

Ethical considerations surrounding lethal injection

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By Mark White

To the Editor:

Perhaps no part of the criminal justice system is more fraught with moral, ethical and legal dilemmas than the execution process. The paramount concern of the blue-ribbon Death Penalty Committee of The Constitution Project is to ensure this system is as fair and transparent as possible and comports with the numerous protections found in the US Constitution. As Dr Truog and colleagues¹ pointed out, the Committee has found that the justice system fails to do this in many areas and their report, *Irreversible Error*, lays out recommendations to address these failures.²

In the last pages of *Irreversible Error*, the Committee addressed what is known to be a recurring problem in the death penalty process: untrained, ill-equipped individuals conducting the error-prone procedures involved in lethal injection, resulting in unconstitutional executions. To be sure, the Committee does not endorse a particular method of execution, but in jurisdictions that use lethal injection to kill prisoners, the report sets out minimum safeguards that must be in place to prevent undue pain and suffering in accordance with the Eighth Amendment. If these dictates cannot be met in any particular execution process – whether by lethal injection or some other method – then it should not be carried out.

The members of the Committee are not medical ethicists. The recommendations leave the important ethical considerations to those who practice medicine and relevant governing bodies. In the report, the Committee affirms that, “Doctors and other medical professionals should not be compelled to violate medical ethics. The result may be that medical professionals will not be able to be present for executions...” If the consensus is as the Viewpoint said it is – that no medical personnel could ever ethically participate in any part of the execution process – then that is the end of the inquiry. But the article noted that at least one physician (and probably more) believes medical personnel participation is ethical. This is a question for the medical community to determine, and the report respects that process, regardless of how it might affect the availability of lethal injection. Ultimately, if medical professionals are ethically barred from participating in executions, the responsibility for finding a method of execution that does not violate the Eighth Amendment – along with the myriad other problems identified in *Irreversible Error* – lies at the feet of policymakers.

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Truog RD, Cohen IG, Rockoff MA. Physicians, medical ethics, and execution by lethal injection. JAMA. 2014;311(23):2375-2376.

The Constitution Project. Irreversible Error: Recommended Reforms for Preventing and Correcting Errors in the Administration of Capital Punishment.

<http://www.constitutionproject.org/documents/irreversible-error/>. Accessed May 7, 2014.

<http://jama.jamanetwork.com/article.aspx?articleid=1920962>