

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

(1.) The Oklahoma Observer, (2.) Arnold Hamilton, (3.) Guardian US, (4.) Katie Fretland,

Plaintiffs,

-v-

(1.) Robert Patton in his capacity as Director, Oklahoma Department of Corrections; (2.) Anita Trammell, in her capacity as Warden of the Oklahoma State Penitentiary,

Defendants.

Civil Case No. CIV-14-905-HE

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

Plaintiffs The Oklahoma Observer, Arnold Hamilton, Guardian US, and Katie Fretland, by and through their attorneys, allege and state as follows:

PRELIMINARY STATEMENT

“To determine whether lethal injection executions are fairly and humanely administered, or whether they ever can be, citizens must have reliable information about the...[‘]procedures,’ which are invasive, possibly painful and may give rise to serious complications. This information is best gathered first-hand or from the media, which serves as the public’s surrogate.”

Cal. First Amendment Coal. v. Woodford, 299 F.3d 868, 876 (9th Cir. 2002)

(citation omitted).

1. The First Amendment to the United States Constitution guarantees the public and press an affirmative right of access to certain government

proceedings. This right of access applies to government proceedings that have been open to the public historically and that play a critical role in ensuring the positive functions of government.

2. Historically, the death penalty has been carried out under public scrutiny in the United States. Oklahoma, too, has long guaranteed by statute and practice that the press and public may witness execution procedures, including lethal injection.
3. Meaningful access to, and oversight of, execution proceedings is critical to the public's and the courts' ability to assess the propriety and lawfulness of the death penalty.
4. The ability of the press to witness the particular facts and circumstances of each execution, and to report on the same, promotes the proper functioning of the State's death penalty system and increases public confidence in the integrity of the justice system.
5. Without full access to execution proceedings in their entirety, the press is unable to provide the public with thorough and objective reporting on the manner in which Oklahoma is carrying out the death penalty.
6. The public is deprived of the right to receive information about, and discuss the propriety of, the execution method if it is denied access to critical details of the State's execution proceedings.

7. At Oklahoma's most recent execution, the assembled press and other witnesses were prevented from exercising their right of access to the State's lethal injection proceeding.
8. First, the assembled press was denied the opportunity to observe Clayton Lockett entering the execution chamber and his intravenous lines being prepared and inserted.
9. Furthermore, after lifting the viewing shade that provides the witnesses with visual access to the execution chamber and the administration of intravenous drugs, the State again lowered this same shade in the middle of the execution proceeding, prematurely terminating press access.
10. For almost 20 minutes while Clayton Lockett was dying, the assembled press and other witnesses were deprived of the right to observe the proceedings. The press was also deprived of the opportunity to verify the nature and source of sounds emanating from the execution chamber, which indicated pain and suffering.
11. Because of the State's use of the viewing shade during initial and later stages of Lockett's execution, the press and public received only government-edited access to an important government proceeding. As a result, the press, and by extension the public, were deprived of the First Amendment right of access to observe the initiation and termination of the execution proceeding.

12. While a formal execution proceeding is underway, the press has a right to witness the State's administration of the death penalty. Alternatively, if the State terminates (or "calls off") an execution, then the State's duty reverts to one of sustaining life and providing medical care to the offender. During the Lockett execution, the State of Oklahoma provided no public notice that it was calling off the formal execution proceeding before terminating press access. Upon information or belief, the State provided no life-saving care to Lockett after the administration of lethal drugs.
13. Because of the State's closure of the viewing shade before Lockett's death, moreover, the press and public received only truncated access to the execution proceeding. The press was unable to observe Lockett's final moments or eventual death. As a result, the public was deprived of objective accounts as to whether, at the time of his death, the State was still attempting to execute Lockett, or in the alternative, attempting to provide medical care after calling off his execution. *Compare* Press Release, Gov. Mary Fallin, *In Death Penalty Debate, Remember the Victims*, Bartsville Examiner Enterprise (May 7, 2014), *available at* <http://examiner-enterprise.com/opinion/columnists/death-penalty-debate-remember-victims> (stating that the State of Oklahoma conducted a "lawful execution"), *with* Letter from Robert Patton, Dir. of Okla. Dep't of Corr., to Mary Fallin, Gov. of Okla., at 3 (May 1, 2014), *available at* <http://www.theguardian.com/world/interactive/2014/may/01/oklahoma->

execution-clayton-lockett-timeline-document (stating that Director Patton called off the execution at 6:56 p.m., and that the doctor pronounced Lockett deceased at 7:06 p.m.).

14. Plaintiffs therefore seek permanent injunctive and declaratory relief under the First Amendment to the United States Constitution and Article 2 § 22 of the Oklahoma Constitution. Plaintiffs ask that the Court prohibit the State of Oklahoma from denying them meaningful, uninterrupted, and unedited access to the entire execution procedure.

JURISDICTION AND VENUE

15. This case arises under the United States Constitution and presents a federal question within this Court's jurisdiction under Article III of the Constitution and 28 U.S.C. § 1331 and § 1343(a)(3). This action is brought pursuant to 42 U.S.C. § 1983.
16. This Court has jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a).
17. This Court has the authority to grant declaratory relief pursuant to 28 U.S.C. § 2201(a), § 2202, and Federal Rule of Civil Procedure 65.
18. Venue is proper in this Court under 28 U.S.C. § 1391(b). All Defendants are sued in their official capacity, and their official places of business are all located within the State of Oklahoma. The event giving rise to this Complaint is an unconstitutional state policy, practice, or custom.

PARTIES

19. Plaintiff The Oklahoma Observer is a domestic, for-profit publication owned by Oklahoma-based AHB Enterprises LLC. The Oklahoma Observer was established on October 9, 1969, to provide critical oversight of public figures and officials, and a means for Oklahomans to reach informed opinions about issues of common concern. The distribution of reports and editorials published in The Oklahoma Observer is supported by the Oklahoma Observer Democracy Foundation, a foundation designated as a 501(c)3 non-profit on July 17, 2014, to provide free access to content available to subscribers of the print edition, via the okobserver.net website.
20. Plaintiff Arnold Hamilton is Editor of The Oklahoma Observer and Co-owner with Beverly Hamilton of its holding company, AHB Enterprises LLC. Plaintiff Arnold Hamilton became Editor of The Oklahoma Observer in September 2006. Plaintiff Hamilton previously served as the longtime Oklahoma Bureau chief for The Dallas Morning News, and covered government and politics for the San Jose Mercury News, the Dallas Times Herald, the Tulsa Tribune, and the Oklahoma Journal. In his capacity as Editor, Plaintiff Hamilton requires and relies on eyewitness reporting by journalists in planning the coverage of The Oklahoma Observer.
21. Plaintiffs The Oklahoma Observer and Hamilton regularly provide reporting on death penalty issues within the State. Plaintiffs The Oklahoma Observer and Hamilton consider State execution proceedings within the publication's

mission of fostering public oversight and informed public debate over issues of common concern.

22. Plaintiff Guardian US is a national digital news service organized in New York, where it is based, as Guardian News and Media LLC. Plaintiff Guardian US was established in 2011 to cover U.S. and international news for an American audience as the U.S. online presence of the London-based newspaper the Guardian, one of Britain's oldest and most respected news outlets. Plaintiff Guardian US produces news articles, opinion, live-blogs, and interactive and multimedia content that currently reach over 20 million online U.S. readers each month. Plaintiff Guardian US was awarded the Pulitzer Prize for Public Service in 2014. Plaintiff Guardian US has reported extensively on the death penalty in general, and lethal injection proceedings in particular.
23. Plaintiff Katie Fretland is a freelance journalist who covers issues surrounding crime, criminal justice, and the death penalty for news organizations including Plaintiffs The Oklahoma Observer and Guardian US. Using records she requested under the Freedom of Information Act, Plaintiff Fretland wrote an investigative report about lethal injection in Oklahoma published by both The Colorado Independent and The Oklahoma Observer in March of 2014, which detailed Oklahoma's purchasing of lethal injection drugs with petty cash funds and the State's injection of leftover drugs into dead inmates for disposal purposes. Plaintiff Fretland has

published articles describing her eyewitness accounts of two Oklahoma executions, including Clayton Lockett's execution on April 29, 2014. She has appeared on MSNBC, New York Public Radio, and Al Jazeera America.

24. Plaintiff Fretland was among the local and national journalists who gathered to observe the scheduled execution of Clayton Lockett from the witness chamber on April 29. Plaintiff Fretland was selected as a witness to the botched Lockett execution, and reported on the event for Plaintiffs The Oklahoma Observer and Guardian US.
25. The Oklahoma Department of Corrections runs a lottery to select reporters to observe the proceeding from the witness chamber; up to 12 press witnesses are selected to attend the proceeding on behalf of their news organizations. Plaintiff Fretland entered the lottery to observe the scheduled Lockett execution, was selected to witness the proceeding, and observed the lethal injection proceeding from the witness chamber to the extent permitted by the State.
26. When the viewing shade providing access to the execution chamber was raised, Plaintiff Fretland saw that Lockett was already on a gurney inside the chamber. The intravenous ("IV") lines that deliver the drugs to the condemned had already been placed. After raising the shade, the State began administering intravenous drugs to Lockett. Plaintiff Fretland then observed Lockett writhing, groaning, and uttering words following the administration of drugs, and until the viewing shade was again lowered. After the shade

was lowered, Plaintiff Fretland was prevented from observing Lockett's death. Plaintiff Fretland stated publicly that she later learned from the State that it took more than 40 minutes for Lockett to die.

27. Defendants' actions and failures to act prevented Plaintiff Fretland from witnessing and reporting on either the IV insertion procedure or the circumstances of Lockett's actual death in her reporting for The Oklahoma Observer and Guardian US.
28. Defendants' actions and failures to act prevented Plaintiffs The Oklahoma Observer, Hamilton, and Guardian US from providing their readers with an independent eyewitness account of the initiation and termination of execution procedures. Having an eyewitness attend an entire execution – from start to finish – is crucial to the ability of The Oklahoma Observer and Guardian US to report accurately on and provide readers with a full and complete description of the lethal injection process as carried out in Oklahoma.
29. Plaintiff Fretland will again submit to the lottery process for witnessing the next execution in Oklahoma, currently scheduled for November 13, 2014, and witness the proceeding firsthand if selected. She will report on the execution from the grounds of the State Penitentiary based on firsthand accounts, whether or not she is chosen to be one of the witnesses to the execution. Plaintiff Fretland has made arrangements with Plaintiffs The Observer and the Guardian to publish her reporting on the event.

