

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

VERNON EVANS, JR.,

*

Plaintiff,

*

vs.

*

Civil Action No. 06-CV-00149 BEL

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

*

*

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

*

LEHRMAN DOTSON, Warden,
Maryland Correctional Adjustment Center;

*

GARY HORNBAKER, Warden,
Metropolitan Transition Center;

*

and,

*

JOHN DOES,

*

Defendants.

*

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION**

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

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

January 20, 2006

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
APPLICATION FOR TEMPORARY RESTRAINING
ORDER AND MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff Vernon Evans, Jr., who is currently under a warrant for his execution during the week of February 6, 2006, seeks a temporary restraining order and preliminary injunction enjoining Defendants from carrying out his execution using the current practices and procedures of the Maryland Department of Correction (DOC) for lethal injection. Evans does not herein challenge the fact of his sentence of death generally, nor does he challenge the constitutionality of lethal injection. Methods of lethal injection that would comply with the United States Constitution exist and are available for use by Defendants.

But, as the declaration of Dr. Mark Heath in support of the application and motion shows, DOC's practices and procedures arbitrarily and unnecessarily create a grave risk that Evans will suffer extreme pain during his execution, thus violating his rights under the Eighth and Fourteenth Amendments to the United States Constitution. Evans will suffer acute and irreparable harm if this Court denies preliminary relief, while the harm, if any, to Defendants stemming from that relief will be minimal. Because the balance of harms tips in Evans's favor, he need only present "grave or serious questions" to justify entry of a preliminary injunction, and he has clearly raised such questions. For these reasons, and because the public interest will be served by judicial consideration of Evans's claims, he is entitled to preliminary relief.

Statement of Facts

Plaintiff Evans was convicted of two counts of murder in 1984. On January 9, 2006, Baltimore County Circuit Judge John G. Turnbull II signed a Warrant of Execution, setting Evans's execution for

the week of February 6, 2006.^{1/} Pursuant to Maryland Code Annotated, Correctional Services § 3-905, Evans would be executed by lethal injection.

Section 3-905 authorizes lethal injection using an “ultrashort-acting barbiturate, or other similar drug” and a “paralytic agent.” *See* Md. Code Ann., Corr. Servs. § 3-905. Evans has attempted to obtain from the DOC its more specific protocol for carrying out executions, but the DOC has not been fully cooperative. *See* Tindall Decl. ¶¶ 2-6 (attached hereto as Exhibit A). Nearly a year ago, on March 7, 2005, Evans first sought access to DOC’s current execution protocol and other related documents by making a public information request. *Id.* ¶ 2.^{2/} DOC provided some documents on April 6, 2005, but it denied significant portions of Evans’s request and significantly redacted portions of the documents that it did provide. *Id.* ¶ 4. Evans has been litigating before a state administrative law judge the DOC’s refusal to grant full access to the requested materials. *Id.* ¶ 4-6. Based on the documents that DOC did provide and other documents obtained by Evans, it appears that the DOC’s protocol has been amended over the years, including two amendments within the three weeks preceding the June 2004 execution of Steven Oken. *Id.* ¶ 4.^{3/}

^{1/} A copy of the Warrant of Execution is attached hereto as Tindall Decl. Exhibit 1.

^{2/} *See* Letter from A. Stephen Hut, Jr. to Jean Goodman, dated March 7, 2005, and attached hereto as Tindall Decl. Exhibit 2.

^{3/} Defendants provided Plaintiff with two heavily redacted Execution Operations Manuals pursuant to a request under the Maryland Public Information Act. One of these Manuals was dated June 14, 2004, and the other was dated May 26, 2004. *See* Tindall Decl. Exhibits 3, 4. Defendants executed Steven Oken on June 17, 2004, *see* Susan Levine, *Maryland Executes Oken*, WASH. POST, Jun. 18, 2004. In litigation between Defendants and Steven Oken, Defendants produced yet another version of the Execution Operations Manual, dated April 1, 1994. *See* Tindall Decl. Exhibit 7.

After the execution of Wesley Baker in December 2005, Evans attempted again to obtain the most recent protocol by filing another public information request on December 20, 2005.^{4/} As of the time of filing of this Memorandum, DOC had refused to produce a complete copy of the most current execution protocol. *Id.* at ¶ 6.

Once DOC is subject to compulsory discovery in this litigation, Evans will be able to address in more detail the State's execution procedures. But based on the portions of the execution protocols that Evans has obtained — either directly from the DOC or from other sources — the basic outlines of the State's execution procedure are clear, and the chemicals Defendants have elected and the practices and procedures by which they are administered create a grave and serious risk that Evans will suffer an agonizing death.

DOC has elected to inject condemned inmates with a three-drug cocktail of sodium pentothal, pancuronium bromide, and potassium chloride. *See* Tindall Decl. Exh. 6. Sodium pentothal is an ultrashort-acting barbiturate, intended to induce general anesthesia. *See* Heath Decl. at ¶ 38 (attached hereto as Exhibit B). Particular skill is required to administer this drug to achieve this. *Id.* Because of complications associated with maintaining anesthesia with sodium pentothal, when a surgical plane of anesthesia must be maintained for more than a matter of moments, drugs other than sodium pentothal are usually employed for such purpose. *Id.* If sodium pentothal is used both to induce and maintain a surgical plane of anesthesia, a qualified person must be present to assure that the drug has been correctly administered and is maintaining a state of unconsciousness. *Id.* As described in more detail below,

^{4/} *See* Letter from A. Stephen Hut, Jr. to Frank Sizer, Jr., dated December 20, 2005, and attached hereto as Tindall Decl. Exhibit 5.

without the proper administration of this anesthesia, the DOC's use of the other two drugs used in the three-drug cocktail would cause excruciating, torturous pain.

Based on the information that the State has provided, however, no qualified person is required to be on hand for lethal injections carried out by Defendants. *Id.* at ¶¶ 8, 24-25. Nor does any person—let alone a qualified person—monitor the plane of anesthesia achieved by administering sodium pentothal during an execution. *Id.* at ¶ 41.

The risk that an inmate subject to lethal injection as conducted by Defendants will be conscious during his or her execution—already significant due to the absence of qualified personnel to ensure that a surgical plane of anesthesia is achieved and maintained throughout the execution—is compounded by Defendant's apparent:

- (1) failure to employ persons proficient in achieving intravenous ("IV") access, which requires skill;
- (2) failure to take into account any individualized facts that affect appropriate dosage, such as Evans's body weight and his individual sensitivity to or tolerance to Defendant's chemicals of choice; and
- (3) failure to prepare for the very real possibility that, due to Evans's previous intravenous drug use, DOC personnel will not be able to access a peripheral vein, necessitating either a surgical "cut-down," wherein a vein is exposed by incision or is catheterized, or the invasive and painful processes of inserting a percutaneous central line, which involves tunneling under the skin to reach the subclavian or central vein.

Id. at ¶¶ 6, 8. In short, the DOC's practices and procedures create a constitutionally unacceptable risk that Evans will not be properly anesthetized when Defendants inject him with the second and third chemicals in the three-drug cocktail: pancuronium bromide and potassium chloride.

Pancuronium bromide and potassium chloride are both "paralytic agents." *Id.* at ¶ 9, 18. While the Maryland lethal injection statute requires use of a "paralytic agent," Md. Code Ann., Corr. Servs. § 3-905, pancuronium bromide and potassium chloride create excruciatingly painful sensations when injected into insufficiently anesthetized persons. Heath Decl. ¶ 6, 23, 43.

Pancuronium bromide serves no medical function in Maryland executions. Its use makes a prisoner look serene because the prisoner's muscles cannot move or contract to show pain, suffering, or any emotion. *Id.* at ¶ 16. The paralysis induced by pancuronium bromide, however, will ultimately cause an intense, painful death by asphyxiation if the prisoner is not adequately anesthetized. *Id.* ¶ 17. Desperately straining to draw breath, but with no corresponding muscle response, an inmate would not be able to signal that he or she is awake and experiencing the agony of suffocation. *Id.* Death by asphyxiation as a method of execution has been ruled unconstitutional as violative of the Eighth Amendment.^{5/}

The lethal-injection process employed by Defendants dictates that potassium chloride—the third chemical injected during executions—will cause death before asphyxiation caused by pancuronium is complete. *Id.* at ¶ 9. While a certain level of potassium chloride is needed for normal cardiac electrical activity, the quantity of potassium chloride administered in executions causes death by stopping the heart. *Id.* at ¶ 11. Potassium chloride affects the nerve fibers lining the veins, and there is universal

^{5/} See *Fierro v. Gomez*, 865 F. Supp. 1387, 1415 (N.D. Cal. 1994); *Fierro v. Gomez*, 77 F.3d 301, 309 (9th Cir. 1996); *vacated on other grounds*, *Gomez v. Fierro*, 519 U.S. 918 (1996).

medical agreement that its administration to an inadequately sedated person would be agonizingly painful. *Id.* In an inadequately sedated—yet paralyzed—inmate, administration of potassium chloride would cause extreme and protracted pain and would be torturous. *Id.* at ¶ 11-13.

The risk of inflicting severe and unnecessary terror, torture, and pain upon Evans is made more dire because the practices and policies Defendants have devised for his execution do not (1) include adequate directions for preparation of drugs and training of staff, (2) establish necessary safeguards regarding the manner in which the execution is to be carried out, (3) require participation of qualified personnel in performing critical tasks in the lethal-injection process, (4) provide for necessary supervision of personnel, and (5) establish appropriate criteria and standards that these personnel must rely upon in exercising their discretion during the lethal injection process. *Id.* at ¶ 6, 8, 24, 26.

Moreover, Defendants have conceded maladministration of at least one lethal injection—that of Tyrone Gilliam in 1998.^{6/} On its website, the Maryland Department of Public Safety and Correctional Services (“DPSCS”) declares that its lethal-injection procedure “lasts about seven minutes.”^{7/} According to newspaper reports, however, Gilliam’s execution took 23 minutes.^{8/} (Indeed, only one of the five lethal injections conducted by Defendants since 1994 — that of Flint Gregory Hunt in 1997 — has been completed within 7 minutes.^{9/}) Throughout Gilliam’s execution, a primary IV line leaked and liquids pooled on the execution room floor. Tindall Decl. Exhibit 8.

