2000 WL 33173913
United States District Court, N.D. California.

CALIFORNIA FIRST AMENDMENT COALITION and Society of Professional Journalists, Northern California Chapter, Plaintiffs,
v.
Jeanne WOODFORD and Cal Terhune, Defendants.

No. C–96–1291–VRW. | July 26, 2000.

Attorneys and Law Firms

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Opinion

FINDINGS OF FACT AND CONCLUSIONS OF LAW

WALKER, District J.

***1** This matter came on for trial on February 14 and 16, 2000. The court now makes its findings of fact, draws conclusions of law and directs preparation of a judgment as follows.

PARTIES AND CLAIMS

Plaintiffs are two non-profit organizations whose members include print and broadcast journalists. Defendants are the warden of San Quentin prison and the director of the California Department of Corrections.

This action, filed on April 9, 1996, challenges the procedure defendants have adopted concerning public access to witness lethal injection executions. Plaintiffs allege that defendants, in their official capacities, have restricted access to view lethal injection executions in violation of the First Amendment to the United States Constitution. Individual members of plaintiff organizations have observed executions in the past as part of their duties and some are likely to do so in the future.

PROCEDURES 769 & 770 AND THEIR APPLICATION

After California's resumption of the death penalty in 1978, two men were executed by defendants or their predecessors by means of lethal gas: Robert Alton Harris was executed on April 21, 1992 and David Mason was executed on August 4, 1993. Subsequently, California law was modified to permit the Department of Corrections to execute condemned individuals by means of either lethal injection or lethal gas. Cal Penal Code § 3604. By the time of trial, five men had been executed in California by means of lethal injection: William George Bonin was executed on February 23, 1996; Keith Daniel Williams was executed on May 3, 1996; Thomas M Thompson was executed on July 14, 1998; Jaturan Siripongs was executed on February 9, 1999; and Manual Babbitt was executed on May 4, 1999. After the conclusion of this trial, Darrell Keith Rich was executed by lethal injection on March 15, 2000.

California Penal Code § 3605 requires the warden to invite at least twelve witnesses to observe each execution. Although the statute makes no mention of the media's presence, a court order in this district prevents the warden from excluding the media. See *KOED, Inc v. Vasquez,* 1995 WL 489485 (ND Cal 1991). Under procedures currently in place, seventeen media representatives are invited to view executions from the rear of the viewing area.

Executions by either means take place in the same chamber in San Quentin. This chamber is equipped with a viewing area in which witnesses stand to observe executions through a large glass window. Members of the press stand in the rear of the chamber on risers. There is a curtain running around the exterior of the glass window. Defendants have adopted two procedures governing

public access to executions: Procedure 769, which governs executions carried out by lethal gas, and Procedure 770, which governs executions carried out by lethal injection. The difference defendants have adopted for the extent of public access to witness executions carried out by the two different procedures is at the heart of this case.

***2** At lethal gas executions conducted pursuant to defendants' Procedure 769, the witnesses are present before the condemned enters the chamber. The witnesses view prison staff escorting the condemned into the chamber and watch as the condemned is strapped to the execution chair. At a lethal injection execution, on the other hand, the curtain concealing the execution chamber is not opened until the condemned has already entered the chamber, been strapped to the execution gurney and had intravenous shunts inserted into both arms. See Plaintiffs' Exh 1 (Procedure 770). An announcement is read immediately before the lethal compounds are administered to the condemned,

Pursuant to Procedure 770, when the witnesses entered the chamber to view the Bonin execution, the curtain was drawn. Prison officials did not open the curtain until after prison employees had escorted Bonin to the chamber, secured him to the gurney and inserted intravenous lines. When the curtain was opened, witnesses observed Bonin lying motionless on the gurney. He appeared to some to be asleep or sedated. Despite the requirements of Procedure 770, the witnesses were not informed when the lethal compounds began to enter Bonin's body. The witnesses thus could not perceive when this occurred. An announcement of Bonin's death was read to the witnesses. During a press conference after the execution, prison officials informed the media that there had been difficulties inserting the intravenous lines into Bonin's arms. Because defendants did not permit witnesses to view the execution prior to the moment Bonin was fully secured to the gurney, these difficulties occurred outside the presence of the witnesses. Plaintiffs believed that Procedure 770's viewing limitations had deprived them of observing a significant part of Bonin's execution and brought this action.

