
Incompetent Administration

Former San Quentin Warden Ornoski testified that a “‘successful execution’ is simply one where ‘the inmate ends up dead at the end of the process.’ When asked whether he considered a successful execution to mean anything else, he responded, ‘I’m thinking not.’”

Morales v. Tilton, 465 F. Supp. 2d 972, 983 n. 14 (N.D. Cal. 2006)

The Problems

- Deficient and Nonsensical Procedures
- Inadequate screening
- Unqualified personnel
- Poor conditions



Examples of Deficient and Nonsensical Execution Procedures

Tennessee

Called a “cut and paste job” by Gov. Phil Bredesen, written procedures – used as recently as 2006 – included instructions lifted directly from the protocol for execution by electrocution, e.g., checking electrodes, activating the electrical control panel, and disconnecting “electrical cables in rear of chair.”

Sheila Burke, Tennessee Will Left Ban on Executions, Tennessean, May 1, 2007, at 1A; State of Tenn., Manual of Execution: Lethal Injection, at 35-36 (Oct. 1, 2006) (rescinded by Executive Order Feb. 1, 2007).

North Carolina and Oklahoma

Protocols called for the administration of the anesthetic drug after the inmate has already been executed.

Aff. of Marvin L. Polk at 2, Page v. Beck, No. 5:04-CT-04-BO (E.D.N.C. Jan. 6, 2004); Decl. of Dr. Mark J.S. Heath at 17, Patton v. Jones, No. 06-591 (W.D. Okla. July 27, 2006).

Federal Government

Revised protocol calls for the use of a “blank” IV line connected to an empty container, not to the inmate, ostensibly to protect execution team members from knowing which member is administering the drugs into the inmate. The procedure, which requires the administration of as many as 20 extra drug syringes, “would only accomplish its apparent purpose if the executioners had been so poorly trained that they could not tell the difference between injecting a syringe into an empty container and injecting a syringe intravenously into a human being.”

Amicus Brief for Michael Morales, Michael Taylor, et al., In Support of Petitioners, Baze v. Rees, at 19-20, citing publicly filed documents in Roane v. Gonzales, No. 05-2337 (D.D.C. Sept. 7, 2007).

Examples of Inadequate Screening

Missouri

Missouri entrusted the overhaul of its lethal injection procedures to “Dr. Doe,” a surgeon, who was also responsible for mixing the drugs and supervised 54 executions.

Tr. of Test. of John Doe No. 1, at 19-20, 22, Taylor v.

Crawford, No. 05-4173 (W.D. Mo. June 5, 2006); Jeremy Kohler, Behind the Mask of the Execution Doctor, St. Louis Post-Dispatch, July 30, 2006 at A-1.

Dr. Doe never created a written execution protocol, varied the amount of thiopental without informing anyone, and, reduced the amount of thiopental by at least half when a change in the drug packaging led him to “improvise.” He could not say how much thiopental he had administered in any particular execution. Dr. Doe is dyslexic and admitted that “[i]t is not unusual for me to make mistakes,” such as transposing numbers.

Tr. Test. of John Doe No. 1, at 9-12, 14-18, 24-25.

By his own estimate, Dr. Doe has been sued for malpractice more than 20 times and reprimanded by the state’s medical board for concealing the law suits from hospitals where he was a treating physician.

Jeremy Kohler, Behind the Mask of the Execution Doctor, St. Louis Post-Dispatch, July 30, 2006 at A-1.

Examples of Inadequate Screening, cont'd

Missouri, cont'd

Although well aware of Dr. Doe's record, the Missouri Attorney General fought to keep Dr. Doe's identity a secret and had every intention of allowing him to continue to carry out executions.

Jeremy Kohler, Behind the Mask of the Execution Doctor, St. Louis Post-Dispatch, July 30, 2006 at A-1; Trial Tr. of Larry Crawford, Director, Mo. Dept. of Corrections, at 387-392, Taylor v. Crawford, No. 05-4173 (W.D. Mo. June 13, 2006).

The U.S. District Court for the Western District of Missouri ordered that Dr. Doe "shall not participate in any manner, at any level in the State of Missouri's lethal injection process." After the State appealed that order, the Attorney General agreed that Dr. Doe would no longer participate in Missouri's executions.

Taylor v. Crawford, No. 2:05-CV-04173:FJG, at 2, (W.D. Mo. Sept. 12, 2006) (Order); Letter from Michael Prichett, Assistant Attorney General of Missouri, to Michael Gans, Clerk, U.S. Court of Appeals, 8th Cir. (Apr. 17, 2007).

