

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

The Appeal, Inc.,

Plaintiff,

v.

TYRONE OLIVER, Commissioner of the
Georgia Department of Corrections; SHAWN
EMMONS, Warden of the Georgia Diagnostic
and Classifications Prison, and
CHRISTOPHER M. CARR, Attorney
General of the State of Georgia,

Defendants.

Civil Action File No. 24CV003010

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff The Appeal, Inc. ("The Appeal"), by and through their counsel, file this Complaint against Defendants Georgia Department of Corrections ("GDC") Commissioner Tyrone Oliver, Georgia Diagnostic and Classification Prison ("GDGP") Warden Shawn Emmons, and Georgia Attorney General Christopher M. Carr, and show this Honorable Court the following:

PRELIMINARY STATEMENT

1. This is a constitutional challenge to Defendants' practice of denying press, serving as the eyes and ears of the public, adequate witness access to the solemn governmental proceedings of a State execution. Defendants' various, arbitrary, and unnecessary restrictions to the execution process prevent Plaintiff and the public from being able to observe and obtain information

regarding key aspects of Georgia’s execution process—including, most critically, incidents where complications and/or missteps might arise in the execution process.¹

2. Plaintiff The Appeal is a news outlet whose mission of reporting on criminal justice issues, including executions in Georgia, is frustrated if not outright denied by Defendants’ existing restrictions on witness access to State executions.

3. Plaintiff brings this action under 42 U.S.C. § 1983; the First Amendment to the United States Constitution; and Article I, Section 1, Paragraph V and Paragraph XI of the Georgia Constitution of 1983 to enforce the public’s right of access to observe—by both sight and sound—executions carried out by Defendants, including the immediately adjacent preparations and actions that are integral to and inextricably intertwined with the execution process, as described in Sections II(B)-(E) of the GDC Prison Lethal Injection Procedures (the “LI Procedures”), attached hereto as Exhibit 1.

4. Plaintiff and the public depend on media witnesses’ ability to see and hear the entire execution process to receive complete and accurate information regarding how the State carries out one of the gravest of responsibilities to which it is entrusted.

5. Allowing media witnesses access to the entire execution process is consistent with Georgia’s long history of public and media access to State executions, *see* Exhibit 2, and other significant government proceedings.

6. Allowing media witnesses access to the entire execution process also helps ensure that executions by the State of Georgia are performed humanely and within the bounds of the law.

¹ Plaintiff and undersigned counsel thank the University of Georgia Law First Amendment Clinic for their substantial contributions to this Complaint and litigation. Plaintiff and undersigned counsel further thank former First Amendment Clinic students Aradhana Chandra and Jack Beaman for their archival research compiling the information conveyed in Exhibit 2 to the Complaint.

7. Safeguarding the right of media witnesses—and, by extension, Plaintiff and the public—to see and hear the entire execution process vindicates the affirmative Georgia constitutional right of “[e]very person” to “speak, write, and publish . . . on all subjects,” including the subject of executions, Ga. Const. art. I, § 1, ¶ V; the Georgia constitutional prohibition stating that “[n]o law shall be passed to curtail or restrain the freedom of speech or of the press,” Ga. Const. art. I, § 1, ¶ V; the Georgia constitutional provision guaranteeing public criminal proceedings, Ga. Const. art. I, § 1, ¶ XI; and the First Amendment guarantee of freedom of speech, press, and access.

JURISDICTION AND VENUE

8. This action arises under 42 U.S.C. 1983, which provides concurrent jurisdiction for federal constitutional claims filed in state court, and under the Constitutions and laws of the State of Georgia and of the United States. This Court has subject matter jurisdiction over Plaintiff’s claims pursuant to O.C.G.A. § 15-6-8.

9. Venue is proper in this Court under O.C.G.A. § 9-10-30.

10. This Court has authority to grant the equitable, declaratory, and injunctive relief pursuant to O.C.G.A. §§ 9-4-2; 9-4-3, 9-5-1, and the Georgia Constitution of 1983.

PARTIES

11. Plaintiff The Appeal is a non-profit news organization based in California that was founded in 2018 and re-incorporated under new leadership in 2021. Covering exclusively criminal justice-related topics, The Appeal works to educate the public through fact-based investigative reporting. The Appeal has historically and consistently covered executions and the death penalty across the country and in Georgia specifically,² as well as criminal legal matters arising out of

² See, e.g., Vaidya Gullapalli, *Spotlight: Marion Wilson’s Execution Is a Grim Milestone*, The Appeal (Jun. 21, 2019), <https://theappeal.org/spotlight-marion-wilsons-execution-is-a-grim-milestone/>; Lauren Gill,

Georgia.³ In order to report on executions in the State of Georgia, Plaintiff relies on the contemporaneous accounts of the designated media witnesses to these solemn and significant governmental proceedings.

12. Defendant Tyrone Oliver is the Commissioner of GDC. As Commissioner, Defendant Oliver is responsible for the supervision and direction of operations at GDC and has a duty to ensure that executions are carried out in compliance with GDC procedure and applicable law. Defendant Oliver is being sued in his official capacity for violations of Plaintiff's federal First Amendment rights pursuant to 42 U.S.C. § 1983, and is being sued in his individual capacity for violations of Article I, Section 1, Paragraph V and Paragraph XI of the Georgia Constitution of 1983.

13. Defendant Shawn Emmons is Warden of GDCP, which is located in Butts County, Georgia, and is where GDC carries out all executions of condemned prisoners. As Warden, Defendant Emmons oversees the execution process and has a duty to ensure that executions are carried out in compliance with GDC procedure and applicable law. Defendant Emmons is being sued in his official capacity for violations of Plaintiff's federal First Amendment rights pursuant to 42 U.S.C. § 1983, and is being sued in his individual capacity for violations of Article I, Section 1, Paragraph V and Paragraph XI of the Georgia Constitution of 1983.

14. Defendant Christopher M. Carr is the Attorney General of the State of Georgia. As Attorney General, Defendant Carr has a duty to ensure that executions are carried out in compliance

Georgia's Unique Death Penalty Law Is Killing the Mentally Disabled, The Appeal (Feb. 23, 2022), <https://theappeal.org/rodney-young-supreme-court-georgia-death-penalty/>; Lauren Gill, *Missouri Executes Russell Bucklew Despite Threat of Botched Execution*, The Appeal (Oct. 2, 2019), available at <https://theappeal.org/missouri-executes-russell-bucklew-threat-botched-execution/>.

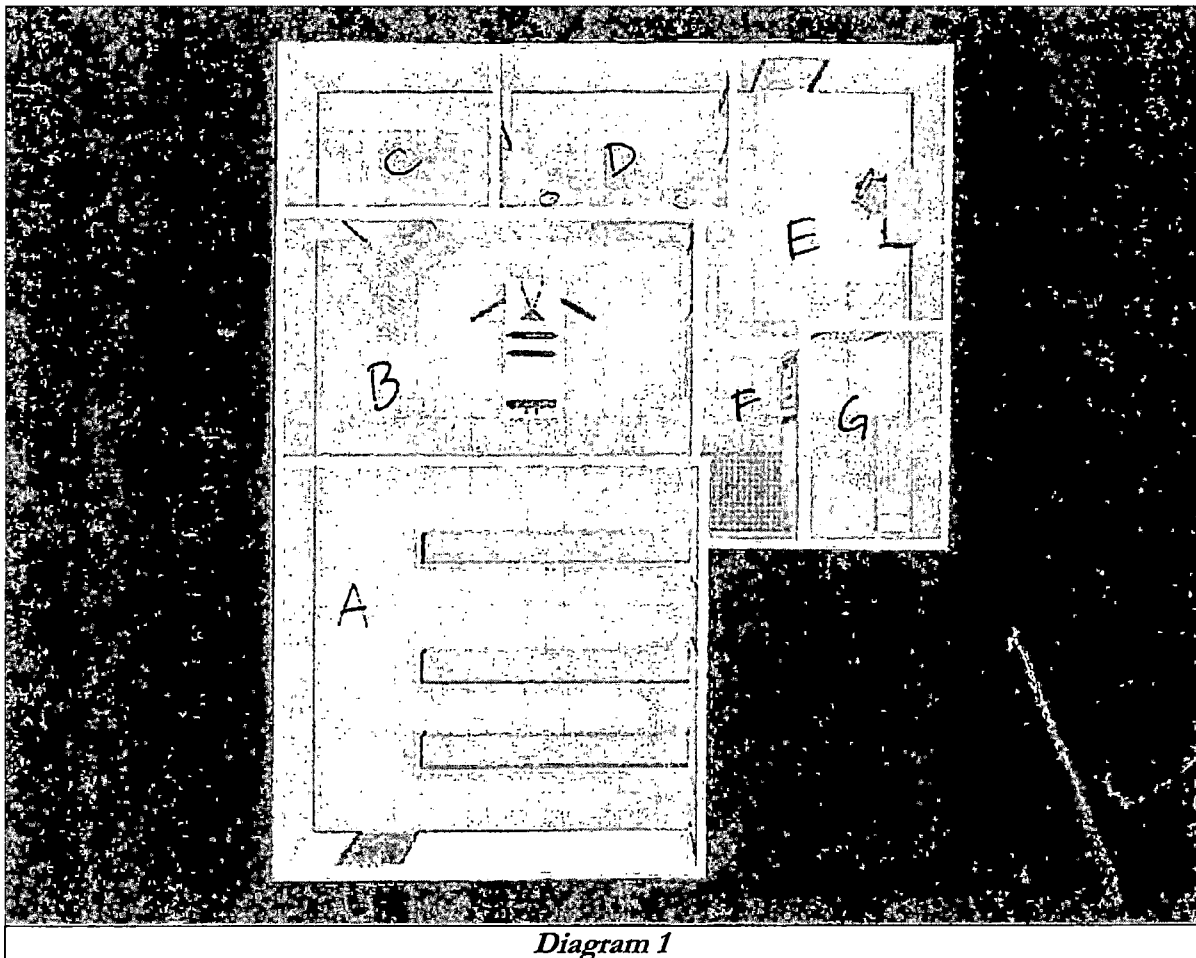
³ See, e.g., C. Dreams, *Georgia Prisoners Can Be Denied Vital Halfway House Placement Due To Medical Conditions*, The Appeal (Sep. 25, 2023), <https://theappeal.org/georgia-prisoners-halfway-houses-transitional-centers-medical-issues/>; Elizabeth Weill-Greenberg, *Medical Staff at Notorious Atlanta Jail Let Autistic Teen Waste Away and Die, Lawsuit Says*, The Appeal (Dec. 18, 2023), available at <https://theappeal.org/fulton-county-jail-medical-staff-shane-kendall-death/>.

with GDC procedure and applicable law. Defendant Carr or his designee is required to be present at GDCP during the execution process, and must advise the Commissioner and the Warden on whether they may proceed with an execution. Defendant Carr is being sued in his official capacity for violations of Plaintiff's federal First Amendment rights pursuant to 42 U.S.C. § 1983, and is being sued in his individual capacity for violations of Article I, Section 1, Paragraph V and Paragraph XI of the Georgia Constitution of 1983.

