



# Problems in Death Penalty Administration

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# Problems in Death Penalty Administration

- Perceptions shift with each botched execution or high-profile criminal atrocity
- Most of nation trends away from the death penalty; some states committing more fully
- Society has a moral & legal obligation to ensure that executions comply with the text of the Eighth Amendment and Supreme Court rulings
- *Suspensions, moratoriums, new legislation, case examples*

# Supreme Court limits & societal changes

- Transition from public executions to small functions witnessed by limited number of chosen witnesses
- Supreme Court winnowed down the thousands of death-eligible offenses to a small range
- Other limits: offender age & mental capacity
- *States are drafting legislation to challenge limits on juveniles, non-murder offenses, non-unanimous death verdicts*

# History's role in limiting Execution

## Supreme Court's 'historical interpretation test'

- Forbidden: Any method of execution banned before or at the time of the Eighth Amendment's ratification (1791)
- Permitted: Forms of execution either not banned in 1791 or created thereafter (hanging, firing squad, gas chamber, or electrocution)

# Methods of Execution in the United States

Currently approved by the federal government or one or more states:

- Electrocution
- Gas chamber
- Firing Squad
- Lethal Injection

Each of these methods has history in and justification by the states for access to resources, ease / difficulty of execution, and likelihood of success.

# Primary Execution Method

## Lethal Injection

- Successor to earlier methods & most used
- Multidrug “cocktail” of sedative, paralytic, & lethal compound
- Training intensive
- Requires quasi-medical skills & knowledge
- *Many & severe problems of administration between training, administration, dramatic failures, and availability of cocktail ingredients*

# “Alternate” Execution Methods

- Electrocution – equipment & training intensive, removed from public view (limited audience), gruesome failures
- Gas chamber (lethal gas inhalation) – equipment & training intensive, ruled by some courts to be cruel & unusual as prisoners were seen struggling & gasping for air; gas poses risk to staff.
- Firing Squad – known & proven technology, resources readily available, may be more merciful

# New method of execution #1

- Small number of states proposed use of seized opioids as readily available method of execution
- Public reception was poor – if opioids are a scourge on society, politically unacceptable to execute with the drugs that have killed so many loved ones.
- Some legislators opposed any method of execution perceived as pleasant, pleasurable, or giving a “high” to condemned prisoners.



# New method of execution #2

- Small number of states have passed legislation allowing new method: nitrogen hypoxia
  - No blood or fluids
  - Limited equipment & training needs
  - Painless, preserves dignity
  - Plentiful gas that is non-toxic
  - Well-understood biological events
  - Untested & unproven (originates in veterinary practices)

# Issues of nitrogen hypoxia

- Inadvertently proven in industrial & cargo hold accidents, first-responder incidents, scuba diving accidents, and public works failures
- Will this meet the “evolving standards of decency” of *Trop v. Dulles*, 356 U.S. 86 (1958)?
- Test the Marshall Hypothesis – concurrence in *Furman v. Georgia* (408 U.S. 238, 1972) by Justice Marshall that information about the administration and effects of the death penalty would cause those who support capital punishment to reject it as unfair and ineffective.

# *Thank You!*

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