

**DEVIN ALLEN BENNETT**

*Petitioner*

*versus*

**NO. 2006-DR-01516-SCT**

**STATE OF MISSISSIPPI**

*Respondent*

**RESPONDENT'S SUPPLEMENTAL BRIEF**

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**STATE OF MISSISSIPPI,***Respondent***RESPONDENT'S SUPPLEMENTAL BRIEF**

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COMES NOW the State of Mississippi, by and through counsel, without abandoning the State's previous reply filed in this matter, in response to this Court's June 3, 2008, Order directing the parties to file a supplemental brief addressing, "Whether Mississippi's method of execution, i.e., lethal injection constitutes cruel and unusual punishment proscribed by the Eighth Amendment to the U.S. Constitution in light of the recent decision by the United States Supreme Court in *Baze v. Rees*, 553 U.S. \_\_\_, 128 S.Ct. 1520, 170 L.Ed. 2d 420 (2008).", and files this brief in compliance.

**INTRODUCTION**

In *Baze*, the U.S. Supreme Court affirmed the Kentucky Supreme Court's decision upholding the constitutionality of the Kentucky lethal injection procedure. Specifically, Chief Justice Roberts, writing for the plurality, concluded that only a "substantial" or "objectively intolerable" risk of harm would constitute cruel and unusual punishment when challenging a State's lethal injection procedure. Neither the plurality decision or any of the

holding of the Court may be viewed as that position taken by those Members who concurred in the judgements on the narrowest of grounds.” *See Gregg v. Georgia*, 428 U.S. 153, 169 (1976); *Marks v. United States*, 430 U.S. 188, 195 (1977).

However, seven Justices agreed that the Kentucky lethal injection procedure does not violate the Eighth Amendment. Thus, any State with a lethal injection protocol substantially similar to the Kentucky protocol would not create a risk of harm that demonstrates a constitutional violation. Mississippi’s lethal injection procedure is substantially similar in all material respects to that of Kentucky, thus, under *Baze*, the Mississippi procedure for lethal injection does not violate the Eighth Amendment.

## **ARGUMENT**

### **MISSISSIPPI’S METHOD OF EXECUTION DOES NOT CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AMENDMENT IN LIGHT OF THE *BAZE* DECISION.**

On April 16, 2007, the United States Supreme Court, in the case of *Baze v. Rees*, 553 U.S. \_\_\_, 128 S.Ct. 1520, 170 L.Ed. 2d 420 (2008), decided that the lethal injection procedure utilized by the State of Kentucky in carrying out death sentences was not in violation of the Eighth Amendment prohibition against cruel and unusual punishment. That Court went on to find that any other State that employed substantially similar lethal injection

[J]USTICE STEVENS suggests that our opinion leaves the disposition of other cases uncertain, *see post*, at 1, but the standard we set forth here resolves more challenges than he acknowledges. A stay of execution may not be granted on grounds such as those asserted here unless the condemned prisoner establishes that the State's lethal injection protocol creates a demonstrated risk of severe pain. He must show the risk is substantial when compared to the known and available alternatives. A State with a lethal injection protocol substantially similar to the protocol we uphold today would not create a risk that meets this standard.

128 S.Ct. at 1537.

Accordingly, to answer the question put forth by this Court, Mississippi's lethal injection procedures must be compared to those of Kentucky, as discussed by the U.S. Supreme Court in *Baze*. If the procedures employed by Mississippi are found to be substantially similar to those utilized in Kentucky, it must follow that Mississippi's lethal injection procedures do not violate the Eighth Amendment prohibition of inflicting cruel and unusual punishment. As discussed below, Mississippi's protocol is in all respects substantially similar to that of Kentucky and therefore constitutionally viable.

The United States Supreme Court set forth the Kentucky protocol in its opinion in *Baze*. The Court's opinion reads:

Shortly after the adoption of lethal injection, officials working for the Kentucky Department of Corrections set about developing a written protocol to comply with the requirements of § 431.220(1)(a). Kentucky's protocol called for the injection of 2 grams of sodium thiopental, 50 milligrams of pancuronium bromide, and 240 milliequivalents of potassium chloride. In 2004, as a result of this litigation, the department chose to increase the amount of sodium thiopental from 2 grams to 3 grams. App. 762-763, 768. Between

bromide. *Id.*, at 761, 763-764. The protocol reserves responsibility for inserting the IV catheters to qualified personnel having at least one year of professional experience. *Id.*, at 984. Currently, Kentucky uses a certified phlebotomist and an emergency medical technician (EMT) to perform the venipunctures necessary for the catheters. *Id.*, at 761-762. They have up to one hour to establish both primary and secondary peripheral intravenous sites in the arm, hand, leg, or foot of the inmate. *Id.*, at 975-976. Other personnel are responsible for mixing the solutions containing the three drugs and loading them into syringes. *Id.*, at 761.

