IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

VERNON BROWN, *Plaintiff*, v. LARRY CRAWFORD, Director, Department of Corrections; JAMES D. PURKETT, Superintendent, Eastern Reception Diagnostic Correctional Center; and JOHN DOES 1-666, Anonymous Executioners, *Defendants*.	**This is a capital case.** EXECUTION SCHEDULED FOR MAY 18, 2005 No. _____ JURY TRIAL DEMANDED EXPEDITED HEARING REQUESTED

VERIFIED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW the plaintiff, Vernon Brown, by and through appointed counsel, Richard H. Sindel and John William Simon, and—as authorized by 42 U.S.C. § 1983—prays the Court for its declaratory judgment holding that the existing procedure for lethal injection that the

State of Missouri and its officials, officers, and employees, acting under color of state law, use in executions violates the Eighth and Fourteenth Amendments, by inflicting on him cruel and unusual punishment, which thereby deprives him of life, liberty, or property without due process of law, in that the defendants' selection of a three-chemical sequence—itself unnecessary to bring about the statutory goal of his death—in its applying its method of lethal injection creates a foreseeable risk of the infliction of gratuitous pain, and for its preliminary injunction to prevent them from executing him at all until he has an opportunity to present his case after discovery and in open court, and thereafter a permanent injunction to prevent the defendants from using this procedure on the plaintiff; for its order granting the plaintiff reasonable attorneys' fees and costs; and for such other relief as the Court finds appropriate.

I. Summary

As set forth in detail in the declarations of anesthesiologists Mark J.S. Heath, M.D. (Attachment A), and David A. Lubarsky, M.D. (Attachment B) which are attached to this complaint, the use of a specific succession of chemicals in judicial executions by lethal injection—which the defendants or their predecessors in office have admitted they use—creates a

foreseeable risk of the gratuitous infliction of pain and suffering, in that the first chemical is used by health-care professionals specifically because it wears off when the patient experiences stimuli which produce pain; the second chemical paralyzes the prisoner such that he cannot breathe and he suffers from suffocation, but cannot cry out or even flinch because of the paralysis; the third chemical burns as it works its way through his veins to the heart, killing him with a heart attack. The LANCET co-authors found that in 43% of executions, the levels of anesthetic were inadequate to render the prisoner unconscious at the time of his death; and those were in jurisdictions which were careful enough to keep records and confident of the humanness of their several practices to share these data with the co-authors. None of these chemicals are required by Missouri statute; none are necessary to bring about the death of the plaintiff. The Eighth Amendment forbids the gratuitous infliction of pain and suffering. Plaintiff is entitled to the relief he seeks.

II. Parties

1. Plaintiff, **Vernon Brown**, is a citizen of the United States and a resident of the State of Missouri.

2. Plaintiff is a person within the jurisdiction of the State of Missouri.

3. Plaintiff was sentenced to death in the Circuit Court of the City of St. Louis (the Hon. Evelyn M. Baker, Circuit Judge) for the homicide of a minor child, J.P.

4. Plaintiff is attacking the conviction and sentence of the Circuit Court of the City of St. Louis in one or more petitions for certiorari in the Supreme Court of the United States, but not in this complaint.

5. On April 15, 2005, the Supreme Court of Missouri issued a warrant of execution specifying that the plaintiff be executed on May 18, 2005.

6. Plaintiff is incarcerated at the Eastern Missouri Reception, Diagnostic & Correctional Center, 2727 Highway K, Bonne Terre, St. Francois County, Missouri 63628.

7. Defendant **Larry Crawford** is Director of the Department of Corrections of the State of Missouri.

8. Defendant Crawford is specifically authorized and directed by state statute to prescribe and direct the means by which the Department of Corrections carries out executions within the statutorily specified methods

of lethal gas or lethal injection.[1] Plaintiff does not in this complaint contend that lethal injection is per se unconstitutional.

9. Defendant Crawford is sued in his individual and official capacity for the purpose of obtaining declaratory and injunctive relief.

