

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION  
19 JUL -6 PM 4:33

FRED TREESH )  
Ohio Death Row Inmate )

and )

MELVIN BONNELL )  
Ohio Death Row Inmate, )

Plaintiffs, )

v. )

BOB TAFT )  
Governor, State of Ohio, )

REGINALD WILKINSON )  
Director, Ohio Department )  
of Rehabilitation and )  
Correction, )

and )

STEPHEN HUFFMAN )  
Warden, Southern Ohio )  
Correctional Facility, )

Defendants. )

C2 99 - 624  
CIVIL ACTION NO. \_\_\_\_\_

JUDGE KINNEARY  
JUDGE \_\_\_\_\_

MAGISTRATE JUDGE KING

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COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

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**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

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**I. INTRODUCTION**

1. This civil action, brought by inmates on Ohio's Death Row, is a First Amendment challenge to a regulation that bars condemned prisoners from uttering their last words in the moments before they are executed.

2. That regulation -- SOCF W-05-94 ("the Regulation") -- affords condemned prisoners no opportunity to make a last oral statement, audible to spectators, after being led into the death chamber for their final minutes of life. Under the Regulation, the prisoner is permitted merely to write out a final statement -- to be read aloud by the warden only after the prisoner is dead. And, according to Ohio prison officials, the warden enjoys complete editorial control over the prisoner's statement, with unfettered discretion to change it, cut it, summarize it, or censor it altogether. (The Regulation is attached to this Complaint as Exhibit A.)

3. Plaintiffs seek declaratory and injunctive relief barring Ohio officials from enforcing the Regulation, and requiring them to restore to condemned prisoners the opportunity -- established by centuries of Anglo-American history and tradition -- to communicate their last words as they stand on the brink of extermination.

## II. JURISDICTION, VENUE, AND PARTIES

### A. Jurisdiction

4. Plaintiffs bring this action to protect rights conferred by the First and Fourteenth Amendments to the United States Constitution.

5. This Court has jurisdiction under 28 U.S.C. § 1331, in that this action arises under the U.S. Constitution; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations, under color of State authority, of rights, privileges, and immunities secured by the U.S. Constitution; under 28 U.S.C. § 1343(a)(4), in that its purpose is to secure equitable relief under Acts of Congress -- specifically, 42 U.S.C. § 1983 -- providing for the protection of civil rights; and, finally, under 28 U.S.C. § 2201(a), in that one of its purposes is to secure declaratory relief.

**B. Venue**

6. Venue is proper in this Court under 28 U.S.C. § 1391(b) because all of the Defendants are situated in this District, and because all of the events giving rise to this action have occurred or will occur in this District.

**C. Parties**

7. Plaintiff Fred Treesh, Prisoner #307-703, resides on Ohio's Death Row at the Mansfield Correctional Institution. Consistent with centuries of Anglo-American history and tradition, Mr. Treesh intends to make a last oral statement, audible to spectators, after being led into the death chamber for his execution.

8. Plaintiff Melvin Bonnell, Prisoner #204-019, resides on Ohio's Death Row at the Mansfield Correctional Institution. Consistent with centuries of Anglo-American history and tradition, Mr. Bonnell intends to make a last oral statement, audible to spectators, after being led into the death chamber for his execution.

9. Defendant Stephen Huffman is Warden of the Southern Ohio Correctional Facility at Lucasville, where all Ohio executions take place. His

predecessor, Warden Terry J. Collins, authored and promulgated the Regulation that Plaintiffs are challenging in this lawsuit. Defendant Huffman is sued here solely in his official capacity.

10. Defendant Reginald Wilkinson is Director of the Ohio Department of Rehabilitation and Correction. Under Ohio Revised Code § 5120.01, he is vested with final authority and control over all aspects of the administration of Ohio's state prison system. Defendant Wilkinson is sued here solely in his official capacity.

11. Defendant Bob Taft, as Governor of the State of Ohio, is vested with final executive authority for carrying out death warrants in Ohio, including grants of commutation and pardon. Defendant Taft is sued here solely in his official capacity.

12. Plaintiffs do not intend this action to have any effect on their state convictions and/or sentences (including their death sentences); nor do Plaintiffs intend this action to constitute a petition for a writ of habeas corpus.