Kentucky's execution facilities consist of the execution chamber, a control room separated by a one-way window, and a witness room. *Id.*, at 203. The warden and deputy warden remain in the execution chamber with the prisoner, who is strapped to a gurney. The execution team administers the drugs remotely from the control room through five feet of IV tubing. *Id.*, at 286. If, as determined by the warden and deputy warden through visual inspection, the prisoner is not unconscious within 60 seconds following the delivery of the sodium thiopental to the primary IV site, a new 3-gram dose of thiopental is administered to the secondary site before injecting the pancuronium and potassium chloride. *Id.*, at 978-979. In addition to assuring that the first dose of thiopental is successfully administered, the warden and deputy warden also watch for any problems with the IV catheters and tubing.

A physician is present to assist in any effort to revive the prisoner in the event of a last-minute stay of execution. *Id.*, at 764. By statute, however, the physician is prohibited from participating in the "conduct of an execution," except to certify the cause of death. KY.REV.STAT. ANN. § 431.220(3). An electrocardiogram (EKG) verifies the death of the prisoner. App. 764. Only one Kentucky prisoner, Eddie Lee Harper, has been executed since the Commonwealth adopted lethal injection. There were no reported problems at Harper's execution.

128 S.Ct. at 1528.

In comparison to Kentucky's process, Mississippi's procedure uses the introduction of the same three drugs, separated by saline flushes of the intravenous (IV) lines. *See* Exhibit

Mississippi as opposed to three grams in Kentucky. However, the U.S. Supreme Court did not reject the use of 2 grams rather than 3 grams of thiopental in the opinion in *Baze*. Additionally, the State would assert that in the five executions conducted in Mississippi there has never been a problem associated with the 2 gram dosage achieving the desired result. Exhibit A. Like Kentucky, to insure that an adequate dose of sodium thiopental is properly delivered to the prisoner, the insertion of the IV lines are handled by qualified and experienced personnel in Mississippi. Exhibit A. The IV tubing, accessing the veins and insertion of the catheter are all jobs performed by the IV insertion personnel which includes two (2) certified practicing paramedics, each with over twenty years of experience. Exhibit A. The lead paramedic has participated in all five (5) of Mississippi's executions by lethal injection. See Exhibit A.<sup>1</sup>

Kentucky and Mississippi each insert IV lines into both arms of the condemned prisoner to insure a backup plan is in place should there be problems with the primary IV line. Both State's also have two sets of chemicals loaded into syringes, arranged in order and laid out separately from each other. Exhibit B. The responsibility for mixing the solution of sodium thiopental (the only chemical needing preparation) and for loading the drugs into

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<sup>1</sup>. Tracey Hansen, July 17, 2002; Jessie Derrell Williams, December 12, 2002; John Nixon, December 14, 2005; Bobby Wilcher, October 18, 2006, Earl Wesley Berry, May 21, 2008. (Exhibit A was produced just prior to the execution of Earl Wesley Berry and does not include the facts associated with that execution)

Mississippi is similar to Kentucky in this respect as well. That Court held:

Petitioners contend that there is a risk of improper administration of thiopental because the doses are difficult to mix into solution form and load into syringes; because the protocol fails to establish a rate of injection, which could lead to a failure of the IV; because it is possible that the IV catheters will infiltrate into surrounding tissue, causing an inadequate dose to be delivered to the vein; because of inadequate facilities and training; and because Kentucky has no reliable means of monitoring the anesthetic depth of the prisoner after the sodium thiopental has been administered. Brief for Petitioners 12-20.

