The future of the death penalty

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By Josh Hall

Missouri has executed 67 people since the death penalty was reinstated in 1976. Only Texas, Virginia, Oklahoma, and Florida have carried out more death sentences since that time.

Missouri did not put anyone to death until 1989, but executions reached an all time high in the state from 1990 to 1999. During that time, 40 prisoners were executed by lethal injection. Texas and Virginia were the only states to execute more prisoners in those 10 years.

Death sentences reached their highest peak in Missouri in 1988, when 17 prisoners were condemned to die after being found guilty of 1st degree murder. In 1999, the state carried out nine executions, the most in Missouri since the death penalty was reinstated.

"That is a reflection of where the death penalty was in the 90s," said Corinne Farrell, Communications and Education Director at the Death Penalty Information Center in Washington, D.C. "Tons of people were being sentenced to death, and it was very popular."

**A stall in the process**

While Missouri has been a leader in executions over the past two decades, 15 other states have conducted more executions between 2009-2010.

Since 2005, the state has carried out one death sentence. The decline stems from a 2006 case regarding the constitutionality of lethal injection, and a national moratorium, which put all executions on hold in 2008.

In January 2006, a decision by the US District Court, based on the constitutionality of Missouri's execution procedure, placed a moratorium on all executions in the state.

The case was filed by Michael Taylor who was to be put to death in 2006, but was given a stay of execution just minutes before the sentence was carried out.

The decision by the court came after the surgeon, who prepared the three drugs for the lethal injection process, admitted to only using half of the set dosage of Thiopental, the first drug injected in the three-drug protocol, which puts the inmate to sleep.

Doctors at the trial testified that without the proper dosage of Thiopental, the third drug, Potassium Chloride, would result in a painful death.

Because the Department of Corrections did not have a written protocol for executions, Dr. "Doe 1" as he was referred to in the 2006 court document, felt he could use his own judgment for the execution procedure. Dr. "Doe 1" also admitted to being dyslexic.

During the Taylor litigation, the district court determined Missouri's unwritten method of execution subjected condemned prisoners to an unconstitutional risk of pain and suffering and ordered the state to prepare a written protocol, according to the 2006 document.

After the Missouri Department of Corrections installed a written protocol for its execution process in July 2006, the 8th Circuit Courts of the Appeals vacated their previous decision in June 2007.

Shortly after, the US Supreme Court ordered a national moratorium, which put all executions on hold, to examine the three drug protocol in Kentucky.

On April 16, 2008, the Supreme Court ruled that Kentucky's three-drug protocol for carrying out lethal injection did not amount to cruel and unusual punishment. As a result, the national moratorium was lifted.

Only five states issued more death sentences than Missouri, which imposed six that year. Across the country there were only 111, bringing death sentences to an all time low.

Missouri only issued one death sentence in 2007, during which the Taylor case was still going on.

The Supreme Court decision did not bring the debate over lethal injection in Missouri to a close. Taylor and seven other inmates appealed to the courts again.

According to the 2009 8th circuit court document, the inmates contended that Missouri's current execution protocol violated the 8th Amendment because the substantial risk of the protocol, and that it may be improperly administered by incompetent, or unqualified medical personnel.

While a final decision was still being made in the case, Missouri executed its first inmate since 2005. Dennis Skillicorn became the 67th inmate to be put to death on May 20, 2009. Because Skillicorn was not a part of the current lawsuit, the process was allowed to take place.

Reginald Clemens was scheduled to be executed in June 2009, but was given a stay because he was part of the case.

On Nov. 10, 2009 the federal appeals court ruled against the inmates. Taylor said they would appeal that decision as well.

While 61 inmates remain on Missouri death row, the state has not scheduled any executions for 2011, but Farrell believes its just a matter of time before executions resume in Missouri.

Roderick Nunley was scheduled to die by lethal injection late last month but a Federal District Court issued a stay on Oct. 20 to decide if Nunley was entitled to a jury for sentencing. Missouri is appealing that stay.

The Missouri Supreme Court says it will look into the case again in January.

Jacquline Lapine, the Chief Public Information Officer at the Missouri Department of corrections, said the department would resume executions as soon as directed by the courts.

**Where the trend is heading**

The lethal injection debate has given anti death penalty supporters more reason for opposition, and public opinion polls show that there are less people in favor of the death penalty than there was in the mid-90s.

A 2006 Gallup Poll found that the overall support for the death penalty was 65%, down from 80% in 1994.

"We are seeing a diminishment in practice across the country on the death penalty," Sister Helen Prejean said. "I have not found in the last 20 years, that the American public is wedded to it."

Prejean has accompanied 16 prisoners to their execution over the past two decades. For 20 years, her goal has been to get people to reflect on the death penalty, and ultimately, see it eliminated.

Prejean points to statistics that show how states have conducted less executions in recent years. But, according to Farrell, no one is quite sure how long that trend will last.

Missouri is one of several states that has had a decline in executions. From 2000 to 2009, execution rates in the state dropped 35% from 1990 to 1999.

Not only has the state held less executions in the last decade, it has also given out fewer death sentences. 80 death sentences were given from 1990 to 1999. That number dropped to 28 from 2000 to 2008.

Farrell believes the cost of seeking a death sentence and the length of time it takes for the sentence to be carried out, is making more prosecutors lean towards life without parole.

"Some feel like it's not worth it because they will never actually see that sentence carried out," Farrell said.

However, Chief Assistant for the Greene County Prosecutors Office, Dan Patterson feels differently.

"I think the prosecutors make their decision based on the strength of their case, whether they can get a death sentence or not," Patterson said. "While the length of the appeals process, in terms of how long it takes, can be frustrating, I don't think that factors into the decision."