

Secrecy Behind Executions

By THE EDITORIAL BOARD JAN. 29, 2014

It is bad enough that the death penalty is barbaric, racist and arbitrary in its application, but it is also becoming less transparent as the dwindling number of death-penalty states work to hide the means by which they kill people.

The increased secrecy around lethal-injection drug protocols is only the latest tactic of pro-death-penalty legislators and corrections officials around the country. In Missouri, this secrecy was upheld last week by a federal appeals court, which denied a condemned inmate's constitutional claim that he is entitled to basic information about the drugs that would be used to put him to death.

Herbert Smulls was executed late Wednesday for the 1991 murder of a jewelry-store owner. Missouri refused to name the pharmacy or pharmacies involved in producing the execution drugs.

Missouri's secrecy, along with new legislation in states such as Georgia and Tennessee, is a response to a mounting "crisis" in death-penalty states: Because many drug manufacturers now refuse to supply drugs for use in executions, states are scrambling to replenish their stocks. This often means turning to compounding pharmacies, which exist in a largely unregulated world.

In 2011, the Drug Enforcement Administration seized Georgia's supply of one lethal-injection drug after concerns that it had been illegally imported from Britain. And last fall, Louisiana officials sought to buy drugs from an Oklahoma pharmacy, the Apothecary Shoppe, which was not licensed to provide drugs in Louisiana.

There have been multiple reports of previously untested drug combinations leading to botched executions, which is a polite way of saying the condemned person suffered greatly while being put to death. (On Jan. 16, an Ohio man, Dennis McGuire, appeared to gasp and choke after being administered a new combination of lethal-injection drugs.) States should simply admit that they don't really know how these drug protocols will work, but instead they have tried to hide almost all information about the drugs and who makes them — increasingly through legislation.

Some courts have had little patience for this behavior. In July, a Georgia judge issued a last-minute stay of execution to one inmate, reasoning that the state's secrecy law "makes it impossible" to show that the drug protocol violates the Eighth Amendment.

But, on Friday, the United States Court of Appeals for the Eighth Circuit ruled that Mr. Smulls had no constitutional claim against Missouri's practice because he had not demonstrated that the "risk of severe pain" from the state's intended drug protocol would be substantially greater than a readily available alternative. As the dissent argued, this "places an absurd burden on death row inmates," who must identify "a readily available alternative method for their own executions," even though the state won't let them see the method it plans to use.

Meanwhile, Missouri and other states race to execute inmates using new and untested drug protocols developed on the fly and under a cowardly shroud of secrecy. Mr. Smulls was the third inmate executed in Missouri since November. In some states, lawmakers have even proposed reintroducing older execution methods, such as the firing squad and electrocution, so as to avoid the escalating legal battles over lethal injection.

In the end, the argument over what is the most "humane" way to kill someone only obscures the larger point, which is that, in the 21st century, the United States has no business putting people to death by any means. Public support for capital punishment has reached a 40-year low, and virtually all other Western societies have rejected it. It will end here, too, but not until this despicable practice is dragged out into the open for all to see.

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