

## Execution scrutiny rages

Gov. Mary Fallin orders a review of the botched lethal injection of Clayton Lockett.

BY CARY ASPINWALL | WORLD STAFF WRITER  
& ZIVA BRANSTETTER | WORLD ENTERPRISE EDITOR

Oklahoma's botched execution Tuesday became the subject of intense international scrutiny as questions emerged on whether the use of an unproven drug protocol led to an inhumane death for inmate Clayton Lockett.

President Barack Obama weighed in on the controversy, saying through a spokesman that the execution fell short of humane standards.

Lockett writhed, strained and mumbled on the gurney inside Oklahoma's execution chamber Tuesday night, appearing to remain conscious and lift his head long after a primary dose of the sedative midazolam was administered to knock him out. Officials closed the blinds to media witnesses 16 minutes after the injection began, and Lockett reportedly died of a massive heart attack less than 20 minutes later.

David Autry, one of two defense attorneys for Lockett who witnessed the execution, said it was apparent that his client was not fully sedated.

"He was experiencing a great deal of pain," Autry said. "For them to claim that he was sedated appropriately and adequately is ridiculous."

It was the first time this combination and dosage of midazolam, vecuronium bromide and potassium chloride had been used in a U.S. execution. It was one of five different combinations the Oklahoma Department of Corrections has approved as policy to use in its executions.

Gov. Mary Fallin announced that there would be an "independent review" of what happened during what was supposed to be the first double execution in Oklahoma since 1937. Inmate Charles Warner, who was supposed to be executed two hours after Lockett, received a stay until May 13 for the state to review its execution procedures.

"I believe the legal process worked. I believe the death penalty is the appropriate response and punishment for those who commit heinous crimes against their fellow men and women," Fallin said. "However, I also believe the state needs to be certain of its protocols and its procedures for executions and that they work. For that reason, I asked last night for a review of the Department of Corrections execution protocols."

She appointed Public Safety Commissioner Michael Thompson to conduct the review.

Late Wednesday, the Oklahoma Medical Ex-

aminer's Office issued a statement that "pursuant to the governor's order;" Lockett's body had been taken to the Dallas County Medical Examiner's Office "for a complete post mortem examination."

### Legal ramifications

White House spokesman Jay Carney said the execution fell short of the humane standards required when the death penalty is carried out. He said President Obama believes that evidence shows the death penalty doesn't effectively deter crime but that some crimes are so heinous that the death penalty is merited.

But Carney said the U.S. has a fundamental standard that the death penalty must be carried out humanely. He said everyone would recognize that this case fell short.

University of Tulsa law professor Lyn Entzeroth, a national expert in death-penalty issues, said there are legal actions Lockett's attorneys could take as a result of what happened to their client Tuesday, but she said "complicated questions" remain about how they would go about it.

They may attempt to prove that their client suffered "cruel and unusual" punishment in violation of his Eighth Amendment rights. While executions are legal in Oklahoma and other states, the Constitution "does require that those executions be carried out in a way that does not involve gratuitous pain and suffering and does not involve torture," Entzeroth said.

"What we saw (Tuesday) night raises some very serious questions about the protocol used by the state of Oklahoma," she said.

Although both Lockett and Warner were convicted of heinous crimes, she said, they have constitutional rights that no state may violate. The Eighth Amendment says that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

"The Eighth Amendment was ratified by our founding fathers," she said. "Execution is an incredible use of power by the states. ... The state cannot kill someone in a manner that would be cruel and unusual — even if it's someone who is a bad guy — because we are a government, and we have to comply with the Constitution and with the rule of law."

# LETHAL CONSEQUENCES

## THE DEATH CHAMBER



Clayton Lockett's botched execution took place in the death chamber on H Unit at the Oklahoma State Penitentiary in McAlester. The Oklahoman file

## THE REVIEW



Gov. Mary Fallin appointed Commissioner of Public Safety Michael Thompson (back) to conduct an "independent review" of what happened on Tuesday. ALONZO ADAMS/Associated Press

## THE CORRECTIONS DIRECTOR



Robert Patton became director of the Oklahoma Department of Corrections in January. He was present during Tuesday's execution, the second since he became director. JOHN CLANTON/Tulsa World

## THE RESPONSE



President Barack Obama's spokesman said Wednesday that the execution fell short of the humane standards required when the death penalty is carried out.

Associated Press file



## THE KILLERS

Clayton Lockett (left) died Tuesday after officials halted his execution, in which the state was using a new drug combination. Charles Warner was scheduled to die two hours later. His execution was postponed at least 14 days.

## Secrecy vs. transparency

The inmates' executions had been postponed by a series of court challenges to an Oklahoma law that allows certain details of the execution procedure to be concealed from the public.