### **III. FACTS**

13. Pursuant to Ohio Revised Code § 5120.01, Defendant Wilkinson is empowered by the Ohio General Assembly to promulgate rules and regulations for managing the state prisons and the inmates confined therein.

14. Under that statutory authority, Defendant Wilkinson promulgated Ohio Administrative Code § 5120-9-54(F), which authorizes the warden at Ohio's Death House to "establish policy for the conduct of executions."

15. Ohio's Death House is situated at the Southern Ohio Correctional Facility in Lucasville. All prisoners condemned to death by the courts of Ohio are eventually transferred to Lucasville. As the warden at Lucasville, Defendant Huffman is required to preside over the executions that take place there. Ohio Revised Code § 2949.22(C).

16. Authored by Warden Collins and approved by Defendant Wilkinson, the challenged Regulation was promulgated on May 2, 1997. (John Nolan, Ohio Sets Stage for Execution, Associated Press, June 29, 1997 -- attached to this Complaint as Exhibit B.)

17. Under the Regulation, condemned prisoners will not be allowed to speak at the time of their execution. (Ohio Won't Allow Verbal Statements

by Condemned Prisoners, Associated Press, January 5, 1998 -- attached to this Complaint as Exhibit C.)

18. The Regulation requires (Exhibit A, page 8, ¶ 5(c)) that the condemned's last words must be in writing -- and permits them to be read only after the execution, rather than allowing a verbal statement beforehand. (See Exhibit B.)

19. Under the Regulation, the prisoner's last words must be submitted in writing for editorial review and advance approval by the warden. (See Exhibits B and C; Alan Johnson, Last Words Will Be Posthumous Ones for Ohio's Condemned, Columbus Dispatch, July 27, 1997 -- attached to this Complaint as Exhibit D.)

20. In statements to the press, the Ohio Department of Rehabilitation and Correction has confirmed that the warden will enjoy "complete editorial rights" over the prisoner's statement (see Exhibit D), with unfettered discretion to change it, cut it, summarize it, or censor it altogether (see Exhibits C and D).

21. The Regulation is intended as a content-based restriction on speech. Its aim is to prevent spontaneous and potentially unpleasant utterances by condemned prisoners as they stand on the brink of extermina-

tion. The Ohio Department of Rehabilitation and Correction has confirmed that the Regulation was adopted in response to dying speeches in other states (see Exhibit D), and is designed to shield the friends and relatives of murder victims from "potentially spiteful, profane, or abusive remarks" by those condemned to die (see Exhibit C).

22. Prison officials have publicly announced that the warden, in reviewing the condemned's written statement, will scan it for any passage that is "potentially offensive," and will send it back to the prisoner with instructions to change it. (See Exhibit B.) If the prisoner refuses, the warden "will have the discretion to omit reading that part of the statement -- or the entire text if it is potentially offensive." (See Exhibit B.)



**IV. CLAIMS FOR RELIEF**

**COUNT I**

**(Facial Challenge under the  
First and Fourteenth Amendments)**

23. On its face, the Regulation violates Plaintiffs' freedom of speech under the First and Fourteenth Amendments to the U.S. Constitution, and thereby causes them irreparable harm.

**COUNT II**

**(As-Applied Challenge under the  
First and Fourteenth Amendments)**

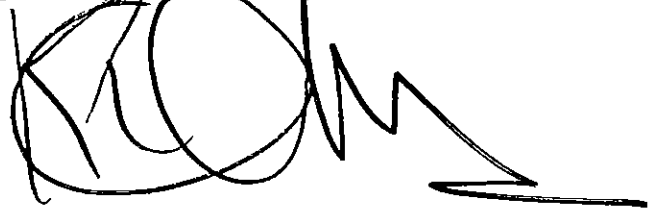
24. If enforced in a manner consistent with the foregoing statements by Ohio prison officials, the Regulation is unconstitutional as applied to Plaintiffs, violating their freedom of speech under the First and Fourteenth Amendments to the U.S. Constitution and thereby causing them irreparable harm.