PRIOR PROCEEDINGS

Plaintiffs seek to enjoin defendants from narrowing the viewing period in lethal injection executions from that permitted in lethal gas executions—that is, a view of the scene from the time the condemned inmate enters the execution chamber. Specifically, plaintiffs seek to enjoin defendants from "(1) preventing witness observation of the entry, treatment, placement and restraint of the prisoner in the execution chamber, the insertion of Ivs[sic], and the connection to the execution apparatus to the prisoner; and (2) using a curtain or other obstructive device to prevent the witnesses' observation." Complaint at 9–10. This court granted plaintiffs' motion for a preliminary injunction and ultimately granted a permanent injunction on summary judgment. *California First Amendment Coalition v Calderon,* 956 FSupp 883 (ND Cal 1997) ("*Calderon I* "). The court ordered defendants to allow witnesses to "view the procedure at least from the point in time just prior to the condemned being immobilized, that is strapped to the gurney or other apparatus of death, until the point in time just after the prisoner dies." *Id* at 890. During the time this court's injunction was in force, California executed Keith Williams without incident.

***3** Defendants appealed the court's order. Initially, the court of appeals reversed and ordered judgment entered in favor of the defendants. *California First Amendment Coalition v Calderon,* 138 F3d 1298 (9th Cir1998). Subsequently, the court of appeals withdrew this order and replaced it with a new order that instructs the court to determine "whether the Coalition has presented 'substantial evidence' that Procedure 770 represents an exaggerated response to Calderon's security and safety concerns." *California First Amendment Coalition v Calderon,* 150 F3d 976, 983 (9th Cir1998) ("*Calderon III* "), citing *Pell v. Procunier,* 417 U.S. 817, 827 (1974). Defendants filed a renewed motion for summary judgment. The court denied this motion and proceeded to trial to resolve the factual question presented by the appeals court. See January 21, 2000 order.

FINDINGS OF FACT

All executions in California take place shortly after midnight at San Quentin. Reporter's Transcript (hereinafter "RT") 19,57. Pursuant to Procedure 770, the condemned inmate is moved from his cell to the "overnight cell" near the execution chamber at approximately 6:00 pm on the evening prior to the execution. During this time period, the condemned has access to a telephone with which to call friends or counsel. Defendants have no policy in place to prevent condemned inmates from disclosing the identities of the execution staff during this time period.

Of the approximately 1000 correctional employees, approximately 800 employees are potentially eligible to

participate as execution team members. RT 117–118. The 180–member death row housing staff may not participate in the executions. RT 118. If an employee has had prior contact with the condemned, this fact does not disqualify that employee from serving on the execution team for that condemned individual. RT 116.

Approximately twenty-five minutes prior to the scheduled time of the execution, four execution team members place the condemned in shackles and escort him to the execution chamber. Approximately seven additional staff members are present in the execution area while the four officers escort the inmate into the chamber. RT 68. In the case of a lethal injection execution, the condemned is then strapped to the gurney with six straps. RT 31, 63. Two medical personnel insert intravenous lines into the condemned's arms. RT 31. A saline solution runs through the intravenous lines until the administration of lethal compounds. All staff then leave the chamber. At this point, the curtain concealing the procedures from the witnesses is opened to allow viewing and the lethal compounds begin to flow through the intravenous lines. During the execution, approximately five to ten staff members are present in the media observation room. No attempt has been made to conceal the identities of these individuals. RT 32.

During the Williams execution, while this court's injunction was in effect, no attempt was made to conceal the identities of the execution team members. RT 35. Although all staff members were informed that they would be observed by the witnesses and were afforded the opportunity to withdraw from the execution team, none refused to participate in the execution. RT 34–35.

***4** During the lethal gas executions, the witnesses were present in the observation room and were able to watch prison staff escort the condemned inmates into the chamber and restrain them. *Id* at 84–85. No attempt was made to conceal the staff's identities. *Id.* During the lethal gas execution of Robert Harris, staff escorted Harris into the chamber, in view of the witnesses, more than once. RT 85. This occurred because of stay orders issued by the Ninth Circuit until the Supreme Court directed the circuit court to desist issuing such orders.

The time period for preparing inmates for execution by lethal injection has shortened with each execution. RT 122. During the Babbitt execution, employees were in the chamber for only six minutes. RT 122. Inserting intravenous lines into a resisting patient is not appreciably more difficult than doing so to a compliant patient, once the individual has been secured. Inserting an intravenous line is generally accomplished within one minute. RT 209.