FACTS

A. GDC Restricts the Public Right of Access to Executions.

15. GDC carries out executions at GDCP in a series of connected rooms. A diagram of the set of rooms used as part of GDC's execution protocol is reproduced below (Diagram 1):



Room A	The “Witness Room”
Room B	The “Execution Chamber”
Room C	Room adjoining Chemical Room and Execution Chamber
Room D	The “Chemical Room”
Room E	<i>[room adjoining Chemical Room and Execution Chamber, not subject of this complaint]</i>
Room F	<i>[room adjacent to Execution Chamber, not subject of this complaint]</i>
Room G	<i>[room adjacent to Execution Chamber, not subject of this complaint]</i>

16. Georgia’s protocol for carrying out the execution process is set forth in the LI Procedures, the most recent version of which was issued in 2012. *See* Exhibit 1.

17. The LI Procedures are comprised of two sections. Section I describes the process by which the Warden of GDCP selects various medical and correctional personnel to carry out the execution.

18. Section II, with which this Complaint is primarily concerned, outlines the steps that must be taken on the day of an execution to prepare the condemned prisoner and carry out the death sentence.

19. The steps outlined in Section II(B)-(D) concern the various actions taken immediately before the lethal drugs are administered, which are integral parts of the execution process.⁴ Section II(E) describes the final steps of the execution, including the administration of the lethal dose of compounded pentobarbital.

20. Section II(B) describes tasks that must be completed by GDC within two hours of an execution. These include delivery of the lethal injection chemicals to the Chemical Room (marked as Room “D” on Diagram 1) and an equipment/instrument check to be performed by the IV

⁴ Section II(A) of the LI Procedures, to which Plaintiff does not seek access, involves safety, security, and communication checks between the Command Center, Execution Chamber, and the Front Gate of the Prison, as well as the Warden’s inspection of the Execution Chamber and Witness Room.

Team.⁵ The LI Procedures currently provide no media witness access to the preparatory steps outlined in Section II(B) despite these steps being integral to and inextricably intertwined with the execution process.

21. Section II(C) of the LI Procedures describes tasks to be performed within one hour of an execution. These include a second equipment/instrument check by the IV Team, preparation of syringes by designated staff members, and a test of the heart monitor. Again, the LI Procedures provide no witness access to these preparatory steps outlined in Section II(C) despite these steps being integral to and inextricably intertwined with the execution process.

22. After the tasks in Sections II(B) & (C) have been completed, a single Media Monitor is escorted to the Witness Room (marked as Room “A” on Diagram 1) and, from behind a glass window, visually observes the Execution Chamber (marked as Room “B”) where the final preparatory steps described in Section II(D) take place. This includes bringing the condemned prisoner to the Execution Chamber, securing the prisoner to the gurney, and establishing (or attempting to establish) intravenous access to the prisoner (hereinafter referred to as “the Preparation of the Condemned”).

23. Defendants further limit access to the Preparation of the Condemned by preventing the designated Media Monitor from having audio access to this part of the execution process; they turn the microphone off during the Preparation of the Condemned, preventing the Media Monitor from hearing sounds made by the execution team and by the condemned prisoner while Defendants carry out these steps.

⁵ Per Section I(A)(5) of the LI Procedures, the IV Team consists of two or more personnel, including at least one nurse, who are trained to provide intravenous access.

24. Establishing intravenous access during the Preparation of the Condemned is often the most fraught segment of an execution by lethal injection, as illustrated by recent events in Alabama,⁶ Idaho,⁷ and the following Georgia examples:

- a. Georgia executed Jose High by lethal injection on November 6, 2001.⁸ According to one reporter witness, though executions are supposed to be “strictly scripted,” Mr. High’s execution procedure went “off the page for 15 minutes” when execution officials struggled to properly insert an IV line into his arm.⁹ Eventually, a doctor had to “cut into” Mr. High to insert the IV.¹⁰
- b. Georgia executed John Hightower by lethal injection on June 27, 2007.¹¹ Again, prison officials had trouble finding a vein in which to insert the IV, prolonging the execution.¹²
- c. Georgia executed Curtis Osborne by lethal injection on June 4, 2008.¹³ The procedure was delayed for two hours because prison officials could not identify a usable vein in which to insert the IV.¹⁴

⁶ In November 2022, the Governor of Alabama halted executions and ordered a “top-to-bottom” review of Alabama’s capital punishment system after a failed lethal injection, the third one since 2018. Difficulties establishing an IV line had been a recurring issue in these three proceedings, as well as in other prolonged, but completed, Alabama executions. *See Alabama is pausing executions after a 3rd failed lethal injection*, The Associated Press (Nov. 21, 2022), <https://www.npr.org/2022/11/21/1138357929/alabama-executions-pause-lethal-injection>.

⁷ On February 28, 2024, Idaho officials halted the execution of Thomas Creech when medical team members failed to establish intravenous access after multiple attempts. *See Rebecca Boone, Idaho halts execution by lethal injection after 8 failed attempts to insert IV line*, The Associated Press (February 28, 2024), <https://apnews.com/article/idaho-execution-creech-murders-serial-killer-91a12d78e9301adde77e6076dbd01dbb>.

⁸ Sandy Hodson, *Executions Are Carefully Scripted*, The Augusta Chronicle (Oct. 20, 2009), <https://www.augustachronicle.com/article/20091020/news/310209938>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Harry R. Weber, *Killer Apologizes Before Execution*, The Associated Press (Jul. 12, 2007), <https://coastalcourier.com/news/state-national/killer-apologizes-before-execution/>.

¹² *Id.*

¹³ The Associated Press, *Georgia Executes Man Who Killed 2 in 1990*, Access WDUN (June 4, 2008), <https://accesswdun.com/article/2008/6/210545>.

¹⁴ *Id.* The execution was further delayed because the U.S. Supreme Court was considering his final appeal, which it ultimately rejected. *Id.*

- d. Georgia executed Brandon Astor Jones by lethal injection on February 3, 2016.¹⁵ During Mr. Jones's execution, the lethal injection team had to insert the IV into his groin because they could not identify a vein to use in his arm.¹⁶

25. The foregoing examples demonstrate that establishing intravenous access is a point in the execution process at which complications regularly arise and where pain and suffering of the condemned prisoner can occur, heightening the need for both audio and visual media witness access to this crucial step in the execution.

26. Yet Defendants have arbitrarily limited observation of this step to only visual observation by a single Media Monitor, who Defendants require, when possible, to be from the county where the crime giving rise to the death sentence occurred.

27. The microphone in the Execution Chamber can easily be turned on during the Preparation of the Condemned, and the Witness Room can readily accommodate the other four media witnesses in addition to the Media Monitor. Indeed, immediately following the Preparation of the Condemned, Defendants permit four additional media witnesses representing the Associated Press, the Georgia Association of Broadcasters, and the Georgia Press Association to enter the same Witness Room (along with other witnesses for the prisoner and the State) to observe the remainder of the execution process. Permitting auditory access and allowing all media witnesses to be present for the Preparation of the Condemned would allow media observers to more fully understand any problems that may occur during the execution process.

28. Moreover, when Georgia executions were previously carried out by electrocution, all five media witnesses were allowed to witness the steps in the process during which the prisoner was brought into the Execution Chamber and strapped to the electric chair. Only once the State moved

¹⁵ Rhonda Cook, *Georgia executes Brandon Astor Jones*, The Atlanta Journal-Constitution (Feb. 3, 2016), <https://www.ajc.com/news/local/georgia-executes-brandon-astor-jones/jDioe9hdPGv2oj7mhVehnM/>.

¹⁶ *Id.*

to using lethal injection did GDC limit access to the Preparation of the Condemned for an execution.

29. Further, requiring that a reporter from the county where the crime occurred serve as the single Media Monitor frequently results in a reporter who is inexperienced in observing and reporting on executions serving as the sole source of contemporaneous information about the Preparation of the Condemned—including the crucial and often fraught step of establishing an intravenous line.¹⁷

30. Relying on a single, often inexperienced, witness—who does not know what may be typical or abnormal about the particular execution being observed—impedes the complete and accurate capture and dissemination of information regarding the execution to members of the general public and to other members of the media, including Plaintiff. This problem is exacerbated by the elimination of auditory access to discussions about any problems that may be occurring, as well as to any statements or noises from the condemned that may indicate pain and suffering.

31. Once intravenous access is established, Section II(D) provides for escorting the additional media and other witnesses to the Witness Room, the Warden delivering final instructions, the prisoner making a final statement, and the offering of a final prayer if requested by the prisoner. During these steps, the microphone in the Execution Chamber is only turned on for the prisoner's last statement. Auditory access is restricted for the other statements and communications.

32. Section II(D) concludes with the Warden reading the Execution Order, advisement by the Attorney General or his/her designee of whether the execution can proceed, and instruction by the GDC Commissioner to the Warden as to whether the execution can proceed. During these

¹⁷ The other media witnesses are representatives for the Associated Press, the Georgia Association of Broadcasters, and the Georgia Press Association. *See* <https://gdc.ga.gov/Media/Scheduled-Executions>.

steps, the microphone in the Execution Chamber is only turned on for the Warden's reading of the Execution Order.

