

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION

06 DEC 29 PM 4:29

SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

NORMAN TIMBERLAKE,)
)
Plaintiff,)
)
)
)
v.)
)
J. DAVID DONAHUE, Commissioner)
Indiana Department of Correction,)
)
ED BUSS, Superintendent)
Indiana State Prison)
Michigan City, Indiana,)
)
and)
)
UNKNOWN EXECUTIONERS,)
)
Defendants.)

1 : 06-cv- 1859 -RLY -WTL
NO. _____

EXECUTION IMMINENT

EXECUTION SCHEDULED FOR
JANUARY 27, 2006 at 12:01 AM

COMPLAINT

**I.
Nature of Action**

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

II.
Plaintiff

2. Norman Timberlake is a United States citizen and a resident of the State of Indiana. He is currently a death-sentenced inmate under the supervision of the Indiana Department of Correction, DOC #873051. He is held at the Indiana State Prison.

III.
Defendants

3. Defendant, J. David Donahue, is the Commissioner of the Indiana Department of Correction. Defendant Ed Buss is the Superintendent of the Indiana State Prison where death row inmates are housed. Defendants, Unknown Executioners, are employed or contracted by the Indiana State Prison to make preparations for, and carry out, the scheduled execution of Plaintiff. They include, but are not limited to correctional officers, nursing assistants, and “executioners”. Plaintiff does not yet know their identities and it is Plaintiff’s understanding that Defendants will not reveal the identities of these persons.

IV.
Jurisdiction and Venue

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

U.S.C. § 1983.

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

**V.
Facts**

6. Plaintiff, Norman Timberlake is scheduled to be put to death by lethal injection at 12:01 a.m. on January 19, 2006. See Exhibit "A" attached. Defendants are responsible for carrying out this execution.
7. Under Indiana law, death sentences shall be carried out by "intravenous injection of a lethal substance or substances ... in a quantity sufficient to cause the death." Ind. Code §35-38-6-1(a). The statute prescribes no specific drugs, dosages, drug combinations, or the manner of intravenous line access to be used in the execution process; nor does the statute proscribe any certification, training, or licensure required of those who participate in the execution. All details of the execution are left to the Indiana Department of Correction to implement through "rules under Ind.Code § 4-22-2 ." Ind. Code §35-38-6-1(d).
8. Plaintiff reasonably believes the Department of Correction will execute him by poisoning him with a lethal combination of three chemical substances: Sodium Pentothal (Thiopental), a short-acting barbiturate; Pavulon (Pancuronium Bromide) curare-derived agent which paralyzes all skeletal or voluntary muscles, but which has no effect whatsoever on awareness, cognition or sensation; and Potassium Chloride, an extraordinarily painful chemical which activates the nerve fibers lining the inmate's veins and which can interfere with the rhythmic contractions of the heart and cause cardiac

arrest. See attached Exhibit “B” - LaPorte County Coroner Letter Re: Kevin Hough Execution on May 2, 2003.

9. Defendants will follow procedures established in Department of Correction Directive ISP 02-04 (March 18, 2003) in executing Plaintiff on January 19, 2006. See Exhibit “C” attached. Directive 02-04 and the predecessor directive (Indiana Department of Correction Operation Directive 95-7, August 15, 1995) were adopted without medical research or review to determine that a prisoner would not suffer a unnecessary and wanton pain. Medically qualified persons were not involved in its adoption. The procedures were patterned after those followed in other states including, but not limited to, Illinois, Texas, Washington, Oklahoma, and Louisiana.
10. Directive 02-04 does not specify the lethal chemicals to be used nor does it specify the quantity or concentration of any chemical used in the execution process. Directive 02-04 does not address the individual prisoner’s medical condition and history. Other prescribed drugs, such as valium, may interfere with the ability of sodium pentothal to act properly as an anesthetic. In addition, “[sodium pentothal] should be titrated against patient requirements as governed by age, sex, and body weight.” “Thiopental Sodium: Clinical Pharmacology”, *RxList Drug Database* (Nov. 26, 2005) http://www.rxlist.com/cgi/-generic3/thiopental_ids.htm. Persons who are anxious and hyperadrenergic and/or have a chronic history of substance abuse may require a higher dosage of sodium pentothal than the average premedicated surgical patient. Leonidas G. Koniaris et al, “Inadequate Anesthesia in Lethal Injection for Execution”, www.thelancet.com, vol. 365 (April 16, 2005) 1412. See Exhibit “D” “Lancet Article”

