

Case #10: Deadly Drug Run

The legality of the death penalty has long been debated, with specific groups like rapists (Coker v. Georgia, 1977), the mentally incompetent (Atkins v. Virginia, 2002), and youthful offenders (Roper v. Simmons, 2005) finding Constitutional protection.¹ Similarly, the manner of imposing the death penalty has also come under fire over the years, and certain methods have been challenged; most recently, lethal injection (Baze v. Rees, 2008).² However, beyond the legality of the practice, some states have had difficulty implementing the death penalty for much more practical reasons – the primary lethal injection drug, barbiturate sodium thiopental (BST), has become scarce.³ A domestic supplier stopped producing BST, and importation of the drug is highly regulated and increasingly difficult. States have therefore resorted to trading BST with one another, using whatever means necessary to import it, or substituting other drugs in an attempt to keep executions on track.

Taking for granted the fact that the U.S. permits capital punishment, states have an obligation to impose the punishment in a manner that does not violate the prohibition on cruel and unusual punishment. States have long employed a three-drug cocktail that first induces a coma (where the BST is employed). A second drug paralyzes the inmate, and a final drug induces cardiac arrest.⁴ In Texas, officials substituted pentobarbital (commonly used in animal euthanasia)⁵ for BST, in order to continue with its scheduled executions. This is an off-label use of the drug, but has not proven to cause any objectionable side effects. In fact, BST is generally metabolized into pentobarbital by those who are exposed to it.⁶ However, the manufacturer has expressed concern over the use of its drug to kill humans.⁷

Other states engaged in suspicious efforts to import BST from overseas. One Department purchased BST directly from a British wholesaler, rather than going through the usual channels of healthcare companies and pharmacies. Further, this department followed the suggestion of this seller to use a particular shipping company that was less likely to delay delivery due to customs inspection. Another state routed shipments through ports less likely to delay shipments, labeled the drug for veterinary use, and used a broker to assist in the transport. All of these acts helped the states accomplish their legal mission to successfully impose the death penalty as required by their laws. But the American Civil Liberties Union (ACLU) and local public defenders are using these questionable tactics to continue their fight against a practice they oppose, despite its continued constitutionality.

¹ “Capital punishment in the United States,” Wikipedia, last accessed June 20, 2011.

² James Vincini, “Top court clears way for executions to resume,” Reuters.com, <http://www.reuters.com/article/2008/04/16/us-usa-execution-court-idUSWAT00935320080416>, April 16, 2008.

³ John Schwartz, “Seeking Execution Drug, States Cut Legal Corners,” The New York Times, <http://www.nytimes.com/2011/04/14/us/14lethal.html>, April 13, 2011.

⁴ Ariane de Vogue, “Drug Shortage Disrupts Lethal Injection Mix,” <http://abcnews.go.com/Politics/death-penalty-drug-shortage-disrupts-execution-lethal-injection/story?id=13148874>, March 16, 2011.

⁵ “Guidelines for Euthanasia (by Agent),” Duke University, http://vetmed.duhs.duke.edu/guidelines_for_euthanasia_agents.htm, (quoting American Veterinary Medical Association Guidelines, at: http://vetmed.duhs.duke.edu/documents/reference/pdf/avma_panel_on_euthanasia.pdf).

⁶ “Sodium Thiopental,” Wikipedia, http://en.wikipedia.org/wiki/Sodium_thiopental#cite_note-25, last accessed June 20, 2011.

⁷ Associated Press, “States moving quickly to switch execution drug,” USA Today, <http://www.usatoday.com/news/nation/2011-04-21-execution-drug-pentobarbital.htm>, April 21, 2011.