After Fallin intervened, the Supreme Court dissolved its own stay, with one justice declaring that the inmates had no more right to know the details they sought than they would the type of rope with which an inmate would be hanged.

State Attorney General Scott Pruitt, who for months fought hard against any further delays to Lockett's or Warner's executions, issued a statement Wednesday saying it was important "to ascertain what transpired and to ensure the death penalty is administered correctly."

Pruitt advocated for transparency in the fact-finding surrounding Lockett's execution.

"It's equally important that any such review be conducted with a commitment to objectivity," he said.

Pruitt said he was designating a special adviser to assess the results of the independent review of Lockett's execution, as well as DOC's procedures.

Neither Fallin nor Pruitt attended Tuesday's execution at the Oklahoma State Penitentiary in McAlester.

Department of Corrections Director Robert Patton and Thompson witnessed it, along with Noble County Sheriff Charlie Hanger, former Noble County Sheriff Jerry Cook, District Attorney Brian Hermanson and members of the media.

Lockett was convicted in the 1999 shooting death of Stephanie Neiman, 19, of Perry.

Neiman's parents, Steve and Susie Neiman, and her aunt and uncle also witnessed the execution.

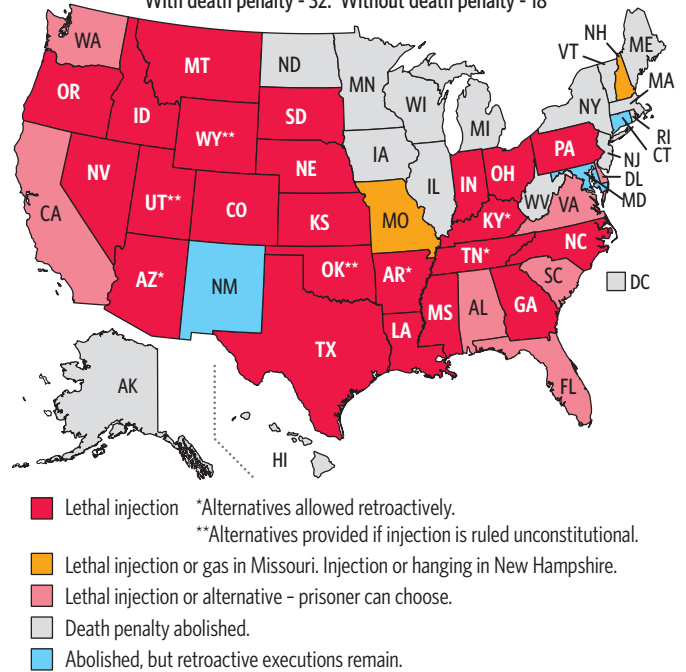
## Calls for a moratorium

At a Capitol press conference Wednesday, Sen. Constance Johnson, D-Forest Park, and Rep. Seneca Scott, D-Tulsa, said they will introduce a resolution calling for a moratorium on executions until an independent, thorough investigation can be conducted.

Johnson conceded that the proposal was un-

## Methods of execution in the states

With death penalty - 32. Without death penalty - 18



likely to be considered during the current legislative session but said it is time for the state to have a conversation about the issue.

According to the Death Penalty Information Center, the state ranked first nationally in per capita executions between 1976 and 2011.

Dean Sanderford, an attorney who witnessed Lockett's execution, said: "We need to stop killing people until we know whether we can do it in a manner consistent with the Constitution."

Sanderford, an assistant federal public defender who also represented Lockett, was in tears as he watched Tuesday's botched procedure. He said he has no confidence in Fallin's decision to appoint a Cabinet-level member of her administration instead of a neutral party to examine what happened.

"In order to understand exactly what went wrong in last night's horrific execution, and restore any confidence in the execution process, the death of Clayton Lockett must be investigated by a truly independent organization, not a state employee or agency," he said.

# Officials quiet on full protocol of execution

BY ZIVA BRANSTETTER | WORLD ENTERPRISE EDITOR

State officials refused to say Wednesday whether attempts were made to revive an inmate following a botched execution.

Inmate Clayton Lockett spent three minutes writhing in pain at the Oklahoma State Penitentiary before prison officials said they had halted his execution. Shades were drawn in the execution chamber 16 minutes after the execution began, preventing media witnesses from seeing what happened to Lockett, 38.

Department of Corrections Director Robert Patton later said Lockett had been pronounced

dead of a heart attack at 7:06 p.m., a total of 43 minutes after the execution began.

Lockett was injected with midazolam, a sedative, and then was supposed to be injected with vecuronium bromide, a paralytic drug intended to stop the breathing; and potassium chloride, a drug intended to stop the heart.