**V. PRAYER FOR RELIEF**

**WHEREFORE, Plaintiffs demand that judgment be entered against Defendants Taft, Wilkinson, and Huffman. Specifically, Plaintiffs demand such declaratory, injunctive, and other relief as follows:**

- (a) A declaratory judgment that SOCF W-05-94 violates Plaintiffs' freedom of speech under the First and Fourteenth Amendments to the U.S. Constitution.**
- (b) Preliminary and permanent injunctions barring Ohio officials from enforcing the "final statement" provisions in SOCF W-05-94 -- and requiring those officials to restore to condemned prisoners the opportunity to make a last oral statement, audible to spectators, after being led into the death chamber for their final minutes of life.**
- (c) An award of attorney fees, pursuant to 42 U.S.C. § 1988, and costs.**
- (d) An order granting Plaintiffs such other and further relief as this Court deems proper.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. O'Neill', with a long horizontal flourish extending to the right.

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STATE OF OHIO  
DEPARTMENT OF REHABILITATION  
AND CORRECTION

POLICY &  
PROCEDURES

RELATED A.C.A. STANDARDS:

RELATED ADMINISTRATIVE  
REGULATIONS:

RELATED DR&C POLICY/AUDIT  
STANDARDS:

SOCF NUMBER: W-05-94

PAGE: 1 OF 10 PAGES

EFFECTIVE DATE:  
May 2, 1997

RESCINDS: \_\_\_\_\_

SECTION:

SUBJECT:

Guidelines for carrying out a  
court-ordered sentence of death

REVISION DATE: 5-97

REVIEW DATE: \_\_\_\_\_

POSITION OF REVIEWER: \_\_\_\_\_

I. AUTHORITY

The Ohio Revised Code, 5120.38, delegates to the Managing Officer the authority to manage and direct all inmates, personnel, volunteers, programs and activities connected with the institution.

II. PURPOSE:

To designate staff responsibility and establish uniform guidelines for carrying out a court-ordered sentence of death.

III. APPLICABILITY:

To all individuals involved in administering a court-ordered death sentence.

IV. DEFINITIONS:

As used in this policy, the following will apply:

1. Execution Team: A team consisting of no less than ten (10) members, designated by the Warden. This team assumes control of the prisoner no more than twenty-four (24) hours and no less than twelve (12) hours prior to the scheduled

EXHIBIT

A

INITIALS: DC 5/2/97

SECTION:

SUBJECT: Carrying out a court-ordered  
sentence of death

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execution and is responsible for the execution and post-execution procedures, to include preparing the equipment and the prisoner.

2. Critical Incident Debriefing Team: A group selected by the Warden and the institutional chief psychologist. Executions have the potential for creating stress on the part of all persons involved. A psychological debriefing process is available via institutional clinical staff and others in the department to recognize stressors associated with executions and to work through them with affected staff as follows:

- a. Worker's own experiences of the execution including reactions and perceptions.
- b. Review any negative aspects and feelings.
- c. Review any positive aspects and feelings.
- d. Relationships - other workers and family.
- e. Empathy (sharing) with others.
- f. Disengagement from execution experience.
- g. Integration of this experience into the professional work role for a positive future contribution to the overall team effort.

3. Stay: A court-ordered suspension or postponement of a legal execution.

4. Electrocutation: Form of execution whereby a current of electricity of sufficient intensity to cause death passes through the body of a person sentenced to death.

5. Lethal Injection: The form of execution whereby continuous intravenous injection of a lethal drug or a series of lethal drugs of a sufficient dosage to cause death.

6. Reprieve: The postponement of an execution.

7. Brine: Water saturated with salt, used to soak the sponges that will be applied to the condemned prisoner's head and leg at the time of execution to ensure proper contact for the electric current.

INITIALS: DC 512/97

SECTION:	SUBJECT: Carrying out a court-ordered sentence of death.
S.O.C.F. NUMBER: W-25-94	PAGE: 3 OF 10 PAGES

## V. POLICY:

It is the policy of the Ohio Department of Rehabilitation and Corrections (Southern Ohio Correctional Facility) to carry out the death penalty as directed by the sentencing court and in the method elected by the condemned in accordance with state statutes. All execution processes shall be performed in a professional, humane, sensitive and dignified manner. The time scheduled for the execution is 9:00 p.m. on the day designated by the Court.