30. Plaintiffs The Oklahoma Observer, Hamilton, and Guardian US will publish news stories about the next-scheduled execution in Oklahoma, and have arranged for Plaintiff Fretland to attend the execution, enter the witness lottery, and provide on-the-ground reporting on their behalf.
31. Defendant Robert Patton is Director of the Department of Corrections (“DOC”). Acting under color of state law, Defendant Patton holds executive authority over the administration of the State death penalty.
32. Defendant Anita Trammell is the Warden of the Oklahoma State Penitentiary (“OSP”), the facility in which Oklahoma executes its condemned. Defendant Trammell, acting under color of state law, controls execution procedures in Oklahoma.

FACTS

The Right of Access

33. The public and press have a First Amendment right of access to observe certain government proceedings. This right of access turns on two complementary considerations: (1) the “experience” test, which examines whether “place and process have been open to the press and general public;” and (2) the “logic” test, which evaluates whether “public access plays a significant positive role in the functioning of the particular process in question.” *Press-Enter. Co. v. Superior Court*, 478 U.S. 1, 8 (1986).

34. Even a brief historical tradition may be sufficient to establish a First Amendment right of access to a government proceeding, if the beneficial effects of public access are overwhelming.
35. Oklahoma has a long history of providing robust public and media access to government proceedings. The State's democratic functions benefit from this public accountability and oversight, which provides an outlet for community concern and bolsters public opinion that justice has been served.
36. In particular, this First Amendment right of access attaches to all stages of the criminal justice process, including pre-trial proceedings, trials, and public executions.
37. Executions comprise an integral part of Oklahoma's criminal justice process. Title 22 of Oklahoma's state law – entitled "Criminal Procedure" – governs the breadth of criminal justice proceedings, including preliminary hearings, *voir dire*, trials, and executions. *See* Okla. Stat. Ann. tit. 22, § 524 (preliminary hearings), § 592 (*voir dire*), §§ 831–61 (trial), § 1015 (executions).
38. State law and protocols issued by the DOC provide for members of the press and public to observe the execution proceeding. By statute, Okla. Stat. Ann. tit. 22, §§ 1014, 1015, and 1016 set forth the statutory framework that governs Oklahoma's death penalty. Okla. Stat. Ann. tit. 22, § 1015 sets forth the location of, and public witnesses to, the execution of a death sentence. These procedures require that the State Penitentiary, where sentences of

death are carried out, be designated “by the court by which judgment is to be rendered.” *Id.*

39. Okla. Stat. Ann. tit. 22, § 1015 also requires the warden to invite:

the district attorney of the county in which the crime occurred or a designee, the judge who presided at the trial issuing the sentence of death, the chief of police of the municipality in which the crime occurred, if applicable, and lead law enforcement officials of any state, county or local law enforcement agency who investigated the crime or testified in any court or clemency proceeding related to the crime, including but not limited to the sheriff of the county wherein the conviction was had, to witness the execution.

The statute also provides for attendance by family members of the condemned and family members of the victims.

40. Accordingly, executions are the final stage of the criminal justice process in Oklahoma, as indicated by the legislature’s inclusion of the proceedings in Title 22 and its continuity with previous stages of the criminal justice process.

Public and Media Access to Execution Proceedings in Oklahoma

41. Oklahoma law has traditionally required the admittance of media and public witnesses at executions. The State of Oklahoma statutorily recognizes that members of the news media have a right to witness executions, along with a limited number of public citizens. Okla. Stat. Ann. tit. 22, § 1015(B) provides that “reporters from recognized members of the news media will be admitted [to executions] upon proper identification, application, and approval of the warden.”

42. This statute has required media access to witness the execution proceeding since at least 1951, when the statute admitted “newspaper men.” 1992 Okla. Sess. Law Serv. Ch. 106 (H.B. 2268) (West).
43. The State’s current execution protocol requires that witnesses, including members of the press, be granted access to observe the execution proceeding. *See* Procedures for the Execution of Offenders Sentenced to Death, OP-040301 (effective Apr. 14, 2014) [hereinafter, “Protocol”] (App’x A) (prescribing protocol for selection of media witnesses and other aspects of media coverage of the execution). Specifically, the Protocol provides that “[t]welve media representatives will be allowed as witnesses in the execution area,” including a newspaper of general record and the Associated Press wire service. Protocol V.C.1.
44. These designated media witnesses are not subject to the warden’s approval. *See* Protocol V.C; *see also id.* VIII.B.6 (allocating separate waiting rooms for observers subject to warden approval – victim and offender witnesses – and for witnesses not subject to the warden’s discretion).
45. Additionally, the State’s Protocol requires as a condition of media access to the witness chamber that media witnesses promise to “fully brief” other reporters whose names are not drawn for access to the proceeding. Protocol V.C.3.c. Specifically, the Protocol mandates a reporters pool under which interested “[o]ther media representatives” not specifically designated access under the Protocol “will be requested to place [their] name and media

representation into a container” from which a DOC employee will draw names to fill the twelve reserved press seats. Protocol V.C.2-3.a. These “representatives selected [through the draw] will sign a statement agreeing to fully brief the remaining media representatives covering the execution before filing their stories.” Protocol V.C. 3.C. “After completion of the execution, the designated twelve media representatives will then be escorted back to the Media Center where they will brief the remaining representatives.” Protocol V.C.7. Thus, Oklahoma protocol not only permits but requires press debriefing and dissemination of information about the execution, as witnessed firsthand, as a condition of media access.

46. The State’s Protocol defines the beginning of the execution proceeding as the moment when the condemned is “moved to the Execution Room” and before the “person recruited by the warden for IV insertion will insert the appropriate intravenous catheter(s)” into the vein. Protocol IX.C.1-2. The State’s Protocol also defines the completion of the execution as the time in which “the offender is pronounced dead by the attending physician,” Protocol IX.C.6; or, in the event of a stay during the actual administration of the lethal drug or drugs, when “all proceedings...cease immediately” at which time “the shades will be lowered and medical personnel will take action immediately to render emergency measures,” Protocol IX.C.7;¹ *see*

¹ In the April 14, 2014 version of the Procedures for the Execution of Offenders Sentenced to Death, there are two consecutive subsections under Protocol IX labeled as point “C.” In effect, this error creates two Protocols referenced as IX.C.7. This Complaint refers to the second referenced Protocol.

also id. C.10 (“Upon pronouncement of death, all persons will leave the execution areas except those responsible for the removal of the body.”).

47. Accordingly, the State’s current Protocol treats the entire execution process as a formal proceeding to which specified members of the press are given access. Nothing in the Protocol suggests that this access may be conditional, temporary, or revoked in an *ad hoc* fashion.
48. Upon information or belief, the State is currently revising its Protocol in the wake of Clayton Lockett’s death. Nothing in the current Protocol concerns the State’s authority to raise or lower the blinds during an execution proceeding; the only mention of the “blind” in the Protocol involves its use after an execution proceeding is *terminated* by a court-issued stay. Protocol IX.C.7 (see n.1).
49. Upon information or belief, the State of Oklahoma has not previously used the lethal injection observation chamber’s shades to block, restrict, or revoke access to the assembled witnesses to an execution after the execution proceeding has begun, and before the execution proceeding is concluded.
50. Upon information or belief, members of the press have been admitted to, and have reported on, every execution in Oklahoma since the State recommenced executions after the 1976 Supreme Court decisions upholding death penalty schemes once again as constitutional. News articles have routinely included eyewitness reports from witnesses and media in attendance at the State’s lethal injection proceedings. *See, e.g.*, Ann Weaver,

Killer, 74, Becomes Oldest to be Executed in State, The Oklahoman, June 2, 2006, available at <http://newsok.com/killer-74-becomes-oldest-to-be-executed-in-state/article/1860863> (describing media witness account of the execution of John Boltz); Kathrin Chavez & Don Mecoy, *Convicted Killer Parks Executed*, The Oklahoman, March 10, 1992, available at <http://newsok.com/convicted-killer-parks-executed/article/2387603> (describing media witness account of the execution of Robyn Parks); Ken Raymond, *Lethal Injection Made Its Debut in Oklahoma 20 Years Ago*, The Oklahoman, Sept. 7, 2010, available at <http://newsok.com/lethal-injection-made-its-debut-in-oklahoma-20-years-ago/article/3492556> (recounting Oklahoma media witness reports of Oklahoma's first execution by lethal injection of Charles Troy Coleman in 1990).

51. Recent press reports on Oklahoma's execution methods have been critical in informing the public about the State of Oklahoma's administration of lethal injection. See, e.g., Justin Juozapavicius, *Man Convicted in 1998 Stabbing Death Executed*, Associated Press, Jan. 23, 2014, available at <http://news.msn.com/crime-justice/oklahoma-executes-man-convicted-in-1998-stabbing> (describing media account of the lethal injection of Kenneth Hogan); Graham Lee Brewer, *Condemned Man's Last Words Lead to Questions About Lethal Injection 'Cocktail' in Oklahoma, US*, The Oklahoman, Feb. 9, 2014, available at <http://newsok.com/condemned-mans-last-words-lead-to-questions-about-lethal-injection-cocktail-in-oklahoma->

u.s./article/3932043 (describing media account of the lethal injection execution of Michael Lee Wilson); Katie Fretland, *Oklahoma Execution: Clayton Lockett Writhes on Gurney in Botched Procedure*, *Guardian*, Apr. 30, 2014, available at <http://www.theguardian.com/world/2014/apr/30/oklahoma-execution-botched-clayton-lockett> (describing reporter's eyewitness account of Clayton Lockett's execution by lethal injection).

52. Oklahoma's tradition of press access to executions is subject to First Amendment protections.

The Importance of Access to Executions in Oklahoma

53. The effectiveness of the State's democratic functions is served by allowing public oversight and accountability.
54. The death penalty represents the most powerful exercise of government authority – the intentional ending of a human life. The need for public oversight is as critical at the execution stage of the justice process as it is in earlier stages, including *voir dire* and trial.
55. The Eighth Amendment to the U.S. Constitution, which prohibits cruel and unusual punishment, has been interpreted by the U.S. Supreme Court as turning on “evolving standards of decency that mark the progress of a maturing society.” *Glass v. Louisiana*, 471 U.S. 1080, 1083 (1985); *Gregg v. Georgia*, 428 U.S. 153, 173 (1976). This standard has been applied in particular to the use of the death penalty, which has evolved through a series

of different methods. Many changes to execution procedures have occurred as a direct result of evidence that prior methods were inhumane or caused unnecessary pain.