It is unclear how much of the drugs were administered, DOC officials said.

Alex Weintz, a spokesman for Gov. Mary Fallin, referred questions to DOC about what happened to Lockett before his death.

A spokesman said the agency would not comment on the execution or make a statement Wednesday.

Officials said previously that Lockett died on the gurney and was not removed from the execution chamber before his death.

Records show DOC's new execution protocol, approved April 14, lists no policies for such situations. It allows the prison to choose from five drug combinations, including the untested combination used Tuesday.

A physician in the execution chamber declared Lockett unconscious. DOC officials cited the state's execution secrecy law in refusing to identify the doctor.

David Autry, one of two defense attorneys for Lockett who witnessed the execution, told the World: "This was obviously a botched execution. ... For them to claim that he was sedated appropriately and adequately is ridiculous."

Autry said he is unaware of what happened to Lockett after the blinds were drawn.

"All I know is Director (Robert) Patton came in and said he was halting the execution," he said. "I assumed that they were going to try to revive him. What efforts if any they made to revive him or try to counteract the drugs, I don't know."

Autry questioned DOC's statement that Lockett's vein had collapsed, preventing full administration of the drugs.

"I'm not a medical professional, but Mr. Lockett was not someone who had compromised veins," Autry said. "He was in very good shape. He had large arms and very prominent veins."

Autry said the state's pledge to investigate the botched execution before Warner's death "is not going to cut it."

"They are going down the same path they've gone down before trying to get this done at all costs regardless," he said. "... That's going to be a whitewash. They are going to paper over this."

A medical expert who has testified in death penalty cases said, based on witness accounts, Lockett was conscious and experienced a painful execution.

Dr. David Waisel, associate professor of anesthesiology at Harvard Medical School, said midazolam is typically given in small doses to patients before surgery. Waisel, who has testified or consulted in about eight death penalty cases, said he is not aware of another execution using the same three-drug combination used by Oklahoma on Tuesday.

After conferring with the physician, OSP Warden Anita Trammell declared Lockett was unconscious at 6:33 p.m., 10 minutes after the proce-

## Three-drug protocol

Oklahoma's execution protocol allows officials to choose from five drug combinations. The state chose the fifth option for the scheduled executions of two inmates Tuesday night. Here are the three drugs chosen by the state.

1. Midazolam: A sedative, 50 milligrams in each arm.
2. Vecuronium bromide: Paralytic drug intended to stop breathing, 20 milligrams in each arm. The drug "will not be administered until at least 5 minutes after the beginning of the administration of the midazolam."
3. Potassium chloride: A drug intended to stop the heart, 50 cc in each arm.

... dure began. Less than five minutes later, a World reporter and other witnesses to the execution saw Lockett convulsing and writhing, apparently in pain. He tried to speak, although what he said was not clear.

Waisel said people who are unconscious are not capable of speaking and bodily movements. Waisel said given the timeline and drugs used, "it is possible that he received enough midazolam to make him sleepy, but not the full intended dose."

He said if the second and third drugs were administered directly to Lockett's blood stream through a vein "he would have died right away."

"What I suspect happened was that the two drugs were not injected into the vein, but were injected in the soft tissue around the vein," he said. "That can be very painful, and would be consistent with the reaction being reported."

Waisel said because so many minutes had elapsed between administering of the midazolam and Lockett's violent reaction, "clearly this sounds like a new injection of something that was very painful."

Attorney General Scott Pruitt's office said in a statement Tuesday that an expert witness had testified in court cases to the safety of midazolam used in Florida executions.

Pruitt's statement cited court testimony by Dr. Mark Dershwitz, professor of anesthesiology at the University of Massachusetts, that "a 50 mg dose prevented his patients from perceiving the noxious stimuli associated with neurosurgery."

"The state is using twice as much midazolam (100 mg) in the executions of Lockett and Warner," Pruitt's statement says. However, Florida uses 500 milligrams of midazolam in its executions, records show.

# Eyewitness account: The execution of Clayton Lockett

*Editor's Note: Tulsa World Enterprise Editor Ziva Branstetter was one of 12 media witnesses to attend a botched execution Tuesday at the Oklahoma State Penitentiary. Here is her account of what happened Tuesday in McAlester:*

**5:30 p.m.** Reporters are taken in two white vans to the prison's death row, called the H unit, to attend the execution. Media witnesses can take nothing with them into death row, not even a watch, and are issued a spiral notebook and pen after being searched by correctional officers. We are taken to the death row law library where we wait with two prison officials to be taken to the execution viewing chamber.

