Following botched Florida lethal injection

Executions on hold in two US states

Kate Randall
18 December 2006

On Friday, executions by lethal injection were suspended in Florida following a botched execution, and a federal judge in California ruled that the state must overhaul its death penalty methods, in effect halting executions there. These developments have focused increased scrutiny on the gruesome lethal injection procedure, which is the method of choice in 37 US states.

In the Florida case, it took 34 minutes and a rare second injection of deadly chemicals for prison authorities to execute Angel Nieves Diaz on December 13. Death usually occurs within 15 minutes, and the individual is unconscious and motionless within 3 to 5 minutes. In Nieves Diaz's case, witnesses reported seeing him moving as long as 24 minutes after the initial injection, including grimacing, blinking, licking his lips, blowing and attempting to mouth words.

As lethal injection is currently practiced, the prisoner is given a deadly cocktail of three poisons: one to deaden pain, the second to induce paralysis and the third to stop the heart. A study published last year in the British medical journal the *Lancet*, however, concluded that the first drug, sodium pentothal, can wear off before the inmate loses consciousness, subjecting the condemned individual to excruciating pain before the third drug, potassium chloride, causes a heart attack.

The medical examiner who performed an autopsy on Nieves Diaz following his execution, Dr. William F. Hamilton, said that it appeared that the lethal-injection needles punctured through both of his veins, sending the poisons into the small tissues of the arm, dispersing them.

"It really sounds like he was tortured to death," commented Jonathan Groner, associate professor of surgery at the Ohio State Medical School and a death-penalty opponent, to the Associated Press. "My impression is that it would cause an extreme amount of pain."

Because medical professionals overwhelmingly refuse to participate in the lethal injection procedure on ethical grounds, the intravenous needles are for the most part put in place by prison personnel. While in a hospital setting the average success rate in inserting an IV is about 1 in 6, when the difficult procedure is attempted by prison staffers trained solely for execution, the results can be disastrous, as proved in Nieves Diaz's case.

Florida Governor Jeb Bush suspended all executions following the medical examiner's report, and appointed a special commission to review lethal injection procedures. The 11-member commission, including five appointed by the governor, will have until March to complete its review.

In commissioning the study, however, Governor Bush made clear his commitment to the death penalty, noting that Nieves Diaz's autopsy "indicated the lethal injection protocols may need to be reviewed to determine if any additional protocols should be added or whether any existing protocols should be modified in any way." In other words, the grisly procedure must be fine-tuned to ensure that capital punishment remains in force.

Since the death penalty was reinstated in Florida in 1979, 64 executions have been carried out in the state—in third place behind Texas, with 379, and Virginia, with 98. Twenty-one of these have been carried out under Jeb Bush, a record high for a Florida governor. There are currently 396 prisoners on death row in the state.

Florida has a record of executions gone horrifyingly wrong in connection with the previously used method, the electric chair—known in the state as "Old Sparky." In 1999, Allan Davis's nose bled excessively during his execution, covering his shirt in red. During Jesse Taffero's electrocution in 1997 and Pedro Medina's in 1990, smoke and flames erupted from the prisoners' heads.

Just the day before Angel Nieves Diaz's execution, the governor reiterated his opposition to calls by capital punishment opponents to scrap lethal injections, commenting callously, "All the people that are against the death penalty, whenever there is chance, will call for suspending the death penalty."

Angel Nieves Diaz's botched execution was the end of a 27-year journey through the Florida legal system which epitomized everything that is inherently brutal and unjust about a society which conducts state killings—a practice condemned and outlawed for years by the vast majority of advanced industrialized countries. His case won the support of human rights organizations and prompted outrage in his native Puerto Rico as well as in the Florida immigrant community.

Nieves Diaz was sentenced to death in 1986 for the murder during a robbery of bar manager Joseph Nagy in Miami. He was represented by legal counsel until shortly after the jury in his trial had been selected, when he decided to conduct his own defense, against the advice of his attorney. His lawyer informed the trial judge that Nieves Diaz had "exhibited rather bizarre tendencies" in days previous, including responding to his attorney's questions with irrational answers as well as rejecting the defense they had devised in the preceding months.

© World Socialist Web Site

Nieves Diaz spoke limited English and communicated in court through an interpreter. He said that he had never read a legal book and had "no idea" about how a trial in Florida was conducted or about "what I may be able to argue." Despite the judge's comments that "since you have no ability to speak the English language in this court, you have no knowledge of the law, you did not [finish high school], it would appear to this Court that it would be impossible for you to act as an attorney in your own defense," he ruled that Diaz's decision to do so had been freely and intelligently made.