10. Defendant **James D. Purkett** is Superintendent of the Eastern Reception, Diagnostic & Correctional Center (ERDCC), in Bonne Terre, St. Francois County, Missouri.

11. Defendant Purkett is "warden" or chief executive officer of ERDCC, and is therefore charged with the management of ERDCC.

12. Defendant Purkett's principal place of business is the Eastern Reception, Diagnostic & Correctional Center (ERDCC), 2727 Highway K, Bonne Terre, St. Francois County, Missouri 63628.

13. Defendant Purkett is a resident of the Eastern District of Missouri.

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[1]Mo. Rev. Stat. § 546.720: "The manner of inflicting the punishment of death shall be by the administration of lethal gas or by means of the administration of lethal injection. And for such purpose the director of the department of corrections is hereby authorized and directed to provide a suitable and efficient room or place, enclosed from public view, within the walls of a correctional facility of the department of corrections, and the necessary appliances for carrying into execution the death penalty by means of the administration of lethal gas or by means of the administration of lethal injection."

14. ERDCC is where the State of Missouri began conducting its executions on April 27, 2005.

15. By virtue of his authority over the staff of ERDCC, defendant Purkett is responsible for the way in which executions are conducted in Missouri.

16. Defendant Purkett is sued in his individual and official capacity for the purpose of obtaining declaratory and injunctive relief.

17. Defendants **John Does 1-666** are officials, officers, employees, agents, and servants of the State of Missouri who, by virtue of their employment or other status (including independent contractors and volunteers under the supervision of the defendants and their designees), participate in the planning of, purchasing and preparation for, carrying out of, and covering up of details about executions in the State of Missouri.

18. Plaintiff cannot provide the Court the natural names of these individuals because the State of Missouri and its officials, officers, and employees have thus far kept them secret.

19. **John Does 1-666** are sued in their individual and official capacities for the purpose of obtaining declaratory and injunctive relief.

20. Each and all of the foregoing defendants Crawford, Purkett, and Does 1-666 at all times relevant to this complaint were acting in their official capacities with respect to all acts and omissions described in this complaint, and were in each instance acting under color of state law.

21. Unless permanently enjoined against doing so, the defendants and each of them intend to act in their respective official capacities and under color of state law to execute the plaintiff by lethal injection in the manner set forth in this complaint.

III. Jurisdiction

22. Plaintiff brings this action to enforce and protect his rights under the Eighth Amendment to the United States Constitution, as applied against the states by the Fourteenth Amendment.

23. This Court has jurisdiction over this cause under 28 U.S.C. § 1331, in that it arises under the Constitution of the United States; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations, under color of state law, of rights, privileges, and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), in that it seeks to secure equitable relief under an Act of Congress, *i.e.*, 42 U.S.C. § 1983, which provides a cause of action for the protection of rights, privileges, or

immunities secured by the Constitution and laws of the United States; under 28 U.S.C. § 2201(a), in that one purpose of his action is to secure declaratory relief; and under 28 U.S.C. § 2202, in that one purpose of his action is to secure permanent injunctive relief.

IV. Venue

24. Venue is proper in this federal judicial district under 28 U.S.C. § 1391(b)(2) in that the events giving rise to this claim will, absent the action of this Court as prayed for in this action, occur in its territorial jurisdiction.

V. Facts

25. Plaintiff restates and realleges the contents of each preceding paragraph as if fully set forth again.

26. Defendants intend to execute the plaintiff on May 18, 2005, by lethal injection using a succession of three chemicals: sodium pentothal, pancuronium bromide, and potassium chloride.

27. As set forth in greater detail in the declarations of anesthesiologists, Mark J.S. Heath, M.D. (Attachment A), and David A. Lubarsky, M.D. (Attachment B), the use of this succession of chemicals in judicial executions by lethal injection creates a foreseeable risk of the

gratuitous infliction of pain and suffering. The use of this succession of chemicals, or of any one or more of them, is absolutely unnecessary to bring about the death of the plaintiff. (*E.g.*, Attachment A, ¶¶ 25, 36, 41 & 45.)