As for the risk that the sodium thiopental would be improperly prepared, petitioners contend that Kentucky employs untrained personnel who are unqualified to calculate and mix an adequate dose, *especially in light of the omission of volume and concentration amounts from the written protocol. Id.*, at 45-46. The state trial court, however, specifically found that “[i]f the manufacturers’ instructions for reconstitution of Sodium Thiopental are followed, . . . there would be minimal risk of improper mixing, despite converse testimony that a layperson would have difficulty performing this task.” App. 761. We cannot say that this finding is clearly erroneous, *see Hernandez v. New York*, 500 U.S. 352, 366, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991) (plurality opinion), particularly when that finding is substantiated by expert testimony describing the task of reconstituting powder sodium thiopental into solution form as “[n]ot difficult at all. . . . *You take a liquid, you inject it into a vial with the powder, then you shake it up until the powder dissolves and, you’re done. The instructions are on the package insert.*” 5 Tr. 695 (Apr. 19, 2005).

128 S.Ct. at 1533. [Emphasis added.]

Rather than just a mere layperson, the individual mixing the chemical in Mississippi’s procedure is an experienced paramedic with the additional practical experience of having participated in past lethal injection executions.



S.Ct at 1523-24. Similar to Kentucky, Mississippi employs ongoing training as well. Prior to each execution there are four practice sessions. Two during the week prior to the scheduled execution and two more within forty-eight hours of the execution. Between December, 2005, prior to the December 14, 2005, execution of John Nixon and May 21, 2008, execution of Earl Wesley Berry, twenty (20) practice or training sessions took place in addition to the actual executions that were carried out. The pattern and practice in Mississippi is that at least four (4) practice or training sessions take place prior to each execution. The State would assert that this is "substantially similar" to the procedures followed in Kentucky and therefore are not in violation of any Eighth Amendment provisions.

As in Kentucky, in Mississippi the condemned prisoner can be observed by the IV personnel during the execution. In both States the IV personnel are located in a separate room with visual access through a window. Exhibit A. Similar to Kentucky's procedure, the Mississippi Department of Corrections' (MDOC) officials remain in the execution chamber observing the prisoner as the execution proceeds. All MDOC officials involved in the execution, the execution team members, as well as medical personnel, including a doctor, are located within three (3) to five (5) feet of the defendant. Exhibit A. Additionally similar is that both States provide rooms for witnesses to observe the execution process. Exhibit B.

Mississippi, like Kentucky provides for the paralytic to be administered as the second

to administration of the second or third chemicals. *sEE Baze* (Ginsburg, J. Dissenting). Similarly, neither State monitors the “depth of consciousness” with any medical instrumentation (e.g. blood pressure cuff, BIS monitor). *See Baze* (Ginsburg, J. Dissenting). The plurality opinion, nor any of the seven concurring justice’s opinions required such to be a needed element of the process.

The Supreme Court pointed out in its opinion in *Baze*, “Only one Kentucky prisoner, Eddie Lee Harper, has been executed since the Commonwealth adopted lethal injection. There were no reported problems at Harper’s execution.” 128 S.Ct. at 1528. Mississippi has now been able to conduct five executions by lethal injection since its adoption. No problem has ever occurred in any of these five executions. It is evident that the protocol in addition to the practices and procedures followed by Mississippi in its implementation of lethal injection are substantially similar to those of Kentucky, as discussed in *Baze*.

Finally, the most significant similarities between Mississippi’s and Kentucky’s lethal injection procedures are the most basic. Highly trained and qualified team members set up the IV lines. A qualified team member mixes the first drug and loads the syringes. Highly trained and qualified team members insert the IV lines into the condemned. Those same highly qualified and trained team members inject the chemicals. As those chemicals are injected, these highly trained and qualified team members observe their equipment and the condemned to monitor for any problems. The record shows neither State has encountered

lethal injection procedure is virtually identical in all material respects, it follows that the Mississippi procedure is constitutionally acceptable.

### CONCLUSION

For the above and foregoing reasons the State would submit the petitioner's application for post-conviction relief challenging his capital murder conviction and sentence of death should be denied.

Respectfully submitted,

**JIM HOOD**  
ATTORNEY GENERAL  
STATE OF MISSISSIPPI

**MARVIN L. WHITE, JR.**  
ASSISTANT ATTORNEY GENERAL

**PAT McNAMARA**  
SPECIAL ASSISTANT ATTORNEY GENERAL  
Miss. Bar No. 99838  
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BY:   
PAT McNAMARA

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I, Pat McNamara, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing RESPONDENT'S SUPPLEMENTAL BRIEF to the following:

Glenn S. Swartzfager, Esquire  
Louwlynn Vanzetta Williams, Esquire  
Mississippi Office of Capital Post-Conviction Counsel  
P.O. Drawer 23786  
Jackson, Mississippi 39225-3786

This the 26<sup>th</sup> day of June, 2008.

