



Death Penalty Information Center

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## **U.S. Supreme Court Narrowly Upholds Kentucky's Lethal Injection Process**

After Ruling on Kentucky, Litigation in Other States Will Continue;  
Some Executions May Resume

WASHINGTON, DC – In a narrow ruling today, the U.S. Supreme Court upheld Kentucky's process of lethal injection. The holding does not exclude challenges to lethal injection procedures in other states. As Justice Stevens noted in his concurring opinion: "When we granted certiorari in this case, I assumed that our decision would bring the debate about lethal injection as a method of execution to a close. It now seems clear that it will not."

"The record on lethal injections was sparse in Kentucky," said Richard Dieter, Executive Director of the Death Penalty Information Center. "They had only carried out one lethal injection. Other states have had repeated problems with this process and the risks of extremely painful executions have not been removed by this decision."

The Court's decision today may bring an end to the de facto moratorium on executions that has been in place since September 2007. The Court had not issued a moratorium on all executions. Nevertheless, the practical effect of the Court's consideration of the case was that executions had been put on hold.

In cases around the country, lawyers for death row inmates are expected to go forward with arguments that the three-drug method of lethal injection poses an unnecessary risk of excruciating pain, increasing the risk of a tortuous death. Those performing the executions are often poorly trained in administering drugs. And information is hard to come by since lethal injection procedures are often shrouded in secrecy and protected from oversight.

"States and the federal government have cloaked their lethal injection procedures in secrecy, effectively removing public scrutiny from what should be a wholly transparent process," said Ty Alper, Associate Director of the Death Penalty Clinic at U.C. Berkeley

School of Law. "But the discovery process has revealed alarming problems with the administration of lethal injection in many states, and nothing in today's decision prevents the lower courts in those states from addressing those problems under the Eighth Amendment."

Lethal injection is used in 35 of the 36 states with the death penalty and in executions by the U.S. Military and the U.S. Government. Nebraska is the only state that does not use lethal injections, and executions by electrocution were recently found unconstitutional there. There are 14 states that do not have the death penalty.

The Court's ruling and the possible resumption of executions comes at a time when Americans have become increasingly uneasy about the death penalty and are reexamining its use. Death sentences are down 60% in the past 7 years and executions had been dropping even before the lethal injection controversy because of other pervasive problems that continue to exist.

Americans have become increasingly concerned that innocent persons have been put to death. They are disturbed by the exoneration of 127 death row inmates since death sentences resumed in 1973. They are also bothered when they learn about the hundreds of millions of dollars spent on the death penalty. Support for life without parole as an alternative to the death penalty has been growing. The state of New Jersey repealed its death penalty in December 2007, substituting a sentence of life without parole.

For more information on the death penalty or to speak to Richard Dieter, contact The Death Penalty Information Center, 202-289-2275. For information on other lethal injection challenges, contact: Elisabeth Semel, Director, Death Penalty Clinic, University of California, Berkeley School of Law, 510-642-0458, 510-701-1212 (cell), [Esemel@law.berkeley.edu](mailto:Esemel@law.berkeley.edu). Or Ty Alper, Associate Director, Death Penalty Clinic, University of California, Berkeley School of Law, 510-643-7849, 510-593-4227 (cell), [talper@law.berkeley.edu](mailto:talper@law.berkeley.edu).

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