

EXHIBIT 1

MINUTE ENTRY OF COURT'S RULING
GRANTING STAY OF EXECUTION ENCLOSED

WRITTEN ORDER FORTHCOMING –
WILL BE FILED UPON RECEIPT

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

DAROLD R.J. STENSON,

Plaintiff,

vs.

ELDON VAIL, ET AL,

Defendants.

Case No. CV-08-05079-LRS

CIVIL MINUTES

DATE: 11/25/08

LOCATION: YAKIMA

MOTION HEARING (TELEPHONIC)

Judge LONNY R. SUKO

Laura McClure Courtroom Deputy	Fred Karau Law Clerk	Lynette Walters Court Reporter
Richard C. Coyle Sherilyn C. Peterson Diane M. Meyers Plaintiff's Counsel	John J. Samson Sara J. Olson Defendant's Counsel	

Open Court **Chambers** **Teleconf**

Arguments presented by Ms. Peterson regarding Motion for Temporary Restraining Order(Crt Rec #5) and Motion for Preliminary Injunction (Crt Rec #12).

Arguments presented by Mr. Samson.

Court ruled, granting a Stay of Execution, Order forthcoming.

ORDER FORTHCOMING

CONVENED: 8:05 AM	ADJOURNED: 8:30 AM	TIME: 25 MINUTES	CALENDARED <input type="checkbox"/>
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EXHIBIT 2

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Attorneys for Plaintiff
Darold R.J. Stenson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Darold R.J. Stenson,
Plaintiff,

v.

Eldon Vail, Secretary of Washington
Department of Corrections (in his
official capacity); Stephen Sinclair,
Superintendent of the Washington
State Penitentiary (in his official
capacity); Cheryl Strange, Office of
Correctional Operations Deputy
Secretary (in her official capacity);
Washington Department of
Corrections; and DOES 1-50,

Defendants.

No. *CV-08-5079-LRS*

**COMPLAINT FOR EQUITABLE
AND INJUNCTIVE RELIEF [42
U.S.C. § 1983]**

Darold R. J. Stenson, by and through his undersigned attorneys for his
complaint against the above-captioned Defendants, alleges as follows:

NATURE OF THE ACTION

**COMPLAINT FOR EQUITABLE AND
INJUNCTIVE RELIEF [42 U.S.C. §
1983] - 1**

68695-0001/LEGAL14959421.1

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1 1. This action is brought under 42 U.S.C. § 1983 for violations and
2 threatened violations of Plaintiff's rights to be free from cruel and unusual
3 punishment under the Eighth and Fourteenth Amendments to the United
4 States Constitution, and for violations and threatened violations of Plaintiffs'
5 rights to be free from arbitrary and capricious Washington Department of
6 Corrections ("DOC") protocols and procedures under the Fifth and Fourteenth
7 Amendments to the United States Constitution.
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14 2. This Complaint does not challenge Plaintiff's underlying capital
15 conviction or sentence of death, nor does it allege that lethal injection as a
16 form of execution is *per se* unconstitutional. Methods of lethal injection that
17 would comply with the United States Constitution exist and are available for
18 Defendants' use. Rather, Plaintiff challenges only the manner and means by
19 which the DOC intends to execute condemned inmates by lethal injection
20 under its protocol dated October 25, 2008 ("Policy"), attached hereto as
21 Exhibit A, or any future version of the DOC lethal injection protocol.
22

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25 3. Plaintiff contends that lethal injection, as that method of
26 execution is currently administered in Washington, carries a substantial risk of
27 the inflicting torturous pain and suffering upon condemned inmates. Plaintiff
28 further contends that the nature of the chemicals used by Defendants to
29 effectuate execution by lethal injection, coupled with Defendants' failure to
30 implement sound alternative procedures and to guarantee the use of properly-
31 trained and qualified personnel, creates a and substantial risk that Plaintiff will
32 experience excruciating pain and suffering during execution.
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4. Plaintiff seeks equitable and injunctive relief to prevent Defendants from carrying out their executions by means of lethal injection, as that method of execution is currently performed in the State of Washington under the Policy, or any similar protocol. Plaintiff asks that the DOC be restrained from carrying out his execution until such time as it has eliminated the substantial risk of serious pain and suffering in violation of the United States Constitution.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this Complaint pursuant to 28 U.S.C. § 1331 (federal question), § 1343 (civil rights violations), § 2201 (declaratory relief), and § 2202 (further relief). This action arises under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. § 1983.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b) because Plaintiff is currently incarcerated in Washington State Penitentiary, which is located within this District. All executions performed by Defendants are carried out in Washington State Penitentiary. The events giving rise to this Complaint have occurred and/or will occur in this District.

