

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

VERNON EVANS, JR.,

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Plaintiff,

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v.

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Civil Action No. 06-CV-00149 BEL

MARY ANN SAAR, Secretary,
Department of Public Safety and
Correctional Services;

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FRANK C. SIZER, JR., Commissioner,
Maryland Division of Correction;

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LEHRMAN DOTSON, Warden,
Maryland Correctional Adjustment Center;

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GARY HORNBAKER, Warden,
Metropolitan Transition Center;

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and,

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JOHN DOES,

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Defendants.

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**SUPPLEMENTAL EVIDENCE IN REPLY TO DEFENDANTS'
OPPOSITION AND IN SUPPORT OF APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff respectfully submits, in further support of his requests for temporary and preliminary injunctive relief, the attached declarations:

1. Declaration of Thomas M. Scalea, M.D. Dr. Scalea, who is physician-in-chief at University of Maryland Trauma Cener in Baltimore, has conducted a thorough examination of

Mr. Evans with instruments, and describes Mr. Evans's highly compromised venous system, such that peripheral access would be impossible, and the disfavored cut-down procedure probably be impossible. Dr. Scalea states that it is not clear that Maryland Department of Correction has the proper staff or equipment to ensure reliable IV access.

2. Declaration of Vernon Evans, Jr. Mr. Evans describes the observations of his veins performed by the nursing assistant, which took no more than 50 seconds.

3. Declaration of Dennis R. Geiser, DVM Dr. Geiser further elaborates on the veterinary standards that prohibit the practices that the State plans to follow if they were proposed for euthanize animals.

Respectfully submitted,

Jeffrey O'Toole (Bar No. 03436)
Julie S. Dietrich
O'TOOLE, ROTHWELL, NASSAU & STEINBACH
1350 Connecticut Avenue, N.W., Suite 200
Washington, D.C. 20036
(202) 775-1550
otoole@otrons.com
dietrich@otrons.com



A. Stephen Hut., Jr.
Todd Zubler
Kalea Seitz Clark
Anne Harden Tindall
WILMER CUTLER PICKERING HALE AND DORR LLP
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000 (phone)
(202) 663-6363 (fax)
stephen.hut@wilmerhale.com
todd.zubler@wilmerhale.com
kalea.clark@wilmerhale.com
anne.tindall@wilmerhale.com

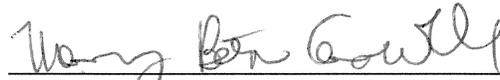
Dated: January 26, 2006

Counsel for Defendant Vernon Evans, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January 2006, I caused a copy of the foregoing motion to be sent via electronic filing to:

Scott S. Oakley, Esq.
Assistant Attorney General
Office of the Attorney General
Dept of Public Safety & Correctional Services
Plaza Center Office
6776 Reisterstown Road, Suite 313
Baltimore, MD 21215-2341



Mary Beth Caswell

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DECLARATION OF DENNIS R. GEISER, DVM

Dennis R. Geiser, D.V.M., pursuant to 28 U.S.C. § 1746, states as follows:

1. I have been practicing veterinary medicine for 33 years, both in private practice and academic veterinary medicine. I received a Bachelor of Science degree in microbiology from Colorado State University in 1968. I received a Doctor of Veterinary Medicine degree from the University of Illinois in 1972. I practiced in a small animal/large animal practice in California for two years and then completed a residency program in equine medicine and surgery at Michigan State University from 1974 to 1976. I practiced in Florida for two years in an exclusively equine referral practice and then took a position at the University of Tennessee College of Veterinary Medicine in 1978.

2. In 1985, I was appointed Chief of Service in large animal anesthesiology at the College of Veterinary Medicine, University of Tennessee. I was appointed Chair

of the Department of Large Animal Clinical Sciences in 1998 and was appointed Assistant Dean of Organizational Development and Outreach in 2005, also at the University of Tennessee.

3. I became board certified in the American Board of Veterinary Practitioners in 1985. I am a tenured full professor and have been involved exclusively in clinical service and teaching of anesthesia for the last 21 years at the University of Tennessee. I have taught courses in respiratory diseases, anesthesiology, pain management, and equine neonatal intensive care. I am a member in good standing of the American Veterinary Medical Association and the American Association of Equine Practitioners. As a practicing veterinarian and a clinical veterinarian in the academic setting, I have been involved directly or through supervision of others in the euthanasia of over a thousand animals. I do not know the exact number. A copy of my curriculum vitae is attached as Exhibit A.

