UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

NORMAN TIMBERLAKE	)	
	)	
Plaintiff,	)	
	)	
MICHAEL ALLEN LAMBERT,	)	
DAVID LEON WOODS,	)	**CAUSE NO. 1:06-cv-1859-RLY-WTL**
	)	
Intervenor Plaintiffs,	)	
	)	
v.	)	
	)	
J. DAVID DONAHUE, Commissioner	)	
Indiana Department of Corrections	)	
	)	
ED BUSS, Superintendent,	)	
Indiana State Prison,	)	
	)	
and	)	
	)	
UNKNOWN EXECUTIONERS,	)	
	)	
Defendant.	)	

STATEMENT OF CLAIM OF INTERVENING PLAINTIFF
MICHAEL ALLEN LAMBERT

I.

Nature of Action

1. This action is brought pursuant to 42 U.S.C. sec. 1983 for violations and threatened violations of the right of plaintiff-intervenor, MICHAEL ALLEN LAMBERT, to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution. Plaintiff seeks equitable and injunctive relief.

II.

Plaintiff

2. Michael Allen Lambert is a United States Citizen and a resident of the State of Indiana. He is currently a death-sentenced inmate under the supervision of the Indiana Department of Corrections, DOC #922001. He is held at the Indiana State Prison in Michigan City, Indiana.

III.

Defendants

3. Defendant J. David Donahue, is the Commissioner of the Indiana Department of Corrections [hereafter "IDOC"]. Defendant, Ed Buss is the Superintendent of the Indiana State Prison where death row inmates are housed. Defendants, Unknown Executioners, are employed or contracted by the Indiana State Prison to make preparations for, and carry out, the execution of Plaintiff. They include, but are not limited to, correctional officers, physician, nurses, nursing assistances, and "executioners." Plaintiff does not yet know their identities and it is Plaintiff's understanding that Defendants will not reveal the identities of these persons.

IV.

Jurisdiction and Venue

4. This Court has jurisdiction pursuant to 28 U.S.C. sec.'s 1331 (federal question), 1343 (civil rights violation), 2201 (declaratory relief), and 2202 (further relief). This action arises under the Eighth and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. sec. 1983.

5. Venue in this Court is proper under 28 U.S.C. sec. 1391.

V.

Facts

6. Defendant on April 4, 2007, filed State's Verified Motion to Set Execution Date, in *Lambert v.* State, No. 18S00-0412-SD-503, requesting that the Indiana Supreme Court set the date for Lambert's execution. Defendants are responsible for carrying out plaintiff's execution.

7. Under Indiana law, death sentences shall be carried out by "intravenous injection of a lethal substance or substances…in a quantity sufficient to cause the death." Ind. Code sec. 35-38-6-1(a). The statute prescribes no specific drugs, dosages, drug combinations, or the manner of intravenous line access to be used in the execution process; nor does the statute proscribe any certification, training, or licensure required of those who participate in the execution. All details of the execution are left to the Indiana Department of Corrections to implement through "rules under Ind. Code sec. 4-22-2." Ind. Code sec. 35-38-6-1(d).

8. Plaintiff reasonably believes the Department of Correction will execute him by poisoning him with a lethal combination of three chemical substances: Sodium Pentothal (Thiopental), a short-acting barbiturate; Pancuronium Bromide (Pavulon), a curare-derived agent which paralyzes all skeletal or voluntary muscles, but which has no effect whatsoever on awareness, cognition or sensation; and Potassium Chloride, an extraordinarily painful chemical which activates the nerve fibers lining the inmate's veins and which can interfere with the rhythmic contractions of the heart and cause cardiac arrest. See Timberlake Complaint, [Docket Entry #1] Exhibit "B" - LaPorte County Coroner Letter Re: Kevin Hough Execution on May 2, 2003, and Docket Entry #13, Defendant's Response to Discovery, at paragraph 3.

9. On understanding and belief, Defendants will follow procedures established in Department of Correction Directive ISP 06-26 (January 4, 2007) in executing Plaintiff.