  
PAT McNAMARA

# EXHIBIT A

**STATE OF MISSISSIPPI**

**COUNTY OF HINDS**

**AFFIDAVIT OF LAWRENCE KELLY, SUPERINTENDENT  
MISSISSIPPI STATE PENITENTIARY AT PARCHMAN**

I, **LAWRENCE KELLY**, after being duly sworn, affirm and state as follows:

1. I am over the age of 18 years and competent to testify to the matters contained in this affidavit.
2. I am the Superintendent of Mississippi State Penitentiary at Parchman. I have been Superintendent of the Mississippi State Penitentiary at Parchman for three years and four months.
3. In addition to various administrative duties as Superintendent, I oversee all aspects of executions conducted at the Penitentiary.
4. I am familiar with all facets of the protocol as well as the practices and procedures utilized in conducting an execution by lethal injection at the Mississippi State Penitentiary at Parchman and submit the following:
  - A. The insertion of the intravenous lines (IV) into the inmate is conducted by trained personnel. These IV insertion personnel include two certified practicing paramedics each with over twenty (20) years of experience. The lead paramedic has participated in all four (4)

executions conducted at the Mississippi State Penitentiary by lethal injection.

- B. Each execution is preceded by a number of "mock" executions or training sessions. For each scheduled execution at the Penitentiary four practice or training sessions conducted. Two (2) sessions are conducted the week prior to the execution with the remaining two (2) sessions held within forty-eight (48) of the lethal injection.
- C. In preparation for the execution an IV line is inserted into the left arm of the prisoner and into the right arm of the prisoner. The second line is held in reserve as a contingency line in case of a malfunction or blocking of the primary line.

5. I further state that I have overseen a total of sixteen (16) execution practice sessions and two (2) actual executions using lethal injection between December, 2005 and October 30, 2007. Four (4) practice sessions were conducted prior to the execution of John Nixon in 2005, that execution was carried out, as scheduled, on December 14, 2005. A total of eight (8) practice sessions were conducted prior to the execution of Bobby Wilcher in 2006, that execution was carried out on October 18, 2006. Since the original July, 2006, execution date was stayed by the United States Supreme Court there were double the practice sessions. Four practice sessions were conducted prior to the scheduled, October 30, 2007, execution date for Earl Wesley Berry. That execution date was stayed. These practice or

training sessions are in accordance with our standard procedures and practices which includes no less than four (4) practice sessions prior to each execution date. In preparation for any execution date set for Earl Wesley Berry, four (4) additional practice or training sessions will be conducted prior to that execution.

6. I further state that these practice sessions involve conducting each step in the execution process with the exception of the intravenous lines being inserted.

7. I further state that I accompany the condemned from his cell to the actual execution room and remain in that room until the execution process is complete. I am at all times during this process no more than three (3) feet from the condemned. As a result of this close proximity, I am able to witness any and all responses from the individual throughout this process.

8. I further state that I am close enough to witness the drugs flowing through the intravenous lines and observe their effect on the condemned.

9. I further state that the two (2) executions in which I have overseen have resulted in the death sentence being carried out without incident. During those executions I witnessed no movement from either individual following the administration of the sodium pentothal and could detect no visible signs of movement or signs of consciousness. After the injection of the third drug no action is taken for a period of eight (8) minutes. At that time the doctors and/or coroner are called on to pronounce the prisoner dead.



10. I further state that all drugs used in the execution are mixed, prior to each execution, by the primary certified practicing paramedic.

11. I further state that the primary certified practicing paramedic is within five (5) feet of the prisoner and observes the procedures to determine if the prisoner is conscious after the administration of the sodium pentothal.

12. I further state that also within five (5) feet of the prisoner once he is strapped to the gurney are the Commissioner of the Department of Corrections, the doctor or doctors and the coroner. These additional persons remain within that proximity of the prisoner during the complete execution process.


WITNESS my signature, this the 30 day of April, 2008.

