

Lethal Injection and the F.D.A.

Capital punishment means lethal injection. The administration of a barbiturate as part of a fatal dose of drugs is meant to render a convict unconscious before other drugs stop his or her breathing and heart so the execution can somehow be construed by a judge as being neither cruel nor unusual.

Sodium thiopental is at the heart of this story. A fast- and short-acting general anesthetic, it has been used to put convicts under and make executions methodical. For more than a year, however, a shortage of the drug has widened the gap between the reality of carrying out executions and support for them in American law. In October, a majority of the Supreme Court wrongly insisted there was no evidence that the shortage had any bearing on whether an execution can be done constitutionally. Now the evidence is impossible to ignore.

We strongly oppose capital punishment on many grounds. Even with judicial blessing, the conduct of executions in this country is a shambles. In Arizona and Georgia, the sodium thiopental used in executions has possibly been ineffective and almost certainly been illegal. It came from Dream Pharma, an unlicensed British supplier, run from a driving school. The batches carried a date of 2006. They were likely made by a company in Austria that went out of business. The drug is said to be

effective for only a year. As a foreign-made drug without approval by the Food and Drug Administration, it is prohibited by federal statute.

The F.D.A. initially suspected the drug from Dream Pharma of being adulterated or mislabeled and refused to let it be imported. Then it let the drug enter the country — but with the warning that the agency hadn't reviewed the drug's "identity, safety, effectiveness, purity or any other characteristics."

This month, the F.D.A. stated: "Reviewing substances imported or used for the purpose of state-authorized lethal injection clearly falls outside of F.D.A.'s explicit public health role."

In the meantime, the only American manufacturer of sodium thiopental — formerly described as F.D.A.-approved — has announced it will no longer make the drug. It planned to produce the drug in Italy, but the Italian government has said it won't permit the drug's export for use in executions.

When it reaffirmed the constitutionality of capital punishment three years ago, a splintered Supreme Court said it believed lethal injection carried neither "substantial" nor "objectively intolerable" risk of inflicting serious harm. How can the justices be confident in that conclusion now?