

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAY 01 2006

JAMES W. McCORMACK, CLERK
By: _____
DEP CLERK

TERRICK TERRELL NOONER,
P.O. Box 600
Grady, AR 71644

v.

LARRY NORRIS, in his official capacity as
DIRECTOR,
ARKANSAS DEPARTMENT
OF CORRECTION
P.O. Box 8707
Pine Bluff, AR 71611

GAYLON LAY, in his official capacity as
WARDEN,
ARKANSAS DEPARTMENT OF
CORRECTION,
CUMMINS UNIT
P.O. Box 500
Grady, AR 71644

WENDY KELLY, in her official capacity as
DEPUTY DIRECTOR FOR HEALTH AND
CORRECTIONAL PROGRAMS
ARKANSAS DEPARTMENT
OF CORRECTION
P.O. Box 8707
Pine Bluff, AR 71611

JOHN BYUS, in his official capacity as
ADMINISTRATOR,
CORRECTIONAL MEDICAL SERVICES,
ARKANSAS DEPARTMENT
OF CORRECTION
P.O. Box 8707
Pine Bluff, AR 71611

DOES 1-50, UNKNOWN EXECUTIONERS,
in their official capacities as Employees
and/or Agents of the Arkansas Department
of Correction.

Civil Action No. 5-06 CV0000 110 SWW/JFF

This case assigned to District Judge Wright
and to Magistrate Judge Forster

COMPLAINT

I. Nature of the Action

1. This is a civil rights action brought under 42 U.S.C. § 1983 and the United States Constitution for violations and threatened violations of the rights of the Plaintiff to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments of the United States Constitution, to be free from arbitrary and capricious Department of Correction procedures and protocols in violation of the Fifth and Fourteenth Amendments of the United States Constitution, and to be free from deliberate indifference of the Defendants toward Plaintiffs' health and safety in violation of the Eighth and Fourteenth Amendments of the United States Constitution.
2. Plaintiff, Terrick Terrell Nooner, is an Arkansas prison inmate who is under a sentence of death. By statute, Arkansas employs lethal injection as its method of execution. The Defendants and the Arkansas Department of Correction (hereinafter "ADC") have designed a procedure for carrying out Arkansas' statutory method of execution that purports to induce death only after a condemned prisoner has been rendered unconscious and unable to experience pain. In reality, however, the policies and practices devised by the Defendants and the ADC unnecessarily risk conscious suffering and extreme pain during execution and deliberately ignore and are indifferent to the health and safety of condemned prisoners, in violation of Plaintiff's civil rights guaranteed by 42 U.S.C. § 1983 and the rights conferred by the Fifth, Eighth and Fourteenth Amendments to the United States Constitution.
3. Plaintiff seeks equitable and injunctive relief. This lawsuit does not challenge the fact of the Plaintiff's sentence of death, nor does it challenge the constitutionality of Arkansas' statute

requiring execution by lethal injection.

II. Jurisdiction and Venue

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § § 1331 (federal question); 1343 (civil rights violations); 2201 (declaratory relief); and 2202 (further relief).
5. Venue is proper under 28 U.S.C. § § 1391(b)(1) and 1391(b)(2) because all Defendants reside within this district and a substantial portion of the events giving rise to this claim have occurred and will occur within this district as part of the official business of the Department of Correction.

III. The Parties

6. Plaintiff Terrick Terrell Nooner is a United States Citizen and resident of the State of Arkansas. He is currently a prisoner under the supervision of the Arkansas Department of Correction, ADC Number SK 926, awaiting the execution of a death sentence that was imposed by the Pulaski County Circuit Court in 1993. Mr. Nooner is held in the Varner Supermax Unit of the Arkansas Department of Correction in Grady, Arkansas. Mr. Nooner does not have a scheduled execution date; when an execution date is scheduled, according to ADC policy, Mr. Nooner will be transferred to the Cummins Unit, also in Grady, Arkansas. The execution will take place at the Cummins Unit.
7. Defendant Larry Norris is the Director of the Arkansas Department of Correction. Pursuant to state statute, Mr. Norris determines the substances to be uniformly administered and the procedures to be used in any execution of an Arkansas prisoner and he and/or his assistants conduct each execution.
8. Defendant Gaylon Lay is the Warden of the ADC Cummins Unit where the death

chamber is located and Plaintiff's execution will be carried out. Warden Lay is the head of the chain of command for control during each execution.