^{6/} See *Oken v. Sizer*, 321 F. Supp. 2d 658, 667 n.7 (D. Md. 2004).

^{7/} See <http://www.dpscs.state.md.us/publicinfo/capitalpunishment/historical.shtml> (last visited January 18, 2006).

^{8/} Caitlin Francke, *Gilliam Executed for '88 Slaying*, BALT. SUN, Nov. 17, 1998.

^{9/} Paul W. Valentine, *A LOOK AT . . . Executions*, WASH. POST, Jul. 20, 1997 (execution of Flint Gregory Hunt); Julie Bykowicz, *In 9 Minutes, Witnesses Watch Death Take Hold*, BALT. SUN, Jun. 19, 2004 (execution of Steven Oken); Eric Rich and Daniel de Vise, *Maryland Executes Woman’s Killer*,

Argument

“The standard for preliminary injunctions is established . . . by *Blackwelder Furniture Co. v. Seilig Mfg. Co.*, 550 F.2d 189 (4th Cir. 1977).” *Rum Creek Coal Sales, Inc. v. Caperton*, 926 F.2d 353, 359 (4th Cir. 1991). Under *Blackwelder*, a District Court presented with a motion for preliminary injunction must consider: (1) “the likelihood of irreparable harm to the plaintiff” if the motion is denied, (2) “the likelihood of harm to the defendant” if the motion is granted, (3) “the likelihood that the plaintiff will succeed on the merits,” and (4) “the public interest.” *Id.* These considerations are not of equal weight. The balance of harms between the plaintiff and defendant is the “more important” consideration. *Blackwelder*, 550 F.2d at 196. “If that balance is struck in favor of plaintiff, it is enough that grave or serious questions are presented; and plaintiff need not show a likelihood of success.” *Id.*

A temporary restraining order is proper to maintain the status quo until the court can hold a hearing on the request for a preliminary injunction. For that reason, the Federal Rules focus the court’s inquiry on whether “irreparable injury, loss, or damage will result to the applicant before the adverse party or that party’s attorney may be heard in opposition.” Fed. R. Civ. P. 65(b).^{10/}

Evans satisfies the requirements for both a temporary restraining order and a preliminary injunction. *First*, in the absence of an injunction, Evans would obviously, and necessarily, suffer the most severe form of irreparable harm—he will be executed pursuant to practices and procedures which create a grave and unnecessary risk that he will suffer excruciating pain during his lethal injection. *See*

WASH. POST, Dec. 6, 2005 (execution of Wesley Baker); Paul W. Valentine, *Execution of Thanos Went “Like Clockwork,”* WASH. POST, May 18, 1994.

^{10/} *See* Charles Alan Wright et al., 11A *Federal Practice and Procedure* § 2951, at 256-57 (1995); *see also Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (court must consider factors in light of purpose of preliminary injunctive relief, which is to preserve status quo until final merits can be considered).

Wainwright v. Booker, 473 U.S. 935 n.1 (1985) (“irreparable harm” is “necessarily present in capital cases”). *Second*, preliminary relief causes minimal—if any—harm to the Defendants. They remain free to execute Evans in compliance with Maryland’s lethal-injection statute, Md. Code Ann., Corr. Servs. § 3-905. They must, simply, refrain from executing him in a manner that contravenes the dictates of the Eighth Amendment. *Third*, because the patent, severe, and irreparable harm that Evans “necessarily” faces outweighs any harm to the Defendants, Evans need only show that “grave or serious questions” are presented in this litigation, *Blackwelder*, 550 F.2d at 196. The arbitrary and unnecessary risk of an excruciatingly painful execution amounting to cruel and unusual punishment, detailed below, certainly presents such questions. *Finally*, a preliminary injunction will further the public’s interest in insuring that executions carried out in its name comport with the dignity of humankind enshrined in the Eighth Amendment.

I. THE BALANCE OF HARMS FAVORS EVANS.

Comparing the likelihood of irreparable harm to Evans if interim relief is not granted to any harm that interim relief might cause Defendants leads to the inescapable conclusion that the balance of harms weighs heavily in Evans’s favor. As the Supreme Court of the United States has recognized, “irreparable harm” is “necessarily present in capital cases.” *See Wainwright*, 473 U.S. at 935 n.1. If preliminary relief is not granted, Evans will be executed and no court will consider the merits of his claims. Furthermore, Evans will be executed pursuant to practices and procedures that pose a substantial risk of causing him excruciating pain and suffering, in violation of the Eighth and Fourteenth Amendments.

Defendants, on the other hand will suffer no meaningful harm. The preliminary injunction Evans seeks does not implicate Defendants’ ability to execute Evans in accordance with Maryland’s lethal

injection statute, Md. Code Ann., Corr. Servs. § 3-905. Practices and procedures for execution, which comply with the Maryland statute and the dictates of the Eighth and Fourteenth Amendments, are inexpensive and are available to Defendants.

II. EVANS PRESENTS “GRAVE OR SERIOUS” QUESTIONS REGARDING THE CONSTITUTIONALITY OF DOC’S EXECUTION PRACTICES AND PROCEDURES.

“Because the death penalty is the most severe punishment, the Eighth Amendment applies to it with special force.” *Roper v. Simmons*, 125 S. Ct. 1183, 1194 (2005). In assessing the Amendment’s application, the Supreme Court has recognized that its prohibition on “cruel and unusual punishment” is “not precise” and its “scope is not static.” *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958). Rather, “[t]he Amendment embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency . . . against which [a court] must evaluate penal measures.” *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (internal quotations and citations omitted). Thus, the Court has “held repugnant to the Eighth Amendment punishments which are incompatible with the evolving standards of decency that mark the progress of a maturing society . . . , or which involve the unnecessary and wanton infliction of pain.” *Id.* at 102-03 (internal quotations and citations omitted). In the context of capital punishment, these precepts apply to prohibit “something more than the mere extinguishment of life.” *Weems v. United States*, 217 U.S. 349, 370-71 (1910).

Evans does not herein assert that either the death penalty or lethal injection *generally* violates “evolving standards of decency that mark the progress of a maturing society.” In theory, lethal injection—a pinprick, followed rapidly by unconsciousness and painless death—could comport with the “dignity, civilized standards, humanity, and decency . . . against which [a court] must evaluate penal

measures.” *Estelle*, 429 U.S. at 102. But Defendants’ ability to effect a death without unnecessary and wanton pain is seriously in doubt.

The practices and procedures employed by Defendants in the lethal injection of condemned inmates purport to cause quick and painless death. In reality, however, as the attached declaration of Dr. Mark Heath, an expert in Anesthesiology, clearly shows, the chemicals selected, the haphazard and needlessly complicated procedures employed, the absence of properly credentialed personnel and medically necessary equipment, and the failure to plan for inevitable obstacles in the lethal injection of condemned inmates, among other deficiencies, create a grave—and most importantly, unconstitutional—risk that lethal injections in Maryland will involve agonizing and wholly unnecessary pain. Should Defendants execute Evans pursuant to these practices and procedures, they unnecessarily risk botching his execution—as they botched Gilliam’s—and causing an insufficiently anesthetized man to experience the excruciating pain associated with the chemicals they have arbitrarily chosen to effect death. Furthermore, as detailed in the newspaper articles cited in Paragraph 36 of Evans’s Complaint in this action, maladministration of lethal injection executions throughout the Nation is not uncommon, and there is no reason to believe, given the Gilliam execution and the insufficient standards described above, that the DOC is more competent than these other States.

Indeed, the drugs selected and practices and procedures employed by DOC in executing death-sentenced inmates do not even comport with prevailing standards for the euthanasia of animals. The American Veterinary Medical Association (“AVMA”) Panel on Euthanasia has banned the use of neuromuscular blocking agents — such as pancuronium bromide — alongside a general anesthetic, such as sodium pentothal. *See* Tindall Decl. Ex. 9 at 680. The State of Maryland has legislated its own ban to this effect. Md. Code Ann., Criminal Law, § 10-611. And while the AVMA does permit the use of

potassium chloride in animal euthanasia, it is only acceptable when a surgical plane of anesthesia is achieved and maintained by adequately trained personnel. Tindall Decl. Ex. 9 at 680-81. Surely, standards considered inhumane in the lethal injection of animals cannot comport with “evolving standards of decency” for the execution of human beings.

Courts applying the general principles of the Eighth Amendment to the practices and procedures involved in a particular execution protocol have focused on the amount of pain the inmate suffers and the speed with which unconsciousness is accomplished. *See Campbell v. Wood*, 18 F.3d 662, 684 (9th Cir. 1994) (execution by hanging constitutional where practices and procedures employed by State were designed such that “unconsciousness will be rapid and death comparatively painless”); *Fierro v. Gomez*, 77 F.3d 301, 308 (9th Cir.) (execution by lethal gas violates Eighth and Fourteenth Amendments where “an inmate probably remains conscious anywhere from 15 seconds to one minute” and suffers “intense, visceral pain, primarily as a result of lack of oxygen to the cells”), *vacated on other grounds*, *Gomez v. Fierro*, 519 U.S. 918 (1996). The practices and procedures employed by Defendants create a grave risk that Evans will never be sufficiently anesthetized, or will regain consciousness at some point during his lethal injection, and will thus experience some combination of the fiery sensation of potassium chloride as it travels through his veins, cardiac arrest, and/or the intense, visceral pain associated with asphyxiation. As demonstrated by the execution of Tyrone Gilliam, this experience could last as long as 23 minutes. Paralyzed, Evans would appear serene, but in reality, he would suffer a torturous death. This the Eighth and Fourteenth Amendments do not countenance.