33. Section II(E) outlines the steps of administering the lethal injection.

34. First, the Injection Team¹⁸ in the Chemical Room injects a series of saline and drugs (compounded pentobarbital) into the intravenous ports. These liquids then travel through intravenous tubes that pass through the wall between the Chemical Room and the Execution Chamber and into the condemned prisoner's body.

35. Media witnesses have no visual or auditory access to the Chemical Room and what is happening inside of it, including, but not limited to, the timing of the injections, the number of injections, the quantity of drugs used in the injections, the order of injections, and any concerns or complications that arise during the injection process.

36. Without visual or auditory access to the Chemical Room, no media witness—and therefore no member of the public, nor Plaintiff—is privy to the critical parts of the execution process that happen there.

37. Without access to the Chemical Room, media witnesses must rely on visual observation from their seats behind glass in the Execution Chamber to attempt to perceive when the lethal injection drugs begin flowing from the ports in the wall into the length of IV tubing and eventually into the prisoner, which is crucial information for determining how long the lethal injection takes to effectuate the prisoner's death. Without access to the Chemical Room, it is difficult-to-impossible for the media witnesses to detect these critical pieces of information.

38. That detection is made even more difficult or impossible because the prisoner is covered with a sheet and strapped to the gurney with restraints on his arms, legs, and body. This

¹⁸ Per Section I(A)(7) of the LI Procedures, the Injection Team consists of three trained GDC staff members. These staff members are not medical personnel.

makes it extremely difficult for a media witness observing through the glass to detect a prisoner's subtle physical movements that might indicate when the drugs have started to flow into their body.

39. Verbal utterances or sounds by the prisoner that might indicate when the drugs have started to flow—or that the prisoner may make during the time (typically 12-to-15 minutes) it takes for the drugs to effectuate death—are also not audible to the media witnesses (unless loud enough to breach the glass window between the Execution Chamber and the Witness Room) because the microphone in the Execution Chamber is turned off during that process.

40. Per Section II(E) of the LI Procedures, the IV Nurse monitors the prisoner in the Execution Chamber as the chemicals are flowing through the IV tubing and eventually into the prisoner's body. If there is a problem with the lethal injection, Section II(E) describes that the IV Nurse alerts the attending Physician, who alerts the Warden, who gives instructions to the Injection Team in the Chemical Room.

41. There is no audio access to these communications because, as noted above, the microphone in the Execution Chamber is turned off for almost the entirety of the execution process and there is no visual or auditory access to the Chemical Room, where the Injection Team is located.

42. Section II(E) next states that if the condemned prisoner is still exhibiting visible signs of life after the pentobarbital has been administered and a sufficient time for death has passed, the Warden shall instruct the Injection Team in the Chemical Room to administer additional pentobarbital. Again, there is no auditory access to either the Execution Chamber or the Chemical Room for witnesses to hear these communications, nor is there visual access to the Chemical Room to see what or how many additional chemicals are being injected.

43. Section II(E) further describes that the Warden and two Physicians shall enter the Execution Chamber and determine if death has occurred. Although witnesses can observe this

occurring, communications between the Physicians and Warden are not audible to the media witnesses because the microphone in the Execution Chamber is turned off.

44. If the prisoner is still exhibiting signs of life, Section II(E) provides that several steps of the lethal injection process shall be repeated. Again, the lack of auditory access to the Execution Chamber, coupled with the lack of auditory or visual access to the Chemical Room, prevent witnesses from hearing these communications or seeing the repetition of steps.

45. Once the condemned prisoner is confirmed dead, the microphone in the Execution Chamber is turned on and the Warden announces the fact of death to the witnesses. The curtain is then closed over the window between the Execution Chamber and the Execution Witness Room.

46. As illustrated by the foregoing recounting of the entire execution process, Defendants have arbitrarily decided what portions of the execution process they will allow media witnesses to see and hear, thereby denying them, and thus Plaintiff and the public, access to observe—both by sight and sound—the entire government proceeding.

47. Defendants' foregoing arbitrary restrictions on the media witnesses' ability to see and hear the entire execution process obstruct Plaintiff and the citizens of Georgia from accurately knowing and understanding what occurs during a State execution.

48. Remedying these restrictions is crucial to fostering transparency and constructive public debate regarding the State of Georgia's most solemn activity of putting to death one of its citizens. Remedying these restrictions is also necessary to give full effect to the constitutional right for members of the public—media and otherwise—to speak, write, and publish on the entire execution process.

B. The State of Georgia Has a Long History of Providing Full Public Access to Executions.

49. Since the United States' inception, executions have traditionally been open to the public. This has also been true in Georgia, where the first reported execution occurred in 1735 by public hanging in Savannah's Wright Square.

50. Since that time, Georgia has a well-documented history of both public and media access to State executions. *See* Exhibit 2.

51. For example, on July 18, 1857, the *Columbus Newspaper* reported that 5,000 people gathered to watch a public execution in LaGrange, Georgia. *See id.* at 4.

52. On November 12, 1872, *The Atlanta Weekly Sun* reported that an estimated 6,000 people were present to witness a public hanging. The reporter had intimate access to the condemned prisoner, who at the gallows asked the reporter to mark down the prisoner's favorite hymn and send it with his love to his wife. *See id.* at 8.

53. On April 23, 1873, the *Elberton Gazette* documented the important role of the press in reporting on executions, stating, "Disagreeable though the task will be to us, we will be on hand to witness the execution, in order to give a full report of the same, which, though not pleasant reading to the refined, is yet necessary to the history of the age we live in." *See id.* at 10.

54. On July 2, 1873, *The Union & Recorder* in Milledgeville, Georgia documented and decried the frequent media reports of public executions in Georgia:

Never since we can remember, have we heard of so many hangings in Georgia in one year as in the past twelve months. . . We are decidedly of the opinion that the horrid details of murders and hangings as published in some of our sensational papers has a very bad influence upon a community. . . May we not attribute the frightful increase of crime in some degree as owing to these horrid details daily published... and to the frequent public executions in our midst?

See id. at 12.

55. On May 19, 1883, *The New York Times* reported that 10,000 spectators gathered to watch a public hanging, noting that “[a] hanging in public in Georgia means a suspension of labor for a week in the adjacent country [sic].” *See id.* at 14.

56. On September 29, 1883, *The Atlanta Constitution* documented the existence of much-in-demand media accounts of a public hanging: “[T]he particulars of the execution were eagerly sought for. The demand for the *Evening Times*, which contained a full account, was unprecedentedly large.” *The Atlanta Constitution* further documented the intense public interest in attending the event: “Early in the morning immense crowds began to assemble about the jail, and applications for admission to the inclosure [sic] were numerous Some five hundred people obtained the coveted passes and flocked around the gallows.” *See id.* at 18.

57. On October 30, 1890, the *Washington Post* reported that 8,000 people gathered to watch the hanging of condemned defendant Tom Woolfolk, noting that “[t]his morning at 8 Woolfolk was taken from his cell into the jail corridor, where he talked for some time with a party of newspaper men.” *See id.* at 20.

58. An article published the same day by *The Atlanta Constitution* further documents that the media had access to all stages of the proceeding, noting that the reporter accompanied the sheriff to the jail to retrieve Mr. Woolfolk, rode next to Mr. Woolfolk in the carriage that transported him to the gallows, and accompanied him through the gate of the gallows and onto the scaffold. *See id.* at 22, 23.

59. According to reports in *The Atlanta Constitution*, between 1884–1893, 40 executions in Georgia were conducted in public, enabling both reporters and other members of the community to hear and see the proceeding. Michael A. Trotti, *The Scaffold’s Revival: Race and Public Execution in the South*, 45 OXFORD UNIV. PRESS J. OF SOCIAL HISTORY, 195 (Fall 2011).

60. And continuing into the 1900s, executions continued to be open to the public and to draw a large crowd. *See* Exhibit 2 at 24-25 (photograph of crowd gathered to witness a public hanging in Gwinnett County, Georgia).

C. Public Access Plays an Important and Positive Role in Ensuring That Executions Are Conducted Humanely and Within the Bounds of the Law.

61. The State of Georgia has administered the death penalty via lethal injection since 2001. Prior to this time, executions in the State were carried out by electrocution.

62. Since roughly 2013, the State of Georgia has relied on compounded pentobarbital as the lethal drug the State administers to condemned prisoners.

63. The pentobarbital used by the State of Georgia in carrying out executions is supplied by an unidentified compounding pharmacy.

64. The origins, identity, and makeup of the ingredients used by the compounding pharmacy, as well as the identity of the pharmacy itself, are all designated as State secrets under O.C.G.A. § 42-5-36(d).

65. The compounded pentobarbital used in Georgia's execution process is not subject to the Food and Drug Administration's manufacturing standards or drug approval process. This means that the compounded pentobarbital does not have to meet certain consistency, purity, potency, or other health and safety standards.

66. The lack of transparency and resulting lack of public accountability surrounding the quality, safety, and preparation of the lethal injection drug itself heightens the need for media witness access to both see and hear the effects that occur when the drug is administered, so that the public receives complete and accurate information about executions carried out on their behalf.

67. Furthermore, the nature of execution by lethal injection entails inherent risks of pain and suffering to the condemned prisoner which heightens the need for audio and visual media witness access to the entire execution process.

68. For example, difficulty in locating and inserting an IV (discussed further below) can lead to a prolonged execution process that causes unforeseen pain and can even include a painful and bloody “cut-down procedure” in order to establish intravenous access.¹⁹

69. As another example, an error in establishing IV access can cause the pentobarbital to escape into the subcutaneous tissue, causing unintended pain and delaying efficacy of the lethal injection drugs.

70. As a further example, injection of compounded pentobarbital, like the State of Georgia uses, has been documented to cause flash pulmonary edema. This is a painful condition where an individual’s lungs are suddenly filled with fluid making it extremely difficult for them to breathe. The lack of audio renders witnesses largely unable to determine whether this condition has occurred.

