

JS 44 (Rev. 09/11)

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS The Philadelphia Inquirer and The Patriot-News</p> <p>(b) County of Residence of First Listed Plaintiff <u>Philadelphia</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Paul H. Titus, Esquire, Schnader Harrison Segal & Lewis LLP, 120 Fifth Avenue, Suite 2700, Pittsburgh, PA 15222</p>	<p>DEFENDANTS John E. Wetzal, Marirosa Lamas, and John or Jane Doe</p> <p>County of Residence of First Listed Defendant <u>Cumberland</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i> <i>(For Diversity Cases Only)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district *(specify)* 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
42 U.S.C. § 1983

Brief description of cause:
Deprivation of right secured by United States Constitution

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ **CHECK YES only if demanded in complaint:**

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE Chief Judge Yvette Kane DOCKET NUMBER 08-CV-1261

DATE 9/25/12 SIGNATURE OF ATTORNEY OF RECORD Paul H Titus

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

THE PHILADELPHIA INQUIRER
801 Market Street, Suite 300
Philadelphia, PA 19107,

and

THE PATRIOT-NEWS
2020 Technology Parkway, Suite 300
Mechanicsburg, PA 17050,

Plaintiffs,

v.

JOHN E. WETZEL,
IN HIS INDIVIDUAL CAPACITY AS
SECRETARY OF THE
PENNSYLVANIA DEPARTMENT OF
CORRECTIONS,
1920 Technology Parkway,
Mechanicsburg, PA 17050,

and

MARIROSA LAMAS,
IN HER INDIVIDUAL CAPACITY AS
SUPERINTENDANT OF THE STATE
CORRECTIONAL INSTITUTE AT
ROCKVIEW
1 Rockview Place
Bellefonte, PA 16823,

and

JOHN OR JANE DOE,

Defendants.

Civil Action No.

(Filed Electronically)

VERIFIED COMPLAINT

PRELIMINARY STATEMENT

1. “To determine whether lethal injection executions are fairly and humanely administered, or whether they ever can be, citizens must have reliable information about the ‘initial 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.” *California First Amendment Coalition v. Woodford*, 299 F.3d 868, 876 (9th Cir. 2002) (citations omitted) (hereinafter *CFAC*); *see also Associated Press v. Otter*, 682 F.3d 821 (9th Cir. 2012).

2. Plaintiffs, pursuant to 42 U.S.C. § 1983, seek declaratory relief and preliminary and permanent injunctive relief to prevent defendants from violating the First Amendment of the United States Constitution by enforcing a Department of Corrections policy that prohibits witnesses to executions from viewing and hearing the entirety of the execution “from the moment the condemned enters the execution chamber through, to and including, the time the condemned is declared dead.” *CFAC*, 299 F.3d at 886.

3. Plaintiffs, pursuant to 42 U.S.C. § 1983, also seek declaratory relief and preliminary and permanent injunctive relief to require defendants to

protect the public's First Amendment rights by affording witnesses to executions the opportunity to hear the final statement, if any, a condemned makes before he or she is put to death.

PARTIES

4. *The Philadelphia Inquirer* (the "*Inquirer*"), is a daily newspaper with its principal place of business at 801 Market Street, Suite 300, Philadelphia, PA 19107. The *Inquirer's* core distribution area spans an eight county area including Philadelphia and its surrounding counties in Pennsylvania and New Jersey. As of September 16, 2012, the *Inquirer* had a daily circulation of more than 202,000 copies and a Sunday circulation of more than 382,000 copies, as well as 30,000 digital only subscribers. The *Inquirer*, which has won nineteen Pulitzer Prizes, regularly covers criminal proceedings involving defendants who have been sentenced to death, and an *Inquirer* reporter was among the members of the press selected to witness the last execution in Pennsylvania in 1999. The *Inquirer* has been covering extensively the criminal proceedings relating to the next execution in Pennsylvania, currently scheduled for October 3, and has, in response to a press release from the Pennsylvania Department of Corrections, submitted the name of the reporter it intends to send to witness the October 3 execution. The *Inquirer* also intends to send reporters to witness and report on

future executions in Pennsylvania. Witnessing the entirety of an execution — from start to finish — is crucial to the *Inquirer*'s ability to accurately report on and provide its readers with a full and complete description of the lethal injection process as carried out in Pennsylvania.

