

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

TERRICK TERRELL NOONER

and

DON WILLIAM DAVIS,

Plaintiffs,

v.

Civil Action No. 5:06-cv-00110-SWW-JFF

LARRY NORRIS, et al.,

Defendants.

APPLICATION FOR PRELIMINARY INJUNCTION

Plaintiff, Don William Davis, is under a sentence of death. Mr. Davis moved to intervene in the instant action on May 4, 2006, and the Court granted the Motion on May 26, 2006. In the interim, on May 11, 2006, the Governor of the State of Arkansas scheduled Mr. Davis' execution to take place on July 5, 2006. Mr. Davis seeks preliminary injunctive relief to prevent Defendants from executing him by their proposed means of lethal injection pending the resolution of this action. Mr. Davis alleges that the Arkansas Department of Correction's lethal injection protocol, as described in Administrative Directive 96-06, which is attached hereto as Exhibit 1, constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments because it creates a substantial and unnecessary risk that Mr. Davis will be fully conscious and in agonizing pain for the duration of the execution process

This application for a preliminary injunction is made pursuant to Federal Rule of Civil Procedure 65, and Mr. Davis is entitled to the relief he seeks under Eighth Circuit precedent. Mr.

Davis will sustain irreparable harm if injunctive relief is not granted preventing the Defendants from conducting his execution in accordance with Administrative Directive 96-06. Mr. Davis is likely to prevail on the merits of the underlying action and the balance of hardships weighs decidedly in his favor. This application is based on the Complaint, the following memorandum of points and authorities and the attached exhibits, including the declaration of Dr. Mark Heath which sets forth the specific deficiencies in the Defendants' lethal injection protocol.

I. INTRODUCTION

Don William Davis, a death row inmate, is scheduled to be executed by the Arkansas Department of Correction by means of lethal injection. A rapidly growing body of evidence, including medical evidence, eyewitness observation and veterinary studies, persuasively demonstrates that the particular lethal injection protocol chosen by Defendant Norris risks, and has repeatedly resulted in, inmates failing to receive adequate anesthesia and remaining conscious during the administration of the lethal drugs. Without adequate anesthesia, the inmate experiences first slow suffocation and then the extraordinarily painful activation of the sensory nerve fibers in the walls of the veins that is caused by potassium chloride. Given the significant danger under the current protocol that he will be subjected to this excruciating pain and torture, Mr. Davis seeks to prevent the Defendants from executing him in this manner.

Administrative Directive 96-06 calls for the use of three drugs in succession: first, Sodium Pentothal, an ultrashort-acting barbiturate that under ideal conditions will cause the inmate to lose consciousness; second, Pancuronium Bromide, a neuromuscular blocking agent that paralyzes the muscles and has no apparent purpose other than to make the execution appear peaceful to witnesses; and finally, Potassium Chloride, which induces cardiac arrest.

Administrative Directive 96-06 also establishes the conditions under which these drugs are administered. It directs that specified dosages of the drugs be administered remotely, in the absence of trained personnel and with no monitoring of the inmate's condition once the procedure is underway. The combination of using these particular drugs, in these dosages and under these conditions, creates a serious risk that the drugs, particularly the critically important Sodium Pentothal, will not be properly administered. Administration errors could result, and demonstrably have resulted, in inmates retaining consciousness and suffering severe pain and torture during their executions.

Thus, Mr. Davis's suit is not premised on the possibility that some unforeseen error or unavoidable accident might cause him to be aware and in excruciating pain during his execution. Nor does he claim that execution by lethal injection is unconstitutional per se, regardless of the manner in which it is accomplished. On the contrary, he alleges that the significant risk of a botched and inhumane execution is an entirely foreseeable consequence of the particular conditions unnecessarily imposed by, and the failings of, Administrative Directive 96-06. It is surely unconstitutional for the State to choose an execution protocol that creates a significant risk of inflicting gratuitous suffering and excruciating pain. Mr. Davis therefore requests that the Court enjoin the Defendants from executing him by means of lethal injection as it is currently administered under Administrative Directive 96-06.

II. FACTUAL BACKGROUND

In 1992, Don William Davis was convicted in the Circuit Court of Benton County, Arkansas, of Capital Murder, Burglary and Theft of Property in connection with the October 12, 1990, shooting death of Jane Daniel at her home in Rogers. The jury thereafter sentenced Mr.

Davis to death. The Arkansas Supreme Court affirmed the convictions and sentence on direct appeal in 1993, *see Davis v. State*, 863 S.W.2d 259 (Ark. 1995), and affirmed the denial of state post-conviction relief in 2001, *see Davis v. State*, 44 S.W.3d 726 (Ark. 2001).

Mr. Davis filed a petition for writ of habeas corpus in the United States District Court for the Western District of Arkansas on April 1, 2002. Chief Judge Jimm Larry Hendren denied the petition in full on January 28, 2004, and the Eighth Circuit Court of Appeals affirmed on September 14, 2005. *See Davis v. Norris*, 423 F.3d 868 (8th Cir. 2005). The Supreme Court denied Mr. Davis' motion for permission to file a petition for certiorari out of time on April 17, 2006.

Plaintiff Terrick Terrell Nooner filed the Complaint in the instant action on May 1, 2006. Mr. Davis thereafter moved to intervene as a plaintiff on May 4, 2006. While that Motion was pending before this Court, on May 11, 2006, Governor Mike Huckabee announced that he had scheduled Mr. Davis's execution for July 5, 2006. The Court granted leave for Mr. Davis to intervene on May 26, 2006.

Currently pending before this Court is Defendants' Motion to Dismiss, filed on May 19, 2006. Plaintiffs filed their Response in Opposition to that Motion on June 2, 2006.

III. ARGUMENT

In moving for a preliminary injunction, Mr. Davis seeks only to preserve the status quo while he litigates his constitutional claims. Mr. Nooner and Mr. Davis are both likely to succeed on the merits of this action, and Mr. Davis will suffer irreparable harm in the absence of temporary relief. It is also in the public interest to grant temporary relief because doing so will allow the important question of the constitutionality of Administrative Directive 96-06 to be fully

and accurately resolved on the merits and will avoid an inhumane, unconstitutional execution. This action was timely brought and the balance of equities so favors Mr. Davis that both justice and controlling precedent require that the Court preserve the status quo until the merits of the matter can be determined.

A. THE LEGAL STANDARD

In order to decide whether a preliminary injunction is appropriate, the Court must consider “(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest.” *Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109, 114 (8th Cir. 1981)(en banc). The necessary showing of likelihood of success depends upon the balance of threatened harms; accordingly, “where the movant has raised a substantial question and the equities are otherwise strongly in his favor, the showing of success on the merits can be less.” *Id.* at 113. In the context of a capital case, where the movant is under a death sentence and the issuance of a preliminary injunction will have the effect of delaying a scheduled execution, the Court must also take into account any unnecessary delay on the part of the prisoner in bringing his claim. *Nelson v. Campbell*, 541 U.S. 637, 649-650 (2004); *Hill v. McDonough*, 547 U.S. ____ (2006).

The Eighth Circuit Court of Appeals performed this weighing of the equities in the functionally identical case of *Taylor v. Crawford*, 445 F.3d 1095, 1097 (8th Cir. 2006). *See also Taylor v. Crawford*, No. 06-1397 (8th Cir. February 1, 2006)(en banc)(Order granting stay of execution). Plaintiff Taylor filed an action pursuant to 42 U.S.C. § 1983 challenging Missouri’s lethal injection protocol on substantially the same grounds that Mr. Davis has challenged

Arkansas' procedure. *See Taylor*, 445 F.3d at 1096. As here, while the action was pending the state scheduled Mr. Taylor's execution. *Id.* at 1097. The district court granted a preliminary injunction preventing the execution from proceeding before the merits of the action had been determined. *Id.* A panel of the Eighth Circuit initially reversed and ordered that an immediate, truncated hearing be conducted to allow the execution to proceed on schedule, *id.*, but on the subsequent appeal the en banc court granted rehearing and stayed Mr. Taylor's execution, *id.* at 1098.

Upon reconsideration the panel affirmatively acknowledged that the plaintiff's interest in having an evidentiary hearing on the merits of his claims prior to his execution was "equally [as] strong" as the State's interest in the prompt execution of its judgment. *Id.* at 1096. The court inquired of the parties how much time they would need to complete the discovery and evidentiary hearing that had previously begun, and ultimately granted the 60 days that plaintiff's counsel requested. *Id.* at 1098. This decision, then, stands for the proposition that a plaintiff who timely files a properly-pled 8th and 14th Amendment challenge to a state's lethal injection procedure under 42 U.S.C. § 1983 is entitled to an evidentiary hearing on the merits of his claims and, if the State schedules his execution in the interim, a preliminary injunction to prevent the State from proceeding with the execution before the hearing can be completed. *See also Cooley v. Taft*, 2006 WL 1207982 (S.D. Ohio); *Jackson v. Taylor*, 2006 WL 1237044 (D. Del.). As discussed in the Opposition to Motion to Dismiss, [Document 20], the suit brought by Mr. Nooner and Mr. Davis is both timely filed and properly-pled, and this Court should therefore issue the preliminary injunction.

B. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS

1. Plaintiff's Claim Is Cognizable Under 42 U.S.C. § 1983

The Complaint does not challenge the legality of Mr. Davis' conviction or sentence, nor does it seek to prevent the state from executing him by lethal injection in a lawful manner. Any doubt that Mr. Davis' claim is therefore properly brought under 42 U.S.C. § 1983 was removed this morning by the United States Supreme Court which announced its decision in *Hill v. McDonough*, 547 U.S. ____ (2006). In accordance with its previous opinion in *Nelson v. Campbell*, 541 U.S. 637 (2004), the Court held that a claim challenging a method of execution as cruel and unusual punishment that "would not necessarily prevent the State from executing him by lethal injection," is proper under § 1983 and need not be brought in habeas. *Hill*, Slip Op. at 5. As is clear from the Complaint, the instant lawsuit is just such an action. Mr. Davis and Mr. Nooner have specifically alleged that there are readily available alternative methods of execution by lethal injection that would both comport with state law and pass constitutional muster. They bring this action simply to ensure that they are put to death in a humane manner.