See Timberlake [Docket Entry #32] Submission of Protocol, filed by Defendant. (Attachments: # 1 *Operation Directive ISP 06-26*).

Directive 06-26 and the predecessor directive, *Indiana Department of Correction Operation Directive 02-04, March 18, 2003*, were adopted without medical research or review to determine that a prisoner would not suffer unnecessary and wanton pain. Medically qualified persons were not involved in its adoption. The procedures were patterned after those followed in other states including, but not limited to, Illinois, Texas, Washington, Oklahoma, and Louisiana.

10. Directive 06-26 does not specify the lethal chemicals to be used nor does it specify the quantity or concentration of any chemical used in the execution process. In addition, sodium pentothal should be titrated against patient requirements as governed by age, sex, and body weight." "Thiopental Sodium: Clinical Pharmacology", *RxList Drug Database* (Nov. 26, 2005) http://www.rxlist.com/cgi/-generic3/thiopental_ids.htm. Persons who are anxious, such as one who is about to be executed, may require a higher dosage of sodium pentothal than the average pre-medicated surgical patient. Leonidas G. Koniaris et al, "Inadequate Anesthesia in Lethal Injection for Execution", www.thelancet.com, vol. 365 (April 16, 2005) 1412.

11. Directive 06-26 contains no standardized time for administration of each chemical nor are there any guidelines for determining when each chemical is to be injected. There is no standardized procedure ensuring the anesthetic agent is properly flowing into the prisoner. And, there is no standardized procedures for ensuring that the prisoner is properly sedated before lethal chemicals are injected.

12. Directive 06-26 does not establish minimum qualifications or the expertise required of personnel who perform the tasks in the lethal injection process, other than requiring a physician to perform a "cut-down" procedure if an adequate vein cannot be located. See Timberlake [Docket Entry #32] Submission of Protocol, filed by Defendant. (Attachments: # 2 Appendix O to Operation Directive ISP 06-26) ["*Draft Procedure for Venus Cut Down*].

There is no procedure specified if adequate flow in the IV cannot be maintained. Directive 06-26 contains no definition of what an "adequate vein" is nor does it specify any requirements regarding the flow in the IV.

13. The only personnel selection guideline contained in Directive 06-26 is a requirement that personnel be screened to "assess their emotional stability and their willingness/ability to handle the stress of assisting with the execution." The protocol does not require that the injection team members be qualified in any particular way. The IV catheters are to be inserted by a team of persons whom IDOC has represented as having at some time had training or background as emergency medical technicians. See Timberlake [Docket Entry #17] Exhibit in Support re #14 Motion for Preliminary Injunction Exhibit 3 in support of motion for preliminary injunction, filed by Plaintiff. The IDOC has not presented any information which shows that these persons are currently licensed or credentialed as having been adequately trained and competent to mix and prepare the lethal chemicals, place IV lines, monitor the IV lines to insure they remain properly placed, and are flowing properly. The IDOC has not presented any information which shows that placement and monitoring of IV lines is currently part of any team members' regular occupation or duties.

14. Directive 06-26 contains no guidelines—other than utilizing a physician to perform a "cut down" if the IV team cannot start an IV—upon which execution personnel can rely if required to exercise discretion during any part of the execution process. Directive 06-26 provides that the injection procedure continues until the prisoner is "presumed dead." If the IV team is unsuccessful in placing a catheter in each of the condemned inmate's arms, "cut-down" procedures will be initiated. The IDOC procedures for cut-downs include a 2.5 cm incision, closing the wound with stitching, and covering the site of the IV access with a sterile dressing. This sterile dressing covers the site of the IV insertion and effectively acts to obscure visualization of the site during execution and monitoring that the IV remains properly in place. Adequate visualization is critical for assessment of IV failures like infiltration and leakage. Timberlake, [Docket Entry No. 40] Plaintiff's Second Supplemental Response to Defendant's Interrogatories to Plaintiff and Amendment to Witness and Exhibit List, January 16, 2007 Affidavit of Mark J. S. Heath, M.D. [hereafter "Affidavit of Dr. Heath"].