56. Changes to execution methods have resulted from public debate, media reporting, and courts' reliance on objective reports of the facts and circumstances of past executions.
57. As such, public and press access to the objective facts and procedure of each execution is critical in aiding the public and the courts in their evaluation of whether execution proceedings violate current standards of decency.
58. By witnessing and reporting on the entire execution process, members of the news media, as representatives and surrogates of the public, provide assurance that established procedures and protocols are being followed and that deviations will be publicized.
59. As independent witnesses to government proceedings, members of the news media provide public scrutiny, which enhances the quality and safeguards the integrity of the death penalty process. Reporting by press not associated with the condemned, the victim, or the State of Oklahoma is critical to assuring the public that they have thorough and objective facts about the execution process. Unbiased reporting is therefore necessary to the perceived and actual legitimacy of the execution process.
60. Defendant Robert Patton, Director of the Oklahoma DOC, recommended that the Governor pursue an independent investigation of the circumstances

of the botched Lockett execution, noting: “While I have complete confidence in the abilities and integrity of my Inspector General and his staff, I believe the report will be perceived as more credible if conducted by an external entity.” Letter from Robert Patton, Dir. of the Okla. Dep’t of Corr., to Mary Fallin, Gov. of Okla. (May 1, 2014) [“Timeline of Botched Procedure”], *available* *at* <http://www.theguardian.com/world/interactive/2014/may/01/oklahoma-execution-clayton-lockett-timeline-document>.

61. To determine whether executions are fairly and humanely administered, the public must have thorough and reliable information about the procedures and protocols used by the State, including the insertion of intravenous (“IV”) lines and the determination of death. This information is best gathered firsthand and reported by eyewitnesses disinterested in the parties to the proceeding.
62. Public and press access to witness the entirety of Oklahoma’s execution procedure is overwhelmingly beneficial to the State’s democratic function and is subject to First Amendment protection.

The Failed Execution of Clayton Lockett

63. The State of Oklahoma had scheduled the execution of two condemned men on the evening of April 29, 2014: Clayton Lockett at 6 p.m. and Charles Warner at 8 p.m.

64. At 5:19 p.m., according to the State's sole account, Defendant Trammell and her restraint team escorted Clayton Lockett to the execution chamber. Lockett was then placed and restrained on the execution table. Lethal doses of drugs were prepared for injection. The phlebotomist then entered the chamber to place an IV into Lockett's body. Unable to find a viable insertion point in Lockett's arms, legs, feet, or neck, the phlebotomist inserted the IV into Lockett's groin area. Lockett's groin was then covered with a small gown or sheet.
65. Upon information or belief, the State of Oklahoma has the capability to videotape the entire execution process, including the IV insertion, and has installed a camera capable of video and audio recording in the execution chamber.
66. Upon information or belief, this camera was not turned on during the botched Lockett execution.
67. The placement of the IV is an integral part of the lethal injection procedure. *See, e.g.*, Protocol IX.B.1 (prescribing selection of a licensed health care specialist certified in IV insertion). The placement of the IV line is necessary to ensure that all intravenous drugs can be administered according to protocol.
68. The placement of an IV line involves technical skill that requires training. *See id.* (selection of a licensed health care specialist certified in IV insertion); B.2 (selection of persons to administer lethal chemical agents);

and B.4 (execution review and training). The proper placement of the IV line is essential to ensuring that drugs are administered directly into the veins of the condemned in required dosages, so as not to cause unnecessary pain.

69. There was no public access, and therefore no objective press account, of the hour-long period during which Lockett was in the execution chamber between 5:19 p.m. and 6:23 p.m. Upon information or belief, during this time the execution team, and specifically the phlebotomist, repeatedly attempted to insert an IV line into Lockett's body.
70. The media, and by extension, the Oklahoma public, had no public access to witness or document whether the IV insertion procedure was performed according to protocol, whether the individual or individuals who inserted the IV appeared to be acting with the proper training, whether the condemned experienced pain during that process, and whether any other events occurred during the execution proceeding between 5:19 p.m. and 6:23 p.m.
71. At 6:23 p.m., the shade between the execution chamber and the witness viewing area was opened, initiating media access. Twelve reporters were present to witness the remainder of the execution proceeding. Immediately after providing media access, prison employees began to administer the drug Midazolam to the condemned. At 6:33 p.m., the doctor declared Lockett unconscious, and staff began to administer the lethal drugs.

72. At 6:36, Lockett's head rolled to the side, and he mumbled something unintelligible. A minute later, Lockett seemed to be struggling to get up and mumbled another unintelligible statement.
73. At 6:38 p.m., Lockett was grimacing, groaning, and lifting his head and shoulders entirely up from the gurney. He uttered a phrase that included the word "man." He appeared to be in pain.
74. The doctor then walked over to Lockett, lifted up the sheet, and spoke to Defendant Trammell. Between 6:39 and 6:42 p.m., Trammell then announced that employees would "lower the blinds temporarily."
75. Between 6:39 and 6:42 p.m., the shade was lowered, preventing the media from witnessing the remainder of the execution. Reporters in the witness viewing area could not observe what was happening behind the shade. Prison employees then left the room, leaving behind the journalists and several of Lockett's attorneys.
76. According to the DOC, behind the drawn shade, the phlebotomist and doctor checked the IV and reported to Defendant Patton that a blood vein had collapsed and the drugs had either absorbed into the tissue, leaked out, or both.
77. According to the DOC's report, the doctor confirmed to the director that an insufficient dosage of drugs had been administered to cause death, that no other vein was available, and that there were not enough drugs remaining to cause death. The doctor also told Defendants Trammell and Patton that

Lockett had a faint heartbeat and was unconscious. Journalists were not permitted to witness either this exchange or Lockett's reaction to the collapsed vein or drug leakage into his body tissue.

78. Upon information or belief, the manner of IV selection and insertion contributed to the consciousness, pain, and unexpected responses of Lockett.
79. At 6:56 p.m., a full 17 minutes after the shade was lowered, Defendant Patton called off the execution, according to the State's timeline. At some point, he returned to the witness viewing area and announced that the execution had been formally called off and the second execution scheduled for that night had been stayed. After Defendant Patton's announcement, witnesses were told to leave the viewing area.
80. At 7:06 p.m. – 27 minutes after the shade was drawn and 10 minutes after the execution was called off – a doctor pronounced Lockett dead in the execution chamber. Defendant Patton subsequently announced Lockett's death to reporters in a statement at the prison's media center.

The State's Burdens on the Plaintiffs' Right of Access

81. As a result of action and inaction by the State of Oklahoma, all Plaintiffs have been, and will continue to be, deprived of their First Amendment right to witness an Oklahoma execution.
82. For the majority of the Lockett lethal injection proceeding, the State of Oklahoma used a physical shade to prohibit Plaintiff Fretland and other

witnesses present from accessing, witnessing, verifying, or reporting on the sights and sounds of the proceeding.

83. The Oklahoma Observer, Editor Hamilton, and Guardian US, who had made arrangements to edit and publish the eyewitness reporting of Plaintiff Fretland, were likewise prevented from publishing full and independent accounts of the botched lethal injection of Clayton Lockett.
84. In order to meaningfully observe an execution, a press witness must be able to see and hear the proceeding from the moment the condemned enters the execution chamber through, to and including, the time he is declared dead – or, alternatively, up to and including the time that he exits the chamber alive if an execution is called off.
85. By preventing witnesses from gaining access to the lethal injection proceeding until after the condemned has been fully prepared for the provision of lethal drugs, Defendants obstructed Plaintiffs' access to the execution and prohibited them from meaningfully reporting on the entire execution. Specifically, the press could not report the extent to which initial IV preparation and placement procedures for Lockett went according to protocol, the apparent behavior and training of the relevant staff members, or the degree of pain or suffering experienced during the IV insertion process.
86. For the first hour of the lethal injection procedure, from 5:19 p.m. through at least 6:23 p.m., media representatives were not permitted any visual or

auditory access to the execution chamber. During this time, state employees prepared Lockett for execution, finding and inserting IV lines and connecting his body to the intravenous lines that supply the lethal injection drugs. The media's only accounts of this critical period therefore come from the State of Oklahoma itself including those of Plaintiffs. *See* Letter from Robert Patton, Dir. of the Okla. Dep't of Corr., to Mary Fallin, Gov. of Okla. (May 1, 2014), *available at* <http://www.theguardian.com/world/interactive/2014/may/01/oklahoma-execution-clayton-lockett-timeline-document> (embedding PDF of letter from Robert Patton, Director of the Oklahoma DOC, as a news story without other reported content); Richard L. Fricker, *It Doesn't Pass the Smell Test*, *The Oklahoma Observer* (May 15, 2014), *available at* <http://www.okobserver.net/2014/05/15/it-doesnt-pass-the-smell-test/> (noting that "Lockett lay on the death gurney for an hour before the actual execution procedure began").

87. The State's own Protocol makes plain that these IV procedures are integral to the execution process, and require training and skill. Furthermore, a substantial number of lethal injections are "botched" as a result of error or unexpected response during the IV insertion process. Information about the initial IV procedures is essential to the press' right to witness the execution and the public's right to assess the propriety of the lethal injection proceeding.