11. Directive 02-04 contains no standardized time for administration of each chemical and there are no guidelines for determining when each chemical is to be injected. There is no standardized procedure ensuring the anesthetic agent is properly flowing into the prisoner. And, there is no standardized procedures for ensuring that the prisoner is properly sedated before lethal chemicals are injected.
12. Directive 02-04 does not establish minimum qualifications or expertise required of personnel who perform the tasks in the lethal injection process, other than requiring a physician to perform a “cut-down” procedure if an adequate vein cannot be located. There is no procedure specified if adequate flow in the IV cannot be maintained. Directive 02-04 contains no definition of what an “adequate vein” nor does it specify any requirements regarding the flow in the IV.
13. The only personnel selection guideline contained in Directive 02-04 is a requirement that personnel be screened to “assess their emotional stability and their willingness/ability to handle the stress of assisting with the execution.”
14. Directive 02-04 contains are no guidelines upon which execution personnel can rely if required to exercise discretion during any part of the execution process. Directive 02-04 provides that the injection procedure continues until the prisoner is “presumed dead.”
15. Sodium pentothal is a short-acting barbiturate which is ordinarily used to render a surgical patient unconscious for mere minutes, only in the induction phase of anaesthesia, specifically so that the patient may re-awaken and breathe on their own power if any complications arise in inserting a breathing tube pre-surgery. Because of this brief duration, it is highly unlikely that sodium pentothal will provide a sedative effect through

the entire execution process. Due to the chemical combination used in the Indiana execution process, there is also a probability that the sedative effect of the sodium pentothal will be neutralized instantly by the second chemical, Pavulon (Pancuronium Bromide).

16. If Plaintiff is not adequately sedated, he will suffer an excruciating pain as a result of the conscious asphyxiation caused by the Pavulon and painful internal burn and cardiac arrest caused by the Potassium Chloride.
17. To the extent that the first chemical, Sodium Pentothal, is neutralized by the second, Pavulon, the paralytic chemical, will serve only to mask the excruciating pain of Plaintiffs.
18. The American Veterinary Medicine Association condemns the use of neuromuscular blocking agents such as Pavulon in the euthanasia of animals and a number of states have made the use of Pavulon on domestic animals illegal.
19. The third chemical involved in the lethal injection process, potassium chloride is intended to cause cardiac arrest.
20. In practice, the administration of Potassium Chloride is inadequate to stop the heart and only arrests the pulmonary system. As a result, the prisoner simply suffocates due to lack of oxygen.
21. In addition, Potassium Chloride ravages the organs by causing an extremely painful burning sensation as it courses through the body.
22. The risk of inflicting severe and unnecessary pain and suffering in the lethal injection process is particularly grave in the execution of Plaintiff.

23. On December 13, 2006 the State of Florida, using a lethal injection procedure like that used in Indiana under Directive 02-04, executed Angel Nieves Diaz. Mr. Diaz did not die until 34 minutes after the lethal chemicals were injected into his body. Mr. Diaz appeared to be conscious when Pancuronium Bromide and Potassium Chloride were injected into his body. A second series of lethal chemicals were injected in Mr. Diaz before he was pronounced dead. On December 15, 2006, Florida Governor Jeb Bush ordered a moratorium on further executions and appointed a commission to evaluate Florida's lethal injection protocol. Governor Bush determined that the moratorium and commission to evaluate the protocol were a "constitutional imperative" under the federal and state constitutions given the "significantly lengthier death process for Mr. Diaz." See Exhibit "E" attached Executive Order 06-260.
24. Several prisoners executed under Indiana's lethal injection protocol had thiopental blood levels at their death below 20 mg/L: (1) Joseph Trueblood executed June 13, 2003 thiopental level was 14 mg/L; and, (2) Gregory Johnson executed May 26, 2005 thiopental level was 19 mg/L. These levels are below those necessary to render them unconscious. Trueblood and Johnson were likely conscious at the time the lethal drugs were administered and caused death. See Exhibit "F" and "G" attached Toxicology Reports on Trueblood and Johnson.
25. Kevin Hough, who was executed under Indiana lethal injection protocol, was administered 25 ml of sodium pentothal, 100 ml of pancuronium bromide, and 70 ml of potassium chloride to bring about his death on May 2, 2003. See Exhibit "A". However, there is no record of the concentration of the drugs used in Hough's execution.

