



DEATH PENALTY CLINIC

CENTER FOR CLINICAL EDUCATION
SCHOOL OF LAW (BOALT HALL)
BERKELEY, CALIFORNIA 94720-7200

FACULTY

Elisabeth Semel, Director
Ty Alper, Associate Director

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Contacts:

Elisabeth Semel, 510-642-0458 (w), 510-701-1212 (c)

Ty Alper, 510-643-7849 (w), 510-593-4227 (c)

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***Amicus* Briefs Ask U.S. Supreme Court to Set Standard Preventing
"Unnecessary Risk" of Torturous Lethal Injection Executions**

Berkeley Law Death Penalty Clinic files amicus brief today detailing pervasive lack of professionalism in the administration of lethal injection in many states. Five other amicus briefs, filed in support of Kentucky death row inmate whose challenge to lethal injection is pending in the Supreme Court, address other deficiencies in the lethal injection process.

Berkeley, CA – Lethal injection executions in this country are performed by untrained, unqualified prison employees using inadequate equipment and following incomprehensible protocols, according to an *amicus* brief filed today by the Death Penalty Clinic at the U.C. Berkeley School of Law. The brief was filed in support of the Petitioner in *Baze v. Rees*, currently pending in the U.S. Supreme Court.

The Clinic surveyed thousands of pages of documents from more than a dozen states, concluding that states have “turned a blind eye” to the foreseeable problems inherent in the three-drug lethal injection formula, and have allowed “ignorance and neglect – rather than science and deliberation – to guide the formation and implementation of lethal injection protocols.” The Court is likely to hear oral argument in the *Baze* case in January of 2008.

Clinic Associate Director Ty Alper, counsel of record for the Clinic, and Professor Elisabeth Semel, the Clinic’s Director, filed the brief on behalf of death-sentenced inmates who are litigating lethal injection challenges in California, Missouri, Maryland, and Florida. The brief, prepared with the assistance of the Clinic’s Eighth Amendment fellow and two Clinic students, begins by explaining the dangers inherent in the three-drug formula, and describes how the failure to correctly administer anesthesia to the inmate can result in an excruciatingly painful, and torturous, death. Alper announced that the brief details the “widespread lack of professionalism and competency in the administration of lethal injection in this country.”

The following are just a few of the Clinic's findings:

- **Executioners in many states have never even read the lethal injection protocols that supposedly govern their actions.** For example, in California, an execution team member was asked whether she had read the protocol. She responded, "I don't know what you're talking about." In Maryland, two key members of the execution team had never seen a copy of the execution operations manual.
- **Executioners in many states have received no training with respect to implementation of the three-drug protocol.** For example, in California, executioners testified that "we don't really have training, really" and that there are no procedures in place to deal with foreseeable malfunctions in the execution equipment. In Florida, where then-Governor Jeb Bush declared a moratorium on executions after a horribly botched lethal injection execution, the state's primary executioner testified that he had no medical training or qualifications, nor had he received any training to conduct executions.
- **Executioners in many states are utterly unqualified to perform executions.** For example, the doctor responsible for overseeing executions in Missouri has been sued for malpractice more than 20 times, and has been reprimanded by the State's medical board. Although a federal judge banned him from participating in Missouri executions, the Federal Government has used him as a consultant on its lethal injection protocols. In California, a federal judge suggested a criminal investigation may be necessary to investigate whether execution team members at San Quentin State Prison have been stealing some of the execution drugs instead of using them for practice executions.
- **Lethal injections in some states have been governed by incomprehensible or nonsensical protocols.** For example, until this year, Tennessee's lethal injection protocol was so poorly drafted that it contained instructions for the electrocution of the inmate, including shaving his head and ensuring a fire extinguisher was nearby prior to the lethal injection. In Oklahoma and North Carolina, protocols called for prison employees to administer a dose of anesthesia after the inmate was already dead.

The brief also describes what is known to have gone awry in a number of the botched lethal injection executions and explains why the botched executions happened. "Torturous executions will continue to occur unless states and the Federal Government are compelled to establish reasonable protections against the foreseeable dangers inherent in the three-drug formula," said Semel, Director of the Death Penalty Clinic.

Amicus briefs in support of Petitioners in *Baze* were also filed by legal scholars, medical ethicists, veterinarians, the ACLU and the Rutherford Institute, and by Human Rights Watch.

The Death Penalty Clinic's *amicus* brief and those filed by other *amici* in support of *Baze*, as well as briefs filed in support of neither party, are available at www.lethalinjection.org, which posts articles and other background information on *Baze* and other lethal injection challenges.