2. Arkansas' Lethal Injection Protocol Violates the Eighth and Fourteenth Amendments Because it Carries a Tremendous Risk of Unnecessary Pain During Executions

The Eighth Amendment, applicable to the States through the Fourteenth Amendment, prohibits the imposition of cruel and unusual punishments. U.S. Const. Amend. VIII. The prohibition includes the "infliction of unnecessary pain in the execution of the death sentence." *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 463 (1974); *see also Gregg v. Georgia*, 428 U.S. 153, 173 (1976)(holding that the Eighth Amendment prohibits the "unnecessary and wanton infliction of pain").

Because it is impossible to determine with certainty before the fact whether a particular inmate will suffer unnecessary pain during his execution, the question of whether a particular execution procedure will inflict unnecessary pain is fundamentally an inquiry as to whether the inmate is “subject to an unnecessary *risk* of unconstitutional pain or suffering.” *Cooper v. Rimmer*, 379 F.3d 1029, 1033 (9th Cir. 2004)(emphasis added); *Fierro v. Gomez*, 77 F. 3d 301, 307 (9th Cir. 1996) (“*Campbell* also made clear that the method of execution must be considered in terms of the *risk* of pain.” (emphasis in original)); *Campbell v. Wood*, 18 F.3d 662, 687 (9th Cir. 1994). “For any individual challenging a death sentence, evidence of botched executions can only be put in terms of probability.” J.D. Mortenson, *Earning the Right to be Retributive: Execution Methods, Culpability Theory, and the Cruel and Unusual Punishment Clause*, 88 Iowa L. Rev. 1099, 1118-20 (2003).

Of course, any medical or quasi-medical procedure inherently carries a risk that a mistake or accident might cause unforeseen pain. Thus, the Eighth Amendment does not require executioners to eliminate all possible risk of pain or accident from their execution protocols. *See Resweber*, 329 U.S. at 464; *Campbell*, 18 F.3d at 687. A risk of pain becomes *unnecessary*, however - and unconstitutional - when experience with the execution procedure demonstrates that there are foreseeable problems that will result in the inmate suffering intense pain that alternative procedures do not engender.

The assessment of the risks associated with a particular procedure is not static. Over time, our knowledge of the workings of the human body increases, technology advances, new information comes to light and old information is more thoroughly understood and interpreted. Accordingly, methods of execution are developed, refined and abandoned. Execution by

hanging, firing squad, gas chamber and electric chair, once standard, have all become virtually obsolete with the passage of time. If a State opts to utilize capital punishment, the 8th Amendment imposes an obligation upon it to keep up with and respond to new developments and information and to ensure that they are using the most humane, least painful procedure available. Evidence is now overwhelming that the particular lethal injection protocol chosen and currently in use by the ADC is far from the most humane available; rather, it engenders serious risks of causing excruciating pain and torture that other available methods simply do not. *See Cooney v. Taft*, No. 2:04-cv-1156, 2006 WL 1207982 * 5 (S.D. Ohio April 28) (noting “mounting evidence calling Ohio’s lethal injection protocol, and the same or similar protocols employed by other states, increasingly into question”).

a. The Protocol Is Old And Was Ill-Conceived At The Outset

Legislation directing a change in the method of execution from electrocution to lethal injection was passed in Arkansas in 1983. As it does to this day, the statute left all decisions regarding the particular chemicals to be injected and the administration procedures to be employed to the discretion of the Director of the Department of Correction. *See Ark. Code Ann. § 5-4-617(a)(1983)*. The legislation originally proposed contained a provision directing the Director of the Department of Correction to consult with the State Medical and Pharmacy Boards before making the determination of which substances should be administered and what procedures should be followed. *See Doug Smith, Pharmacy College’s Dean Resents Role in Execution Thrust Unmasked on School, ARKANSAS GAZETTE, March 5, 1983, at 1A, 13A (Exhibit 2)*. However, lobbying by physicians unwilling to be involved in the execution business resulted in the College of Pharmacy at the University of Arkansas for Medical Sciences being substituted

as the consulting Agency. *Id.*

The legislation containing this provision passed, but the College of Pharmacy was outraged. Dean Larry D. Milne was vocal in his opposition to involving his institution in the execution process, *id.*, and virtually the entire faculty signed a petition objecting to the legislation, *see May Not Sign Injection Bill, Clinton Says*, ARKANSAS GAZETTE, March 12, 1983, at 2A (Exhibit 3). The bill was recalled, and ultimately an amended version was passed that contained no requirement that the Director consult with knowledgeable parties. *Sponsor Recalls Lethal Injection Bill*, ARKANSAS GAZETTE, March 15, 1983, at 3A (Exhibit 4); *Clinton Signs Injection Bill, Six Additional Measures*, ARKANSAS GAZETTE, March 26, 1983, at 8A (Exhibit 5). Senator John F. Bearden, Jr., the sponsor of the legislation, was unperturbed, telling media representatives that designing a lethal injection protocol is ““pretty simple. All you have to do is pick up the phone and call Texas.”” *Sponsor Recalls Lethal Injection Bill*, ARKANSAS GAZETTE, March 15, 1983, at 3A (Exhibit 4). The protocol was thus designed with no input or advice from medically trained personnel in Arkansas.

Similarly, the Texas protocol upon which the Arkansas procedure was apparently modeled was designed by lay corrections officials with no medical knowledge. Louisiana is another state that looked to Texas when it came time to figure out how to execute someone by lethal injection. When the chief legal counsel of the Louisiana Department of Corrections consulted with the warden of the Texas Department of Corrections responsible for executions about the “medical portion” of the Texas protocol, she was told:

‘[T]hat the only thing that mattered was that the guy ended up dead and that he wasn’t worried too much about the amount of medicine. He had certainly used the same types of medicine, but that he wasn’t totally concerned about the

amounts or what it may or may not do. They ended up dead, and that's all he was worried about. The rest of our conversation with him tracked that same thing. He was not terribly concerned about policy, procedure, or who did what, when, where. Just so the right result happened.'

So Long as They Die: Lethal Injections in the United States, 18 Human Rights Watch 1(G) at 16-17 (2006)(Exhibit 6).

The Department of Correction has used the protocol adopted in this ad hoc, unscientific manner for all executions by lethal injection conducted in Arkansas, and still uses that same procedure. *See* Motion to Dismiss at 4 [Document 13]("Since 1983, the protocol used for executions has basically remained unchanged").

b. The Protocol Arbitrarily Selects Painful Drugs And Fails To Ensure Adequate Anesthesia During Their Administration

As noted above, the Arkansas lethal injection statute, Ark. Code Ann. § 5-4-617, requires only that the chemicals administered to cause death include an ultra-short-acting barbiturate and a chemical paralytic agent. The choice of drugs and drug dosages is made by Defendant Norris. 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").

The drugs and dosages chosen by Defendant Norris, in order of administration, are as follows:

1. 2 g Sodium Pentothal;
2. 10-15cc Normal Saline;
3. 50 mg Pancuronium Bromide;
4. 50 mg Pancuronium Bromide;
5. 10-15cc Normal Saline;

6. 50 meqs (milliequivalents) Potassium Chloride;
7. 50 meqs Potassium Chloride;
8. 50 meqs Potassium Chloride.

ADC Administrative Directive 96-06 (Exhibit 1).

The first drug, Sodium Pentothal, is an anesthetic, intended to rapidly induce unconsciousness. The second active drug, Pancuronium Bromide, is a neuromuscular blocking agent that causes complete paralysis. Finally, Potassium Chloride is introduced to cause cardiac arrest.

Potassium Chloride is a salt that naturally occurs in trace amounts in the human body. In large quantities, however, such as the 100 meqs called for by Administrative Directive 96-06, it not only causes the heart to stop beating but also causes excruciating pain as it travels through the circulatory system. The drug activates the sensory nerve fibers of the insides of the veins as it courses through the body from the injection site to the heart, causing a sensation that has been likened to fire scorching along the vessels. *See* Exhibit 7 at ¶12 (Declaration of Dr. Mark Heath).

The neuromuscular blocking agent Pancuronium Bromide stops all movement, including that necessary to breathe. The drug has no effect, however, on consciousness or the ability to perceive pain. If a prisoner is conscious when this drug is administered, he will feel the visceral pain and distress of slow suffocation, much like as if he were drowning or being crushed to death. *Id.* at ¶15.

Having made the choice to administer two drugs that cause excruciating pain and agony, a choice that was not required by either statute or practical considerations, the ADC can fulfill its responsibility under the 8th Amendment to avoid gratuitous and unnecessary pain and torture

only if it ensures that the prisoner is adequately anesthetized at the time that those drugs are administered. In order to ensure that the prisoner does not feel pain a surgical plane of anesthesia, or that level of anesthesia that prevents conscious perception of noxious stimuli of the magnitude of surgical procedures, must be achieved and maintained throughout the execution procedure. However, the drug that the ADC has chosen to induce anesthesia, administered in accordance with the procedures under which the ADC has chosen to administer it, is an exceedingly inferior choice for the task and fails to provide the necessary assurance of adequate anesthesia.

i. Sodium Pentothal is an Ultra-Short-Acting Barbiturate Unsuitable for use as Sole Anesthetic Agent for Executions, Especially in the Dose Used by the ADC

Sodium Pentothal is an ultra-short-acting barbiturate that is used for certain specific purposes in surgical anesthesia. Its effect has a rapid onset and then a rapid recovery; the patient becomes unconscious very quickly after the drug is introduced, and the effects begin to wear off very soon thereafter. Sodium Pentothal is therefore ideal for the provision of anesthesia during intubation at the beginning of surgery, for example, because it induces deep anesthesia rapidly but if there are problems with the intubation the patient will regain consciousness and the ability to breathe independently very quickly. *See* Exhibit 7 at ¶ 24-25 (Declaration of Dr. Heath).

