

Esquire

Some States Are Very Committed to Killing People

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We begin this week's tour in Nebraska, where Governor Pete Ricketts, a devout Catholic, celebrated Papa Francesco's recent condemnation of capital punishment by killing a guy, and doing so by using the drug over which every level of government and law enforcement are currently at DefCon1. From *The New York Times*:

The use of fentanyl, an opioid at the heart of the nation's overdose crisis, as part of a previously untested four-drug cocktail drew concern from death penalty experts who questioned how the execution unfolded. And here in Nebraska, a state that last killed a prisoner in 1997, the lethal injection represented a stark political turnabout from when legislators outlawed capital punishment three years ago. The condemned man, Carey Dean Moore, 60, had been convicted of killing two Omaha taxi drivers decades ago and did not seek a reprieve in his final months. He was pronounced dead at 10:47 a.m. at the Nebraska State Penitentiary, officials said, 23 minutes after the first drug was administered. Mr. Moore breathed heavily at one point and coughed, said four Nebraska journalists whom the state selected to watch the execution. Mr. Moore's face turned red, then purple.

The reason for this ghastly improv act in the death chamber is that the tiny vestigial consciences of America's pharmaceutical companies somehow were stirred against supplying drugs that deliberately kill people. So, instead, Nebraska has decided to use the drug that has been proven to kill people by the bushel all over America, and that has been the cause of great weeping and lamentations throughout the land. That, to the logical mind, this appears to be somewhat insane apparently is beside the point.

We move a little north into Iowa, where we find the state supreme court engaged in a dangerous little exercise in under-the-radar mischief. Thanks to the folks at Bleeding Heartland, we learn about the case of *Baldwin v. City of Estherville*, which made it harder for citizens in Iowa to sue, say, the police or local prosecutors over illegal searches and/or false arrest.

Greg Baldwin sued the city of Estherville (Emmet County) and two police officers after being arrested and charged for operating an ATV in a way that turned out to be legal. His lawsuit is pending in federal court. Bennett already ruled "the officers had qualified immunity for violating

Baldwin's rights under the U.S. Constitution." Since federal judges lack the authority to resolve matters of state law, he asked the Iowa justices to determine, "Can a defendant raise a defense of qualified immunity to an individual's claim for damages for violation of article I, § 1 and § 8 of the Iowa Constitution?" Those passages protect "inalienable rights – among which are those of enjoying and defending life and liberty" and forbid "unreasonable seizures and searches."

So-called "qualified immunity" is a hot topic these days among constitutional scholars, and it's entirely possible that Greg Baldwin's case may make its way to the Big Docket in D.C. at some point.

On the other hand, Kende pointed to "an important scholarly trend questioning the doctrine." UCLA law professor Joanna Schwartz and University of Chicago law professor William Baude are among those who have written extensively about the issue in recent months. Baude's article challenging the foundations of qualified immunity "has had a huge scholarly impact and beyond," according to Kende. For example, the conservative Cato Institute has promoted Baude's perspective on what Cato considers an "unlawful assault on civil rights and police accountability" by the U.S. Supreme Court. Kende noted,

As Justice Appel points out in dissent, it is generally not a good thing for constitutional violations to be excused. Yet the majority endorses such a position in certain cases. And there is growing criticism of federal qualified immunity in surprising circles. It is also very difficult for plaintiffs to overcome qualified immunity, and even to draft complaints that survive dismissal, in federal court civil rights cases. [...] We will have to see how the doctrine is implemented in Iowa. To put it another way, law enforcement has a tough job and deserves respect, but constitutional violations should not easily be immunized.

Keep an eye on this one. A lot of people from both sides of the ideological ditching have been spoiling for a fight on this issue for a while now.

Remaining on the judicial branch, we choogle on down to New Orleans, where a particularly odious practice took a major hit in the federal courts. From *The Baton Rouge Advocate*:

On Friday, Vance declared that "undisputed evidence" shows the 13 judges of Orleans Parish Criminal District Court have "a policy or practice of not inquiring into criminal defendants' ability to pay before those individuals are imprisoned for nonpayment of court debts." She also declared that the judges have an "institutional conflict of interest" in making such poverty determinations themselves. That's because the proceeds from fines and fees go directly to the court's Judicial Expense Fund, a kitty controlled by the judges that can be used for a broad range of judicial expenses. Fines and fees have contributed about \$1 million a year to the court's coffers. Vance ruled that the court's failure to "provide a neutral forum for determination of such persons' ability to pay is unconstitutional."

This state of affairs turned the Orleans Parish jails into a virtual debtor's prison where, even if you are arrested for a specific offense, you end up staying in jail for the crime of being poor.

In Orleans Parish, 80 percent or more of criminal defendants are deemed indigent and are represented by public defenders. A report last year by the Vera Institute of Justice found that

roughly 550 Orleans Parish defendants sit in jail on any given day because they can't come up with enough money to bond out, or because they were booked on arrest warrants for failing to pay fines and fees from a previous conviction.

In addition, the prisoners therein have been converted into walking ATMs in order to keep the courts afloat.

The federal case has left a hole, at least temporarily, in a court budget that has counted on about \$1 million a year from fines and fees. Some judges already have been loathe to enforce payment in recent months amid the uncertainty.

If you monetize criminal justice in this way, human beings become a medium of exchange. This country once had a terrible problem with that, if I recall correctly.

Meanwhile, down in Florida, a local judge seems to have been absent the day they taught that pesky Constitution thingamabob in law school. From the *Sun-Sentinel*:

At issue is a report released Aug. 3 based on Cruz's educational record, revealing what officials knew about him in the years leading up to his Feb. 14 attack on Marjory Stoneman Douglas High School, where he killed 17 people and wounded 17 more.

A coalition of 30 media organizations, including the Reporters Committee for Freedom of the Press, the Society of Professional Journalists, the New York Times, the Washington Post, CBS Broadcasting and CNN, came to the Sun Sentinel's side in a court brief filed Tuesday. They called on the judge to deny the School Board's motion to penalize the news organization and two of its reporters, Paula McMahon and Brittany Wallman...

Scherer was not swayed. She threatened to restrict what the media can report, a practice known as prior restraint. "From now on if I have to specifically write word for word exactly what you are and are not permitted to print – and I have to take the papers myself and redact them with a Sharpie ... then I'll do that," she said.

And then, Your Honor, you will be hauled into federal appeals court before you can say "prior restraint," and things will get extremely ugly from there on.

And we conclude, as is our custom, in the great state of Oklahoma, where Blog Official Dustcatcher Friedman of the Plains brings us a true and tragic tale of urban wildlife. From News9.com in Oklahoma City.

About 9:50 p.m. Monday, police were called to the area of Reno and Classen in response to a rodeo bull escaping Stockyards City and running toward downtown. The animal was found near Main Street and Walker and made multiple attempts to run toward Bricktown and the Midtown Bar districts, according to the police incident report. The bull nearly crushed a person near NW 3 and Walker at the Goodyear tire shop but missed when it charged at the person. The bull also hit an Oklahoma City patrol car near NW 3 and Dean A McGee. Police said cowboys put down the bull due to its aggressive behavior after it was corralled near NW 13 and Robinson.

The poor beast just wanted a drink. Is that too much to ask? However, it is interesting to us eastern elites that the Oklahoma City P.D. has cowboys on call for these kind of emergencies.