A cut down is a complex medical if not surgical procedure requiring equipment and skill not accounted for in Indiana's protocol on cut down procedures. Very serious complications, including severe pain, hemorrhage, and collapse of a lung potentially leading to suffocation can result from doing an improper cut-down. Cut down is an outdated, unconscionable method of achieving central venous access. Its use as a backup method of achieving IV access would defy contemporary medical standards and be a violation of any modern standard of decency. Since it has been virtually completely supplanted by the "percutaneous" technique, which is less invasive, less painful, less mutilating, faster, safer, and less expensive, its use would be a gratuitous infliction of

pain and mutilation to the condemned prisoner. Declaration of Dr. Heath at paragraphs 55-56. This is readily apparent from the extraordinary time it took for someone to perform a cut-down during Tommie's execution,[1] See Suzanne McBride, *Problem with Vein Delays Execution*, INDIANAPOLIS NEWS, July 18, 1996, at 1, and the post-execution photographs of Tommie Smith, DOC. No. 4330. See Timberlake, Docket Entry #24, Exhibit in Support re 14 Motion for Preliminary Injunction *Exhibit 9 in support of Motion for Preliminary Injunction*, filed by Plaintiff.

As to any other problems, complications or unforeseen events involving the mixing and preparation of chemicals, establishing and maintaining a properly placed and flowing IV line, the execution team has no IDOC guidelines to rely upon if required to exercise discretion during any part of the execution process.

15. Sodium pentothal is a short-acting barbiturate which is ordinarily used to render a surgical patient unconscious for mere minutes, only in the induction phase of anesthesia, specifically so that the patient may re-awaken and breathe on their own power if any complications arise in inserting a breathing tube pre-surgery. Because of this brief duration, it is highly unlikely that sodium pentothal will provide a sedative effect through the entire execution process. Due to the chemical combination used in the Indiana execution process, there is also a probability that the sedative effect of the sodium pentothal will be neutralized instantly by the second chemical, Pavulon (Pancuronium Bromide).

16. If Plaintiff is not adequately sedated, he will suffer excruciating pain as a result of

[1] The execution team first tried to insert an IV into Tommie Smith's arms. That failed, and the Warden ordered a physician to do a cut down. The physician instead attempted to insert an IV into Smith's neck. He failed to accomplish this, and instead did the cut down on Smith's ankle. See Testimony of Warden Al Parke, June 18, 1998 at 47-57.

the asphyxiation caused by the Pavulon while he remains conscious yet unable to move a muscle, especially not breathing muscles, and suffers agonizing internal venous and organ burning prior to and during thee cardiac arrest caused by the Potassium Chloride.

17. To the extent that the extremely short acting effects of the first chemical, Sodium Pentothal, renders the plaintiff-intervenor conscious, and/or to the extent that Sodium Pentothal is neutralized by the second chemical, Pavulon, this paralytic chemical [Pavulon] will serve only to mask the agonizing pain and strangulation of Plaintiff-intervenor. Regardless of the level of pain or the sensation of strangulation, Pavulon makes it impossible to move a single muscle, thus falsely creating the appearance of sleep, for in fact, the drug has no effect on the brain, on consciousness or on awareness.

18. The American Veterinary Medical Association condemns the use of pancuronium bromide in euthanizing dogs and cats due to the risk that the animal might not be properly sedated by the barbiturate sodium pentothal, and therefore would be conscious of the severe pain of asphyxiation while being suffocated by this neuromuscular blocking agent. Indeed, its use is prohibited in animal euthanasia in nineteen states.[2] Although this is the standard of care set by law in many states for the euthanasia of dogs and cats by sodium