26. During the execution of Marvin Bieghler on January 27, 2006, The “Command Center” minutes report difficulty maintaining flow in the IV’s that had been inserted into Mr. Bieghler’s veins. Unlike “past executions,” flows were not maintained in both of Mr. Bieghler’s arms. Despite this failure to follow the procedure on past executions and the lack of any written standards to guide the discretion of personnel when this contingency arises, Mr. Bieghler’s execution proceeded. The minutes report that Mr. Bieghler was in “a state of shock” at the time lethal chemicals were injected. The minutes include medical opinions of unknown origin about Mr. Bieghler’s physical condition and the effect Bieghler’s ingestion of Valium on the lethal injection process. Lethal chemicals were injected into Mr. Bieghler without any determination being made whether he was adequately sedated. The minutes report that the Command Center was “unclear what the [I.V. team] were exactly doing” during the execution. See Exhibit “H” attached Command Center Minutes of Marvin Bieghler Execution.
27. Timberlake has a history of substance abuse, including intravenous drug usage. He had hepatitis, suffers from anxiety attacks, and is taking prescribed medications, including Valium and Pamalar. For years while in prison, Timberlake was prescribed Sinequan (Doxepin Hydrochloride) and other prescription drugs to induce sleep and treat anxiety. Timberlake weighs approximately 150. The concentration of Sodium Pentothal to produce a continued state where Timberlake is unconscious and insensate, will not be the same as other prisoners executed in the past. Adjustments need to be made to take these and other factors into consideration. These calculations can only be appropriately performed by a person educated and trained in the field of clinical anesthesiology.

28. As the Indiana protocol for execution does not include the assistance of a person trained in the field of clinical anesthesiology, an unconscious and insensate state in Timberlake at the time of his execution cannot be guaranteed. To have Timberlake, conscious and feeling asphyxia, a severe burning sensation, massive muscle cramping, and finally cardiac arrest is cruel and unusual punishment.

**VI.
Claim**

29. Plaintiff incorporates paragraphs 1-28 by reference.

30. J. David Donahue, Ed Buss and Unknown Executioners are acting under color of Indiana law in administering to Plaintiff chemicals that will cause unnecessary pain in the execution of a sentence of death, thereby depriving Plaintiff his rights under the Eighth and Fourteenth Amendments to be free from cruel and unusual punishment, in violation of 42 U.S.C. § 1983.

31. Directive 02-04, which specifies Indiana's lethal injection protocol, violates Plaintiff's rights under the cruel and unusual punishment clause of the Eighth Amendment because the protocol creates the unreasonable and unacceptable risk of unnecessary physical and psychological pain, it does not comport with norms and standards of society, and it offends the dignity of the person and society.

32. The Indiana Department of Correction's execution through lethal injection utilizes three dangerous chemicals that are not specified in Directive 02-04. The protocol does not ensure that personnel using these chemicals have the proper and necessary training, experience, or expertise to administer these drugs. The protocol does not specify the

concentration of the drugs used, the timing of their administration, or any other accepted standard for their proper administration.