88. By prematurely closing the viewing shade after the lethal injection resulted in drug leakage and Lockett's unexpected consciousness, Defendants further obstructed Plaintiffs' access to the execution and prohibited them from meaningfully reporting on the entire execution. Specifically, the State foreclosed access at the most critical juncture of the execution proceeding – when it became apparent that the lethal injection proceeding diverged from the standard protocol. Immediately after the gathered witnesses were presented with visual and auditory evidence that the execution had been botched, the State revoked the access of members of the press, and by extension, the public. At the moment when public oversight was most important, the State instead unlawfully shrouded its execution proceedings in secrecy.
89. Plaintiffs were forced to rely on official reports from the State for critical details of the execution proceeding. Accordingly, they were unable to give firsthand, objective accounts as to whether established procedures were followed or whether, and to what extent, Lockett experienced pain and suffering as a result. Rather than provide independent accounts of Lockett's death, Plaintiffs were forced instead to inform readers on the limitations of their ability to access the event. The closure of the viewing shade, in fact, became a focal point of Plaintiff Fretland's reporting and Plaintiffs' coverage of the attempted Lockett execution. *See* Katie Fretland, *Clayton Lockett Writhed and Groaned. After 43 Minutes, He Was Declared Dead*,

Guardian US, Apr. 30, 2014, *available at* <http://www.theguardian.com/world/2014/apr/30/clayton-lockett-oklahoma-execution-witness> (“Then, in a gesture that seemed to echo Oklahoma’s fierce commitment to secrecy in the way it carries out lethal injections, the curtains were drawn over the execution chamber, obscuring the gruesome spectacle from public view. Officials picked up prison phones and left the room.”); Richard Fricker, *Oklahoma’s Execution De-botchery*, *The Oklahoma Observer* (April 30, 2014), *available at* <http://www.okobserver.net/2014/04/30/oklahomas-execution-de-botch-ery/> (“Shortly thereafter, the screen was closed and reporters were ushered out of the room. Nothing more was heard from the State until DOC Director Patton announced he had used his own authority to halt the execution.”).

90. By keeping the viewing shade closed during initial IV selection and insertion procedures, Defendants obstructed, and will continue to obstruct, the Plaintiffs’ access to the full execution procedure and prohibit them from meaningfully reporting on the entire execution.
91. Closing the viewing shade and revoking all visual access to the execution proceeding is neither necessary to nor justified by protecting the right to privacy.
92. Closing the viewing shade and revoking all visual access to the execution proceeding is neither necessary to nor justified by the State’s desire to hide the identity of the staff involved in administering the death penalty.

93. Oklahoma has no tradition of providing access *only* to “non-cruel” or “usual” portions of an execution proceeding. The Protocol provides no authority for the closure of the viewing shade during the execution proceeding.
94. If Defendants are permitted to continue preventing witnesses from observing any part of the execution, from the time it begins until death, the public will have no way of evaluating the State’s administration of the death penalty or ensuring that those proceedings meet evolving standards of decency.
95. The State’s failure to have a policy requiring press access to the entire execution proceeding conflicts with the First Amendment right of the public and the press to observe government proceedings, including executions.
96. Charles Warner is currently scheduled to be executed in Oklahoma by lethal injection on November 13, 2014.
97. Richard Glossip is currently scheduled to be executed in Oklahoma by lethal injection on November 20, 2014.
98. John Grant is currently scheduled to be executed in Oklahoma by lethal injection on December 4, 2014.
99. Plaintiffs The Oklahoma Observer, Hamilton, Guardian US, and Fretland all intend to continue reporting on the death penalty and to deliver eyewitness reporting from the scene of the next execution to occur in Oklahoma. Plaintiff Fretland will again enter the witness lottery for the next scheduled execution, and has made arrangements with Plaintiffs The Observer and the

Guardian to publish her reporting on the event. Without an Order from this Court, all Plaintiffs risk having their right to access Oklahoma’s execution proceedings curtailed, withheld, or revoked in violation of the First Amendment to the U.S. Constitution.

CLAIMS

Count I

Violation of the First Amendment to the U.S. Constitution

- 100. Plaintiffs repeat and re-allege each allegation contained in Paragraphs 1 through 99 of this Complaint.
- 101. The First Amendment, made applicable to the states by the Fourteenth Amendment, guarantees designated members of the public and the press a qualified right of access to government proceedings, including executions.
- 102. Defendants deprived Plaintiffs of their First Amendment rights by preventing Plaintiffs from aurally and visually observing the full execution proceeding, and by extension deprived the Oklahoma public of informed and accurate media coverage of that critical event.
- 103. Defendants will deprive Plaintiffs, and others similarly situated, of their First Amendment rights in future executions if the State of Oklahoma is not required to allow witnesses to meaningfully observe the entire procedure from the moment the condemned enters the execution chamber until the time the condemned is declared dead.

Count II

Violation of Article 2, Section 22 of the Oklahoma Constitution

104. Plaintiffs repeat and re-allege each allegation contained in Paragraphs 1 through 103 of this Complaint.
105. Article 2 § 22 of the Oklahoma Constitution guarantees designated members of the public and the press a qualified right of access to government proceedings.
106. Article 2 § 22 of the Oklahoma Constitution prevents the State from taking action to abridge the liberty of the press.
107. Defendants deprived Plaintiffs of their First Amendment rights by preventing Plaintiffs from aurally and visually observing the full execution proceeding, and by extension deprived the Oklahoman public to informed and accurate media coverage.
108. Defendants will deprive Plaintiffs, and others similarly situated, of their rights in future executions if the State of Oklahoma is not required allow witnesses to meaningfully observe the entire proceeding from the moment the condemned enters the execution chamber until the time the condemned is declared dead.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Declare that Plaintiffs have a right protected by the First Amendment to the United States Constitution and Article 2 § 22 of the Oklahoma Constitution

- to witness the entire execution process;
2. Declare that Defendants' act of preventing witnesses to an execution from viewing and hearing the entire execution process violates the First Amendment to the United States Constitution and Article 2 § 22 of the Oklahoma Constitution;
 3. Declare that a lethal injection proceeding, for purposes of the right of access, includes the entire time from when the condemned enters the execution chamber until the time the condemned leaves the execution chamber, dead or alive;
 4. Preliminarily and permanently enjoin Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction from curtailing, censoring, limiting, or hindering the ability of lawful witnesses and media representatives to witness the entire execution process;
 5. Preliminarily and permanently enter a mandatory injunction requiring the State to amend its execution protocol to prohibit the withdrawal of visual or auditory access to the execution proceeding during the entire execution process, from the time from when the condemned enters the execution chamber until the time the condemned is declared dead, or the State calls off the execution;
 6. Preliminarily and permanently enter a mandatory injunction requiring the State to record and keep a video and audio recording of the entire execution

proceeding, from when the condemned is led into the execution chamber until the condemned exits the chamber, dead or alive;

7. Award Plaintiffs reasonable costs and attorney's fees pursuant to 42 U.S.C. § 1988; and
8. Grant Plaintiffs such other relief as the Court deems just and proper.

Respectfully submitted,

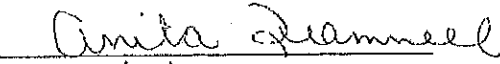
_____/s/ Lee Rowland_____
Lee Rowland*
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2606

_____/s/ Brady Henderson_____
Brady Henderson, OBA #21212
Ryan Kiesel, OBA #21254
ACLU of Oklahoma Foundation
3000 Paseo Drive
Oklahoma City, OK 73103
(405) 524-8511

Counsel for Plaintiffs

* *Pro Hac Vice* Motion pending

EXHIBIT A

Section -- 04 Security	OSP-040301-01	Page: 1	Effective Date: 04/14/14
Procedures for the Execution of Offenders Sentenced to Death	ACA Standards: None		
Anita Trammell, Warden Oklahoma State Penitentiary	 signature		

Procedures for the Execution of Offenders Sentenced to Death

The Department of Corrections will carry out the punishment of death, as defined by and according to state statute, in a timely and efficient manner.

For the purpose of this procedure, the term "offender" will apply to anyone under the authority, custody or care of a prison operated by the Oklahoma Department of Corrections.

I. Logs

Seven days prior to the execution of an offender sentenced to death, a daily log will be kept regarding every aspect of the proceedings except names of those participants who are to remain anonymous.

II. Location and Time of Execution

All judgments of death will be executed at Oklahoma State Penitentiary (OSP) at a time and day designated by the court order or appropriate authority. At least 24 hours prior to any scheduled execution, the Warden will have a direct telephone line installed to provide immediate access by the Governor.

III. Pre-Execution Procedures

A. Notification of Department of Corrections Personnel

The Attorney General's office will notify the Department of Corrections general counsel 60 days prior to the execution that it should occur as scheduled. The general counsel will notify the director, appropriate deputy director, DOC public Information Officer, and the Warden of the Oklahoma State Penitentiary (OSP) or Mabel Bassett Correctional Center.

B. Notification of Offender

Within thirty days prior to a scheduled execution, the Warden, the Deputy Warden, the Chaplain, representatives from Medical Services and Mental Health Services, the Unit Manager and the Case Manager Coordinator will meet and advise the offender of the rules and procedures of the execution so the offender may plan for visits, religious assistance and other privileges. If the offender refuses to leave his cell for the notification meeting, the Warden has the option to meet with the offender privately at his cell. In either case, the meeting will be documented in the log. At this time Psychological Services will evaluate the offender, and begin providing daily updates on the offender to the Warden. The Lead Physician will have the offender scheduled for a physical examination; the offender will be assessed to ensure there are no health issues that will interfere with the execution process.

A thirty-day packet will be given to the offender during this meeting. This

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packet includes, but is not limited to, information regarding expanded visiting list, rules, phone list, witness list, last day visit list, and burial arrangements information for the offender to complete and return to the unit manager. (Attachment A, "Thirty Day Notification" and Attachment A-1 30 Day Information Packet)

1. At the discretion of the Warden, the offender may be allowed special visiting privileges during the seven days prior to the execution.
 - a. For special visits, the offender may specify five (5) visitors and one (1) member of the clergy. Visitors must be approved by the Warden of the facility where the offender is housed.
 - b. The number of visitors may be increased to the number of the offender's immediate family members.
 - c. The number of clergy may be increased to two.
 - d. The visits will occur in a designated visiting area and under the supervision of a correctional officer.
 - e. More than two visits may be permitted during one period, but the visits will be sequenced so that no more than two visitors are in the visiting area at the same time.
 - f. The offender will not be allowed to make changes to the 30 day Information Packet, once the time frame has reached 7 days prior to the execution.
2. Visits by the attorney(s) of record will be permitted during visiting hours in the contact attorney area and other times as approved by the Warden or designee. These visits will be monitored by a correctional officer or staff person through the observation window.
3. The facility Chaplain, upon request, will be available to the offender continuously during the final 24-hour period.
4. The offender may request a supervised 30 minute non-contact visit at the holding cell with his spiritual advisor or facility Chaplain. This visit must be requested at least 24 hours in advance and must be between 4:00 p.m. and 5:00 p.m. on the day of the execution. Individuals that are under any type of supervision, by any corrections or law enforcement authority from any state or other local government entity, are prohibited from being a spiritual advisor.
5. The offender will be advised that the facility Chaplain and/or spiritual advisor are not permitted to be in the execution chamber during the execution process.
6. At the time of the offender's notification, mental health services will evaluate the offender. Seven days prior to the execution date, the offender will be transferred to a high maximum cell. Based on the

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mental health services evaluation and other contingencies which may occur, the offender may be placed in the high maximum cell at an earlier date. Twelve hours prior to the execution, the offender will be placed in Cell SW-4-LL.