9. Defendant Wendy Kelly is the Deputy Director for Health and Correctional Programs of the Arkansas Department of Correction. Pursuant to established ADC procedure, the Deputy Director or her designee is responsible for obtaining the chemicals that are used to execute condemned prisoners and for establishing and maintaining intravenous access to the prisoner for the purpose of administering the lethal injection.
10. Defendant John Byus is the Administrator of Correctional Medical Services for the Arkansas Department of Correction.
11. Defendants Unknown Executioners are the officers, agents, employees, and successors in office, along with those acting in concert with them, of the Arkansas Department of Correction who will assist in carrying out the executions of Plaintiff. Plaintiff does not yet know the identities of the Unknown Executioners.
12. Defendants are acting under color of State law in establishing and designing the ADC execution policies and protocol and will act under color of State law in selecting and administering to Plaintiff chemicals in amounts, in combinations, and by methods that will unnecessarily risk conscious suffering and pain in the execution of a sentence of death and which are deliberately indifferent to the health, welfare, and safety of Plaintiff.

VI. Statement of Facts

13. Lethal injection has been promoted as a peaceful, dignified and humane way to induce death, akin to euthanizing a pet - a single injection, immediate unconsciousness, no struggling or movement, with death occurring within seconds. The reality in Arkansas, however, is often quite different.

14. Ronald Gene Simmons was executed by the State of Arkansas on June 25, 1990. The administration of the lethal chemicals began at 9:02pm. Between 9:02 and 9:04pm, according to an eyewitness, Mr. Simmons appeared to nod off into unconsciousness. However, “at 9:05pm he called out ‘Oh! Oh!’ and began to cough sporadically as though he might be having difficulty breathing. During the next two minutes, he coughed slightly, approximately 20 times, each cough heaving his stomach slightly and causing the gurney to shake a little.”¹ Mr. Simmons became still at 9:07pm, after which his face and arm turned first blue and then purple. An ADC employee twice appeared to adjust the IV tube in Mr. Simmons’ arm, and not until 9:19pm was Mr. Simmons pronounced dead by the coroner.
15. Rickey Ray Rector was put to death in Arkansas on January 24, 1992. The execution took one hour and 9 minutes to complete, during which time Mr. Rector’s hands and arms were punctured 10 separate times by ADC personnel searching for a suitable vein in which to place the IV line and finally a deep incision, a “cut-down,” was made in his arm. The curtains between the execution chamber and the witness room remained closed during the 50 minutes it took to place the IV line, but witness heard Mr. Rector’s loud moans as his skin was repeatedly pierced.² Witnesses also heard the sound of skin slapping skin as ADC personnel apparently tried to raise a vein, prompting one witness to

¹ Bill Simmons, *Stoic Murderer Meets His Fate by Quiet Means*, ARKANSAS DEMOCRAT, June 26, 1990, at 9A. Bill Simmons was the Arkansas Bureau Chief for the Associated Press and, upon information and belief, no relation to Ronald Gene Simmons.

² Sonja Clinesmith, *Moans Pierced Silence During Wait*, ARKANSAS DEMOCRAT GAZETTE, January 26, 1992, at 1B; Ron Fournier, *13 Outsiders View Death of Rector, Witnesses Listen, Wait Beyond Curtain*, ARKANSAS DEMOCRAT GAZETTE, January 26, 1992, at 4B.

say “[t]hey’re going to beat him to death.”³ Even once the IV line was secured and the curtains opened, the ordeal for Mr. Rector was not over. The flow of lethal chemicals began at 9:50pm, and for two minutes Mr. Rector looked to witnesses as though he was nodding off to sleep. However, one observer noted that Mr. Rector said “‘I’m getting dizzy,’” two minutes after the execution began.⁴ Then at 9:55pm, “Rector’s lips moved rapidly - as if he was drawing shallow breaths. His lips stopped moving a minute later.”⁵ Mr. Rector still was not pronounced dead; at 10:06pm a witness noted that a heart monitor at the head of the gurney appeared to be flat-lining, only to then see another “jump” and then “another flutter.”⁶ Death was finally pronounced at 10:09pm.

