

Lethal Injections: Medicine and Research

BY JEFF STRYKER

For the first time in more than a hundred years, the U.S. Supreme Court has agreed to hear a case involving the constitutionality of a particular method of execution—lethal injection. The case involves Kentucky death row inmates Ralph Baze and Thomas Clyde Bowling, Jr., who sued in 2004 to challenge the method nearly all death penalty states have adopted: a three-drug cocktail intended first to render the inmate unconscious, then to paralyze and stop his breathing, and finally to stop his heart.

Twenty-five years of experience reveals that execution by lethal injection is not the quick or painless event originally envisioned, but frequently a drawn-out affair during which the paralyzing drugs may mask excruciating pain. The debate about lethal injection has centered on whether it is a medical procedure. At least eight states explicitly maintain that it does not constitute medical practice. Last March, a North Carolina superior court judge ruled that the state's medical board did not have the authority to keep doctors from participating because an execution is "not a medical event or medical procedure." The problem is that lethal injections *look* an awful lot like medical procedures, what with gurneys and syringes and IVs and drugs (albeit far off-label). New Jersey's death penalty statute refers to the lethal chemicals as "execution medications." Wasn't lethal injection *supposed* to be clinical—isn't that why it's a moral advance over electrocution, hanging, and poison gas?

Maybe, however, lethal injection is more like research—a nationwide, government-sponsored clinical trial gone horribly awry. In 1977, when Oklahoma became the first state to recognize lethal injection by statute, Oklahoma legislators turned to A. Jay Chapman, then the state's chief medical examiner, to develop a lethal injection protocol. At first Chapman demurred, saying he "was an expert in dead bodies and not an expert in getting them that way." But he eventually agreed to help, and when he did he jumped right in. "I didn't do any research. I just knew from

having been placed under anesthesia myself, what we needed," he told researchers from Human Rights Watch. Despite the casual approach, the protocol was rapidly adopted by virtually all death penalty states.

Physicians' reluctance to participate in lethal injection protocols has been one of the problems in implementing them. Lay executioners have often lacked the training or experience to place IVs in the arms of sweating, writhing inmates whose veins may be compromised by years of injection drug use. Some had never held a syringe before the execution. One prison warden didn't realize that mixing the drugs together would create a white sludge that couldn't be injected. Ohio revised its protocol after one execution took ninety minutes, only to have a subsequent execution take two hours.

But some physician executioners have been no better. Missouri doctor Alan Doerhoff, who supervised more than fifty executions, had been a defendant in more than twenty malpractice suits and had his privileges revoked at two hospitals. Court testimony revealed his problem with drug dosages: "[I] am dyslexic . . . so it's not unusual for me to make mistakes."

Executions have been compromised in other ways, too. Many executions take place in the middle of the night in poorly lit rooms, forcing some executioners to inject the drugs by flashlight. A federal judge recently faulted California's Corrections Department for "lack of meaningful training, supervision and oversight of the execution team," "inconsistent and unreliable record-keeping," and "inadequate lighting, overcrowded conditions, and poorly designed facilities."

If lethal injection were any other government-sponsored clinical trial, a Data Safety Monitoring Board would have shut it down years ago. But there is no DSMB for clinical trials of lethal injection: no government agencies or entities have embraced responsibility for how executions are carried out. Now, perhaps, the government and the wider public will have at long last an opportunity to take a hard look the nation's ongoing clinical experiment with lethal execution. It may be time to halt the trial.

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*A nationwide trial
gone awry*
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