1. The Ohio Revised Code, 2949.22, provides both electrocution and lethal Injection as the forms of execution in Ohio. This section provides any person sentenced to death the option to elect lethal injection or electrocution as a form of execution and limits the period for electing Lethal Injection to one week prior to date of execution. It establishes the responsibilities of the Director to designate a penal institution where death sentences shall be executed and the Warden of the institution or Deputy Warden of the institution in his/her absence to be prepared to carry out an execution on the day designated by the Sentencing Judge or Court in the course of Appellate or Post Conviction proceedings.
2. The date of the execution will be designated by the courts. The execution will be under the direction of the Warden of the Southern Ohio Correctional Facility. Attendance at the execution will be specified in the Ohio Revised Code, 2949.25.
3. The condemned inmate will remain on death row until transferred to the death house at the Southern Ohio Correctional Facility for execution.
4. Upon receipt of a court scheduled execution, Director's Office and the Wardens of the Mansfield Correctional Institution, Ohio Reformatory for Women, and the Southern Ohio Correctional Facility will be notified, as appropriate.
5. Attendance at the Execution:
  - a. The Warden or his Deputy, and such number of correction officers as the warden deems necessary.
  - b. The Sheriff of the County in which the prisoner was tried and convicted.
  - c. The Director of the Department of Rehabilitation and Correction, or his agent.

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- d. Physicians of the Penitentiary.
  - e. The Clergyman in attendance upon such prisoner, and no more than three other persons, to be designated by such prisoner, who are not confined in any State institution.
  - f. Not more than three persons to be designated by the immediate family of the victim.
  - g. The Director shall authorize at least one representative of a newspaper, at least one representative of a television station, and at least one representative of a radio station to be present at the execution of the sentence in accordance with ORC 2949.25 and the DRC Execution Media Policy.
6. An increase in traffic and tourists, as well as demonstrations, both for and against the execution, can be expected. When deemed appropriate by the Department and the Ohio State Patrol, the contingency plan for crowd and traffic control will be implemented. The Ohio State Patrol, in conjunction with the Warden, will set aside areas for peaceful demonstrations and pickets. The Ohio State Patrol, in conjunction with SOCF staff, will have responsibility for maintaining security and order in all areas outside of the institution.
7. A communication system between the Governor's Office and the execution chamber will be established.
- a. Primary communications will be via a telephone line opened directly to the Governor's Office from the execution chamber. This line will be tested one (1) hour prior to the scheduled execution. Other than testing, this line will remain open.
  - b. Secondary communications will be via cellular phone.
  - c. In the event that both the primary and secondary communications are inoperable, the execution will be delayed until communications are established.

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## VI. PROCEDURES

1. Thirty (30) Days Prior To The Scheduled Execution Date:

- a. The MANCI or ORW Warden will notify the Director by memo, with copies going to the Regional Director and Chief Counsel, along with the Assistant Director, APA, OSP (Portsmouth and Jackson), and the Office of Victim Services.

2. One Week Prior To The Scheduled Date Of Execution:

- a. The Warden of the institution housing the death row inmate will ensure that the inmate is provided with an Election of Manner of Execution Form. A copy of the completed form indicating either electrocution or lethal injection as the elected form of execution shall be forwarded to the Warden of the Southern Ohio Correctional Facility.

3. No More Than 24 Hours And No Less Than 12 Hours Prior To The Scheduled Execution:

- a. The condemned prisoner will be removed from death row and housed in the death house wing at the Southern Ohio Correctional Facility. He will be constantly monitored by members of the execution team. A log will be maintained on the condemned prisoner. This log should reflect all activity of the prisoner, i.e., visitors, movements, mood changes, meals served, time showered, etc. A minimum of three (3) team members of the team will be present at any time the prisoner is moved from his cell. The staff psychologist will interview the prisoner on a daily basis and submit written daily report to the Warden. The transporting institution shall bring all inmate files direct to the Warden's office at SOCF.
- b. The warden will establish a line of communication with the legal staff of the Ohio Department of Rehabilitation and Correction and the Attorney General's Office. Key staff will be apprised of any significant legal changes.

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SUBJECT: Carrying out a court-ordered  
sentence of death

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4. The Following Events Will Take Place Upon Arrival At The Death House:
- a. Upon arrival, the execution chamber will be restricted to the following:
1. Director and/or designee(s);
  2. Warden;
  3. Chief Public Information Officer;
  4. Institution Deputy Wardens;
  5. Administrative Assistant to the Warden;
  6. Chaplain;
  7. Chief Electrician;
  8. Scioto County Coroner;
  9. Chief of Security;
  10. Maintenance Superintendent;
  11. Other persons as deemed necessary by the Warden.
- b. The warden will notify the institution execution task force.
- c. The institution chaplains will be notified to make daily visits to the condemned prisoner.
- d. The Deputy Warden of Operations will identify security personnel to man entrances, checkpoints and to assist the Ohio State Patrol.
- e. The condemned prisoner will be measured for clothing. Clothing will be equipped with Velcro fasteners in lieu of metal (if by electrocution).