7. Once an execution date has been received by the facility, a file will be maintained in the office of the H Unit Manager, containing copies of any requests to staff or other documents generated by or for the offender.
 8. A log will be maintained beginning when the offender is placed in the high-maximum cell with entries from Health Care Services, Psychological Services, Case Managers, and the Chaplain. This log will be transferred to the Execution Holding Cell Area Officers, after the offender is moved to the execution holding cell.
 9. This log will provide a detailed chronological history of every aspect of the execution proceedings. They will include any and all transactions concerning the condemned offender, i.e., telephone calls, correspondence, and visits between staff and offender.
 10. The personnel of Health Services, Mental Health Services, the assigned Case Manager, and the Chaplain will see the offender as requested. During the last seven days, these personnel will see the offender on a daily basis and document each visit.
 11. The Warden of the institution holding the offender will notify the Department of Correction's Public Information Officer of the thirty day notification.
- C. One of the facility Physicians will be available during the last twelve hours prior to an execution.
- D. On the day prior to the date of the scheduled execution, the Maintenance Superintendent, Deputy Wardens, CERT Commander or designee, and the H Unit Manager, will examine the Execution Area to ensure it is secure and operational.
- E. Procedures for placing a male offender in the Execution Holding Cell are as follows:
1. Prior to 6:00 a.m., on the day of the scheduled execution, the privacy screen will be placed around Cell SW-4-LL. A minimum of four (4) staff and one (1) camera operator will be present to film the activity throughout the search procedure. The Unit Manager and the CERT Commander or designee must be present. Cell SW-4-LL will be thoroughly searched by two officers under the supervision of the CERT Commander or designee and the drug detection dog may also be utilized when available. They will then conduct a thorough search of the shower located adjacent to Cell SW-4-LL. At least one officer will be posted and remain at the cell at all times. At 6:30 a.m. on the morning of the scheduled execution, officers selected by the CERT Commander or designee will proceed to the high maximum cell housing the offender and search, issue new clothing

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and escort the offender to medical where he will be x-rayed (beginning at the head and x-rayed downward of the body). The x-rays will be taken prior to eating breakfast. The offender will then be escorted back to H Unit and placed in the shower next to cell SW-4-LL.

2. The offender will enter the shower area and may take a shower under the supervision and observation of staff.
 3. Two sets of clothing, to include shorts, pants, shirts, socks, and shoes, in the appropriate sizes, mattress, sheets and a blanket will be provided for the offender. Upon completion of the shower, the offender will change into one set of clothing. The remaining set of clothing will be maintained by the officers for issuance to the offender each time he enters or exits the cell. Clothing will be searched each time the offender is moved.
 4. After the offender has dressed, restraints will be applied. The shower door will be opened and the offender will step out on the run and the shower door will be secured. Cell SW-4-LL door will be opened and staff will monitor the offender's movement from the shower to the cell. After the offender enters cell SW-4-LL, the cell door will be closed and secured.
 5. Assigned staff (a minimum of three officers) will take up positions in front of the cell door maintaining constant observation of the offender and keep a master log of the activities that take place involving the offender during their assigned shift.
 6. Officers will be assigned to work from 5:30 a.m. until 1:30 p.m. and 1:30 p.m. until 6:00 p.m.
 7. Any appliances owned by the offender will be exchanged one for one by the facility and thoroughly searched by the Unit Manager and CERT Commander or designee prior to being placed in SW-4-LL. The offender's personally-owned television and/or radio, or fan, will not be taken into SW-4-LL.
 8. Legal material not to exceed two cubic feet will be allowed in the cell after it has been thoroughly searched. No canteen items will be allowed in the cell from the offender's property. These items will be exchanged on a one for one ratio from the facility canteen. Hygiene items will be made available on a check-out/check-in basis. No personal property will be allowed other than a Bible, Koran, or other equivalent religious materials (as deemed appropriate by the facility Chaplain), and family pictures (no frames or photo albums). Only those pictures authorized by the Warden, Deputy Wardens or CERT Commander or designee will be allowed in the cell. Under no circumstances will an item be introduced into the cell until it has been thoroughly searched by staff.
- F. Procedures for placing a female offender in the execution holding cell area are as follows:

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1. Prior to arrival of a female offender to be placed in the execution holding cell, OSP will have two correctional officers thoroughly search Cell SW-4-LL under direct supervision of the CERT Commander or designee. The drug detection dog may also be utilized when available. They will then conduct a thorough search of the shower located adjacent to Cell SW-4-LL. At least one (1) officer will be posted and remain at the cell at all times. Privacy screens will be drawn around cell SW-4-LL to prevent visual contact with other offenders and privacy curtains will be placed between the execution table and chamber doorway prior to the offender being moved to H Unit.
2. MBCC will x-ray the offender prior to departure from MBCC. Upon arrival at OSP, the offender will again be x-rayed; officers selected by the CERT Commander or designee will then transport the female offender by vehicle to the rear of H Unit. She will be escorted to the H Unit Law Library and placed in a caged area for legal visit opportunities or escorted through the chamber to the shower adjacent to cell SW-4-LL.

In the event the Law Library is utilized, the offender will be removed from H Unit Law Library and escorted to medical for x-rays and returned to SW-4-LL through the H Unit chamber area.

- a. The Unit Manager and CERT Commander or designee must be present. The offender will be escorted to the shower adjacent to Cell SW-4-LL.
- b. The offender will enter the shower and a search will be conducted by staff of the same gender. The offender may take a shower under the supervision and observation of female correctional staff.
- c. Two sets of clothing, to include female underpants, bra, pants, shirts, socks, and shoes, in the appropriate sizes, mattress, sheets and a blanket will be provided. Upon completion of the shower, the offender will change into one set of clothing. The remaining set of clothing will be maintained by the officers for issuance to the offender each time she enters or exits the cell. Clothing will be searched each time the offender is moved.
- d. After the offender has dressed, restraints will be applied. The shower door will be opened and the offender will step out on the run and the shower door will be secured. Cell SW-4-LL door will be opened and staff will monitor the offender's movement from the shower to the cell. After the offender enters cell SW-4-LL, the cell door will be closed and secured.
- e. Three officers will be posted in front of cell SW-4-LL to monitor the offender. These officers will be trained prior to their assignment on Post Orders and policies. (Two from MBCC and one from OSP) The officers will maintain constant observation of the offender and keep a master log of the

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activities that take place involving the offender during their assigned shift.

- f. Any appliances owned by the offender will be exchanged one for one by the facility and thoroughly searched prior to being placed in SW-4-LL. The offender's personally-owned television and/or radio, or fan, will not be taken into SW-4-LL.
 - g. Legal material not to exceed two cubic feet will be allowed in the cell after it has been thoroughly searched. No canteen items will be allowed in the cell from the offender's property. These items will be exchanged on a one for one ratio from the facility canteen. Hygiene items will be made available on a check-out/check-in basis. No personal property will be allowed other than a Bible, Koran, or other equivalent religious materials (as deemed appropriate by the facility Chaplain), and family pictures (no frames or photo albums). Only those pictures authorized by the Warden, Deputy Wardens or CERT Commander or designee will be allowed in the cell. Under no circumstances will an item be introduced into the cell until it has been thoroughly searched by staff.
 - h. The supper meal (if requested) will be served from the line by the Unit Manager and the CERT Commander or designee.
3. During the time a female death row offender is housed on H Unit, two **female** Correctional Officers from MBCC and one (1) OSP female Correctional Officer will be assigned to work from 4:00 p.m. until 6:30 p.m.

G. Procedures for the Execution Holding Cell: Offender-Attorney Visits:

1. Upon notification by the SW Control Room Officer of full contact attorney visit for the offender in SW-4-LL, two escort officers will place handcuffs (in front) and leg irons on the offender through the food passageway of cell SW-4-LL.
2. Any legal material the offender wishes to carry into the client/attorney contact visit will be passed out through the food passageway and thoroughly searched by the officers. The cell door will then be opened and the escort officers will escort the offender to the attorney/client visiting room and secure the offender in the room.
3. The officers assigned to cell SW-4-LL will maintain constant surveillance of the cell in the offender's absence. Escort officers will take up a position in the Unit Manager's office that allows the officers to maintain constant surveillance of the offender and attorney.
4. At the end of the attorney visit, one of the escort officers will take up a position on the run outside the attorney/client visiting room and maintain constant surveillance of the offender and attorney through

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the observation glass in the attorney/client visiting room. After the officer has been posted, the second escort officer will be notified by the SW Control Room Officer. The second escort officer will then proceed from the Unit Manager's office onto the run outside the attorney/client visiting room.