PARTIES

7. Plaintiff Darold R.J. Stenson is a United States citizen and a resident of the State of Washington. He is currently a death-sentenced inmate in the custody of Defendants and under the supervision of the DOC (DOC number 232018). He is held at the Washington State Penitentiary, 1313 N. 13th Ave, Walla Walla, Washington 99362.

1 8. Defendant Eldon Vail is the Secretary of the DOC, with the
2 responsibilities outlined in RCW § 72.09.050, and is sued in his official
3 capacity.
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6 9. Defendant Stephen Sinclair is the Superintendent of the
7 Washington State Penitentiary where Plaintiff is housed and where all
8 executions in Washington are performed, and is sued in his official capacity.
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10 10. Defendant Cheryl Strange is the Deputy Secretary for the Office
11 of Correctional Operations, and is sued in her official capacity.
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13 11. Defendant Washington Department of Corrections is a
14 department of the State of Washington created by RCW § 72.09.030, and is
15 responsible for administering the adult corrections programs operated by the
16 State of Washington pursuant to RCW § 72.09 *et seq.*
17

18 12. Defendants Does 1-50, are the DOC's officers, successors in
19 office, agents, contractors, and employees, along with those acting in concert
20 with them, who have or will participate in Plaintiff's execution by virtue of
21 their roles in designing, implementing, preparing for, and/or carrying out the
22 lethal injection process. Plaintiff does not yet know the identities of these
23 persons, but will amend his complaint accordingly upon obtaining that
24 information.
25

26 EXHAUSTION OF ADMINISTRATIVE REMEDIES

27 13. Without conceding that the provisions for exhaustion of
28 administrative remedies are applicable to his claims, Plaintiff has effectively
29 exhausted all administrative remedies for the issues contained in this
30 Complaint to the extent that they were available and has satisfied the Prison
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1 Litigation Reform Act's exhaustion requirements pursuant to 42 U.S.C. §
2 1997e(a).
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4 14. Plaintiff is not required to exhaust administrative remedies before
5 bringing this Complaint because modification of the DOC's lethal injection
6 protocol is not possible through the internal grievance process and therefore
7 exhaustion is futile
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12 15. Notwithstanding the fact that exhaustion of administrative
13 remedies through a prison grievance policy is not required for this type of
14 action, Plaintiff has, in an abundance of caution, grieved his claim. The DOC
15 has denied all relief requested by Plaintiff and Plaintiff avers and asserts that
16 all conditions precedent for bringing this suit have been met.
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22 BACKGROUND

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24 16. Plaintiff was convicted and sentenced to death in 1994.

25 17. His execution is set for December 3, 2008.

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27 18. On April 16, 2008, the United States Supreme Court issued its
28 decision in *Baze v. Rees*, __ U.S. __, 128 S.Ct. 1520, 170 L.Ed. 2d 420
29 (2008), in which a plurality of the Court held that the Eighth Amendment to
30 the United States Constitution is violated when the State subjects an
31 individual to conditions presenting the risk of future harm that are likely to
32 cause serious illness and needless suffering and give rise to sufficiently
33 imminent dangers.
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42 19. The State of Washington's methods of execution create a
43 substantial risk of serious harm and expose death-sentenced prisoners to
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1 objectively intolerable risks of harm for purposes of the Eighth Amendment to
2 the United States Constitution.
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4 20. Alternatives to the State's methods of execution exist that
5 effectively address the substantial risk of serious harm posed by the State's
6 current methods and that are feasible, readily implemented, and in fact
7 significantly reduce a substantial risk of severe pain. The State lacks a
8 legitimate penological justification for adhering to its current methods of
9 execution. By refusing to adopt the available constitutionally sufficient
10 procedures, the State is violating the prohibitions on cruel and unusual
11 punishment set forth in the Eighth Amendment to the United States
12 Constitution.
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22 GENERAL ALLEGATIONS

