

FILED

UNITED STATES COURT OF APPEALS

SEP 06 2010

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CAL COBURN BROWN,

Plaintiff - Appellant,

v.

ELDON VAIL,

Defendant - Appellee.

No. 10-35771

D.C. No. 3:09-cv-05101-JCC
Western District of Washington,
Tacoma

ORDER

Before: KOZINSKI, Chief Judge, and BERZON, Circuit Judge.

We deny the motion for an emergency stay of execution, and disagree with the dissent that the Appellant is entitled to further information about the qualifications and training of the members of the lethal injection team. See Baze v. Rees, 553 U.S. 35, 55 (2008) (plurality opinion).

Judge **REINHARDT**, dissenting:

I believe that the Appellant is entitled to further information about the qualifications and training of the members of the lethal injection team, and would remand so that the Superintendent may provide such further information. I believe

that this could be accomplished prior to the time we would be required to vote on the emergency stay. I would therefore issue an Order to require the Superintendent to provide the requisite information. I believe that a vote on the stay prior to Brown's receipt of that information is premature.