16. On May 7, 1992, Steven Douglas Hill was executed. His execution began at 9:02pm. His eyes closed one minute later, but shortly afterwards he had what witnesses described as “a ‘seizure,’ arching his back with his cheeks popping out.”⁷ The seizure ended at 9:04pm and Mr. Hill was pronounced dead at 9:10pm.
17. Christina Riggs, the first woman to be put to death in Arkansas in over 150 years, was executed on May 2, 2000. The procedure was delayed for 18 minutes while ADC

³ Ron Fournier, *13 Outsiders View Death of Rector, Witnesses Listen, Wait Beyond Curtain*, ARKANSAS DEMOCRAT GAZETTE, January 26, 1992, at 4B.

⁴ Joe Farmer, *Rector, 40, Executed for Officer’s Slaying*, ARKANSAS DEMOCRAT GAZETTE, January 25, 1992, at 9A. If a sufficient dose of Thiopental is properly administered to the prisoner, it will cause him to lose consciousness and stop breathing within one minute.

⁵ Ron Fournier, *13 Outsiders View Death of Rector, Witnesses Listen, Wait Beyond Curtain*, ARKANSAS DEMOCRAT GAZETTE, January 26, 1992, at 4B.

⁶ *Id.*

⁷ Andy Gotlieb and Linda Satter, *Hill Dies by Injection for ‘84 Police Killing*, ARKANSAS DEMOCRAT GAZETTE, May 8, 1992, at 17A.

personnel struggled in vain to insert the IV line into her elbows. When they could not do so, they asked Ms. Riggs if they could insert the catheters into her wrists, and she consented. The execution then proceeded. However, a minute after the drugs had purportedly begun to flow into her body, Ms. Riggs was still vocalizing. Witnesses heard her say “I love you, my babies.”⁸

18. More of the 26 individuals who have been executed by lethal injection by the State of Arkansas may have suffered agonies during the execution procedure, while their suffering was hidden from observers by the total paralysis induced by the ADC’s decision to use a neuromuscular blocking agent, namely Pancurium Bromide, as one of the chemicals administered during the procedure. See Paragraphs 33-34, 42-45, *infra*, incorporated by reference as if fully set forth herein.
19. Unless modified, the policies and practices followed by the ADC, which are the same today as were used in the executions of Mr. Simmons, Mr. Rector, Mr. Hill and Ms. Riggs, will unnecessarily place Plaintiff at risk of suffering the same excruciating, torturous death as was experienced by Mr. Simmons, Mr. Rector, Mr. Hill and Ms. Riggs.

A. Arkansas’ Lethal Injection Legislation

20. In 1983, the Arkansas State Legislature enacted a statute prescribing that “[t]he punishment of death is to be administered by a continuous, intravenous injection of a lethal quantity of an ultra-short-acting barbiturate in combination with a chemical paralytic agent until the defendant’s death is pronounced according to accepted standards of medical practice.” Ark. Code Ann. § 5-4-617(a)(1). This legislation mandated

⁸ Cathy Frye, *Riggs, Mother who Killed her 2 Children, Put to Death by State*, ARKANSAS DEMOCRAT GAZETTE, May 3, 2000, at 1B.

execution by this method for all defendants whose capital crimes were committed after July 4, 1983.

21. The statute prescribes no specific drugs, dosages, drug combinations, manner of intravenous line access, or certifications, training, or licensure for those who participate in executions. All of the details for carrying out executions are left up to the Director of the ADC. Ark. Code Ann. § 5-4-617(a)(2)(“The Director of the Department of Correction shall determine the substances to be uniformly administered and the procedures to be used in any execution”).

B. How Executions Are Performed in Arkansas

22. On information and belief, executions by lethal injection in Arkansas are performed in the following way:
23. The condemned prisoner is strapped to a gurney in the execution chamber. His head is completely immobilized by two pieces of plastic, which press against the sides of his face like bookends, and a tight leather strap across his forehead. His arms are spread at angles away from his body, and each hand is strapped to a board that protrudes from each side of the gurney. A leather breastplate is held in place by a strap across his chest, straps running over each shoulder and a strap across his waist. Another strap runs across his thighs. Finally, leather shackles are placed around his ankles and then fastened to the gurney, immobilizing his lower legs.
24. ADC employees insert two intravenous (“IV”) lines into the condemned prisoner and attach an electrocardiogram monitor. The execution protocol states only that the Defendant Deputy Director of Health and Correctional Programs, or her designee, “shall have catheters placed in each arm or other appropriate areas.” This simple statement in

actuality refers to a significant medical procedure that can be fraught with problems and complications. The typical site for obtaining intravenous access is the area of the antecubital fossae, or elbow folds. However, such access is not always obtainable and other, increasingly invasive procedures may be the only methods available. Despite this fact the execution protocol fails to provide any further guidance as to how intravenous access is to be secured. No procedures govern which IV insertion point will be selected, the circumstances under which an alternate IV insertion point will be selected, which alternate site will be selected or the qualifications of the person or persons who will perform surgical procedures such as insertion of subclavian lines or cut-downs.