4. I was contacted by legal counsel for Vernon Evans, Jr. and asked to provide my opinion regarding methods of veterinary euthanasia, as they compare to chemicals and procedures used in Maryland's lethal injection protocol. In preparing this Declaration, I have fully reviewed Maryland's Lethal Injection Instruction Sheet and Checklist (attached as Exhibit B) as well as relied upon my knowledge and understanding of anesthesiology, euthanasia solutions, and recommendations of the American Veterinary Medical Association (AVMA). In addition, I have reviewed the veterinary practice acts of multiple states including Tennessee and Maryland. I have previously provided trial testimony in Tennessee for Abu-All Abdur'Rahman (2003) and Kentucky for Thomas Clyde Bowling and Ralph Baze (2005).

5. The AVMA provides guidelines and recommendations to veterinarians and certified technicians on how to perform humane euthanasia. These recommendations provide nationwide guidelines and mandates for personnel who perform animal euthanasia, regarding their certification and training. The AVMA has published two reports (1993 & 2000) that contain acceptable and unacceptable protocols for animal euthanasia to be painless and distress-free.

6. The 2000 report from the AVMA Panel on Euthanasia, attached as Exhibit C, describes the advantages and disadvantages of drugs and procedures used for euthanasia. The 2000 AVMA report on euthanasia divides euthanasia methods into acceptable, conditionally acceptable, and unacceptable. Whether a method of euthanasia is acceptable or conditionally acceptable depends on the species of animal involved.

7. The most commonly used anesthetic for euthanasia of companion animals, large and small, is sodium pentobarbital. This drug is an oxybarbiturate that is administered intravenously. The procedure utilizes pentobarbital as the sole agent for euthanasia. The effect is essentially a lethal overdose of a general anesthetic. Pentobarbital produces central nervous system depression and analgesia. The subject falls asleep and the high concentration of the drug produces respiratory and cardiac arrest during the anesthetic state. In many cases the subject is heavily sedated prior to administration of the pentobarbital to further eliminate the chance of apprehension,

distress, discomfort, and pain. This method has several advantages: it is very quick, is a better anesthesia, has longer duration, is inexpensive, more reliable (use of multiple drugs increases risk of unwanted side effects and drug interactions), more familiar, and conforms with prevailing professional standards.

8. According to the Lethal Injection Instruction Sheet and Checklist, the protocol for lethal injection in Maryland involves a combination of sodium pentothal (an ultra-short acting anesthetic), pancuronium bromide, and potassium chloride (the latter two of which do not depress cerebral functions or produce anesthesia or analgesia). This combination would be unacceptable for veterinary euthanasia by AVMA standards.

9. Sodium pentothal is an ultra-short acting thiobarbiturate that can be used as a sedative or a very short acting anesthetic depending on the dose administered. Sodium pentothal has minimal analgesic properties. There are many factors that determine duration and potency of this barbiturate including patient weight, fat content, blood protein levels, and acid-base status. Should all or a portion of the thiobarbiturate be administered outside of the vein, its effect would be greatly diminished.

10. Neuromuscular blocking agents (including Pavulon or pancuronium bromide) block transmission of nerve impulses from the nerve to the skeletal muscles. This class of drugs does not act at the spinal chord or brain level, only at the peripheral level, a distance from the spinal chord or brain, e.g. at the muscle. The administration of pancuronium bromide results in the loss of diaphragmatic function, cessation of breathing, and eventually suffocation. Neuromuscular blocking agents do not, therefore, produce unconsciousness or relieve pain or distress. When these drugs are used alone, the subject will perceive pain and distress but would be unable to react to it because of muscle paralysis. Pancuronium bromide would also prevent a subject from vocalizing pain because of the paralysis of those muscles of the larynx and pharynx used to vocalize. The use of pancuronium bromide is strictly prohibited by the ethical standards of the AVMA for euthanasia. Both the 1993 and the 2000 AVMA recommendations condemn the use of neuromuscular blocking agents, such as pancuronium bromide, regardless of whether it is used alone or in combination with other drugs for euthanasia purposes.