  
LAWRENCE KELLY

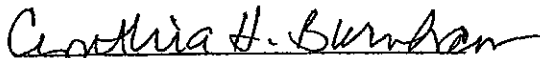
STATE OF MISSISSIPPI

COUNTY OF HINDS

Personally appeared before me, the undersigned , who being first duly deposed and sworn, states under oath that the facts and circumstances in the above statement are true and correct to the best of his knowledge.

  
LAWRENCE KELLY

SWORN TO AND SUBSCRIBED before me, this the 30<sup>th</sup> day of April, 2008.

  
Notary Public

My Commission Expires: \_\_\_\_\_

MISSISSIPPI STATEWIDE NOTARY PUBLIC  
MY COMMISSION EXPIRES OCT. 26, 2010  
RONDED THRU STEGALL NOTARY SERVICE

# **EXHIBIT B**

1 Applicability:

2

3 This procedure applies to all employees of the Mississippi  
4 Department of Corrections (MDOC) and particularly those involved  
5 with an execution of a state offender.

6

7 Policy Statement:

8

9 It shall be the policy of the Mississippi Department of Corrections  
10 (MDOC) to carry out executions of offenders in accordance with the  
11 provisions of the court and in a manner that is consistent with  
12 appropriate standards of compassion, humanness and dignity.

13

14 Procedures:

15

16 The Supreme Court of Mississippi determines execution dates.

17

18 The Clerk of the Mississippi Supreme Court will deliver to the  
19 Commissioner of Corrections a copy of the Death Sentence under the  
20 seal of the Court and this will serve as a warrant for executing  
21 the offender.

22

23 It is the duty of the Commissioner to notify the State Executioner.

24

25 Manner of Execution

26

27 The punishment of death will be inflicted upon a convicted offender  
28 in a manner prescribed by law (Lethal Injection).

29

30 The Superintendent of the Mississippi State Penitentiary, after  
31 receiving official notice of any impending execution, will set the  
32 execution procedures into motion and he will personally ensure that  
33 everyone is properly notified and all procedures are followed.

34

35 The State Executioner, or his duly authorized representative, shall  
36 supervise and inflict the punishment of death as required and  
37 authorized by law.

38

1 expenses for each execution, to be paid by the county where  
2 the crime was committed.

3  
4 The county of conviction will likewise pay the fees of the  
5 attending physician or physicians in attendance.

6  
7 The Executioner may appoint not more than two (2) deputies who  
8 shall be paid one hundred fifty dollars (\$150.00) per  
9 execution and mileage authorized by law to be paid by the  
10 county where the crime was committed. Such deputies may  
11 assist in the infliction of the punishment of death. The  
12 Executioner may appoint such other assistants as may be  
13 required; however, such assistants shall not be entitled to  
14 compensation of travel expenses.

15  
16 The State Executioner is the custodian of all equipment and  
17 supplies involved in the infliction of the death penalty. All  
18 expenses for the maintenance and protection of the property,  
19 together with operating expenses, which as a practical matter  
20 cannot be allocated to the county of conviction, will be paid  
21 out of the General Support Fund of the Mississippi Department  
22 of Corrections.

23  
24 The Official State Executioner is appointed by the Governor  
25 and serves at his pleasure until a successor is appointed.

26  
27 Whenever any person shall be condemned to suffer death for any  
28 crime which such person shall have been convicted in any court of  
29 this State; such punishment shall be inflicted at an appropriate  
30 place designated by the Commissioner of Corrections;

31  
32 Any person convicted of a capital offense upon which the death  
33 sentence has been imposed will be immediately transported to  
34 a location designated by the Commissioner. It is the duty of  
35 the State Executioner, or any person deputized by him in  
36 writing, in the event of his physical disability, to be  
37 present at such execution, to perform the same and to have  
38 general supervision over said execution.

1 prior to the scheduled execution, the following individuals to  
2 be present at the execution:

3  
4 The Sheriff, or his Deputy, of the county of conviction

5  
6 Not more than two (2) physicians

7  
8 Bonafide members of the press not to exceed eight (8) in  
9 number; and at the request of the condemned, such ministers of  
10 the gospel not exceeding two (2) as said condemned person  
11 shall name.

12  
13 The Commissioner may permit two (2) members of the condemned  
14 person's immediate family and witnesses, if they so request.

15  
16 The Governor may, for good cause shown, permit two (2)  
17 additional persons of good and reputable character to witness  
18 an execution.