The reasons for the drug's utility in certain surgical contexts, however, are also reasons why Sodium Pentothal is decidedly *inappropriate* for use as the sole anesthetic agent during a lethal injection procedure. *Id.* at ¶ 26-27. Although the Arkansas protocol calls for a dose of the drug that is large enough to be lethal if properly administered, any problems with the delivery of the full dose engender the serious risk that the inmate will receive an insufficient amount of the

drug to induce a deep enough plane of anesthesia, or to maintain that degree of anesthesia throughout the execution process. In short, if the inmate does not receive the full amount of Sodium Pentothal, and there are many reasons why that can and apparently does happen, the anesthetic effect may wear off too quickly and the inmate may be conscious and suffering during the remainder of the procedure.

The ADC's protocol unnecessarily enhances these risks by its arbitrary and unnecessary adoption of 2 grams as the dose of Sodium Pentothal to be administered, as distinguished from the 3 grams or 5 grams that is typically given in other jurisdictions that conduct executions by lethal injection. *See, e.g., Taylor v. Crawford*, 445 F.3d 1095, 1097 (8th Cir. 2006) (noting that Missouri's lethal injection protocol calls for 5 grams of sodium pentothal); *Morales v. Hickman*, 438 F.3d 926, 928 (9th Cir. 2006) (noting that California's lethal injection protocol calls for 5 grams of sodium pentothal); *Cooley v. Taft*, 2006 WL 1207982 at * 4 (noting that Ohio's lethal injection protocol calls for 2 grams of sodium pentothal, less than the 5 grams called for by California and the 3 grams used by North Carolina). Although concerns about the selection of this particular drug apply regardless of the size of the dose of sodium thiopental that is prescribed under the protocol, the ADC's arbitrary decision to administer only 2 grams unduly decreases the margin of error and increases the risk that inadequate anesthesia will be achieved.

The level of anesthesia, if any, achieved in each individual inmate depends on the amount that is successfully administered, although other factors such as the inmate's weight and sensitivity/resistance to barbiturates are also important. Many foreseeable situations exist in which human or technical errors could result in the failure to successfully administer the intended dose. If error occurs that results in the prisoner receiving only half of a 5 gram dose, the prisoner

will still receive 2.5 grams and adequate anesthesia will likely occur despite the error. If the same error occurs and the prisoner receives only half of a 2 gram dose, however, the risks of inadequate anesthesia and conscious suffering are significant. Exhibit 7 at ¶ 27 (Declaration of Dr. Heath)

Additionally, the ADC's protocol fails to even require that additional Sodium Thiopental be available in the execution chamber in the event that problems with delivery of the dose are detected and more of the anesthetic agent is determined to be necessary. Because of its instability, the drug is distributed in powder form and must be placed into solution before it may be injected. *Id.* at ¶ 27 (a). Administrative Directive 96-06 fails to require even that extra Sodium Pentothol powder be on hand, much less extra syringes of the drug already mixed into solution, and so in the event that execution personnel were to detect signs of inadequate anesthetic depth or possible consciousness once the execution process was under way, the protocol ensures that there is nothing they could do about it. As noted, the circumstances under which a failure to achieve and maintain adequate anesthesia may occur are many, varied and common.

ii. Obtaining IV Access for Execution Purposes Requires Training and Skill that ADC Execution Personnel Lack

Establishing peripheral intravenous access to an inmate to facilitate the administration of the lethal drugs called for by Administrative Directive 96-06 is a complex and risky medical procedure that should only be performed by properly medically trained and qualified personnel. The process is fraught with the potential for error. Under the best of circumstances, it is vital that the iv set-up be assembled properly and securely. The set-up consists of multiple parts and

pieces of tubing, which may leak or otherwise fail to permit the unobstructed flow of chemicals into the inmate's circulatory system if not correctly attached. *See* Exhibit 7 at ¶ 27(e) (Declaration of Dr. Heath).

The tourniquet that is applied to facilitate access to the peripheral vein must be removed once iv access is achieved; failure to do so will obstruct the flow of the anesthetic agent into the inmate's body. *See Id.* at ¶ 27(k). There is reason to believe that the executioners have failed to remove the tourniquet in at least one execution conducted by the ADC; the Medical Examiner's report of the autopsy of Darrell Richley states that the tourniquet was still present on Mr. Richley's arm when his body was received at the morgue following his execution. *See* Exhibit 8 (Medical Examiner's Report of Autopsy - Darrell Richley). A similar problem may occur due to placement of the extensive restraining straps that the ADC uses to tie the inmate down to the gurney. *See* Exhibit 7 at ¶ 27(l)(Declaration of Dr. Heath).

It is critical that the catheter be inserted into the vein in precisely correct fashion in order to ensure that the full dose of the anesthetic drug is delivered into the inmate's circulatory system. If the catheter is inserted incorrectly, the drug will go into the tissue surrounding the vein rather than into the vein itself. *See id.* at ¶ 27(f). This condition, known as infiltration, is not uncommon. *Id.* Uncorrected, it will result in a failure of the anesthetic to reach the central nervous system and a failure to render the inmate unconscious. *Id.* Once properly inserted, the catheter must be adequately secured with tape or by other means, or else it may shift and result in infiltration. *Id.* at ¶ 27(j).

Even finding a suitable peripheral vein into which the catheter may be placed can be a medically complex and difficult endeavor. *See, e.g.,* Exhibit 9 (Post-Mortem Photograph of

Riley Noel). Due to a variety of conditions, including obesity, prior intravenous drug use, corticosteroid treatment and even just naturally small or deep veins, obtaining peripheral iv access may be difficult or even impossible. *Id.* at ¶ 36. The very nature of the execution process may exacerbate this problem, because the autonomic manifestations of the anxiety associated with impending death include constriction or narrowing of the veins. *Id.* at ¶ 41.

In the event that peripheral iv access proves impossible to obtain, most States' protocols call for the use of dramatically more medically complex, risky and invasive procedures such as a cut-down, which entails making a deep incision into the inmate's skin in order to access a vein that is not accessible from the surface, or a central line, which requires insertion of the catheter into a large vein such as the subclavian vein in the chest or the femoral vein in the groin. Indeed, both of these procedures have been conducted in Arkansas by the ADC. *See* Exhibits 10, 11, 12 (Post-mortem Photographs of Ricky Ray Rector); Exhibit 13 (Autopsy Report of Ricky Ray Rector); Exhibits 14, 15, 16 (Post-mortem Photographs of Clay Smith); Exhibit 17 (Autopsy Report of Clay Smith).

Despite the complexity of and risks associated with these types of procedures, *see* Exhibit 7 at ¶¶ 36-41 (Declaration of Dr. Heath), and their demonstrable necessity in at least two of the last 26 executions in Arkansas, Administrative Directive 96-06 fails to set forth any procedures whatsoever governing the use of these techniques. The protocol fails to specify who will decide if such measures are necessary, to prescribe how they are to be conducted or to set forth the qualifications required of the personnel who will actually perform them. Given the nature of the procedures it is unacceptable that they be performed by anyone except for medically trained personnel possessed of adequate skill and experience, but the protocol fails to require any

particular knowledge or ability at all.

iii. Maintenance of Adequate Anesthesia Throughout the Execution Process Requires Training and Skill that ADC Execution Personnel Lack

Even once peripheral iv access has been established and the catheters are properly inserted, there are still a large number of problems that may arise that may interfere with the proper delivery of anesthesia. It is critical, therefore, that the inmate be closely monitored by medically trained and experienced personnel throughout the execution process in order to detect problems as they occur and ensure that the inmate is maintained on a sufficiently deep plane of anesthesia. *See* Exhibit 7 at ¶¶ 31-32 (Declaration of Dr. Heath). Even most qualified nurses and paramedics are not trained in the use of ultrashort-acting barbiturates; these drugs are used only by anesthesiologists and a very select group of nurses who have obtained significant experience in intensive care units and as nurse anesthetists. *Id.* at ¶ 30. Training equivalent to that of an anesthesiologist or a CRNA is minimally required in order to ensure that an execution using the drugs and procedure selected by Defendant Norris is humane. *Id.* However, the ADC's protocol fails to provide for any monitoring of the inmate during the execution process, much less monitoring by individuals competent in the provision of general anesthesia.

Errors and problems are potentially rife beginning at the stage of preparation of the lethal drugs. Sodium Thiopental is unstable in solution, and is therefore distributed by the manufacturer in powder form. Before it may be injected intravenously, the powder must be mixed with liquid, a process that requires knowledge of pharmaceuticals and familiarity with terminology and abbreviations. *Id.* at ¶ 27(a). Administrative Directive 96-06 provides no guidance to execution personnel on this issue, stating only that "the powder be dissolved in 'the

least amount of clear diluent possible to attain complete, clear suspension.” *Id.* No instructions are given as to how much fluid that might be or how the person performing the mixing should determine how much to use or how success has been achieved. *Id.*

The ADC’s protocol requires that, once mixed, the drugs be placed in a series of numbered syringes. *Id.* at ¶ 27(b); Exhibit 19 (Photograph of Syringes). No other indication of the contents of the syringes is placed on them, which means that if a drug is erroneously placed in a syringe of the incorrect number, the error is likely to go undetected and the drugs will be administered in the wrong order. *Id.* Such labeling is far below the appropriate medical standard of care and would never be permitted in the clinical context. Administration of the drugs in the wrong order may also result from the fact that each syringe is a separate unit that must be attached in series to the iv setup by hand. Exhibits 20, 21, 22 (Photographs of Syringes and IV Tubing). The protocol wholly fails to guard against the possibility that the executioner might select the incorrect syringe, to provide for monitoring of the inmate to ensure that such an error is immediately detected if it occurs, or to prescribe the steps to be taken if such a situation is detected. *See* Exhibit 7 at ¶ 27(c)(Declaration of Dr. Heath)

If the lethal drugs are administered in the wrong order a range of negative consequences may ensue. Several of the numbered syringes are supposed to contain saline solution to be administered between drugs in order to flush the iv lines of all traces of the preceding agent. Of primary importance is the fact that, if mixed with Pancuronium Bromide outside of the body, Sodium Pentothol will precipitate, i.e. solids will form in the solution, impairing or preventing delivery of the full dose of anesthetic agent. Hence, if error in the selection of syringes results in the introduction of Pancuronium Bromide before the line has been flushed with saline solution,

inadequate anesthesia may result.