33. J. David Donahue, Ed Buss, and Unknown Executioners are aware that they conduct lethal injection executions in violation of the delegation of authority conferred upon them by the Indiana General Assembly by failing to adopt any standards and guidelines for the administration of the chemicals used in the execution process. Likewise, Defendants are aware that the failure to continuously administer a drug that will anesthetize the condemned prison while other lethal chemicals are being administered poses an excessive risk that the inmate will be conscious or regain consciousness during the administration of pavulon and potassium chloride.
34. J. David Donahue, Ed Buss and Unknown Executioners are aware that their execution procedures and training of Unknown Executioners are inadequate in establishing an IV line capable of delivering the quantity of the lethal chemicals in a manner that will not cause unnecessary physical and psychological pain. The lack of procedures and training creates a substantial risk Plaintiff will remain conscious during the subsequent administration of Pavulon and Potassium Chloride resulting in a death by suffocation and cardiac arrest that will cause a cruel and unusual death in violation of the Eighth Amendment.
35. J. David Donahue, Ed Buss and Unknown Executioners are aware, that the American Veterinary Medical Association has banned the use of Pavulon in the euthanasia of animals and that the continued use of Pavulon creates a substantial risk that the Plaintiff's death by lethal injection will violate constitutional principles with respect to evolving


standards of decency.

36. J. David Donahue, Ed Buss and Unknown Executioners are acting with deliberate indifference to the Plaintiff's serious medical needs and their failures contained in paragraphs 30 thru 35 represent a mutually enforcing effect that produces the deprivation of Plaintiff's right to be free of unnecessarily cruel and unusual punishment.
37. The use of these three chemicals as well as the State's refusal to provide reliable information regarding a) its protocol, b) the training of the execution team, and c) guidelines for guiding the discretion of execution personnel when problems arise during the execution procedure greatly increase the risk that Plaintiff will suffer an unnecessarily painful execution.

VII.
Prayer for Relief

38. Plaintiff requests that this Court grant a temporary restraining order and a preliminary injunction barring defendants from executing Plaintiff in the manner they currently intend.
39. Plaintiff requests that this Court grant reasonable attorneys' fees pursuant to 42 U.S.C. § 1983 and the laws of the United States, as well as for costs of suit and any further relief that this Court deems just and proper.

Respectfully submitted,


BRENT WESTERFELD
LORINDA MEIER YOUNGCOURT
Attorneys for Plaintiff Timberlake

Brent Westerfeld
Attorney at Law
6202 North College Avenue
Post Office Box 30379
Indianapolis, Indiana 46230-0379
(317) 257-5200
bwesterfeld@wkelaw.com

Lorinda Meier Youngcourt
Attorney at Law
PO Box 206
Huron, IN 47437-0206
(812) 849-9852
lmyoungcourt@earthlink.net



LaPorte County Coroner

3723 Franklin St.
Michigan City, IN 46361
Phone: (219) 878-2325 or Fax: (219) 878-2330

Vidya Kora, MD
Coroner

May 2, 2003

St. Anthony Hospital
301 W. Homer St.
Michigan City, IN 46360

RE: Kevin Lee Hough
DOB: 08-17-1959
DOC#: 872039

Dr. Roberts,

On May 2nd, Kevin Lee Hough was executed by lethal injection at the Indiana State Prison in Michigan City. The names and amounts of drugs that were administered at approximately 12:15 am are as follows:

Sodium Pentothal	25 ml
Pancuronium Bromide	100 ml
Potassium Chloride	70 ml

The body was pronounced dead at 12:25 am by Bob Shearer Sr. The body was removed by Ott/Haverstock Funeral of Michigan City. The body will be picked up by Coleman Williams Funeral also of Michigan City. If there are any questions please contact at (219)608-9537 or (219)325-1593.

Sincerely,

Eric E. Wood
Chief Deputy Coroner
Michigan City

CONFIDENTIAL

DEPARTMENT OF CORRECTION OPERATION DIRECTIVE INDIANA STATE PRISON

Revised March 18, 2003

ISP 02-04 – EXECUTION OF DEATH SENTENCE

This directive supersedes ISP 95-7

A. PURPOSE:

The purpose of this procedure is to establish appropriate guidelines to enable the Indiana State Prison to comply with state statutes governing the administration of the Death Penalty.