28. Specifically, sodium pentothal, also known as thiopental, is a ultra-short acting substance which produces shallow anesthesia. Health-care professionals use it as an initial anesthetic in preparation for surgery while they set up a breathing tube in the patient and use different drugs to bring to patient to a "surgical plane" of anesthesia that will last through the operation and will block the stimuli of surgery which would otherwise cause pain. Sodium pentothal is intended to be defeasible by stimuli associated with errors in setting up the breathing tube and initiating the long-run, deep anesthesia; the patient is ***supposed*** to be able to wake up and signal the staff that something is wrong. (Attachment A ¶¶ 20-22.)

29. Sodium pentothal is unstable in liquid form, and must be mixed up and applied in a way that requires the expertise associated with licensed health-care professionals who cannot by law and professional ethics participate in executions. (Attachment A, ¶ 26.)

30. The second chemical the defendants use in lethal injections is pancuronium bromide, sometimes referred to simply as pancuronium. It is not an anesthetic. It is a paralytic agent, which stops the lungs. It has two contradictory effects: first, it causes the person to whom it is applied to suffer suffocation when the lungs stop moving; second, it prevents the person from manifesting this suffering, or any other sensation, by facial expression, hand movement, or speech. (Attachment A, ¶¶ 27-30.)

31. When sodium pentothal is exposed to pancuronium bromide, it precipitates. It is then no longer active as an anesthetic. Any one of a number of mistakes, or simply bad luck, can cause this to happen. In the absence of the assurance that the executioners have the same skills as anesthetists or nurse-anesthetists, the likelihood is substantial that this will happens in any given execution by lethal injection performed in the State of Missouri.

32. Pancuronium bromide is unnecessary to bring about the death of a person being executed by lethal injection. Its only relevant function is to prevent the media and the conscientious staff from knowing when the sodium pentothal has worn off and the prisoner is suffering from

suffocation or from the administration of the third chemical. (Attachment A, ¶ 41.)

33. That third chemical is potassium chloride, which is the substance that causes the death of the prisoner. It burns intensely as it goes through the veins toward the heart. Because the veins are running back to the heart after the arteries have carried it to the extremities, the blood runs more slowly than it does in the arteries. This prolongs the pain the prisoner suffers when the sodium pentothal wears off, as it is selected by surgical anesthetists because it does. (Attachment A, ¶¶ 43-44.)

34. When the potassium chloride reaches the heart, it causes a heart attack. If the sodium pentothal has worn off by the time, the prisoner feels the pain of a heart attack, but no one can tell because the pancuronium bromide has paralyzed his face, his arms, and his entire body so that he cannot express himself either verbally or otherwise. (Attachment A, ¶¶ 43-46.)

35. Veterinarians are prohibited by law from using these chemicals in euthanizing animals, because the veterinary profession knows that they are cruel means of bringing about the death of a sentient being.

(Attachment A, ¶¶ 25, 37-40 & 47-50.) They cause pain and suffering far in excess of what is necessary to bring about the mere extinguishment of life.

36. Veterinarians are forbidden to use these chemicals even though they may personally participate in euthanasia and may also recruit and retain the most qualified available personnel to assist them. By contrast, physicians are forbidden by the Hippocratic Oath and by positive law from participating in executions. (Attachment A, ¶¶ 55-58.)

37. In a study published the day after the Missouri Supreme Court set the execution date in this case, Dr. David A. Lubarsky and three co-authors published in the world-renowned medical journal THE LANCET the results of their research on the effects of these chemicals in lethal injections in the few states which bothered to conduct autopsies and prepare toxicology reports, and which did not refuse to produce these data for these scholars.