71. Pulmonary edema “produces sensations of drowning and asphyxiation” and causes “extreme pain and needless suffering.” *In the Matter of the Federal Bureau of Prisons’ Execution Protocol Cases*, No. 19-mc-145, Mem. Op. at 9-10 (D.C. Cir. July 13, 2020) (describing scientific evidence of flash pulmonary edema caused by pentobarbital injection).

72. Autopsies from at least fifteen people executed in Georgia by compounded pentobarbital have revealed significant fluid congestion in the lungs, with at least seven showing signs of flash pulmonary edema.

73. These risks inherent in execution by lethal injection intensify the need for auditory and visual access to the entire execution process in order for the media to effectively serve as the

¹⁹ See footnote 6, *supra*.

eyes and ears of the public in observing the pre-death effects of the compounded pentobarbital on the prisoner.

74. As an example of the important role that media can play in providing transparency and public accountability in the execution process, the State of Tennessee recently failed to test its lethal injection drug for toxins which experts said could cause respiratory failure or other distressing symptoms before death. After this was exposed by the media based on documents they obtained, the governor halted the execution process and appointed outside counsel to investigate the State's failings. *See* Nicholas Bogel-Burroughs, "Tennessee Halts Executions After Failing to Test Lethal Injection Drugs," THE NEW YORK TIMES (May 2, 2022), available at <https://www.nytimes.com/2022/05/02/us/tennessee-executions-lethal-injection.html>.

COUNT ONE

Violation of Plaintiff's First Amendment Rights [Against All Defendants]

75. Plaintiff incorporates and re-alleges paragraphs 1-74 above as if fully set forth herein.

76. The First Amendment to the United States Constitution encompasses the right of the public, including the media, to contemporaneously see and hear certain governmental proceedings, including executions carried out by Defendants on behalf of the State of Georgia.

77. Specifically, the Supreme Court has long held that the First Amendment guarantees a qualified right of access to certain governmental proceedings based on the principle that there exists "the common understanding that a major purpose of the First Amendment was to protect the free discussion of governmental affairs." *Globe Newspaper Co. v. Superior Ct. for Norfolk Cnty.*, 457 U.S. 596, 604 (1982). While the right of access is not explicitly enumerated in the First Amendment, it is "nonetheless necessary to the enjoyment of the other First Amendment rights." *Id.* at 604; *see also Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 583 (1980) (J. Brennan, concurring) ("Today . . . for the first time, the Court unequivocally holds that an arbitrary interference with access to

important information is an abridgment of the freedoms of speech and of the press protected by the First Amendment.”).

78. When determining whether the public has a First Amendment right of access to a particular governmental proceeding, courts weigh: (1) “whether the place and process have historically been open to the press and general public,” and 2) “whether public access plays a significant positive role in the functioning of the particular process in question.” *Press-Enterprise Co v. Superior Courts*, 478 U.S. 1, 8-9 (1986).

79. Since the United States’ inception, executions have traditionally been public affairs. *See* Paragraphs 49-60, *supra*.

80. Public access to the execution process, which currently happens exclusively through media witnesses, plays a critical role in ensuring that the execution process is carried out humanely and in accordance with the law, and in enabling ongoing public discussion regarding capital punishment and whether lethal injection comports with the “evolving standards of decency that mark the progress of a maturing society.” *Trop v. Dulles*, 356 U.S. 86, 100 (1958).

81. The ability to see and hear government proceedings is a necessary prerequisite to being able to exercise the constitutional right to speak, write, and publish about them given that “[f]acts [] are the beginning point for much of the speech that is most essential to advance human knowledge and to conduct human affairs.” *Sorrell v. IMS Health Incorporated*, 564 U.S. 552, 570 (2011); *see also Buehrle v. City of Key West*, 813 F.3d 973, 977 (11th Cir. 2015) (noting the First Amendment harm that results if the government were to “proceed upstream and dam the source” of speech).

82. “[P]ermitting the press to witness all phases of the execution contributes to the proper functioning of the execution process, in part because it allows the press to contribute to an

informed discussion of the [state's] lethal injection procedures.” *Philadelphia Inquirer v. Wetzel*, 906 F. Supp. 2d 362, 371 (M.D. Pa. 2012).

83. Moreover, public access to government proceedings, including State executions, “fosters an appearance of fairness, thereby heightening public respect” for the process. *Globe Newspaper Co. v. Superior Ct. for Norfolk Cnty*, 457 U.S. 596, 606 (1982).

84. This is because “[p]eople in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980).

85. Yet, Defendants currently impose arbitrary and broad restrictions on media witness access to executions carried out by the State of Georgia.

86. Defendants provide no visual or auditory access to the preparatory steps for executions outlined in Sections II(B) and II(C) of the LI Procedures, which includes checks of equipment and instruments to be used in the lethal injection.

87. Defendants arbitrarily limit access to the Preparation of the Condemned described in Section II(D) of the LI Procedures to a single Media Monitor, who, when applicable, is from the county in which the underlying crime occurred. This frequently results in a reporter who has never previously witnessed an execution being the only person observing the Preparation of the Condemned, including the crucial and sometimes difficult and painful step of establishing intravenous access to the condemned prisoner.

88. Even the Media Monitor, moreover, has no auditory access to the Preparation of the Condemned aside from any sounds loud enough to be heard through the glass window separating the Witness Room and Execution Chamber.

89. During and after the administration of the lethal injection, described in Section II(E) of the LI Procedures, Defendants arbitrarily limit media auditory access to the prisoner's last statement, the Warden's reading of the Execution Order, and the Warden's pronouncement of the prisoner's death.

90. There is no auditory or visual access to the Chemical Room. This is the room where the compounded pentobarbital and the saline are injected into IV tubing that travels multiple feet from the Chemical Room, through a hole in the wall, and into the body of the condemned prisoner in the adjacent Execution Chamber. This is also the room where verbal communications take place between the members of the lethal injection team, the Warden, GDC Commissioner, and the State Attorney General's Office about the execution as it is in progress.

91. The foregoing arbitrary limitations on auditory and visual access prohibit media witnesses from observing the entire execution process and therefore prevents them from providing a full and accurate account of the actions taken by the State to carry out the condemned prisoner's death; any complexities or complications that arise; significant sounds or communications from any of the people involved in the execution, including the condemned; and generally whether the execution was effectuated in a humane and lawful way. The limitations on media witness access in turn directly obstruct Plaintiff and the public's ability to have accurate and complete information about executions carried out by the State of Georgia.

92. "The explicit, guaranteed rights to speak and to publish concerning what takes place . . . would lose much meaning if access to observe . . . [could] be foreclosed arbitrarily." *Richmond Newspapers*, 448 U.S. at 576-77.

93. Ultimately, the First Amendment's right of access "protects the public against the government's 'arbitrary interference with access to important information.'" *New York C.L. Union v.*

New York City Transit Auth., 684 F.3d 286, 298 (2d Cir. 2012) (quoting *Richmond Newspapers*, 448 U.S. at 583 (Stevens, J., concurring)).

94. Defendants current procedures arbitrarily thwart media witnesses from obtaining information that is a necessary prerequisite to the public’s engaging in constitutionally protected “free discussion of governmental affairs,” which, in this case, is executions by the State of its own citizens. *Globe Newspaper Co.*, 457 U.S. at 604.

95. Allowing all five media witnesses to both see and hear the entire execution process carried out by Defendants on behalf of the State of Georgia—including all steps outlined in LI Procedures II(B)-(E)—is critical for Plaintiff’s the public’s ability to be accurately informed about this solemn and significant governmental action, and is therefore critical both for enabling public discussion regarding lethal injection and for ensuring that the executions carried out by the State are humane and lawful.

96. The documented risks and challenges with conducting executions by lethal injection described in paragraphs 61-74 above further heighten the need for public transparency and accountability. This can only be achieved by providing media witnesses with full visual and auditory access so that they may accurately inform the public about the entire execution process.

COUNT TWO

Violation of Article I, Section 1, Paragraph V of the Georgia Constitution of 1983 [Against All Defendants]

97. Plaintiff incorporates and re-alleges paragraphs 1-96 above as if fully set forth herein.

98. Article 1, Section 1, Paragraph V of the Georgia Constitution of 1983 declares that “[n]o law shall be passed to curtail or restrain in the freedom of speech or of the press. Every person may speak, write, and publish sentiments on all subjects but shall be responsible for the abuse of that liberty.”

99. Per this “plain language, the [media] is empowered to write and speak and publish on all subjects.” *Georgia Gazette Pub. Co. v. Ramsey*, 248 Ga. 528, 529 (1981).

100. “[T]he[se] protections of our own Constitution must remain paramount.” *Id.*

101. In no context is the right to speak, write, and publish more important than when reporting on government proceedings. *See Macon Tel. Pub. Co. v. Tatum*, 263 Ga. 678, 679 (1993) (“A free press is necessary to permit public scrutiny on the conduct of government and to ensure that government operates openly, fairly, and honestly.”).

102. To afford full meaning and effect to the Georgia Constitution’s freedom of speech and of the press, Article I, Section 1, paragraph V, must necessarily encompass a right of access to government proceedings.

103. Giving the state and federal constitutional protections for speech, press, and related rights “the broadest scope that could be countenanced in an orderly society[,] [t]he press should be given the widest latitude possible in the exercise of its freedom that is consonant with the orderly administration of justice.” *Atlanta Newspapers, Inc. v. State by Webb*, 216 Ga. 399, 404 (1960).

104. The right of access under the Georgia Constitution attaches to executions carried out by Defendants on behalf of the State of Georgia.

105. This is in part because the Georgia Supreme Court “interpret[s] a constitutional provision according to the original public meaning of its text, which is simply shorthand for the meaning the people understood a provision to have at the time they enacted it,” *Olevik v. State*, 302 Ga. 228, 235 (2017), and at the time “freedom of speech” first appeared in the Georgia Constitution of 1861,²⁰ both members of the public and reporters had full access to criminal hangings. This

²⁰ *See Maxim Cabaret, Inc. v. City of Sandy Springs*, 305 Ga. 187, 196 (2018) (Peterson, J., concurring);

access, in turn, enabled speech, writing, and publishing about these events. *See, e.g.*, Paragraphs 49-60 *supra* (newspaper accounts of public hangings from 1857 to 1873). Indeed, in 1859, two years before the 1861 Constitution was adopted, the Georgia Legislature had *rejected* a bill that would have mandated private criminal executions, thereby preserving their public, accessible nature.

