

**PUBLIC**

**AI Index: AMR 51/148/2007  
26 September 2007**

**Further information on UA 246/07 (AMR 51/143/2007, 17 September 2007) –**

**Death penalty / Legal concern**

**USA (Tennessee)**

**Edward Jerome Harbison (m), black, aged 52**

Edward Jerome ("E.J.") Harbison, who was due to be executed in Tennessee on 26 September, has received a stay of execution until January 2008. He was sentenced to death in 1985 for the murder of Edith Russell in 1983. He has been on death row for more than 20 years.

On 19 September 2007, US District Judge Aleta A. Trauger barred the state of Tennessee from executing Edward Harbison under its lethal injection protocol adopted earlier this year.

Like most other death penalty jurisdictions in the USA, Tennessee's new protocol requires the administration of three drugs, sodium thiopental, pancuronium bromide and potassium chloride in lethal injection executions. Sodium thiopental, a rapid-acting barbiturate commonly used in anaesthesia, is injected to render the inmate unconscious. The inmate is then injected with pancuronium bromide, a muscle paralytic which paralyzes the diaphragm, making breathing impossible. By itself, Judge Trauger noted, "100mg of pancuronium bromide would be sufficient to kill a person by suffocation," adding that, "Due to the risk that pancuronium bromide could cause an animal to suffocate to death while paralyzed but fully awake, the use of the drug on animals for purposes of euthanasia is prohibited in Tennessee." The third and final drug, potassium chloride, is injected into the condemned prisoner to cause cardiac arrest.

Judge Trauger noted that "It is undisputed that, without proper anaesthesia, the administration of pancuronium bromide and potassium chloride, either separately or in combination, would result in a terrifying, excruciating death. The basic mechanics are that the inmate would first be paralyzed and suffocated (because the paralysis would make him unable to draw breath), then feel a burning pain throughout his body, and then suffer a heart attack while remaining unable to breathe."

Judge Trauger concluded that, as a result of lack of training of personnel involved and other failings, Tennessee's lethal injection protocol posed a "substantial risk" that the prisoner would not be unconscious when the second and third drugs were administered. In addition, "Because there is no check for consciousness, such a mistake may never be discovered." She concluded that Harbison's pending execution under this protocol would violate the constitutional ban on "cruel and unusual" punishment.

Governor Bredesen was quoted as responding to Judge Trauger's ruling by saying: "She's kind of created a Catch-22 for us. She decries the lack of medically trained personnel involved in the execution, and of course it's very hard to get trained medical personnel to participate in any fashion ... I think this is the wrong decision in this case. I think she's trying to push us into uncharted territory, which I'm going to have to think carefully about. And I think she's made it very difficult to fix the three-drug protocol."

Judge Trauger had not issued a stay of execution. On 24 September, the state filed a motion in the Tennessee Supreme Court asking the Court to vacate E.J. Harbison's execution date. The motion stated that the Commissioner of the Department of Correction needed "additional time" to determine how to respond to Judge Trauger's ruling, and that the Department would "not be in a position to go forward with the execution of Mr Harbison on September 26, 2007."

On 25 September, the state Supreme Court granted the motion, and set a new execution date of 9 January 2008. One of the judges dissented, arguing that under state law the execution could go ahead by electrocution. The dissenting judge said that the Governor could issue a temporary reprieve to allow the state time to decide what to do.

In another development on 25 September, the US Supreme Court agreed to consider the constitutionality of lethal injections in a case brought by two Kentucky death row inmates claiming that the three-drug execution process used in Kentucky is unconstitutional.

Amnesty International opposes the death penalty in all cases, regardless of the method selected to kill the prisoner. There have been 1,099 executions in the USA since judicial killing resumed there in 1977. There have been 42 executions in the USA this year, 26 of them in Texas.

**No further action by the UA Network is requested at present. Many thanks to all who sent appeals.**

\*\*\*\*\*