At the Bonin execution, the viewers were not notified when the administration of the lethal compounds began. During the Williams execution, the curtain was not opened until Williams was already strapped to the gurney. Although this appears to be more limited viewing than the court's injunction contemplated, witnesses perceived a dramatic contrast between viewing Bonin already strapped down and outfitted with intravenous lines and viewing Williams being prepared for execution by insertion of the intravenous lines.

Defendants are concerned that media personnel viewing the execution might regard any force that might be used to strap a condemned inmate to the gurney as excessive force. RT 44–45. This concern was a motivating factor in the drafting of Procedure 770. San Quentin adopted a policy limiting face-to-face press interviews with inmates around the same time that Procedure 770 was adopted. Another policy limiting confidential communications with the media was also adopted at this time.

In a memorandum written to the Department of Corrections administration, then-Warden Arthur Calderon stated that one reason defendants oppose the same degree of media access for lethal injection executions as in executions by lethal gas is that

> in the event of a hostile and combative inmate, it will be necessary to use additional force and staff to subdue, escort and secure the inmate to the gurney. It is important that we are perceived as using only the minimal amount of force necessary to accomplish the task. In reality, it may take a great deal of force. This would most certainly be misinterpreted by the media and inmate invited witnesses who don't appreciate the situation we are faced with.

Plaintiffs' Exh 3. In contrast to this concern, during the five executions that Calderon has observed, the condemned inmate did not resist. RT 58. Calderon believes that Procedure 770 authorizes the warden to close the curtain during an execution in the event there are difficulties with the implementation of the execution, such as a "blown vein." RT 69.

***5** The United States Military, the Federal Bureau of Prisons and thirty-five states currently permit lethal

injection as a means of execution. Defendants' Exh P–1. The majority of these jurisdictions follow a viewing procedure similar to Procedure 770. Five of these jurisdictions have yet to adopt a policy for witnesses. Three states permit witnesses to observe the placement of the inmate on the gurney. These states then close the curtain during the installation of the intravenous lines and re-open the curtain after the staff have left the chamber. Two states restrict viewing of the gurney placement and intravenous line installation but have the staff remain present in the execution chamber once the curtain is opened. One state, Oregon, is under court order to require full witness access to the entire proceeding. Prior to the court order, Oregon's viewing policy was similar to Procedure 770. The parties were unable to locate any findings made by any jurisdiction regarding the First Amendment rights of the press or the public in connection with the adoption of procedures for viewing lethal injection executions.

Ensuring staff safety is a legitimate safety concern. Execution team members' identities have not in the past ever been revealed by the media, nor have there been any acts of retaliation or threats against any execution workers. Defendants presented no evidence of any disclosures or attacks occurring in any other jurisdiction. Defendants stipulate that the procedure employed in lethal injection executions was not adopted in response to any past incident of assault or threat against execution team members. See July, 13, 1999 Stipulation. Although witnesses to all of San Quentin's executions by lethal gas and to one by lethal injection have been able to view members of the execution staff, no staff member's identity has been disclosed in the media.

The problem of gangs at San Quentin and of a fatal attack on a prison guard in 1985, while serious matters of prison security in general, do not compel defendants to conceal the identities of execution personnel. There was no evidence at trial that an inmate would be more likely to attack a guard who participated in an execution than a guard who had not participated in an execution. Furthermore, there are many high-profile individuals whose participation in the implementation of executions is essential, including the warden, the governor and judges of the courts who reject the condemned's appeals. No attempts are made to conceal the identities of these people, their staff or other prison personnel who have less direct roles in carrying out executions.

The use of surgical garb is available to defendants as an alternative to limiting witness access in lethal injection executions to an extent greater than that permitted in lethal gas executions. Masks are an effective means of concealing the identity of the wearer. It is increasingly common in the medical community for any individual coming in contact with blood to wear surgical masks and gloves. RT 206–07. The wearing of these items is not yet universal, but is becoming mandatory at many medical facilities as a means of protecting medical personnel from infection. Masks and gloves do not impair the functioning of medical personnel in the emergency room setting or their ability to communicate with colleagues and patients. Use of surgical garb would likewise not impede execution staff in performing executions. Masks are unlikely to be dislodged during the execution process, revealing the identity of the wearer.