106. Similar provisions that protected “freedom of speech” and “liberty of speech” appeared in the 1865, 1868, and 1877 versions of the Georgia Constitution,²¹ during which time there continued to be public and media access to State executions, which allowed for speech, writing, and publishing about those proceedings. *See, e.g.*, Paragraphs 49-60, *supra* (newspaper accounts and photo of public hangings from 1872 to early 1900s).

107. Considering this history and context, the right of access that is necessary to give full effect to the freedom of speech and press codified in Article 1, Section 1, Paragraph V of the Georgia Constitution of 1983 necessarily encompasses the right to see and hear the entire execution process carried out by Defendants on behalf of the State of Georgia.

COUNT THREE

Violation of Article I, Section 1, Paragraph XI of the Georgia Constitution of 1983 [Against All Defendants]

108. Plaintiff incorporates and re-alleges paragraphs 1-107 above as if fully set forth herein.

Ga. Const. of 1861, Art. I, Sec. 8 (“Freedom of thought and opinion, freedom of speech, and freedom of the press, are inherent elements of political liberty. But while every citizen may freely speak, write and print, on any subject, he shall be responsible for the abuse of the liberty.”).

²¹ *See Maxim Cabaret*, 305 Ga. at 196-197; Ga. Const. of 1865, Art. I, Sec. 6 (“Freedom of speech, and freedom of the press, are inherent elements of political liberty. But while every citizen may freely speak or write, or print on any subject, he shall be responsible for the abuse of the liberty.”); Ga. Const. of 1868, Art. I, Sec. 9 (substantially the same); Ga. Const. of 1877, Art. I, Sec. I, Para. XV (“No law shall ever be passed to curtail, or restrain, the liberty of speech, or of the press; any person may speak, write, and publish his sentiments, on all subjects, being responsible for the abuse of that liberty.”).

109. Article 1, Section 1, Paragraph XI of the Georgia Constitution of 1983 declares that “the defendant shall have a public and speedy trial.”

110. The right of public access to criminal proceedings is even more expansive than its federal counterpart. *See R. W. Page Corp. v. Lumpkin*, 249 Ga. 576, 578 (1982) (“Georgia law, as we perceive it, regarding the public aspect of hearings in criminal cases is more protective of the concept of open courtrooms than federal law.”)

111. The robust speech protections guaranteed by the Georgia Constitution, together with the steadfast right of public access to criminal proceedings afforded by Georgia law, further establish Plaintiff and the public’s right of open access to executions conducted in Georgia.

CONCLUSION

112. In sum, the First Amendment of the United States Constitution and Article I, Section 1, Paragraph V and Paragraph XI of the Georgia Constitution require auditory and visual media witness access to the full execution process. This includes auditory and visual access to Steps II(B)-(E) in the LI Procedures, access for all media witnesses to the Preparation of the Condemned, and audio and visual access to the Chemical Room.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the court:

A. Declare unlawful under the First Amendment of the United States and the Georgia Constitution Defendants’ imposition of restrictions on media witnesses’ visual and auditory access to the execution process carried out by Defendants on behalf of the State of Georgia.

B. Issue a temporary restraining order and interlocutory injunction preventing Defendants and their agents from proceeding with executions under the existing protocols until such time as they remove the unconstitutional limits on media witnesses’ visual and auditory access to the entire execution process.

C. Issue further injunctive relief requiring Defendants and their agents to amend their procedures so that:

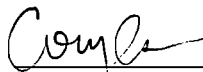
- (1) All five media witnesses have visual and auditory access to the steps outlined in Sections II(B)-(D) of the LI Procedures, including establishing intravenous access to the prisoner and preparation of pentobarbital and other injections in the Chemical Room.
- (2) All five media witnesses have visual and auditory access to the Execution Chamber throughout the steps outlined in Section II(E) of the LI Procedures.
- (3) All five media witnesses have visual access to the administration of injections in the Chemical Room (via closed-circuit camera or other remote means) and auditory access (via microphone or other remote means) to the Chemical Room.

D. Award reasonable attorneys' fees, expenses, and costs of litigation pursuant to 42 U.S.C. § 1988.

E. Grant Plaintiff such other and further relief as the Court deems just and proper.

Dated: March 7, 2024
Atlanta, Georgia

Respectfully submitted,



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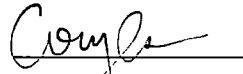
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused a true and correct copy of the within and foregoing to be filed with the Clerk of Court using the eFile Georgia system, which will serve a true and correct copy of the same upon all counsel of record.

Respectfully submitted, this 7th day of March, 2024.

A handwritten signature in black ink, appearing to read "Cory Isaacson", written over a horizontal line.

Cory Isaacson

Counsel for Plaintiff

Exhibits to Verified Complaint

Exhibit	Document
1	Lethal Injection Protocols
2	Historic Access to Executions

EXHIBIT 1

GEORGIA DEPARTMENT OF CORRECTIONS
GEORGIA DIAGNOSTIC AND CLASSIFICATION PRISON
LETHAL INJECTION PROCEDURES



July 17, 2012

**GEORGIA DIAGNOSTIC AND CLASSIFICATION PRISON
LETHAL INJECTION PROCEDURES**

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LETHAL INJECTION PROCEDURES

I. PRE-EXECUTION PROCEDURES

A. Designation and Notification of Staff

The individuals listed below shall be present at each execution. At least twelve (12) hours prior to the execution, the Warden or the Warden's designee will notify the following individuals of the time and date of execution and place to report for assignment. These individuals will then acknowledge receipt of the Warden's notification. The Warden has the authority to waive the twelve (12) hour requirement on an emergency basis.

1. Warden or Deputy Warden who shall ensure that the court ordered execution is carried out.
2. Two (2) Assistants or more as directed by the Warden.
3. Two (2) Physicians - to determine when death supervenes.
4. One (1) Physician - to provide medical assistance during the execution process (may be one of the Physicians identified in I.A.3 above).
5. IV Team - to consist of two (2) or more trained personnel, including at least one (1) Nurse, to provide intravenous access.
6. Six (6) Correctional Officers to serve as a Special Escort Team who will apply restraints to the condemned during the execution process.
7. Injection Team to consist of three (3) trained staff members to inject solutions into the intravenous port(s) during the execution process.
8. One (1) Chaplain to administer to the spiritual needs of the condemned and to provide a prayer on the condemned's behalf upon request.
9. Security personnel as appropriate.

B. Restrictions:

No photographic, audio, video, recording, or computerized equipment will be permitted in the Execution Chamber or Execution Witness Room except as

specifically authorized by the Warden. Only pencils, note pads, or other writing materials issued and controlled by designated GDC staff will be permitted.

II. DAY OF EXECUTION

A. Within Three (3) Hours of Execution

Within three (3) hours of the scheduled execution, the following tasks shall be performed:

1. A communications check will be performed.
2. Telephone circuits and private lines between the Command Center (CP1), Execution Chamber (CP2), and the Front Gate (CP3) will be checked.
3. The Execution Chamber and Execution Witness Room will be inspected as directed by the Warden.
4. A radio check between the Command Center, Execution Chamber, and Front Gate will be initiated.

B. Within Two (2) Hours of Execution

Within two (2) hours of the scheduled execution, the following tasks shall be performed:

1. Chemicals will be delivered to the H-5 Chemical Room by the Deputy Warden of Security or Correctional Major.
2. The IV Team will perform a check of all necessary equipment and instruments.
3. Communications Check - The same procedure will be followed as at three (3) hours prior to the execution as specified in Paragraph II.A.
4. The Execution Chamber and Execution Witness Room will be inspected as directed by Warden.
5. The condemned will be prepared in accordance with prior responsibilities previously designated by Warden.
6. The condemned may visit with clergy.

7. An opportunity for the condemned to make a last statement will be provided. Any such statement will be recorded by designated staff.
8. A shower and clean clothing will be provided to the condemned.
9. A designated staff member shall confirm the presence of witnesses required by O.C.G.A. §17-10-41 to attend the execution. Any final instructions will be issued by the Warden.
10. A designated staff member shall confirm the presence of the witnesses designated and approved by the Commissioner. Instructions will be issued to the witnesses to assure an understanding of their conduct in the Execution Witness Room and while being escorted to and from the Execution Witness Room. All witnesses are to have previously acknowledged, in writing, their understanding and agreement to abide by the rules, regulations, and procedures of the GDC.

C. Within One (1) Hour of Execution

Within one (1) hour of the scheduled execution, the following tasks shall be performed:

1. The IV Team will perform a check of all necessary equipment and instruments.
2. The designated staff members will prepare lethal injection syringes.
3. Medical staff will perform a test on the heart monitor.
4. The condemned will be offered a mild sedative by a Physician.
5. Special Escort Team members will ensure that all straps are in place and functional on the execution gurney.
6. Communications Check: The same communications check procedures specified in Paragraph II.A. above will be repeated. In addition, the telephone lines between the Command Center (CP1), the Execution Chamber (CP2), and the Front Gate (CP3) are to remain open beginning thirty (30) minutes prior to the scheduled execution.
7. The Execution Chamber and Execution Witness Room will be inspected as directed by the Warden.

8. Attendees and those required by O.C.G.A. §17-10-41 to attend executions will be issued additional instructions, and will be escorted to the Execution Chamber or Execution Witness Room as appropriate. Any witnesses for the condemned inmate, any media representatives, and the State's witnesses will be processed, instructed, and transported separately.
9. Upon arrival at the Execution Witness Room, witnesses and media representatives will be confirmed. The media representative designated to observe the preparation of the condemned will be identified and confirmed. The presence of witnesses requested by the condemned and those approved by the Commissioner, including media representatives, will be confirmed.

