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HEADLINE: After Flawed Executions, States Resort to Secrecy

BYLINE: By ADAM LIPTAK.

Online: Documents and an archive of Adam **Liptak's** articles and columns: nytimes.com/adamliptak.

BODY:

A Missouri doctor who had supervised more than 50 executions by lethal injection testified last year that he sometimes gave condemned inmates smaller doses of a sedative than the state's protocol called for, explaining that he is dyslexic. "So it's not unusual for me to make mistakes," said the doctor, who was referred to in court papers as John Doe I.

The St. Louis Post-Dispatch identified him last July as Dr. Alan R. Doerhoff, revealing that he had been a magnet for malpractice suits arising from his day job as a surgeon and that two hospitals had revoked his privileges. In September, a federal judge barred Dr. Doerhoff from participating "in any manner, at any level, in the State of Missouri's lethal injection process."

Naturally, state lawmakers took action to address the issue.

A new law, signed this month by Gov. Matt Blunt, makes it unlawful to reveal "the identity of a current or former member of an execution team," and it allows executioners to sue anyone who names them.

The governor explained that the law "will protect those Missourians who assist in fulfilling the state's execution process."

In the wake of several botched executions around the nation, often performed by poorly trained workers, you might think that we would want to know more, not less, about the government employees charged with delivering death on behalf of the state.

But corrections officials say that executioners will face harassment or worse if their identities are revealed, and that it is getting hard to attract medically trained people to administer lethal injections, in part because codes of medical ethics prohibit participation in executions.

The Missouri law addresses that point, too. It bars licensing boards from taking disciplinary actions against

doctors or nurses who participate in executions.

The job of executioner has never been a high-status profession, of course, which accounts for the hoods that hangmen wore. But in the old days, as John D. Bessler wrote in a history of executions, killing condemned prisoners "called for no expertise apart from the ability to tie a knot."

Lethal injections are different. They require executioners to insert catheters and to prepare three chemicals and inject them, in the right dosage and sequence, into intravenous lines. If the first chemical is ineffective as a sedative, the other two are torturous.

Yet a federal judge in California found last year that prison execution teams there had been poorly screened and included people who had been disciplined for smuggling drugs and who had post-traumatic stress disorder.

In a decision a week ago Sunday, a state court judge in Florida, Carven D. Angel, halted the execution of a death row inmate, saying, "We need to have people with competence and experience" to perform executions.

But, according to lethal injection procedures issued by Florida's corrections department in May, there is only one job requirement to be an executioner there: you must be "a person 18 years or older who is selected by the warden to initiate the flow of lethal chemicals into the inmate."

Those credentials struck Judge Angel as a little thin.

"I don't think that any 18-year-old executioner," the judge said from the bench, "with the pressure of a governor's warrant behind him to carry out an execution, and with the pressure of the whole world -- the press and the whole world -- in front of him and looking at him is going to have enough experience and competence to stop an execution when it needs to be stopped."

The concern is not hypothetical. In December, Florida executioners had to inject Angel N. Diaz, a convicted murderer, with a second dose of lethal chemicals after the first set did not do the trick. It took Mr. Diaz 34 minutes to die, and witnesses said he continued to move, squint and mouth words after the first dose hit.

It would be good to know more about who is performing executions in Florida. But that state's law, like Missouri's, forbids the disclosure of "information which identifies an executioner." Quite a few states have similar laws, and a new Virginia law shielding executioners came into effect this month.

A forceful and persuasive article published in the Fordham Law Review in April argued for "a right to know who is hiding behind the hood."

Its author, Ellyde Roko, who will start her third year of law school at Fordham in the fall, said in an interview that society's interest in knowing how the death penalty is administered should outweigh the relatively flimsy interests supporting secrecy. "Not knowing who the executioners are takes away a huge check on the system," she said.

A 2002 decision of the federal appeals court in San Francisco allowing the press and public to view executions in California supports Ms. Roko's position.

"Even assuming an execution team member were identified by a witness, the notion of retaliation is pure speculation," Judge Raymond C. Fisher wrote for a unanimous three-judge panel. "No execution team member has ever been threatened or harmed by an inmate or by anyone outside the prison because of his participation in an execution."

Indeed, Judge Fisher continued, there are far more likely targets for retaliation, including the warden, the governor and the judges who rejected the condemned prisoner's appeals. And all of their names are public.

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GRAPHIC: Drawing (Drawing by Harry Campbell)

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