The ADC's lethal injection protocol requires that the executioners who inject the lethal drugs into the iv set up be located in a room that is apart from the execution chamber where the inmate is placed on the gurney, separated by a window with a hole in it for the iv lines to pass through. Exhibit 23 (Photograph of Execution Chamber). Because of the distance between the inmate and the executioners that this procedure necessitates, extended iv tubing is required. The introduction of extra length and components to the iv set-up not only increases the number of sites where leakage may occur, *see* Exhibit 7 at ¶ 27(e)(Declaration of Dr. Heath), but also increases the risk that the tubing may coil or kink.

Even when properly placed initially, the tip of an iv catheter may migrate during the course of the execution so that it is outside of the vein at the time of the introduction of the anesthetic agent and infiltration occurs. *See* Exhibit 7 at ¶ 27(g)(Declaration of Dr. Heath). Although the catheter appears to be securely and properly placed, too, the process of inserting it may weaken or damage the vein wall such that the vein ruptures when the administration of the lethal drugs begins. *Id.* at ¶ 27(h). This risk is increased by the fact that inexperienced, untrained personnel may exert excessive pressure on the syringe plungers, increasing the velocity of the administration of the drug and consequently the pressure that is placed on the vein walls. *Id.* Indeed, excessive pressure on the plunger can lead to tearing or rupture of the vein even in the absence of damage caused by the initial insertion of the catheter. *Id.* at ¶ 27(i).

Because of each of these potential problems and more, constant, close monitoring of the inmate's plane of anesthesia throughout the execution process by individuals who are properly trained and skilled in anesthesiology is indispensable. And yet, the Defendants' protocol fails to

provide for any monitoring at all once the execution is underway, much less monitoring by personnel who have the requisite knowledge and experience to detect and rectify any problems that may arise them.

iv. Even if ADC Personnel Were Qualified to Administer IV Anesthesia, the Use of Pancuronium Bromide and the Physical Arrangement of the Execution Chamber Preclude Effective Monitoring

Not only does the ADC's lethal injection protocol fail to provide for monitoring of the inmate by persons qualified in assessing anesthetic depth, it calls for a physical arrangement of inmate and executioners that would unnecessarily hinder effective monitoring even if it were attempted. As noted, the protocol requires that the executioners who inject the lethal drugs into the iv set-up be located in a room that is apart from the execution chamber where the inmate is placed on the gurney, separated by a window with a hole in it for the iv lines to pass through. Exhibit 23 (Photograph of Execution Chamber). The persons who control the administration of the drugs, then, are the furthest away of any execution chamber personnel and their line of sight to the inmate is impeded. *See* Exhibit 7 at ¶ 27(e)(Declaration of Dr. Heath). The distance entirely precludes the close monitoring of the diagnostic signs of anesthetic depth that are constantly checked during surgical procedures

d. The Risk of Torture and Pain Created by Administrative Directive 96-06 Has Been Realized in Executions in Arkansas and Elsewhere

There is now ample evidence that Administrative Directive 96-06 has caused some inmates executed in Arkansas to experience unnecessary pain and suffering during their executions. Both execution records and witnesses' accounts of these executions provide evidence that is indicative of continued consciousness following the purported administration of the

sodium pentothal. A dose of Sodium Pentothal of 2mg or more, properly administered, will cause unconsciousness within one minute or less. Exhibit 7 at ¶ 42 (Declaration of Mark Heath). However, in several executions that have been performed in Arkansas, the inmate displayed signs of consciousness for considerably longer than the one minute maximum that is indicative of successful administration of the anesthetic.

Ronald Gene Simmons was executed by the State of Arkansas on June 25, 1990. Exhibits 24, 25, 26 (Post-mortem Photographs of Ronald Gene Simmons). The administration of the lethal chemicals began at 9:02pm. Exhibit 27 (Medical Examiner's Consultation and Investigation Form - Ronald Gene Simmons). 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." Bill Simmons, *Stoic Murderer Meets His Fate by Quiet Means*, ARKANSAS DEMOCRAT, June 26, 1990, at 9A (Exhibit 28). 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. *Id.*; Exhibit 28.

According to Dr. Heath, the typical reaction to the administration of sodium pentothal is yawning, drawing one or two deep breaths, or visibly exhaling so that the cheeks puff out. Exhibit 7 at ¶ 44. (Declaration of Mark Heath M.D.) Obviously, audibly vocalizing is not consistent with unconsciousness. Also, irregular heaving of the chest is not consistent with the depression of the central nervous system caused by sodium pentothal. *Id.* Rather, chest heaving is indicative of labored respiratory activity, which in turn strongly suggests that Mr. Simmons was conscious, and indeed may have been laboring against the paralyzing effect of the pancuronium bromide. *Id.*

Just under two years later, on January 24, 1992, Rickey Ray Rector was put to death in Arkansas. The execution took one hour and 9 minutes to complete, during which time Mr. Rector's hands and arms were punctured no less than 10 separate times by ADC personnel searching for a suitable vein in which to place the IV line. Exhibits 10, 29, 30, 31 (Post-mortem Photographs of Ricky Ray Rector); Exhibit 13 (Autopsy Report of Ricky Ray Rector) The catheter was finally inserted into a vein in Mr. Rector's hand, Exhibits 32, 33, 12, but not before a deep incision, a "cut-down," was made in his arm, Exhibits 10, 11, 12. The curtains between the execution chamber and the witness room remained closed during the 50 minutes it took to place the IV line, but witnesses heard Mr. Rector's loud moans as his skin was repeatedly pierced. Sonja Clinesmith, *Moans Pierced Silence During Wait*, ARKANSAS DEMOCRAT GAZETTE, January 26, 1992, at 1B (Exhibit 34); Ron Fournier, *13 Outsiders View Death of Rector, Witnesses Listen, Wait Beyond Curtain*, ARKANSAS DEMOCRAT GAZETTE, January 26, 1992, at 4B (Exhibit 45); Exhibit 35 at ¶¶ 8, (Declaration of John Jewell). Witnesses also heard the sound of skin slapping skin as ADC personnel apparently tried to raise a vein, prompting one witness to say "[t]hey're going to beat him to death." Ron Fournier, *13 Outsiders View Death of Rector, Witnesses Listen, Wait Beyond Curtain*, ARKANSAS DEMOCRAT GAZETTE, January 26, 1992, at 4B (Exhibit 45.)

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, Exhibit 36 (Medical Examiner's Consultation and Investigation Form - Ricky Ray Rector), 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. Joe Farmer, *Rector, 40, Executed for Officer's Slaying*, ARKANSAS DEMOCRAT GAZETTE, January 25, 1992, at 9A. (Exhibit 37.) Then at 9:55pm, "Rector's lips moved rapidly - as if he was drawing shallow breaths. His lips stopped moving a minute later." Ron Fournier, *13 Outsiders View*

Death of Rector, Witnesses Listen, Wait Beyond Curtain, ARKANSAS DEMOCRAT GAZETTE, January 26, 1992, at 4B (Exhibit 45). This again suggests an attempt to fight against the effects of the pancuronium bromide. 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.” *Id.* Death was finally pronounced at 10:09pm.

On May 7, 1992, 25 year old Steven Douglas Hill was executed. Exhibit 38 (Declaration of Charles L. Carpenter, Jr.); Exhibits 39, 40 (Post-mortem Photographs of Steven Hill). His execution began at 9:02pm. Exhibit 41 (Medical Examiner’s Consultation and Investigation Form - Steven Douglas Hill). 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.” Andy Gotlieb and Linda Satter, *Hill Dies by Injection for ‘84 Police Killing*, ARKANSAS DEMOCRAT GAZETTE, May 8, 1992, at 17A (Exhibit 42.) He was visibly “gasping for air,” and even though he was strapped down to the gurney “his chest was heaving against the wide belt that covered his chest.” Exhibit 38 at ¶ 8 (Declaration of Charles L. Carpenter, Jr.). The seizure ended at 9:04pm and Mr. Hill was pronounced dead at 9:10pm.

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 personnel struggled in vain to insert the IV line into her elbows. Exhibit 46 (Medical Examiner’s Consultation and Investigation Form - Christina Riggs). When they could not do so, they asked Ms. Riggs if they could insert the catheters into her wrists, and she consented. Exhibits 47, 48 (Post-mortem Photographs of Christina Riggs). 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.” Cathy Frye, *Riggs, Mother who Killed her 2 Children, Put to Death by State*, ARKANSAS DEMOCRAT GAZETTE, May 3, 2000, at 1B (Exhibit 49).

