US lethal injection: end of the line?

By Laura Smith-Spark
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The US Supreme Court has said it will review whether the use of lethal injections is constitutional - but what does that mean for inmates on death row?

Experts agree that many executions may be placed on hold as the nation's highest court examines the evidence.

But despite a steady drop in executions in recent years, they say there is little chance of the nine justices banning the use of lethal injection or bringing the death penalty to an end.

The case the nine justices have agreed to hear involves a challenge by two men, Ralph Baze and Thomas Clyde Bowling Jr, who are on death row in Kentucky.

The men argue that the standard three-drug cocktail administered by almost all the 37 states that use lethal injection inflicts unnecessary pain and suffering.

The question is, therefore, whether it violates the US Constitution's Eighth Amendment ban on cruel and unusual punishment.

The case will be one of the most closely watched of the Supreme Court's new session, which starts in October, with a decision due by the end of June next year.

LETHAL INJECTIONS
Sodium pentothal - anaesthetic
Pancuronium bromide - paralyses entire muscle system
Potassium chloride - stops the heart
Lethal injection has been used in all but one of 41 executions carried out in the US in 2007

"It's very significant - I think it will likely hold up executions in the US for some months," said Richard Dieter, director of the Washington-based Death Penalty Information Center (DPIC).

"On the other hand, I don't think it will result in any clearing of death row or the end of the death penalty."

'How much pain?'

A Supreme Court ruling last year said that death row inmates could file last-ditch challenges to lethal injections.

As a result, many lower courts in states across the US have been flooded with appeals.

Only last week, Tennessee became the 11th state in which executions have been postponed or blocked over concerns about injections.

The Supreme Court may have felt it had to step in to provide guidelines for states to follow, says Elisabeth Semel, director of the Death Penalty Clinic at the University of California law school in Berkeley.
The difficulty the court faces, she says, is that it must agree a standard for what constitutes "cruel and unusual" suffering.

"It's clearly an important case because it will decide what the Eighth Amendment will permit, or not, in terms of the pain and suffering allowed when someone is put to death," Ms Semel said.

"But I think it's premature to say it will resolve the lethal injection questions and incorrect to say it will resolve the death penalty issue. That's not the question before the court."

**Botched executions**

The Supreme Court is likely to look at a range of medical evidence as it reviews the case.

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**It's the lethal injection or nothing at this point**

Richard Dieter, DPIC

During an execution by lethal injection, the inmate is given three drugs - one sedative, another that paralyses all muscles except the heart and a final drug which stops the heart, causing death.

A 2005 study sparked controversy by suggesting the amount of sedation given might not be enough to stop the inmate feeling the painful effects of the other drugs - but would prevent him crying out.

A botched execution in Florida last year, in which a man was left grimacing for more than 30 minutes after the drugs missed his vein, led the state to review its procedures before allowing lethal injections to resume.

Such cases, along with the mounting legal challenges, may have helped contribute to the downward trend in death sentences passed and executions carried out in recent years.

The number of executions hit 98 in 1999 but has been falling since, with 53 recorded last year, according to the DPIC.

**Majority backing**

However, it is unclear to what extent US public opinion is changing on the issue, despite campaigning by high-profile rights groups such as Amnesty International.

A survey for the Pew Forum on Religion and Public Life in January 2007 suggested that 64% favoured the death penalty for persons convicted of murder, 29% were opposed and 7% were unsure.

While that is a drop from a peak of 80% in 1994, Pew surveys over the years reveal public support for the death penalty for murder has not fallen below 50% since 1966.

But anti-death penalty groups and some academics argue there is a growing groundswell of opposition to executions, which may play into the current case.

"It comes at a time when there's a broad national uncertainty about use of the death penalty writ large," said law professor Doug Berman of Ohio State University.

He says evidence of miscarriages of justice and concerns that many death row inmates receive inadequate legal representation have undermined people's confidence in the process.

"Thrown into that context it makes it even more compelling for courts to make sure that we are doing this the most ethically sound and medically sensible way," he said.

**'No alternative'**

Whatever the Supreme Court decides, this is unlikely to be the end of the line for the lethal injection, so any stay of execution for those on death row, is likely to be temporary.

As Mr Dieter points out, the injection system was adopted in most states some 20 years ago to replace methods such as the electric chair that were considered less humane.

"It's the lethal injection or nothing at this point," he said.
"Gas chambers or electrocution are not likely to be accepted by the public.

"The courts will have to work with lethal injections or come up with something totally new and hi-tech - but no-one's really talking about that.

"There is a quandary, in that there's no alternative and they are going to have to fix what they have."