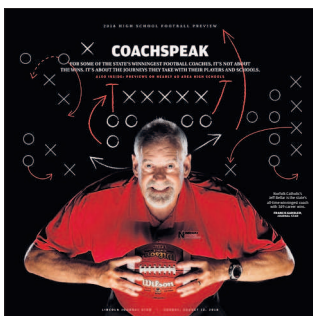




Prep football primer

Look for stories, class breakdowns and more in our prep football preview section. **INSIDE**



Enjoying the optimism

Is it madness to expect 8-win season from Huskers? **SIPPLE, PAGE C1**

Back to class

Students head back to school beginning Monday. **LOCAL, PAGE B1**



SUNNY 89 • 65 FORECAST, B8

SUNDAY, AUGUST 12, 2018

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DEATH PENALTY

PUT TO THE TEST



Small vials of fentanyl are shown in the inpatient pharmacy at the University of Utah Hospital. Nebraska state officials are preparing for their first execution in two decades and their first-ever lethal injection with an untried combination of drugs, including fentanyl.

ASSOCIATED PRESS

Untried drug concoction set for Tuesday execution

JOANNE YOUNG
Lincoln Journal Star

Condemned Nebraska prisoner Carey Dean Moore has made it clear he prefers not to stay on death row the rest of his life. He's ready to die.

Saying the time had come, after seven prior dates with death imposed but not carried out by the state, a federal judge on Friday accommodated Moore, ruling against a drug company that asked for a delay.

It's been 39 years since Moore took his little brother with him to rob a cabbie and kill his first victim, Reuel Van Ness Jr., then kill a second man, Maynard Helgeland, by himself.

Although the drug company has appealed Friday's court ruling, Moore is not fighting his execution.

He has named his witnesses: His brother David Moore; a friend, Gary Cross; a niece, Taylor Brouillette; his spiritual adviser and friend, Bob Bryan. He has asked for the state to pay for his cremation, according to prison documents, and would like his ashes given to his brother David.

He is scheduled to die Tuesday morning, and the state appears ready to proceed, even with an untested combination of four drugs, three of which — fentanyl, diazepam and cisatracurium — have not been used in capital punishment. The protocol was put

Please see **EXECUTION**, Page A9

■ **Online:** Read the guidelines for public access at the Nebraska State Penitentiary on Tuesday **@JournalStar.com**.

■ **Inside:** A look at the states with the most executions. **Page A8**

Officials look into how employee stole plane

Man took plane,
fatally crashed
into small island

RACHEL LA CORTE AND KEITH RIDLER
Associated Press

OLYMPIA, Wash. — Investigators are piecing together how an airline ground agent stole an empty commercial airplane, took off from Sea-Tac International Airport and crashed into a small island in the Puget Sound after being chased by military jets that were quickly scrambled to intercept the aircraft.

Officials said Saturday that the man was a 3.5-year Horizon Air-

lines employee and had clearance to be among aircraft, but that to their knowledge, he wasn't a licensed pilot.

The 29-year-old used a machine called a pushback tractor to first maneuver the aircraft, which was in a maintenance area, so he could board and then take off Friday evening, authorities said.

A U.S. official briefed on the matter told The Associated Press the man was Richard Russell. The official wasn't authorized to discuss the matter and spoke on the condition of anonymity.

Video showed the Horizon Air Q400, a turboprop plane that

Please see **CRASH**, Page A2

Sasse: Mueller probe must continue

Senator says country
is 'fortunate' to have
him investigating

DON WALTON
Lincoln Journal Star

Sen. Ben Sasse believes special counsel Robert Mueller is the right man for the job and that his investigation into Russian interference in America's 2016 presidential election is providing a service to the country.

"We are really fortunate to have him leading this investigation," Nebraska's Republican senator said during an interview over lunch at a small cafe in Ashland.