19  
20 The Commissioner shall also name to be present at the  
21 execution such officers or guards which may be deemed by him  
22 to be necessary to ensure proper security.

23  
24 No other persons shall be permitted to witness the execution.

25  
26 Selection of Media Representatives to Attend Executions

27  
28 Because of space limitations within the execution viewing room, it  
29 may be necessary to limit the number of media representatives  
30 present.

31  
32 The selection of media representatives shall be coordinated by  
33 the MDOC Public Information Officer (PIO) in accordance with  
34 the procedures prescribed herein and at the direction of the  
35 Commissioner of Corrections.

36  
37 The Mississippi Bureau Chief of the Associated Press (AP) wire  
38 service and the News Director of the Mississippi Radio Network

Public Information Officer of the Mississippi Department of Corrections (MDOC) not later than seven (7) calendar days prior to the scheduled date of execution.

The selection of the remaining media representatives to witness the execution shall be made by lottery. All media representatives based in Mississippi wishing to witness the execution shall submit their request in writing to the Department's Public Information Officer at least fourteen (14) calendar days prior to the scheduled date of execution. In this written request, they are to indicate whether they represent printed media or electronic media. One name representing the printed media and one name representing the electronic media will be drawn from the names submitted. These selected representatives will be notified in writing at least seven (7) calendar days prior to the scheduled date of execution of their selection.

For those additional media representatives present at the execution site immediately prior to the scheduled execution, the MDOC Public Information Officer shall establish a central area for the media briefings. Available information will be disseminated at this point.

Other media representatives with press credentials approved by the Mississippi Department of Corrections' Public Information Officer will be admitted to the central press area on the grounds of the institution where the execution is to take place.

#### Admission Procedures for Execution Witnesses

All execution witnesses, including media representative, are to report to the Superintendent's Office at the Mississippi State Penitentiary not less than one (1) hour before the time set for the execution.

All witnesses will be required to present proper identification and

1 Media representatives will be issued Press Passes and other  
2 witnesses will be issued temporary passes, showing that they are  
3 official execution witnesses.

4  
5 Upon being issued Press Passes, the media representatives will be  
6 escorted by security personnel to a designated site for a press  
7 briefing, to be conducted by the Department's Public Information  
8 Officer, if deemed necessary.

9  
10 After the briefing and explanation of the procedures and  
11 regulations to be followed, media representatives will be  
12 transported to the designated site, searched by Mississippi  
13 Department of Corrections' security personnel and escorted to the  
14 Execution Observation Room by such security personnel.

15  
16 Other non-media execution witnesses will be briefed on the  
17 procedures and regulations to be followed by the Superintendent, or  
18 his designee, and will then be transported to the Maximum Security  
19 Unit, where they will be searched and then escorted to the  
20 Execution Observation Room by the security personnel of the  
21 Department of Corrections.

22  
23 The prisoner may make a final statement immediately before the time  
24 set for the execution if the offender desires to do so.

25  
26 In accordance with Section 99-19-55(2) of the Mississippi Code of  
27 1972, no person shall be allowed to take photographs or other  
28 recordings of any type prior to, during or after an execution.

29  
30 No electronic or mechanical devices, including but not limited to  
31 motion picture cameras, video tape cameras, tape recorders, or any  
32 similar devices, or any drawing, art materials or supplies may be  
33 in the possession of the witness or any other person admitted to  
34 the Execution Observation Room.

35  
36 No other Death Row offender may be interviewed by any media  
37 representative the day before, the day of or the day after a  
38 scheduled execution.



1 execution shall be made by the Commissioner of Corrections or the  
2 Department's Public Information Officer.

3  
4 The absence of the Sheriff or Deputy, under due notice to attend,  
5 will not delay the execution. Likewise, the execution may proceed  
6 with one (1) attending physician if it is not practical for two (2)  
7 physicians to be in attendance.

8  
9 The Superintendent, upon being officially notified of the impending  
10 execution of an offender, will notify the offender of the execution  
11 date and time both in person and in writing.

12  
13 The Superintendent will have a conference with the condemned  
14 offender to ascertain the offender's desires (within reason)  
15 for his last meal.

16  
17 The Superintendent will have preparations made at his  
18 direction for the final night and meal of the condemned  
19 offender.