[2] The states that expressly forbid the use of neuromuscular blocking agents to euthanize animals are: Florida, Fla. Stat. §§ 828.058 and 828.065; Georgia, Ga. Code Ann. § 4-11-5.1; Maine, Me. Rev. Stat. Ann., tit. 17, § 1044; Maryland, Md. Code Ann., Criminal Law, § 10-611; Massachusetts, Mass. Gen. Laws ch. 140 § 151A; New Jersey, N.J. Stat. Ann. 4:22-19.3; New York, N.Y. Agric. & Mkts Law § 374; Oklahoma, Okla. Stat. tit. 4, § 501; and Tennessee, Tenn. Code Ann. § 44-17-303. The states that mandate the use of particular methods for animal euthanasia, most often the use of the sedative sodium pentobarbitol, and therefore implicitly ban the use of neuromuscular blocking agents are: Connecticut, Conn. Gen. Stat. § 22-344a; Delaware, Del. Code Ann. tit. 3, § 8001; Illinois, 510 Ill. Comp. Stat. 70/2.09; Kansas, Kan. Stat. Ann. § 47-1718(a); Kentucky, Ky. Rev. Stat. Ann. § 321.181(17) and Ky. Admin. Regs. 16:090 section 5(1); Louisiana, La. Rev. Stat. Ann. § 3:2465; Missouri, Mo. Rev. Stat. § 578.005(7); Rhode Island, R.I. Gen. Laws § 4-1-34; and South Carolina; S.C. Code Ann. § 47-3-420; Texas, Tex. Health & Safety Code Ann. § 821.052(a).

pentothal and potassium injection, the IDOC protocol does not eliminate pancuronium bromide, or in using it, provide for any credible verification that the inmate is and remains unconscious. Declaration of Dr. Heath, at paragraph 28. *See also.,* Rev. Code of the Consolidated City and County of Indianapolis/Marion, Indiana, Ch. 531 (Animals), Article VI (Euthanasia of Animals), Sec. 531-601(a) ("The animal care and control division, other animal shelters, and/or public animal facilities which destroy animals in the city, shall use only such methods, materials and standards as approved by the American Veterinary Medical Association for said purpose. In no event shall an animal be euthanized inhumanely."); *Id*. IDOC's procedures do not even comply with the minimal guidelines set forth by the American Veterinary Medical Association for the euthanasia of animals. Declaration of Dr. Heath, at paragraph 40. .

19. There is no medical dispute that intravenous injection of the third lethal chemical, concentrated potassium chloride solution, required to be administered by the Indiana Department of Corrections, causes excruciating pain. The vessel walls of veins are richly supplied with sensory nerve fibers that are highly sensitive to potassium ions. There exist other available, equally effective chemicals which can be used to stop the heart and which are essentially painless medications for stopping the heart. [Declaration of Mark Heath, M.D., at 6.

20. The statute authorizing lethal injection in Indiana does not require the use of potassium chloride to cause cardiac arrest.

21. The risk of inflicting severe and unnecessary pain and suffering in the lethal injection process is particularly grave in the execution of Plaintiff-Intervenor, Lambert.

22. Untrained, unskilled, personnel lacking the necessary knowledge are required to be responsible for the storage, mixing, dosage calculation and preparation of the three drugs to be used to cause Lambert's death. Errors in the storage, mixing and preparation of these drugs—especially Sodium Pentothal—will likely result in: inadequate anesthesia to Lambert, resulting in his remaining conscious during the administration of the subsequent lethal drugs. This, in turn, would cause Lambert to suffer excruciating the pain of actual suffocation when the next drug, is given, Pancuronium Bromide. That drug completely paralyzes all of the body's muscles yet gives the body the false appearance of sleep, for in fact, the drug has no effect on the brain, on consciousness or on awareness. Lambert would be fully conscious and feel like he was in the throes of drowning while looking to witnesses like he was calmly sleeping, for he could not move a muscle, especially not his breathing muscles. See Declaration of Mark J.S. Heath, M.D., at paragraphs 11, 15, 19, 21 (f) & (g), 29-37.

23. Failure to label the syringes containing the three drugs would also risk the error of first injecting the paralytic agent or the cardiac arrest-causing drug before the anesthesia was injected, resulting in the concealing of excruciating pain amounting to torture of Lambert during the execution process. Declaration of Dr. Heath at paragraph 45.