***6** Given the relatively short viewing time period involved, the likelihood that the witnesses have had no prior contact with the execution personnel and the fact that these personnel have their backs turned to the witnesses for a large portion of the proceedings, it is extremely unlikely that personnel wearing masks would be identified.

The use of surgical garb is a practical alternative to restricting access to witness lethal injection executions in order to conceal the identity of executions staff should security concerns warrant such concealment.

Plaintiffs have shown that restricting public access to view lethal injection executions to a degree greater than that afforded to view lethal gas executions is an exaggerated response to defendants' safety concerns. Defendants' response is exaggerated because (1) there have been no acts of violence or threats of violence to prison personnel who have participated on San Quentin execution teams; (2) defendants have available alternative means of concealing the identities of execution team members without restricting public access to view the entirety of a lethal injection execution in the event the safety of execution team members is threatened in the future; and (3) Procedure 770 was motivated, at least in part, by a concern that the strapping of a condemned inmate, the injection of intravenous lines or other aspects of a lethal injection execution would be perceived as brutal by the public and thus was, to that extent, prompted by considerations other than legitimate concerns for prison personnel safety.

DISCUSSION

Plaintiffs have met the burden imposed upon them by the ruling of the Ninth Circuit. *Calderon III,* 150 F3d at 983. On this basis, plaintiffs are entitled to the relief they seek.

Other jurisdictions' adoption of similar viewing procedures does not undermine this conclusion. No jurisdiction has explicitly considered the First Amendment in formulating its viewing procedures. Because no balancing of interests was performed by policy makers in these jurisdictions, defendants cannot rely on their analogous procedures as evidence that Procedure 770 does not violate *Pell.*

Having determined that plaintiffs are entitled to judgment in their favor based on the *Pell* test cited in the remand order of the appeals court, the court finds three additional, independent grounds which support a result favorable to plaintiffs within the First Amendment, the Eighth Amendment and the California Penal Code.

With all due respect to the appeals court, the court reiterates its conclusion that the First Amendment compels at least some public access to execution proceedings. Plaintiffs have adduced copious evidence establishing the public nature of executions both in England and in the colonies at the time of the Bill of Rights. This evidence is not disputed by defendants. It is likewise uncontroverted that in California there has been an uninterrupted history of public or media presence at executions. See *Calderon III,* 150 F3d at 978.

***7** The movement of executions from the public square to within prison walls in the nineteenth century coincided with the advent of inexpensive, mass-circulation newspapers. Accounts from this era establish that execution witnesses were present throughout the entire proceedings. Indeed, until the advent of lethal injection executions, witnesses were present prior to the condemned's arrival at the location of the execution.

In finding a First Amendment right to view executions, this court discussed both the tradition of public access to executions and the "awesomeness of the state's imposition of death as punishment." *Calderon I,* 956 FSupp at 886–890. The appeals court rejected this court's reasoning, and stated that whether the First Amendment is called into play is not based on the "notoriety" of the underlying event. *Calderon III,* 150 F3d at 982. This court is not alone in positing that the death penalty has a unique status in the law. Numerous Supreme Court cases acknowledge the truism that "death is different." See, e.g. *Harmelin v. Michigan,* 501 U.S. 957, 994 (1991); *Turner v. Murray,* 476 U.S. 28, 36–37 (1986); *Eddings v. Oklahoma,* 455 U.S. 104 (1982); *Beck v. Alabama,* 447 U.S. 625 (1980). It is not merely the fact that capital punishment is controversial or notorious that makes it a unique act of the state. Whatever one's personal views, there is no question that only in rare and extreme circumstances does the law condone the government's deliberate infliction of death.

The appeals court ruled that the press possesses no heightened constitutional right to view the proceedings as compared to the right of the general public. *Calderon III,* 150 F3d at 981 (quoting *Pell*). In doing so, the appeals court invoked a line of cases limiting press access to activities within prison walls: *Pell* (upholding regulation which limited media selection of specific inmate for interview against separate challenges by prisoners and media); *Saxbe v. Washington Post Co,* 417 U.S. 843 (1974) (upholding regulation prohibiting face-to-face interviews with specific inmates); *Houchins v. KOED, Inc,* 438 U.S. 1 (upholding policy of allowing media to visit prison only during scheduled tours). The appeals court rejected this court's analogy to cases recognizing First Amendment rights in "access to certain government-controlled sources of information related to the criminal justice system," such as preliminary hearings, voir dire and trials. See *Calderon I,* 956 FSupp at 886 and cases cited therein. The appeals court found that this court mistakenly determined that Procedure 770 implicated First Amendment access and accordingly had erred in applying the First Amendment level of scrutiny in analyzing the regulation. See *Calderon III,* 150 F3d at 982.

