Alabama plans to use a more “humane” method of execution: Nitrogen gas asphyxiation

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Alabama’s attorney general is asking the state’s Supreme Court to authorize a date for the first-ever execution of a death row prisoner by what is being called “nitrogen hypoxia”—a method that should be more properly described as nitrogen gas suffocation.

According to the redacted protocol filed by the Alabama Department of Corrections in a federal case, the condemned inmate, Kenneth Eugene Smith, would be fitted with a face-covering mask connected to gas cylinders. A pulse oximeter would be placed on the inmate to measure the presence of oxygen.

After several checks of the system and mask, the staff will leave the execution chamber. The warden will enter the room, read the execution warrant and allow the inmate to make a final statement, limited to two minutes, and then depart. The warden will then activate the “nitrogen hypoxia” system, allowing the flow of nitrogen gas for 15 minutes or for two minutes after the EKG machine that measures the prisoner’s heartbeat flatlines.

Republican Trip Pittman, who sponsored the 2018 bill authorizing nitrogen gas for executions, claimed in an interview, “I know in a pure nitrogen environment you pass out. It is instantaneous. You basically black out. There is no time for pain or anything else.” How the former state senator, owner of the Pittman Tractor Company, is qualified to make this statement he does not say.

The *Alabama Reflector* quotes Dr. Joel Zivot, an anesthesiologist at Emory University Hospital in Atlanta whose research found evidence of pulmonary edema, a feeling of suffocation or drowning, in the bodies of those executed by lethal injection, who counters, “This is death by asphyxiation. This is choking someone to death with a gas. Why anyone would think that would be something pleasant or painless is really beyond my understanding.”

There is no “humane” way to carry out a state execution. It is not a particular method of execution that must be condemned as “cruel and unusual”—the entire system of capital punishment must be rejected by a civilized society. That being said, the preparations by Alabama authorities to utilize nitrogen gas to suffocate and kill a man expose the barbarity of the American death penalty system and is deserving of examination.

If Alabama sets a date for Kenneth Smith’s execution it will be his second trip to the death chamber. He spent four hours on November 17, 2022, strapped to a gurney while state prosecutors worked to lift a stay of execution. At 10:23 p.m., the US Supreme Court vacated the stay of execution issued by a lower court, allowing the procedure to proceed.

The team tasked with putting Smith to death repeatedly failed in its attempts to insert the intravenous line intended to be used to inject the lethal chemicals into his body. Their efforts were abandoned after it was determined that there was insufficient time to carry out the execution before the death warrant expired at midnight.

The Death Penalty Information Center describes the scene inside the execution chamber as described in the complaint Smith filed to block a new execution date:

> At one point in the process, Smith informed an execution team member that executioners were painfully inserting the needle in his muscle. According to the complaint, the team member responded, “No I’m not.” …
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> Subsequently, an individual of “unknown medical credentials … started repeatedly stabbing [Smith’s] collarbone area with a large needle” in an attempt to begin placing a central line IV, and a prison official “grabbed and held [Smith’s] head away from the area where the needle was being inserted.” Smith describes sharp and intense pain, “as though he were being ‘stabbed’ in the chest” as the individual “repeatedly jabbed him … underneath his collarbone.” Unbeknownst to Smith, around 11:20 p.m., “unverified reports that the execution may have been called off started circulating.” …
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> Sometime before midnight, the execution team told Smith “it’s over with.” When guards came to remove him from the execution chamber, Smith was trembling, sweating, hyperventilating, dizzy, and could not lift his own arms to be handcuffed or walk unassisted.

Smith was convicted of the 1988 murder of Elizabeth Dorlene Sennett. The trial jury concluded that Sennett’s husband, Charles Sennett, had paid Smith and another man $1,000 each to kill his wife to collect on insurance to pay off his debts. Charles Sennett, a pastor, killed himself a week after his wife’s death. The other man

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convicted in the killing, John Forrest Parker, was executed in 2010.