Twenty-five foreign indictments already have been is-



ERIC GREGORY, JOURNAL STAR

Sen. Ben Sasse speaks Thursday at the federal legislative summit at the Strategic Air Command & Aerospace Museum.

sued, and that's "a really big deal," Sasse said, "and when

you layer on what some of us who have participated in intelligence briefings know, it's even a bigger deal."

"One of the real tragedies (in the partisan political battle over the ongoing probe) is that it somehow has become a proxy for who you worked for in the 2016 election," Sasse said.

"And that's a big mistake." This is not about President Donald Trump or 2016 Democratic presidential nominee Hillary Clinton, Sasse said.

The issue is whether Russia interfered in America's presidential election, Sasse said.

And the answer is yes. In the intelligence community, Sasse said, "there is zero debate on whether Russia is

Please see **PROBE**, Page A2

DISCOVER
DIGITAL



■ PhotoFiles: Scenes from the Nebraska Balloon and Wine Festival

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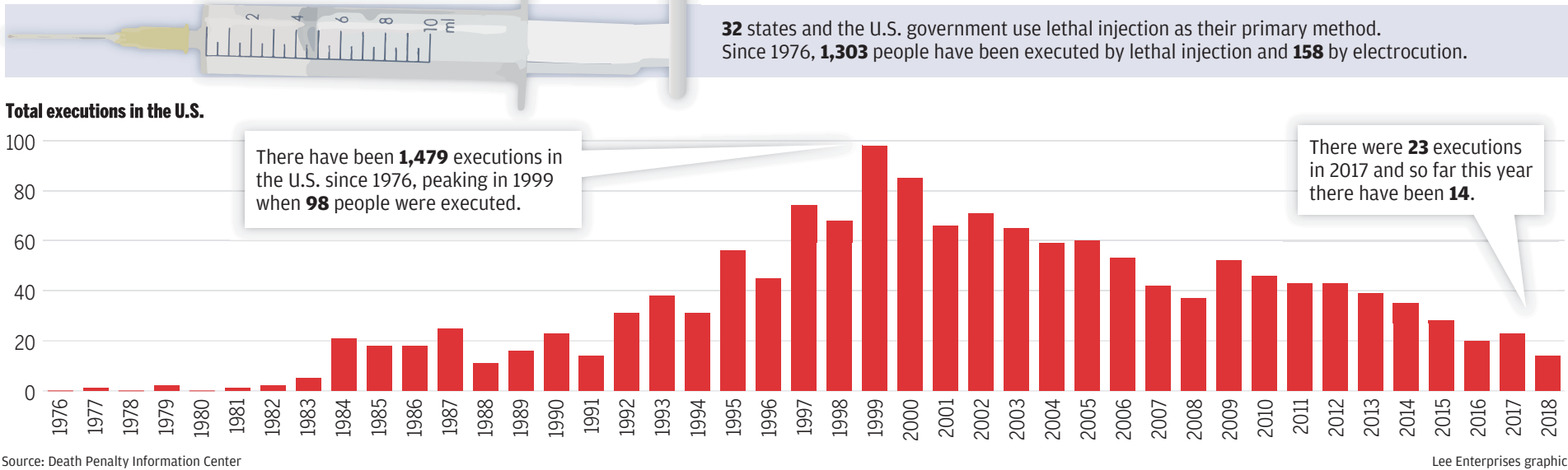
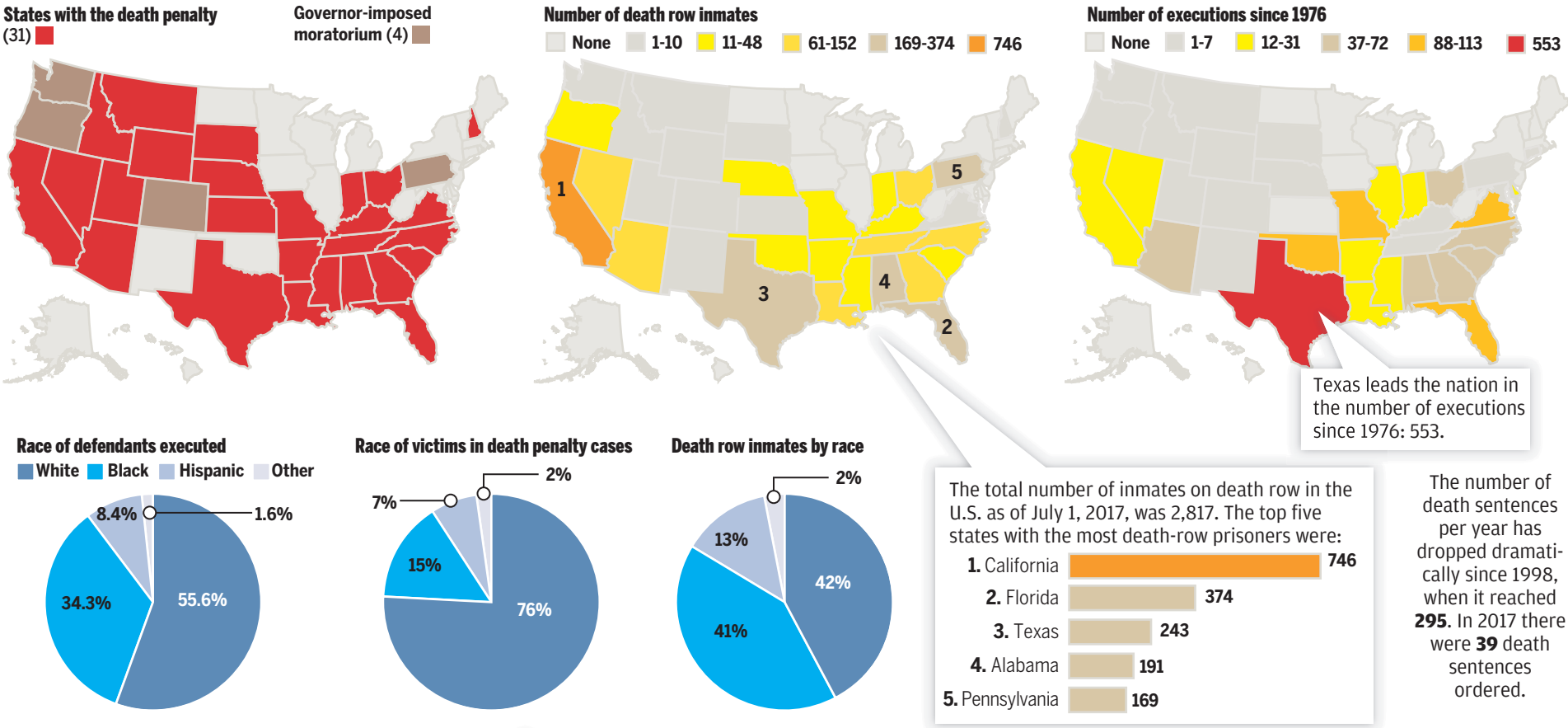