24. Notably, there have been serious IV access difficulties in at least two of the fourteen executions, a 14% failure rate. Declaration of Dr. Heath at paragraph 14, See also *Timberlake* Complaint, [Docket Entry #1] Ex. H (Command Center minutes for Bieghler 13153 execution). In addition to lack of training, further complications arise from the lack of any medically acceptable procedure set out by IDOC to insure that the

IV remains in the vein or that the fluids are not "infiltrating" into surrounding tissue instead of flowing through the veins.

25. Un-credentialed, unqualified, untrained, unskilled, personnel lacking the necessary knowledge are required to be responsible for determining that the IV line is properly placed in the vein. No one, much less a qualified individual, is designated to determine throughout the execution process that the IV line is not leaking or infiltrating into the surrounding tissue, but rather is bringing the lethal drugs into the vein.[3] Indeed, the IV tubing is apparently fed through a hole in the wall separating the execution chamber from the concealed executioners, thus requiring communication by radio between the execution chamber and the executioners on the other side of the wall. Bieghler minutes, June 18, 1998, *Timberlake* Complaint, [Docket Entry #1] Ex. H; June 18, 1998, Testimony of Indiana State Prison Warden Al Parke at 24, 27, 29.

Moreover, IDOC's protocol exacerbates the foreseeable risk of improper anesthesia administration, as they fail to articulate procedures to deal with the slippage of the catheter, or it's leaking into surrounding tissue. No trained personnel (there is no evidence at this time that any person on the IDOC's injection team has any training in administering anesthesia, or if there is training, what that training might be) are required to monitor the IV lines and flow of anesthesia into the veins through the obvious means of visual and tactile observation and examination. [4] Examples of other drug

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[3]See Department of Corrections "Operation Directive" 06-26 and Department of Corrections "Operation Directive" 02-04, which establish the conditions under which the three lethal drugs are to be administered, and direct that the drugs be administered remotely, in the absence of appropriately trained personnel and with no adequate monitoring of the inmate's condition once the procedure is underway.

[4] See Declaration of Mark J.S. Heath, M.D., January 16, 2007, at 13, paragraphs E & F; 16.

administration problems that could occur (and have occurred) in executions that could prevent the proper administration of Sodium Pentothal include, but are not limited to the following:

A. Errors in selecting the correct syringe: IDOC protocol uses two sets of seven syringes, a total of 14 syringes, a number that could make it easy to make a mistake in selecting the correct syringe. See ISP 06-26 "Operation Directive," at p. 7. Without knowing if—or how—IDOC labels and differentiates the syringes, it is impossible to know with assurance that syringe swap (one of the most common forms of medical error) would not occur in an Indiana execution. Declaration of Dr. Heath at paragraph 45 (c).

B. Error in correctly injecting the drug into the IV line. If the syringe holding the drug is turned the wrong direction, a retrograde injection of the drug into the IV fluid bag instead of into the inmate will occur. The probability of this occurring is greatly increased in the hands of untrained, inexperienced personnel. *Id*. at paragraph (d).

C. IV tubing leakage. An "IV setup" consists of multiple components assembled by hand and capable of leakage under the pressure of flowing fluids. The IDOC protocol does not place a monitor to observe for or correct this error. *Id*. at paragraph (e).

D. Migration of the catheter. Even a properly inserted IV catheter tip may move or migrate so that it is not within the vein at the time of fluid injection. This would result in infiltration and failure to deliver the drug to the inmate's circulation, resulting in failure to render him unconscious. Declaration of Mark J.S. Heath, M.D., January 16, 2007. paragraph (g).

E. Excessive pressure on the syringe plunger. Excessive pressure on the syringe plunger during injection may cause tearing, rupture, and leakage of the vein. Should this occur, there would be failure to deliver the drug to the inmate's circulation, resulting in failure to render him unconscious. *Id.* at paragraph (i)

F. Improperly securing the catheter. Catheters must be secured after insertion by tape, adhesive material or suture. Even if restrained by straps, movement by the inmate could dislodge the catheter and potentially go undetected under the sheet or under gauze. The drug would not enter the inmate's circulation, and would not render him unconscious. *Id.* at paragraph (j), (k), (l).