5. *The Patriot-News* is a daily newspaper with its principal place of business at 2020 Technology Parkway, Suite 300, Mechanicsburg, PA 17050. *The Patriot-News* is distributed in Harrisburg and a six county area in central Pennsylvania. As of September 24, 2012, *The Patriot-News* had a daily circulation of more than 68,000 copies and a Sunday circulation of more than 117,000 copies. *The Patriot-News*, which recently won a Pulitzer Prize for its coverage of the Jerry Sandusky case, regularly covers criminal proceedings involving defendants who have been sentenced to death. *The Patriot-News* has been covering extensively the criminal proceedings relating to the next execution in Pennsylvania, currently scheduled for October 3, and has, in response to a press release from the Pennsylvania Department of Corrections, submitted the name of the reporter it intends to send to witness the October 3 execution. *The Patriot-News* also intends to send reporters to witness and report on future executions in Pennsylvania. Witnessing the entirety of an execution – from start to finish – is crucial to the *The Patriot-News*' ability to accurately report on and provide its readers with a full and complete description of the lethal injection process as carried out in Pennsylvania.

6. Defendant John E. Wetzel is the Secretary of the Pennsylvania Department of Corrections (the “DOC”). Acting under color of state law, he is responsible for the overall management and operation of the correction system in Pennsylvania, and personally approved the DOC protocols at issue in this case. Plaintiff sues Mr. Wetzel in his individual capacity as Secretary of the DOC.

7. Defendant Marirosa Lamas is the Superintendant of the State Correctional Institute at Rockview (“SCI Rockview”), the facility at which executions in Pennsylvania take place. Superintendant Lamas, acting under color of state law, supervises executions in Pennsylvania. *See* 61 Pa. C.S. § 4304(a)(2) (“The execution shall be supervised by the chief administrator or his designee of the State correctional institution designated by the department for the execution.”). Plaintiff sues Ms. Lamas in her individual capacity as Superintendant of SCI Rockview.

8. Defendant John or Jane Doe is the person, if anyone, that Superintendant Lamas has designated to supervise executions and/or carry out the DOC’s execution protocols.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1343(a)(3), and may grant declaratory and injunctive relief pursuant

to 28 U.S.C. § 2201(a), § 2202 and Federal Rule of Civil Procedure 65. Plaintiffs' claims arise under the First and Fourteenth Amendments of the United States Constitution and under 42 U.S.C. § 1983.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2) because defendants reside in this judicial district and because a substantial part of the events or omissions giving rise to the claim will occur, absent judicial relief, in this district.

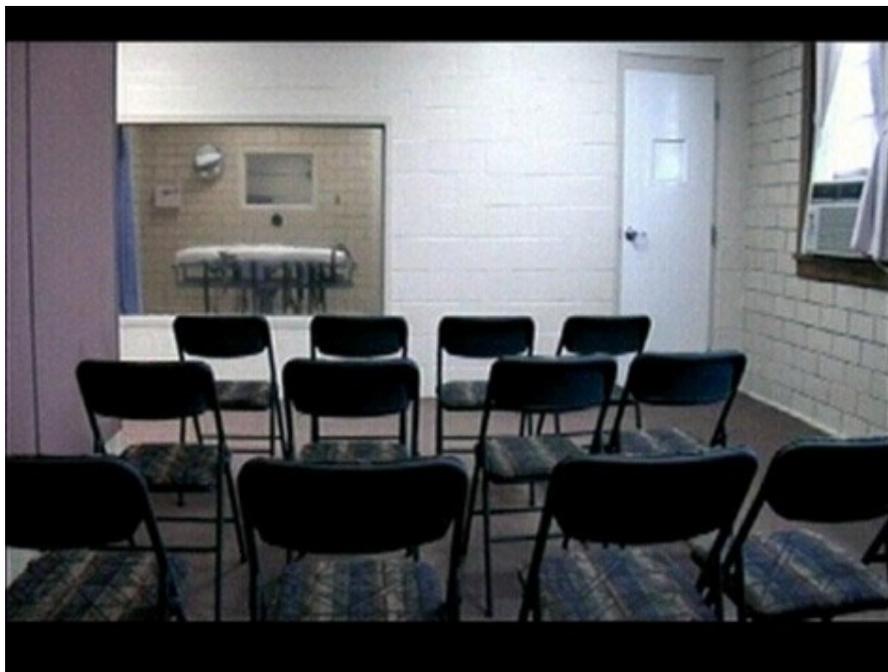
THE RELEVANT FACTS

WITNESSES TO EXECUTIONS

11. Pennsylvania's execution chamber is located at SCI Rockview.

12. As pictured below, an observation room, which contains a window into the execution chamber, adjoins the chamber.¹

¹ Source of photo: <http://www.wgal.com/image/view/-/6977772/medRes/2/-/maxh/358/maxw/538/-/8cyw91z/-/death-0008---19344381.jpg>