B. LEGAL BASIS:

1. IC 35-38-6-1 EXECUTION OF DEATH SENTENCE: SPECIFIED TIME AND DATE:
EXECUTIONER:
 - a. Section 1:
 - 1) The punishment of death shall be inflicted by intravenous injection of a lethal substance or substances into the convicted person;
 - 2) In a quantity sufficient to cause the death of the convicted person; and,
 - 3) Until the convicted person is dead.
2. IC 35-38-6-5 PLACE OF EXECUTION OF DEATH SENTENCE:
 - a. Section 5:

The execution must take place inside the walls of the State Prison, in a room designed for that purpose. The Department of Correction shall provide the necessary room and appliances to carry out the execution as provided in this chapter.
3. IC 35-38-6-6 PERSONS PERMITTED TO BE PRESENT AT THE EXECUTION OF DEATH SENTENCE:
 - a. Section 6:

Only the following persons may be present at the execution:

 - 1) The Warden/Superintendent and any of his assistants who are necessary assist him in the execution;
 - 2) Up to two (2) physicians;
 - 3) The Spiritual Advisor of the convicted person;
 - 4) The Prison Chaplain; and,
 - 5) The convicted person may invite up to, but no more than, ten (10) relatives or friends to attend.

The offender shall submit his list of witness names and their relationships

(Family, Friends, Spiritual Advisor) to the Warden/Superintendent for approval at least twenty (20) days prior to the execution date.

C. NEWS MEDIA:

1. Central Office Executive Staff shall designate a Central Office staff person to assist the State Prison in the coordination of media communications. The designated Central Office staff person shall be present at the State Prison to assist with the media during the period preceding the execution. Additionally, the Warden/Superintendent shall designate a staff person to assist with coordinating media activities.
2. Authorized and properly identified representatives of the news media shall be permitted access to an appropriately equipped designated area within the Administration Building. Media personnel must remain in the designated area of the Administration Building until the execution has been completed. The Warden/Superintendent or designee shall assign a staff person to remain with the media personnel at all times while they are in the facility.
3. Media personnel shall not be permitted to witness the execution or to be in the execution area. The only exception to this rule is if the offender requests, in writing, that a member or members of the media be present. The name of the individual(s) must then be included on the list of ten (10) persons who are invited by the offender to witness the execution.
4. Under no circumstances will cameras or recorders not under the control of the Prison be permitted in the execution area.

D. COMMUNICATION SYSTEMS:

E. SELECTION OF EXECUTION TEAM AND SUPPORT PERSONNEL:

1. Prior to an execution date, the [REDACTED] or [REDACTED] shall appoint a Screening Committee to assist with the execution process. This committee shall consist of, at a minimum, [REDACTED] a [REDACTED], and a [REDACTED] [REDACTED] to screen personnel who are to assist with the execution process.
2. An appropriate number of Department of Correction staff members, as well as an appropriate number of alternates, shall be selected to assist with the execution.
3. The Screening Committee shall interview appropriate personnel and assess their emotional stability and their willingness/ability to handle the stress of assisting with the execution.
4. Following the individual screening process, the Screening Committee shall provide a list of candidates to the [REDACTED]. The [REDACTED] shall approve the personnel who will assist with the execution.
5. An [REDACTED] or [REDACTED] and the [REDACTED] shall select, subject to the approval of the [REDACTED] personnel who will perform support roles in the execution process; including, but not limited to: Security, Communications, and other appropriate support activities.
6. During the preparation for an execution, should a staff person desire to be relieved of these responsibilities, or should observations of a staff person's behavior dictate that he/she may be unsuitable for the task, he/she will be relieved of these duties. In either case, the [REDACTED] or [REDACTED] shall contact the [REDACTED] for the Critical Incident Stress Management Team (CISM) to arrange a debriefing session with the staff person(s).
7. Being unable to utilize a Prison Health Services physician, the [REDACTED] or [REDACTED] shall locate and select a physician to be present at the Institution at the time of the execution. This physician's duties shall be to pronounce death after the execution has occurred and to perform a Cut-Down Procedure should the I.V. technicians be unable to find a vein adequate to insert the Angiocath.

F. PRELIMINARY PROCEDURES:

- 1.
2. The facility shall be constantly monitored during the days immediately before the scheduled date of execution. Activities of the facility may be adjusted in order to maintain a proper level of security.
3. Visitors of the condemned will visit in conjunction with regular visiting hours, 8:00 a

through 2:30 p.m. Extended visiting hours (visitation) may be requested and approved only by the [REDACTED] or [REDACTED]. Legal counsel shall be subject to the same hours listed above.