The foregoing establishes a likelihood that Evans will prevail on the merits of his constitutional claims. But Evans need not show even this much. As demonstrated above, the balance of harms associated with preliminary relief tips in Evans’s favor. As a result, he need only raise “grave or serious

questions.” *Blackwelder*, 550 F.2d at 196. The practices and procedures employed by Defendants in the lethal injection of condemned inmates raise “grave or serious questions,” without a doubt.

III. THE PUBLIC INTEREST WILL BE FURTHERED BY PRELIMINARY RELIEF.

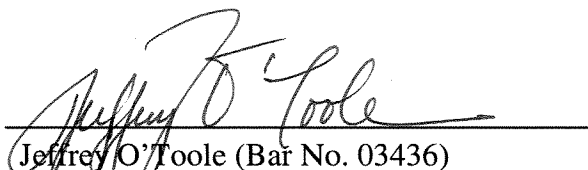
The DPSCS website advertises a quick and painless death for condemned inmates: “The procedure lasts about seven minutes. The worst physical pain being the prick of a needle.”^{11/} Presumably, this advertisement signifies a perceived duty on the part of the Defendants to carry out executions that are not unnecessarily lengthy or painful—in other words, executions that comport with the requirements of the Eighth Amendment. The public has an acute interest in ensuring that Defendants fulfill this duty. That interest will be served by issuance of preliminary relief so that Evans’s claims may be adequately tested, and his execution by practices and procedures that unnecessarily and arbitrarily risk agonizing pain prevented.

Conclusion

For the foregoing reasons, Plaintiff Vernon Evans’s application for a temporary restraining order and motion for preliminary injunction should be granted.

^{11/} See <http://www.dpscs.state.md.us/publicinfo/capitalpunishment/historical.shtml> (last visited January 18, 2006).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey O'Toole", is written over a horizontal line.

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 20, 2006

Counsel for Defendant Vernon Evans, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January 2006, I caused a copy of the foregoing pleading to be delivered by first-class mail to the Defendants at the following addresses:

MARY ANN SAAR, Secretary
Department of Public Safety and
Correctional Services
300 East Joppa Road
Suite 2000
Towson, Maryland 21286

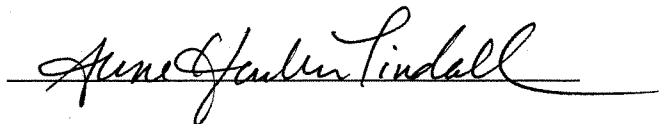
FRANK C. SIZER, JR., Commissioner
Maryland Division of Correction
6776 Reisterstown Road
Baltimore, Maryland 21215

LEHRMAN DOTSON, Warden
Maryland Correctional Adjustment Center
401 East Madison Street
Baltimore, Maryland 21202

GARY HORNBAKER, Warden
Metropolitan Transition Center
954 Forrest Street
Baltimore, Maryland 21202

and to be served by hand delivery to the following:

J. Joseph Curran, Jr.
Attorney General
Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202

A handwritten signature in cursive script, reading "Anne Gaudin Lindall", is written over a horizontal line.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

VERNON EVANS, JR., *
DOC Number 172357 *
Maryland Correctional Adjustment Center *
410 East Madison Street *
Baltimore, Maryland 21202 *

Plaintiff, *

v. *

Civil Action No. 06-149

MARY ANN SAAR, Secretary, *
Department of Public Safety and *
Correctional Services *
300 East Joppa Road *
Suite 2000 *
Towson, Maryland 21286; *

FRANK C. SIZER, JR., Commissioner, *
Maryland Division of Correction *
6776 Reisterstown Road *
Baltimore, Maryland 21215; *

LEHRMAN DOTSON, Warden, *
Maryland Correctional Adjustment Center *
401 East Madison Street *
Baltimore, Maryland 21202 *

GARY HORNBAKER, Warden, *
Metropolitan Transition Center *
954 Forrest Street *
Baltimore, Maryland 21202 *

and, *

JOHN DOES, *

Defendants. *

DECLARATION OF ANNE HARDEN TINDALL

I, Anne Harden Tindall, declare as follows:

1. I am an associate at the law firm of Wilmer Cutler Pickering Hale and Dorr LLP, attorneys of record for Vernon Evans, Jr., in the above-captioned matter. I am licensed to practice law in the State of North Carolina and the District of Columbia. I am familiar with the facts set forth herein, and if called as a witness, I could and would testify to those facts under oath.

2. On March 7, 2005, my colleague, A. Stephen Hut, Jr., a partner at the law firm of Wilmer Culter Pickering Hale and Dorr LLP, sent a letter to Jean Goodman, Secretary of the Maryland Department of Public Safety and Correctional Services ("DPSCS"), requesting access to certain records concerning lethal injection practices and procedures in Maryland pursuant to the Maryland Public Information Act ("MPIA"), State Government Article, §§ 10-611 to 628. Among the records requested were (1) documents describing the past and current procedures of the Maryland Division of Corrections ("DOC") for lethal injection; (2) past and current regulations governing lethal injections; (3) documents reflecting revisions to execution procedures; (4) documents related to the drugs used in lethal injections and their administration; (5) records related to equipment used in lethal injections; and (6) notes, reports, statements, photographs, scientific reports, physical evidence, witness interviews, and other documents prepared in connection with actual executions.

3. Ms. Goodman forwarded Mr. Hut's March 7, 2005, letter to Frank Sizer, Jr., Commissioner of DOC, as Commissioner Sizer is the custodian of the requested records.

4. On April 6, 2005, Commissioner Sizer responded to Mr. Hut's letter, granting in part and denying in part Mr. Hut's request for access to records concerning lethal injection. The records released included:

- (a) an "Execution Operations Manual," dated June 14, 2004, with nine pages redacted from sections of the manual addressing actions taken "Four Days prior to Execution Week" through "When the execution is completed";
- (b) an "Execution Operations Manual," dated May 26, 2004, with nine pages redacted from sections of the manual addressing actions taken "Four Days prior to Execution Week" through "When the execution is completed";
- (c) three "Lethal Injection Execution Logs" from the execution of Mr. Gilliam;
- (d) the execution warrant for Mr. Oken;
- (e) "Execution Reminders," sent via email, concerning the lethal injection of Mr. Oken;
- (e) what appear to be three complete "Lethal Injection Execution Logs" from the execution of Mr. Oken, but the three documents bear different dates;
- (f) four draft "New Releases" concerning Mr. Oken's execution;
- (g) "IV Injection Training/Practice Records";

- (h) an article printed from the website www.sunspot.net concerning Governor Ehrlich's lifting of the moratorium on executions imposed by Governor Glendening;
- (i) the Warden's report on Mr. Oken's execution;
- (j) a "Summary Report" from a Technical Assistance visit by Maryland officials to "Oklahoma's execution-related staff" sponsored by the National Institute of Corrections;
- (k) Directives concerning the death penalty issued by the Division of Corrections on September 15, 1998;
- (l) Directives concerning the death penalty issued by the Division of Corrections on January 25, 2000; and,
- (m) Directives concerning the death penalty issued by the Division of Corrections on January 20, 2004.

4. On May 5, 2005, Mr. Hut sent a letter to Commissioner Sizer requesting administrative review of the Commissioner's complete denial of access to some records and his substantial redactions of the records that were released. By letter dated June 17, 2005, Commissioner Sizer delegated the matter to the Maryland Office of Administrative Hearings ("OAH") for an evidentiary hearing. That hearing is currently scheduled for January 24, 2006.

5. On December 20, 2005, after the execution of Wesley Baker, Mr. Hut sent a supplementary MPIO request to Commissioner Sizer, renewing the March 7, 2005 request as to any such records pertaining to the execution of Wesley Baker and clarifying that the request included autopsy, toxicology, and scene investigation reports. On the same day, Mr. Hut sent an MPIO request to the Office of the Chief Medical Examiner of Maryland, requesting documents related to lethal injections, including autopsy, toxicology, and scene investigation reports. Neither Commissioner Sizer nor the Office of the Chief Medical Examiner has responded to these requests.

6. To date, DOC has not provided Evans with a complete copy of its Execution Operations Manual, or with other documents related to lethal injections included in Mr. Hut's MPIO requests, and it continues to contest release of those records in the OAH proceedings.

7. Attached as Exhibit 1 to this Declaration is a true and correct copy of the Warrant of Execution signed on January 9, 2006, by Baltimore County Circuit Judge John G. Turnbull II setting Evans's execution for the week of February 6, 2006.

8. Attached as Exhibit 2 to this Declaration is a true and correct copy of the letter from A. Stephen Hut, Jr. to Jean Goodman, dated March 7, 2005, containing a public information request seeking access to records related to lethal injection.

9. Attached as Exhibit 3 to this Declaration is a true and correct copy of the heavily redacted copy of an Execution Operations Manual, dated June 14, 2004, provided to Mr. Hut in response to his public information request.

10. Attached as Exhibit 4 to this Declaration is a true and correct copy of the heavily redacted copy of an Execution Operations Manual, dated May 26, 2004, provided to Mr. Hut in response to his public information request.

11. Attached as Exhibit 5 to this Declaration is a true and correct copy of the letter from A. Stephen Hut, Jr. to Frank Sizer dated December 20, 2005, supplementing Mr. Hut's original public information request to include records related to the December 2005 execution of Wesley Baker.

12. Attached as Exhibit 6 to this Declaration is a true and correct copy of a document entitled "Lethal Injection Checklist," identical copies of which were appended to both Execution Operations Manuals supplied to Mr. Hut in response to his public information request.

13. Attached as Exhibit 7 to this Declaration is a true and correct copy of the heavily redacted copy of an Execution Operations Manual, dated April 1, 1994, produced by Defendants in litigation with Steven Oken in the Circuit Court for Baltimore County.

14. Attached as Exhibit 8 to this Declaration is a true and correct copy of the affidavit of Jerome H. Nickerson, produced in litigation between Defendants and Mr. Oken in the Circuit Court for Baltimore County, describing problems encountered in the execution of Tyrone Gilliam and Defendants' response to those problems.