Examples of Inadequate Screening, cont'd

Federal Government

The Federal Government selected the same Dr. Doe to develop execution procedures and administer lethal injection executions, including placing and monitoring IV lines, and monitoring levels of consciousness.

Pls.' and Intervenor Pls.' Opp'n to Def.'s Mot. and Corrected Mot. for J. on the Pleadings and Mot. to Lift the Stay of the Pls.' Executions at 38-40, Roane v. Gonzales, No. 05-2337 (D.D.C. Oct. 10, 2007) (redacted version, publicly filed).

Examples of Inadequate Screening, cont'd

California

No warden or supervisor ever reviewed any of the execution team members' qualifications, experience, training or personnel files.

Am. Joint Pre-Hr'g Conf. Statement, at 3-4, Morales v. Tilton, No. C06-0219, C06-926 (N.D. Cal. Nov. 27, 2006).

A prison guard who was disciplined for smuggling illegal drugs into San Quentin Prison was later appointed the execution team leader.

Id. at 3.

Tennessee

The department of corrections did not screen for substance abuse or psychological disorders, despite the fact that one team member had a history of both.

*Harbison v. Little, 2007 WL 2821230, at *15 (M.D. Tenn. Sept. 19, 2007).*

qualifications — and whether Missouri was delivering unconstitutionally cruel punishment in its death chamber.

Doerhoff's reprimand was no secret to Attorney General Jay Nixon's office. Nixon's office, which fought to keep Doerhoff's identity a secret in death penalty appeals, signed off on the discipline.

From 2000 to 2004, the board doled out the same or worse discipline to only 2 percent of the state's practicing physicians.

A public reprimand can have bad consequences, veteran physicians say. It may be a red flag that causes a hospital to investigate further before conveying privileges.

Typically, if a doctor is cited for concealing malpractice complaints, it could signal to an insurer that "maybe his skills are not what they're looking for," said Dr. Robert Gibbons, president of the Metropolitan Medical Society of Greater Kansas City.

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BLOG: Missouri's execution doctor unmasked: What's your reaction?

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**Execution doctor stays secret
Cruel and unusual**

"Doctors don't take it lightly," he said.

But the rebuke from one arm of Missouri government did not affect Doerhoff's status with another arm, the Department of Corrections.

Even after the reprimand, Doerhoff, who had supervised 48 executions, continued to supervise six more. And he had prepared injections for a seventh — Michael A. Taylor, who raped and murdered a teenager in Kansas City in 1989. It was Taylor's appeal that led to Gaitan's landmark order.

A deeper dive into court records shows that Doerhoff made false statements in at least two different court cases about his history of mistakes.

In one case, he was to be the expert witness for a woman suing a Tennessee surgeon in Nashville for allegedly botching a bladder repair. But lawyers dropped the suit just before the trial when the judge ruled that he would allow evidence that Doerhoff had misrepresented a disciplinary action taken against him.

No problem for ex-director

Gary B. Kempker, who served as director of the Missouri Department of Corrections under Gov. Bob Holden from 2001 to 2005, said he spoke with Doerhoff before each of the 16 executions over that time.

He said he never knew Doerhoff had a disability or had been reprimanded by the Board of Healing Arts.

Doerhoff had been involved with executions long before Kempker took over as director, he said, and Kempker said he saw no reason to question or replace the doctor.

Doerhoff's role was to supervise the injections, but he did not push the plunger.

Kempker, a former police chief in Jefferson City, said he had known Doerhoff from living in the same small city. He also knew other members of Doerhoff's family, prominent professionals who included Doerhoff's wife, Adelia, an anesthesiologist, brother Carl, a general surgeon, and brother Dale, former president of the Missouri State Bar Association.

Alan Doerhoff was the only one of them involved in executions, Kempker said.

"He had been trusted by the Department of Corrections for a long time," Kempker said.

"I would say it was very humane and it was a process that I . . . know all the staff took extremely seriously about our legal mandate," he said.

'I don't do them'

When a reporter approached Doerhoff at his home Thursday and asked about his role in executions, he said, "Read my lips: I don't do them." Then he shut the door.

The Post-Dispatch asked Friday to speak with Attorney General Jay Nixon about his office's defense of Missouri's lethal-injection process, its efforts to conceal Doerhoff's identity in court and whether he knew about the reprimand.

