

WARREN GEORGE
CAROLYN L. REID
McCutchen, Doyle, Brown & Enersen
3 Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 393-2000

MICHAEL LAURENCE
MATTHEW A. COLES
American Civil Liberties Union
Foundation of Northern California, Inc.
1663 Mission Street, Suite 460
San Francisco, California 94103
Telephone: (415) 621-2493

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

DAVID FIERRO, ROBERT HARRIS, and
ALEJANDRO GILBERT RUIZ, as
individuals and on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

JAMES GOMEZ, as an individual, and in his
capacity as Director, California Department of
Corrections, and DANIEL VASQUEZ, as an
individual, and in his capacity as Warden of
San Quentin Prison,

Defendants.

No. C-92-1482-MHP

**DECLARATION OF JAMES J.
BELANGER, ESQ. IN LIEU
OF LIVE TESTIMONY BY
STIPULATION OF THE
PARTIES**

AFFIDAVIT

I, James J. Belanger, declare and aver as follows:

1. I am an attorney, licensed to practice law in the state of Arizona. I was the attorney for Don Eugene Harding. I began working on Mr. Harding's case on March 15, 1991. In November of 1991, Don asked me to witness his execution. I agreed out of great personal respect for Don and desire to carry out his final wishes.

2. On March 20, 1992, I received an invitation to attend Mr. Harding's execution, which was scheduled to take place at 12:05 a.m. on Monday, April 6, 1992.

3. At approximately 11:00 p.m. on Sunday night, April 5, I arrived at the Central Unit of the Arizona State Prison Complex in Florence, Arizona. I was escorted to a meeting room by a deputy warden. He was our escort for the remainder of the evening.

4. After a few minutes I was joined by two other persons that Don had asked to witness his execution. At approximately 11:30 p.m., we were all escorted to a chapel located several yards from the gas chamber where Don was being held. We were joined there by the final person who would be witnessing the execution on Don's behalf. While we waited in the chapel, a prison official entered and asked us to draw numbers from a box. These numbers determined the order in which we were allowed into the viewing room. I drew number one.

5. At approximately ten minutes past midnight, the deputy warden asked us to convene outside of the chapel. There we were joined by the other witnesses to the execution and formed a procession to the gas chamber. As we walked, the inmates in the

cells in the building along the walkway were screaming at us. None of the witnesses said anything at all.

6. When we got to the entrance to the death house we were stopped. One of the prison officials told us to file in by our number as he called them out. I was called first and I was directed to a spot at the far left side of the first row. The rest of the witnesses entered the room behind me as their numbers were called. We all stood.

7. When we entered, the blinds on the windows to the gas chamber were completely closed.

8. A few minutes after we entered, a prison official came into the room and said that the United States Supreme Court had denied Mr. Harding's request for a stay of execution and that there was no legal reason why the execution could not go forward. He closed the door. Another prison official was then ordered to raise the blinds.

9. Don was already strapped into place when the blinds were drawn. The chair he was in faced away from the witness room, but he was clearly visible. I was positioned at the window that looked in over his left shoulder. Don could see me when he turned his head. We were approximately five feet apart. He was very agitated.

10. Don's arms were tightly bound to the chair with two thick leather straps. His legs were also bound to the chair. An electric monitor was attached to his chest. He was stripped virtually naked except for a pair of white, diaper-like undershorts. I was appalled at the indignity that Don was being

forced to endure.

11. A signal was given and there was a thumping noise. A few seconds later I saw white fumes begin to rise towards Don's head. They were moving more quickly than I had expected.

12. When the fumes enveloped Don's head he took a quick breath. A few seconds later he again looked in my direction. His face was red and contorted as if he were attempting to fight through tremendous pain. His mouth was pursed shut and his jaw was clenched tight. Don then took several more quick gulps of the fumes.

13. At this point Don's body started convulsing violently and his arms strained against the straps. His face and body turned a deep red and the veins in his temple and neck began to bulge until I thought they might explode.