23 21. All prior allegations set forth above are re-alleged as if set forth
24 entirely herein.
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26 22. The State of Washington has elected to use lethal injection as the
27 presumptive method of execution. *See* RCW § 10.95.180(1). Under state
28 law, death sentences "shall be supervised by the superintendent of the
29 penitentiary and shall be inflicted by intravenous injection of a substance or
30 substances in a lethal quantity sufficient to cause death and until the defendant
31 is dead." *Id.* A defendant may elect death by hanging. *Id.*
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40 23. The statute prescribes no specific drugs, dosages, drug
41 combinations, or the manner of intravenous line access to be used in the lethal
42 injection execution process.
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1 24. The statute fails to prescribe any certification, training, or
2 licensure required for those individuals who participate in the execution
3 process.
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6 25. Though the statute does not delegate to DOC or any agency the
7 authority to implement execution policies and fails to set forth any
8 administrative or procedural standards safeguards or guidelines to be followed
9 when enacting policy or otherwise acting to implement the statute, all of the
10 details and methods involved in the execution process have been determined
11 by DOC and at DOC's sole discretion.
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15 26. The Policy sets forth the protocol by which the DOC has
16 determined that lethal injections are to be carried out in the State of
17 Washington.
18

19 27. On information and belief, DOC intends to execute Plaintiff by
20 the lethal injection procedure as set forth in the Policy. The Policy, and the
21 manner and means by which lethal injections are currently performed, violate
22 federal constitutional provisions that prohibit cruel and unusual punishment.
23

24 28. On information and belief, the lethal injection protocol set forth
25 in the Policy was adopted without sufficient medical research or review to
26 determine that an inmate would not suffer a painful death.
27

28 29. The execution protocol set forth in the Policy was adopted
29 without complying with any administrative or procedural standards,
30 safeguards or guidelines.
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32 30. The Policy creates a substantial risk that Plaintiff will
33 consciously experience pain and suffering during execution. Pursuant to the
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1 Policy, an "injection team" whose members, titles and qualifications are
2 largely undefined by the Policy, will administer intravenously a three-drug
3 combination to Plaintiff in the following order: (1) thiopental sodium;
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5 (2) pancuronium bromide; and (3) potassium chloride.
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9 **i. Thiopental Sodium**

10 31. Thiopental sodium, the first drug to be administered, is an ultra-
11 short acting anesthetic intended to cause temporary unconsciousness, the
12 effects of which wear off quickly. If a sufficient dose of thiopental sodium is
13 not administered properly, the sedative effect will wear off during the
14 execution process, creating a substantial constitutionally unacceptable risk of
15 suffocation from the administration of the subsequently-administered
16 pancuronium bromide and pain from injection of the subsequently-
17 administered potassium chloride.
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20 32. Failure to administer properly the entire dose of thiopental
21 sodium necessary to prevent unconstitutional suffering is a foreseeable
22 consequence of the inadequacy of DOC's procedures and training as outlined
23 in the Policy. Proper administration of thiopental sodium sufficient to render
24 an adequate depth of unconsciousness is crucial to render the execution
25 humane because the subsequently-administered drugs cause excruciating pain
26 and suffering if injected into a conscious or inadequately sedated person. If
27 not fully anaesthetized when injected with the pancuronium bromide and the
28 potassium chloride, Plaintiff will experience both conscious paralysis and
29 asphyxiation and an excruciating burning feeling throughout his veins before
30 dying from cardiac arrest.
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COMPLAINT FOR EQUITABLE AND
INJUNCTIVE RELIEF [42 U.S.C. §
1983] – 8

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33. The Policy provides that a solution of thiopental sodium will be used in the lethal injection procedure and states that solutions for injection will be prepared no more than thirty minutes prior to administering them in the execution. The Policy does not outline how the drug will be prepared, or by whom, nor does it reasonably assure that the personnel who will prepare and deliver the thiopental sodium have adequate training and experience to perform these tasks properly and to do so within the time constraint. On information and belief, other states use licensed pharmacists or physicians to mix the drugs, including thiopental sodium, for lethal injections.