13. A retractable curtain hangs from the window separating the observation room from the chamber, as pictured below.²



² Source of photo: http://www.portal.state.pa.us/portal/server.pt/document/1284942/rockview_6_24_08_7_jpg

14. Pennsylvania law requires the presence of witnesses at executions.

15. Specifically, 61 Pa. C.S. § 4305(a) provides that: “No person except the following shall witness any execution under the provisions of this chapter: (1) The chief administrator or his designee of the State correctional institution where the execution takes place. (2) Six reputable adult citizens selected by the secretary. (3) One spiritual adviser, when requested and selected by the inmate. (4) Not more than six duly accredited representatives of the news media. (5) Such staff of the department as may be selected by the secretary. (6) Not more than four victims registered with and selected by the victim advocate.”

THE EXECUTION PROTOCOLS

16. The DOC’s Capital Case Procedure Manual sets forth the protocols for conducting executions in Pennsylvania. A copy of the Manual, heavily redacted by the DOC, is attached as Exhibit A.

17. The Manual provides that all of the following actions are to take place with the curtain between the execution chamber and the observation room drawn closed and, therefore, unobserved by the witnesses:

- (a) The inmate is transported into the execution chamber and secured on the injection table. *See Manual* at p. 4-24, ¶ 2(a).
- (b) The inmate is connected to an EEG monitor. *See id.* at ¶ 2(b).
- (c) The lethal injection team inserts an intravenous catheter into each of the inmate's arms. *See id.* at ¶ 2(c).
- (d) The intravenous catheters are connected to an IV extension set and administration set leading to saline solutions. *See id.* at ¶ 2(d).
- (e) The lethal injection team starts and regulates the flow of the saline solutions. *See id.* at ¶ 2(e).
- (f) The lethal injection team applies leads for the electrocardiogram and ensures that it is working. *See id.* at ¶ 2(f).
- (g) The lethal injection team leaves the execution chamber for a separate room from which it will administer the drug cocktail. *See id.* at ¶ 2(g).

18. Only after all of the actions described above have been completed is the curtain covering the window between the execution chamber and the observation room opened. *See id.* at ¶ 3(b) (“The opening of the curtain is the signal to the LIT [lethal injection team] to commence the lethal injection”).³

19. The DOC’s protocols prevent the witnesses to an execution from observing: (a) the demeanor of the condemned as he or she enters the execution chamber and is strapped onto the injection table; (b) the demeanor of the individuals who escort the condemned into the chamber and strap him or her onto the injection table; (c) the demeanor of the members of the lethal injection team as they prepare the condemned; (d) the amount of force, if any, that is required to strap the condemned to the injection table; (e) the length of time required to insert the intravenous catheters; (f) the type and severity of complications, if any, that

³ The attached version of the Manual is dated April 2010. After it issued that version, the DOC learned that one of the drugs used in the lethal injection protocol is no longer available and “determined that it is necessary to make revisions to its protocol to permit the use of another drug.” *See* ¶ 3 of the Joint Motion of the Parties for an Enlargement of Time (Document No. 71) in *Chester v. Beard*, No. 08-CV-1261, which currently is pending in this Court before Chief Judge Kane (the “Chester Action”). The DOC issued a revised Manual on August 28, 2012. *See* Status Report of the Attorney General (Document No. 81) in the Chester Action. Plaintiffs do not possess a copy of the revised Manual. However, because the DOC indicated that the purpose of the revision was to allow for the use of a different drug in the lethal injection process, plaintiffs infer, and therefore allege on information and belief, that the provisions in the April 2010 version relating to the stages of the execution visible to witnesses remain unchanged in the new version.

arise during the catheterization process; (g) the amount of pain, if any, that the condemned exhibits during the preparation process; and (h) the length of time that the condemned is left laying in the execution chamber before the lethal injection is administered.

20. Indeed, the first time the witnesses see the condemned, he or she is already in the execution chamber, immobilized on the injection table — the witnesses see none of the processes leading up to that point.

21. After the curtain is opened, the lethal injection team administers the lethal injection drug cocktail. *See* Manual at p. 4-24 to 4-25, ¶ 3(c).

22. Once asystole or the absence of electrical activity is observed (“flat-lining” in common parlance) for a set number of minutes, the curtain is closed. *See id.* at p. 4-25 to 4-26, ¶¶ 3(c)(11), 3(c)(12), 4(c) and 4(d).

23. With the curtain closed, the Coroner then enters the execution chamber, examines the condemned to verify that he or she is dead and, if so, pronounces the condemned dead. *See id.* at p. 4-26, ¶ 4(e) and (f).

