

Texas carries out lethal injection with drug from unidentified source

Kate Randall
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The state of Texas executed Tommy Lynn Sells Thursday night using a version of the drug pentobarbital from an unnamed source. The US Supreme Court denied a request from Sells' lawyers to block the execution on the grounds that Texas officials have refused to disclose details about the pentobarbital used in the lethal injection. Sells' defense argued that execution with the drug could cause severe pain, constituting cruel and unusual punishment.

Sells, 49, was convicted and sentenced to death for the 1999 murder of 13-year-old Kaylene Harris. He pleaded guilty to the 1999 murder of nine-year-old Mary Beatrice Perez and received a life sentence in that case in exchange for the plea. Sells claimed to have been responsible for the deaths of as many as 70 people nationwide.

Witnesses to the execution said that Sells closed his eyes and gasped as the drug was administered at the Walls Unit in Huntsville, at around 6 p.m. local time. He then took a few deep breaths before his eyes closed and he began to snore. Sells was pronounced dead some 13 minutes after the pentobarbital was administered.

In a macabre scene repeated hundreds of times at the nation's busiest execution chamber, families of the victims were present to witness the execution. Also present were two of the condemned man's friends and the prison chaplain. Sells was the fifth person executed in Texas in 2014 and the 513th to be put to death in the state since the US Supreme Court reinstated the death penalty in 1976.

Out of concern over the use of pentobarbital in executions, European drug makers have stopped selling the sedative in the US market. In an effort to keep state execution chambers in operation, authorities have begun obtaining lethal mixtures of the drug from compounding pharmacies, which are less strictly

regulated than other pharmaceutical companies and can be exempt from Food and Drug Administration regulation. States have refused to release the names of these companies, citing alleged threats against the pharmacies or potential lawsuits.

Texas prison officials had obtained a supply of pentobarbital from a suburban Houston compounder last year, but the drugs expired at the end of March. They obtained a new supplier elsewhere, but have refused to make the source known to the public or the attorneys of death row inmates. Tommy Sells was the first person to be executed using pentobarbital from this undisclosed source.

Attorneys for Sells and Ramiro Hernandez-Llanas, a Mexican national scheduled to be executed April 9, filed several lawsuits in an effort to compel Texas to disclose information about the source and details of the drugs to be used in their lethal injections. Last week, a district judge in Austin told Texas authorities to reveal information about the drugs to the two men's lawyers, but did not order the information to be made public. Texas officials appealed that decision and it was stayed by the state's Supreme Court.

On Wednesday, the day before Sells' execution, a federal judge in Houston issued a temporary injunction halting both executions until the two prisoners' attorneys had been provided information about the source and quality of the drugs. A federal appeals court reversed that decision within hours, which meant that Sells' execution could go forward.

The appeals court ruled that the plaintiffs were "speculating" about the risk of severe pain with use of the new drugs and that "speculation is not enough." Lawyers representing the state argued that tests showed the drugs were of acceptable quality, while refusing to make this information public.

In their client's last-minute appeal to the US Supreme Court, Sells' lawyers listed as defendants a number of Texas officials and "unknown executioners." They petitioned to know the source of the pentobarbital to be used in the lethal injection, details of how it was prepared, and who had tested it.

Citing constitutional protections against "cruel and unusual punishment" set forth in the Eighth Amendment, they argued that Sells "has a constitutional interest—and consequent due process rights—in not being executed in a tortuous manner." The Supreme Court declined this request. Last month, the high court rejected a similar request from a death row inmate in Missouri who was subsequently executed.

Due to drug shortages, states have scrambled to concoct new lethal mixtures for executions. Until 2010, most states used a three-drug protocol including an anesthetic (pentobarbital or, formerly, sodium thiopental), a paralytic agent (pancuronium bromide), and an agent to stop the heart and cause death (potassium chloride).

According to the Death Penalty Information Center (DPIC), eight of the 32 states that practice capital punishment have either used or intend to use compounding pharmacies to obtain their drugs for lethal injection. State authorities have continued to utilize various untested chemical mixtures in lethal injections despite substantial evidence that their use causes pain and suffering.

On January 9, Oklahoma inmate Michael Lee Wilson, 38, died by lethal injection of a three-drug mixture of pentobarbital. Witnesses reported he cried out, "I feel my whole body burning" following the lethal injection, before being pronounced dead several minutes later. (See: "US states turn to unregulated compounding facilities to make drugs for lethal injections.")

Ohio executed Dennis McGuire, 53, on January 16 using an experimental two-drug mixture. He writhed in agony for 25 minutes before being pronounced dead, according to those witnessing his lethal injection. (See: "The horror in Ohio's death chamber.")

Executions in the US have dropped from a high of 98 in 1999 to 39 last year, in part due to legal battles over methods of execution. Public support for the barbaric practice has declined as well, as growing numbers of cases point to wrongful convictions and the likely executions of innocent people.

But the state killing machine grinds on. According to DPIC, as of last year 3,095 prisoners languished on death rows nationwide. Since reinstitution of the death penalty, 1,374 men and women have been sent to their deaths, including the mentally impaired, foreign nationals denied their consular rights, and those convicted of crimes committed as juveniles.



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