G. Failure to properly loosen or remove the tourniquet. Failure to remove the tourniquet, used to assist in insertion of the IV catheter, from the arm or leg after placement of the IV catheter will delay or inhibit delivery of the drugs to the central nervous system. This may cause a failure of the sodium pentothal to render and maintain Lambert in a state of unconsciousness.

Lack of qualified personnel present *in the chamber* thwarts the execution personnel from taking standard measures to ensure that the anesthesia is flowing into the inmate, and that he is properly anesthetized prior to the administration of the paralytic agent, Pancuronium Bromide, and the heart-stopping drug, Potassium Chloride. *Id.* at paragraph 50-53.

26. No provisions exist in the IDOC protocol for a properly trained and credentialed individual to examine the inmate after the administration of Sodium Pentothal—and prior to and during the administration of Pancuronium Bromide and Potassium Chloride—to verify that the inmate is, and remains, completely unconscious.

27. The above-stated problem is greatly aggravated by the use of the paralytic agent, Pancuronium Bromide, because of the appearance of sleep and calm that it may falsely present if the inmate is not, or does not remain, completely unconscious. Id. The simple fact is that pancuronium bromide serves no purpose in the execution protocol other than to shield the witnesses to the execution from the inmate's twitching and writhing that would accompany death by potassium chloride even if adequate sedation were to be achieved.

28. In Indiana, and elsewhere in the United States, general anesthesia such as Sodium Pentothal, is administered by physicians who have completed residency training in the specialty of Anesthesiology, and by nurses who have undergone the requisite training to become Certified Registered Nurse Anesthetists (CRNAs). Declaration of Dr. Heath, at paragraph 49-50. Physicians and nurses who have not completed the requisite training to become anesthesiologists or CRNAs are not permitted to provide general anesthesia. These universal credentialed individuals are absent from the IDOC protocols, and their replacement with various prison personnel lacking in such credentials underlie the multiplicity of foreseeable events that put Lambert at an unreasonable risk of suffering an excruciatingly painful execution. The establishment of a surgical plane of anesthesia is a complex task which can only reliably be performed by individuals who have completed the extensive requisite training to permit them to provide anesthesia. "If the individual providing anesthesia care is inadequately trained or experienced, the risk of complications is enormously increased...'the only way to assure [a surgical plane of anesthesia] would be to have an anesthesiologist prepare and administer the drugs, carefully observe the inmate and all pertinent monitors, and finally to integrate all this

information.' " Orin F. Guidry, M.D., *Message from the President: Observations Regarding Lethal Injection* (June 30, 2006). There is no evidence that any person on the IDOC injection team has any training in administering anesthesia.

29. In addition, several prisoners executed under Indiana's lethal injection protocol had thiopental blood levels at their death below 20 mg/mL: (1) Joseph Trueblood executed June 13, 2003 thiopental level was 14 mg/mL; and, (2)Gregory Johnson executed May 26, 2005 thiopental level was 19 mg/mL. *These levels are below those necessary to render them unconscious*. Trueblood and Johnson were therefore likely conscious at the time the lethal drugs were administered and caused death. See Timberlake Complaint [Docket Entry #1], #6 Exhibit F South Bend Medical, # 7 Exhibit G Report to St. Anthony's Hospital.

30. Kevin Hough, who was executed under Indiana lethal injection protocol, was administered 25 ml of sodium pentothal, 100 ml of pancuronium bromide, and 70 ml of potassium chloride to bring about his death on May 2, 2003. See Timberlake Complaint, [Docket Entry #1] Exhibit "B" - LaPorte County Coroner Letter Re: Kevin Hough Execution on May 2, 2003. However, there is no record of the concentration of the drugs used in Hough's execution.