These accounts of Arkansas executions are “extremely troubling,” because they indicate “that there were problems associated with the administration of the chemicals that may have resulted in the prisoners being conscious during portions of the executions.” *Beardslee v. Woodford*, 395 F.3d 1064, 1075 (9th Cir. 2005). They are also part of a growing body of evidence that suggests that identical problems are recurring over and over again in jurisdictions throughout the country that utilize similar lethal injection protocols. *See, e.g., Cooley v. Taft*, 2006 WL 1207982 * 5 (“Plaintiff has demonstrated a *stronger* likelihood of success on the merits than the plaintiffs who preceded him, given the growing body of evidence calling Ohio’s lethal injection protocol increasingly into question. This Court cannot and will not turn a blind eye to the evidence presented in the cases of *Brown v. Beck* in North Carolina and *Morales v. Hickman* in California”).

Recently, the execution of Joseph Lewis Clark by the State of Ohio demonstrated graphically and horrifically how an execution that appeared completely normal and routine at the outset can rapidly go horribly wrong. *See Adam Liptak, Trouble Finding Inmate’s Vein Slows Lethal Injection in Ohio*, NEW YORK TIMES, May 3, 2006 (Exhibit 43.) After searching for 22 minutes, execution personnel finally found a vein that they thought was suitable for inserting the IV catheter. *Id.* However, three or four minutes after the flow of lethal drugs was started, Mr. Clark literally raised his head up off the gurney and informed his executioners that “[i]t’s not working.” *Id.* The vein had apparently collapsed; the execution team closed the curtain to the witness room and once again began searching for a usable site for the IV, a process that took another 30 minutes. *Id.* Mr. Clark was not pronounced dead until 11:26am, almost an hour and a half after the ordeal began. *Id.*

c. The Serious Risks Engendered by ADC’s Lethal Injection Protocol are Unnecessary and Unconstitutional

Administrative Directive 96-06 both creates an unacceptable and unnecessary quantum of

risk that the inmate will not be adequately anesthetized and therefore will suffer excruciating pain during his execution, and also fails utterly to account for these obvious contingencies and instruct personnel on how to react to or prevent them. In this respect, the lethal injection protocol is starkly different from the judicial hanging protocol that the Ninth Circuit Court of Appeals upheld in *Campbell v. Wood*, 18 F.3d 662, 683 (9th Cir. 1994). Analogous to the risk that an inmate will be conscious and in excruciating pain during the lethal injection process, the State of Washington's judicial hanging procedure carried the risk that an inmate would die of asphyxiation, which is slow and painful, or decapitation, which mutilates the inmate's body, rather than dying within seconds as intended. *See id.* at 683.

Unlike the ADC's lethal injection protocol, however, Washington's protocol carefully acknowledged the risks that it engendered and provided detailed procedures specifically designed to minimize them. Thus, as the court noted, Washington's protocol reflected medical opinions as to the manner in which different methods of hanging would kill inmates and which modes of causing death were the most humane. *Id.* In order to avoid death by asphyxiation or decapitation, the protocol included detailed instructions on numerous factors that could affect the manner of death, including the diameter of the rope; the method of tying the knot; treating the rope with wax and boiling it to reduce elasticity; and the length of the drop in relation to body weight and the manner in which that length should be calculated. *Id.* at 683-85. All of these instructions were the result of careful consideration of the available scientific and medical evidence. In light of the Washington protocol's ample provision for the risks of an inhumane death, the Ninth Circuit concluded that the risk of a botched execution was "slight," and had been "minimized as much as possible." *Id.* at 687 & n.17.

In contrast to Washington's protocol, it is impossible to detect in the version of Administrative Directive 96-06 currently available any attempt on the ADC's part to account for the problems that can and do arise during an execution by lethal injection. This failure is

particularly egregious in light of the fact that simply having a qualified person verify, visually and tactically, that the inmate is indeed anesthetized following the administration of the sodium pentothal, would go a long way towards mitigating the risk of unnecessary pain. *See* Exhibit 7 at ¶ 32 (Declaration of Mark Heath M.D.) Moreover, the necessity for such monitoring may be obviated by the selection of alternative, equally effective anesthetic agents and by the use of one of the drugs capable of causing cardiac arrest that does not cause excruciating pain. *Id.* at 13. Yet it does not appear that the ADC has even considered these or any other means of lessening the gratuitous dangers created by its protocol. This egregious failure renders the significant risk of error truly unnecessary and unconstitutional. *Cf. Campbell*, 18 F.3d at 687 & n.17.

C. MR. DAVIS WILL SUFFER IRREPARABLE HARM IF A PRELIMINARY INJUNCTION IS NOT GRANTED

If the State is not enjoined from executing him in accordance with Administrative Directive 96-06, Mr. Davis will likely suffer irreparable harm. Being forced to endure excruciating pain during the execution process clearly constitutes irreparable harm. *See Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996)(holding that continued pain and suffering resulting from deliberate medical indifference is irreparable harm). As is clear from the foregoing, there is ample evidence that Defendants' proposed method of execution carries a significant and unacceptable risk that Mr. Davis will indeed suffer that harm. The threat of harm is both "real and immediate," and thus the situation is one that is "ripe for injunctive relief." *See Goff v. Harper*, 60 F.3d 518, 521 (8th Cir. 1995). Moreover, Mr. Davis will have no retrospective remedy for the constitutional violation, as he will no longer be alive.

D. THE BALANCE OF HARMS STRONGLY FAVORS MR. DAVIS

In contrast, the harm to the State that will result from the entry of a preliminary injunction is slight. The State undoubtedly has a strong interest in the prompt execution of its judgments. The delay resulting from granting the temporary relief sought herein, however, will have little

adverse effect upon that interest. See *Gomez v. US. Dist. Ct. for Northern Dist. of Ca.*, 966 F.2d 460,462 (9th Cir. 1992) (Noonan, J., dissenting from grant of writ of mandate) (“The state will get its man in the end. In contrast, if persons are put to death in a manner that is determined to be cruel, they suffer injury that can never be undone, and the Constitution suffers an injury that can never be repaired.”). The balance of harms tips sharply in favor of entering a preliminary injunction.

E. GRANTING TEMPORARY RELIEF IS IN THE PUBLIC INTEREST

Whether the State is executing its prisoners in a way that subjects them to an excruciatingly painful, torturous death is clearly a matter of vital public interest. The standards of decency and humanity in a society such as ours are gravely offended by such practices, and so it is affirmatively in the public interest to address and resolve the merits of the Plaintiffs’ claims in order to identify and put an end to unnecessary procedures that pose a risk of causing gratuitous suffering. Indeed, the citizens of the State of Arkansas, through their elected representatives, have expressly acknowledged the importance of conducting executions as humanely as possible by changing the method from electrocution to lethal injection as a result of the belief that the latter reduces unnecessary suffering. See Carol Matlack, *House Votes Injection Bill*, ARKANSAS GAZETTE, February 22, 1983, at 1A, 3A (noting that bill resulted from legislative staff study that found that lethal injection is the most humane method of execution) (Exhibit 18); John Brummett, *Clark to Propose Bill on Selection of PSC, Fights Direct Election*, ARKANSAS GAZETTE, January 6, 1983, at 10A (reporting that State Attorney General Steve Clark supported legislation that would make lethal injection the method of execution because he had read gruesome accounts of electrocutions and “[d]ying is dying, but I think you deserve to die with dignity”) (Exhibit 44).

There is now compelling evidence that Arkansas’ lethal injection protocol creates a significant and unacceptable risk of, and on multiple occasions has actually resulted in, the

infliction of unnecessary pain. As noted above, the claim does not become ripe for resolution until an execution is imminent but, if a preliminary injunction is not granted, the execution will necessarily take place before the issues can be adjudicated. In light of the importance of the questions involved, it is clearly in the public interest that temporary relief be granted in the instant case to solve this dilemma and permit a definitive determination of the merits to be made. “[T]he public interest only is served by enforcing constitutional rights and by the prompt and accurate resolution of disputes concerning those constitutional rights. By comparison, the public interest has never been and could never be served by rushing to judgment at the expense of a condemned inmate’s constitutional rights.” *Cooley v. Taft*, 2006 WL 1207982 at *6 (S.D.Ohio)

F. MR. DAVIS ENGAGED IN NO UNDUE DELAY IN BRINGING THIS ACTION

Mr. Davis diligently prosecuted his constitutional claims as soon as they became ripe for review. The fact that the State of Arkansas chose to schedule his execution while the lawsuit and his Motion to Intervene were still pending, and before the Court has had the opportunity to adjudicate his claims on the merits, in no way detracts from the propriety of according him temporary relief in order to facilitate that adjudication. A challenge to a specific execution procedure becomes ripe for adjudication only when it is clear that the challenger will in fact be subjected to that particular procedure, i.e. “when the execution becomes imminent and the plaintiff knows or has reason to know of the facts giving rise to his specific challenges.” *Cooley v. Taft*, 2006 WL 1207982 at *3. These criteria are met when all state and federal legal challenges to the conviction and sentence have been exhausted and certiorari has been denied by the United States Supreme Court. *Id.*

Accordingly, Mr. Davis moved to join the instant action on May 4, 2006, just 17 days after the United States Supreme Court denied his application to file a certiorari petition, only 3

Little Rock, Arkansas 72221-5438
(501) 312 8500
(501) 312 8505
debsal@arbs.net

Counsel for Don William Davis

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th day of June, 2006, the foregoing Application for Preliminary Injunction was filed using this Court's EF/CMS electronic filing system and thereby automatically delivered electronically to Assistant Attorney General Mark Hagemeyer, Catlett-Prien Tower Bldg., 323 Center Street, Suite 200, Little Rock, AR 72201-2610.