14. Attached as Exhibit 9 to this Declaration is a true and correct copy of the 2000 Report of the American Veterinary Medical Association Panel on Euthanasia.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 20, 2006.


Anne Harden Tindall

State of Maryland
Department of Public Safety and Correctional Services
Division of Correction

Division of Correction Manual
110-2
Execution Procedures

HIGHLY CONFIDENTIAL

Revised 4/1/94

Table of Contents

Introduction

Section I	Death House
Section II	Responsibilities
Section III	Pre-Execution Procedures
Section IV	Execution Procedures - Gas Chamber
Section V	Execution Procedures - Lethal Injection Chamber
Section VI	Death Watch Team Procedures
Section VII	Last Minute Stay or Revocation of the Warrant of Execution
Section VIII	Post-Execution Procedures
Section IX	Emergency Operation Plan for Lethal Gas Chamber
Section X	Support Services
Section XI	Appendices

INTRODUCTION

In accordance with DCD 110-2 (Refer to Appendix #1) this Division of Correction manual shall serve as guidelines for the Commissioner of Correction's designee, the Warden of the Maryland Penitentiary, and any other personnel assisting, to ensure the performance of an efficient and successful execution by the administering of a lethal gas or lethal injection when ordered to do so by a court in the State of Maryland. It is also intended to establish procedures for the care and treatment of inmates sentenced to suffer death from the time a warrant of execution is received through execution. In addition, this manual identifies staff responsibilities pursuant to preparation and implementation of the execution process, including but not limited to the operation of the death chamber.

Article 27, Sections 71 - 79 of the Annotated Code of Maryland (ACM) cover the requirements related to the imposition of the Death Penalty (Refer to Appendix #2).

In accordance with Article 27, Section 71 (ACM), offenders sentenced to suffer death by a court in the State of Maryland shall suffer death by the administering of lethal injection unless that person has elected, in writing prior to May 20, 1994, to be executed by lethal gas in accordance with Article 27, Section 627(ACM).

In accordance with Article 27, Section 72 (ACM), the Commissioner of Correction shall provide a suitable and efficient room or place in which executions may be carried out that is enclosed from public view. This room or place shall have all the necessary appliances for the proper execution of felons by the administering of a lethal gas or lethal injection.

Section I

~~DEATH HOUSE~~

The Commissioner of Correction has designated the Maryland Penitentiary as the place in which all executions ordered by a court in the State of Maryland are carried out. The area so designated shall be known as the Death House. The Death House is located at the west end of the second floor of the Maryland Penitentiary Hospital (Refer to Appendix #3).

The Death House includes a housing unit with four cells, each 8 feet 9 inches long and 7 feet 6 inches wide. Each cell has a window with a heavy security screen and is equipped with a bed, toilet and sink with hot and cold running water. An officer station and shower is located in this area.

It also includes a separate area known as the Death Chamber. The Death Chamber is divided into two separate execution areas. One is known as the Lethal Injection Chamber area. It consists of a witness room, a chemical room, a storage room and a Lethal Injection room. The other is known as the Gas Chamber area. It consists of a witness room, a chemical room, an operations room and a Gas Chamber.

Section II

RESPONSIBILITIES

- A. The Commissioner of Correction shall be responsible for designating a person to supervise the execution. The Commissioner's designee shall be known as the Execution Commander. He shall be assisted by the warden, Maryland Penitentiary. The Execution Commander shall be responsible for the overall operation of this procedure.
- B. The Assistant Warden, Maryland Penitentiary is responsible for all administrative activities and other assignments delegated to him/her in the event of a scheduled execution.
- C. The Security Chief is in charge of the Death Watch Team and is responsible for the security of the condemned inmate and security operations related to this procedure.
- D. The Assistant Warden, Maryland Correctional Adjustment Center (MCAC) is responsible for all institutional operations during the time an execution is in progress, and will act as Officer in Charge (OIC) of the Command/Operations Center.
- E. The Assistant Commissioner, Field Services, is responsible for training, audits and inspections related to the Death House and its operation.
- F. Execution Team members are responsible for all operations, equipment and sanitation related to the Death House. One member of the Execution Team should be designated as OIC by the Execution Commander.
- G. The Correctional Maintenance Team shall be responsible for all maintenance and repairs, and will assist in all training, audits and inspections related to the Death House.

Section III

PRE-EXECUTION PROCEDURES

- A. Execution dates are set in accordance with the provisions of Article 27, Section 75 (ACM). Once the date is set the Execution Commander will conduct activities as listed in this Manual. In addition, specific activities as listed below shall be initiated.
- B. Upon Receipt of a Warrant of Execution the Warden Shall:
 1. Initiate a log in a bound ledger for the purpose of logging all activities and actions related to the warrant of execution and the implementation of the death penalty.
 2. The receipt of the warrant shall be logged immediately.
 3. The warrant shall be hand-carried to the records department supervisor by a member of the Warden's Staff.
 - a. The records supervisor shall prepare a letter of acknowledgement to the Governor's Office for the Warden's signature (Refer to Appendix #4).
 - b. Copies of the letter of acknowledgement shall be sent to parties named in DCD 110-2, Section VI B 2 b.
 4. If no stay accompanied the warrant, the Warden shall personally notify the inmate that the warrant of execution has been received; this shall be done at a private meeting in the presence of at least one witness (Refer to Appendix #4(a)).
- C. In The Event That a Stay of Execution is Not Granted.

1. The exact date of the execution shall be set by the Execution Commander, in consultation with the Commissioner. It shall be within the week designated in the warrant.
2. The time of the execution shall be determined by the Execution Commander. No announcement of the date or hour of execution shall be made, except to those individuals permitted to be present at the execution.

D. Fourteen Days Prior to Execution Week.

1. The Assistant Commissioner, Field Services, shall inspect the Death House, initiate training, tests and drills and ensure that personnel, procedures and equipment are prepared for the execution (Refer to Appendix #5). The Assistant Commissioner shall assist the Warden, as necessary, to ensure these procedures are carried out.
2. The Assistant Warden, Maryland Penitentiary, shall be responsible for obtaining required permits from the Maryland Department of the Environment (Refer to Appendix #6).
3. The Assistant Warden, MCAC shall develop plans associated with a command/operations center and contact those necessary to staff that center. Each will be required to develop special operating procedures for their area of responsibility and submit them to the Assistant Commissioner, Field Services and the Warden, for review and approval (Refer to Appendix #7).
4. The designated public information officers will meet with the Governor's Press Secretary to develop media procedures (Refer to special operating procedures under Appendix #8).

E. Seven Days Prior to Execution Week:

1. Non-contact visiting may be scheduled on a daily basis.
 - a. A maximum of two visits will be allowed per day, not to exceed one hour each visit.
 - b. Regular visits will be held between the hours of 1:00 p.m. and 7:00 p.m.
 - c. Attorney and clergy visits shall be unlimited, however, these visits should take place between the hours of 9:00 a.m. and 8:00 p.m. unless approved as a result of special request.

2. All outgoing or incoming telephone calls shall be approved by the Warden or his designee provided all parties consent to receipt of the call. All parties to the conversations shall be informed that these calls may be subject to monitoring and recording, except calls to or from the inmate's attorney will not be monitored.

F. Five Days Prior to Execution Week.

1. The Execution Team will be selected by the Execution Commander. This squad shall include:

- a. The Assistant Warden, Maryland Penitentiary, to monitor the telephones in the Death House and to assist in the execution process.
- b. Two (2) designated trained officers to operate the Gas Chamber AND Two (2) designated trained officers to operate the Lethal Injection chamber. Two (2) alternates may be designated at the discretion of the Warden.
- c. One (1) designated trained officer to conduct record keeping and key control activities during the execution.
- d. A three (3) officer escort team assigned to escort the inmate from M.C.A.C. to the Death House, to conduct death watch activities, and to move the condemned inmate from the Death House housing area to the appropriate execution area, depending on the method of execution. After the execution they will take custody of the body from the Execution Team and escort it to its appropriate destination.
- e. A two (2) officer team, under the direction of the Assistant Warden, M.C.A.C., will be assigned to escort official witnesses.
- f. The Warden, Maryland Penitentiary, will designate any other support staff deemed necessary by the Execution Commander.

2. Medical support staff for the execution shall be designated by the Execution Commander.
3. The EKG machine to be used during the execution by lethal gas shall be inspected and calibrated.

4. Equipment tests shall be conducted, to include emergency generator, phones and any other equipment to be utilized in the accomplishment of the execution process.
5. The Warden shall brief all shift commanders and department heads regarding the execution. Only the information necessary for the safe, efficient operation of the institution shall be shared with them. Under no circumstances shall the date or time or any details of execution be communicated to them (Refer to Appendix #9).
6. The Warden shall identify a switchboard operator that shall be on duty during the period of execution and instruct this individual of the duties of this position (Refer to Appendix #10).
7. The Assistant Commissioner, Field Services, shall conduct an inspection of the Death House housing unit, witness area and chamber area.
8. The Commissioner shall identify 6 to 12 public witnesses. People that should be considered for selection may be (Refer to Appendix #11):
 - a. Public officials
 - b. Victim family members
 - c. Elected officials
 - d. Any other respectable citizen of Maryland in good standing that has made a request in writing
 - e. Media representatives

G. Four Days Prior to Execution Week.

1. The Execution Commander shall conduct a meeting with all individuals who have supervisory responsibilities for activities associated with the execution, including those related to crowd control strategy.
2. The Assistant Warden, Maryland Penitentiary, shall check all outside telephone lines in the area. Any deficiencies shall be reported for immediate correction.
3. A notification list will be established by the Assistant Warden, Maryland Penitentiary, to identify individuals to be notified in the event of significant legal change. The list shall include, at minimum:
 - (a) Governor's Office
 - (b) Secretary of Public Safety and Correctional

SENDING REPORT

May. 06 2004 03:49PM

YOUR LOGO : BENNETT&LAWLOR, LLP
YOUR FAX NO. : 3012201577

NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	18156429399	May. 06 03:46PM	03'11	SND	10	OK

TO TURN OFF REPORT, PRESS 'MENU' #04 SET.
THEN SELECT OFF BY USING 'JOG-DIAL'.