25. When the IV lines are in place, the curtain across the window that divides the execution chamber from the witness room is lifted. A section of the IV lines is visible, and can be seen running from the condemned prisoner's body, draped across the floor of the chamber and passing through a hole in a glass window that leads to a separate control room where the two executioners wait. Extended IV lines are required in order to stretch into the control room. Last statements are made, and then the Warden orders the execution to begin.
26. The two lay-executioners then begin attaching and plunging up to eight hand-held plastic syringes in a complicated sequence prescribed by the ADC protocol. First one drug, then a saline flush, then two syringes of the next drug, another saline flush, and then up to three syringes of a third drug. It is not known who, if anyone, directs the sequence of drug administration for the executioners or how they divide the various tasks between them.

27. The drugs purportedly administered are: Thiopental (to cause unconsciousness);⁹ Pancuronium Bromide (to cause paralysis and to stop all movement including respiration);¹⁰ and Potassium Chloride (to stop the heart).
28. The putative drugs dosages are:
- 2 g Thiopental;
 - 10-15cc Normal Saline;
 - 50 mg Pancuronium Bromide;
 - 50 mg Pancuronium Bromide;
 - 10-15cc Normal Saline;
 - 50 meqs (milliequivalents) Potassium Chloride;
 - 50 meqs Potassium Chloride;
 - 50 meqs Potassium Chloride.
29. When the prisoner no longer exhibits any signs of life, the Warden summons the coroner into the death chamber to pronounce death.
30. This process recklessly subjects condemned prisoners to multiple significant and utterly unnecessary risks that they will be tortured to death.

C. The Risks of ADC's Chosen Lethal Injection Process

31. The risks associated with the ADC's chosen execution process include, but are not limited to, the following:
- (a) First, in violation of the applicable medical standard of care regarding the use of painful drugs such as Potassium Chloride, the process fails to employ properly trained and skilled persons to carry out the necessary induction and maintenance of general anesthesia.

⁹Thiopental is also known as Sodium Pentothal or Sodium Thiopental and will be referred to as Thiopental in this Complaint.

¹⁰ Pancuronium Bromide is also known by a trade name, Pavulon.

(b) Second, the arrangement of the execution chamber, the condemned prisoner, the control room and all involved equipment is such that, even if properly trained persons were employed to induce and maintain an appropriate level of anesthesia, they would be physically unable to perform that function adequately.

(c) Third, the process arbitrarily and unnecessarily uses drugs and drug dosages that create significant risks that condemned prisoners will suffer severe and completely unnecessary pain during execution.

a. Because the Drugs Selected by the Director to Cause Death Are Painful, Qualified Persons Must be Employed to Create and Maintain IV Access to Ensure Adequate Anesthesia.

32. The particular drugs selected by the Director of the ADC to cause death in an execution by lethal injection cause severe physical pain when administered to the human body.

When a concentrated dose of Potassium Chloride is injected intravenously it feels like a fire traveling through the vein to the heart. Death by Potassium Chloride poisoning is known to be so excruciating that the American Veterinary Medical Association (“AVMA”) prohibits the use of Potassium Chloride as the sole agent of euthanasia and, if it is to be used at all, mandates that it only be used after the subject has reached a surgical plane of anesthesia.

33. Pancuronium Bromide is a neuromuscular blocking agent. When administered it paralyzes all voluntary muscles, including those necessary for breathing. Respiration is impossible. The drug in effect buries the recipient alive in a chemical tomb, where he is fully conscious but unable to signal distress and unable to breathe, and eventually dies by asphyxiation. Death by asphyxiation involves intense, visceral pain and has, as a method of execution, been ruled unconstitutional as violative of the Eighth Amendment.