The department said Nixon was unavailable, but issued this statement:

"The doctor who administers this procedure was hired and retained by the Department of Corrections. We will continue to defend this method of execution against constitutional challenges. All questions about the qualifications of this doctor would be better addressed by those who hired and retained him."

Larry Crawford, the director of the Department of Corrections appointed by Gov. Matt Blunt in January 2005, did not respond last week to a request to be interviewed.

The Post-Dispatch asked the department July 17 for records of the state's payments to the physician who supervises the lethal injections. The Missouri Sunshine Law requires public bodies to respond to requests for records within three days; the cause of any delay beyond that must be explained in detail.

The department, through its spokesman Brian Hauswirth, responded three days later that it was gathering records and needed seven working days to review them. It has not responded to the newspaper's requests to explain the delay.

In a previous interview, Crawford said that he was concerned that revealing the execution doctor's identity would expose him to harassment, even put him in physical danger.

Crawford said he was grateful to have a doctor participate in something that most physicians avoid as a matter of medical ethics.

Kent Gipson, of the Public Interest Litigation Clinic in Kansas City, questioned exactly what the state sought to protect with its secrecy. He suggested, "It was to hide the embarrassment of hiring somebody with that many problems."

Said Gipson, who has represented Missouri inmates appealing death sentences, "It sounds to me that if that's the best they can do, that's sort of a sad commentary on how the department does business."

Lawsuits and settlements

According to statements Doerhoff made in regard to Taylor's appeal, corrections officials first consulted with him in 1989, when George Mercer became the first Missouri inmate to be executed in 24 years. The state had purchased a lethal injection machine. Doerhoff said he suggested changes to the injections planned for Mercer.

In his deposition, Doerhoff said he overhauled Missouri's lethal-injection protocol at the request of corrections officials after a debacle on May 3, 1995, when it took more than 30 minutes for the state to execute Emmitt Foster.

Foster "was a drug addict and they could not get an IV line in," Doerhoff explained in the deposition. "They finally put the needle in his thumb . . . so it was a prolonged execution which caused a lot of embarrassment and it should not have happened."

He then stayed on as a long-term contractor. In court filings, he described his role as preparing the injections, inserting the intravenous line, ensuring proper functioning of medical equipment and providing medical support for the offender and witnesses. Other staffers actually injected the drugs, he wrote.

Doerhoff spoke in a malpractice suit filed against him about what else was happening in his life during 1995: He had a heart attack, he was \$4 million in debt and was depressed.

On top of that, a woman sued Doerhoff in St. Louis Circuit Court that May, alleging that he was having sex with her while she was under his care, that he performed an operation to restore her virginity and other sex-related procedures, and that he gave her an abortion in a Jefferson City hotel room.

The case was settled with the woman being paid \$100,000 in an agreement in which Doerhoff admitted no wrong, according to court records. She suggested in a recent interview that her lawyer fabricated some of the claims.

In a 1998 deposition, Doerhoff said he had been sued about 20 times after as many as 35,000 surgeries. He mentioned a settlement paid in one, and other records show at least four more settlements plus a judgment for \$262,000 that he appealed and lost.

Operated on inmates

Doerhoff's work for the Department of Corrections goes back to at least the mid-1970s. He and his brother, Carl Doerhoff, had a contract to perform surgeries on Missouri prisoners. Each also has served as medical examiner in Cole County, a title Carl Doerhoff now holds.

Contacted by phone, Carl Doerhoff said he had no knowledge about who may have been involved with executions, and otherwise declined to comment.

Alan Doerhoff participated in more than half of Missouri's executions — 54 out of 105 — since the Department of Corrections took over the responsibility from counties in 1938.

Records indicate the Department of Corrections paid him \$33,020 since mid-2001, typically in checks of \$2,000 that were issued a few weeks to a few months after each of the past 17 executions. Earlier pay records were not available.

Doerhoff has testified that he brought special knowledge to the death chamber. "I was the only physician available anywhere to ask about how and what," he said in a deposition in Taylor's appeal. "No one has any experience (with the execution drugs) so I have to be the authority, I guess."

It was that deposition in June that led to a moratorium on Missouri executions. A U.S. Supreme Court decision made it easier for death-row inmates to file suits challenging lethal injection as unconstitutionally cruel and unusual punishment.