FOR FAX ADVANTAGE ASSISTANCE, PLEASE CALL 1-800-HELP-FAX (435-7329).

Services

- (c) Commissioner of Correction
- (d) Warden of Maryland Penitentiary
- (e) Attorney General's Office

4. The inmate will be requested to specify funeral arrangements. This will be obtained by the assigned Chaplain and submitted to the Warden's Office in writing (Refer to Appendix #12).
5. The Execution Team shall conduct a drill in accordance with operating procedures in Appendix #13, to demonstrate their readiness to the Execution Commander. ~~The drill shall include all steps in the execution process and demonstrate the time it takes to complete each.~~
6. The Assistant Commissioner, Field Services, shall inspect the command/operations center, as well as the Death House housing unit, witness area and chamber area.
7. The Assistant Commissioner, Treatment, shall present pre-execution "inoculation" training to the Execution Team. (Refer to Appendix #14).

H. Three Days Prior to Execution Week.

1. The Execution Commander shall designate a custody supervisor to hand carry a sealed envelope marked personal and confidential containing information as to the date and time of execution to:
 - a. The Governor's Office
 - b. The Secretary of Public Safety and Correctional Services
 - c. The Commissioner of Correction
2. The Execution Commander shall inspect the Death House housing unit, witness area and execution areas, and advise the Commissioner of his findings.
3. Official witnesses shall be notified of their selection and will be required to complete a witness agreement (Refer to Appendix #15).
4. Witness applicants not selected will be notified accordingly (Refer to Appendix #16).

I. Two Days Prior to Execution Week:

1. A training exercise/drill will be conducted, including a drill of the execution, and all related operational procedures.
2. The Execution Commander shall oversee the training exercise/drill and inspect the Death House housing unit, witness area and execution areas and advise the Commissioner of his findings.
3. The Assistant Warden, Maryland Penitentiary, shall test all telephones in the Death House.
4. Equipment tests shall be conducted.
5. The Warden shall be briefed of the results of Items #1, 3 and 4 in order that all deficiencies found can be corrected immediately.

J. One Day Prior to Execution.

1. The Warden shall personally test all telephones in the Death House and brief the Execution Commander.
2. An inspection will be conducted of all safety equipment.
3. The witness staging area will be identified by the Assistant Commissioner, Field Services.
4. The witness waiting area, which is located on the first floor of the Maryland Penitentiary Hospital, shall be set up by the Assistant Warden, M.C.A.C.
5. Personnel assigned to the execution team shall inspect and test all medical related equipment and submit a report of their findings to the Execution Commander.
6. Funeral or body disposition arrangements are confirmed by the Assistant Warden, Maryland Penitentiary (Refer to Appendix #17).
7. The Execution Commander may conduct separate security briefings, to include the Execution Team, all support personnel, designated Division of Correction Headquarter's personnel, and any other personnel deemed necessary (Refer to Appendix #9).

8. The Assistant Warden, Maryland Penitentiary, shall establish communication lines with the Governor's Office and submit a written briefing to the Warden (Refer to Appendix #18).
9. The Execution Commander shall conduct an inspection of the Death House housing unit, witness area, and chamber area.
10. All of the inmate's personal property, with the exception of legal material, shall be inventoried by staff in the presence of the inmate. The inmate shall designate, in writing, what disposition is to be made of this property. Property shall be sealed in the presence of the inmate and stored in the designated area until disposition is made.

K. Eight Hours Prior to the Designated Execution Time

1. The Execution Commander shall make an inspection of the Death House housing area, witness area and chamber area.
2. The Assistant Warden, MCAC, shall establish a Command/Operations Center to be located at the Maryland Penitentiary Hospital in the administrative area located on the east end of the second floor. The Center shall be equipped with telephones and institutional radios in order that proper communication can be maintained. The Command/Operations Center shall be staffed in accordance with Appendix #7.

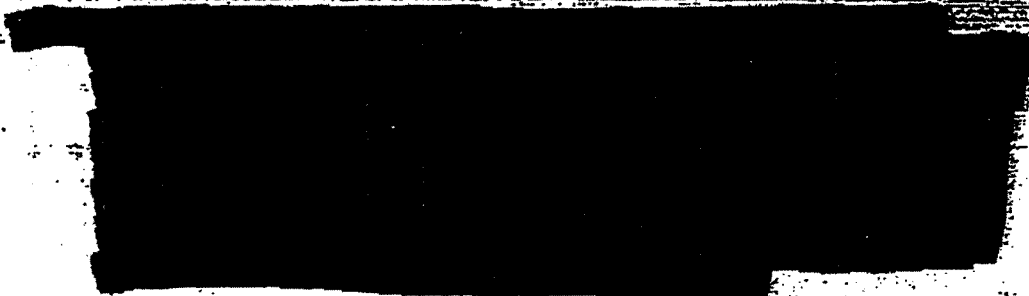
This Command Center shall be responsible for the operation and monitoring of the institution during the period of execution and for coordination with the Execution Commander, Warden and supervisors in the Death House.

Institutional personnel in the Command/Operations Center shall respond to the needs of the institution. Non-institutional personnel may be requested to perform support services, if needed, in appropriate areas of expertise.

3. The only staff permitted in the Death House housing area without approval of the Execution Commander shall be:
 - a. Commissioner of Correction
 - b. Warden, Maryland Penitentiary
 - c. Assistant Warden, Maryland Penitentiary

- d. Chief of Security, Maryland Penitentiary
- e. Chaplain
- f. Death Watch Supervisor
- g. Officers assigned to post
- h. Assistant Commissioner, Field Services
- i. Designated maintenance personnel
- j. Inmate's Attorney
- k. Designated medical personnel
- l. Execution Team

L. Six Hours Prior to the Designated Execution Time

- 
2. The Correctional Security Chief shall make rounds every [redacted] in the Death House housing area.
 3. The Psychologist, Chaplain and medical personnel shall respond upon request.
 4. The Execution Recorder's official record shall be initiated.

M. Three Hours Prior to the Designated Execution Time

1. The Assistant Warden, M.C.A.C., shall contact all official witnesses, instructing them to report to a designated location at a specific time, where they will be screened and assigned special passes for admission to the Maryland Penitentiary.
2. At a time directed by the Execution Commander, the Witness Escort Team shall proceed to the witness staging location and transport the witnesses to the witness waiting area at the Maryland Penitentiary Hospital (Refer to Appendix #20).



A designated supervisor of the Maryland Penitentiary shall accompany this detail and escort the witnesses on behalf of the Division of Correction. The witnesses shall remain in the witness waiting area until the time of execution.

3. The designated switchboard operator shall report for duty and remain on duty until ordered relieved. This individual shall take special care to assure that all calls are received and screened in accordance with pre-established instructions (Refer to Appendix #10).

N. Two Hours Before the Designated Execution Time

1. The Execution Team will report to their stations, inspect the equipment and advise the Execution Commander when they are prepared to begin the execution. The Execution Commander will initiate the execution process in accordance with Appendix #13.
2. At a time designated by the Execution Commander, not to exceed one hour prior to execution, the Execution Commander shall go to the Death House housing unit and inform the inmate of the execution.
3. The assigned Chaplain may remain in this area if requested by the inmate.
4. The inmate shall not be allowed to make or receive calls unless authorized by the Warden.

Section V

Execution Procedures

Maintenance and Operation of Lethal Injection Chamber
State of Maryland

A. Equipment, Materials and Chemicals

The equipment, materials and chemicals required are as follows:

Minimum Amount	Materials	Actual
8	Sodium Pentathol, 500 mg., w/diluent (C.I.)	
15	Pavulon, 10 mg. ampules (C.I.)	
15	Potassium Chloride, 10 mEq. ampules (C.I.)	
10	Syringe, 60 cc	
40	Angiocath, 22 gauge, 1"	
10	Needle, 18 ga. straight	
8	Angiocath, 20 gauge, 1 1/2"	
15	Angiocath, 18 gauge, 1 1/4"	
8	Angiocath, 18 gauge, 1 1/2"	
8	Angiocath, 16 gauge, 1 1/2"	
10	Angiocath, 16 gauge, 1 1/4"	
4	Lactated Ringers, IV Bag, 1,000 cc	
6	IV administration sets	
6	IV extension sets - 20 sets	
6	Pressure infusion bags	
6	3-lead IV extension sets	
6	IV needle locks	

Revised 4/1/94

22

15

<u>Minimum Amount</u>	<u>Materials</u>	<u>Actual</u>
1	Stethoscope	_____
1	Blood Pressure cuff	_____
1	Alcohol Preps, box	_____
1	4 X 4 gauze pads, box	_____
6	Cjhuks, absorbent pads	_____
24	Adhesive tape, 1" (2 boxes)	_____
1	Scissors, bandage, pair	_____
4	Tourniquet	_____
1	I.V. cut down set, Sterile	_____
1	Gloves, P2, box size small	_____
1	Gloves, P2, box size medium	_____
1	Gloves, P2, box size large	_____
50	Surgical masks (1 box)	_____
1	Flashlight, with batteries	_____
4	Eye protectors	_____
1	Training arm with attachments (see inventory)	_____
2	I.V. poles	_____
2	Mayo instrument stands	_____
1	Small sharps Disposal Box	_____
1	Large Sharps Disposal Box	_____

B. Suggested Personnel for Operations

1. The Commissioner shall designate a person to be the "Execution Commander" who will be in command of all activities related to the execution. The Warden, Maryland Penitentiary shall be the assistant to the Commander of the execution process.

Revised 4/1/94

23 / 16

2. Three persons shall be detailed as primary operators of the Lethal Injection Chamber. One shall be detailed as the OIC of the Injection Team, under the direction of the Execution Commander. The OIC should handle the ordering of all equipment, drugs and supplies, as well as the preparation of all syringes as necessary to carry out the execution by lethal injection.

