

For Immediate Release: June 25, 2014

Contact: Laura Burstein at (202) 626-6868; laura.burstein@squirepb.com

Oklahoma Death Row Prisoners Sue State Officials to Avoid Future Problems with Executions

Oklahoma's "Unsound Practices and Procedures" Among Numerous Other Constitutional Violations Cited in Federal Lawsuit Filed Today

(June 25, 2014) Citing the botched execution of Clayton Lockett and several other problematic executions in Oklahoma, today, a group of death row prisoners sued state officials to prevent future executions using the state's current procedures because they create a substantial risk of severe pain, needless suffering and a lingering death. The civil rights lawsuit, filed in the U.S. District Court for the Western District of Oklahoma, seeks to ensure that the state's lethal injection execution practices will comport with the U.S. Constitution, including the Eighth Amendment's protection against cruel and unusual punishment.

The lawsuit names as Defendants the seven members of the Oklahoma Board of Corrections who oversee the state prisons, Oklahoma Department of Corrections Director Robert Patton, Oklahoma State Penitentiary Warden Anita Trammell and several unnamed participants who have performed or will perform executions in the state, including a doctor, a paramedic, and three additional personnel on the execution team. According to today's filing, Defendants have admitted that experts were not directly consulted in the development of the Department's current execution protocol (p. 14), which was used to carry out the botched execution of Mr. Lockett on April 29, 2014.

The lawsuit can be accessed here:

<https://drive.google.com/file/d/0BxR5nee8pBYQRXZUdGowMktDZE9VN0ZyNVE2VERBWkV3WWE4/edit?usp=sharing>

The lawsuit asserts that Oklahoma's lethal injection practices violate the death row prisoners' federal constitutional rights on numerous counts, including that:

- **Oklahoma uses unsound practices and procedures**, including the failure to consult experts in the development of the procedures; the lack of medical expertise of Director Patton and Warden Trammell; the lack of any backup intravenous line; the lack of backup dosages of the lethal drugs; the lack of visibility of the venous access site; and the lack of required expertise by execution team members. Additionally, Oklahoma's execution procedures allow for the placement of a central line, as was used in Mr. Lockett's execution, an "invasive surgical procedure that is difficult to perform" and requires specialized training and experience (p. 15). Mr. Lockett's bungled execution illustrates both defects in the Department's protocol and violations of the protocol by the execution team, in part because "a purported central line was established in Clayton Lockett's groin, despite the ample availability of sites that could have provided peripheral venous-access." (p. 15).
- **The drugs and procedures used in Clayton Lockett's botched execution were flawed.** There is a substantial risk that "Defendants will attempt to execute the Plaintiffs using the same drugs and procedures used in the attempted execution of Clayton Lockett, or with similarly untried, untested, and unsound drugs and procedures" (pp. 8-9).
- **Midazolam is not a suitable anesthetic agent for executions because the drug is "incapable of producing a state of unawareness"** (p. 10) and "cannot relieve pain" (p. 10). The complaint notes that

“the federal Food and Drug Administration has not approved midazolam for use as a stand-alone anesthetic” (p. 10).

- **Compounded drugs present substantial risks of pain and suffering**, because “the FDA does not verify the identity, purity, potency, quality, safety, or effectiveness of compounded drugs” (p. 12).
- **Defendants have failed to provide notice to the Plaintiffs**, and a new protocol could be announced and implemented without adequate court review. The lethal injection protocol has been “revised and altered repeatedly, most recently on March 21, April 14 and April 25, 2014” (p. 3), just prior to the April 29th botched execution of Mr. Lockett. As the filing states, “In practice, any additional notice that the Defendants Patton and Trammell have undertaken to provide to a condemned person about how they will be executed has been incomplete, untimely, and insufficient” (pp. 18-19).
- Finally, by **denying the prisoners access to counsel during the execution process**, and by denying the right of counsel to witness every aspect of the execution, the state violates Plaintiffs’ rights under the First and Fourteenth Amendments to the U.S. Constitution. Furthermore, the Defendants “have used and will use blinds and soundproof barriers to block outside witnesses [including counsel] from seeing and hearing critical stages of the execution process...[and] intentionally denied outside witnesses, including counsel for Clayton Lockett, audiovisual access to such critical stages as insertion and maintenance of intravenous catheters, proceedings after his attempted execution was called off by Director Patton under authority granted by the governor, and the death of Clayton Lockett” (pp. 25-26).

Today’s filing comes just over a week after the release of the preliminary findings of forensic pathologist Dr. Joseph I. Cohen, M.D., who performed an autopsy of Clayton Lockett. Dr. Cohen’s preliminary findings indicate that the execution team failed to set a properly functioning IV in Mr. Lockett’s femoral vein and, as a result, the lethal drugs were absorbed through the tissue, causing a lingering, painful death (link: <https://docs.google.com/file/d/0BxR5nee8pBYQQktuNmtaV0pGS2ZhMF8yZ3g0QU1ZcWI0UWdz/edit>)

The botched execution of Clayton Lockett was just the latest in a series of problematic executions that have inflicted severe pain and needless suffering. According to today’s filing, “[o]ther such violations have occurred during the executions of Robyn L. Parks, Scott D. Carpenter, Loyd W. LaFevers and Michael L. Wilson” (p. 8).

Charles Warner, one of the Plaintiffs in the lawsuit, was scheduled to be executed a few hours after Mr. Lockett on April 29, 2014. Mr. Warner’s execution was stayed following the bungled execution of Mr. Lockett. His is the next execution slated to take place in Oklahoma, scheduled for November 13, 2014.

“We look forward to the full airing of the important issues raised in this case through the discovery process,” said Dale Baich, an attorney for one of the death row prisoners.

If you would like additional information, please contact Megan McCracken, Eighth Amendment Resource Counsel, U.C. Berkeley School of Law's Death Penalty Clinic, megan@law.berkeley.edu or [267-997-3510](tel:267-997-3510).

To speak with attorneys or other leading experts, please contact Laura Burstein at: [\(202\) 626-6868](tel:202-626-6868); laura.burstein@squirepb.com.