Lawyers for Missouri's condemned inmates have seized upon that issue in the past year, claiming that Missouri inmates were not being sufficiently numbed before the final two injections in the three-drug cycle. The reasoning is that if the condemned is not properly numbed by the first drug, paralysis from the second could make it impossible to communicate pain from the third.

The argument gained traction with Gaitan after the state acknowledged during Taylor's appeal that its own logs of the chemicals given to prisoners were incorrect. Over Nixon's objection, Gaitan allowed Taylor's legal team to depose Doerhoff.

To comply with an earlier protective order that sealed Doerhoff's identity, Gaitan allowed Doerhoff to testify from behind a screen and arranged for identifying references to be blacked out of public records.

Though court records have cloaked his name, they left enough clues to identify Doerhoff. Interviews with three men who had official roles at executions, including Kempker, confirmed Doerhoff's name.

Misrepresentations

Some of Doerhoff's problems are a matter of public record.

In August 1997, a letter from Lake of the Ozarks General Hospital informed Doerhoff that his request for active staff status was denied and that his privileges were revoked. The letter accused Doerhoff of failing to disclose malpractice claims against him, misrepresenting how many cases were brought against him, and of having an "extensive" history of cases he did disclose.

The letter, signed by Michael E. Henze, the hospital's chief executive, said the hospital had found a history of poor record keeping by Doerhoff at another hospital and that there were "continuity of care concerns" at more than one hospital.

Henze sent a second letter, to the Board of Healing Arts, saying the hospital's decision was based on "Dr. Doerhoff's material misrepresentations, misstatements, and omissions from his applications for medical staff membership and corresponding clinical privileges."

A year later, Doerhoff was contacted by Stephen Doughty, a lawyer in Nashville representing a woman in a malpractice claim against a surgeon and a hospital. Doerhoff agreed to be paid

in exchange for his testimony as an expert that the surgeon had not used the standard of care required in a bladder repair. The plaintiff, Katrinka Stalsworth, claimed that she was in constant pain from severed nerve endings.

In a deposition on Nov. 23, 1998, the defense lawyer, Phillip North, asked Doerhoff where he practiced.

"Well, I've always had staff privileges at (Hermann) Hospital and Lake Ozark Hospital," he said. "They are hospitals I helped organize."

Later, North revisited the issue. "These . . . are full privileges, no qualifications, no restrictions or anything like that?"

Doerhoff: "Lake Ozark, I no longer have staff privileges there. There's too much to do. . . . I helped build the Lake hospital, but I had not admitted a patient there for about 10 years and after a heart attack, my wife and I decided that we were going to retire and move to the lake, so I informed the Lake hospital I would be moving there, and they took away my staff privileges."

Doerhoff said the hospital gave no reason for taking away his privileges. "The surgeon that was on the credentials committee saw me as a threat, and he wanted the hospital to hire him as a partner, so he terminated my privileges."

The defendant secured a copy of the letter revoking Doerhoff's privileges. Just before the trial was to begin, the judge ruled that he would admit it as evidence, which Doughty said he saw as a crucial blow to Doerhoff's credibility.

"He was our expert witness and . . . now there was some question about the truthfulness of his answers," said Doughty. "It was not the kind of thing you want to find out about on the eve of the trial."

Doughty withdrew the case.

Accused of malpractice

A year later, Doerhoff was the defendant in a malpractice case. John Kerr, a minister in Jefferson City, accused Doerhoff of damaging his stomach during an appendectomy.

Kerr's lawyer, John Beger of Rolla, issued written questions to Doerhoff to clarify matters of evidence. He asked Doerhoff, "Have you now or at any time in your career had your license or staff privileges revoked, terminated, suspended, or limited in any way?"

Doerhoff's reply: "No."

Beger said he obtained the Lake of the Ozarks letter — as well as a transcript from Doerhoff's deposition in the Tennessee case — and knew that the answer was false.

Beger filed a motion to compel Doerhoff to turn over records pertaining to his hospital privileges, writing that he believed Doerhoff's written answer was "incorrect." Within days, the suit was settled for an undisclosed sum.

In May 2000, Doerhoff's request for privileges was denied at St. Mary's Health Center in Jefferson City. The hospital alleged that he had failed to fully disclose malpractice cases filed against him. Doerhoff then withdrew his application from St. Mary's and did not appeal.

The matter was reported to the Board of Healing Arts, which opened a discipline case against Doerhoff. The two sides settled in 2003 with Doerhoff agreeing to his penalty — a public reprimand.

