Lethal objection

An execution is postponed after two doctors refuse to take part. Is the needle on the ropes?

By Nathan Thornburgh

The evening of June 7, 2000, should have been another seamless exhibition of modern execution science. A killer named Bennie Demps was scheduled to be the third Floridian to die by lethal injection, that smooth cocktail of sedatives, paralytics and heart-stopping potassium chloride that was adopted to replace the macabre malfunctions of Old Sparky, an electric chair that had served the state since 1924.

Unlike Florida's first two executions by lethal injection, however, there was nothing smooth about Demps' death that evening. Prison personnel struggled behind closed doors for 33 min. to properly insert the long tubes into Demps' veins. When the curtains finally opened, as they are meant to so witnesses can observe the final moments, Demps, strapped to a gurney, addressed the group in a trembling voice. "They butchered me back there. I was in a lot of pain. They cut me in the groin. They cut me in the leg," he said before the drugs were pumped into his veins. "This is not an execution, it is murder."

The Supreme Court is scheduled to hear in April the case of the most recent Florida prisoner facing the needle and take a rare look at whether inmates can challenge lethal injection. That case, coupled with the surprise withdrawal last week of two court-appointed anesthesiologists who were going to assist in the execution of California's Michael Morales, has unleashed a wave of new questions about the future of lethal injection, the method of preference in 37 of 38 states with the death penalty. Is this seemingly sanitized death really cruel and unusual punishment? Should medical doctors, those do-no-harm healers bound by the Hippocratic oath, refuse to assist in executions, even though their absence might raise the risk that the procedure will be botched?

In all, five inmates have had their executions put on hold since late January because of doubts surrounding lethal injection. Critics of the method point to 24 cases since 1985 that have gone awry. It took 39 min. of failed attempts to put a tube into Georgia's Jose High before a doctor took over and found a suitable vein. Oklahoma's
Scott Dawn Carpenter had drug-induced seizures on the gurney. And even when everything seemed to go right, opponents say, inadequate doses of barbiturates-- the first drug in the cocktail--may have exposed prisoners to excruciating pain, while the paralytic drugs left them unable to cry out or even move as they lay dying.

Supporters of the death penalty say the rash of new objections is not really about the minutiae of dosage or correct catheterization. Rather, it's all part of the continuing effort to chip away at support for capital punishment. Indeed, some anti--death- penalty activists hope that if state courts order closer supervision of lethal injection, instead of remote dosing through tubes that run outside the death chamber, the heavier reality of capital punishment might sink in for witnesses and executioners alike. "Having someone enter the chamber to administer the drugs will force us to decide who will take responsibility for taking a human life," says Mona Cadena of Amnesty International.

Morales is no stranger to cruel and unusual punishment. In 1981 he tried at first to strangle Terri Winchell, 17, and failing that, beat her with a hammer and raped and stabbed her. In challenging his Feb. 21 execution date, however, Morales was not arguing his guilt, only his right to avoid a painful death.

His argument may be morally suspect, but it got a boost of scientific legitimacy in April 2005, when the British medical journal Lancet reported that on the basis of the toxicology reports of executed inmates from six U.S. states, 43% of prisoners may have still been conscious after their dose of sedatives. That means the inmates would have slowly suffocated from the paralytic or suffered intense pain as the potassium chloride worked its way through their veins. Critics of the article fault the study's methodology, but the article has become a favorite defense exhibit in increasingly successful challenges to lethal injection.

In response to Morales' appeal, U.S. District Court Judge Jeremy Fogel gave the state two options: either have licensed personnel inject Morales directly with a lethal wallop of barbiturate, or perform the standard three-drug cocktail with two anesthesiologists present to ensure that the procedure is as painless as possible.

Two doctors initially agreed to monitor Morales' pain. But when newspapers reported that doctors were part of Fogel's newly mandated protocol, the California Medical
Association was deluged by calls and e-mails from doctors who objected to fellow healers playing an active role in the execution. Either because of professional pressure or personal qualms, the two anesthesiologists bowed out. California was unable to find timely replacements, and Fogel postponed the execution until at least May, when he has scheduled another hearing to decide on a protocol, including an appropriate role for doctors.

Medical associations say the ethics of participating in the executions is clear. "The bottom line is that physicians are supposed to cure, not kill," says Dr. Priscilla Ray, chair of the Council on Ethical and Judicial Affairs at the American Medical Association (A.M.A.). "There are a number of doctors who are personally pro--death penalty. But we simply can't be involved in carrying it out." The A.M.A. can't do much to censure physicians who decide on their own to participate in executions. And almost all doctors involved in executions take great pains to conceal their identity--from hiding during the execution to requesting payment in cash so there's no check to trace back to the state. When doctors do admit to having helped the state execute an inmate, activists are there to make their life difficult. Dr. Arthur Zitrin, professor emeritus of psychiatry at New York University, has spent his retirement filing grievances against such doctors. An ethical grievance filed against the Georgia doctor who found High's good vein was eventually dismissed, but it did inspire the Georgia house of representatives to pass legislation in February that would protect the medical license of any doctor who participates in executions. A similar grievance filed by Zitrin and others against Kentucky Governor Ernie Fletcher, a licensed doctor who signed his first death warrant in November 2004, also failed, but Zitrin is unbowed. "Doctors should not be handmaidens to executioners," he says. "We have a responsibility to maintain life as long as there is a possibility to do so."

But other doctors quibble with that interpretation of the Hippocratic oath. In a certain light, a condemned prisoner whose death is imminent and assured could be viewed as a terminal patient. Then the doctors' palliative presence through the dying process takes on a nobler tone. Despite the A.M.A.'s objections, a survey published in 2000 by the Archives of Internal Medicine found that 43% of responding physicians felt it was acceptable for other doctors to inject lethal drugs as part of an execution.

Physicians have played a major role in the history of
execution, but often with unintended consequences. Joseph-Ignace Guillotin was a pacifist doctor who thought beheading by ax was inhumane. And beginning with Oklahoma anesthesiologist Dr. Stanley Deutsch, who helped craft modern lethal-injection protocols 30 years ago, doctors have evolved the science of execution to the point where today they are the most qualified to carry out the sentence.

The rules are often vague about who monitors an execution if physicians are unwilling or unwanted. The surrogates range from nurse practitioners to prison guards, an inadequate replacement in the eyes of many. "If states were doing electrocutions, they would call in electricians," says Richard Dieter of the Death Penalty Information Center. "But lethal injection is a medical procedure. They need doctors."

For now the Supreme Court is unlikely to weigh in on whether doctors should be involved in lethal injections. The Florida case addresses only the narrower issue of what type of appeals inmates can file against this form of punishment. Some, however, are worried less about botched injections and more about what it will mean when we finally do perfect the art of execution. Father John Giuliani witnessed a textbook execution--overseen by a physician--when serial killer Michael Ross was put to death in Connecticut in May 2005. "The most chilling thing was its perfection. Just a slight twitch of an artery, and silence," he says. "Like nobody was dying."