The OIC, or his designee, shall prepare the IV set-up, insert the angiocath into the vein of the inmate's right and left arms and initiate the flow of lactated ringers at a slow rate (to keep open) as directed by the Execution Commander.

The Execution Commander shall designate which member of the Injection Team will administer the lethal dose of Sodium Pentothal, the Pavulon and the Potassium Chloride; which member will activate the flow control clamps; and which member will communicate with the Execution Commander using predetermined signals.

3. One additional officer should be designated as the Chamber Recorder. This officer shall record all activities conducted during the pre and post-execution, as well as the execution itself. He shall also function as the Key Control Officer for all Death Chamber keys.

4. One Assistant Commander, who shall conduct all inspections, tests and drills and may act as the Execution Commander during the execution process. The Execution Commander will instruct the witnesses as to the proceedings and will direct the Warden to escort them into and out of the Witness room.

5. One Assistant Warden, will monitor the telephones and advise the Execution Commander concerning any last minute changes in the legal authority to conduct the execution.

6. One Security Chief and two Death Watch Officers will monitor the inmate from the time of placement in the Death House until placement in the Death Chamber. They will be responsible for physical placement of the inmate in the Death Chamber and for disposition of the body after it is removed.

7. One Medical Doctor who will be responsible for examination of the inmate for the purpose of pronouncing death after the execution and informing the Execution Commander.

8. Two Maintenance Officers will stand by for the purpose of making any last minute repairs or adjustments to equipment or facilities related to the execution process.

C. Preparation for Operations of the Lethal Injection Chamber

1. Four (4) days prior to anticipated use a Pre-Execution Inventory and Equipment Check will be conducted.

- a. Members of the injection team shall conduct an equipment check of all materials necessary to perform the execution.

- b. The inventory shall be conducted not more than ninety-six (96) hours prior to the execution.

- c. An inventory check list shall be completed, dated, and initialed by the injection team (A copy of the checklist is attached. Items marked "C/I" in the check column shall be carried in by the injection team on the day of the execution.)

- d. Quantities of items in locked injection room shall be at least those indicated in the left column of the checklist.

- e. Expiration and/or sterilization dates of all applicable items shall be checked on each individual item.

- 1) Outdated items (i.e., lactated ringers bags) shall be replaced immediately.

- 2) On the day of the execution, members of the injection team shall enter the injection room at least two (2) hours prior to the scheduled time of the execution. They shall immediately re-inventory the supplies and equipment to ensure that all is in readiness.

2. Not less than twenty-four (24) hours prior anticipated use the necessary drugs shall be obtained.

- a. During the afternoon immediately proceeding the scheduled date of an execution by lethal injection, a member of the injection team shall obtain the necessary agents (drugs).

- b. When the drugs have been issued, and quantities verified, they shall be placed in the Lethal Injection Drug Box, and the box sealed with a non-reusable, sequentially numbered locking-type seal and a padlock.
- c. A member of the injection team shall maintain personal, physical custody of the sealed drug box until such time as it is opened for use and/or for return if not used.

3. IV Set-up Procedure

- a. At least ninety (90) minutes prior to the scheduled execution, the injection team shall be positioned in the Lethal Injection Chamber room.
- b. The QIC:
- 1) shall complete a pre-execution inventory and equipment check; and
 - 2) prepare the IV set-up.
- c. The 1,000 ml bag of lactated ringers solution will be opened and inspected. The administration set will be opened and the flow control valve moved to the top and closed off. The spike of the administration set will be placed in the port of the IV bag and secured with a twist. Fill the drip chamber to half full by squeezing the chamber.
- d. Attach the needle lock device to the top most "Y" site (closest to the IV bag) and secure. Attached the three (3) lead extension to the needle lock and secure. Attach the 20" extension set to the end of the administration set and tape the connection.
- e. Start the flow of IV fluid until all the air is out of the set-up. Place the IV pressure infuser over the IV bag and inflates until the green line is observed.
- f. Mark the three ports of the three lead extension as follows; Port #1, Port #2 and Port #3. Close all three flow clamps on the three lead extension. The set-up is ready to use.

- g. Steps one (1) through four (4) shall be repeated for the second set-up.
- h. The syringes containing the drugs shall be prepared and loaded in the following order.
 - 1) Two sixty (60)-cc syringes, each containing one hundred (100) M μ g. of Potassium Chloride in fifty (50)-cc. Label these "MED #3".
 - 2) Two sixty (60)-cc syringes, each containing one hundred (100) mg of Pavulon in fifty (50)-cc. Label these "MED #2".
 - 3) Two sixty (60)-cc syringe containing 2.0 grams of Sodium Pentothal (contents of four (4) five-hundred (500) mg vials dissolved in the least amount of diluent possible to attain complete, clear suspension).

The Sodium Pentothal, being a federally controlled drug, shall be prepared last, when it appears it will be used. Label this syringe "MED #1".

NOTE: Three syringes of Pavulon and three syringes of Potassium Chloride are prepared, even though the injection procedure only calls for two of each. The extra syringes are prepared as "stand-bys", in the event one of the others is dropped in handling during the injection procedure.

4. Injection Procedure

- a. The angiocath will be inserted into the vein of the left arm and secured in place. The flow of lactated Ringers shall be started and administered at a slow rate (20cc/hour).
- b. Prepare the left arm for the intravenous line by placing a constricting band one inch above the antecubital fossa. Select the vein to be cannulated.
- c. Clean the I.V. site with an alcohol prep. Start at insertion site and make circles, getting larger each time until a four inch area is clean.
- d. Open an angiocath of appropriate size, and stretch the skin at the insertion site. With a bevel up; 40 degree angle of attack, place the angiocath in

the vein. Advance the catheter over the stylette until the hub is at the level of the skin.

- e. REMOVE THE CONSTRICTING BAND.
- f. Apply pressure to the distal end of the I.V. catheter and remove the stylette. Attach the I.V. administration set, and start the flow of I.V. fluid.
- g. Observe the I.V. site for swelling or discoloration. Confirm that the I.V. is flowing.
- h. Secure the I.V. catheter with tape.
- i. Slow the I.V. to KVO, 20 to 30 ml/hr.
- j. Step one is repeated for the right arm. This line shall be held in reserve as a contingency in case of malfunction or blockage in the first line.

NOTE: At this point, the administration sets shall be running at a slow rate of flow, and ready for the insertion of the syringes containing the injection agents. Observation of both set-ups to ensure that the rate of flow is uninterrupted shall be maintained.

NO FURTHER ACTION shall be taken until the prearranged signal to start the injection of lethal agents is given by the Execution Commander.

- k. Witnesses to the execution shall be brought in only after the lactated Ringers IV's have been started and are running properly.
- l. Total anonymity of the injection team members in the injection room shall be maintained. At no time shall they be addressed by name, or asked anything that would require a verbal response.
- m. The tip of syringe "MED #1" (Sodium Pentothal) shall be inserted into the 3 lead extension port marked "Port #1". Open the flow clamp to port #1 and the injection shall commence. A steady even flow of the injection shall be maintained with only a minimum amount of force applied to the syringe plunger.
- n. "MED #1" will be removed from "Port #1" and the

flow clamp closed. The IV will be run wide open for ten seconds to flush the line.

- o. Attach the first syringe of "MED #2" to "Port #2", open the flow clamp to port #2 and inject the total contents of the syringe. When the first syringe is empty, close the flow clamp to port #2, switch to the second syringe of "MED #2", if necessary, open the flow clamp and inject the second syringe. Close the flow clamp to port #2.

- p. Open the flow control valve and run the IV wide open for ten seconds to flush the line.

- q. Attach the first syringe of "MED #3" to "Port #3", open the flow clamp to port #3 and inject the contents of the syringe. Close the flow clamp to port #3, switch to the second "MED #3" syringe, if necessary, open the flow clamp and inject the contents of the syringe. Close the flow clamp to port #3.

- r. Upon completion of the injections, or at such earlier time as may be appropriate, the physician shall examine the inmate to pronounce death. After the witnesses have been removed, both IV lines shall be removed from the veins and the tubing shall be passed through the opening into the Execution Chamber.

- s. Equipment and lethal drugs shall be gathered up by the OIC following the execution.

- 1) The OIC shall be responsible for the disposal of the medical equipment used for lethal injection. It will be treated with standard medical procedures.
- 2) The designee shall maintain security of the drugs until such time as they are turned over to the Warden.
- 3) The drugs shall be secured for a minimum of ten (10) days following the execution.
- 4) At least ten (10) days after the execution, and at the direction of the Warden, a designated staff member shall dispose of the drugs used for lethal injection in accordance with State and Federal laws.

Section VI

DEATH WATCH TEAM

(For detailed requirements refer to Appendix #19)

- A. The Death Watch Team shall maintain a log of all activities related to the inmate.
- B. ~~_____~~ the inmate shall be fingerprinted, and moved to the Death House housing area by the Death Watch Team.
- C. Upon orders from the Execution Commander, the Death Watch Team shall apply restraints to the inmate and assist, if necessary, in the application of the EKG leads and/or the catheters to the inmate.
- D. Upon orders from the Execution Commander, the Chief of Security and the Death Watch Team shall escort the inmate to the Death Chamber. The assigned Chaplain may escort the inmate as far as the Chamber Room door, if so requested by the inmate. Thereafter, the Chaplain shall exit the Death House and remain in the Command/Operations Center until completion of the execution.
- E. The Death Watch Team, under the direction of the Chief of Security, shall secure the inmate in the chair of the gas chamber or on the gurney and remove the handcuffs and leg irons.
- F. The designated personnel shall attach all monitoring equipment to the inmate, to be monitored by the medical personnel. The Chief of Security, and Escort Team shall exit the death chamber.
- G. The Chamber and Chemical Officers shall close the Gas Chamber or Lethal Injection Chamber door, assure that it is properly sealed, and notify the Execution Commander of same.
- H. The Chief of Security and the Death Watch Team shall return to the housing area of the Death House and stand by for further instructions. The medical personnel shall remain in the Execution Chamber area to monitor the inmate and report the findings to the Execution Commander.
- I. At the time of the execution, the only persons authorized to be in the execution Chamber area are:

1. Execution Commander
2. Warden, Maryland Penitentiary
3. Execution Team Members
4. Recorder/Key Control Officer
5. Medical Doctor

J. Once the Gas Chamber decontamination process is complete, the Chamber and Chemical Officers shall remove the inmate's body, remove all contaminated clothing, photograph the body and turn it over to the Death Watch Team who shall handle disposition in accordance with pre-designated procedures.