Doerhoff is now on staff at a hair-removal business in Jefferson City and has made trips with groups of physicians to treat the Third World poor.

In a deposition in Kerr's suit in 1999, Doerhoff said he was looking forward to the new challenge of working overseas.

"It's really difficult to find surgeons that can operate under difficult circumstances," he said. The mission group "needs people that are able to go into a very primitive area and function without a lot of support. So I'm the type of person they're looking for."

"So it's a lot more interesting than sitting around in Jeff City waiting to die."

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Dr. Alan R. Doerhoff timeline

1969: Doerhoff graduates from medical school at University of Missouri with a specialty in general surgery Mid-1970s to mid-'90s: He works as surgeon on contract for Department of Corrections

1989: Michael A. Taylor and second man admit kidnapping 15-year-old Ann Harrison from school bus stop in Kansas City, raping her and slitting her throat. Taylor is sentenced to death.

1989: Doerhoff advises corrections officials on lethal injections as state resumes executions after 24 years.

1995: He revises execution procedure after problem with condemned's veins leads to 30-minute execution. Becomes permanent contractor for corrections department.

1997: Lake of the Ozarks General Hospital denies Doerhoff staff privileges

1998: Doerhoff claims in a deposition that he's "always had staff privileges" at the Lake hospital, then, under questioning, says they were revoked by a surgeon who saw him as a threat. He is discredited as plaintiff's expert witness in Tennessee malpractice case, which then collapses.

1999: In written questions from a plaintiff alleging malpractice, Doerhoff is asked if he's ever had hospital privileges revoked. He answers "no." After the plaintiff moves to compel him to turn over records, the case is settled.

2000: St. Mary's Health Center in Jefferson City denies Doerhoff privileges, saying he failed to disclose malpractice cases from 1994-99.

2003: Doerhoff is reprimanded by Missouri Board of Healing Arts over claim that he failed to disclose past malpractice suits to St. Mary's.

Jan. 31, 2006: U.S. District Judge Fernano Gaitan Jr. rejects Taylor's appeal that lethal injection is cruel and unusual punishment.

April 26, 2006: U.S. Supreme Court agrees to hear lethal injection concerns in another case, opening door to further appeals by Taylor that end up back in Gaitan's court in Kansas City.

June 26, 2006: Gaitan orders Taylor's execution halted, citing concerns about problems with dyslexia and dealing with numbers that are admitted to in deposition by execution doctor "John Doe I," who in fact is Doerhoff. Gaitan demands execution procedure overhaul and use of board-certified anesthesiologist.

July 14, 2006: Corrections officials tell Gaitan they have made changes but cannot find an anesthesiologist to participate. Eleven days later, they appeal his order to the 8th Circuit Court of Appeals in St. Louis.

July 26, 2006: Gaitan says the state's proposal is an improvement, but that "there continue to be inadequacies with the personnel required to monitor and oversee" the death penalty.

<http://www.latimes.com/news/printedition/asection/la-na-johndoe15nov15,1,6152698.story?ctrack=1&cset=true>

From the Los Angeles Times

Doctor barred by Missouri helps in federal executions

A judge cites the physician's dyslexia in banning him from participation in state lethal injections. His role has been cited in several death penalty challenges.

By Henry Weinstein

Los Angeles Times Staff Writer

2:07 PM PST, November 15, 2007

A doctor who was barred from taking part in executions in Missouri because of concerns his dyslexia would interfere with his ability to administer lethal injections is helping the federal government carry out death sentences in Indiana, according to court documents.

The physician has been the target of more than 20 malpractice suits, was barred from practicing at two hospitals and was publicly reprimanded by a state agency for failing to disclose those suits to a hospital where he treated patients, according to the St. Louis Post-Dispatch. The newspaper identified the doctor as Alan R. Doerhoff of Jefferson City, Mo.

Last year, U.S. District Judge Fernando J. Gaitan Jr. of Kansas City, Mo., banned Doerhoff from participating "in any manner, at any level" in lethal injections in Missouri.

The judge said earlier he was "gravely concerned" that the doctor responsible for "mixing the drugs which will be responsible for humanely ending the life of condemned inmates, has a condition [dyslexia] which causes him confusion with regard to numbers."

Federal officials, however, have made Doerhoff part of the execution team at the federal prison in Terre Haute, Ind., according to court papers filed on behalf of several inmates there. All condemned federal prisoners are executed at that prison.