38. This publication is Exhibit 2 to Attachment B, the declaration of the plaintiff's expert witness Dr. Lubarsky.

39. The LANCET team found that in 43% of the lethal injections they studied, the prisoner had an inadequate amount of sodium pentothal in his bloodstream to provide anesthesia. (Attachment B, ¶ 16.) In other words,

in close to half of the cases, the prisoner felt the suffering of suffocation from pancuronium bromide, and the burning through the veins followed by the heart attack caused by the potassium chloride.

40. Another Missouri prisoner under sentence of death, Timothy Johnston, has filed an action before this Court under 42 U.S.C. § 1983 raising substantially the same claim that this plaintiff is raising. *Johnston v. Kempker*, No. 4:04-CV-01075-DJS (E.D. Mo. Mar. 31, 2005) (memorandum in support of motion to compel answers filed by plaintiff Johnston's counsel).

41. Represented by the Office of the Attorney General, specifically Assistant Attorneys General Denise G. McElvein and Stephen David Hawke, the defendants in the *Johnston* case—including the predecessor in office of defendant Crawford and also defendant Purkett—have resisted virtually every syllable of discover promulgated by Mr. Johnston's counsel, but have admitted, by their response to interrogatories to defendant Crawford's predecessor in office (Attachment C at 4), that the defendants use the three chemicals identified in this complaint, though the defendants have refused to disclose the amounts or the timing of their administration.

42. Although a Missouri statute specifies that death sentences will be carried out by lethal gas or lethal injection, it does not prescribe any

given chemical to be used in either process, but leaves these decisions up to defendant Crawford.[2]

43. In *Johnston v. Kempker*, the defendants have refused to disclose the training or lack thereof which the actual executioners have had. Only blind faith would lead this Court to find that the personnel they have been able to recruit to participate in this activity have the skills of licensed medical and veterinary professionals which would be necessary to administer the chemicals in a minimally competent manner. (Attachment A, ¶¶ 55-58; Attachment B, ¶¶ 19.f & 21.)

44. One of the defenses the *Johnston* defendants asserted was nonexhaustion of administrative remedies. (Attachment D at 12-13.) Mr. Johnston's counsel filed an Informal Resolution Request (IRR) in which Mr. Johnston had sought to raise the grievance in his complaint, Mr. Jones's, and this one, but the Department of Corrections had not processed the grievance beyond noting in writing that it raised "a non-grievable issue." (Attachment E.) Although the Johnston defendants' counsel, Ms. McElvein and Mr. Hawke, filed a reply to the response to which this IRR was an exhibit, they did not dispute the plaintiff's showing that because the issue

[2]Mo. Rev. Stat. § 546.720.

was non-grievable according to the agency which promulgated the grievance policy on which the defense of nonexhaustion relied, the defense was unavailing. (Attachment F at 5 (digitally signed "/s/Denise G. McElwein").

45. On January 21, 2005, the plaintiff filed a pleading in the Missouri Supreme Court asking it not to set an execution date in his case on the basis of his grievance with the use of the three-chemical sequence described in the attached declarations, and that it not do so while the defendants' motion to dismiss was pending before this Court in Mr. Johnston's case.

46. On April 15, 2005, the Missouri Supreme Court set an execution date notwithstanding his pleading as aforesaid, which it had duly filed and to which the Office of the Attorney General (specifically counsel of record for the state, Assistant Attorney General Stephen D. Hawke) filed no response.

47. On April 16, 2005, Dr. Lubarsky (whose declaration is attached to this complaint) and his co-authors published in the world-renowned medical journal THE LANCET the article attached to Dr. Lubarsky's declaration (Attachment B) as Exhibit 2.

48. This article confirmed, through the analysis of empirical after-the-fact data, that the scientific critique of the use of sodium pentothal, pancuronium bromide, and potassium chloride creates a foreseeable risk of the gratuitous infliction of pain on a person being executed.

49. On April 21, 2005, the plaintiff filed a petition for a writ of habeas corpus under Mo. S. Ct. R. 91 before the Missouri Supreme Court, renewing the grievance he had set forth on January 21, 2005, but with the additional authority of the LANCET article by Dr. Lubarsky and his co-authors.