D. Preparation of the Condemned

1. The condemned inmate will be escorted to the lethal injection gurney by member(s) of the Special Escort Team approximately twenty (20) minutes prior to the time of the execution. The Special Escort Team will securely control the movements of the condemned from the holding cell to the execution chamber.
2. The Special Escort Team will secure the condemned to the gurney by attaching restraints to the arms, legs, and body of the condemned.
3. The IV Team will provide two (2) intravenous accesses into the condemned. If the veins are such that intravenous access cannot be provided, a Physician will provide access by central venous cannulation or other medically approved alternative.
4. Heart monitor leads will be applied to the condemned by a Nurse from the IV Team.
5. Witnesses will be escorted to the Execution Witness Room.
6. The Warden will introduce himself to witnesses and issue final instructions regarding the execution.
7. The Warden will ask the condemned if he has anything to add to the final statement. Any additional statement will be limited to two (2) minutes. The statement will be recorded by designated staff. A prayer will be offered if requested by the condemned. The prayer will be limited to two (2) minutes.
8. The condemned will be read the Execution Order of the Court.

9. Execution officials will take their places.
10. The Attorney General, or the Attorney General's designee, shall advise the Commissioner as to whether or not to proceed. The Commissioner then instructs the Warden as to whether or not to proceed.

E. Execution Process

Upon the Order of the Warden, the execution process will proceed as follows:

1. A staff member designated by the Warden will monitor the time when the injection process begins.
2. The first member of the Injection Team will inject one (1) syringe containing 2.5 grams of Pentobarbital (labeled #1). The second member of the Injection Team will inject an additional syringe containing 2.5 grams of Pentobarbital (labeled #2). The third member of the Injection Team will inject one (1) syringe containing 60 cubic centimeters of Saline (labeled #3), ensuring a steady, even flow of the chemical.
3. Throughout the lethal injection process, an IV Nurse will monitor the progress of the injection in the Execution Chamber to ensure proper delivery of chemicals and to monitor for any signs of consciousness. If the IV Nurse in the execution chamber observes a problem with intravenous flow, the Nurse will inform the attending Physician, who will inform the Warden as to whether or not using an alternative intravenous access is appropriate. The Warden will give the appropriate instructions to the Injection Team.
4. If, after a sufficient time for death to have occurred, the condemned individual exhibits visible signs of life, the Warden shall instruct the Injection Team to administer an additional 5 grams of Pentobarbital followed by 60 cubic centimeters of Saline as outlined in Subsection 2 of Section E. above.
5. Upon completion of the injection of the final syringe, the designated Physician will advise the Warden when the heart monitor indicates that the condemned inmate is deceased. The Warden and the two Physicians will then enter the Execution Chamber to determine if death has occurred.
6. If the condemned shows residual signs of life within a reasonable period after all injections have been completed, steps 1 through 5 above will be repeated upon the order of the Warden.
7. The Warden will then announce the fact of death to the witnesses. The

Execution Chamber curtains will then be closed.

F. Post Execution

1. The witnesses and media representatives will be escorted from the Execution Witness Room. Media representatives will be immediately escorted from the prison to the press area.
2. The IV lines will be detached by the IV Team, the straps will be removed by the Special Escort Team, and the body will be removed from the gurney. The body will be placed in a body bag and placed on a stretcher provided by the State Crime Lab. The body will then be taken by van to the State Crime Lab for a postmortem examination.
3. Press release: The Public Information Officer for the Department of Corrections will advise news media that the Order of the Court has been carried out.

G. Interment of Condemned.

1. The Warden or designee and attending physicians will prepare a certificate of execution and certify the fact of execution. The certificate will be forwarded to the Clerk of Superior Court of the county in which the sentence was pronounced. A copy shall be forwarded to the Commissioner.
2. The last statement of the condemned will be forwarded to the Central Office, as appropriate.
3. Interment: The body may be released to the relatives at their expense or should the nearest relative of the condemned so desire, the body will be carried to the former home of the person so executed, if in the State of Georgia. The expense of such transportation to the former home shall be paid by the Ordinary, County Commissioners, or person(s) having the charge of county funds in which the person was convicted. (O.C.G.A. § 17-10-43).
4. If the relatives do not claim the body of the executed person, interment will be in accordance with Board of Corrections Rule 125-2-4.20.

H. Critical Incident Debriefing

1. Staff participants will be seen by the Critical Incident Debriefing Team within seventy-two (72) hours of each execution or as soon as possible.

APPENDIX I

IV TEAM - INSTRUCTIONS

SET UP PROCEDURE:

1. The Warden or designee will have two (2) intravenous infusion devices placed in the veins of the condemned and a Saline solution available for an infusion medium. Those persons engaged in this activity will be referred to as the IV Team.
2. An IV administration set will be inserted into the outlet of the bag of Normal Saline IV solution. Two (2) IV bags will be set up in this manner.
3. The IV tubing shall be cleared of air and made ready for use.
4. The standard procedure for providing IV access will be used.
5. The IV tubing for both set-ups will be connected to the receiving port of the IV access; one for the primary vein, the other for the secondary vein.
6. At this point, the administration sets shall be running at a slow rate of flow (KVO), and ready for the insertion of syringes containing the lethal agents. The Warden or his designee shall maintain observation of both set-ups to ensure that the rate of flow is uninterrupted. **NO FURTHER ACTION** shall be taken until the prearranged signal to start the injection of lethal agents is given by the Warden or designee.

APPENDIX II

CONTROLLED CHEMICAL HANDLING PROCEDURES FOR EXECUTION BY LETHAL INJECTION

The following procedures will be utilized to obtain controlled chemicals, transport the chemicals to the Execution Chamber at the Georgia Diagnostic and Classification Prison (GDCP), dispose of and/or return unused chemicals to the GDCP Pharmacy.

- A. The certificate issued by the Drug Enforcement Agency (DEA), United States Department of Justice will be posted in the medical room of the GDCP Execution Chamber. A copy of the certificate will be kept on file at the GDCP Pharmacy.
- B. All controlled materials, blank "Controlled Chemical Disposition Record" forms, and a lockable transport case will be kept in the GDCP Pharmacy.
- C. The designated key ring, located in the Tunnel Entrance Restricted Key Box, will be utilized to gain access to the chemical storage containers, transport case and the temporary chemical storage containers located in the Execution Chamber. Access to this key ring and the receipt and/or transportation of chemicals is restricted to: Deputy Warden for Security, Correctional Major, and designated Pharmacist. In an emergency, the Warden of GDCP may designate another official this duty.
- D. On the day of a scheduled execution, one of the authorized staff members will draw the proper keys, proceed to the pharmacy and procure the appropriate amount of chemicals.
- E. The appropriate amount of chemicals to be issued is as follows: Pentobarbital – a total of 15 grams of the chemical.
- F. During the procedures outlined in step #4, the "Controlled Chemical Disposition Record" will be initiated at this time. The Pharmacy will keep a temporary copy upon issuance. The original will be kept with the chemicals in the transport case. The appropriate sections will be completed as needed.
- G. Chemicals will be delivered to the Execution Chamber and locked in the chemical storage container.
- H. Within one hour of the scheduled execution, the chemicals will be drawn into syringes to be used by the Injection Team by a trained staff member supervised by a nurse.
- I. Chemicals will be drawn up as follows:
 1. Pentobarbital – 2.5grams – Syringe #1 .

2. Pentobarbital – 2.5 grams – Syringe # 2.
 3. Saline Solution – 60 cubic centimeters each - Syringe # 3.
-
- J. A secondary set of Syringe Numbers 1, 2 and 3 will be prepared in the manner outlined above in section I if an additional dosage of Pentobarbital is needed. The secondary set of Pentobarbital will not be drawn into Syringe Numbers 1 and 2 prior to the execution, but will be immediately available, together with the appropriate syringes, if an additional dosage of Pentobarbital is needed.
 - K. The remaining chemicals, along with appropriate syringes will be locked in the transport case and placed in the mechanical room in the event they are needed.
 - L. At the conclusion of the execution, the amount of each chemical injected into the condemned inmate is to be recorded on the Controlled Chemical Disposition Record form, along with the date, time, inmate name and number.
 - M. Any chemical loaded into a syringe that is not used will be destroyed by disposing of the chemicals in an appropriate manner. This must be witnessed and the section completed and signed on the Controlled Chemical Disposition form.
 - N. Any unused chemicals will be returned to the pharmacy via the transport case and the remainder of the Controlled Chemical Disposition Record form will be completed.
 - O. The original Controlled Chemical Disposition Record form will be retained by the Pharmacy. A copy will be sent to the Warden's office for inclusion into the Execution file.
 - P. An inventory will be kept by the Pharmacy of each chemical used and returned. The Controlled Chemical Disposition form and the inventory logs will be kept in a red binder attached to the chemical storage container.
 - Q. The attachments 1 through 2 will be completed and submitted as required.

Attachments: (1) Controlled Chemical Disposition Form
 (2) Inventory Log for Pentobarbital

**CONTROLLED CHEMICAL DISPOSITION RECORD
(LETHAL INJECTION)**

GEORGIA DEPARTMENT OF CORRECTIONS – GDCP

CHEMICALS DISPENSED BY GDCP PHARMACY

Name of Chemical – Amount	Date Issued	Lot #	Expiration	# of Vials
PENTOBARBITAL 15 GRAMS				

ISSUED BY: (SIGN AND PRINT NAME)	RECEIVED BY: (SIGN AND PRINT NAME)	DEPT/LOCATION
----------------------------------	------------------------------------	---------------

CHEMICALS ADMINISTERED BY INJECTION TEAM

DATE	TIME	INMATE NAME/NUMBER	CHEMICALS	QTY
			PENTOBARBITAL	

CHEMICALS DESTROYED

CHEMICALS DESTROYED	QTY	# OF SYRINGES	DATE DESTROYED	DEPT/LOCATION
PENTOBARBITAL				

DESTROYED BY: (SIGN AND PRINT NAME)	WITNESSED BY: (SIGN AND PRINT NAME)	DEPT/LOCATION
-------------------------------------	-------------------------------------	---------------

CHEMICALS RETURNED TO GDCP PHARMACY

DATE RETURNED	CHEMICAL RETURNED	QTY RETURNED	# OF VIALS
	PENTOBARBITAL		

RETURNED BY: (SIGN AND PRINT NAME)	RECEIVED BY: (SIGN AND PRINT NAME)	DEPT/LOCATION
------------------------------------	------------------------------------	---------------

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<i>Gwinnett County Crowd Photograph, May 8, 1908</i>	22
Photograph of a large crowd gathered at a public hanging.	22

Georgia Gazette, February 6, 1800

An article lamenting the fact that a man who was scheduled to be publicly executed in a week unexpectedly died before it could take place.