Whirligigs turn a passing breeze into a performance art

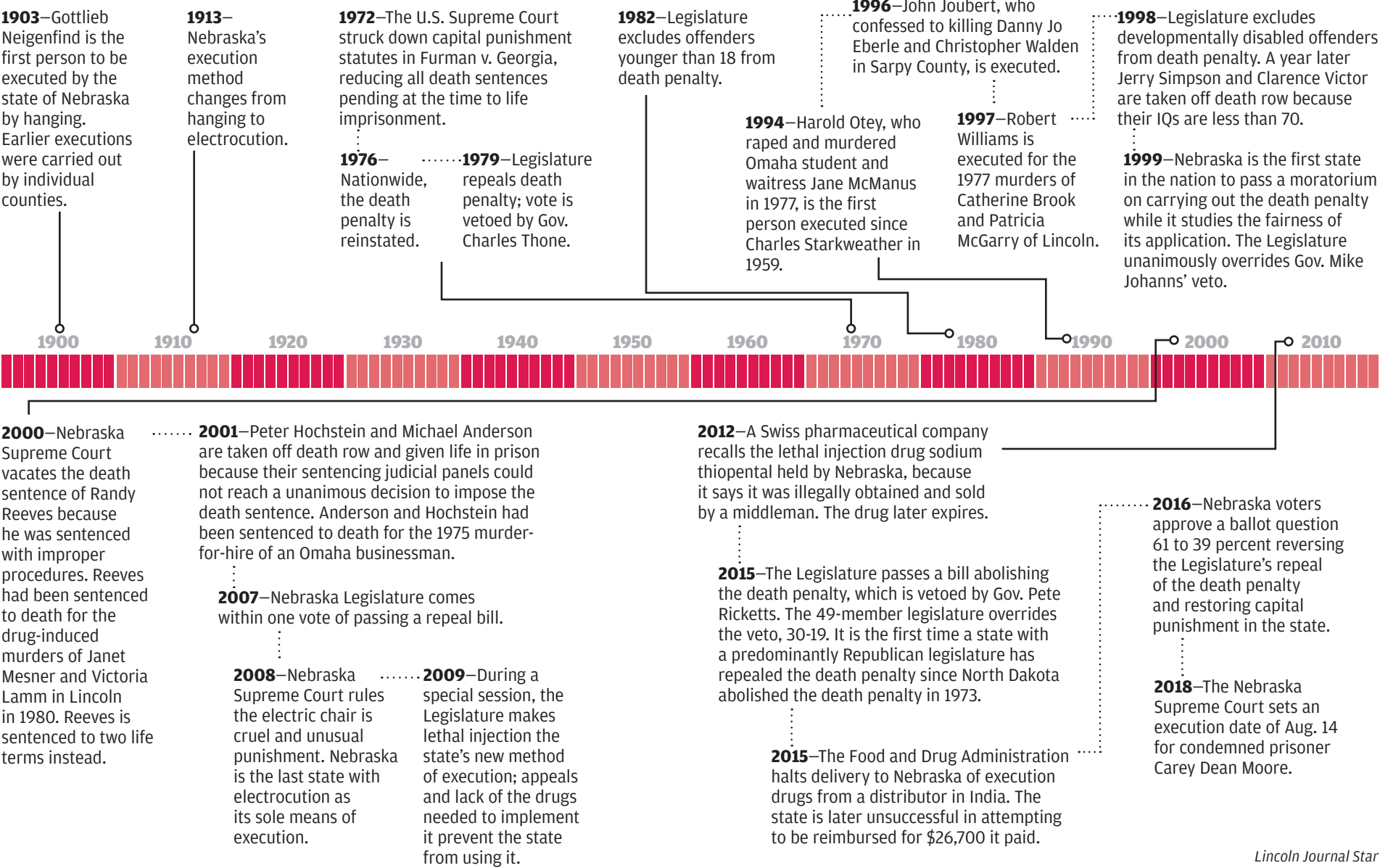
LOOK INSIDE



DEATH PENALTY IN THE UNITED STATES



HISTORY OF THE DEATH PENALTY IN NEBRASKA



NEBRASKA'S 12 DEATH ROW INMATES

Carey Dean Moore, arrived on death row June 20, 1980, Douglas County. Moore killed two Omaha cab drivers five days apart, Reuel Van Ness Jr. and Maynard Helgeland. Van Ness was shot during a robbery, with Moore's younger brother along, and Helgeland was shot three times, Moore has said, just to prove he could take a man's life all by himself.

John L. Lotter, Feb. 21, 1996, Richardson County. Lotter and Marvin Nissen were convicted of killing Brandon Teena, 21, a transgender male. They killed Brandon in 1993 to silence him after he told police they had raped him. They also killed Lisa Lambert, 24, and Phillip DeVine, 22, who lived in the same house as Brandon and witnessed the killing. Lotter has maintained his innocence.