/s/ Alvin Schay
ALVIN SCHAY

INDEX TO EXHIBITS

Exhibit No.	Exhibit Name
1	ADC Administrative Directive 96-06
2	Newspaper article 3-5-83 "Pharmacy Dean resents role"
3	Newspaper article 3-12-83 "May Not Sign Injection Bill"
4	Newspaper article 5-15-83 Sponsor Recalls Lethal Injection Bill
5	Newspaper article 3-26-83 Clinton Signs Injection Bill"
6A	So Long as They Die, 18 Human Rights Watch pages 1-17
6B	So Long as They Die, 18 Human Rights Watch pages 18-34
6C	So Long as They Die, 18 Human Rights Watch pages 35-52
6D	So Long as They Die, 18 Human Rights Watch pages 53-68
7	Declaration of Mark Heath
8	Richley Autopsy Report
9	Noel Post Mortem Photo 1
10	Rector Post Mortem Photo 2
11	Rector Post Mortem Photo 4
12	Rector Post Mortem Photo 5
13	Rector Autopsy Report
14	Smith Post Mortem Photo 1
15	Smith Post Mortem Photo 2
16	Smith Post Mortem Photo 3
17	Smith Autopsy Report
18	Newspaper Article 2-22-83 "House Votes Injection Bill"
19	Photograph of Syringes
20	Photograph of Syringes and IV Tubing
21	Photographs of Syringes and IV Tubing 2
22	Photograph of Syringes and IV Tubing 3
23	Photograph of Execution Chamber
24	Simmons Post Mortem Photo 1
25	Simmons Post Mortem Photo 2
26	Simmons Post Mortem Photo 3
27	Simmons ME Consultation Form
28	Newspaper Article 5-26-90 "Stoic Murderer Meets Fate"
29	Rector Post Mortem Photo 6
30	Rector Post Mortem Photo 7
31	Rector Post Mortem Photo 8
32	Rector Post Mortem Photo 1
33	Rector Post Mortem Photo 3
34	Newspaper Article 1-26-92 "Moans Pierced Silence During Wait"
35	Declaration of John Jewell
36	Rector ME consultation form
37	Newspaper Article 1-25-92 "Rector 40 Executed"
38	Declaration of Charles L. Carpenter

39 Hill Post Mortem Photo 1
40 Hill Post Mortem Photo 2
41 Hill ME consultation form
42 Newspaper Article, 5-8-92-Hill Dies by Injection
43 NY Times Article "Trouble finding inmate's veins Slows Lethal Injection
in Ohio"
44 Newspaper Article 1-6-83 "Clark to Propose Bill on Selection of PSC"
45 Newspaper Article "13 Outsiders View Death of Rector"
46 Riggs ME Consultation Report
47 Riggs Post Mortem Photo 1
48 Riggs Post Mortem Photo 2
49 Newspaper Article 5-3-00 "Riggs, mother who killed her Two Children,
put to death"

EXHIBIT 1



Arkansas
Department of Correction

P.O. Box 8707
Pine Bluff, Arkansas 71611-8707
Phone: (501) 247-1800 FAX: (501) 247-3700

ADMINISTRATIVE DIRECTIVE
CONFIDENTIAL

SUBJECT: Procedure for Execution

NUMBER: 96-06

SUPERSEDES: AD 95-15 dated
08/23/95

APPLICABILITY: Management Team and designated
staff

REFERENCE:

PAGE 1 **OF** 24

APPROVED:

A handwritten signature in cursive script, appearing to read "Ray Brown", is written over the "APPROVED:" label.

DATE: 5/23/96

I. POLICY:

It shall be the policy of the Department of Correction to comply with Arkansas Code regarding the execution of persons sentenced to Death.

II. PROCEDURE:

A. Setting of Execution Date

1. Judge sets date of execution. The execution date will be verified by the Warden of the Maximum Security Unit. A copy of the order shall be provided to the Director.
2. Governor sets date of execution and issues death warrant. The execution date will be verified by the Warden of the Maximum Security Unit. A copy of the order shall be provided to the Director.

B. Executioners

The Director will select two executioners. Their names will be known only by the Director and the Deputy Director for Health and Correctional Programs. The identity of the executioner(s) will be kept secret. Both executioners will be in the control room during the execution. The Director will be responsible for making arrangements to have the executioners in the execution chamber.

Orientation for the executioners, if needed, will be prior to the day of the execution and provided by the Director and/or designee(s). Both executioners shall arrive at least an hour prior to the time of the execution through the sally port gate. The executioners shall be escorted by the Director or designee.

C. Chain of Command

The Warden of the Cummins Unit, then the Director or designee, will be the chain of command for control.

D. Witnesses

1. The execution shall not be witnessed by more than 25 persons. This does not include executioners. Attendance at the execution shall include:

- a. Director and Cummins Unit Warden or an assistant;
- b. Surgeon (physician) of the penitentiary or an assistant (i.e. Deputy Director of Health and Correctional Programs or designee, etc.);
- c. Not less than six and no more than 12 respectable citizens;
- d. Counsel for the inmate (optional);
- e. Minister of the Gospel (optional);
- f. Two members of the media.

2. The selection of six to 12 citizens to witness the execution will be made by the Director. Recommendations from staff, Board members, and others will be reviewed. Minimum criteria include:

- a. Persons (no ex-felons) selected must be 21 years of age or older; and,
- b. All persons will be very mature, responsible, and respected citizens of the State of Arkansas.

3. No inmate's family member nor family member of the victim will be present at the execution.

E. Inter/Intra-Agency Coordination

Seven days prior to the execution date, the following individuals shall contact and coordinate the assistance of the following:

1. Assistant Director of Institutions
 - a. Arkansas State Police and request that the Arkansas State Police be at the Cummins Unit the date of the scheduled execution and provide mobile units to block designated streets/roads during the scheduled execution and have a riot team available;
 - b. Lincoln and Jefferson County sheriffs and request the county sheriffs have deputies on stand-by the date of the scheduled execution;
 - c. FBI for notification only;
 - d. Police departments of Grady and Gould for notification only;
2. Cummins Unit Warden - each unit warden and request the assistance of correctional officers of the rank of sergeant or above from each unit for the date of the scheduled execution;
3. Deputy Director of Health and Correctional Programs - county coroner and request presence;
4. Deputy Director of Institutions - unit wardens and advise them of their responsibilities.

The Office of the Attorney General will be responsible for contacting the Governor's Office and Federal Courts to establish telephone contact times, telephone numbers, and verification of the personnel with whom they will be in contact on the date of the execution.

F. Prior Arrangements

1. Chaplaincy Services
 - a. If the condemned inmate is incarcerated in the system, his minister or the Department of Correction Administrator of Chaplaincy Services will work with the inmate starting at least seven calendar days prior to the execution as determined by the warden and/or minister.
 - b. The Cummins Unit Chaplain (as designated by the Administrator of Chaplaincy Services) will contact the family of the condemned inmate and the victim's family after the inmate is transferred to the Cumins Unit and be their liaison.

2. Explanation of Execution Procedure

Seven calendar days prior to the scheduled execution date, the Warden of the Maximum Security Unit and the Deputy Director of Health and Correctional Programs or designee will explain to the condemned inmate his option of electrocution or lethal injection, if applicable, and document his choice.

3. Automotive test for electrocution shall be checked prior to the date of execution by the Director or designee.
4. No medication shall be given to the condemned inmate seven days prior to the execution date, except medicine which is personally prescribed by a Department physician.

Medication prescribed for the condemned inmate by a Department physician shall be reported to the Deputy Director of Health and Correctional Programs.

5. Disposition of Property

The Warden of the Cummins Unit will obtain instructions from the condemned inmate as to the disposition of his or her property being maintained at the Cummins Unit.

The Cummins Unit Warden will request that a withdrawal slip be filled out if the condemned inmate has any money in the inmate trust fund so the money can be forwarded to the person designated for receipt of such by the inmate.

6. Burial Arrangements

- a. The Deputy Director of Health and Correctional Programs or designee and the Administrator of Chaplaincy Services shall be responsible for ascertaining the identity of a funeral home to whom the body will be remanded upon completion of the autopsy.
- b. The State Crime Laboratory will be informed by the Deputy Director of Health and Correctional Programs or designee of known funeral plans.
- (1) The State Crime Laboratory will coordinate with the designated funeral home the transfer of the body post-mortem.
- (2) The Arkansas State Police will provide two cars to escort the body off the premises.

- c. The Deputy Director of Health and Correctional Programs or designee will institute standard operating procedure for unclaimed remains should disposition of the body not be known at the time of the execution.

A military veteran with an honorable discharge is qualified for burial in a National Cemetery and will not be buried in the prison cemetery.

- d. Transportation arrangements for the deceased inmate will be made by the Deputy Director of Health and Correctional Programs or designee.

The vehicle and driver should be located outside the sally port gate one hour prior to the scheduled execution time.

7. Method of Execution

- a. Electrocution - If the method of execution is electrocution, the Deputy Director of Health and Correctional Programs or designee will ensure that a good conductor will be available for the condemned inmate's head and leg and will ensure that elephant ear sponges will be in the leg and cap covers.

The Deputy Director or designee will also ensure that this sponge is soaked for 12 hours in brine water prior to the scheduled time of execution.

- b. Lethal Injection - The Deputy Director of Health and Correctional Programs or designee shall assume the following responsibilities:

- (1) No less than two days prior to execution (if lethal injection is the method of execution), prepare the necessary requisition for procuring the lethal injection;
- (2) One day prior to execution, obtain the lethal injection; and,
- (3) Have the lethal injection, the gurney, straps, etc., available for use on the scheduled date of execution (see Attachment C).

G. Inter-Unit Transfer

- 1. Seven days prior to the scheduled execution date, the Warden of the Maximum Security Unit will

confer with the Deputy Director of Institutions and the Warden of the Cummins Unit to finalize plans to transfer the condemned inmate to the Cummins Unit.

