



Death Penalty Information Center

MEDIA ADVISORY
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CONTACT: Erin Wallace
(202) 289-2275
ewallace@deathpenaltyinfo.org

Federal Court Poised to Issue Groundbreaking Ruling on Lethal Injection

Serious Problems Found in Methods Used Around the Country

Washington, DC – Judge Jeremy Fogel of the federal District Court for Northern California is expected to issue an important ruling on the constitutionality of California's lethal injection process in about one week. Judge Fogel's decision follows one of the most extensive explorations into this issue, with multi-day hearings involving experts from around the country. California's execution process has been in abeyance as the state awaits the ruling in the case of Michael Morales. Morales' scheduled execution was stayed at the 11th hour in February when doctors engaged by the state of California declined to participate in the lethal injection process.

Testimony regarding the risks of torturous and botched executions has emerged from reviews being conducted in many different states:

- In **California**, the room where the lethal drugs are administered through IV lines is so dark and crowded that it is impossible to identify who is there or who is being handed syringes. The IV bags containing the lethal drugs are hung so high that they cannot be identified, and a flashlight is needed to record in writing.
- In **Maryland**, an anesthesiologist testified that those designated to carry out lethal injections were unprepared and unqualified, and that their knowledge of the lethal injection process was grossly inadequate. The retired state trooper responsible for injecting lethal doses of drugs into IV lines said he had never before seen the Maryland Execution Operations Manual.
- In **Missouri**, the doctor who supervised the lethal injection process suffered from dyslexia and admitted to making mistakes identifying drugs and numbers.
- During a recent execution in **Ohio**, the inmate on the gurney had to shout to the guards, "It's not working, it's not working."

- Other concerns about the lethal injection process have led to stays of execution in **Delaware, Arkansas, New Jersey, and South Dakota**, in addition to **California, Maryland, and Missouri** where federal hearings have been held on this matter.

In contrast, executions involving virtually the same drugs and procedures have gone forward in other states without the benefit of extensive hearings that took into account recent developments from the scientific community. Florida executed Clarence Hill without an evidentiary hearing, despite the fact that Hill's appeal to the U.S. Supreme Court had been unanimously granted, thereby allowing all death row inmates to raise the lethal injection issue as a civil rights matter in federal courts. Texas has conducted 22 executions this year using lethal injection, about half the total in the country. Ohio, North Carolina, and Oklahoma have proceeded with executions after making minor modifications to their lethal injection process.

Deborah Denno, a professor of law at Fordham University School of Law and one of the nation's leading experts on the execution process, pointed out that the often haphazard oversight of state executions contrasts with the careful norms of the veterinary profession:

The euthanasia of animals in this country is a highly regulated and evolving process, based on strict guidelines periodically revised and modernized by the American Veterinarian Medical Association. In sharp contrast, lethal injections for inmates are inhumanely archaic, secret, and unsupervised – using decades-old drugs long disfavored by veterinarians for their dangerousness as well as shockingly untrained executioners. Judge Fogel's decision will not just be a statement about the moral progress of California but also about where this country stands on the all important issue of human rights.

Judge Fogel's ruling, as well as expected rulings in Missouri and Maryland, will likely be watched by other courts and by the U.S. Supreme Court, which may someday have to resolve this issue. A case on the national level would benefit from a full exploration of this issue in all states that face this question.

For further information, see DPIC's Web page on lethal injection, <<http://www.deathpenaltyinfo.org/article.php?did=1686&scid=64>>, including reference to Judge Fogel's additional questions for the parties following the hearings. See also the Boalt Law School's site of legal briefs and decisions on this issue at <<http://www.deathpenaltyclinic.org/>>. Prof. Denno can be contacted by phone at 212-636-6868 or e-mail: ddenno@law.fordham.edu. To schedule an interview with Richard Dieter, DPIC's Executive Director, call Erin Wallace at (202) 289-2275 or e-mail her at ewallace@deathpenaltyinfo.org. After hours, Mr. Dieter can be reached at (301) 943-1402.

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