50. On the same day that the plaintiff filed his state habeas corpus petition challenging this three-chemical sequence on the new basis of the LANCET article, so did Donald Jones, CP-110, represented by the undersigned court-appointed counsel.

51. The Missouri Supreme Court denied Mr. Jones's petition the next day.

52. Represented by Michael A. Gross—his lead appointed counsel in the federal courts—Mr. Jones filed an action under 42 U.S.C. § 1983 on Monday, April 25, 2005, less than forty-eight hours before his scheduled execution using this sequence of three chemicals.

53. The same day, the Court (the Hon. Rodney W. Sippel, District Judge) held a proceeding at which Mr. Jones was represented by Mr. Gross, and the defendants (including defendants Crawford and Purkett here) were represented by Assistant Attorneys General Denise McElwein, in person, and Andrew W. Hassell, by telephone. (Attachment G is a true and correct copy of the transcript of proceedings in the Jones section 1983 action.)

54. Before Judge Sippel, Ms. McElwein (who had signed a pleading in the Johnston case recognizing by silence that the issue before Judge Sippel was non-grievable) re-raised the defense of nonexhaustion of administrative remedies:

> . . . even if you look at this as a Section 1983 action, then it is barred under the Prison Litigation Reform Act because the plaintiff has failed to allege that he has exhausted his administrative remedies as required by the PLRA.
>
> And I think the PLRA is pretty clear that no action—it says: "No action shall be brought with respect to prison conditions under Section 1983 until such administrative remedies as are available are exhausted."
>
> And according to this circuit in *McAlphin v. Morgan*, 216 F.3d. 680, which is a 2000 Eighth Circuit

> opinion, states that dismissal is appropriate in the absence of proof of exhaustion.[3]

55. After retiring to deliberate, Judge Sippel returned to the courtroom and announced that he was relying on Ms. McElwein's nonexhaustion defense as his first and basic reason for denying relief: "the basis of my judgment will be that the complaint fails to state a cause of action under Section 1983 for failure to exhaust administrative remedies." (Attachment G at 30-31.)

56. Over a vote of five to two for commutation by the Board of Probation & Parole, the Governor denied executive clemency, and the defendants executed Mr. Jones on April 27, 2005, at or about 12:01 a.m.

57. Later the same morning (after the fact of the execution was public knowledge), the district court (the Hon. Carol E. Jackson) granted Mr. Brown's motion—filed before the Missouri Supreme Court had set an execution date—for leave to proceed ex parte to request funding for expert and investigative services. Thereafter and thereby, Mr. Brown's counsel were able to obtain the services, inter alia, of the senior co-author of the LANCET article published the day after the Missouri Supreme Court set Mr. Brown's execution date.

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[3]Attachment G at 22-23.

58. After this Court allowed the plaintiff's counsel to seek funding for expert and investigative services without disclosing their mental impressions to opposing counsel, the Missouri Supreme Court summarily denied the plaintiff's habeas corpus action raising this issue, with explanation and without ordering the respondents to show cause or otherwise respond.

59. This complaint is being filed as soon as counsel received the attached declarations prepared by the LANCET team and by the leading expert on the underlying mechanism under which the defendants' three-chemical sequence creates a foreseeable risk of inflicting gratuitous pain.

60. Unless the defendants answer several questions that the LANCET team has expressed through Dr. Lubarsky's declaration (Attachment B, ¶¶ 19-21), and which are reflected in the plantiff's discovery, the petitioner is entitled to the inference that because the defendants' practices are substantially similar to those of the lethal-injection jurisdictions which conducted autopsies and toxicology reports, which kept records of them, and which disclosed them to the LANCET scholars, there is at least the same risk (43%) as in those jurisdictions that he will not be anesthetized at the time of his death. (Attachment B, ¶¶ 22-23.)