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sentence of death

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- f. The execution team leader will interview the condemned prisoner and ascertain the names of three (3) witnesses he wishes to have at the execution.
- g. The execution team chief will ensure that the prisoner's property is inventoried in front of the prisoner.
- h. The condemned prisoner will be allowed daily visits with family, friends and private clergy, as approved by the warden.
- i. The institution electrician will thoroughly test all execution equipment. All communication equipment will also be tested. A record will be kept of test results, these tests will take place daily until execution.
- j. Key personnel will be briefed by the warden.
- k. Medical staff will be identified/briefed by the warden.
- l. The condemned prisoner will specify in writing his/her request for funeral arrangements. This information shall be conveyed to the prisoner's family or others, as appropriate. The execution team leader will be responsible for securing this information.
- m. The condemned prisoner will specify who is to receive his personal effects.
- n. The warden will receive updates from security personnel and the Ohio State Patrol on crowd control, demonstrations, pickets, etc. ---
- o. The chief of security will brief the warden on the level of tension/increased anxiety within the prison population.
- p. The warden will relay any out of the ordinary activity to the South Regional Director.
- q. The execution team will continue to drill/rehearse.
- r. All electrical equipment, to include emergency power, will be tested by the chief electrician. The test will be documented.

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- s. Primary/secondary communication systems will be checked.
  - t. The execution team advisor will interview the prisoner to allow for the order of his/her last meal.
  - u. The names of official witnesses/media witness will be supplied to the warden. Witnesses will be outlined in the Ohio Revised Code, 2949.25, Attendance at Execution.
5. Approximately Six (6) Hours Prior To The Execution:
- a. The execution team will prepare the brine and soak sponges, if by electrocution.
  - b. The prisoner is served his/her last meal.
  - c. Inmate will be asked to write his last statement, if any. The draft of the statement will be given to a member of the execution team, who will forward it to the Warden for transcribing and copying. The statement will be read by the Warden in the execution chamber after the execution has been completed, and then by an official media witnesses after the media briefing.
6. Approximately One (1) Hour Prior To The Execution:
- a. If by electrocution, the execution team leader will supervise the shaving of the condemned prisoner's head and right leg.
  - b. The prisoner will then be permitted to take a shower and dress in the appropriate clothing for the execution.
  - c. Official witnesses to the execution will report to the institution. However, the victim's witnesses will report to the Portsmouth Highway Patrol Post for transportation to the institution.
7. Approximately Fifteen (15) Minutes Prior To The Execution:
- a. Establish phone communications with the Governor's Office. If there has been no stay or reprieve granted, this contact will be maintained until the execution has been carried out.

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b. The party pronouncing death will report to the Execution Chamber.

8. The Following Will Occur Just Prior To The Execution:

- a. The DR&C Public Information Officer will be responsible for media witnesses from the holding area to the witness room. The SOCF Unit Management Administrator will be responsible for escorting witnesses of the victim. The SOCF Chief of Security will be responsible for escorting all other witnesses.
- b. The Warden and execution team will escort the condemned prisoner to the execution chamber.
- c. The execution team will place the condemned prisoner in the chair or on the lethal injection bed.
- d. If by electrocution, the execution team will secure the back, arm, forearm, lap, chest, and ankles. The electrode will then be attached to the right leg by a member of the execution team.
- e. If by lethal injection, the condemned prisoner will be placed on the bed and strapped down. Intravenous injection tubes will then be hooked up.

9. Execution:

- a. If by electrocution, the execution team will place the sponges on the condemned prisoner's head, secure the headset and attach the electrode to the headset. The head cover will then be placed on the prisoner's head.
- b. The Warden will give the signal to commence execution process.
- c. The designated member of the execution team will then activate the execution cycle, either by electrocution or lethal injection.
- d. Once the execution cycle is completed, after five (5) minutes have elapsed, the designated personnel will examine the body and pronounce the prisoner dead.