31. During the execution of Marvin Bieghler on January 27, 2006, The "Command Center" minutes report difficulty maintaining flow in the IV's that had been inserted into Mr. Bieghler's veins. Unlike "past executions," flows were not maintained in both of Mr. Bieghler's arms. Despite this failure to follow the procedure on past executions and the lack of any written standards to guide the discretion of personnel when this contingency arises, Mr. Bieghler's execution proceeded. The minutes report that Mr. Bieghler was in

"a state of shock" at the time lethal chemicals were injected. The minutes include medical opinions of unknown origin about Mr. Bieghler's physical condition and the effect Bieghler's ingestion of Valium on the lethal injection process. Lethal chemicals were injected into Mr. Bieghler without any determination being made whether he was adequately sedated. The minutes report that the Command Center was "unclear what the [I.V. team] were exactly doing" during the execution. See *Timberlake* Complaint, [Docket Entry #1] Ex. H, Command Center Minutes of Marvin Bieghler Execution.

VI

CLAIM

32. Plaintiff incorporates paragraphs 1-31 by reference.

33. J. David Donahue, Ed Buss and Unknown Executioners are aware of the potential for an excruciating death created by the use of potassium chloride and the risk of conscious asphyxiation created by the use of pancuronium bromide, which makes it necessary to induce and maintain a deep plane of anesthesia. The circumstances and environment under which anesthesia is to be induced and maintained in an Indiana execution create, needlessly, a significant risk that Lambert will suffer in the extreme. The procedures and protocol selected by the IDOC as reflected in IDOC Directive 06-26, will subject Lambert to an increased an unnecessary risk of experiencing excruciating pain in the course of execution, in violation of the Eighth Amendment through the Fourteenth Amendment.

34. J. David Donahue, Ed Buss and Unknown Executioners are aware that the Indiana lethal injection procedures concerning storage, mixing, dosage calculation, preparation and labeling of the lethal injection drugs together with the execution personnel's lack of proper and necessary training, experience or expertise create a substantial and

unnecessary risk that Lambert will be fully conscious and in agonizing pain for the duration of the execution process, in violation of the Eighth Amendment through the Fourteenth Amendment.

35. J. David Donahue, Ed Buss and Unknown Executioners are aware that the result of using the IDOC required chemical, pancuronium bromide, creates a substantial and unnecessary risk that Lambert will be conscious, or become conscious, during the execution process, which would be impossible to determine without medically acceptable monitoring once the paralytic agent is injected, and would in that event cause Lambert to suffer excruciating pain, in violation of the Eighth Amendment through the Fourteenth Amendment, while *appearing* to suffer no pain at all.

36. J. David Donahue, Ed Buss and Unknown Executioners are aware that the Indiana Department of Corrections protocol for execution does not include the assistance of a person trained in the field of clinical anesthesiology, and consequently an unconscious and insensate state in Lambert at the time of his execution cannot be guaranteed. To have Lambert, conscious and feeling, but unable to show outwardly, the strangulating effects of asphyxia from pancuronium bromide, and the extreme generalized burning sensation, massive muscle cramping, and finally cardiac arrest from potassium chloride—is cruel and unusual punishment, in violation of the Eighth Amendment through the Fourteenth Amendment.

37. J. David Donahue, Ed Buss and Unknown Executioners are aware that the IDOC protocol and procedures for execution exacerbate the foreseeable risks of improper administration of sodium pentothal, as they fail to articulate procedures to deal with slippage of the IV catheter, or its leaking into surrounding tissue, thus creating an a

substantial and unnecessary risk that Lambert will be subject to cruel and unusual punishment, in violation of the Eighth Amendment through the Fourteenth Amendment.

38. J. David Donahue, Ed Buss and Unknown Executioners are aware that the IDOC protocol and procedures together with the lack of adequately trained, appropriately experienced and credentialed personnel at execution exacerbate the foreseeable risk of numerous drug administration errors that could prevent the proper administration of sodium pentothal, including but not limited to errors in selecting the correct syringe among 14 syringes; errors in correctly injecting the drugs into the IV tubing, IV tubing leakage migration of the IV catheter, excessive pressure on the plunger, improper securing of the catheter, failure to properly loosen or remove the tourniquet, which individually or in combination create a substantial and unnecessary risk that Lambert will be fully conscious and in agonizing pain for the duration of the execution process, in violation of the Eighth Amendment through the Fourteenth Amendment.