VI. Claim for Relief

61. Plaintiff restates and realleges the contents of each preceding paragraph as if fully set forth again.

62. Unless this Court stops them, the defendants, acting individually and under color of state law, will violate the plaintiff's right to be free of cruel and unusual punishments secured to him by the Eighth Amendment to the Constitution of the United States as applied against the states by section 1 of the Fourteenth Amendment by executing him using the sequence of three chemicals (sodium pentothal a/k/a thiopental, pancuronium bromide, and potassium chloride) which they have admitted to be their practice in their discovery responses in *Johnston v. Kempker* as aforesaid, which is unnecessary as a means of employing lethal injection and not required by the statute creating this form of execution in the State of Missouri, and which creates a foreseeable risk of inflicting gratuitous pain and suffering.

VII. Exhaustion of Administrative Remedies

63. As noted, in the *Johnston* and *Jones* litigation, the defendants initially asserted that the plaintiff had failed to exhaust administrative remedies.

64. In *Johnston*, the defendants' clients in the Department of Corrections had admitted, by notation on Mr. Johnston's IRR, that the issue of which chemicals the executioners use is "non-grievable."

65. Counsel for the defendants recognized this fact by dropping the nonexhaustion point in the reply to Mr. Johnston's response to which the IRR was attached as an exhibit.

66. The same counsel raised the same defense in *Jones*, knowing that this issue was not grievable according to the Department of Corrections, in whose favor the exhaustion requirement of 42 U.S.C. § 1997e is supposed to run; the Court relied on her representations; Mr. Jones was executed by the use of the specific chemical sequence which Mr. Johnston's pleadings, his pleadings, and Mr. Brown's pleadings show to create a foreseeable risk of inflicting gratuitous pain and suffering in violation of the Eighth and Fourteenth Amendments.

67. As of the time this claim manifested itself beyond cavil with the publication of the LANCET article, Mr. Brown was not only aware of what happened to Mr. Johnston's grievance but had also heard that when prisoners have attempted to file IRR's on this issue, the staff of the

Department of Corrections have actually refused to give them IRR forms because of the Department's position that the issue was not grievable.

68. Nonetheless, on the advice of counsel, Mr. Brown has filed an IRR and submits a true and correct copy of it with a cover affidavit as Attachment H. This filing is in an abundance of caution and not by way of admission that the issue is grievable notwithstanding the well-established position of the Department of Corrections, reflected both to this Court through counsel and to the prisoners affected by the issue by the staff of the Department.

69. Because the issue which chemicals the state uses in lethal injections is not within the scope of the Department of Corrections grievance policy, this complaint is not subject to the requirement of 42 U.S.C. § 1997e which applies to suits about the heat of beans served at meals, etc.

70. Parties in privity with the State of Missouri, such as these defendants, are estopped to assert the nonexhaustion of administrative remedies because the Department of Corrections does not consider this issue grievable (and their attorneys know it) and because the plaintiff has

given the Missouri Supreme Court a clear opportunity to resolve this issue by filing a petition under its Rule 91.

71. In any event, the plaintiff observes ex gratia that just as a constitutional challenge to the specific selection and sequence of chemicals used in a lethal injection is not an attack on the fact or duration of his confinement, it is not an issue of "prison conditions" either, but falls between these two categories and is among the deprivations of federal constitutional rights for which section 1983 provides a remedy on the facts and circumstances of this case.

VIII. Prayer for Relief

72. Initially, the plaintiff seeks a preliminary injunction to prevent the defendants from executing him until the defendants have responded to his discovery (including what appears to be the inevitable time it will take to litigate motions to compel as Mr. Johnson has had to do) and until this Court has adjudicated his underlying claim for relief on the merits (including the time it would take for any appeal from the disposition).

73. Second, the plaintiff seeks a declaratory judgment holding that the defendants' current means, methods, practices, procedures, and

customs regarding execution by lethal injection violate the Eighth and Fourteenth Amendments.

