

**IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION**

BRIAN KEITH MOORE,)	
)	
v.)	
)	
JOHN D. REES,)	No. 3:06-cv-00022-KKC
Commissioner,)	
Kentucky Department of Corrections,)	
Frankfort, Kentucky)	
)	
THOMAS SIMPSON,)	CAPITAL CASE
Warden, Kentucky State)	
Penitentiary, Eddyville Kentucky,)	
)	
SCOTT HAAS)	
Medical Director for the)	
Kentucky Department of Corrections)	
)	
ERNIE FLETCHER,)	
Governor of the Commonwealth)	
of Kentucky)	
)	
and,)	
)	
UNKNOWN EXECUTIONERS,)	
)	
Defendants.)	
)	

SECOND NOTICE OF SUPPLEMENTAL INFORMATION

Brian Keith Moore files this notice of supplemental authority to bring to this Court's attention the problems that occurred during the execution of Joseph Clark on

May 2, 2006,¹ which will likely occur here if Defendants are allowed to execute Moore with their current chemicals and procedures for carrying out lethal injections.

Rather than causing death within a matter of ten minutes, as should occur with lethal injections, it took one hour and twenty-six minutes to execute Clark. The execution team, which included a paramedic, spent more than twenty minutes attempting to insert an I.V. into Clark's veins. After finally getting an I.V. line inserted into one part of Clark's body, they gave up trying to insert a second I.V. line and began injecting the lethal injection chemicals.

At first, Clark was extremely still, with shallow breathing. He appeared to have fallen asleep. But after about three or four minutes, he raised his head and said "it don't work." The Ohio Department of Corrections closed the curtains so the witnesses could not see what had happened.

What had happened was that after the chemicals began to flow, Clark's vein had collapsed. As a result, the chemicals, which began to impact his body, stopped serving its intended function, as they flowed into other parts of the body causing pain but not rendering him unconscious or causing his death. Thus, the execution team had to stop injecting the chemicals and insert a new I.V. line.

The execution team then spent approximately 40 minutes attempting to reinsert an I.V. into Clark, possibly resorting to a cut-down procedure (using a scalpel to cut about five inches into the body of a conscious person to insert an I.V. directly into the vein). The curtains reopened between 11:12 a.m. and 11:17 a.m. to show Clark succumbing to the chemicals. But even then, there were problems. Clark raised his head about a dozen times and appeared to try to speak. Finally, he appeared to stop breathing at 11:23 a.m.

¹ Attached to this pleading are newspaper articles describing Clark's execution.

He was pronounced dead at 11:26 a.m., one hour and twenty six minutes after the execution began. Throughout the attempts to insert an I.V. and the injections of the chemicals, Clark was heard moaning and groaning in pain.

The Ohio Department of Corrections attributes the problems with Clark's execution to the fact that he had a history of intravenous drug abuse that damaged his veins. Like Clark, Moore has damaged veins, mainly due to drug abuse. Thus, the problems that occurred with Clark's execution will likely occur if Defendants are allowed to execute Moore with the chemicals and procedures they intend to use. The likelihood of this is even greater than it was with Clark, because Defendants have already had trouble inserting needles into Moore, because Moore suffers from cardiovascular disease and diabetes, and because Moore weighs 340 pounds. As the Clark execution shows, even if Defendants are able to get an I.V. into Moore, there is a likelihood that Moore's vein will collapse during his execution.

RESPECTFULLY SUBMITTED,

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May 3, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused a true and correct copy of the foregoing

SECOND NOTICE OF SUPPLEMENTAL INFORMATION

and accompanying exhibits to be served via first class mail, postage prepaid on the following individuals:

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May 3, 2006.