5. The attorney/client visiting room door will be opened and the two officers will escort the offender back to SW-4-LL area and place the offender in the shower. Any time the offender has a full contact visit, he/she may be transported to the IHCC to be x-rayed prior to being returned to SW-4-LL.
 6. After the offender has been placed in the shower, handcuffs and leg irons will be removed from the offender by the officers.
 7. After the handcuffs and leg irons have been removed, the offender will completely strip handing all clothing out through the security passageway. A new set of clothing will be passed through the passageway. Once the offender has dressed, handcuffs and leg irons will be applied, and the shower door will be opened. The offender will step out on the run and the shower door will be secured.
 8. The execution holding cell door will be opened and the offender will enter the cell and the cell door will be secured.
 9. Officers will then remove restraints from the offender.
 10. Any legal material taken to or brought back from the attorney/client room will be thoroughly searched by the officers assigned to the execution holding cell.
- H. At the time the offender is removed from his cell on Death Row for transfer to SW-4-LL, the H Unit Manager will ensure a proper inventory is conducted of the offender's personal property. Only that property authorized on Attachment A will be allowed in SW-4-LL. The property that is not allowed will be stored in a secure location within the OSP Personnel Office. At the completion of the execution, all of the offender's property will be released to the individual(s) designated to receive the property from the Personnel Office.
- I. A minimum of two Correctional Officers of the same gender as the offender, will assume the post outside SW-4-LL, and will maintain a shift log. An entry will be made when the escort team arrives with the offender. This log will be maintained in accordance with procedures in OSP-040102-01, entitled "Facility Post Orders and Log".
- J. Notification of Family
The holding facility will notify the offender's immediate family by certified mail at least two weeks prior to the scheduled date of execution and of their responsibility for making burial arrangements.
- K. Notification of Oklahoma State Penitentiary

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If the offender to be executed is female, the Warden of Mabel Bassett Correctional Center will notify the Warden of the Oklahoma State Penitentiary and make arrangements for transfer of the offender when an execution date is set.

L. Notification of Executioners

The Warden of the Oklahoma State Penitentiary or designee will notify the executioners of an execution date in a timely manner. The identities of these individuals will remain confidential.

- M. Within 30 days prior to the execution, the offender will be scheduled for a physical examination to be conducted by the facility health services unit. During this physical examination, the offender will be evaluated for any existing health conditions and be checked for ease of intravenous accessibility for identification purpose that may interfere with or affect the execution process.

IV. Visiting Privileges

A. Family

At the discretion of the warden, the offender may be allowed special visiting privileges during the seven days prior to the execution.

1. For special visits, the offender may specify five visitors and one member of the clergy. Visitors must be approved by the warden of the facility where the offender is housed.
2. The number of visitors may be increased to the number of the offenders' immediate family members.
3. The number of clergy may be increased to two.
4. The visits will occur in a designated visiting area and under the supervision of a correctional officer.
5. More than two visits may be permitted during one period, but the visits will be sequenced so that no more than two visitors are in the visiting area at the same time.

B. Legal Representation

Visits by the attorney(s) of record will be permitted during visiting hours in the contact attorney area and other times as approved by the warden. These visits will be monitored by a correctional officer or staff person through the observation window.

C. Spiritual Support

1. The facility chaplain, upon request, will be available to the offender continuously during the final 24-hour period.

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2. The offender may request a supervised 30 minute non-contact visit at the holding cell with his/her spiritual advisor or facility chaplain. This visit must be requested at least 24 hours in advance and must be conducted between 4:00 p.m. and 5:00 p.m. on the day of the execution. Individuals that are under any type of supervision, by any corrections or law enforcement authority from any state or other local government entity, are prohibited from being a spiritual advisor.
3. The offender will be advised that the facility chaplain and/or spiritual advisor are not permitted to be in the execution chamber during the execution process.

V. Media Coverage of the Execution

A. Pre-Execution Coverage

1. Members of the media will be notified of the execution at least 15 days prior to the execution by the Department of Corrections public information officer.
2. Media access to the offender will be according to procedures established in OP-020301 entitled "Information Requests and Release of Information from Agency Records and Media Access to the Oklahoma Department of Corrections." All requests for individual interviews with the offender will be arranged at least ten days prior to the execution and completed at least two days prior to the execution.
3. Video taping of the physical plant by the media may be allowed at least ten days prior to the execution at the discretion of the Warden of the Oklahoma State Penitentiary.

B. Execution Coverage

1. An information center will be set up in the Jackie Brannon Correctional Center Minimum Unit Visiting Area, which will be available to all media representatives wishing to cover the execution.
2. All interested news media sources should contact the public information officer at the address below and inform the public information officer in writing regarding the names of the reporters and photographers covering the execution at least 24 hours before the execution date:

Department of Corrections
3400 Martin Luther King Avenue
P.O. Box 11400
Oklahoma City, Oklahoma, 73136-0400

This will assist in providing of media accommodations at the OSP information center before, during, and after the time of execution.

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C. Selection of Media Witnesses (Maximum of Twelve)

1. Twelve media representatives will be allowed as witnesses in the execution area, to include:
 - a. A newspaper of general circulation, at least one of which will be a representative from a metropolitan newspaper with circulation over 50,000.
 - b. Associated Press (AP)
 - c. Media based within Oklahoma will be given first preference.
2. Other media representatives will remain in the designated information center area.
3. The media representatives to witness the execution will be chosen two hours prior to the execution.
 - a. Each reporter will be requested to place his/her name and media representation into a container.

A designated staff person will draw names, allowing one person from wire service (AP), different Oklahoma newspapers of general circulation, radio and television.
 - c. The representatives selected will sign a statement agreeing to fully brief the remaining media representatives covering the execution before filing their stories. (Attachment A to OP-040301)
 - d. No tape recorders, cellphone or cameras will be allowed in the execution viewing area.
4. At the appropriate time, a designated staff member will escort the twelve representatives selected to view the execution to the H-Unit Central Control. These representatives will be pat searched as well as searched by a soni-frisker upon arrival at H-Control.
5. Pencil and paper will be provided to the media representatives in the H -Unit Control Lobby.
6. After being searched, the media representatives will be escorted to the second floor of H Unit enter the Viewing Room and be seated in the rear of the Viewing Room.
7. After completion of the execution, the designated twelve media representatives will then be escorted back to the Media Center where they will brief the remaining representatives.
8. The Department of Corrections Public Information Officer will make a public statement to the Media Representatives at the Information Center following the execution.

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VI. **Last Meal**

- A. The offender's last meal request must be available on a menu of a local restaurant and approved by the Warden. This meal, not to exceed \$15.00, must be requested ten days prior to the date of execution. MBCC will provide the female offender's last meal request while at MBCC.
- B. The last meal will normally be served by the Unit Manager and CERT Commander or designee between 12:00 noon and 3:00 p.m. on the day of execution.

VII. **Telephone Calls**

- A. Telephone calls will be permitted from 8:00 a.m. to 4:30 p.m. on the day of the execution.
- B. Attorney telephone calls will be permitted upon request. Such calls are to be collect calls which will be placed through the existing telephone service on the quad.
- C. Female offender name, number and phone list will need to be added to OSP phone system.

VIII. **Persons Allowed at the Execution**

At 10:00 a.m. the day of the scheduled execution, the perimeter of Oklahoma State Penitentiary will be secured. Post assignments will be prepared at least two weeks in advance of a scheduled execution.

A. **Witnesses**

- 1. The following persons will be present at the execution:
 - a. The warden of Oklahoma State Penitentiary
 - b. Other necessary correctional officials
 - c. A physician
 - d. If the offender is female, the warden of Mabel Bassett Correctional Center will also be present.
- 2. The following persons may be present at the execution:
 - a. The cabinet secretary of Public Safety.
 - b. Selected members of the media
 - c. The judge who presided during the trial
 - d. Chief of police of the municipality in which the crime occurred
 - e. The district attorney of the county of conviction

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f. The sheriff of the county of conviction

B. Additional Witnesses:

1. Additional witnesses may include five witnesses and two qualified ministers, who are 18 years of age or older as selected by the offender and approved by the Warden.
2. Any surviving victim of the offender who is eighteen years of age or older may view the execution, with the approval of both the Director of the Department of Corrections and the Warden. The Director and Warden will prioritize persons to view the execution, including immediate family members, surviving victims, and those who serve a close supporting role or professional role, including but not limited to, a minister or licensed counselor, and may set a limit on the number of viewers within occupancy limits. Any surviving victim approved to view the execution of their perpetrator may have an accompanying support person as provided for members of the immediate family of a deceased victim. As used in this subsection, "surviving victim" means any person who suffered serious harm or injury due to the criminal acts of the defendant of which the defendant has been convicted in a court of competent jurisdiction.

Immediate family member is defined as spouse, a child by birth or adoption, a stepchild, a parent, a grandparent, a grandchild, a sibling of a deceased victim, or the spouse of any immediate family member specified in this paragraph.

3. In the event the defendant has been sentenced to death in one or more criminal proceedings in this state, or has been sentenced to death in this state and by one or more courts of competent jurisdiction in another state or pursuant to federal authority, or any combination thereof, and this state has priority to execute the defendant, the Warden must invite the district attorney, the judge, and the chief law enforcement official from each jurisdiction where any death sentence has been issued. The above mentioned officials will be allowed to witness the execution or view the execution by closed circuit television as determined by the Director of the Department of Corrections.
4. The individuals authorized to be present at the execution will receive a two-week prior written notice of the scheduled execution.
5. Holding areas for the witnesses will be provided prior to their being escorted (one group at a time) to the Execution Viewing Room. The designated holding areas for the witnesses are as follows:
 - a. Warden's Office: Departmental, State, and County Officials
 - b. Jackie Brannon Correctional Center Minimum Security Visiting Area: Media Representatives
 - c. OSP Recreation Building: Victim's Witnesses Approved by

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Warden

- d. Jackie Brannon Correctional Center Community Corrections Unit Offices: Offender Witnesses Approved by Warden.
 6. Thirty minutes prior to the execution, the above individuals will be escorted to the designated H Unit holding areas:
 - a. H Unit Managers Office - Department of Corrections, State, and County Officials
 - b. H Unit Law Library - Designated Media Witnesses
 - c. H Unit Room #10 Programs Room - Victim's Family Approved by Warden
 - d. H Unit Staff Lounge - Offender Witnesses Approved by Warden
 7. A list of witnesses attending the execution will be maintained, and all persons attending the execution will be required to sign a witness sheet prior to entering the Execution Area.
 8. Family members of victim's families, authorized in accordance with Oklahoma state statute may view the execution via closed circuit television from the Program's Room #10, located on the first floor of H Unit or the area designated in the Execution Viewing Room.
 - a. Approved victim's family members will meet in the Recreation Building, located on next to the Administration Building, two hours prior to the scheduled execution.
 - b. A list of authorized family members will be provided to the H Unit Manager by the Warden on the day of the scheduled execution.
 - c. A representative from Health Services and the Chaplain's Office will be available near the Program's Room #10 during the execution.
 9. No cameras, cellphone, tape recorders, or other recording or electronic devices will be allowed in the viewing area.
 10. A designated staff member of Oklahoma State Penitentiary will be responsible for attending to the needs of the family of the offender scheduled for execution.
- C. Persons Excluded from the Execution Process:

The Correctional Officers and Case Manager(s) who attended the offender while in isolation **will not** participate in the execution process.