Approved spiritual advisors may visit longer if extra time is requested and approved in advance by the [REDACTED] or [REDACTED]. All visits will conclude by 10:00 p.m.

4. Prior to the scheduled date of the execution, the [REDACTED] or [REDACTED] shall arrange for the execution room to be equipped, and for the necessary supplies to be ordered.
- 5.
- 6.
- 7.
8. If the condemned offender wishes to receive a final meal, he will be permitted to order his choice of food (within reason, based on availability and legality) forty-eight (48) hours prior to execution. This meal will be eaten twenty-four (24) to thirty-six (36) hours before the execution. The condemned offender is to have nothing heavy to eat past 6:00 p.m. on the night of the execution.
9. If requested, an approved spiritual advisor or prison chaplain may be present with the offender on the day preceding the execution to provide pastoral care and sacramental functions. The name of the spiritual advisor must be submitted to the Administration for approval a minimum of twenty (20) hours prior to the execution.

G. EXECUTION PROCEDURES:

1. The execution of an offender shall generally occur between 12:00, midnight and no later than an hour before sunrise on a date fixed by the sentencing court. The execution must not occur until, at least, one-hundred (100) days after the conviction.
- 2.

3. The [REDACTED] and a [REDACTED], or their designee(s), shall inspect the execution chamber and equipment approximately thirty (30) minutes prior to the execution. The [REDACTED] and/or [REDACTED] shall remain in the execution area following this inspection.
4. An appropriate number of Department of Correction staff, previously selected, along with the [REDACTED] and the [REDACTED] (or [REDACTED]) shall be present to assist with the execution.
5. The [REDACTED] or [REDACTED] shall designate staff to monitor the communications systems put in place for the execution.
- 6.
7. The [REDACTED] or [REDACTED] will record the steps taken during the execution process and log the times:
(The following times are approximate)
 - a. 10:30 P.M.: Extraction and I.V. Teams arrive at [REDACTED] and report to the [REDACTED]. I.V. Team sets up I.V. system.
 - b. 11:20 P.M.: L-1 Team in place.
 - c. 11:35 P.M.: Physician in place.
 - d. 12:00 A.M.: [REDACTED] checks to ensure that the execution is to proceed.
 - e. 12:03 A.M.: Extraction Team notified by radio (E - 1 from R - 1: "Move In").
 - 1) At the command of the [REDACTED] or [REDACTED], the Extraction Team will approach the holding cell and ask the condemned offender to approach the cell door and be handcuffed.
 - 2) After being handcuffed, the [REDACTED] will ask the offender to step back and place his hands above his head, on the wall in front of him. (If the condemned offender refuses to cooperate, Departmental Extraction Policy will be used.)
 - 3) The [REDACTED] will unlock the cell door to allow the Extraction Team to enter. The offender will then be escorted from the cell, placed on the gurney, and secured with metal and leather restraints. The gurney will then be wheeled into the Execution Chamber. The Extraction Team will then return to the holding cell staging area, out of view of any witnesses.
 - f. 12:10 A.M.: I.V. Team notified [REDACTED] "Move In").
[REDACTED], the I.V. Technicians will insert an Angiocath into each of the condemned offender's arms, attach the necessary

tubing, and start an I.V. consisting of a saline solution.

g. 12:20 A.M.: I.V. Team announces, "I.V. process completed". They then proceed to the holding cell area.

h. 12:25 A.M.: The [redacted] will then read the Execution Order/Death Warrant to the condemned offender.

- 1) After the Execution Order/Death Warrant has been read, the [redacted] or [redacted] will then ask the condemned offender if he has any last words, if he does they will be recorded by the [redacted] an [redacted] and the L-1 Team.

(NOTE: The condemned offender will be given ample opportunity to prepare a written statement prior to an execution.)