24. Once the Coroner leaves the execution chamber, the curtain is drawn open and an announcement is made to the witnesses over a public address

system that the Coroner has pronounced the condemned dead. *See id.* at p. 4-26 to 4-27, ¶ 4(c).

25. The curtain is then closed again, and the witnesses are escorted out of the facility. *See id.* at p. 4-26 to 4-27, ¶ 5(c) and (d).

26. In addition, there is no indication in the unredacted sections of the Manual that any part of the execution process — either before or after the opening of the curtain — is audible to the witnesses.

27. As such, the DOC's protocols also appear to prevent the witnesses to an execution from hearing: (a) whether or not the condemned expressed any pain at any point in the process; (b) any conversations between and among the condemned and/or the lethal injection team indicating the existence or nonexistence of complications; and (c) any efforts by the guards and/or the lethal injection team to either comfort or taunt the condemned.

28. The protocols described above are the same, in all relevant respects, as the protocols that the State of California employed until 2002, when the Ninth Circuit Court of Appeals held that they violated the First Amendment rights of the public to witness executions “from the moment the condemned enters

the execution chamber through, to and including, the time the condemned is declared dead.” *CFAC*, 299 F.3d at 886.⁴

29. The protocols described above also are the same, in all relevant respects, as the protocols that the State of Idaho employed until this past summer, when the Ninth Circuit Court of Appeals again held that they violated the public’s First Amendment right “to witness all phases of [a condemned’s] execution.” *Associated Press v. Otter*, 682 F.3d 821, 824 (9th Cir. 2012).

30. In addition, the DOC’s protocols do not provide the condemned the opportunity, should he or she wish to exercise it, to make a final statement while visible to the witnesses.⁵

31. As such, the protocols do not protect the public’s First Amendment right to hear the final statement, if any, the condemned makes before he or she is put to death.

⁴ The Ninth Circuit issued the *CFAC* decision three years after the last execution in Pennsylvania in 1999.

⁵ It is theoretically possible that the redacted portions of the Manual provide the condemned the opportunity to make a statement earlier in the process but, if that is the case, the witnesses would have no way of verifying that the condemned made the statement, and the statement would not actually be the condemned’s last words.

32. Specifically, the public is denied the right to hear a final statement by the condemned that could indicate, among other possibilities: (a) the level of remorse, if any, expressed by the condemned; (b) whether the condemned professes innocence or admits guilt; (c) whether the condemned seeks forgiveness from society or divinity; (d) whether the pre-execution protocols caused the condemned any physical pain; (e) the amount of mental anguish, if any, expressed by the condemned; and (f) whether the condemned seeks to deter others from conduct that could land them in the same position as the condemned.

THE IMPORTANCE OF PUBLIC ACCESS TO EXECUTIONS

33. “Independent public scrutiny — made possible by the public and media witnesses to an execution — plays a significant role in the proper functioning of capital punishment.” *CFAC*, 299 F.3d at 876.

34. “An informed public debate is critical to determining whether execution by lethal injection comports with ‘the evolving standards of decency which mark the progress of a maturing society.’” *Id.* (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).

35. In addition, “public access [to criminal proceedings] fosters an appearance of fairness, thereby heightening public respect for the judicial process.” *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982).

36. “[P]ublic observation of executions fosters the same sense of catharsis that public observation of criminal trials fosters. Although this may reflect the dark side of human nature, the Supreme Court has recognized that the public must be permitted to see justice done, lest it vent its frustration in extralegal ways.” *CFAC*, 299 F.3d at 877 (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 571 (1980)).

37. The DOC’s execution protocols deprive the public of the information necessary to engage in an informed debate about the most severe penalty the government can impose on its citizens.

COUNT I
42 U.S.C. § 1983

38. Plaintiffs repeat and re-allege each allegation contained in paragraphs 1 through 37 of this Complaint as if fully set forth.

39. 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 governmental proceedings, including executions.

40. The DOC protocols that: (a) hide the initial procedures of an execution from the view of the witnesses selected to observe the execution; and (b)

do not guarantee the witnesses the right to hear any final statement the condemned may wish to give (the “Protocols”), infringe upon that First Amendment right.

41. The Protocols are not reasonably related to any legitimate penological objectives.

42. A person who, under color of any statute, ordinance, regulation, custom or usage of any state, deprives citizens of a right secured by the United States Constitution, shall be liable in a suit in equity for redress of those rights under 42 U.S.C. § 1983.

43. Defendants, acting under color of state law, will deprive plaintiffs and others similarly situated of their First Amendment rights if they are not prevented from implementing the Protocols.