K. Once the witnesses are removed from the chamber, the Medical Officer shall remove the catheters from the body, remove all clothing, photograph the body and turn it over to the Death Watch Team who shall place it in a body bag and handle disposition in accordance with pre-designated procedures.

L. The Death Watch shall clean and secure the Death House housing area and will remain on duty until relieved by the Warden.

Section VII

LAST MINUTE STAY OR REVOCATION OF THE WARRANT OF EXECUTION

- A. At any time prior to the Execution Commander directing that the execution begin, and upon receiving a call from the Governor's Office ordering a last minute stay or revocation of the Warrant of Execution, the Assistant Warden, Maryland Penitentiary, shall stop the execution proceedings by shouting the designated code word.
- B. Once the proceedings are stopped, the witnesses will be removed from the Death Chamber and returned to the witness waiting area.
- C. The Execution Commander shall personally confirm the order from the Governor.
- D. Once confirmed, the Execution Commander shall order the inmate to be removed from the Death Chamber and will personally advise the witnesses of the cause of action.
- E. Further proceedings will be directed by the order and/or the Warrant of Execution.

Section VIII

POST EXECUTION PROCEDURES

- A. Official witnesses shall be escorted from the witness area to the Witness Waiting Room to be met by the Warden.
- B. The Execution Commander will call the Command/Operations Center, the Commissioner of Correction and if necessary, the Governor and DPSCS officials and report the results of the execution.
- C. The designated medical personnel shall sign the Certificate of Death (Refer to Appendix #21).
- D. Official witnesses shall sign the Certificate of Execution that verifies that the execution has been accomplished (Refer to Appendix #22).
- E. The Witness Escort Team shall transport official witnesses back to the designated location.
- F. The Assistant Warden, Maryland Penitentiary will take charge of the decontamination process (Refer to Appendix #13).
- G. The Execution Team shall be directed to return to the Death Chamber to remove the body. In the case of execution by lethal gas, when the decontamination process is complete, the body of the inmate shall be removed from the Gas Chamber, stripped of all contaminated clothing, photographed and turned over to the Death Watch Team for removal to the designated location to await pre-arranged pick up by the designated party. In the case of execution by lethal injection, the execution team will remove all catheters, strip it of all clothing, photograph it and turn it over to the Death Watch Team for placement in a body bag and removal to the designated location to await pre-arranged pick up by the designated party.
- H. The Death Chamber shall then be thoroughly cleaned and left in the state of readiness as described in instructions governing the care of the Death Chamber.
- I. As soon as practical after any press conference, the Execution Commander shall conduct a critique of the entire execution process.
- J. No later than twenty-four (24) hours after the completion of the execution the Warden shall submit to the Execution Commander, a detailed confidential report of the execution.

This report shall include:

1. A draft cover letter from the Execution Commander to the Commissioner announcing completion of execution.
 2. Serious Incident Report Form
 3. List of all staff involved and their roles.
 4. List of all official witnesses.
 5. List of all DOC personnel present.
EXCEPT THAT NAMES OF ALL MEMBERS OF THE EXECUTION TEAM SHALL BE SEALED IN A SEPARATE ENVELOPE ATTACHED TO THE REPORT AND WILL ONLY BE OPENED BY ORDER OF THE COURT.
 6. List of all staff from other agencies involved and their roles.
 7. Official record of execution as recorded by the Official Recorder, or copy of same.
 8. Certificate of Death, or copy of same.
 9. Certificate of Execution, or copy of same.
 10. Any other document and/or reports required by the Commissioner of Correction, Secretary of Public Safety and Correctional Services, or Governor of the State of Maryland.
- K. The Execution Commander shall prepare a report, summarizing the execution. The Commissioner shall distribute this report to the Governor, Secretary of Public Safety and Correctional Services, Public Information Office, etc.

INSTRUCTION SHEET

The attached Lethal Injection Execution Log shall be completed in detail at the time of an execution by the lethal injection. The actual time will be entered, any movement that occurred, problems that were encountered, etc., will be reported on this form. If additional space is needed, use the reverse side and/or additional sheets as necessary. Once the form is completed, it will be turned into the Execution Commander immediately.

CONTENTS OF SYRINGES

<u>LABELLED</u> <u>MARKED</u>	<u>CONTENTS</u>	<u>QUANTITY</u>
MED #1	Sodium Pentothal, 2.0 Gm. (four 500 mg vials dissolved in the least amount of diluent possible to attain complete, clear suspension).	2 syringe
MED #2	Pavulon, 50 mg per 50 cc. (five 10 cc ampules of 10 mg each in each syringe).	2 syringes
MED #3	Potassium Chloride, 50 mEq. (five 10 cc ampules of 10 mEq. each in each syringe).	2 syringes
	Total injection; 100cc/100 mEq., or two syringes. One extra made up as stand-by.	

Appendix 13-A

Lethal Injection Procedures Check Sheet

Date Set _____, 19____

A. Required Staff

	Check	Time
1. Execution Commander	()	()
2. Assistant Execution Commander, Warden	()	()
3. Primary operators, Lethal Injection Chamber, (3)	()	()
a. OIC	()	()
b. Operator 2	()	()
c. Operator 3	()	()
4. Chamber Recorder, Key control Officer	()	()
5. Assistant Warden, communications	()	()
6. Security Chief	()	()
7. Death Watch Officer (1)	()	()
8. Death Watch Officer (2)	()	()
9. Medical Doctor	()	()
10. Maintenance Officer (1)	()	()
11. Maintenance Officer (2)	()	()

Appendix 13-A

B. Preparations for Operations of the Lethal Injection Chamber

1. The Execution Team will conduct an inventory of necessary materials (not more than 96 hours prior to execution) () ()
2. The execution Team will re-inventory necessary materials at least two hours prior to execution () ()
3. Not less than 24 hours prior to the execution the agents are obtained () ()
4. Drugs are issued, checked, and placed in the lethal injection drug box () ()
5. The lethal injection drug box is sealed () ()
6. Injection Team member must maintain personal control of drug box () ()
7. The OIC of the Injection Team shall ensure that the gas chamber drape and the Witness Room drape are in the closed position. () ()

NAME: _____

Appendix 13-A

C. I.V. Set-Up Procedure

1. 90 minutes prior to execution, the Injection Team is in the Lethal Injection Chamber Room () ()
2. The OIC shall prepare the necessary equipment, complete a pre-execution inventory and equipment check () ()
 - (a) Prep-table

6	60 cc syringes	()	()
2	I.V. Bags	()	()
2	Administration sets	()	()
2	Needle locks	()	()
2	3 Lead extensions	()	()
2	Extensions	()	()
6	18 gauge 1 1/2 straight needles	()	()
2	Pressure infusion bags	()	()
 - (b) Instrument Stand #1

6	Alcohol prep pads	()	()
3	Angiocath 20 gauge	()	()
3	Angiocath 18 gauge	()	()
3	Angiocath 16 gauge	()	()
1	Constricting band	()	()
1	Roll tape	()	()
2	4 x 4 pads	()	()
 - (c) Instrument Stand #2

3	Pair gloves	()	()
3	Pair eye protectors	()	()
3	Surgical masks	()	()
3. Execution Commander notified
Set-up equipment has been prepared
 - a. Execution Commander approves set-up equipment () ()
 - b. Execution Commander instructs OIC to begin set-up process () ()
4. The I.V. bag will be opened and inspected () () () ()

Appendix 13-A

- And the administration set is now opened to the top and closed () () () () ()
6. Insert the I.V. bag chamber half with a way () () () () ()
7. Attach the needle lock to the top () () () () ()
8. Attach the 3 lead extension to the needle lock and secure () () () () ()
9. Attach the 20" extension set to the administration set and tape () () () () ()
10. Start the flow of IV fluid until all () () () () ()
11. Place the pressure infuser over the I.V. bag and inflate to green line () () () () ()
12. Mark the ports of the 3 lead extension; #1, #2, #3 or use color code markings () () () () ()
13. Repeat steps 4 thru 11 (for the second line) () () () () ()
14. Execution Commander is notified that set-up is complete () () () () ()
- a. Execution Commander approves set-up () () () () ()
15. Execution Commander instructs OIC to prepare medication () () () () ()
16. Warden tests red/green lights in Lethal Injection Room and Chamber Lights to be in off position () () () () ()

D. Medication Preparation

1. Prepare two syringes 60cc: Potassium Chloride, 100 meq each. Label Med #3 or use color code () () () () ()
2. Prepare two syringes 60cc Pavulon, 100 mg each. Label MED #2 or use color code () () () () ()
3. Prepare two syringe 60cc () () () () ()

Revised 4/1/94

34

Appendix 13-A

Sodium Pentathol, 2,000mg. Label
MED #1 or use color code

4. OIC notifies Execution Commander
MEDS are prepared () ()

E. Placement of Inmate in Execution Chamber

1. Execution Commander directs Warden
to escort the inmate to the Lethal
Injection Chamber and place him on
the gurney () ()
2. Warden directs Death Watch Team to
prepare the inmate for the execution () ()
 - a. Death Watch Team places inmate
on the gurney in the Lethal
Injection Chamber and straps
him down () ()
 - b. Death Watch Team exits Lethal
Injection Chamber, closes door
and stands by in the Death
House housing area () ()

F. Injection Procedure

1. Place a constricting band on the left
arm, one inch above the antecubital
fossa. Select a vein. () () () ()
2. Clean the I.V. site with alcohol. () () () ()
3. Open an angiocath of appropriate
size. () () () ()
4. Stretch the skin at the site and
insert the angiocath, bevel up. () () () ()
5. Advance the catheter over the
stylette. () () () ()
6. REMOVE THE CONSTRICTING BAND () () () ()
7. Apply pressure to the distal end
of the catheter and remove the
stylette. () () () ()

Appendix 13-A

8. Attach the I.V. tubing and start the flow of fluid. () () () ()
9. Observe for swelling or discoloration Confirm flow of I.V. () () () ()
10. Secure the I.V. with tape. () () () ()
11. Slow the I.V. to KVO, 20-30 ml/hr () () () ()
12. An angiocath will be secured in the right arm, following steps 1 thru 11 () () () ()
13. OIC verifies that the execution process is ready to begin and notifies the Execution Commander () () () ()
14. Lights are turned down in the Lethal Injection Room and the Witness Room () () () ()

G. Escort of Witnesses to Witness Area

1. Execution Commander escorts witnesses to Witness Room () ()
2. Witnesses in place in witness area () ()
3. Execution Commander opens drapes to witness area () ()

H. Execution Procedure

NOTE: At any time the Execution Commander, Warden or OIC find it necessary to stop the execution process, they shall light the red light and turn off the green light. If open, the Witness Room drapes will be immediately closed until the cause is determined. Witnesses will be notified as appropriate by the Execution Commander.