- 2) The [redacted] checks I.V. tubes and notifies the [redacted] to transport the witnesses into the viewing area. [redacted]

- 3) The only staff in the Death Chamber with the condemned offender will be the [redacted] or [redacted] and the [redacted] or [redacted]

i. 12:31 A.M.: Witnesses in place – Notification of such, [redacted]

j. 12:32 A.M.: The [redacted] or [redacted] will contact the facility Command Center for word to proceed.

k. 12:33 A.M.: The [redacted] or [redacted] will then order the lights to be dimmed, and the viewing blinds to be opened.

l. 12:35 A.M.: The [redacted] or [redacted] instructs L – 1 Team by [redacted]

The L – 1 Team then proceeds, advising [redacted] t. [redacted] after each syringe. Once the "Proceed" command is given, the injection procedure will continue until all of the chemicals have been injected into the condemned offender, and he is presumed dead;

- a) Step 1 Completed _____
- b) Step 2 Completed _____
- c) Step 3 Completed _____
- d) Step 4 Completed _____
- e) Step 5 Completed _____

m. 12:55 A.M.: "Process Completed"

n. 12:56 A.M.: Following the completion of the injection process, and a five (5) minute waiting period, the blinds to the witness area will be closed, the lights will be turned up, and the Physician will be notified.

CONFIDENTIAL

- o. 1:00 A.M.: If the offender's heart has not stopped, the lights will be dimmed, the blinds will be reopened, and [REDACTED] or [REDACTED] shall order the injection procedure to be repeated. After this procedure is completed, the blinds will again be closed, and the Physician will again check for signs of life.
- The Physician comes out and pronounces death, and then returns to his room. The actual time of death will be when the Physician pronounces death. The Physician shall then report his findings to [REDACTED] or [REDACTED].
- p. 1:01 A.M.: [REDACTED] advises the Command Center of the time of death and of the last statement, if there is one.
- q. 1:02 A.M.: The [REDACTED] notifies the [REDACTED] that the witnesses will now leave ([REDACTED]). The visitors will be picked up at [REDACTED] with a facility vehicle. They are then driven out of the facility [REDACTED] to the outside parking lot and their vehicles. Once the visitors pass [REDACTED] going [REDACTED] [REDACTED] will notify the [REDACTED] that the area is clear [REDACTED].
- r. 1:07 A.M.: The [REDACTED] orders the I.V. Team to disconnect the I.V. System.
- s. 1:12 A.M.: The [REDACTED] t, [REDACTED] authorizes, both the I.V. Team and L-1 Team to leave. ([REDACTED])
- t. 1:14 A.M.: Physician departs.
- u. 1:15 A.M.: Extraction Team removes restraint equipment.
- v. 1:20 A.M.: Coroner is escorted to the Execution Chamber to claim the body, along with the I.D. & Release Officer for fingerprints. The hearse will be brought [REDACTED] to transport the body to the mortuary.
- w. 1:25 A.M.: Extraction Team leaves. The [REDACTED] and the [REDACTED] ensure that the area is cleared and secured.

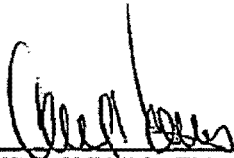
I. POST EXECUTION PROCEDURES:

- 1.
- 2.
3. The Warden/Superintendent or designee shall return the Execution Warrant to the Clerk of the Sentencing Court as soon as possible following the execution of the offender.
- 4.

J. REVIEW:

The contents of this document will be reviewed and/or revised (if needed) on an annual basis, in accordance with Policy No. 00-04-101, "THE DEVELOPMENT, APPROVAL AND IMPLEMENTATION OF POLICY".

APPROVED:



SUPERINTENDENT,
INDIANA STATE PRISON

DATE: 3-25-03

REVIEWED/REVISED:

DATE: _____

DATE: _____

DATE: _____

STATE OF FLORIDA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NUMBER 06-260

WHEREAS, the laws of Florida provide that, under certain circumstances, murder in the first degree is punishable by death; and

WHEREAS, in 2000, the Florida Legislature determined that death by lethal injection is the preferred method for carrying out a sentence of death, leaving to persons under sentence of death the option of choosing to have the death sentence administered by electrocution; and

WHEREAS, in implementing the death penalty, Florida has adopted procedures and protocols for lethal injection intended to ensure that the lethal injection is administered appropriately and in a manner that does not cause unnecessary pain and suffering; and