34. The risks associated with the use of neuromuscular blocking agents are well known in the medical profession. The AVMA prohibits the use of neuromuscular blocking agents in combination with the barbiturate anesthetics on animals. Lethal injection can be humane only if an anesthetic is administered which induces unconsciousness before neuromuscular blockers stop respiration or Potassium Chloride is injected.
35. Administration of IV anesthesia requires proficiency at achieving and maintaining IV access, because the potential sources of error are many. For example:
- (a) IV catheters must be inserted such that the tip is inside a vein and does not penetrate through the vein wall into tissue. If a catheter is incorrectly placed, the drugs flowing through the IV lines can infiltrate the tissue surrounding the catheter rather than correctly entering the vein, thus impeding the delivery of the drug to the brain.
 - (b) Once inserted, the catheters are connected with extensive tubing to IV fluid bags. All mechanical components of the IV system must operate correctly for the drugs to be correctly delivered, but errors commonly occur: IV tubing sometimes leaks or becomes disconnected, or the drugs are introduced to the IV system in the wrong direction, preventing the drugs in the IV line from reaching the patient in the intended concentrations, or from reaching the patient at all.
 - (c) Upon information and belief, ADC employs unqualified persons to create IV access for executions. The protocol adopted by the Director states that the Deputy Director for Health and Correctional Programs, or her designee, shall insert the intravenous infusion device into the prisoner; the protocol has no requirements that such persons be trained to do so. Such persons are not competent to

administer drugs intravenously and are not expert in the process of inserting and maintaining IV catheters. Once the execution commences, no one monitors the IV catheters, leaving open the possibility that IV catheters can become loose, disconnected or clogged during the process.

(d) In the event that ADC employees cannot achieve IV access via a peripheral vein in a hand or arm, the ADC is willing to create venous access through the invasive and painful processes of inserting a percutaneous central line (tunneling under the skin to reach the subclavian or central vein) or performing a surgical cut-down (where a vein is exposed by incision). Because these techniques of venous access require much more skill and training and are far more invasive than peripheral vein access, they are normally performed only in highly equipped emergency rooms or operating theaters.

(e) The ADC protocol fails to specify who has performed these procedures in the past (and there has been at least one subclavian central line and at least one cut-down performed) or who will perform them in the future, if necessary, and failed to guarantee that those performing such procedures will have the requisite training to protect condemned inmates from unnecessary pain. This is especially risky given that it is not always possible to predict that there will be difficulty obtaining peripheral IV access until attempts to establish such access are underway.

(f) Arkansas uses two lay-executioners to attach and plunge eight handheld syringes, labeled only by number, in a complicated sequence in order to deliver the deadly drugs. The use of untrained persons to label, attach and plunge syringes risks error in the sequence and rate of drug administration. Potential IV

line failures are also unguarded against because the executioners cannot observe the IV site and monitor the condition of the IV catheter for problems that may develop such as infiltrations and blowouts and are not trained to interpret and react appropriately to signs such as pressure feedback on the IV lines.

36. Training and experience in IV drug administration are essential to ensuring that the execution is a humane process free from gratuitous and unnecessary pain. The ADC's personnel and executioners are not properly trained to administer intravenous drugs.

b. The Particular Chemical Cocktail Chosen by the Director Creates an Unnecessary Risk of Conscious Suffering During Execution

37. The Director of the ADC has arbitrarily selected three drugs that, in the dosages, combinations, and procedures used, unnecessarily risk subjecting the prisoner to an excruciatingly painful, torturous death.

38. The first drug, Thiopental, is an ultra-short acting barbiturate which acts to depress the central nervous system to produce unconsciousness and anesthesia. Thiopental derives its utility in surgical procedures from its rapid onset and rapid redistribution through the body at surgical doses. Typically, Thiopental is used in the induction phase of anesthesia to temporarily anesthetize patients for sufficient time to, for example, intubate the trachea.

39. If it is necessary to maintain a patient in a surgical plane of anesthesia for longer than just a few minutes, physicians typically use drugs other than Thiopental. If Thiopental is going to be used not only to induce, but also to maintain, a surgical plane of anesthesia, a qualified person must be present to continually monitor the patient to ensure that the Thiopental has been correctly administered and is maintaining the patient in a state of

unconsciousness.