Jurors voted 11 to 1 to sentence Smith to life in prison without the possibility of parole. But a judge overruled the jury's vote and ordered Smith to be executed. Alabama subsequently prohibited judges from overruling juries in capital cases, but the law did not apply retroactively. Judges are no longer able to overrule juries in death penalty cases in any state, although Florida is seeking to reintroduce the practice.

Twenty-seven US states currently retain the death penalty. Governors in five of these states—California, Pennsylvania, Oregon, Arizona and Ohio—have placed a hold on executions. Twenty-three states and the District of Columbia have abolished the death penalty. Seven states have carried out nearly three-quarters of the 1,576 executions that have been carried out since 1977: Texas (583), Oklahoma (122), Virginia (113), Florida (104), Missouri (97), Georgia (76) and Alabama (71).

Execution by nitrogen asphyxiation has been authorized as a first-line execution method in Alabama, Oklahoma and Mississippi, but no state has used it yet to carry out a death sentence. No one should be fooled into thinking that these states are seeking to adopt the method as a more "humane" alternative to lethal injection. Rather, the assembly lines of state-sponsored killing are threatened with shutdown due to the lack of availability of the drugs used in lethal injections and controversy over their use, and authorities are scrambling for an alternative method.

The US Supreme Court has ruled the following methods of execution to be constitutional: hanging, electrocution, gas chamber, firing squad and lethal injection. Hanging, electrocution and the firing squad have largely been abandoned by states because they *visibly* mutilate or harm the prisoner's body. This has not deterred Idaho and Oklahoma from keeping the firing squad on the books, nor has it stopped New Hampshire and Washington from retaining the hanging method. Electrocution is still an option in seven states.

Just under 100 years ago, on February 8, 1924, the United States' first gas chamber execution was carried out at Nevada State Prison in Carson City when Chinese national Gee Jon, 29, was put to death for the murder of an older man from a rival gang. A supporter of the "Humane Death Bill" in the Nevada Legislature said the gas would kill a prisoner "without warning and while asleep in a cell." The Nevada Supreme Court had approved the use of gas chambers, writing that their use would do a good job of "inflicting the death penalty in the most humane manner known to modern science."

A professor selected hydrocyanic acid gas as the substance to kill Gee because it would be "instantly fatal" and because "it is the deadliest poison known." The California Cyanide Company, which produced the gas as a pesticide for killing parasites in citrus groves, was selected to supply the deadly substance.

As Ryan Fan writes of the grisly execution in the CrimeBeat, because the temperature was not high enough in the gas chamber its lethal power was reduced:

> [A]nd instead of the gas chamber killing him quickly, he died slowly and painfully. He threw his head back violently as the gas started to seep into his lungs, and the 30 witnesses in the prison heard his breathing grow more shallow as he began to suffocate to death.
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> His chin would drop to his chest, and then his head would pull back as Gee Jon kept suffocating to death, and reporters recorded his every move. Some spectators said they started to smell the deadly gas themselves—the smell of almond blossoms. However, it was only a minority of the audience. The rest of the crowd stayed to watch Gee die. After two minutes, someone said "he's unconscious," but Gee's head kept pulling back and his mouth kept opening as he continued to suffocate. After one pause in movements, a physician said Gee died.
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> Gee, however, was not actually dead. He kept raising his head and extending it back, making witnesses terrified. Gas started to leak out from the gas chamber and into the prison yard, but at 9:46 a.m., Gee was finally motionless—10 minutes after the execution started.
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> Warden Dickerson cleared the prison yard and had a ventilator gate opened and a suction fan turned on. They closed the chamber for two hours and wouldn't remove the body until about two and a half hours after Gee died. Physicians also refused to perform the autopsy—they worried his body would release toxic gas.

The *San Jose Mercury News* wrote at the time: "One hundred years from now Nevada will be referred to as a heathen commonwealth controlled by savages with only the outward symbols of civilization." The same can be said today not only of the savages in the state of Alabama, but of a political establishment that condones the use of execution by gas asphyxiation as well as the entire practice of capital punishment.

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