IX. Execution Procedures

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A. Assumption of Duty

On the day of the execution at approximately 4:00 p.m., the Deputy Director of Institutions will relieve the Warden of Oklahoma State Penitentiary of all duties except the executive control of the execution proceedings.

B. Method of Execution

The execution will be by administering a lethal quantity of a drug or drugs until death is pronounced by a licensed physician.

1. Selection of a Licensed/Certified Health Care Specialist in IV insertion:

Prior to the scheduled execution, the Warden of Oklahoma State Penitentiary will recruit an EMT-P or person with similar qualifications and experience in IV insertion. The identity of the person will not be disclosed. Remuneration will be handled through the Business Manager's Office.

2. Selection of Persons to Administer Lethal Chemical Agents:

Prior to the scheduled execution, the Warden will choose three (3) persons to administer the lethal agents. The identities of the persons selected as executioners shall not be disclosed. Remuneration will be handled through the Business Manager's Office.

3. Selection of Licensed Physician:

Prior to the scheduled execution, the Warden of Oklahoma State Penitentiary will recruit a Licensed Physician. The identity of the person will not be disclosed. Remuneration will be handled through the Business Manager's Office. Medical equipment and instruments will be provided for the attending Licensed Physician, as previously designated and requested by the Physician.

4. Execution Review and Training

Prior to the execution the following shall occur:

- a. The Deputy Warden or designee will review the following Field Memorandum OSP-040301-01, entitled "Procedures for the Execution of Offenders Sentenced to Death" section IX. C and the sequence of events inside the execution room with the executioners and EMT-P prior to each execution. The EMT-P will give the executioners the following instructions prior to each execution: "Administer the drugs at a steady flow without pulling back on the plunger of the syringe".
- b. The Deputy Warden will verify the current status of the EMT-P license, no later than 2 weeks prior to the execution.

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- c. The Warden, Deputy Warden(s), the Chief of Security, and the Physician, in the execution chamber shall jointly review the sequence of events inside the execution room prior to the execution.
- d. The Strap Down Team will conduct a walk-through of the strap down procedures no later than 2 weeks prior to the execution.
- e. Newly assigned staff involved in the execution process will shadow and observe experienced staff to gain a full working knowledge and understanding.

C. Execution Proceedings:

1. The offender will be dressed in scrubs and tennis shoes which, will be provided by Oklahoma State Penitentiary or Mabel Bassett Correctional Center. The offender will be moved to the Execution Room to be restrained on the execution gurney.
2. The person recruited by the warden for IV insertion will insert the appropriate intravenous catheter(s) into a peripheral vein in each arm, and will ensure the patency until the time of execution by slow infusion of normal saline or dextrose five percent (5%) in sterile water. If this person is unable to gain appropriate IV access, the physician present will start the necessary IV. The physician will start the necessary IV in the arm or start a central line. In the event a central line cannot be established the attending physician will perform a cut down procedure to establish the line.
3. The Department of Corrections, State, and County officials, media representatives, and all offender witnesses will be escorted to the Viewing Room, to be seated one group at a time.
4. The Warden will ask the offender if he/she wishes to make any last comments.
5. Any persons acting in a manner as to impede the execution procedure may be subject to removal from the Execution Area.
6. After such comments as the offender may make, the Warden will direct the designated persons to administer the lethal chemical agents which will continue by intravenous infusion until such time as the offender is pronounced dead by the attending physician.
7. The Warden shall have the sole discretion as to which lethal agent will be used for the scheduled execution. The lethal agents to be used may include:
 - a. Three Drug Method Using Sodium Thiopental. The injection of lethal agents will be given in the following order with two bilateral doses of each drug to be given simultaneously:

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First, sodium thiopental 2500 mg/100 ml in the left arm and 2500 mg/100 ml in the right arm; a flush of 50 cc of saline will then be injected into both lines.

Second, vecuronium bromide or a comparable non-depolarizing neuromuscular blocking agent of comparable strength, 20 mg/20 cc in the left arm and 20 mg/20 cc in the right arm; a flush of 50 cc of saline will be injected into both lines.

Prior to the administration of vecuronium bromide or a comparable non-depolarizing neuromuscular blocking agent, the physician present in the Execution Room will monitor the condemned offender's level of consciousness through whatever means the physician believes are appropriate, to ensure that the condemned is sufficiently unconscious prior to the administration of the blocking agent. The physician may monitor the condemned offender with an EKG monitor and/or stethoscope.

The blocking agent will NOT be administered until at least 5 minutes after the beginning of the administration of the sodium thiopental.

Third, potassium chloride 100 meq/50 cc in the left arm and 100 meq/50 cc in right arm: a flush of 50 cc of saline will be injected into both lines.

If the medical personnel are only able to obtain one patent IV, both doses of each drug will be administered in a serial fashion with a saline flush following the completed administration of each drug. If the physician pronounces death of the condemned before the administration of all three drugs, the injection of any remaining drugs will continue until completed.

- b. Three Drug Method Using Pentobarbital. The injection of lethal agents will be given in the following order with two bilateral doses of each drug to be given simultaneously:

First, Pentobarbital, 2500 mg/100 ml in the left arm and 2500 mg/100 ml in the right arm; a flush of 50 cc of saline will then be injected into both lines.

Second, vecuronium bromide or a comparable non-depolarizing neuromuscular blocking agent of comparable strength, 20 mg/20 cc in the left arm and 20 mg/20 cc in the right arm; a flush of 50 cc of saline will be injected into both lines.

Prior to the administration of vecuronium bromide or a comparable non-depolarizing neuromuscular blocking agent, the physician present in the Execution Room will monitor the condemned offender's level of consciousness through whatever means the physician believes are appropriate, to ensure that the condemned is sufficiently unconscious prior to the administration of the blocking agent. The physician may monitor the condemned offender with an

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EKG monitor and/or stethoscope.

The blocking agent will NOT be administered until at least 5 minutes after the beginning of the administration of the pentobarbital.

Third, potassium chloride 100 meq/50 cc in the left arm and 100 meq/50 cc in right arm: a flush of 50 cc of saline will be injected into both lines.

If the medical personnel are only able to obtain one patent IV, both doses of each drug will be administered in a serial fashion with a saline flush following the completed administration of each drug. If the physician pronounces death of the condemned before the administration of all three drugs, the injection of any remaining drugs will continue until completed.

- c. One Drug Method Using Pentobarbital. The use of pentobarbital alone shall be administered 2500 mg in the left arm and 2500 mg in the right arm. A flush of 50 cc of saline will then be injected into both lines. The physician may monitor the condemned offender with an EKG monitor and/or stethoscope.

If the medical personnel are only able to obtain one patent IV, both doses of the pentobarbital will be administered in a serial fashion with a saline flush following the completed administration of each dose.

- d. Three Drug Method Using Midazolam and Hydromorphone. The injection of lethal agents will be given as follows:

A mixture of 50 mg of midazolam (or equivalent sold by another name) and 50 mg hydromorphone (or equivalent sold by another name). Said midazolam and hydromorphone shall be drawn into or mixed in a single syringe and labeled "1," and injected into either arm intravenously. A flush of 50 cc of saline will be injected into the line following administration of the syringe. Five (5) minutes after the administration of the midazolam and hydromorphone, the physician present will check the offender for consciousness through whatever means the physician believes appropriate. If the offender is unconscious, then potassium chloride 100 meq/50 cc shall be administered followed by flush of 50 cc of saline into the line.

If the offender is conscious, the physician shall signal to the warden to administer a second syringe with an identical mixture of midazolam and hydromorphone labeled "2." If a patent IV can be obtained in each arm, this mixture will be administered in the arm not utilized in the initial injection; a flush of 50 cc of saline will be injected into the line following administration of the syringe;. The physician may continue to monitor the condemned offender with an EKG monitor and/or stethoscope until the physician is satisfied the condemned offender is unconscious. When the condemned offender is no longer conscious, then potassium chloride 100

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meq/50 cc shall be administered followed by flush of 50 cc of saline into the line.

If the physician pronounces death of the condemned before the administration of the potassium chloride, the potassium chloride shall nonetheless be administered to the condemned offender.

- e. Three Drug Method Using Midazolam and Blocking Agent. The injection of lethal agents will be given in the following order with two bilateral doses of each drug to be given simultaneously:

First, Midazolam, 50mg/10 ml in the left arm and 50 mg/10 ml in the right arm; a flush of 50 cc of saline will then be injected into both lines.

Second, vecuronium bromide or a comparable non-depolarizing neuromuscular blocking agent of comparable strength, 20 mg/20 cc in the left arm and 20 mg/20 cc in the right arm; a flush of 50 cc of saline will be injected into both lines.

Prior to the administration of vecuronium bromide or a comparable non-depolarizing neuromuscular blocking agent, the physician present in the Execution Room will monitor the condemned offender's level of consciousness through whatever means the physician believes are appropriate, to ensure that the condemned is sufficiently unconscious prior to the administration of the blocking agent. The physician may monitor the condemned offender with an EKG monitor and/or stethoscope.

The blocking agent will NOT be administered until at least 5 minutes after the beginning of the administration of the midazolam.

Third, potassium chloride 100 meq/50 cc in the left arm and 100 meq/50 cc in right arm: a flush of 50 cc of saline will be injected into both lines.

If the medical personnel are only able to obtain one patent IV, both doses of each drug will be administered in a serial fashion with a saline flush following the completed administration of each drug. If the physician pronounces death of the condemned before the administration of all three drugs, the injection of any remaining drugs will continue until completed.

7. In the event a Stay of Execution is granted during the actual administration of the lethal chemical agents, all proceedings will cease immediately. At that time, the shades will be lowered and medical personnel will take action immediately to render emergency measures.
8. The Deputy Warden or designee will acquire a sufficient quantity of the previously named chemical agents, and will maintain the security of these chemical agents in accordance with the Chain of Custody document (Attachment B-1 or B-2).