“On Friday next Gideon Washburn was to have expiated his crimes at the gallows: Death, however, to the disappointment of the unreflecting and pitiless, suddenly stepped in on Sunday last, and favorably superseded the bustle, pain, and expense, of a public execution.”

GEORGIA

GAZETTE.



(No. 850.)

THURSDAY,

FEBRUARY 6, 1800.

Four Dollars
per annum.

ON Friday next Gideon Washburn was to have expiated his crimes at the gallows: Death, however, to the disappointment of the unreflecting and pitiless, suddenly stepped in on Sunday last, and favorably superseded the bustle, pain, and expence, of a public execution. Washburn was visited by his children on Friday evening, and discovered no unusual gloom or debility: Whether the natural conjecture that his solitary night reflections produced agitations of mind too mighty for human frailty, or whether he was precipitated into eternity by any criminal or desperate means, will probably remain an unsettled speculation. The gaoler found him stupid and insensible on Sunday morning, in which state he remained till death. His mysterious exit is an apt counterpart of his life and character. The sheriff acquitted the body to the friends for interment.

Columbus Newspaper, July 18, 1857

An article discussing a public hanging that occurred in LaGrange, Georgia that drew over 5,000 spectators.

“The slave Aaron, condemned at the last term of our Superior Court, for the murder of his mistress, suffered the extreme penalty of the law on Friday last... There were no less than four thousand negroes [sic] witnessed the execution, and perhaps no less than fifteen hundred white people were on the ground.”

COLUMBUS:

LARGEST CITY CIRCULATION.

Saturday Morning, July 18, 1857.

The LaGrange Reporter, of the 16th instant, says:

“The slave Aaron, condemned at the last term of our Superior Court, for the murder of his mistress, suffered the extreme penalty of the law on Friday last. He met his fate with the most perfect indifference, and without saying but little if anything. There were no less than four thousand negroes witnessed the execution, and perhaps no less than fifteen hundred white people were on the ground.”

Atlanta Weekly Sun, November 13, 1872

An article regarding a public hanging at which “probably 6,000 people” were present.

“When The Sun Reporter reached the scene of execution, we found the prisoner sitting on the gallows grimly facing the noose, and coolly awaiting his fate...A vast multitude, probably 6,000 people, consisting of men, women and children of both classes, mostly white, who had flocked from all the adjoining, and many distant counties to witness the appalling spectacle. ‘That,’ said the prisoner, ‘is my favorite hymn...’ He then called upon his friend Jennie Pruitt to remember the words, and asking the reporter to mark them; sent the book with his love to his wife...”

Local Matters.

**THE HANGING OF THE NEGRO BYRD
BROOKS, AT GAINESVILLE...**

OVER 3,000 PEOPLE PRESENT.

AMONG THEM 1,500 WOMEN.

A HEART RENDING SPECTACLE.

A Cool, Collected and Intrepid Prisoner.

**He Protests His Innocence to the Last
Moment.**

FULL PARTICULARS.

Reported Specially for THE SUN.]

Several weeks ago the Superior Court of Hall county convicted Byrd Brooks and Wade Henderson, both colored, of committing a rape on the person of Mrs. Sophie Hubbard, a widowed white woman about thirty years of age, living with her mother, in the lower part of that county. These two wo-

THE PRISONER ON THE SCAFFOLD.

When THE SUN Reporter reached the scene of execution, we found the prisoner sitting on the gallows grimly facing the noose, and coolly awaiting his fate. A vast multitude, probably 6,000 people, consisting of men, women and children of both classes, mostly white, who had flocked from all the adjoining, and many distant counties to witness the appalling spectacle. Seated upon the scaffold, were

Elberton Gazette, April 23, 1873

An article regarding an upcoming public hanging in Elberton.

“Disagreeable though the task will be to us, we will be on hand to witness the execution, in order to give a full report of the same, which, though not pleasant reading to the refined, is yet necessary to the history of the age we live in.”

“The prospect is fair for a ‘large and enthusiastic’ turn-out to witness the hanging which takes place in Elberton next Friday.”

THE GAZETTE.

Wednesday, April 23, 1873.

Local Intelligence.

THE EXECUTION NEXT FRIDAY.—The prospect is fair for a "large and enthusiastic" turn-out to witness the hanging which takes place in Elberton next Friday. A

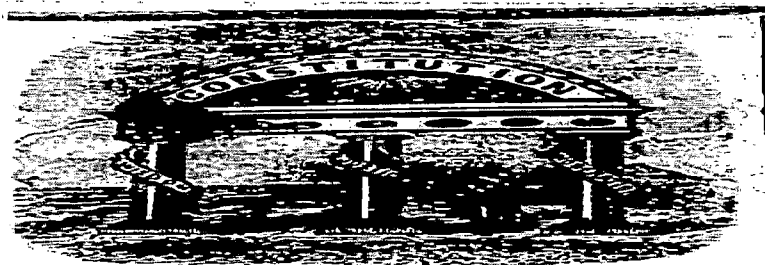
Disagreeable though the task will be to us, we will be on hand to witness the execution, in order to give a full report of the same, which, though not pleasant reading to the refined, is yet necessary to the history of the age we live in.

The Union & Recorder, July 2, 1873

Article containing multiple references to the media's regular and detailed reporting on them.

"Never since we can remember, have we heard of so many hangings in Georgia in one year as in the past twelve months..."

"[S]ome of our sensational newspapers serve up such a repast to their readers every week, and frequently wind up by describing a public hanging in all its disgusting details."



THE UNION & RECORDER.

Old "Southern Recorder" and "Federal Union"
consolidated.]

MILLEDGEVILLE, GA:

Wednesday, July 2, 1873.

Public Hanging and Murders.

Never since we can remember, have we heard of so many hangings in Georgia in one year as in the past twelve months, and never do we remember of hearing of so many murders in the same length of time. The murders seem to increase with the hangings, and this is the case all over the United States. The question arises in the mind of every reflecting person, does public executions deter men from committing crimes; or in other words has public executions a tendency to improve the morals of a people. We are decidedly of the opinion that the horrid details of murders and hangings as published in some of our sensational papers has a very bad influence upon a community. Especially has these disgusting rehearsals of crime and blood a demoralizing and pernicious influence to poison the minds of their children by letting them read the exploits of Dick Turpin and Jack Shepherd; but some of our sensational newspapers serve up such a repast to their readers every week, and frequently wind up by describing a public hanging in all its disgusting details. We know that some persons gloat over such recitals, but that is no reason why the press should pander to such a depraved appetite. May we not attribute the frightful increase of crime in some degree as owing to these horrid details daily published and kept before the eyes and stamped upon the minds of the young and susceptible. and to the frequent public executions in our midst? Time was, and not

The New York Times, May 19, 1883

Story on two public hangings in Georgia describing the first in great detail and noting the second attracted a crowd of 10,000

“10,000 were present. A hanging in public in Georgia means a suspension of labor for a week in the adjacent country...At 1 o’clock the Sheriff took him in a buggy to the place of execution, a mile distant, situated in a valley surrounded by three hills, upon which fully 7,000 people stood.”

The New York Times

Published: May 19, 1883

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TWO HANGINGS IN GEORGIA.

JOSEPH C. JONES AND HENRY KNIGHT EXPI-
ATE THEIR CRIMES.

was greatly annoyed by the armed guards. For a few minutes he talked and laughed. At 1 o'clock the Sheriff took him in a buggy to the place of execution, a mile distant, situated in a valley surrounded by three hills, upon which fully 7,000 people stood. The prisoner ascended the steps with a firm tread and looked quickly over the sea of faces. He immediately began jabbering a speech,

WAY CROSS, Ga., May 18.—The hanging of Henry Knight, colored, which took place here to-day, was chiefly noticeable for the demoralization of labor caused by it. An immense crowd of negroes employed in the turpentine industry for 40 miles about quit work, and for three days have been gathered at the scene of the hanging. Fully 10,000 were present. A hanging in public in Georgia means a suspension of labor for a week in the adjacent country.

The Atlanta Constitution, June 14, 1883

A section called "Georgia Gossip," which seemingly is printed remarks from other newspapers in the state containing a call for no more public hangings from the Walton News.

"We protest against any more public hangings...It is discretionary with the Judges whether executions be public or private, and we do hope they will exercise their powers by ordering them to be strictly private."

GEORGIA GOSSIP.

SHORT TALK WITH THE SCRIBES OF THE COUNTRY PRESS.

**A Protest Against Public Hangings—A Horned Snake—
Reunion of the 531 Georgians—Esob Martin's
Surprise—Returned Home—The Lunatic
Asylum—Bob Brockles's Daughter.**

Says the Walton News: We protest against any more public hangings. The mania which causes people to ride for miles and miles to see a doomed man hung by the neck is a feature in the human character which we cannot understand. Hanging in a quiet jail yard, hidden from the gaze of an excited crowd, is much more terrible and will have a much greater tendency to prevent crime. It is discretionary with the judges whether executions be public or private, and we do hope they will exercise their powers by ordering them to be strictly private.

The Atlanta Constitution, September 29, 1883

Story on a public hanging with details of the moments leading up to the execution.

“[T]he particulars of the execution were eagerly sought for. The demand for the Evening Times, which contained a full account, was unprecedentedly large...Early in the morning immense crowds began to assemble about the jail, and applications for admission to the inclosure were numerous...Some five hundred people obtained the coveted passes and flocked around the gallows...”

Savannah, Georgia.

THE HANGING OF GEORGE WALLACE.

