

THIS IS A CAPITAL CASE
Eighth Circuit stay expires at 5:00 p.m. CST

No. _____

In The
SUPREME COURT OF THE UNITED STATES

MICHAEL ANTHONY TAYLOR,

Petitioner,

v.

LARRY CRAWFORD,

Director, Department of Corrections, State of Missouri,

and

JAMES D. PURKETT,

Superintendent, Eastern Reception, Diagnostic & Correctional Center,

Respondents.

On Petition for a Writ of Certiorari to the
Eighth Circuit Court of Appeals

**SUPPLEMENTAL SUGGESTIONS IN SUPPORT OF APPLICATION
FOR STAY OF EXECUTION**

COMES NOW the petitioner, by and through counsel, and files these
supplemental suggestions in support of his application for stay of
execution.

As noted in Mr. Taylor's initial pleading, this court must apply the standards of *Rostker v. Goldberg*, 448 US 1306, 1308 (1980) to this motion. Applying that standard here requires a stay.

In addition to the fact that is court has pending before it two similar cases, the particular facts of this case also support the prongs of the test that there is a reasonable probability that this Court will grant certiorari and a substantial likelihood of relief.

Mr. Taylor's §1983 motion, unlike that of Mr. Bieghler, to whom this court recently denied relief, was pending for six months when the Missouri Supreme Court set a date for Mr. Taylor's execution. As noted in previous pleadings, the Missouri Supreme Court created the current time urgency by setting the date for execution before the defendants in the §1983 action had even filed an answer to the plaintiffs' petition.

In response, the district court acted with due respect both to the interests of the defendants and the plaintiffs. It set a hearing on the merits less than 30 days after the scheduled execution, and stayed the execution pending the hearing. The Eighth Circuit instead directed that a hearing be held before the execution date. The order was issued on a Sunday afternoon, and Mr. Taylor's counsel did not become aware of it until January 30, 2006, the day the hearing was scheduled to begin.

Both the district court and the defendants implicitly conceded that a fair hearing was improper when the defendants did not oppose, and the court granted, the motion of intervenor plaintiff Richard Clay to withdraw on the grounds that such an unfair hearing should not be binding on him.

In order to accommodate the unreasonable order of the court of appeals, the district court unreasonably truncated the hearing. In his appeal, Mr. Taylor has presented two specific instances of prejudice arising from this limitation that prevented him, in violation of his rights to due process of law, from fairly presenting his civil rights claim to the district court.

To obtain a judgment that Missouri's method of lethal injection did not constitute cruel and unusual punishment, the defendants relied exclusively on testimony from experts about the way in which the process *should* work. Despite the fact that this protocol has been used, according to the state, for approximately five years, the district court refused to require the state to make available the medical professionals who actually carry it out so that the plaintiffs could adduce evidence about how the process works in practice. Nor would the court allow the plaintiffs to investigate independently whether those professionals in fact had the qualifications

the defendants said they had, or what their experience was with the particular processes involved in the Missouri protocol.

This is particularly important because there are inherent problems with Missouri's method of execution. Intravenous access is gained via the femoral (leg) vein, using a sophisticated medical procedure that involves the insertion of a guidewire and a large than normal intravenous catheter. This is an unnecessary, painful procedure that is used in spite of the fact that there are other less painful and safer ways to gain intravenous access. Further, Missouri, which uses a three chemical sequence of thiopental, pancuronium bromide, and potassium chloride, makes no provision for monitoring the prisoner's level of anesthesia prior to administration of the latter two drugs. Reasonable medical standards call for careful monitoring of anesthesia whenever a barbiturate (such as sodium thiopental) is used in conjunction with a muscle relaxer (such as pancuronium bromide.) This is because the muscle relaxer will paralyze the patient and prevent him from communicating his pain and suffering if the barbiturate is not at the proper level in his brain.

As noted in the declaration of Dr. Sri Melethil, previously provided to this court, certain persons have "acute tolerance" to sodium thiopental. These people will awaken despite the administration of a dosage of the

drug which would ordinarily cause sleep. Missouri makes no provision for determining whether this has happened during the execution process. The phenomenon is common enough that reasonable medical standards require that precautions be taken to avoid it.

Dr. Melethil's evidence was not presented to the district court because he was traveling and did not learn of the immediate hearing until January 31, 2006, when it was already in progress; his previous commitments made it impossible for him to participate that day. His declaration was filed the next day, but the district court issued its ruling on the evening of January 31.¹ Thus, in addition to forbidding Mr. Taylor from presenting relevant and necessary fact witnesses, the district court prevented him from presenting relevant expert testimony.

Mr. Taylor presented the testimony of two experts at the truncated hearing despite the lack of notice. The district court relied heavily on the credibility of the state's expert in the absence of fact witnesses and the testimony of a pharmacokineticist such as Dr. Melethil. Had a full hearing been conducted, there is a reasonable probability that the district court would have ruled otherwise.

¹ Dr. Melethil's declaration indicates that he had been involved with the case since September, 2005; he was not a last-minute addition to Mr. Taylor's evidence.

WHEREFORE, for the reasons presented in his application for stay and in this pleading, the petitioner prays the Court for its order granting a stay of execution pending this Court's disposition of his petition for a writ of certiorari to review the judgment of the Eighth Circuit Court of Appeals, and if certiorari is granted, pending the final disposition of his cause in this court..

Respectfully submitted,



JOHN WILLIAM SIMON*
**Counsel of Record*

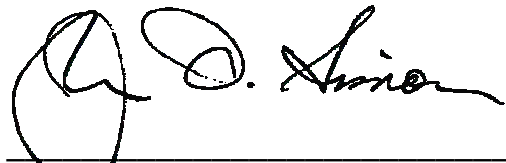
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Certificate of Service

I hereby certify a true and correct copy of the foregoing was e-mailed
this 1st day of February 2006, to the office of:

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