Nikko Jenkins, May 30, 2017, Douglas County. Eleven days after his release from prison, where he had been for 10 years for two carjackings, Jenkins shot and killed Juan Uribe-Pena and Jorge Cajiga-Ruizon on Aug. 11, 2013. Eight days later, Jenkins killed Curtis Bradford, a one-time prison acquaintance. Then, on Aug. 21, he pulled Andrea Kruger from her SUV as she drove home from work and shot her four times before speeding off in her vehicle.

Arthur L. Gales, Nov. 6, 2001, Douglas County. Gales was convicted of attempted murder in the severe beating of Judy Chandler, and of raping and murdering her 13-year-old daughter, Latara Chandler, by strangling her, and killing her 7-year-old son Tramar by drowning and strangling him. He killed them because they could identify him as being with their mother that day.

Roy L. Ellis, Feb. 6, 2009, Douglas County. Ellis abducted, sexually assaulted and killed 12-year-old Amber Harris, who died of at least two blows to the head. Ellis has said he used a hammer, and he may also have strangled her.

Marco E. Torres, Jan. 29, 2010, Hall County. In 2007, he tortured and killed Edward Hall, 60, binding him with an electrical cord, gagging him and shooting him. He then shot and killed Timothy Donohue, 48, who lived upstairs in Hall's home. The men were killed to conceal a robbery.

Raymond Mata, June 1, 2000, Scotts Bluff County. Mata was convicted of killing and dismembering 3-year-old Adam Gomez, his former girlfriend's son, in 1999. Prosecutors said Mata fed parts of the boy's body to a dog, and kept some of his remains in the home to intimidate the boy's mother.

Patrick Schroeder, June 1, 2018, Johnson County. Schroeder was convicted of strangling his cellmate, Terry Berry, at Tecumseh State Correctional Institution in April 2017. At the time, Schroeder was serving a life sentence for beating Pawnee City farmer Kenny Albers to death and dumping his body in a well in 2006.

Galindo

Sandoval

Vela

Jorge Galindo, Nov. 10, 2004; **Jose Sandoval**, Jan. 31, 2005; **Erick F. Vela**, Jan. 12, 2007; all Madison County. All three were convicted of shooting and killing Lisa Bryant, 29, Lola Elwood, 43, Samuel Sun, 50, all Norfolk, Jo Mausbach, 42, Humphrey, and Evonne Tuttle, 37, of Stanton, in a botched attempted bank robbery.

Jeffrey Hessler, May 18, 2005, Scotts Bluff County. In 2003, Hessler kidnapped, raped and murdered 15-year-old newspaper carrier Heather Guerrero.

Execution

From A1

in place by the Nebraska Department of Correctional Services.

Outside of a short list of people with the need-to-know, no one else has been told details of how Director Scott Frakes and prison staff came up with the protocol. Frakes said in an affidavit last week he relied upon “expert opinions of qualified pharmacological and medical anesthesiology experts.” He also got legal advice from Nebraska assistant attorneys general.

The combination is an unusual one, in which there is no experience as to how the dosages and drugs will work together to cause death. The drugs actually are meant not to cause death, but to relieve pain, reduce anxiety, facilitate surgery or treat medical conditions.

■ Diazepam, first marketed as Valium, acts as an anti-anxiety medication and has a sedative effect.

■ Fentanyl citrate, a potent narcotic painkiller, is an opioid said to be 30-50 times more potent than heroin and 50-100 times more potent than morphine. It can cause respiratory depression, stop a person’s breathing and render them unconscious.

■ Cisatracurium besylate is a muscle relaxant and in high enough doses can paralyze the muscles, including those used for breathing.

■ Potassium chloride is used to treat or prevent low potassium levels in the body. Too much can cause heart failure.

■■■

Attorney Eric Berger, associate dean and professor of the Nebraska College of Law, is concerned about the concoction of drugs. It’s not clear, he said, that the initial drugs in the protocol can sufficiently prevent the pain — he called it excruciating pain — that the last two, cisatracurium and potassium chloride, could cause.