40. The ADC protocol does not provide for any person, much less a properly trained individual, to monitor the plane of anesthesia during execution.
41. The Director of the ADC has arbitrarily and needlessly selected a dose of Thiopental of only 2 grams. Other jurisdictions in the United States typically employ considerably larger doses of Thiopental than are used in Arkansas. For example, California administers 5 grams of Thiopental. The lower the dose of Thiopental used, the greater the risk that errors in preparation or administration of the drug will result in inadequate anesthesia. For example, if a problem arises and half of a 5 gram dose does not reach its target, the prisoner still receives 2.5 grams, itself a large quantity. If, however, such an error occurs with the administration of a 2 gram dose, the prisoner receives only 1 gram - a small enough quantity to risk consciousness in some condemned prisoners during the course of the execution. There is no legitimate reason for selecting a dose of Thiopental of only 2 grams.
42. The second drug, Pancuronium Bromide, is a neuromuscular blocking agent. Neuromuscular blocking agents are used clinically to induce skeletal muscle relaxation for purposes such as facilitating tracheal intubation or suppressing spontaneous respiration.
43. Neuromuscular blocking agents must be administered with great care and skill because they have no effect on consciousness or the ability to perceive pain. Moreover, the paralysis induced in the patient by the drug will prevent anyone, even a person with advanced medical training, from ascertaining whether a patient is awake and capable of experiencing pain. Therefore, administration must be accompanied by adequate

anesthesia .

44. The effect of neuromuscular blocking agents in immobilizing patients and masking external indications of their pain is well known. Patients who have been administered neuromuscular blocking agents with inadequate anesthesia have been conscious during surgery and have reported terrifying and torturous experiences where they were alert, experiencing pain, yet utterly immobilized and unable to signal their distress.
45. The consequences of erroneous administration of neuromuscular blocking agents is so profound that at least eighteen states have banned by statute the use of such drugs in the euthanasia of animals. The AVMA never permits the use of neuromuscular blocking agents in combination with barbiturate anesthetics on animals. In short, the ADC has settled on a protocol and procedure to kill the State's condemned prisoners that is considered too risky and dangerous for the euthanasia of pets. There is no need to risk the conscious suffocation of these prisoners as a result of the administration of neuromuscular blocking agents. Other drugs are available to satisfy Arkansas' statutory requirement for a "paralytic agent" that do not affect respiration. Using these alternate drugs would eliminate the risk that a condemned prisoner will consciously asphyxiate.
46. The third drug, Potassium Chloride, contains essential blood ions and is typically administered medically in trace amounts as a necessary electrolyte. While a certain potassium level is important for normal cardiac electrical activity, a rapid increase in blood concentration of potassium causes cardiac arrest. Injection of concentrated potassium activates sensory nerve fibers, causing severe pain as the drug travels through the venous system. There is universal medical agreement that, without anesthesia, an injection of a potassium chloride overdose would be excruciating.

47. The American Veterinary Medical Association is so confident that death by Potassium Chloride will cause unnecessary suffering that it prohibits its use as a euthanasia agent unless the practitioner administering the Potassium Chloride has the skill and training to assure that the subject to be euthanized has reached a surgical plane of anesthesia.
48. The Arkansas statute does not require the administration of Potassium Chloride; the ADC has arbitrarily and needlessly added the drug to the protocol and it has thereby increased the risk that executions will be agonizingly painful..

D. The Defendants and the ADC Knew, Or Should Have Known, That Their Procedure Involves the Risk of, and has Resulted In, Conscious Suffering, Yet Have Failed to Correct the Execution Protocol to Minimize That Risk

49. The Defendants and the ADC knew, or should have known, that their execution process is flawed in ways that risk causing conscious suffering but they have deliberately ignored those risks and failed to make practicable modifications to the process. The Defendants and the ADC have, or should have been, aware since the commencement of executions by lethal injection that properly obtained and maintained IV access is essential to a humane procedure free from gratuitous, unnecessary pain, but they have nevertheless continued to employ unqualified personnel to perform this crucial part of the procedure.
50. The Defendants and the ADC knew, or should have known, since the commencement of executions by lethal injection that, in light of the painful drugs that the Director has opted to use, careful, skilled monitoring of the prisoner throughout the execution to ensure continued maintenance of a surgical plane of anesthesia is necessary to ensure a humane procedure free from gratuitous, unnecessary pain. Nevertheless, the Defendants and the ADC have neither provided for such monitoring by adequately trained personnel, nor altered the design of the execution chamber and equipment to render adequate monitoring

physically possible.