Among those executed there was Oklahoma City bomber Timothy J. McVeigh.

Doerhoff's role is to place intravenous lines in condemned inmates, monitor their levels of consciousness and sign death certificates, according to the papers.

Doerhoff did not respond to requests for comment, and Justice Department spokesman Erik Ablin declined to comment.

Traci Billingsley, U.S. Bureau of Prisons spokeswoman, said the agency does not comment on pending litigation and does not make public the names of staff involved in lethal injections.

Washington attorney Paul F. Enzinna, one of the Indiana inmates' lawyers, also declined to comment.

Doerhoff's role in federal executions emerged in one of several challenges to lethal injection filed in courts around the country.

Thirty-seven states and the federal government use a three-drug cocktail to execute prisoners: the fast-acting sedative thiopental, a paralyzing drug and a heart-stopping drug.

Although ostensibly more humane than prior execution methods, lethal injection is often performed by untrained, unqualified prison employees using inadequate equipment, creating an unnecessary risk of excessive pain in violation of the constitutional ban on cruel and unusual punishment, the suits allege.

The U.S. Supreme Court is set to hear a challenge to Kentucky's executions by lethal injection on Jan. 7.

During the court challenges, officials have cloaked Doerhoff's identity in extraordinary secrecy. In the Missouri case, he was referred to as "John Doe One" and allowed to sit behind a screen during a deposition so that lawyers for condemned inmate Michael Taylor could not see him being questioned.

In the latest challenge, *Roane vs. Gonzales*, filed in Washington, the inmates' lawyers refer to Doerhoff as "Protected Person No. 2." About a dozen lines in the October brief were redacted.

Doerhoff was cited as "Dr. Doe" in a friend-of-the-court brief filed Tuesday in the lethal injection challenge before the Supreme Court.

"The most well-known example of a jurisdiction entrusting its execution administration to an incompetent individual is the infamous 'Dr. Doe' in Missouri," says a brief written by lawyers from the death penalty clinic at UC Berkeley's Boalt Hall School of Law.

The brief contends that even though Doerhoff had played a key role in more than 50 executions, he had not followed written instructions but instead "varied the amount of thiopental he gave inmates on a whim, without informing anyone."

The Missouri doctor also said that he had cut the thiopental dosage he gave inmates by half because a change in drug packaging forced him to "improvise," the brief said.

"The federal government chose to rely upon the only person in the country who has been

explicitly barred by a federal court from participating in lethal injection executions," said the brief, written under the supervision of Tyler L. Alper, associate director of the death penalty clinic.

Fordham University law professor Deborah Denno, an expert on capital punishment methods who is closely following the challenges to lethal injection, said that Gaitan, an appointee of President Reagan, issued his order after "a thorough and detailed examination of Dr. Doerhoff's shocking lack of knowledge of the basic tenets of the drugs and procedures involved in a lethal injection execution, Dr. Doerhoff's admitted challenges with dyslexia that affected his ability to mix and measure the drugs, as well as his record of more than 20 malpractice suits and revoked privileges at two hospitals."

Denno said the revelations about Doerhoff illustrated "the need for transparency in the identity of executioners" so that their records could be scrutinized.

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What Courts Say About Lack of Training

Executioners are “largely ignorant” and “completely unprepared” for the “known risks” of the three-drug formula.

*Harbison v. Little, 2007 WL 2821230, at *17-18 (M.D. Tenn. Sept. 19, 2007).*

Execution team members “almost uniformly have no knowledge of the nature or properties of the drugs that are being used or potential problems associated with the procedure.”

Morales v. Tilton, 465 F. Supp. 2d 972, 979 (N.D. Cal. 2006).

Remote Administration Prevents Adequate Observation of the Inmate

A frequent expert for the States has acknowledged that, in a medical setting, bedside induction and monitoring is required even in routine anesthesia.

Trial Tr. at 113-14, Evans v. Saar, No.06-149 (D. Md. Oct. 11, 2006) (testimony of Dr. Mark Derschwitz).

Dim lighting and remote administration precluded “effective observation of any unusual or unexpected movements by the condemned inmate, much less [the ability] to determine whether the inmate is conscious; this is exacerbated by the fact that the chamber door is sealed during executions as if lethal gas were being disseminated, rendering it virtually impossible to hear any sound from the chamber.”

Morales v. Tilton, 465 F. Supp. 2d 972, 980 (N.D. Cal. 2006).