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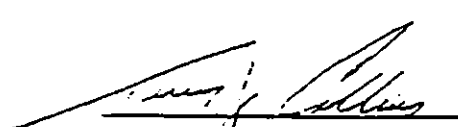
- e. The Warden will pronounce the time of death, read the inmate's last statement (if any), and the witnesses will be removed.

10. Post-Execution:

- a. The Warden, or his designee, will notify the Director that the execution has been carried out.
- b. The execution team will remove the deceased from the chair, injection bed, and place him/her on a gurney.
- c. A hearse will be cleared through the sallyport by the Chief of Security.
- d. The body will then be turned over to the Scioto County Coroner for disposition in accordance with the arrangements made three (3) days prior to execution at the prisoner's request.
- e. The Warden will sign and return the death warrant to the court, indicating the execution has been carried out.

11. Debriefing:

- a. The Warden will ensure that stress trauma briefings are available for the execution team/staff participants immediately following the execution.
- b. Interviews will be accomplished by the "institution critical incident debriefing team" established by the staff psychologist.

 5/2/97  
TERRY J. COLLINS  
WARDEN

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JOURNAL NEWS  
-AMILTON, OH.  
JUN CIRC 29,375

JUN-29-97

# Ohio sets stage for execution

By John Nolan  
The Associated Press

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LUCASVILLE

Whenever Ohio conducts its next prisoner execution — the state's first since 1963 — there will be two notable differences.

The state has adopted a 9 p.m. execution time, rather than 12:01 a.m. And the condemned's last statement — if any is volunteered — will be read after the execution, rather than allowing a verbal statement before it.

The Ohio Department of Rehabilitation and Correction adopted the changes to its execution policy in May, after a survey of other states that have capital punishment. Terry Collins, warden of the Southern Ohio Correctional Facility, which houses the state's execution chamber, made the changes with approval of Reginald Wilkison, director of Ohio's prison system.

Prison officials briefed reporters on the changes during a tour Wednesday of the death chamber.

The earlier execution time was adopted to make it more convenient for representatives of victims' families who witness executions, and to make it easier to contact judges if last-

## Procedure changes

■ The execution time will be 9 p.m., rather than 12:01 a.m.

■ The condemned's last statement will be read after the execution, rather than allowing a verbal statement before it.

minute stays of execution are sought, prison spokeswoman Rhonda Millhouse said.

The warden is to read the prisoner's last statement in the execution chamber. The prisoner will be given the option to write the statement during the 12 to 24 hours that separate his execution and the time when he is brought from death row.

Prisoners will be given the opportunity to change passages that are vulgar, threatening or potentially offensive to the victim's family, Millhouse said. If the prisoner refuses, the warden will have discretion to omit reading that part of the statement — or the entire text if it is potentially offensive, she said.

The prison department's position is that a last statement is a courtesy tradition-

ally afforded to the condemned, but is not a legal right, Millhouse said.

Whenever Ohio's next execution occurs, it will be the first since Donald Reinbolt of Columbus was electrocuted March 15, 1963, for killing a grocer.

The polished oak chair in which Reinbolt was executed, with its leather-trimmed metal straps, is still Ohio's execution device for inmates who do not choose lethal injection. The 100-year-old chair was moved in 1972 from the old Ohio Penitentiary in Columbus to the newly opened Lucasville prison.

The chair is in a room of pale yellow-painted concrete block, tile floor and acoustic ceiling tile, along with a bed atop two metal posts bolted to the floor. The bed has straps designed to hold a prisoner who chooses lethal injection.

Both can be seen through windows of two witness rooms and the control chamber where the executions are administered.

A confidential team of at least 10 Lucasville prison employees trained in execution procedures is awaiting the scheduling of Ohio's next execution. Participation is voluntary.

EXHIBIT

B



## BEACON JOURNAL

### News

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Posted at  
7:56 a.m. EST  
Monday,  
January 5, 1998



[Knight-Ridder  
newspapers](#)

## Ohio won't allow verbal statements by condemned prisoners

COLUMBUS, Ohio (AP) - Condemned prisoners in Ohio will not be allowed to speak at the time of their execution, state corrections officials have decided.

A written last statement will be permitted, but it will be subject to censorship and will not be read until after the execution is carried out.