51. The Defendants and the ADC knew, or should have known, since the commencement of executions by lethal injection that, drugs other than neuromuscular blocking agents or can serve the statutory requirement of paralytic agents without risking that the prisoner will slowly, consciously asphyxiate and be unable to signal his distress, and that drugs other than the excruciating painful Potassium Chloride can be utilized to induce cardiac arrest. The Defendants and the ADC have nevertheless continued to employ these drugs, notwithstanding their simultaneous failure to ensure adequate anesthesia..
52. The Defendants and the ADC knew, or should have known, these facts because of the documented instances of botched executions that they have performed, including those of Rickey Ray Rector Ronald Gene Simmons, Steven Hill and Christina Riggs. *See* Paragraphs 14-17, *supra*, incorporated by reference as if fully set forth herein. They knew, or should have know, of these facts because measured postmortem Thiopental blood concentrations, in some past cases, cannot be reconciled with consistent administration of Thiopental and, in some cases, are inconsistent with antemortem unconsciousness. The sum of the available execution data (witness reports, postmortem Thiopental levels, execution duration, weight, and other data) indicates that the ADC protocol has resulted in a high frequency of failure to effectively anesthetize condemned prisoners for the duration of their executions.
53. Botched executions involving unnecessary conscious suffering are the inevitable result of a protocol cobbled together in secret by people who are not qualified to conduct what is essentially the surgical induction of anesthesia. The ADC protocol is flawed at nearly every turn in that it: (1) uses unqualified personnel to insert IV catheters; (2) uses

dangerous and unnecessary drugs like neuromuscular blockers) in a reckless manner; (3) fails to take steps to assure that a surgical plane of anesthesia and an actual state of unconsciousness are achieved and continue for the duration of the execution before administering painful drugs; and (4) administers a dose of Thiopental that is unnecessarily dangerously low.

54. The consequence of the ADC protocol is that many people are suffering when they are executed in Arkansas. They are suffering for more than the transitory period necessarily attendant to any death. People are suffering for prolonged periods as result of completely avoidable problems in protocol and procedure. It is possible to conduct execution by lethal injection in a manner that both complies with Arkansas' statute and is humane, but the Defendants and the ADC have arbitrarily, capriciously, and unnecessarily devised a protocol for carrying out executions by lethal injection that fails to do so.

VII. Claims

55. By subjecting Plaintiff to an arbitrary, capricious and irrational method of execution that creates an unnecessary and significant risk of inflicting agonizing and prolonged pain, and by designing and administering a process under which they will inject Plaintiff with chemicals in amounts, combinations, and in accordance with a protocol that unnecessarily risks conscious suffering and pain in the execution of a sentence of death, Defendants deprive Plaintiff of his rights under the Fifth, Eighth and Fourteenth Amendments of the United States Constitution to be free from cruel and unusual punishment and to be free from arbitrary and capricious processes.
56. By subjecting Plaintiff to an arbitrary, capricious, and irrational method of execution that creates an unnecessary and significant risk of inflicting agonizing and prolonged pain,

Defendants, with deliberate indifference to Plaintiff's serious medical needs, violate Plaintiff's right to be free from cruel and unusual punishment and the unnecessary and wanton infliction of pain in violation of the Fifth, Eighth and Fourteenth Amendments of the United States Constitution.

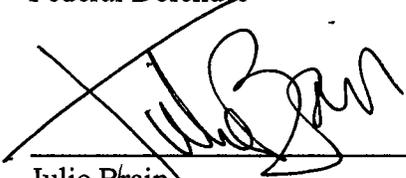
VIII. Prayer for Relief

57. Wherefore, Plaintiff prays as follows:
58. That this Honorable Court issue a judgement declaring that the Defendants' protocols, policies, practices, and acts and omissions as described herein violate Plaintiff's rights as guaranteed by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States;
59. That this Honorable Court permanently enjoin Defendants, their officers, agents, employees, and successors in office, along with those acting in concert with them, from engaging in the unlawful practices described herein;
60. That this Honorable Court retain jurisdiction over this cause until the Court's order is carried out; and
61. That this Honorable Court afford any and all other such relief as this Court deems just, proper, and equitable under the circumstances.

Respectfully Submitted,

JENNIFFER HORAN
Federal Defender

By:



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Counsel for Plaintiff, Terrick Terrell Nooner