34. DOC has chosen to create a substantial and foreseeable risk that Plaintiff will be conscious during the administration of the pancuronium bromide and potassium chloride by electing to use thiopental sodium. Anesthesiologists typically administer thiopental for purposes of temporarily anaesthetizing patients in order to introduce a breathing tube. Once the breathing tube has been inserted, other longer-lasting barbiturates are administered to maintain the patient at a surgical plane of anesthesia throughout the procedure.

35. The American Veterinary Medical Association (AVMA) recommends the use of a long-acting barbiturate such as sodium pentobarbital in euthanasia, rather than the thiopental sodium used in Washington executions of death-sentenced prisoners. *See American Veterinary Medical Association, AVMA Guidelines on Euthanasia (Formerly Report of the AVMA on Euthanasia) (June 2007) at 11, available at*

1 <http://www.avma.org/issues/animal_welfare/euthanasia.pdf>, last visited
2 August 18, 2008.
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5 **i. Pancuronium Bromide**

6 36. After the thiopental sodium, Defendants intend to administer 100
7 milligrams of pancuronium bromide. Pancuronium bromide is a
8 neuromuscular blocking agent that paralyzes all voluntary muscles, including
9 the respiratory muscles, thereby causing asphyxiation. Pancuronium bromide
10 does not diminish cognition, consciousness, or the ability to feel pain or
11 suffocation. As a result, if an individual is not fully unconscious when
12 pancuronium bromide is administered, that person will experience the
13 physical and psychological agony of conscious suffocation, but because of the
14 paralysis, the person will be unable to communicate that suffering and the
15 pain will not be visible to an observer.
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18 37. Pancuronium bromide substantially increases the risk that
19 Plaintiff will be conscious during the injection of potassium chloride, an
20 extremely painful drug. Once paralyzed by pancuronium bromide, an
21 inadequately anesthetized person will appear to be serene and unconscious
22 throughout the execution procedure and will be unable to speak or move or
23 otherwise inform the execution personnel that he is conscious and
24 experiencing torturous pain. Indeed, administered by itself to a conscious
25 person, pancuronium bromide would cause the person to suffocate to death
26 slowly while remaining fully conscious.
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29 38. Pancuronium bromide serves no medical purpose or legitimate
30 function in an execution. The chemical is used to prevent the executioners
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1 and witnesses from knowing whether the condemned inmate is adequately
2 anesthetized. In cases in which the thiopental sodium is not successfully
3 delivered to the inmate's circulation and/or the condemned inmate is not
4 adequately anesthetized, pancuronium bromide will create the appearance of a
5 serene death while masking the fact that the person is experiencing conscious
6 paralysis, suffocation, and the agony of cardiac arrest from the administration
7 of potassium chloride. The use of pancuronium bromide is unnecessary to
8 bring about death. Absent the use of pancuronium bromide, a person
9 undergoing execution would be able to indicate that he was still conscious or
10 had regained consciousness prior to the lethal dose of potassium chloride.
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20 39. On information and belief, pancuronium bromide is banned in
21 most states for use in animal euthanasia because it inhibits the ability to
22 determine if the patient is experiencing pain during the procedure.
23 Washington's statutory and administrative provisions express a strong
24 preference for pentobarbital-based drugs. See RCW §§ 16.52.011; 69.50.310;
25 WAC §§ 246-886-020 & 246-886-030.
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32 40. Pancuronium bromide substantially and foreseeably increases the
33 risk that Plaintiff will be conscious during the injection of the potassium
34 chloride that follows. Once paralyzed, he will be unable to indicate to the
35 execution personnel that he is conscious and experiencing torturous pain.
36 When pancuronium bromide is administered after an initial dose of thiopental
37 sodium, as the Policy calls for, it creates the real, gratuitous, and unacceptable
38 risk that Plaintiff will be paralyzed by the pancuronium bromide but
39 conscious and able to feel the severe pain caused by the potassium chloride.
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1 Administering the combination of thiopental sodium and pancuronium
2 bromide thus creates the unconscionable possibility that Plaintiff will
3 consciously experience the agony of suffocation by the pancuronium bromide
4 and the intense burning as the potassium chloride moves through his veins,
5 followed by cardiac arrest, without being able to indicate that he was still
6 conscious or had regained consciousness.
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13 **I. Potassium Chloride**

