



## Baze v. Rees, 553 U.S. 35, 64-65 (2008)

The death row inmates acknowledged that the lethal injection procedure, if applied as intended, would result in a humane death. They nevertheless contended that the lethal injection protocol was unconstitutional under the Eighth Amendment because of the risk that the protocol's terms might not be properly followed, resulting in significant pain. The Court held that the inmates had not carried their burden of showing that the risk of pain from maladministration of the concededly humane lethal injection protocol, and the failure to adopt untried and untested alternatives, constituted cruel and unusual punishment.

### **The Court Reviewed the Ethical Guidelines on Physician Participation in Capital Punishment and Provided**

Guidelines issued by the American Medical Association (AMA) state that "[a]n individual's opinion on capital punishment is the personal moral decision of the individual," but that "[a] physician, as a member of a profession dedicated to preserving life when there is hope of doing so, should not be a participant in a legally authorized execution." AMA, Code of Medical Ethics, Policy E-2.06 Capital Punishment (2000), online at <http://www.ama-assn.org/ama1/pub/upload/mm/369/e206capitalpunish.pdf> (all Internet materials as visited Apr. 14, 2008, and available in Clerk of Court's case file). The guidelines explain:

"Physician participation in an execution includes, but is not limited to, the following actions: prescribing or administering tranquilizers and other psychotropic agents and medications that are part of the execution procedure; monitoring vital signs on site or remotely (including monitoring electrocardiograms); attending or observing an execution as a physician; and rendering of technical advice regarding execution." *Ibid.*

The head of ethics at the AMA has reportedly opined that "[e]ven helping to design a more humane protocol would disregard the AMA code." Marris, Will Medics' Qualms Kill the Death Penalty? 441 Nature 8-9 (May 4, 2006).

Similarly, petitioners argue for better trained personnel. But it is clear that both the American Medical Association (AMA) and the American Nursing Association (ANA) have rules of ethics that strongly oppose their members' participation in executions