“I’m not saying that the execution will necessarily be painful, but I am saying that the state has thrown together an especially novel and problematic protocol that raises serious questions,” he said.

The paralytic to be used, Berger said, could conceal the pain an inmate might feel.

Compounding that, Berger said, it’s not certain how competently the protocol will be carried out. The qualifications, training and procedures of those administering the drugs are unknown, he said. And prison officials have not revealed where they got the drugs, how they were manufactured and what testing assures they are what they purport to be.

Frakes has said only that the drugs were purchased legally from a pharmacy in the U.S.

Because Moore hasn’t allowed his attorneys to challenge the protocol, the state thus far hasn’t had to defend it in court, Berger said.

■■■

Omaha Sen. Ernie Chambers, the state’s highest profile opponent of the death penalty, has diligently worked behind the scenes to derail the execution, staying up late at night, getting up early in the morning.

He contacted manufacturers of drugs he thought might be used in Moore’s execution to persuade them to attempt, through the courts, to stop the use of any of their drugs.

Companies have made successful arguments elsewhere defending their reputations and missions, and the fact that their medicines are meant to cure or enhance health and not to kill.

“Anything that can contribute to derailing this execution ought to be done,” he said. “And that’s a self-imposed obligation on me.”

It’s not enough to request any drugs to be used in an execution be returned, Chambers said. The companies have to go all the way to the mat with the state if they really mean to defend their reputations, integrity and mission, he said.

Kabi stepped in with a lawsuit, even if it was, so far, unsuccessful.

Fresenius Kabi sought to stop the use of what it believes are two of the drugs, cisatracurium besylate and potassium chloride, it makes and supplies to wholesalers and distributors.

U.S. District Court Judge Richard Kopf denied a temporary restraining order. The company has appealed.

On Saturday, Sandoz Inc. filed a brief with the federal court to intervene in the lawsuit, saying a Sandoz product, cisatracurium, could be used by the state in an unauthorized manner, and seeking an order to immediately force the state to identify the manufacturer of the drug.

Chambers, too, has been in close contact with Jeff Pickens, chief counsel of the Nebraska Commission on Public Advocacy, who represents Moore, to the extent Moore would allow.

And he wrote a letter to Chief Justice Mike Heavican, pointing out what he believed was the fatal flaw in the request from Attorney General Doug Peterson to set an execution date for Moore. The court would not read the letter, considered an ex parte communication, he said, but communication from the court said it would put it into the record.

“I didn’t want to leave any stone unturned,” Chambers said. “And if this bad thing had happened, I wouldn’t want to look at it after the fact and say this I could have done. And if I could have done it, I should have done it. But that would be too late.”

You never know when you might strike the right chord, he said.

■■■

Brent Martin, news director with Nebraska Radio Network, observed 13 lethal injection executions in Missouri between 1996 and 2005. He was selected by the Corrections Department to represent radio media for Moore’s death.

All of the executions he witnessed were carried out with a three-drug protocol: Sodium thiopental, which rendered the inmate unconscious; pancuronium bromide, which stopped breathing; and potassium chloride, which stopped the heart. Missouri has since moved to a one-drug protocol, using pentobarbital.

Martin said every witness he has talked to says the same thing about lethal injection executions.

“You go into it the first time you ever witness one with so much foreboding. It is such a solemn, sober responsibility. ... It has a certain emotional weight that just is unlike anything you ever do as a reporter,” he said.

But then to actually see it, lethal injection is so almost antiseptic, it becomes anticlimactic, he said.

In Missouri, condemned inmates could choose to have midazolam, marketed under the trade name Versed, before the execution as a sedative or to decrease anxiety. Midazolam has become controversial when used as part of an execution protocol.

The first drug, sodium thiopental, a fast-acting anesthetic, usually elicited the only response from the inmate, Martin said, a cough or a slight rising up from the gurney. After that, there was no movement until prison officials announced the execution was complete.