WHEREFORE, plaintiffs respectfully request that this Court order the following relief:⁶

a. Declare that defendants' practice of preventing witnesses to an execution from viewing and hearing the entire execution process — starting from the earlier of: (i) the moment the condemned enters the execution chamber, or (ii) the moment the condemned is strapped to the injection table and is attached to intravenous lines, and continuing through, to and including, the time the condemned is declared dead — violates the First Amendment to the United States Constitution, as made applicable to the states by the Fourteenth Amendment;

b. Declare that defendants' failure to guarantee witnesses to an execution the right to hear any final statement by the condemned violates the First Amendment to the United States Constitution, as made applicable to the states by the Fourteenth Amendment;

c. Enter a preliminary and permanent mandatory injunction requiring defendants to conduct all phases of the execution process — starting from the earlier of: (i) the moment the condemned enters the execution chamber, or

⁶ To remove any doubt, plaintiffs are *not* suggesting that defendants should be prohibited from implementing procedures that will mask the identities of those who carry out executions while they are visible to witnesses. Rather, plaintiffs only request that the entirety of executions, including any final statement by the condemned, take place in the view of witnesses.

(ii) the moment the condemned is strapped to the injection table and is attached to intravenous lines, and continuing through, to and including, the time the condemned is declared dead — in the view of and audible to all witnesses to that execution;

d. Enter a preliminary and permanent injunction prohibiting defendants from implementing any provisions of the Capital Case Procedure Manual that would prevent witnesses to executions from viewing and hearing all phases of the execution process — starting from the earlier of: (i) the moment the condemned enters the execution chamber, or (ii) the moment the condemned is strapped to the injection table and is attached to intravenous lines, and continuing through, to and including, the time the condemned is declared dead;

e. Enter a preliminary and permanent mandatory injunction requiring defendants to afford witnesses to an execution the ability to hear any final statement the condemned may wish to give;

f. Enter a preliminary and permanent injunction prohibiting defendants from implementing any provisions of the Capital Case Procedure Manual that would prevent witnesses to executions from hearing any final statement that the condemned may wish to give; and

g. Such other relief as the Court deems just and proper.

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

AMERICAN CIVIL LIBERTIES FOUNDATION
OF PENNSYLVANIA

/s/ Paul H. Titus

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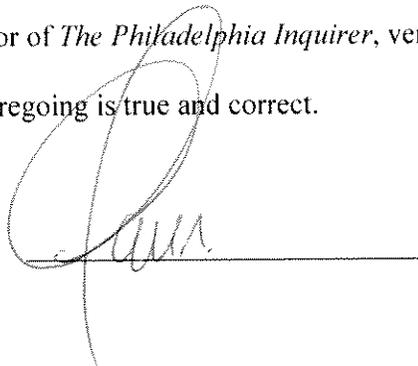
* Application seeking special admission
pursuant to LR 83.8.2.1 will be filed.

Attorneys for plaintiffs.

Dated: September 25, 2012

VERIFICATION

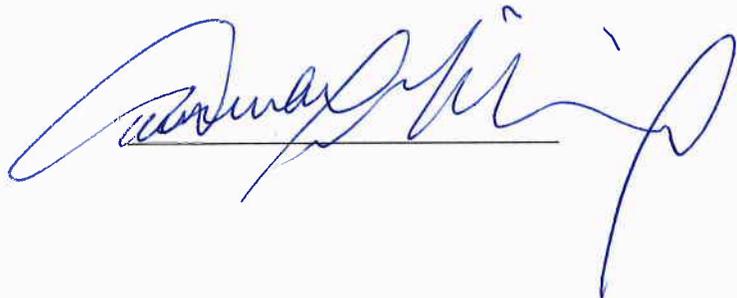
I, Gabriel Escobar, Deputy Managing Editor of *The Philadelphia Inquirer*, verify under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Gabriel Escobar", is written over a horizontal line. The signature is stylized and cursive.

Dated: September 25, 2012

VERIFICATION

I, Donald Gilliland, Enterprise Reporter for *The Patriot-News*, verify under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in blue ink, appearing to read "Donald Gilliland", is written over a horizontal line. The signature is stylized and cursive.

Dated: September 25, 2012

EXHIBIT A

Section 4 - Execution Procedures

[REDACTED]

[REDACTED]

II. Procedures

[REDACTED]

A. General

1. SCI Rockview (ROC) is designated as the Capital Facility.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. Pre-Execution Procedures

1. Scheduling of Lethal Injection

- a. The lethal injection will be scheduled in accordance with the date stated on the execution warrant signed by the Governor.
- b. The Secretary will designate the time of the lethal injection.
- c. When multiple executions are scheduled, the subsequent executions will follow immediately upon completion or stay of the preceding execution.

