hence, the Director or his designee must guess at the amount of voltage to apply to the condemned person.

26. The human skull is a very poor conductor of electricity. Human skin is also a poor conductor, but sweat on the outside of the skin is an excellent conductor, given that it is essentially salty water.

27. Most, if not all, persons strapped into the electric chair waiting execution, sweat.

28. Electrical current seeks the path of least resistance. Therefore, a far greater portion of electrical current passes along the prisoner's skin than through his skull, body and brain as it travels to the electrode on his leg.

29. Hence, in spite of the voltage applied, relatively little current goes through the prisoner's brain.

30. The effect is to burn the condemned person's skin at extreme temperatures while he is awake and conscious for an indeterminate period. Copies of photographs of the body of Robert Wayne Williams, executed in Louisiana, attached hereto as Exhibit 1, provide some understanding of the burns that can be inflicted by the electric chair. . . .

31. The heat generated by the passage of current across the body eventually brings the blood to a boil and results in the brain being cooked.

32. The prisoner ultimately dies from asphyxia and

cardiac arrest.

33. Sufficient current can be applied to a human being to kill him instantaneously. However, the amount of current would be so great that the body would be very badly burnt and might well explode.

34. The Director or his designee therefore essentially guesses at the voltage that should be applied to kill the condemned person without creating a mess. Generally, the Director or his designee errs on the side of avoiding the latter.

35. The pain experienced by the condemned person is evidenced by:

- (a) third-degree burns to the flesh;
- (b) drooling and vomiting;
- (c) defecation and urination;
- (d) convulsions;
- (e) grimaces and dilated pupils.

36. The painful effects of electrocution described above are concealed from spectators by the mask, diaper and restraints on the prisoner.

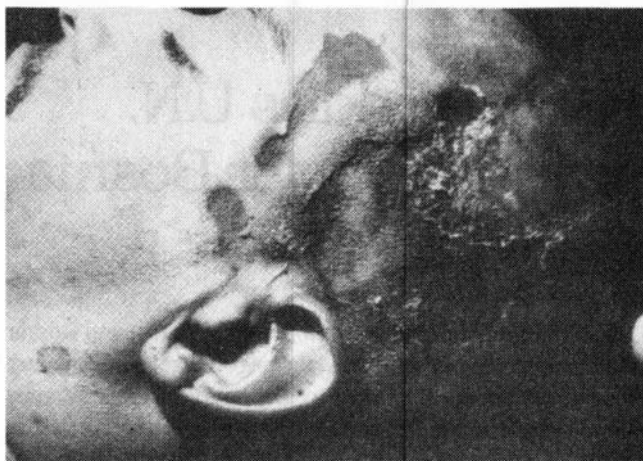
37. Because the nervous and motor systems of the body are separate, the muscles can be rendered immobile while the nervous system retains its ability to register pain. During the application of electricity, the condemned person's nervous system and brain remain relatively intact, allowing him to feel pain. His muscles, however, are fully contracted by the electrical shock. The involuntary contraction of the condemned person's muscles itself causes intense pain. After he lurches forward with the initial jolt of electricity (a phenomenon almost invariably noted by witnesses), he cannot move but can still feel the indescribable pain inflicted by the electrical current travelling over and through his body. . . .

#### Count II

. . . 39. The defendants and the Commonwealth are deliberately indifferent to the fact that they are torturing the Commonwealth's condemned prisoners, as they are aware or must be deemed to be aware of the facts set forth herein and have not even attempted to alleviate the resulting problems.

40. The technology of executing people by administering jolts of electricity externally to the head is antiquated. The defendants and the Commonwealth are aware of a large number of botched executions, both within and without Virginia.

41. The defendants and the Commonwealth are aware that the use of Virginia's chair has resulted in several gruesome executions. Flame and smoke erupted from the head of Frank J. Coppola when he was executed. More recently the executions of Wilbert Lee Evans and Derick L. Peterson were botched. Both men died prolonged, lingering, agonizing deaths, as observed by eyewitnesses and reflected by physical evidence. Blood and other bodily fluids gushed out from under Evans' mask during his execution, and his autopsy revealed burns not only at the points of the electrode contact, but on other parts of his body as well. Peterson was not killed by the first jolt of electricity, and witnesses observed him wheezing and moaning. It took the defendants



*Louisiana electric chair victim Robert Wayne Williams, showing the first, second, third, and fourth degree burns on his scalp. Prosecutors such as William Burch in Loudoun County, Virginia consider a string of capital convictions good "career moves," so long as the public is "protected" from seeing the barbarity of the death sentence.*

and the Commonwealth over 12 minutes to execute Peterson.

42. In response to the botched execution of Peterson in August 1991, the defendants and the Commonwealth decided that in all future executions they would administer two separate two-minute series of electrical jolts. The defendants and the Commonwealth adopted this procedure because they recognized that the first jolt of electricity often does not kill a condemned person and that death by electrocution is not immediate. . . .

44. Virginia's operating and testing procedure for its equipment are primitive. The operating procedures promulgated by the Department of Corrections provide that the brine solution in which the sponges are soaked shall consist of five gallons of water and "approximately three (3) pounds of table salt." . . . In order to determine whether the brine is sufficiently saline, the defendants and the Commonwealth place "a fresh egg in its shell in the solution. If the egg will float, the solution is correct." . . .

45. The Commonwealth in the past has failed to provide requested information on the composition of the execution teams, and hence, the expertise of these persons cannot be gauged. However, a review of the relevant parts of the Institutional Operating Procedures (No. 426.1) reveals that no special expertise is required of its members. . . .

WHEREFORE, plaintiff on behalf of himself and the class prays that the Court: (1) declare Va. Code § 53.1-233 and the actions of the defendants unconstitutional in violation of the Eighth and Fourteenth Amendments' prohibition against cruel and unusual punishment; and (2) enjoin the defendants from using electrocution as a method of carrying out death sentences.