WHEREAS, courts, including the Florida Supreme Court in the case of *Sims v. State*, 754 So.2d 657 (Fla. 2000), and subsequent cases citing *Sims*, have upheld Florida's method of lethal injection as consistent with the Eighth Amendment of the United States Constitution and its prohibition against cruel and unusual punishment; and

WHEREAS, the cases that have upheld Florida's lethal injection protocols have done so based on evidence that the Department of Corrections was adequately implementing and following such protocols; and

WHEREAS, the findings in the autopsy report prepared by William F. Hamilton, M.D., Medical Examiner for the 8th Circuit, regarding Angel Diaz, who was executed on December 13, 2006, indicate that the lethal injection protocols may need to be reviewed to determine if any

additional protocols should be added or whether any existing protocols should be modified in any way; and

WHEREAS, the significantly lengthier death process for Mr. Diaz compared to that of other inmates who previously have been executed by lethal injection in Florida, including, according to witness accounts, a longer period of time during which Mr. Diaz lay conscious, should be considered; and

WHEREAS, as a matter of humanity, constitutional imperative, and common sense, if the State is going to execute persons convicted of capital crimes, it must do so in a manner that comports to its own protocols and the United States and Florida Constitutions;

NOW, THEREFORE, I, JEB BUSH, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section (1)(a) of the Florida Constitution, and all other applicable laws, do hereby promulgate the following Executive Order, to take immediate effect:

Section 1. I hereby create the Governor's Commission on Administration of Lethal Injection (the "Commission").

Section 2. The purpose of the Commission shall be to review the method in which the lethal injection protocols are administered by the Department of Corrections and to make findings and recommendations as to how administration of the procedures and protocols can be revised so that Floridians, including those persons who are sentenced to death, can be assured that the State continues to take reasonable and appropriate measures to ensure that its administration of death by lethal injection comports to the United States and Florida Constitutions, as interpreted by current case law.

Section 3. The Commission shall be composed of 11 members, five of whom shall be appointed by the Governor, three of whom shall be appointed by the Attorney General, one of

whom shall be appointed by the Senate President, one of whom shall be appointed by the Speaker, and one of whom shall be appointed by the Chief Justice of the Florida Supreme Court. To the extent possible, the members of the Commission shall reflect a cross-section of the scientific, medical, law enforcement and legal communities. At least one such member of the Commission shall be an attorney with extensive capital collateral experience or a present or former capital collateral regional counsel or registry attorney. In order to provide the broadest experience available to the Commission, at least three members shall be persons who are not currently involved in the criminal justice system in Florida. The Chairman shall be appointed by the Governor from among the members of the Commission.

Section 4. Members of the Commission shall serve at the pleasure of the appointing authority and shall serve without compensation, except that they may be reimbursed for travel to Commission meetings at the rates permitted under Section 112.061, Florida Statutes (2006).

Section 5. The Commission shall meet as often as necessary, and in no event fewer than three times, and shall submit its preliminary report of findings and recommendations to the Governor no later than February 1, 2007, and its final report of findings and recommendations by March 1, 2007. Upon issuance of its final report, the Commission shall be dissolved. Moreover, all meetings of the Commission shall be open to the public as set forth in Article I, Section 24(b) of the Florida Constitution and Chapter 286, Florida Statutes (2006).

Section 6. The Commission's purpose and mission shall be limited to evaluating Florida's lethal injection procedures and protocols, including enforcement of those procedures and protocols, and shall not extend to re-evaluating the policy decisions of the Legislature in enacting a death penalty or the means chosen by the Legislature for implementing the state's death penalty.

Section 7. The Executive Office of the Governor shall provide administrative support to the Commission.

Section 8. Until the Commission has issued its findings and recommendations and the appropriate revisions to the Department of Corrections' procedures and protocols have been adopted, or until further executive order, no further death warrants shall be signed.

Section 9. All state agencies under the direction of the Governor are hereby ordered, and all other state agencies are hereby requested, to provide such assistance to the Commission as may be requested by the Commission in furtherance of this Executive Order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, the Capitol, this 15th day of December, 2006.

GOVERNOR

ATTEST:

SECRETARY OF STATE