[REDACTED]

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2. Lethal Injection Team

- a. The Department will obtain the services of a sufficient number of individuals qualified to administer the lethal injection to ensure that a two-member team, at a minimum, will be available for each scheduled execution.
- b. The [REDACTED] shall:
 - (1) interview potential Injection Team members and conduct a background investigation;
 - (2) select Injection Team members;
 - (3) maintain the confidentiality of Injection Team members;
 - (4) maintain a list of potential Injection Team members;
 - (5) schedule Injection Team drills including, but not limited to, practice using the four channel processed electroencephalography;
 - (6) contact and confirm the Injection Team members when an Execution Warrant is signed;

[REDACTED]

[REDACTED]

- (9) prepare an Agency Purchase Request (APR) and make payments to the Lethal Injection Team.
- c. The identity of the individuals selected for the Lethal Injection Team(s) will remain confidential. [REDACTED]
- d. All team members must be trained health care professionals who have completed IV therapy training and are experienced in performing venipuncture. In the case of a collapsed vein(s), team members must be able to identify appropriate alternative intravenous IV access points. At least one team member will have experience in placing an IV in the jugular vein.
- e. Team members may be requested to submit to psychological testing [REDACTED].
- f. If a member wishes to withdraw from the team, he/she may do so by notifying [REDACTED].

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g. An individual may be removed from the team for any reason [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

e. [REDACTED] the Lethal Injection Kit contains the items listed below:

- (1) four 60 cc syringes with 1.5 gm thiopental, identified with a green label that contains the chemical name;
- (2) three 60 cc syringes each with 50 mg Pancurium Bromide, identified with a yellow label that contains the chemical name;
- (3) four 60 cc syringes each with 50 meq Potassium Chloride, identified with a red label that contains the chemical name;
- (4) three 20 cc syringes each with 20 ml Normal Saline, identified with a white label that contains the chemical name; and
- (5) three 250 cc bags of Normal Saline Solution.

f. [REDACTED]

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[REDACTED]

h. The Capital Facility's medical department will provide a sufficient number of intravenous catheters, IV administration sets and needles of various sizes. At a minimum the items below will be provided:

- (1) four IV Extension Sets;
- (2) four 18 g Intravenous Catheters;
- (3) four 22 g Intravenous Catheters;
- (4) four IV Administration Sets #110;
- (5) ten 18 g 1" needles;

i. Two 4-channel processed electroencephalograph (EEG) monitors shall be stored at the execution complex at SCI-Rockview.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

11. Preparations for the Execution

- a. One hour before the scheduled time of execution, the LIT members will dress in disposable surgical masks, gowns, and surgical gloves provided by the Capital Facility and enter the Injection Room
- b. From this point on, [REDACTED] will observe the injection procedures and document the activities on a **Checklist of Lethal Injection Procedures (Attachment 4-G)**.
- c. Two members of the LIT will document each step of the injection procedures on a **Checklist of Lethal Injection Procedures (Attachment 4-G)**, separate from the checklist completed by [REDACTED].
- d. The LIT members will inventory the contents of the Lethal Injection Kit and check each item carefully to ensure that everything is in proper order.
- e. [REDACTED]
- f. The LIT members shall verify that the EEG monitor is operational. If the EEG monitor is not operational and cannot be made so, the LIT shall verify that the reserve EEG monitor is operational. If neither EEG monitor is operational, the LIT members shall proceed by using physical examination to determine if the inmate is unconscious.
- g. No less than 30 minutes prior to the scheduled time of execution, the LIT will enter the Injection Chamber and set up the two 250cc bags of Normal Saline Solution by connection to the IV administration sets. Two separate IV lines will be used.
- h. The IV extension sets will be connected to the IV administration sets and the two lines will be passed through the opening of the wall to the Injection Chamber.
- i. The flow of both IV lines will be checked by regulating each flow clamp. When the flow has been checked the flow clamps will be shut off and the LIT member(s) will return to the Injection Room.

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[REDACTED]

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C. [REDACTED]

2. EEG Monitor and Intravenous Catheter Procedures

- a. After the Phase III inmate is transported to the Injection Chamber and secured on the Injection Table, [REDACTED] and the LIT member(s) will enter the Injection Chamber.
- b. The LIT will inform the inmate that he is being connected to the EEG monitor to monitor his consciousness level, if an EEG monitor is being used.
- c. The LIT will set up two intravenous catheters, one in each forearm or other usable vein.
- d. Each intravenous catheter will be connected to an IV extension set and administration set that leads to one of the 250 cc Saline solutions.
- e. The LIT member(s) will then start and regulate the flow of both IV Saline solutions at approximately 10 to 15 drops per minute, to the Keep Vein Open (KVO) rate.
- f. The LIT will apply leads for the electrocardiogram (ECG) and verify that it is operating.
- g. Upon completing all the connections, the Injection Team will return to the Injection Room and notify [REDACTED] that they are ready to commence the lethal injection.