Assessments by two mental health experts following the trial also concluded that Angel Nieves Diaz suffered from mental disorders which contributed to his decision to represent himself. His lawyer signed an affidavit which read in part, "Mr. Diaz asked questions he should not have asked and could not object to certain questions and evidence after my advising him to through the interpreter. I do not believe he adequately understood the legal system and the conduct of the trial due to cultural differences and language barriers, among other reasons."

The case and the conduct of the trial were stacked in many ways against Nieves Diaz. In a move highly prejudicial to the jury's presumption of his innocence, the defendant was forced to wear shackles during the trial, including when he was conducting his own defense.

There were many unanswered questions raised at trial. Diaz's former girlfriend testified that on the night of the robbery he told her that another defendant in the murder, Angel Toro, had shot a man during the robbery. Toro pled guilty to second-degree murder in return for a life sentence. Two other witnesses also testified that Nieves Diaz was not the gunman.

One of the key pieces of evidence leading to Nieves Diaz's conviction was the testimony of a jailhouse informant—a category of testimony that has proven to be notoriously unreliable. While the jury requested copies during their deliberation of the testimony of the former girlfriend and the informant, the judge refused to provide it. The jury returned a guilty verdict, and at Nieves Diaz's sentencing hearing two weeks later a jury recommended the death penalty.

The case received widespread coverage in Puerto Rico, which abolished capital punishment in 1929. Although US law applies to the island as a US territory, a Puerto Rican jury has never voted to execute anyone found guilty of a capital federal crime. Puerto Rican Governor Anibal Acevedo, the president of the island colony's Senate, Kenneth MacClintock, and other officials petitioned Jeb Bush to halt the execution, after the Florida governor signed Nieves Diaz's execution order in March.

On the night of the execution, several hundred people gathered in San Juan to protest the state killing.

Anger over the execution was also fueled by reports that the FBI had attempted to falsely implicate Nieves Diaz in the activities of the Macheteros, a nationalist group that carried out armed actions, and had pressured him to help frame up an independence activist. His refusal to participate in this frame-up, it is widely believed, contributed to his receiving the death penalty

Residents of Orange and Osceola counties in Central Florida, where many of Nieves Diaz's extended family lives, also rallied to his defense. The home of Maggie Otero Diaz, a distant cousin, became the headquarters of a frantic effort to stop the execution, winning support from Puerto Rican Coalition Against the Death Penalty and Amnesty International.

Widespread anger met Bush's refusal to halt the execution. Sol Otero, Nieves Diaz's niece living in Orlando, commented, "We are still grieving. It continues to get worse and worse, learning the details of what happened. The excruciating pain and torture my uncle went through for 34 minutes. He was literally crucified."

In California, US District Judge Jeremy Fogel ruled Friday that the state's lethal injection procedure represents "an undue and unnecessary risk" of a violation of the constitutional prohibition against cruel and unusual punishment. "The state's implementation of California's lethal injection protocol lacks both reliability and transparency," he said.

The judge urged Governor Arnold Schwarzenegger "to take this opportunity to address seriously now, rather than later, the significant problems" with the state's lethal injection protocol and implementation. Fogel gave California officials 30 days to tell him whether they would begin a review of the procedures and when they would complete the task.

The ruling was issued in response to a lawsuit brought by death row inmate Michael Morales, who had been scheduled for execution February 21, 2006, for the rape and murder of a 17-year-old girl. He had been on death row for nearly a quarter-century.

State officials postponed Morales's execution when prison officials were unable to meet conditions previously imposed for his lethal injection by Judge Foley. These included a requirement that doctors be present to step in if anything went awry during the execution. When no doctors could be found to participate, the execution was called off.

Debate over lethal injection is rising in other states. In Maryland, a federal judge is considering the constitutionality of the method and a ruling is expected next year. Reviews of lethal injection in Missouri and South Dakota have delayed executions while the procedure is reviewed.

In other states, authorities have attempted to alter the procedure in order to keep executions in operation. In Oklahoma the prisoner now receives more anesthesia before being executed. In North Carolina, a federal judge ordered that a brain monitor be used to ensure that the inmate is unconscious before the final, heart-stopping drug is administered.

These twists and turns in the debate over the death penalty come against a backdrop of growing popular opposition within the US population not simply to lethal injection, but capital punishment itself, with a majority favoring life without parole over the barbaric practice.

To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact

© World Socialist Web Site