39. J. David Donahue, Ed Buss and Unknown Executioners are aware that the IDOC's procedures and protocol foster these above-stated problems and fail to provide adequate mechanisms for recognizing these problems, and do so needlessly and without legitimate reason, resulting in a substantial and unnecessary risk that Lambert will be fully conscious and in agonizing pain for the duration of the execution process, in violation of the Eighth Amendment through the Fourteenth Amendment.

40. J. David Donahue, Ed Buss and Unknown Executioners are aware that in Indiana, and elsewhere in the United States, general anesthesia is administered by physicians who have completed residency training in the specialty of Anesthesiology, and by nurses who have undergone the requisite training to become Certified Registered Nurse Anesthetists

(CRNAs). Physicians and nurses who have not completed the requisite training to become anesthesiologists or CRNAs are not permitted to provide general anesthesia. These universal credentialed individuals are absent from the IDOC protocols, there is no evidence that any person on the IDOC injection team has any training in administering anesthesia, and their replacement with various prison personnel lacking in such credentials underlie the multiplicity of foreseeable events that put Lambert at an unreasonable risk of suffering an excruciatingly painful execution, in violation of the Eighth Amendment through the Fourteenth Amendment.

41. J. David Donahue, Ed Buss and Unknown Executioners are aware that the IDOC execution protocol and procedures prevent effective monitoring of Lambert's condition or whether he is anesthetized and unconscious. Lack of any qualified personnel present in the chamber during execution thwarts execution personnel from taking standard and necessary measures to reasonably ensure that the sodium pentothal is properly flowing into the Lambert and that he is properly anesthetized prior to and during the administration of pancuronium bromide and potassium chloride, and to ensure the continued administration of a drug that will assure a surgical depth of anesthesia creates a substantial, unreasonable and unnecessary risk that Lambert will be fully conscious and in agonizing pain for the duration of the execution process, in violation of the Eighth Amendment through the Fourteenth Amendment.

42. J. David Donahue, Ed Buss and Unknown Executioners are acting under color of Indiana law in administering to Plaintiff-Intervenor Lambert chemicals that will cause unnecessary pain in the execution of death, thereby depriving Lambert of his rights under

the Eighth and Fourteenth Amendments to be free from cruel and unusual punishment, in violation of 42 U.S.C. sec. 1983.

VII.

PRAYER FOR RELIEF

43. Plaintiff-Intervenor, Michael Allen Lambert, requests that this Court grant a preliminary injunction barring defendants from executing him in the manner they currently intend or in a manner that violates his rights under the Eighth and Fourteenth Amendments to be free from cruel and unusual punishment, in violation of 42 U.S.C. sec. 1983.

44. Plaintiff-Intervenor, Michael Allen Lambert, requests that this Court grant reasonable attorneys' fees pursuant to 42 U.S.C. sec. 1988 and the laws of the United States, as well as for costs of suit and any further relief that this Court deems just and proper.

Respectfully submitted,

/s/Alan M. Freedman
Alan M. Freedman

/s/Carol R. Heise
Carol R. Heise

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

NORMAN TIMBERLAKE	)	
	)	
Plaintiff,	)	
	)	
MICHAEL ALLEN LAMBERT,	)	
DAVID LEON WOODS,	)	**CAUSE NO. 1:06-cv-1859-RLY-WTL**
	)	
Intervenor Plaintiffs,	)	
	)	
v.	)	
	)	
J. DAVID DONAHUE, Commissioner	)	
Indiana Department of Corrections	)	
	)	
ED BUSS, Superintendent,	)	
Indiana State Prison,	)	
	)	
and	)	
	)	
UNKNOWN EXECUTIONERS,	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically and served upon Thomas D. Quigley, Stephen R. Creason, Betsy M. Isenberg, Linda M. Wagoner, William Van Der Pol, Jr., Brent Westerfeld, Lorinda Meier Youngcourt and Richard A. Waples through the Court's CM/ECF system on April 17, 2007.

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