3. Commencement of the Lethal Injection

- a. At the determined time of the execution, after [REDACTED] has determined that no stay of execution has been ordered, and so indicated to [REDACTED], the final order for the execution to proceed will be given by [REDACTED].
- b. [REDACTED]. The opening of the curtain is the signal to the LIT to commence the lethal injection.
- c. When the signal is given to start the execution, the LIT will follow this sequence:
 - (1) A syringe containing 1.5 gm thiopental, identified with a green label that contains the chemical name will be inserted in the "Y" injection tube of the left arm IV administration set and the injection shall commence. The emptied syringe will be removed from the injection tube.

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- (2) A second syringe containing 1.5 gm thiopental, identified with a green label that contains the chemical name, will be inserted into the "Y" injection tube of the left arm IV administration set and the contents injected. The emptied syringe will then be removed from the injection tube.
- (3) If an EEG monitor is being used, the LIT will observe the EEG monitor until the PSI reaches 40 or less and then proceed with the execution. If the EEG monitor does not reach 40 or less, the execution procedure shall be restarted from **Section C (3)(c)(1)** using a different IV site.
- (4) One syringe containing 20 ml Normal Saline, identified with a white label that contains the chemical name, will be inserted into the "Y" injection tube of the left arm IV administration set and the contents injected to flush the line. The emptied syringe will then be removed.
- (5) **CAUTION:** If all of the thiopental has not been flushed from the line, the mixture with the pancurium bromide may create flocculation (solid particles) to block the flow of the fluid through the intravenous catheter. If blockage occurs, the remaining injections must be made in the contingency line running to the right arm.
- (6) A syringe containing 50 mg pancurium bromide, identified with a yellow label that contains the chemical name, will be inserted into the "Y" injection tube of the left arm IV administration set and the contents injected.
- (7) When the contents of the first pancurium bromide syringe has been injected, the emptied syringe will be removed and the second 50 mg pancurium bromide syringe, identified with a yellow label that contains the chemical name, will be inserted into the "Y" injection tube of the left arm IV administration set and injected. The emptied syringe will then be removed.
- (8) One syringe containing 20 ml Normal Saline, identified with a white label that contains the chemical name, will be inserted into the "Y" injection tube of the left arm IV administration set and the entire contents will be injected to flush the line. Each emptied syringe will then be removed.
- (9) A syringe containing 50 meq Potassium Chloride, identified with a red label that contains the chemical name, will be inserted into the "Y" injection tube of the left arm IV administration set and the entire contents shall be injected.
- (10) When the contents of the first Potassium Chloride syringe have been injected, the emptied syringe will be removed and a second syringe containing 50 meq Potassium Chloride, identified with a red label that contains the chemical name, will be inserted into the "Y" injection tube of the left arm IV extension set and injected. The emptied syringe will then be removed.
- (11) After the second Potassium Chloride syringe has been removed from the line, the Injection Team will observe the ECG monitor. Once asystole or absence of

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- electrical activity is observed for two minutes an LIT member will notify [REDACTED] that injection of the drugs has been completed.
- (12) [REDACTED] to draw the curtain to the closed position.

4. Non-Completion of the Execution

- a. If asystole or absence of electrical activity does not occur within two minutes of the second injection of Potassium Chloride, the third 50 meq Potassium Chloride syringe, identified with a red label that contains the chemical name, will be inserted into the "Y" injection tube of the left arm IV administration set and the entire contents shall be injected.
- b. When the contents of the third Potassium Chloride syringe have been injected, the emptied syringe will be removed and the fourth 50 meq Potassium Chloride syringe, identified with a red label that contains the chemical name, will be inserted into the "Y" injection tube of the left arm IV administration set and injected. The emptied syringe will then be removed.
- c. After the fourth Potassium Chloride syringe has been removed from the line, the Injection Team will observe the ECG monitor. Once asystole or absence of electrical activity is observed for five minutes one LIT member will notify [REDACTED] that injection of the drugs has been completed.
- d. [REDACTED] to draw the curtain to the closed position.
- e. After the curtain has been drawn closed, [REDACTED] will open the door to the Standby Room and silently signal the Coroner to enter the Injection Chamber.
- f. The Coroner will conduct an examination to determine that the Phase III inmate died following the lethal injection and will pronounce the Phase III inmate dead under those circumstances.