2. Knowledge of the actual time that the condemned inmate will be transferred shall be restricted to the two wardens and the Deputy Director of Institutions.
3. Females will be kept at the Tucker Unit and then transported to the Cummins Unit approximately eight hours prior to the execution. A test for pregnancy will occur prior to the female being moved from the Tucker Unit to the Cummins Unit.
4. Upon receipt at the Cummins Unit, the condemned inmate's property shall be inventoried, and those items authorized shall be retained in his or her cell.
5. Shakedowns of the cell and the condemned inmate will be no more than five times per day or as security dictates after the condemned inmate arrives at the Cummins Unit.
6. The Deputy Director of Institutions will coordinate the transfer with the Arkansas State Police.

H. Visitation Privileges

1. Persons on Approved List
 - a. If requested by the condemned inmate, visits with the immediate family or friends who are on the approved visitors list and are approved by the warden (as determined by security needs) shall be allowed each day for five days prior to the date of the execution.
 - b. No family or friends will be allowed to visit on the day of the execution.
 - c. Approved visits will be no more than three hours and must be within a time period from 1:00 p.m. to 4:00 p.m.
2. Legal Counsel and Spiritual Advisor
 - a. If requested by the inmate, visits from legal counsel and spiritual advisors shall be allowed each day for five days prior to the date of the execution.

- b. Legal Counsel and Spiritual Advisor may be allowed to visit on the day of execution.
- c. Legal Counsel and Spiritual Advisor visits will be allowed at any time except during specified events.

I. Stations/Contacts

1. Road Blocks

- a. Arkansas State Police Mobile Units shall block designated routes at 3:00 p.m. One Department of Correction officer with a walkie-talkie shall be stationed with each police unit.
- b. A police ribbon barricade and/or road block will be placed as indicated on Attachment A and A-1.
 - (1) Security officers shall be placed around the area of the police ribbon barricades and other posts as required in Attachment A and A-1.
 - (2) After the execution and news conference, the Arkansas State Police shall order spectators to disperse. After the spectators have dispersed, the barricades shall be removed.

2. Riot Team

The State Police Riot Team shall arrive at 3:00 p.m. and will assemble as designated by the State Police coordinator.

3. Director

- a. Telephone numbers and names of contact persons within the Department of Correction will be given by the Director to each person who has authority to issue a stay of execution as determined by the Office of the Attorney General.
 - (1) The telephone in the execution chamber is to be used by the Director only for stay of execution procedures.

- (2) The warden or designee will have available a walkie talkie in the execution chamber on a separate frequency which will be utilized to receive a stay of execution if the telephone system is not working properly.
 - (3) A telephone in the waiting room adjacent to the witness room is for security purposes only.
- b. The Director will make telephone and/or personal contact with the Department's legal advisors prior to the execution to determine the status of the execution.
4. Governor's Office/Attorney General's Office
- a. During the execution procedure, the Internal Affairs Administrator or designee shall be stationed in the Conference Room and shall monitor the telephone to the Attorney General's Office. The Classification Administrator shall be stationed at the Farm Office and shall monitor the telephone to the Governor's Office. Each person will be available for contact for a stay of execution.
 - b. Once a stay is received by any of the above, telephone or walkie talkie (if the telephone system is not working) contact will be made to the execution chamber. Telephone numbers will be provided. Walkie talkies on the same frequency as the one in the death chamber will be provided to each designated contact person.
5. Witnesses
- a. Witnesses chosen by the Director shall arrive at the Administration Building in Pine Bluff two hours prior to the execution time, where their identification shall be checked, and they will be searched by the Warden of the Diagnostic Unit or designee. They will then be transported to the Death Chamber at the Cummins Unit.
 - (1) Arrangements for transportation and security officers for the witnesses shall be made by the Warden of the Diagnostic Unit.
 - (2) The Assistant Director of Institutions will coordinate with the Warden of the Diagnostic Unit the route the witnesses will take to arrive at the Death House.

- b. The transportation vehicle and security staff will remain adjacent to the Death House. Once the execution is completed, the witnesses will be transported back to the Administration Building in Pine Bluff.

Others in attendance will receive special instructions from the Director or designee.

- c. The Deputy Director of Health and Correctional Programs or designee will have a medical authority waiting in the foyer of the witness room to assist witnesses in need of medical attention.

- 6. Individual stations in the death house are indicated in Attachment B.

J. Procedures Prior to Execution

1. Documentation in Log Book

Upon arrival at the Cummins Unit, the warden will ensure that an execution log book is initiated to document all of the condemned inmate's activities throughout his stay in the death house at the Cummins Unit.

- a. A security officer will be stationed as determined by the warden to observe the condemned inmate and record activities.
- b. Designated Cummins Unit staff members are responsible for recording activities occurring in the death house which will conclude with the departure of the deceased from the Death Chamber.
- c. A copy of the log shall be given to the Assistant to the Director for Public Information for release to the news media, Governor's Office, the Attorney General's Office, and the Director's Office within 24 hours after the execution unless an exception is made.

2. Last Meal

The condemned inmate may request one special meal on the evening of the scheduled execution. This request must be for food within reason based on availability in food service, legality, etc.

- (a) The Cummins Unit Warden shall visit with the condemned inmate and advise the inmate of the menu schedule to include the inmate's request for the last meal.
- (b) The last meal is to be served at the last regular scheduled meal time or no sooner than four hours prior to the time of execution.

3. Preparation of Condemned for Execution

The condemned inmate may shower and be dressed in the clothes in which the inmate shall be executed.

If the method of execution is electrocution, two hours prior to the execution, a barber should shave the subject head area for electric contact only and the area on the right leg where the straps will be connected.

K. Execution Process

1. Prior to Execution

- a. The execution team as identified by the Cummins Unit Warden shall be assembled and assume their positions three hours prior to the execution.
- b. At the time of execution, the condemned inmate will be wearing white inmate clothing with long sleeve shirt for electrocution or a short sleeve shirt for lethal injection. No belts or jewelry will be allowed to be worn by the condemned inmate.

The following will have been done just prior to the time set for the execution:

- (1) The Cummins Unit Warden shall have the condemned inmate removed from the holding cell in socked feet and strapped in the chair or strapped to the gurney in case of lethal injection (see Attachment D).

The Spiritual advisor may escort the condemned to the death chamber entrance as determined by security needs, but legal counsel is not allowed.

- (2) The Deputy Director of Health and Correctional Programs or designee shall have catheters placed in each arm or other appropriate areas and a saline solution started if lethal injection is the method of execution (see Attachment C).

- (3) The Cummins Unit Warden shall summon the witnesses and have them escorted to the Death Chamber Viewing Room. The Cummins Unit Building Major will have each witness sign, print their name, and give the date and time of their arrival in the Viewing Room (see Attachment E). The door shall be locked by the building major.
 - (4) After the witnesses are in the Death Chamber Viewing Room and the condemned inmate is in the execution chamber, the Cummins Unit Warden shall open the curtains, and face the witnesses. The recorder will turn on the microphone.
 - (5) The Director or designee shall then ask the condemned inmate if he or she has any last words or statements. The inmate shall be allowed to respond, and then the Cummins Unit Warden shall state "the officials are ready to proceed with the execution." The recorder will then turn off the microphone.
2. Unless specified, the time for execution will be 9:00 p.m. At the time of execution, the following shall occur:
- a. The executioners shall administer the lethal injection or turn the switch. Once the instruction is given to commence the execution, the procedure for electrocution and/or lethal injection will proceed to completion (see Attachment C).
 - b. When the inmate no longer exhibits any sign of life, the Cummins Unit Warden shall request the physician (coroner) to be brought into the Death Chamber.
 - c. The physician (coroner) shall then pronounce the death and record this information in the inmate's medical file. The physician (coroner) shall then be escorted out of the Death Chamber.
 - d. After the inmate is pronounced dead, the microphone shall be turned on, and the Director or designee shall read the order of the court, the time the switch was pulled or the lethal injection was administered, and the time of death to the witnesses. The microphone shall then be turned off, and the warden shall close the curtain.

The Director will call the Classification Administer (Farm Office), the Public Information Officer (Media Center), and the representative from the Attorney General's Office (Warden's Office) to advise the execution has been completed.

- e. When the inmate has been pronounced dead, the Warden of the Cummins Unit or designee shall order the witnesses to be escorted from the Death Chamber to the outside of the Cummins Unit or designated area.
 - f. Witnesses will leave by the same procedure as they were allowed in. The stretcher shall be brought into the Death Chamber by the transportation attendants who shall then remove the body and transport it to the Crime Laboratory. The transportation vehicle will depart through the sally port.
3. Cause of death ruling and/or autopsy will be requested by the Deputy Director of Health and Correctional Programs through the State Medical Examiner's Office at the Crime Laboratory.

L. Final Documentation

1. The Internal Affairs Administrator shall gather and compile all pertinent information and shall submit a final report to the Director.
2. Certification of Execution
 - a. The Director shall certify the fact of the execution of the condemned inmate to the clerk of the court by which such sentence was pronounced.
 - b. The clerk shall file such certificate with the papers of the case and enter the same upon the records of the case.

kh/execad.doc

ATTACHMENT C

LETHAL INJECTION PROCEDURES

SECTION I. General

1. The Deputy Director for Health and Correctional Programs, or designee, is responsible for having the agents for lethal injection, the gurney, straps, etc., available for use on the scheduled date of execution.
2. When the drug agents have been received the agents shall be verified as to type and concentration and thereafter placed in a designated Lethal Injection Drug Box. The box will be sealed with a non-reusable locking-type seal.
3. The Deputy Director, or designee, shall maintain personal, physical custody of the sealed drug box until such time as it is opened for use, or for return if not used.
4. On the evening of the execution, the executioner(s) shall enter the injection room at least two hours prior to the scheduled time of the execution. They shall immediately reinventory the supplies and equipment to ensure that all is in readiness.