20  
21 The Superintendent will meet with the appropriate staff members  
22 immediately after becoming aware of an immediate impending  
23 execution date to prepare security for the execution site as well  
24 as for other units. The staff members will be composed of, but not  
25 limited to those designated by the Superintendent and the Agency's  
26 General Legal Counsel or his duly authorized designee.

27  
28 The Agency's General Legal Counsel, or his duly authorized  
29 designee, shall serve as the official liaison officer to the State  
30 Attorney General's Office for any legal matters concerning an  
31 impending execution.

32  
33 Twenty-four (24) hours before the date of execution, the  
34 Commissioner shall declare an institutional emergency at the  
35 designated institution. The institutional emergency shall remain  
36 in effect for twenty-four (24) hours following the time of  
37 execution.

institutional emergencies shall apply.

The period of institutional emergency may be expanded, if necessary and for cause, as determined by the Department's Policies regarding institutional emergencies.

The Superintendent shall ensure that the telephone line located near the execution site is free and clear in the event of a last minute stay of execution. At the appointed execution time, the Superintendent, acting as the representative of the Mississippi Department of Corrections, will officially turn the execution site over to the State Executioner, or his designated representative, to perform the execution, at which time the Superintendent will retire to the security position outside the execution area.

Pursuant to Section 99-19-61 of the Mississippi Code of 1972, the Commissioner of Corrections is hereby authorized and empowered to pay, out of any available funds of the Department, all lawful costs, fees and expenses and/or the cost of the execution of any person not a legal resident of Sunflower County, Mississippi, who is charged, tried and/or executed for the commission of a crime within the confines of the boundary of the institution, or any crime committed outside the bounds of the land of the institution by any offender lawfully charged thereto. Such cost shall include the reasonable expense of burial in the event the person is executed and the body is not claimed by relatives or friends, and any all other expenses required to be borne by the State of Mississippi under the provisions of Section 99-19-53 and 99-19-55 of the Mississippi Code of 1972.

Media access will be provided pursuant to the policy and procedures previously adopted and approved by the Department.

#### INJECTION PREPARATION

Open execution room and injection room.

Inventory and inspect IV equipment, syringes and drugs.

1 The lip of the neoprene diaphragm on the "Y" injection site shall  
2 be rolled back so that it can easily be removed for insertion of  
3 syringe tips instead of a needle.

4  
5 A sixty-one (61) inch Extension Set (Abbot Rx 15099 - or  
6 equivalent) shall be connected to the needle adapter of the  
7 Administration Set. Note: For the set-up for administration into  
8 the distal arm, a second Extension Set shall be required due to the  
9 additional distance.

10  
11 An Angiocath (no smaller than 18 Ga. X 2" ) shall be connected to  
12 the needle adapter of the Extension Set. Optimal injection flow  
13 may be achieved with a 14 Ga. or 16 Ga. Angiocath, if the veins  
14 will permit the use of the larger size. Angiocath will be secured  
15 with one (1) inch surgical tape.

16  
17 The tubing shall be cleared of air and the Angiocath recovered.  
18 The set-up is ready for use.

19  
20 The syringes containing the drugs shall be prepared and loaded in  
21 the following order:

22  
23 Two 50-cc syringes, each containing 10-15 cc of sterile Normal  
24 Saline. Label syringes " NS" .

25  
26 Three 50-cc syringes, each containing 50 mequiv of Potassium  
27 Chloride in 50 cc. Label syringes " 3" .

28  
29 Three 50-cc syringes, each containing 50 mgm of Pavulon in 50  
30 cc. Label syringes " 2" .

31  
32 One 50-cc syringe containing 2.0 Grams of Sodium Pentothal  
33 (contents of four 500 mgm vials dissolved in the least amount  
34 of diluent possible to attain complete, clear suspension).  
35 The Sodium Pentothal, being a federally controlled drug, shall  
36 be prepared last, when it appears that it shall actually be  
37 used. Label syringe " 1" .

38

INJECTION PROCEDURE

The angiocath shall be inserted into the vein of the left arm and secured in place. The flow of Normal Saline shall be started and administered at a slow rate of flow.

Step 1 shall be repeated for the right arm. This line shall be held in reserve as a contingency line in case of a malfunction or blockage in the first line.

Note: At this point, the administration sets shall be running at a slow rate of flow, and ready for the insertion of syringes containing the injections agents. Observation of both set-ups to insure that the rate of flow is uninterrupted shall be maintained. NO FURTHER ACTION shall be taken until the prearranged signal to start the injection of lethal agents is given by the Superintendent.