The appeals court did not find that any restriction of witness access would be impervious to First Amendment challenge. Rather, the appeals court found that the current procedure would not violate the First Amendment, unless plaintiffs could show that the procedure represents an exaggerated response to the risks associated with public access to the execution process. The appeals court noted that if the state "were to attempt a greater limitation on the press' observation, we would have to revisit the issue." *Calderon III,* 150 F3d at 982, n 10.

***8** The appeals court asks this court to apply a test of "substantial evidence" of an "exaggerated" response by prison officials in deciding whether the First Amendment is implicated. This test, however, comes from the section of the *Pell* decision discussing the First Amendment rights of prison inmates, not those of the media. *Pell,* 417 U.S. at 827. The paragraph from which the appeals court crafted this test concludes:

> Courts cannot, of course, abdicate their constitutional responsibility to delineate and protect fundamental liberties. But when the issue involves a regulation limiting *one of several means* of communication

> by an inmate, the institutional objectives furthered by that regulation and the measure of judicial deference owed to corrections officials in their attempt to serve those interests are relevant in gauging the validity of the regulation.

Id (emphasis added).

Later in the *Pell* decision, the Court addressed the issue of prison limitations on the media's access. The portion of *Pell* which actually addresses the *media's* First Amendment rights in the prison context also emphasizes the many opportunities for media observation that the policy then under review afforded:

> We note at the outset that this regulation is not part of an attempt by the State to conceal the conditions in its prisons or to frustrate the press' investigation and reporting of those conditions. Indeed, the record demonstrates that, under current corrections policy, both the press and the general public are accorded full opportunities to observe prison corrections.

Id at 830.

Plaintiffs have demonstrated that Procedure 770 violates the spirit of the *Pell* decision. First, unlike the disputed policy in *Pell,* Procedure 770 was adopted, at least in part, to prevent the viewing of certain proceedings. Furthermore, defendants have a history of resistance to media presence at executions, at one point trying to prevent reporters from bringing pencils and paper into the viewing chamber and even attempting to exclude the media's presence altogether. See *KOED v. Vasquez,* 1995 WL 489485 (ND Cal 1991).

More importantly, Procedure 770 provides no alternative opportunities or channels for information about these events to reach the media and the public. The condemned inmate, the only non-government witness to any Eighth and Fourteenth Amendment violations that might occur prior to the observation permitted by Procedure 770, cannot communicate with the media or the public at the conclusion of his execution.

Implicit in the appeals court's order is an acknowledgment that the First Amendment touches the issues at bar. Were there no possible implication of a First Amendment right, remand of the action by that court would have been unnecessary. Furthermore, the appeals court refused to hold that there could be no First Amendment right implicated, stating instead that a complete ban on viewing would likely prompt a different conclusion from the one therein articulated. The *Pell* test that the appeals court ordered for use in this remand proceeding is itself grounded in the First Amendment. This court continues to believe, therefore, that *Richmond Newspapers v. Virginia,* 448 U.S. 555 (1980), rather than *Pell,* articulates more clearly the standard appropriate for access to executions.

***9** The court also believes that the Eighth Amendment or, at any rate, the Eighth Amendment and the First Amendment, taken together, mandate the public's presence during the entire execution. A punishment satisfies the Constitution only if it is compatible with "the evolving standards of decency which mark the progress of a maturing society." See *Trop v. Dulles,* 356 U.S. 86, 101 (1958). Under this construct, methods of execution which cause excessive pain are considered cruel and unusual. See *In re Kemmler,* 136 U.S. 436, 447 (1890). The public's perception of the amount of suffering endured by the condemned and the duration of the execution is necessary in determining whether a particular execution protocol is acceptable under this evolutionary standard.