5. Completion of the Execution

- a. [REDACTED]
- b. The Coroner will exit the Injection Chamber and return to the Coroner's Standby Room.
- c. [REDACTED] will then draw open the curtain and [REDACTED] will use the microphone in the Injection Chamber to make the following announcement over the public address system to the witnesses:

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“Ladies and gentlemen, the County Coroner has pronounced the inmate dead at _____ p.m. The execution is complete and the officers will now escort you out of the Execution Facility.”

- d. After making the announcement, [REDACTED] will draw the curtain closed and [REDACTED] will open the door to the Injection Chamber and signal the Coroner to enter the Injection Chamber to perform his/her post-execution procedures.

[REDACTED]

[REDACTED]

D. Post-Execution Procedures

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

i. [REDACTED]

2. Post-Mortem Examination and Certification of Execution

- a. Immediately following the pronouncement of death, the Coroner will enter the Injection Chamber to perform a post-mortem examination of the deceased inmate.
- b. The LIT will remain in the Injection Room during the post-mortem examination.
- c. As prescribed by statute, immediately after execution a post-mortem examination of the body will be made at the discretion of the Coroner of the county in which the execution is performed. The Coroner will report the nature of any examination so made. This report will be filed with the death certificate.
- d. While conducting the post-mortem the Coroner will:
 - (1) collect the lethal injection apparatus, i.e., the two bags of Saline and the IV lines from the LIT;
 - (2) remove the EEG monitor and ECG lines from the inmate's body;
 - (3) take at least two photographs of the deceased inmate; and
 - (4) examine the deceased inmate.
- e. When the post-mortem examination is completed, the Coroner will:
 - (1) prepare and sign a report of the post-mortem examination;

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- (2) prepare a death certificate; and
 - (3) determine if he/she will perform an autopsy on the body.
 - f. The Body Removal Detail, consisting of two members of the Standby Team and a Commissioned Officer, will enter the Injection Chamber and assist the Coroner in placing the deceased inmate in a body bag.
 - g. If the Coroner will perform an autopsy on the body:
 - (1) he/she will inform [REDACTED] of his/her decision;
 - (2) he/she will inform [REDACTED] of the estimated time when the body may be released to the funeral home designated by the next-of-kin or the facility to provide for the final arrangements of the body;
 - (3) [REDACTED] will prepare the written certification of the execution, noting the Coroner's decision to conduct an autopsy;
 - (4) the Body Removal Detail will transport the body to the Coroner's vehicle, which will be waiting at the main entrance to the Execution Facility; and
 - (5) after the Body Removal Detail has placed the body in the vehicle, the Coroner will then depart the Capital Facility.
 - h. If the Coroner will not perform an autopsy:
 - (1) [REDACTED] shall remain in the Injection Chamber until the deceased inmate's body is removed;
 - (2) [REDACTED] will obtain a receipt for the body from the Coroner;
 - (3) the Body Removal Detail shall transport the body to the vehicle of the funeral home designated by the next-of-kin or the facility to provide for the final arrangements of the body. If the family does not arrange for disposition of the body, the Department's contracted mortician will be contacted for cremation of the remains; and

[REDACTED]
3. Securing and Disposing of the Lethal Injection Kit and Single Use Equipment upon Completion of Execution.
- a. After the Coroner has left the Execution Facility, the Injection Team will enter the Injection Chamber from the Injection Room.

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- b. The Injection Team will dispose of all used needles and syringes in the sharps container.
- c. All other items (gloves, clothing, surgical masks, IV lines, etc.) will be disposed of in the Biomedical Waste container. All disposed items will be left in the Injection Chamber for pick-up by the facility medical staff.
- d. The contents of the unused backup syringes will be disposed of by the LIT.
- e. The LIT will remove their protective clothing, and prepare themselves for departure. No one will be permitted to enter the Injection Chamber until the LIT has completed its work and is prepared to depart the Execution Facility.

[REDACTED]

- g. [REDACTED]

- h. The LIT will give the **Checklist of Lethal Injection Procedures** and the print out from the ECG to [REDACTED], then leave the Execution Facility [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. Certification of Execution

After the execution, the Facility Manager will certify in writing, under oath or affirmation, to the court of the county where the inmate was sentenced to death that the inmate was duly executed in accordance with Act of June 18, 1998 (P.L. 622, No. 80), "The Death Sentence Execution Law." The certificate will be filed in the office of the clerk of such court.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]