1. Signal to commence the execution is given by the Execution Commander by lighting the green light in the Lethal Injection Room () ()
- a. The Warden will light the green light in the Execution Chamber indicating MED #1 is being administered () ()

Appendix 13-A

2. MED #1 is inserted into Port #1, () ()
the flow clamp opened and the
medication administered to the left
arm of the inmate
3. MED #1 removed, flow clamp closed, () ()
I.V. run wide open for ten seconds
 - a) The Warden will turn off the () ()
green light in the Lethal
Injection Chamber, indicating
MED #1 has been administered
4. MED #2 is inserted into Port #2, () ()
the flow clamp opened and the
medication administered
 - a. The green light is turned on () ()
indicating MED #2 is being
administered
5. MED #2 (second syringe) is () ()
administered in Port #2
6. MED #2 removed, flow clamp closed () ()
I.V. runs wide open for ten seconds
 - a. Turn off green light to () ()
indicate MED #2 has been
administered
7. MED #3 is inserted into Port #3, () ()
the flow clamp opened and the
medication administered
 - a. Turn on green light to indicate () ()
MED #3 is being administered
8. MED #3 (second syringe) is () ()
administered in Port #3
 - a. Turn off green light to () ()
indicate MED #3 has been
administered
9. Close the flow clamp to Port #3 () ()
10. When it appears to the Medical Doctor () ()
observing the inmate from the Lethal
Injection Room that death has

Revised 4/1/94

37

Appendix 13-A

occurred, he shall advise the OIC/
Warden

- a. The OIC/Warden shall continuously turn the green light on/off in a blinking manner () ()
11. Upon observing the blinking green light, the Execution Commander will close the Witness Room drapes, turn off the green light in the Lethal Injection Room and summon the Medical Doctor to confirm death () ()
12. Medical Doctor will confirm death () ()
13. The Warden will prepare a Certificate of Execution and present it to the Execution Commander. All persons will exit the Lethal Injection Chamber and stand by. () ()
14. Execution Commander reads the Certificate of Execution to the witnesses and directs them back to the Witness Waiting Area () ()
15. Witnesses are escorted out of the Injection Chamber Room () ()
- a. Witness Room door is closed and locked () ()
16. I.V. will be removed and passed into the injection room () ()
17. OIC collects all equipment () ()
18. Unused drugs are secured, placed in the secure Lethal Injection Drug Box, and held for ten days () ()
19. Execution Team removes all clothing from the inmate () ()
20. Body is photographed by the Execution Team () ()
21. Inmate clothing is disposed of in () ()

Revised 4/1/94

Appendix 13-A

the disposal bag

22. Body is placed in body bag by the Death Watch Team and disposed of per pre-determined arrangements () ()

23. Warden designates staff member to dispose of drugs () ()

24. Drugs are disposed () ()

I. The Execution Commander will conduct a critique of the execution process immediately following the clean-up process

57

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STEVEN HOWARD OKEN,

Plaintiff,

v.

**Frank C. Sizer, Jr., Commissioner
Maryland Division of Correction,**

**William Williams, Warden
Maryland Correctional Adjustment Center
Baltimore, Maryland**

**Gary Hombaker, Warden
Metropolitan Transition Center**

and

UNKNOWN EXECUTIONERS,

Defendants.

AFFIDAVIT OF JEROME H. NICKERSON JR. ESQ.

After being duly sworn by me a Notary Public for the State of Maryland, Jerome H. Nickerson Jr., Esq. did state as follows:

1. My name is Jerome H. Nickerson, Jr. and I reside at 1104 William Street, Baltimore, Maryland.
2. I am an attorney and member in good standing of the Maryland Court of Appeals. For fifteen years my practice has consisted almost exclusively of state and federal post-conviction representation of death sentenced inmates in Florida, Maryland, Pennsylvania and South Carolina.

3. In 1994, I was appointed by the Federal District Court for the District of Maryland to represent Mr. Tyrone X. Gilliam in federal habeas corpus proceedings challenging Mr. Gilliam's convictions and sentence of death in the Circuit Court for Baltimore County, Maryland. For four years I represented Mr. Gilliam before the District Court, the United States Court of Appeals for the Fourth Circuit and the United States Supreme Court.

4. Ultimately, all of Mr. Gilliam's challenges were rejected by the federal courts and the Governor of Maryland, the Hon. Paris Glendening, denied Mr. Gilliam's request for executive clemency.

5. On the evening of November 16, 1998, I was present in the death house of the Maryland Penitentiary when the sentence of death imposed by the Circuit Court for Baltimore County was carried out. Other individuals present in the death house who I recognized, included Mr. Gilliam's spiritual adviser, Sister Ashida Kalil and two media witnesses selected by the Maryland Department of Corrections, Ms. Caitland Franke of the Baltimore Sun and Mr. Greg Toppo of the Associated Press.

6. After I was escorted to the death house the curtain to the window separating the death chamber from the witness gallery was retracted. I was standing directly in front of the window of the lethal execution chamber when the curtain was pulled back.

7. At that time I observed Mr. Gilliam lying on the execution gurney with his arms outstretched. From this vantage point I could see that IV lines had already been established by the execution team in both of his arms. From my position I could see the IV lines stretched from Mr. Gilliam's arms back to an opening in a wall of the lethal injection chamber.

8. Immediately, when the execution began, I observed fluid running down the exterior surface of the IV line closest to the witness gallery. I watched as this fluid followed the path of the IV line from the opening in the wall into the execution chamber to where the line arced upwards towards Mr. Gilliam's arm. At the lowest point of the IV line drops of fluid began to fall and collect on the floor of the lethal injection chamber. This dripping continued throughout Mr. Gilliam's execution.

9. The dripping began immediately after the IV line jerked or twitched for the first time. By this I mean that I observed the IV line closest to me sway back and forth and jump as if it had been infused with pressure. I viewed the IV line jerk three times in this fashion. After each of these three jerks I noticed the volume of liquid traveling down the exterior of the IV line increase and a corresponding increase in the rate of fluid dripping. After each jerking motion the volume of dripping fluid would increase and would then slow until the line jerked again when the rate of dripping would again increase.

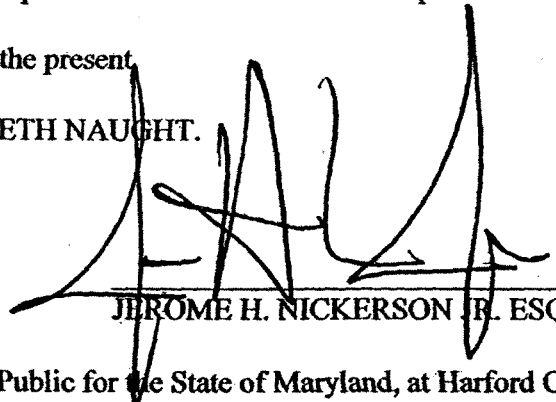
10. After I observed the first jerk in the IV line I noted fluid continuously drip from this line onto the floor of the execution chamber. By the time Mr. Gilliam was pronounced dead a puddle of liquid had formed on the floor of lethal injection chamber immediately below where the IV line was located. This puddle had an irregular circumference of five to seven inches across.

11. As we were escorted from the death house I was joined by Ms. Franke of the Baltimore Sun and Mr. Toppo of the Associated Press. We were taken to a room close to the front entrance of the Maryland Penitentiary where we were instructed to wait before being taken to the Reception and Classification Center where the Department of Corrections was to hold a

press conference regarding Mr. Gilliam's execution. While in this room I recall Ms. Franke asking a Department of Corrections official regarding the fluid seen dripping during Mr. Gilliam's execution. I recall this official's answer to Ms. Franke's inquiry was that dripping fluid during a lethal injection execution was "normal" and the execution team encountered no problems during Mr. Gilliam's execution. When I attempted to enter the press conference at the Reception and Classification Center I was advised by a Department of Corrections officials I would not be permitted to attend and a guard was instructed to escort me off Department of Corrections property.

12. This affidavit does not exhaust my knowledge regarding lethal injection executions in general, the 1994 Execution Procedures adopted by the Maryland Department of Corrections or other practices of the Maryland Department of Corrections with respect to lethal injection executions from the period 1994 to the present.

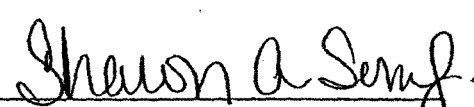
FURTHER AFFIANT SAYETH NAUGHT.



JEROME H. NICKERSON JR. ESQ.

Signed before me, a Notary Public for the State of Maryland, at Harford County,

Maryland this 14th day of May 2004.



Notary Public for the State of Maryland

My Commission Expires:

SHARON A. SOMJI
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires January 15, 2005