14 41. 1. The third and final chemical Defendants intent to administer
15 is potassium chloride, an extremely painful chemical which causes death by
16 disrupting the heart's contractions, leading to cardiac arrest and death. As
17 potassium chloride travels through the bloodstream from the site of injection
18 towards the heart, the chemical activates sensory nerve fibers inside the veins,
19 causing a prolonged and intense burning sensation. In the foreseeable event
20 that a person is not adequately anesthetized throughout the execution
21 procedure, the potassium chloride will cause the person to consciously
22 experience the agonizing pain of this excruciatingly painful chemical coursing
23 through his veins and of cardiac arrest, while being incapable of expressing
24 his suffering due to the paralytic effects of the pancuronium bromide.
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36 42. The AVMA condemns the use of potassium chloride as the sole
37 agent for animal euthanasia. *See* AVMA Guidelines, *supra*, at 12. If
38 potassium chloride is to be used at all, the AVMA requires the practitioner
39 administering the potassium chloride to have proper training and knowledge
40 to ensure that the euthanized animal has reached a surgical plane, which is
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1 characterized by the loss of consciousness, loss of reflex muscle and loss of
2 response to noxious stimuli. The Policy lacks even these basic protections.
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4 43. The Policy creates a substantial risk that Plaintiff will not be fully
5 anaesthetized when the potassium chloride is administered and therefore will
6 be conscious and experience torturous pain as a result.
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11 **a. Deficiencies in the DOC's Lethal Injection Protocol Create a Substantial**
12 **and Excessive Risk That Plaintiff Will Suffer Excruciating Pain During**
13 **Execution**
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15 44. On information and belief, the State of Washington does not use
16 a lethal injection procedure and/or employ safeguards substantially similar to
17 those used by the State of Kentucky. *See Baze v. Rees*, ___ U.S. ___, 128 S.Ct.
18 1520, 170 L.Ed. 2d 420 (2008).
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20 45. The Policy fails for many reasons including, but not limited to,
21 those stated below.
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23 46. The Policy fails to set forth a back-up plan in the event of failed
24 intravenous insertion or other errors in administration of the chemicals.
25

26 47. On information and belief, the State does not select or assemble
27 the lethal injection team until 60 to 90 days prior to the execution date,
28 thereby creating the substantial risk that the members of the injection team
29 will not have adequate training to perform executions in a constitutionally
30 compliant manner.
31

32 48. The Policy fails to set forth the procedures for establishing
33 properly the intravenous lines through which the lethal solutions will flow.
34 This failure creates a substantial, intolerable risk of serious harm that the
35 drugs will not be properly administered, specifically, that an adequate dose of
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1 thiopental sodium will not reach Plaintiff and render him unconscious on a
2 surgical plane of anesthesia, and that therefore Plaintiff will suffer suffocation
3 from the administration of the pancuronium bromide and the excruciating pain
4 akin to fire running through his veins from injection of the potassium
5 chloride.
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11 49. The Policy does not identify who will set the intravenous lines,
12 where and the manner in which the intravenous lines will be set, or sufficient
13 credentials, qualifications, training, or experience of such person or persons.
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16 50. The Policy does not provide a time frame during which the
17 intravenous lines must be established or a backup plan for vein access in the
18 event that the initial attempt to establish the intravenous lines is unsuccessful.
19 The protocol set forth in the Policy fails to identify whether the intravenous
20 access will be attempted first through peripheral sites, such as arms, hands, or
21 legs, before more invasive measures are attempted.
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29 51. The Policy does not prohibit the use of "cut downs" to access
30 veins for the intravenous lines. A cut down is a painful procedure that
31 involves surgically exposing a vein, inserting a catheter, and closing the skin
32 with suturing, and would be performed prior to the administration of the
33 thiopental sodium. This procedure has been held unconstitutional by other
34 courts.
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41 52. The Policy does not limit injection of the drugs into the arms or
42 legs as do other states protocols. Injection in other areas, such as the neck,
43 can cause excessive pain.
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53. The Policy does not provide for persons who possess sufficient expertise to insert an intravenous line properly to be present in the chamber with the inmate to watch for signs of intravenous line problems, such as blockage and infiltration, and what necessary measures to take in the event of such instances.

54. The Policy does not provide for a standard time for the lethal solutions to be administered or how much time should elapse between administration of the solutions.