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9. The drugs are to be prepared by a state-licensed pharmacist. The drugs are to be mixed, when necessary by the pharmacist and placed in the syringes by the pharmacist. The pharmacist shall label each syringe with the name of the drug and the name of the offender. The pharmacist shall place an easily identifiable number on each syringe so that the syringes are numbered in the order they are to be administered as outlined in this policy. The drugs will be acquired from the pharmacist within 24 hours of the execution.
10. Following the execution, the Warden or designee will receipt the body to the Medical Examiner, and the death certificate will be forwarded to the court from which the judgment was rendered. The certificate will indicate the time, mode, and manner in which the death occurred. Copies of this report and execution log will be sent to Closed Records for filing. Mabel Bassett Correctional Center will receive a copy of the death certificate for female offenders executed.
11. The offender's personal property and trust fund account will be released to the designated individual(s).

D. Procedures on Completion of Execution

Upon pronouncement of death, all persons will leave the execution areas except those responsible for the removal of the body. Custody of the body will be transferred to the medical examiner and will be transported per arrangements made by the medical examiner for the purpose of examination.

E. Execution Costs

All costs incurred as a result of the execution, prior to and after, will be the responsibility of the Oklahoma State Penitentiary for male offenders or the Mabel Bassett Correctional Center for female offenders.

X. Post Execution Procedures

A. Reports

Following the execution, the Warden of the Oklahoma State Penitentiary will attach a copy of the death warrant forward it to the court from which the judgment was rendered indicating the time, mode, and manner in which accomplished. Copies of the report and log will be sent to Closed Records and the correctional facility's records section for filing. Mabel Bassett Correctional Center will receive a copy of the death warrant for female offenders executed.

B. Burial Procedures

After the body has been released from the Medical Examiner, the offender's body will be sent for burial as arranged by the family. If the family did not arrange for burial, the state will assume responsibility for the offender's burial at the DOC cemetery.

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C. Debriefing

The administrative staff will meet in the Warden's office after the execution and evaluate the procedure, to identify if there are any issues or concerns within the process.

XI. REFERENCES

OP-040301 entitled "Procedures for the Execution of Offenders Sentenced to Death"

OP-020108 entitled "Information Requests and Release of Information from Agency Records and Media Access to the Department of Corrections"

Robinson v. Manard, 857 P.2d 817 (Okla. App. 1992)

22 O.S. § 1015-1016, supp. 1995

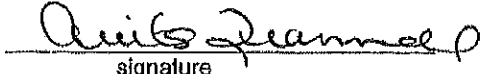
XII. ACTION

The Wardens of Oklahoma State Penitentiary and Mabel Bassett Correctional Centers will be responsible for compliance with this procedure.

Any exceptions to the procedures in this field memorandum will require prior written approval from the Warden.

Replaced: Field Memorandum No. OSP-040301-01, entitled, "Procedures for the Execution of Offenders Sentenced to Death", dated 08/26/11.

Distribution: Personnel designated in OSP-010101-01.

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Anita Trammell, Warden Oklahoma State Penitentiary	 signature		

Addendum 01

Procedures for the Execution of Offenders Sentenced to Death

This Addendum to the Procedures for the Execution of Offenders Sentenced to Death is prepared in the event of two inmates are ordered to be executed on the same day. Unless otherwise stated, the Procedures for the Execution of Offenders Sentenced to Death with the effective date of April 14, 2014 will be followed.

III. Pre-Execution Procedures

B. Notification of Offender

4. Each Offender may request a supervised 30 minute non-contact visit at the designated holding cell with his spiritual advisor or facility Chaplain. The visit must be requested at least 24 hours in advance and must be between 4:00 p.m. and 5:00 p.m. on the day of the execution. Individuals that are under any type of supervision, by any corrections or law enforcement authority from any state or other local government entity, are prohibited from being a spiritual advisor.
6. At the time of the offender's notification, mental health services will evaluate the offender. Based on the mental health services evaluation and other contingencies which may occur, the offender may be placed in the high maximum cell. Twelve hours prior to the execution, the offender will be placed in either Cell SW-4-LL or Cell SW-4-KK.

E. Procedures for placing each offender in their respective Execution Holding Cell are as follows:

Prior to 4:30 a.m., on the day of the scheduled execution, the privacy screen will be placed around Cell SW-4-LL and Cell SW-4-KK. A minimum of four (4) staff and one (1) camera operator will be present to film the activity throughout the search procedure. The Unit Manager and the CERT Commander or designee must be present. Cell SW-4-LL and Cell SW-4-KK will be thoroughly searched by two officers under the supervision of the CERT Commander or designee and the drug detection dog may also be utilized when available. They will then conduct a thorough search of the shower located adjacent to Cell SW-4-LL and Cell SW-4-KK. At least one officer will be posted and remain at the cell at all times.

1. **Procedures for Execution Procedures to begin at 6:00 p.m.**

- a. Beginning at 4:30 a.m. on the morning of the scheduled execution officers selected by the CERT Commander or designee will proceed to the cell housing the offender whose execution procedure will begin at 6:00 p.m. The selected officers will search, issue new clothing and escort the offender to medical where he will be x-rayed (beginning at the head and x-rayed downward of the body). The x-rays will be taken prior to eating breakfast. The offender will then be escorted back to H Unit and placed in the shower next to cell SW-4-LL.
- b. The offender will enter the shower area and may take a shower under the supervision and observation of staff.
- c. Two sets of clothing, to include shorts, pants, shirts, socks and shoes in the appropriate size, mattress, sheets and a blanket will be provide for the offender. Upon completion

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of the shower, the offender will change into one set of clothing. The remaining set of clothing will be maintained by the officers for issuance to the offender each time he enters or exits the cell. Clothing will be searched each time the offender is moved.

- d. After the offender has dressed, restraints will be applied. The Shower door will be opened and the offender will step out on the run and the shower door will be secured. Cell SW-4-LL door will be opened and staff will monitor the offender's movement from the shower to the cell. After the offender enters cell SW-4-LL, the cell door will be closed and secured.
- e. Assigned staff (a minimum of three officers) will take up positions in front of the cell door maintaining constant observation of the offender and keep a master log of the activities that take place involving the offender during their assigned shift.
- f. Officers will be assigned to work from 4:30 a.m. until 1:30 p.m. and 1:30 p.m. until 6:00 p.m.
- g. Any appliances owned by the offender will be exchanged one for one by the facility and thoroughly searched by the Unit Manager and CERT Commander or designee prior to being placed in SW-4-LL. The offender's personally-owned television and/or radio, or fan, will not be taken into SW-4-LL.

2. Procedures for Execution Procedures to begin at 8:00 p.m.

- a. Beginning at 5:30 a.m. on the morning of the scheduled execution officers selected by the CERT Commander or designee will proceed to the cell housing the offender whose execution procedure will begin at 8:00 p.m. The selected officers will search, issue new clothing and escort the offender to medical where he will be x-rayed (beginning at the head and x-rayed downward of the body). The x-rays will be taken prior to eating breakfast. The offender will then be escorted back to H Unit and placed in the shower next to cell SW-4-KK.
- b. The offender will enter the shower area and may take a shower under the supervision and observation of staff.
- c. Two sets of clothing, to include shorts, pants, shirts, socks and shoes in the appropriate size, mattress, sheets and a blanket will be provide for the offender. Upon completion of the shower, the offender will change into one set of clothing. The remaining set of clothing will be maintained by the officers for issuance to the offender each time he enters or exits the cell. Clothing will be searched each time the offender is moved.
- d. After the offender has dressed, restraints will be applied. The Shower door will be opened and the offender will step out on the run and the shower door will be secured. Cell SW-4-KK door will be opened and staff will monitor the offender's movement from the shower to the cell. After the offender enters cell SW-4-KK, the cell door will be closed and secured.
- e. Assigned staff (a minimum of three officers) will take up positions in front of the cell door maintaining constant observation of the offender and keep a master log of the activities that take place involving the offender during their assigned shift.
- f. Officers will be assigned to work from 5:30 a.m. until 1:30 p.m. and 1:30 p.m. until 8:00 p.m.
- g. Any appliances owned by the offender will be exchanged one for one by the facility and

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thoroughly searched by the Unit Manager and CERT Commander or designee prior to being placed in SW-4-KK. The offender's personally-owned television and/or radio, or fan, will not be taken into SW-4-KK.

G. Procedures for the Execution Holding Cell: Offender – Attorney Visits:

1. Upon notification by the SW Control Room Officer of full contact attorney visit for the offender in with Cell SW-4-LL or Cell SW-4-KK, two escort officers will place handcuffs (in front) and leg irons on the offender through the food passageway of the respective cell.
3. The officers assigned to either Cell SW-4-LL or Cell SW-4-KK will maintain constant surveillance of their assigned cell in the offender absence. Escort offices will take up a position in the Unit Manager's office that allows the officers to maintain constant surveillance of the offender and attorney.
5. The attorney/client visiting room door will be opened and the two officers will escort the offender back to the shower adjacent to Cell SW-4-LL and Cell SW-4-KK. The offender will be placed in the shower. Any time the offender has a full contact visit, he/she may be transported to the IHCC to be x-rayed prior to being returned to his/her respective assigned cell.

H. At the time the offender is removed from his cell on Death Row for transfer to either Cell SW-4-LL or Cell SW-4-KK, the H Unit Manager will ensure a proper inventory is conducted of the offender's personal property. Only that property authorized on Attachment A will be allowed in Cell SW-4-LL or Cell SW-4-KK. The property that is not allowed will be stored in a secure location within the OSP Personnel Office. At the completion of the execution, all of the offender's property will be released to the individual(s) designated to receive the property from the Personnel Office.

I. A minimum of two Correctional Officers of the same gender as the offender, will assume the post outside Cell SW-4-LL and Cell SW-4-KK, and will maintain a shift log. An entry will be made when the escort team arrives with the offender. This log will be maintained in accordance with procedures in OSP-040102-01, entitled "Facility Post Orders and Log".

IV. Visiting Privileges

C. Spiritual Support

1. The offender must request a supervised 30 minute non-contact visit at the holding cell with his/her spiritual advisor or facility chaplain. This visit must be requested at least 24 hours in advance and must be conducted between 4:00 p.m. and 5:00 p.m. on the day of the execution. Individuals that are under any type of supervision, by any correctional or law enforcement authority from any state or other local government entity, are prohibited from being a spiritual advisor.

VII. Telephone Calls

A. Telephone calls will be permitted from 12:00 p.m. to 4:00 p.m. on the day of the execution.