11. The use of a neuromuscular blocking agent poses a significant risk of inhumane suffering and masks visible and audible signs of other problems that might arise. Although neuromuscular blocking agents are used in conjunction with other anesthetic agents for surgery in both human and animal venues, their use requires very specialized training and expertise. Neuromuscular blocking agents eliminate several reflexes that are used to determine the depth of anesthesia (the amount of central nervous system depression). A surgical depth of anesthesia is achieved when brain and spinal chord function is adequately depressed so that pain and distress from a stimulus is not perceived. The ability to accurately assess proper anesthetic depth prior to neuromuscular blocker administration is paramount. Any reduction in the potency of the thiobarbiturate or general anesthetic, without monitoring anesthetic depth, would increase the risk of neuromuscular blocking agent producing pain and distress. Because there is a significant potential to produce a painful, agonizing death when neuromuscular blocking agents are used in any fashion, the AVMA has made their use unacceptable to minimize

any possibility of an excruciating death occurring. Even the use of pancuronium bromide in combination with an anesthetic administered prior to its use is unacceptable because the individual performing the procedure does not have sufficient observable physical parameters to rely upon to ensure that the animal is under anesthesia at an appropriate level. If the animal is not under anesthesia at an appropriate level, it would feel the effects of the pancuronium bromide and if followed by potassium chloride, the experience prior to death would be torturous. Thus, the use of neuromuscular blocking agents and potassium chloride falls below professional and community standards.

12. Under Maryland law (MD Code Crim. Law § 10-611), the use of "curariform drugs" for the killing of dogs and cats is prohibited. **Curariform drugs are neuromuscular blocking agents such as pancuronium bromide.**

13. Potassium chloride is a compound composed of two electrolytes, potassium and chloride. Potassium in high concentrations affects conduction of nerve impulses to the heart muscle and results in muscle relaxation and eventually cardiac arrest. The potassium chloride solution used in lethal injection is a saturated solution of the compound and therefore toxic to the heart. Potassium chloride, like neuromuscular blocking agents, is not an anesthetic and therefore does not produce central nervous system depression, analgesia, or relieve distress. In the case of potassium chloride, the AVMA allows its use for euthanasia only when administered following the determination that the patient is in a "surgical plane of anesthesia." A surgical plane of anesthesia is determined by many variables, some of which include reflexes that are eliminated by neuromuscular blocking agents, such as pancuronium bromide. Since potassium chloride causes rippling of muscle tissue and colonic spasms, the animal must be sufficiently under anesthesia to avoid extreme pain and suffering. The AVMA panel has recommended that personnel performing this form of euthanasia be trained in techniques that assess anesthetic depth appropriate for the administration of potassium chloride intravenously. Administration of potassium chloride intravenously requires animals to be in a surgical plane of anesthesia characterized by a loss of consciousness, a loss of reflex muscle response, a loss of response to any noxious stimulus. Because the administration of pancuronium bromide impairs the ability to accurately assess anesthetic depth, this lethal injection sequence followed by the State of Maryland has the potential for allowing an individual to experience substantial pain and distress.

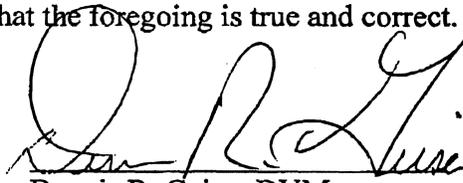
14. Maryland's lethal injection protocol calls for the use of an ultra-short acting anesthetic, followed by pancuronium bromide and potassium chloride to be administered rapidly one after another. This has the very real potential of inflicting a torturous death as described above. Such an approach is not tolerated by the AVMA euthanasia guidelines.

15. In summary, veterinary medicine and the American Veterinary Medical Association prohibit the use of neuromuscular blocking agents alone or in any combination for euthanasia of animals. The use of potassium chloride is also severely restricted. The reasons include:

- Neuromuscular blocking agents alone or in any combination and potassium chloride alone have adverse effects that can produce pain and distress.
- The use of neuromuscular blocking agents and potassium chloride in combination with anesthetic agents requires advanced expertise in patient monitoring prior to their use. In the absence of such advanced expertise, the use of these chemicals has the potential to cause severe pain and distress.
- There are other agents available that fulfill all of the requirements for humane euthanasia of animals.

16. It is my opinion to a reasonable degree of medical certainty that the combination of chemicals used by the Maryland Division of Correction for lethal injection would not be an acceptable protocol for veterinary euthanasia, because it creates an unacceptable risk of painful and inhumane death.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 25, 2006.



Dennis R. Geiser DVM