55. The Policy fails to specify where the injection team and injection team leader are to be located during the administration of the intravenous lethal solutions or how the execution facilities are set up, thereby creating the substantial risk that there will be not be adequate monitoring for purposes of assessing unconsciousness and whether intravenous tubes are and remain properly inserted into veins.

56. The Policy fails to provide sufficient methods to ensure and monitor that the proper level of unconsciousness is maintained following administering of the sodium thiopental to ensure that an inmate will not experience suffocation or the excruciating burning pain caused by the second and third drugs, *i.e.*, whether the inmate is on the surgical plane of anesthesia prior to administration of pancuronium bromide and potassium chloride. In light of the known risk that a person not completely and deeply unconscious will experience torturous pain and suffering as a result of the last two drugs to be administered, the lack of safeguards creates a substantial intolerable risk of serious harm and wantonly exposes death-sentenced prisoners to that risk.

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57. The Policy does not provide how the syringes containing the lethal solutions will be labeled to ensure that the injection team administers the drugs in the correct order and dosage.

58. The Policy does not provide where or how the lethal solutions will be stored upon arrival to the Washington State Penitentiary to guarantee that the integrity of the chemicals is not compromised prior to the execution.

59. The Policy's inadequate procedures and lack of safeguards for establishing and maintaining the IVs, administering the lethal solutions and maintaining the unconsciousness of the condemned creates a substantial intolerable risk of serious harm to Plaintiff.

60. The Policy delegates the assignment of all staff to be involved in the execution, including the administration of the medical procedures, as well as the determination whether expert advice should be sought as to whether to deviate from the Policy's procedures for inmate-specific physical or medical reasons, to the Superintendent of the Washington State Penitentiary (Superintendent), a position that, on information and belief, does not require any medical certification, training, experience, or knowledge.

61. The Policy lacks any guidelines for injection team members or other personnel to rely upon if they are required to exercise their discretion during the lethal injection process.

62. The Policy provides that briefing and rehearsals are to be conducted only "as necessary," but fails to provide what will be rehearsed, and whether and what type of follow-up will take place in the event that the

1 rehearsal reveals deficiencies, difficulties, or flaws with the personnel or
2 procedures.
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4 63. The failure of requirement for medical file review and a physical
5 examination is especially problematic in this case. Mr. Stenson is a type 2
6 diabetic with a history of significant difficulty in the injection of needles in
7 his veins even to draw blood. Executing Mr. Stenson under DOC's current
8 protocol is likely to cause him severe pain.
9

10 64. A physical examination of the person, may, but need not, be
11 performed. The Policy does not state who is to review the medical file the
12 requirements for that person's credentials or qualifications. There is no
13 guidance as to who will conduct the physical examination, when a physical
14 examination will be performed or the scope of the examination. The Policy
15 provides that, based upon the physical examination, the Superintendent "may"
16 but need not consult with "appropriate experts" to determine whether, based
17 on the medical file, any deviation from the policy is advisable. There is no
18 guidance as to what the credentials and qualifications of these "appropriate
19 experts" must be, or whether they must have any experience administering
20 lethal injections.
21

22 65. The Policy does not provide for any evaluation of the person's
23 psychiatric state.
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25 66. The Policy fails to provide for a physician to be on stand-by, and
26 does not make any provision for resuscitation in the event that a last-minute
27 reprieve is granted once the execution process has begun.
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**COUNT I:
Violation of the Right to be Free from Cruel and Unusual Punishment
Pursuant to Eighth Amendment
to the United States Constitution**

67. All prior allegations set forth above are re-alleged as if set forth entirely herein.

68. Defendants, acting under color of Washington law, intend to execute Plaintiff in a manner and by methods that will cause unnecessary pain, that do not comport with evolving standards of decency, thereby depriving Plaintiff of his rights under the Eighth Amendment to the United States Constitution, as made applicable to the State of Washington by the Fourteenth Amendment to the United States Constitution, to be free from cruel and unusual punishment.

69. Although it is possible to conduct executions in a constitutionally compliant manner, Defendants have chosen not to do so. While Defendants could select additional or alternative chemicals and retain qualified medical personnel to administer its chosen chemicals to ensure the constitutionality of its lethal injection procedure, Defendants have acted with deliberate indifference and failed to do so. Defendants' current procedures violate evolving standards of decency.