SAVANNAH, September 28.—George Wallace was hanged to-day for the murder of Martin L. Jansen, in March, 1880. In consequence of the extraordinary efforts made to save the condemned, and the fact of his alleged insanity, which was discovered to be a great fraud, more than the usual interest was aroused, and the particulars of the execution were eagerly sought for. The demand for the *Evening Times*, which contained a full account, was unprecedentedly large. Early in the morning immense crowds began to assemble about the jail, and applications for admission to the inclosure were numerous, many being from strangers in the city. Some five hundred obtained the coveted passes and flocked around the gallows, which was erected in the northeast corner of the jail yard. At

The Washington Post, October 30, 1890

Article describing Thomas G. Woolfolk's crime and public execution.

"Thomas G. Woolfolk... paid the penalty on the gallows here today in the presence of a crowd of 8,000 people... This morning at 8 Woolfolk was taken from his cell into the jail corridor, where he talked for some time with a party of newspaper men..."

HANGED HIM IN PUBLIC

Eight Thousand Persons Grouped
About a Georgia Gallows.

HOW WOOLFOLK MET HIS FATE

Begged that the Hanging Be De-
layed Five Minutes.

STRONG PROTESTATIONS OF INNOCENCE

Story of the Butchery of Capt. Woolfolk
and Eight of His Family—Revenge and
Greed the Motives that Actuated the Son
in the Commission of the Crime.

the bloody room alone after the murder. He was searched, and on one leg about the knee was found the imprint of a bloody hand. He had on a shirt much too large for him when searched, and afterwards his own shirt was found in the well, blood-stained and clotted with human brains.

The motive for the crime was found in Tom Woolfolk's enmity for his step-mother and his desire to have undisputed possession of his father's property. Capt. Woolfolk was twice married, having by his first wife two daughters and one son—Tom. On account of certain business complications he settled the bulk of his property on his second wife, first, however, giving his eldest children their shares. Tom was not satisfied with this, and hated his stepmother and her children in consequence. At the time of the murder he had returned to his father's house, after having spent all the money his father had given him, first in farming and then in running a store, and was working on the farm until he could get something better to do.

At the time Woolfolk was twenty-seven

PERRY, Ga., Oct. 29.—[Special].—Thomas G. Woolfolk, murderer of nine members of his father's family, paid the penalty on the gallows here to-day in the presence of a crowd of 8,000 people. The condemned man enjoyed a good night's sleep last night. He received visitors up to 10 o'clock, chatting glibly with his callers on any subject that happened to come up. In response to all inquiries as to his guilt he steadfastly protested his innocence, at the same time declaring that he was tired of jail life, did not want a reprieve, and was ready to die. From 2 o'clock a. m. to 4 he slept soundly.

This morning at 8 Woolfolk was taken from his cell into the jail corridor, where he talked for some time with a party of newspaper men, laughing at his own witticisms, and making frequent sarcastic remarks. He then took a bath and was

The Atlanta Constitution, October 30, 1890

Additional article describing Thomas G. Woolfolk's public execution.

"During last night, Sheriff Cooper promised the members of the press a talk with Tom early this morning... At 7:15 o'clock this morning the sheriff accompanied the correspondents to the jail..."

pg. 1

TEN VICTIMS OF ONE TRAGEDY.

The Hanging of Tom Woolfolk
in Perry Yesterday.

STORY OF THE WOOLFOLK SLAUGHTER

Nine Victims to One Man's
Brutal Passion.

A SCENE OF BLOODY CARNIVAL.

The Murderer at Last Pays the
Penalty.

sheriff, "and I'll let you out. These gentlemen want to talk to you."

"All right," was the answer, and without a word of complaint or a shaky movement he began dressing. First he put on his shoes, lacing them carefully. Then his breeches, then his coat and hat. In dressing he was slow, but as careful and precise as though dressing for his wedding.

READY FOR THE DAY.

With his hat upon his head Woolfolk remarked: "I'm ready, Mr. Cooper." There was no tremor or unevenness in the man's voice. The cell door was unlocked and Woolfolk stepped into the corridor. As he came out of the cell door, he grasped Mr. Cooper by the hand. Then he shook hands with those he knew, and was introduced to the strangers in the party. The introductions he acknowledged with as much grace and ease as any gentleman could have displayed.

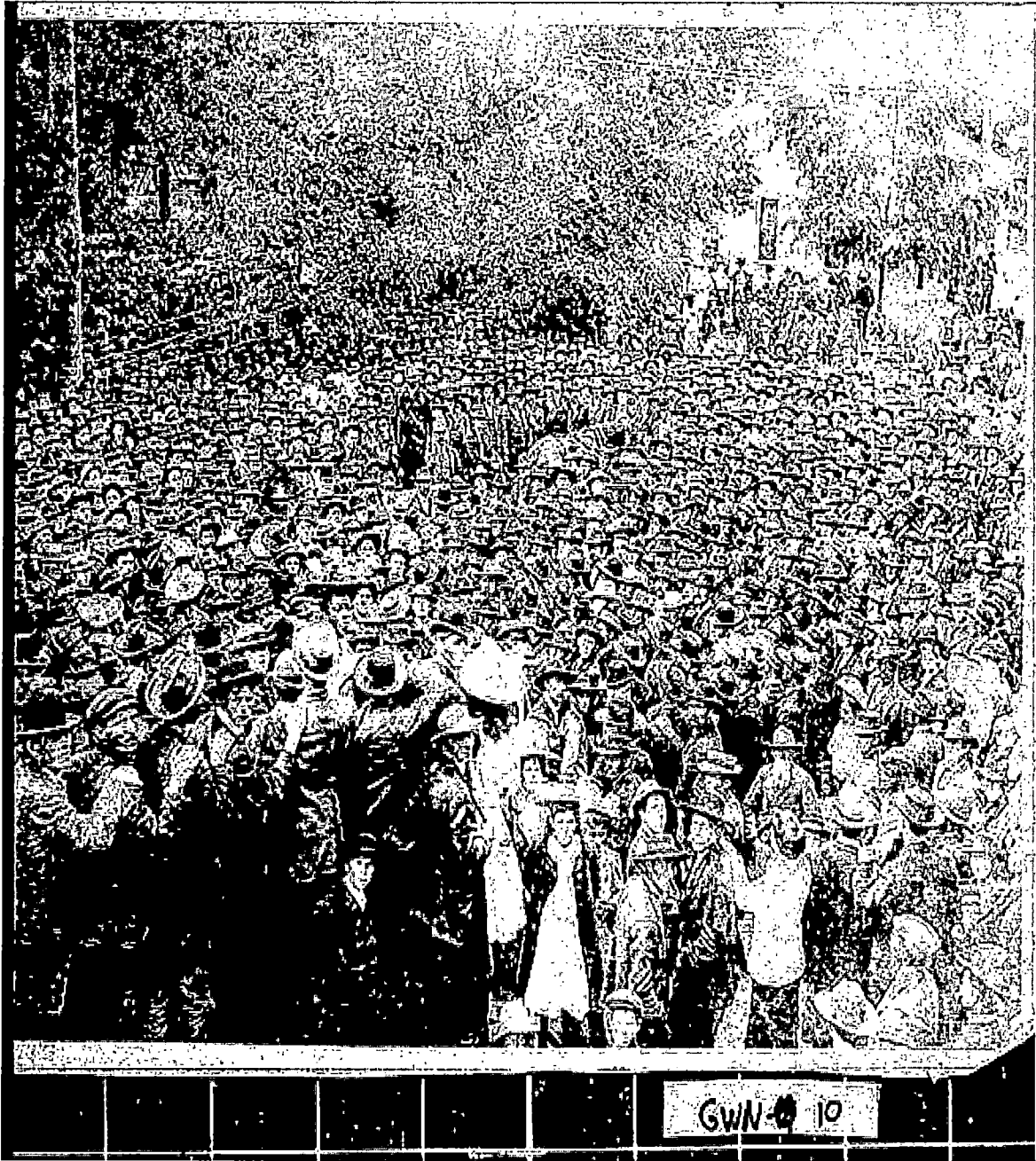
"How do you feel, Tom?" I asked. "Never better." "You aren't at all nervous, are

TO TALK WITH THE PRESS MEN.

During last night, Sheriff Cooper promised the members of the press a talk with Tom early this morning, and 7 o'clock was the hour appointed for the visit. At 7:15 o'clock this morning the sheriff accompanied the correspondents to the jail, and as he entered the building Mr. Johnson repeated the prisoner's request.

***Gwinnett County Crowd Photograph, May 8,
1908***

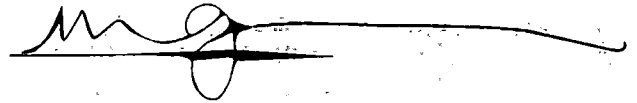
Photograph of a large crowd gathered at a public hanging.



VERIFICATION OF COMPLAINT

I, Molly Greene, am the Strategy and Legal Director for The Appeal, and I am authorized to give this verification on behalf of The Appeal. I further state under oath that I have reviewed the Verified Complaint and that the paragraphs relating to The Appeal are true and correct to the best of my knowledge and belief based on the information currently available to me.

3.8.24



Molly Greene

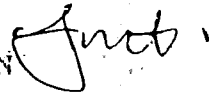
Sworn to and subscribed before me

this _____ day of _____, 2024.

NOTARY PUBLIC

My commission expires:

SEE ATTACHED
FOR NOTARIZATION



CALIFORNIA JURAT

GOVERNMENT CODE § 8202



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

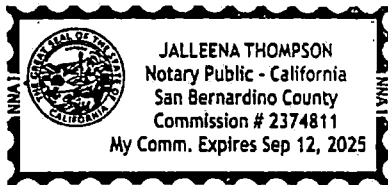
State of California

County of San Bernardino

Subscribed and sworn to (or affirmed) before me on this 8th day of March, 2021, by
Date Month Year

(1) Molly Greene

(and 2),
Name(s) of Signer(s)



proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature Jalleena Thompson
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Prob.

Description of Attached Document

Title or Type of Document: Verification of Complaint

Document Date: _____ Number of Pages: _____

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