Courts evaluating the constitutionality of methods of execution rely in part on eyewitness testimony. See e g *Jones v. Butterworth,* 695 So.2d 679 (Fla 1997); *Sims v. Florida* 2000 WL 193226 at *7–8 (Fla 2000); *Fierro v. Gomez* 865 FSupp 1387 (ND Cal 1994). This eyewitness testimony is crucial to the review of execution protocols which the courts frequently undertake. While courts rarely invalidate a state's execution procedure, ongoing challenges and threats of challenge motivate states to modify their procedures. For example, lethal gas and electrocution have been vigorously challenged in recent years. In response to these challenges, most states have either moved to the use of lethal injection or make it available as an alternative to gas, electrocution or hanging. See, e g, *Bryan v. Moore,* 120 S Ct 1003 (2000) (certiorari to determine constitutionality of electrocution dismissed as improvident after state modified statute to permit execution by lethal injection); *Rupe v. Wood,* 93 F3d 1434 (9th Cir1996) (constitutionality of hanging a 400–pound man rendered moot after state modified statute to permit lethal injection).

Although lethal injection is generally regarded as the most humane and painless execution method presently

available, technology and society's perceptions may evolve in the future. If there are serious difficulties in administering lethal injections, society may cease to view it as an acceptable means of execution and support a return to lethal gas or electrocution or push for development of another execution method. Or a majority of the public may decide that no method of execution is acceptable. Eyewitness testimony is crucial to the public's evaluation of how this extreme punishment is performed. See, e g *Calderon III,* 150 F3d at 978 ("Eyewitness media reports of the first lethal gas executions sparked public debate over this form of execution and the death penalty itself.") Demonstrating the need for witnesses at executions is the fact that although there had only been five executions by means of lethal injection in California by the time of trial, the execution record of one of these individuals had inexplicably vanished.

***10** As a final matter, the court concludes that plaintiffs are entitled to view the entire execution proceedings under California law. As noted above, the warden is required by California law to "invite the presence" of at least twelve "reputable citizens" at each execution. Cal Penal Code § 3605. Since executions in California were first moved within prison walls, California has had a comparable statute requiring the invitation of witnesses. Media representatives have been among the witnesses present at every execution held within California's prisons.

The Oregon Supreme Court recently addressed the question whether its statute mandating the presence of witnesses at executions also required that the witnesses be permitted to view the condemned inmate entering the chamber and being prepared for lethal injection. See *Oregon Newspaper Publishers Association v Oregon Department of Corrections,* 988 P.2d 359 (1999). Oregon's execution witness statute is substantially similar to California's. See Or Rev Stat § 137.473 (1998).

The Oregon Supreme Court held that the Oregon Department of Corrections' rules which allowed for viewing only after the prisoner had been secured to the gurney and outfitted with intravenous shunts violated the state statute's mandate for viewing the execution. *Id* at 364. The Oregon court accepted the argument of the petitioners before it that "the statute requires that the execution, not just the dying, be observed by the witnesses." *Id.* The court found that the preliminary measures which the plaintiffs in the instant case seek to view—the condemned prisoner entering the chamber, his being physically restrained, the insertion of intravenous shunts—are integral parts of the execution. *Id.* The court contrasted these measures with "remote" pre-execution procedures such as the condemned inmate's last meal. *Id.*

This court agrees with the Oregon court and adopts the same reasoning in interpreting California's analogous statute. Execution witnesses present by statute are entitled to view the entire execution, not just "the dying." This encompasses observing the condemned entering the chamber, his placement on the gurney and the installation of the intravenous device. This amount of viewing, although somewhat longer in duration, is comparable in substance to what is permitted during a lethal gas execution. The court is unpersuaded that the access afforded witnesses should vary according to the execution method employed. Thus, the court finds that section 3605 provides an independent basis for requiring the defendants to extend the period of access to that requested by plaintiffs.

CONCLUSIONS OF LAW

The court has jurisdiction over the subject matter of this action pursuant to 28 USC § 1983 in that plaintiffs allege that defendants have acted under the color of law in impinging the rights of plaintiffs and their members under the First Amendment. Defendants are found in this district and thus subject to the personal jurisdiction of the court.

***11** The court concludes that defendants' practice of limiting witness observation during lethal injection executions is an exaggerated response to defendants' safety concerns. The court GRANTS judgment in favor of plaintiffs. Defendants are ENJOINED from preventing uninterrupted viewing of executions from the moment the condemned enters the execution chamber through to, and including, the time the condemned is declared dead.

Plaintiffs' counsel shall forthwith submit an appropriate form of judgment.

IT IS SO ORDERED.