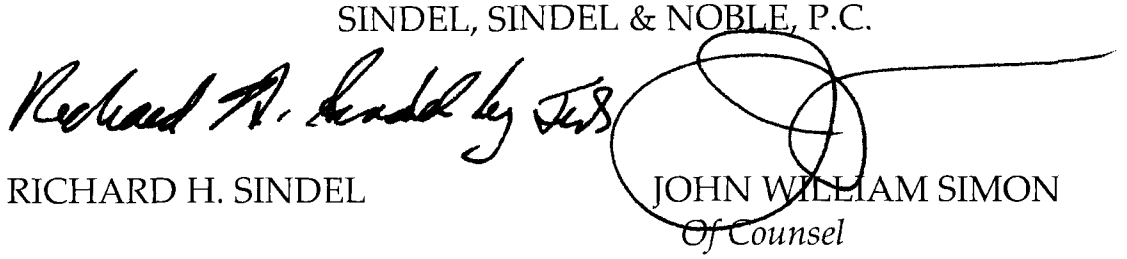
74. Plaintiff seeks a permanent injunction preventing the defendants from using their current means, methods, practice, procedures, and customs regarding execution by lethal injection.

75. Finally, the plaintiff seeks an order granting him reasonable attorney fees under 42 U.S.C. § 1988 and the laws of the United States; for his costs of suit; and for such other and further relief as the Court deems appropriate.

WHEREFORE, the plaintiff prays the Court for its orders as aforesaid.

Respectfully submitted,

SINDEL, SINDEL & NOBLE, P.C.



RICHARD H. SINDEL

E.D. Mo. Bar No. 4380
Mo. Bar Enrollment No. 23406
8008 Carondelet, Suite 301
Clayton, Missouri 63105
(314) 721-6040
FAX (314) 721-8545

JOHN WILLIAM SIMON
Of Counsel
E.D. Mo. Bar No. 5676
Mo. Bar Enrollment No. 34535
2683 South Big Bend Blvd., # 12
St. Louis, Missouri 63143-2100
(314) 645-1776
FAX (314) 645-2125

Attorneys for Petitioner

Declaration of Verification

COMES NOW the declarant, John William Simon, and as authorized by 28 U.S.C. § 1746, states and declares under penalty of perjury all as follows:

1. My name is John William Simon.

2. I live in Richmond Heights, Missouri.

3. I am a member of the Missouri Bar (Enrollment No. 34535), and of the bars of the Supreme Court of the United States, the United States Court of Appeals for the Seventh and Eighth Circuits, and of the United States District Courts for the Eastern and Western Districts of Missouri.

4. I hold an A.B. summa cum laude, Phi Beta Kappa, with distinction in Philosophy and Political Science from Boston University; an A.M. and a Ph.D. in Political Science from Harvard University; and a J.D. from the Yale Law School.

5. I taught constitutional law and other subjects in the discipline of political science for eight and one-half years.

6. I have practiced law full-time since my admission to the bar in 1985, having worked as a summer clerk or law clerk from my first summer of law school until my admission.

7. I have handled capital cases in federal habeas corpus and in state court from both sides since 1991, first for the State of Missouri and its privies, and thereafter for persons accused of capital crimes or sentenced to death by the federal government or the State of Missouri.

8. I have personally prepared the foregoing pleading.

9. Insofar as I am a witness to the transactions and occurrences set forth in the foregoing pleading, such as pleadings filed and responses and orders received in this plaintiff's cases and in those of Donald Jones, the statements in the pleading are true and correct according to my personal knowledge and belief.

10. The documents I have attached to this pleading are true and correct copies of the masters or originals in my possession, custody, and control.

Further, the declarant saith naught.

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

Executed: May 10, 2005

JOHN WILLIAM SIMON

Certificate of Service

I hereby certify a true and correct copy of the foregoing was forwarded for transmission via Electronic Case Filing (ECF) ***or otherwise e-mailed*** this tenth day of May, 2005, to the offices of:

Stephen David Hawke, Esq.
Assistant Attorney General
P.O. Box 899
Jefferson City, Missouri 65102
stephen.hawke@ago.mo.gov

/s/ John William Simon
Attorney for Plaintiff