SECTION II. IV Set-Up Procedure

1. The Deputy Director, or designee, shall have an intravenous infusion device placed in each arm of the condemned and a saline solution available for an infusion medium. Those persons engaged in this activity will be referred to as the IV Team.
2. An IV Administration Set (Travenol #2C0005 - or equivalent) shall be inserted into the outlet of the bag of Normal Saline IV solution. Two (2) IV bags will be set up in this manner.
3. The Administration Set tubing for both set-ups will be connected to the receiving port of the three-way control devices; one for left arm, the other for right arm.
4. IV extension tubing (Travenol #2C0066 - or equivalent) will be connected to the discharge ports on the right/left three-way control device and shall be thereafter be connected to the applicable right/left angiocath/cathlon. Extension tubing will be of sufficient length to accommodate distance from control device to IV insertion site.
5. The tubing shall be cleared of air and made ready for use.
6. Angiocath/cathlon devices shall be initiated through standard procedure for such devices. Once infusion of IV solution has

been assured, the IV devices shall be secured to the right/left arm as necessary.

7. At this point, the administration sets shall be running at a slow rate of flow (KVO), and ready for the insertion of syringes containing the lethal agents. The Deputy Director, or designee, shall maintain observation of both set-ups to ensure that the rate of flow is uninterrupted. NO FURTHER ACTION shall be taken until the prearranged signal to start the injection of lethal agents is given by the Warden.

SECTION III. Injection Procedure

1. The three-way control device facilitates the movement of infusion fluid from saline bag and allows for the interdiction of lethal agent. A valve serves to direct which fluid source is entering the IV set-up.
2. When the signal to commence is given by the warden:
 - a) Syringe #1 (Sodium Pentothal) shall be inserted into the designated receiving port of the three-way control device.
 - b) The flow of saline solution will be interrupted by moving the three-way valve assembly to the saline solution receiving port.
 - c) The contents of Syringe #1 shall commence with a steady even flow of the lethal agent. Only a minimum amount of force will be applied to the syringe plunger.
 - d) When the contents of Syringe #1 has been injected, the three-way valve assembly will be moved so as to effect the return of saline infusion.
 - e) Syringe #1 will be replaced by Syringe #2 and the procedure described in a) thru c) will be repeated.
 - f) This procedure shall continue until all syringes have been used or until the Deputy Director, or designee, signals cessation due to absence of life signs.
3. For purposes of procedural reference, the following listing constitutes the arrangement and contents of the Lethal Injection Drug Box.

LABELED/
MARKED

CONTENTS

#1	Sodium Pentothal, 2.0 Gm. (four 500 mgm vials dissolved in the least amount of diluent possible to attain complete, clear suspension)
#2/#5	Normal Saline, 10-15 cc.

#3/#4 Pavulon, 50 mgm per 50 cc.
(five 10 cc ampules of 10 mgm each in each syringe)

#6/#7/#8 Potassium Chloride, 50 milequiv. per 50 cc.
(five 10 cc ampules of 10 milequiv. each in each syringe)

ALL10pc5

ATTACHMENT D

TIE DOWN PROCEDURES

NOTE: During the practice session, the following procedures will be utilized.

- I. The condemned inmate shall be escorted from the holding cell into the execution chamber.
- II. The condemned inmate shall be ordered to lay down on his/her back on the gurney.
- III. The condemned inmate shall be strapped to the gurney as follows :
 - A. The condemned inmate's ankles and wrists shall be buckled down simultaneously.
 - B. The strap across the stomach and above the knees shall be placed on the inmate.
 - C. The restraint device across the chest shall be placed on the inmate.
- IV. When all tie down steps have been completed, the IV Team will be summoned to initiate intravenous infusion devices. Tie-down Team will stand by to assist loosening and relocating wrist devices and/or arm restraint as necessary.
- V. When infusion devices have been declared potent, all restraint devices will be checked. The Deputy Director, or designee, shall thereafter excuse the members of the Tie-down/IV Team from the execution chamber.

ALL10pc5

Attachment E

We, the undersigned, did serve as witnesses in the scheduled execution of _____, SK# _____, on _____.

	<u>Print Name</u>	<u>Address</u>	<u>Date/Time</u>	<u>Signature</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____
7.	_____	_____	_____	_____
8.	_____	_____	_____	_____
9.	_____	_____	_____	_____
10.	_____	_____	_____	_____
11.	_____	_____	_____	_____
12.	_____	_____	_____	_____
13.	_____	_____	_____	_____
14.	_____	_____	_____	_____
15.	_____	_____	_____	_____
16.	_____	_____	_____	_____
17.	_____	_____	_____	_____
18.	_____	_____	_____	_____
19.	_____	_____	_____	_____
20.	_____	_____	_____	_____
21.	_____	_____	_____	_____
22.	_____	_____	_____	_____
23.	_____	_____	_____	_____
24.	_____	_____	_____	_____
25.	_____	_____	_____	_____

**Media Policy
Executions**

The following will be the policy for dealing with the news media when an execution is carried out by the Arkansas Department of Correction.

A. Location of the Media

In the event an execution is scheduled, the department can anticipate a large gathering of media people at the Cummins Unit. In order to accommodate the media people, but also not disrupt the normal activities of the institution, the following procedure should be observed:

1. All representatives of the news media will be held at the State Police roadblock, on Highway 388, until five hours prior to the scheduled time of the execution.
2. Only accredited members of the media carrying current identification will be admitted to the institution grounds. The Assistant to the Director for Public Relations or designee will check identification and authorize the admittance of the media to the unit. Those representatives admitted will be recorded and will utilize the visitation center which will be established as a center to await the announcement of the execution. The visitation center has telephones and restroom facilities, as well as space where tables will be set up for media purposes. The media will be admitted to the visitors center through the front gate by the armory tower and immediately moved into the building. During the course of the execution, all media people with the exception of those selected as witnesses, will utilize the visitation center. Normal access to parking area for access to equipment will be allowed. In the event any media arrive after the members of the media are admitted to the institution grounds, they will be retained at the roadblock until verification of their identification and organization they are employed by can be made.
3. Upon being allowed access to the grounds, the media representatives will be given a tag stating that they are a member of the press and an escort will be required at all times. Security officers, as well as any available state troopers, should be assigned to assist with the control and operations of the press center in the visitation center.

All members of the media will be required to wear the ID issued by the department at all times while on the unit property. The tag will be approximately 3" x 5" and will have a string attached to it so that the tag can be tied to a person's clothing. The tags will be in the following colors: blue, green, red, yellow, and white. One side of the tag in large letters shall

read "Arkansas Department of Correction Media Pass: Escort Required". The reverse side of the card shall have a space for the person's name, organization, date, and place for issuing officer. The bottom shall read "Escort Required at All Times". The Assistant to the Director for Public Relations will determine the color to be issued for the appropriate situation and will issue the passes. He will also validate the passes prior to the issuance. Return of the ID's will occur after the execution.

B. Interviews

The inmate, seven days prior to the execution, will not be made available at any time to the news media for interviews. His attorney, if he so desires, will be able to utilize the media center for any statements or comments that he wishes to make to the media. Any other interviews by the media will be conducted in the areas accessed for media use. Prior to such interview, clearance must be obtained from the Assistant to the Director for Public Relations.

Any questions by the media concerning the execution procedure or other pertinent information concerning the execution should be referred to the Assistant to the Director for Public Relations at the press center.

C. Media Witnesses of Execution

The Department of Correction will allow two representatives of the media to attend an execution. One will be representing the electronic media, including radio and television stations, film companies, special documentary crews, the wire services, or any other organization that would have to utilize electronic means to get their story to their patrons. The second organization would be known as the print media which will include newspaper, magazines, special publications, freelance writers, or any organization that utilizes printed material as a means of getting their information to their patrons.

On the date of an execution, representatives of these two groups, electronic and print, present at designated press center at the unit two hours prior to the scheduled execution will be asked to pool themselves and submit the name of one person who would represent their particular organization as a witness to the execution. No photographs will be allowed of the execution. No other electronic devices such as tape recorders will be allowed

to be carried by these two witnesses. These two persons will be escorted to the execution chamber to coincide with arrival of the other witnesses. This transportation will be coordinated by the Assistant to the Director for Public Relations and the Cummins Unit Warden. These representatives will function as pool reporters. If the media cannot reach a decision, no representatives from the media will be chosen by the Department.

D. Statements

After the media is admitted to the press center, hourly updates of activities surrounding the execution shall be given to the news media by the Assistant to the Director for Public Relations. Following the execution, the Director will, by telephone from the execution chamber, notify the Assistant to the Director for Public Relations in the media center that the execution has been carried out. Following the receipt of the confirmation of the execution, a brief announcement stating that the execution has been carried out in accordance with the judgement of the court will be made by the Assistant to the Director for Public Relations at the media center. No further comment or details of the execution will be given by the Assistant to the Director for Public Relations or any other member of the department's staff. Members of the media witness pool shall answer questions from reporters.

E. Telephones

The telephones in the lobby of the visitation center may be utilized by the media. A pay phone is located at the Armory Tower and may be utilized as well.

The telephone in the visitation center will be used solely by the Assistant to the Director for Public Relations for update preparation and notice of execution.

F. Printed Materials

Written information will be supplied to the media of pertinent information that is routinely provided. This policy will be provided to the media.

Official photos, including those of condemned person, will be available for use by the media.

G. Media Coverage by Air

Federal Air Regulation 135.203 forbids the operation of a helicopter at an altitude of less than 300 feet over an area as populated as a prison facility. Adherence to this regulation is required.

Federal Air Regulation 91.9 prohibits operation in a careless and reckless manner endangering persons or property.

H. Media Cooperation

Media representatives will be required to observe all barricades and restricted areas. Any media representative failing to cooperate with the Department of Correction during an execution situation shall be promptly removed from the grounds and not allowed readmittance during that situation. Law enforcement agencies will assist if needed in corporation with the department.

exmedia.doc