**COUNT II:
Violation of the Right to Due Process Pursuant to the
Fourteenth Amendment to the United States Constitution**

70. All prior allegations set forth above are re-alleged as if set forth entirely herein.

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71. The Washington legislature did not delegate authority to DOC to establish or implement a policy by which executions are to be carried out in the State.

72. By acting without a legislative grant of authority in establishing or implementing an execution policy, DOC exceeded its jurisdiction, and its policy may not be enforced.

73. No Washington statute sets forth which agency, if any, has delegated authority to establish or implement an execution policy.

74. No Washington statute sets forth the scope of authority under which a State agency might establish or implement an execution policy.

75. No Washington statute describes administrative or procedural standards, safeguards or guidelines by which an agency should establish or implement an execution policy.

76. There is no provision made by the Legislature, or by DOC, for review of the Policy under the Administrative Procedures Act or otherwise to assure that DOC's policies and actions are constitutional, and not arbitrary and capricious and are otherwise lawful.

77. By failing to adopt adequate statewide standards for lethal injection, and failing to adopt practicable procedures to implement them, and failing to provide for any review, Defendants have deprived Plaintiff of his right to due process under law as provided by the Fourteenth Amendment.

78. By failing to adopt adequate statewide standards for lethal injection, and failing to adopt practicable procedures to implement them, and failing to provide for any review, Defendants fail to provide a process with

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sufficient guarantees of equal treatment as required by the Fourteenth Amendment.

PRAYER FOR RELIEF

Mr. Stenson respectfully requests that this Court grant the following relief:

A. Injunctive relief to enjoin Defendants, their officers, agents, servants, employees and all persons acting in concert with them from execution Plaintiff by lethal injection using the execution protocol set forth in the DOC Policy or similar policy, protocol, practice, or procedure.

B. That the Court conduct appropriate and necessary evidentiary hearing and discovery to permit Plaintiff to prove his constitutional claim;

C. Reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and the laws of the United States;

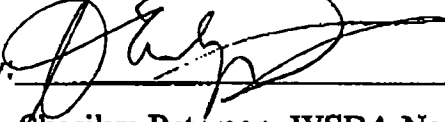
D. Costs of the suit; and

E. Any further relief that the Court deems just and proper.

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DATED: November 20, 2008

PERKINS COIE LLP

By: 

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COMPLAINT FOR EQUITABLE AND
INJUNCTIVE RELIEF [42 U.S.C. §
1983] – 21

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Exhibit A

 STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS	APPLICABILITY PRISON		
	REVISION DATE 10/25/08	PAGE NUMBER 1 of 12	NUMBER DOC 490.200
	TITLE CAPITAL PUNISHMENT.		
POLICY			

REVIEW/REVISION HISTORY:

Effective: 9/3/93
 Revised: 6/15/98
 Revised: 8/10/01
 Revised: 6/21/07
 Revised: 10/25/08

SUMMARY OF REVISION/REVIEW:

Title and Team Name changes throughout
 I.A.1., II.C. & VIII.A.1., & VIII.C.2. – Added clarifying language
 III.B.3. – Added requirements for ISDP incoming mail
 III.B.4.b. & 5.b. – Added clarifying language regarding attorney of record
 Revised IV.A.1. to specify a single media event
 Added IV.B.1. & DOC 21-575 Acknowledgment of Visitor Search Requirements for searches of media representatives
 Revised V.F. regarding search requirement for witnesses
 VI.C. – Revised housing requirements for female ISDP
 VIII.A.2. – Added requirement for 3 practice sessions for lethal injections
 VIII.B. – Removed medical file review; revised physical examination requirement
 IX.A.1.d. – Added that Lethal Injection Team members must be trained; added qualifications
 IX.A.2.a. – Changed Director of Health Services to Superintendent
 IX.A.4.b. & d. – Revised requirements for lethal injection
 IX.A.4.jr. – Removed requirement that Lethal Injection Team remove apparatus and saline
 X.A. – Calls to Headquarters will be made to the Department Emergency Operations Center
 X.F. – Removed requirement that Death Certificate be signed before removal of body
 Several changes to Attachment 1

APPROVED:

Signature on File

ELDON VAIL, Secretary
 Department of Corrections

10/23/08
 Date Signed