CHRONOLOGICAL SEQUENCE OF EXECUTION

0800 hours The Superintendent declares an institutional emergency and places the institution on lockdown status. The Emergency Operations Center is activated.

0830 hours The Emergency Response Team is placed on telephone stand-by status. All staff scheduled to participate are advised to report to the Superintendent's Conference Room at 1000 hours.

0900 hours The Telecommunications Engineer checks the telephone in the execution chamber to ensure that it is working properly.

1000 hours A briefing is conducted in the Superintendent's Conference Room for assigned staff members.

1030 hours The briefing is concluded and staff are advised to

responsibilities.

1130 hours Staff assigned as Administration Security report to their duty post.

1200 hours The Public Information Officer prepares to greet media representatives. Assigned drivers and escorts for media representatives report to their duty stations.

1300 hours Execution Chamber Passes are issued by the Security Operations Chief. The Execution Team reports to Unit 17 to prepare lethal injection system. A walk-through of procedures is conducted. The Communications Officer issues walkie-talkies and a list of call numbers to designated staff. The condemned offender is allowed to visit with family members at Unit 17. The length of the visit is at the discretion of the Superintendent.

1500 hours All security staff and maintenance personnel assigned to duty posts at Unit 17 and Gate 1 report to their assigned stations. The Quick Response Team reports to the K-9 Office and stays on call until 2000 hours. The Telecommunications Engineer checks the telephone in the execution chamber to ensure that it is working properly. The Engineer or his designee will remain on duty in the chamber area until after the execution.

1600 hours All other staff assigned to participate meet at the E.O.C. for final briefing. Security staff and maintenance personnel assigned to the demonstration area report to their assigned posts. The condemned offender is served his last meal.

1630 hours Food prepared for staff manning duty posts is picked up at The Place and delivered. The media is

1 The Executioner shall advise the Superintendent  
2 that the lethal injection system is prepared and  
3 ready for use. The Superintendent will contact the  
4 Deputy Commissioners to verify that no stay of  
5 execution has been granted..

6  
7 1815 hours The Superintendent directs the Executioner to  
8 proceed. The Executioner will then administer the  
9 lethal injection.

10  
11 1816 hours The Superintendent or his designee will  
12 telephonically advise the Deputy Commissioner or  
13 his designated representative that the execution  
14 has begun. During the execution procedure, the  
15 Superintendent's designee will man the telephone to  
16 the Governor's Office. Constant voice to voice  
17 communications shall be established and maintained  
18 throughout and after the execution.

19  
20 When the offender no longer exhibits signs of life, the  
21 Superintendent shall request the physician and/or the coroner be  
22 brought into the execution chamber and pronounce the offender's  
23 death. The Superintendent will then order the witnesses escorted  
24 from the observation room to the outside of the unit.

25  
26 STEP DOWN

27  
28 Disconnect IV line, remove and discard angiocath in properly  
29 labeled medical waste disposal bag.

30  
31 Remove body from execution room, wash and re-clothe, if necessary.

32  
33 Place body in hearse.

34  
35 The body of the executed person will be released immediately after  
36 the execution by the State Executioner, or his duly authorized  
37 representative, to the relatives of the deceased person, or to such  
38 friends as may claim the body. The Department of Corrections will

1 burial in the event the body is not claimed by relatives or  
2 friends. There shall be no autopsy required pursuant to Section  
3 47-5-151.

4  
5 The State Executioner, or his duly authorized representative and  
6 the Physicians who witnessed the execution shall prepare and sign  
7 officially a certificate setting forth the time and place of  
8 execution and that such criminal was then and there executed, in  
9 conformity to the sentence of the Court and the provisions of  
10 Section 99-19-55 of the Mississippi Code of 1972, and shall secure  
11 the signatures of the other public officers and persons who  
12 witnessed such execution.

13  
14 The certificate shall be filed with the court where the criminal  
15 was convicted.

16  
17 The clerk will subjoin the certificate to the record of the  
18 conviction and sentence.

19  
20 The Staff Chaplain will be available for individual or group  
21 counseling.

22  
23 Reports Required:

24  
25 As required by this procedure and through the chain-of-command.

Reviewed &  
Issuance  
Approved

Issuing Authority

Date

Commissioner

Title

*[Signature]* 8-5-98