Ohio Department of Rehabilitation and Correction spokesman Joe Andrews said the policy was adopted to spare murder victims' friends and relatives from potentially spiteful, profane or abusive remarks by those condemned to die.

The warden at the Southern Ohio Correctional Facility near Lucasville, where executions will take place, will have control over the statement, Andrews told The Blade of Toledo for a story published today.

Andrews said the warden can alter it, summarize it, release it in its entirety, or not release it in any form.

He said the policy calls for the warden to read the condemned's statement in the execution chamber after the prisoner is put to death.

The condemned will be given paper and a pen about six hours before the time of execution and will be allowed to write as much as he or she wants.

``But if they write for that long, the warden isn't going to read for that long," Andrews said.

He said there is no provision for preserving the original document for possible study by scholars or others at a later date.

``It might be that it could be placed in the prisoner's file, which isn't a public document," Andrews said. But that hasn't been discussed, he said.



Harland Britz, general counsel to the Toledo chapter of the American Civil Liberties Union, told the newspaper he views the move as "an attempt to sanitize the issue (of capital punishment) to the vanishing point."

Britz suggested the state might not want the public to think again about capital punishment if a condemned inmate made a "powerful statement."

Andrews said a number of states allow only written statements.

No one has been executed in Ohio since 1963.

But the Ohio Supreme Court last month granted a request by convicted killer Wilford Berry Jr. to be executed without further appeals, and set a March 3 execution date.

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Last words will be posthumous ones for Ohio's condemned

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*"It  
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executing."*

**lawyer Jeffrey M.  
Ganso**  
critic of new policy

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## Last words will be posthumous ones for Ohio's condemned

**By Alan Johnson**  
*Dispatch Statehouse Reporter*

July 27, 1997

Some repent, protest their innocence, praise God or say goodbye to loved ones. Others curse, philosophize, sing or remain silent.

One man spat at the warden. Another died listening to a Marty Robbins song.

But two long-standing traditions accompany a prisoner execution in the United States: a last meal and last words.

When Ohio resumes use of the death penalty, the condemned still will have a last meal. But his or her last words will be heard after the execution -- when the prison warden reads them.

The policy change announced recently by the Ohio Department of Rehabilitation and Correction comes in response to incidents in other states where the person about to be executed unleashed profanities or lashed out at the victim's family.

"We didn't want that to happen here," prisons spokesman Joe Andrews said.

Ohio has not had an execution since 1963, even though capital punishment was reinstated in 1981. But several prisoners are moving closer to a date with the executioner, including Cleveland murderer Wilford Berry, who wants to waive his legal appeals and be put to death.

When an execution is scheduled, the prisoner will be given the opportunity to write his last words about six hours before the execution, Andrews said.

"They can write as much as they want in the time they have," he said.

A draft of the statement will be forwarded to Warden Terry Collins at the Southern Ohio Correctional Facility near Lucasville, where executions will take place. Andrews said the warden will have



Last words will be posthumous ones for Ohio's condemned

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"complete editorial rights" over the prisoner's statement and can change, censor or summarize it.

"This has all been reviewed by our legal staff, and they had no problem with it," Andrews said. Those officials say a prisoner's last words are a privilege, not a right.

Toledo lawyer Jeffrey M. Gamso, an American Civil Liberties Union activist who represents eight of the 173 men on Death Row, said he is outraged by the change.

"I'm bothered because of the pretense that we're trying to do is prettying up the whole process, sanitizing the execution to distance all of us from it," Gamso said.

"It dehumanizes even further the person you're executing," he said. "To deprive them of the opportunity to speak seems to further a process that is wrong."

Gamso acknowledged some states don't permit last statements. But the Ohio policy, he said, is "clearly an interference with free speech" and will likely be challenged.

Rhonda Millhouse, spokeswoman at the Lucasville prison, said Ohio officials found that several states allow prisoners to make only a written statement.

Not so in Florida, Georgia and Texas, where executions are frequent and prisoners often have much to say.

A man executed in December wished witnesses a "Merry Christmas." Georgian Christopher Berger apologized to "anybody and everybody I've ever hurt." Sylvester Adams of South Carolina sang part of a hymn: *Jesus, your baby is coming home.*

And at his 1995 execution, Mickey Wayne Davidson of Virginia said only this: "I'll say my last words to the Lord. I guess that's really all that needs to be said."

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