**5:40 p.m.** Inmates can be heard banging loudly on cell doors throughout death row, which prison officials explain is a sign of respect for the inmate to be executed. Not all inmates receive such a sendoff; it just depends on whether other inmates liked the condemned inmate.

**5:50 p.m.** We are taken from the law library down a long sterile hall, around a corner and into the viewing chamber. Media witnesses file into the back row of two rows of metal folding chairs. Before the execution starts, witnesses for the crime victim, Stephanie Neiman, file into a separate viewing room for victims' relatives so they can watch the process through one-way glass. Two attorneys for inmate Clayton Lockett, his only witnesses, sit in front of us. Department of Public Safety Commissioner Michael Thompson, Department of Corrections Director Robert Patton and several other state officials also file in, sitting in the front row.

**6:23 p.m.** The beige blinds covering four windows into the execution chamber are raised and the execution is set to begin – 23 minutes past its scheduled time. This execution has taken longer to start than the three others I have covered and other media witnesses remark on the slow start as well. Oklahoma State Penitentiary Warden Anita Trammell asks Lockett, covered up to his shoulders by a white sheet, whether he has any last words. "No," is all he says. This isn't especially surprising. Earlier, Lockett rejected his last meal after being told he couldn't have a particular kind of steak. "Let the execution begin," Trammell says. Inside the room are four other people, including a physician and a uniformed correctional officer.

**6:28 p.m.** Fifty milligrams of midazolam have been injected into each of Lockett's arms to start the process, an attempt to sedate him before the second and third drugs are administered to stop the breathing and the heart. Lockett has spent the past several minutes blinking and occasionally pursing his lips.

**6:29 p.m.** Lockett's eyes are closed and his mouth is open slightly.

**6:31 p.m.** The doctor checks Lockett's pupils and places his hand on the inmate's chest, shak-

ing him slightly. "Mr. Lockett is not unconscious," Trammell states.

**6:33 p.m.** The doctor checks Lockett a second time after a full minute without movement. "Mr. Lockett is unconscious," Trammell states. It seems like it took longer than expected for this to occur. In past executions I have attended, there has been no notice that the inmate was unconscious, just a pronouncement of death after about eight minutes without much reaction from the inmate.

**6:36 p.m.** Lockett kicks his right leg and his head rolls to the side. He mumbles something we can't understand.

**6:37 p.m.** The inmate's body starts writhing and bucking and it looks like he's trying to get up. Both arms are strapped down and several straps secure his body to the gurney. He utters another unintelligible statement. Defense Attorney Dean Sanderford is quietly crying in the observation area.

**6:38 p.m.** Lockett is grimacing, grunting and lifting his head and shoulders entirely up from the gurney. He begins rolling his head from side to side. He again mumbles something we can't understand, except for the word "man." He lifts his head and shoulders off the gurney several times, as if he's trying to sit up. He appears to be in pain.

**6:39 p.m.** The physician walks around to Lockett's right arm, lifts up the sheet and says something to Trammell. "We're going to lower the blinds temporarily," she says. The blinds are lowered and we can't see what is happening. Reporters exchange shocked glances. Nothing like this has happened at an execution any of us has witnessed since 1990, when the state resumed executions using lethal injection.

**6:40 p.m.** A black landline phone rings in the viewing chamber and Patton leaves to take the call, stretching the phone cord out into the hall and closing the door behind him. Though the clock on the wall in the execution chamber is no longer visible, it seems like several minutes pass before Thompson is summoned out to the hallway.

**Approximately 6:50 p.m.** Patton comes back to the viewing room and says the execution has been "stopped. We've had a vein failure in which the chemicals did not make it into the offender. ... Under my authority, we are issuing a stay for the second execution." The announcement is stunning and leaves us wondering what has happened to Lockett.

Patton leaves for about 10 more minutes and reporters at the end of our row begin interviewing Sanderford and defense attorney David Autry, both clearly upset by the turn of events. "They will save him so they can kill him another day," Autry says.

We are told to leave the viewing chamber and are escorted back to a waiting white prison van.

We have to tear the notes out of the spiral notebook and leave it plus the pen behind. Another van is on the way so I stay behind with reporters from the Associated Press, The Oklahoman, OETA and The Guardian to compare notes. After every execution, it's important that reporters compare last words and other observations to make sure they have the most accurate version of events possible.

**7:06 p.m.** Lockett is pronounced dead in the

execution chamber from a heart attack. The news of his death is provided to reporters by Patton during a brief statement at the media center on the prison grounds. He explains to reporters that prison officials do not know how much of the second and third drugs entered Lockett's body.

"His line failed," Patton says. When asked what that means, Patton adds: "His vein exploded."