Normally, it took five minutes from the time the first drug was administered, Martin said. Frequently, however, there were delays before the start — sometimes minutes, sometimes hours.

If witnesses felt anxious about witnessing someone die, he said, they were told to review the case file of what the inmate did to get there.

“We always believed it was a solemn responsibility, when the state decided to exact the ultimate punishment, that we be there to view it for the public, and to ensure it was done correctly, humanely if that’s applicable,” he said.

■■■

The next condemned



ASSOCIATED PRESS FILE PHOTO

Nebraska’s lethal injection chamber at the State Penitentiary in Lincoln.

killer who has been notified of the drugs the state plans to use in his execution is Jose Sandoval, convicted of killing five people at a bank branch in Norfolk. But Sandoval, unlike Moore, could present a legal challenge against the execution protocol and tie the state up in litigation, Berger said.

The state has the upper hand in that kind of lawsuit, because both the U.S. Supreme Court and the 8th Circuit Court of Appeals

have shown hostility to inmates’ legal challenges of lethal injection protocols, he said.

But the Nebraska protocol is so unusual, a judge might conduct a trial to get more information, he said.

“It is becoming increasingly unlikely that states can get their drugs from what might be called ‘big pharma,’ from major pharmaceutical companies,” Berger said.

Those companies, like

Alvogen, Hikma, Lundbeck, APP Pharmaceutical, Fresenius Kabi, Sandoz, are more and more unwilling to sell their drugs for a state’s use in executions.

Frakes told the federal court last week in an affidavit that one of the department’s drugs, potassium chloride, is set to expire this month, and the state doesn’t have any way to buy more to comply with state law and protocol.

Some states started using

just one drug, and Nebraska could try changing its protocol, which would require a public administrative hearing and approval by the governor and attorney general.

Three states have made available alternative methods for carrying out the death penalty. One of those is nitrogen hypoxia, a method available in Missouri, Oklahoma and Alabama.

Nitrogen hypoxia would cause death by the inmate breathing in pure nitrogen, which keeps the brain from getting enough oxygen. It would be a new method, never before used in executions.

If the state would move away from lethal injection as a method of enforcing the death penalty, it would require the Legislature to write a bill, hold a hearing, get it out of committee, debate it and pass it with at least 25 votes, or more than likely 33 to break a filibuster.

Reach the writer at 402-473-7228 or jyoung@journalstar.com. On Twitter @LJSLegislature.

Sandoz seeks to intervene in drug manufacturer’s execution lawsuit

Another drug company has jumped into the last-minute flurry of legal protests of the state’s lethal injection drugs.

Sandoz Inc. filed a brief Saturday in federal court asking to intervene in a lawsuit filed last week by drug manufacturer Fresenius Kabi. U.S. District Court Judge Richard Kopf ruled on that complaint Friday afternoon, denying a temporary restraining order and allowing the execution of Carey Dean Moore to go forward as planned on Tuesday.

Fresenius Kabi has appealed, and Sandoz’s motion to intervene will be heard by Kopf on Monday at 10 a.m.

Sandoz is a manufacturer of cisatracurium, a muscle relaxant, and wants to force the state to identify the manufacturer of the drug to be used in Moore’s execution.

“The use of cisatracurium in this unauthorized manner will cause substantial reputational and other harm to Sandoz, and compromise

Sandoz’s longstanding efforts to ensure its products are not used for capital punishment,” the complaint said.

The drug has never been used in an execution, nor tested or approved for that purpose, the company said.

Sandoz seeks an injunction to require the Nebraska Department of Corrections to disclose the drug’s manufacturer and distributor.

The drug is made by multiple companies.

In his ruling on the Fresenius Kabi lawsuit, Kopf said he did not believe its reputation would be irreparably harmed if the execution proceeds using the drugs cisatracurium and potassium chloride, which the company believes are from its supplies.

But the state of Nebraska would be “greatly and irreparably harmed,” he said, if he stopped the execution.

— JoAnne Young

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