14. After about a minute Don's face leaned partially forward, but he was still conscious. Every few seconds he continued to gulp in. He was shuddering uncontrollably and his body was racked with spasms. His head continued to snap back. His hands were clenched.

15. After several more minutes, the most violent of the convulsions subsided. At this time the muscles along Don's left arm and back began twitching in a wavelike motion under his skin. Spittle drooled from his mouth. I couldn't believe that it was lasting this long. I just wanted it to end.

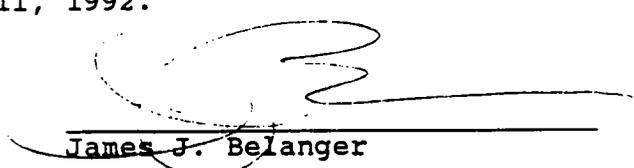
16. Don did not stop moving for approximately eight minutes, and after that he continued to twitch and jerk for another minute. Approximately two minutes later, we were told by a prison official that the execution was complete.

17. Don Harding took ten minutes and thirty one seconds to die. At least eight of these minutes were spent in gross and brutal agony. They were also the most excruciatingly painful eight minutes of my life.

18. During the entire time I was in the room, until the execution was over, my knees were shaking so badly I thought I might fall down. At least two times I had to lean against the wall that was immediately behind me. My heart continued to race until I was out of the witness room. At one point I thought I might throw up. I wept.

19. Nothing in my life prepared me for the horror of Don being ritualistically and methodically stripped of his humanity and then watching him being tortured to death. I will never forget the look on his face when he turned to me several seconds after first having inhaled the fumes. It is an image of atrocity that will haunt me for the rest of my life. Don Harding's death was slow, painful, degrading, and inhumane. He would not tolerate such cruelty even to put an animal to death. He literally choked and convulsed to death in front of my eyes. I felt embarrassed and humiliated for having witnessed the gross brutalization of another human being. God willing, something such as this will never happen again.

DATED this 7th day of April, 1992.


James J. Belanger

WARREN GEORGE
CAROLYN L. REID
McCutchen, Doyle, Brown & Enersen
3 Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 393-2000

MICHAEL LAURENCE
MATTHEW A. COLES
American Civil Liberties Union
Foundation of Northern California, Inc.
1663 Mission Street, Suite 460
San Francisco, California 94103
Telephone: (415) 621-2493

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID FIERRO, ROBERT HARRIS, and)
ALEJANDRO GILBERT RUIZ, as)
individuals and on behalf of themselves)
and all others similarly situated,)

Plaintiffs,)

v.)

JAMES GOMEZ, as an individual, and in his)
capacity as Director, California Department of)
Corrections, and DANIEL VASQUEZ, as an)
individual, and in his capacity as Warden of)
San Quentin Prison,)

Defendants.)

No. C-92-1482-MHP

**DECLARATION OF DONNA
LEONE HAMM SUBMITTED
IN LIEU OF LIVE
TESTIMONY BY STIPULATION
OF THE PARTIES**

DECLARATION OF DONNA HAMM

I, Donna Leone Hamm, declare as follows:

1. Don Eugene Harding was executed in Arizona's gas chamber on April 6, 1992 beginning at 12:18 a.m., just over a week ago. I knew Don for about eight months prior to his execution. Don had asked me to witness his execution so that I might tell his family and the families of others on death row what actually happens when one is killed by lethal gas. Despite strong apprehensions, I agreed to honor his request.
2. Upon my arrival at Arizona State Prison, Florence, Arizona, I was escorted by a prison official to the chapel where other witnesses for Don Harding were waiting. As a group, we avoided talking about what we were about to see. Instead, we shared memories of our personal human experiences with Don and his family, and spoke about carrying out his final wishes. We were in the chapel for nearly an hour during which time a prison official had us draw numbers from a box. This number established the order in which we would enter into the viewing area and where we would stand in proximity to the viewing windows of the gas chamber. I drew number eighteen.
3. At approximately 12:00 a.m., all the witnesses for Don, for the State and from the media, converged on the sidewalk to walk over to the Death House. No one spoke. The only noises I could hear were my own footsteps and the sounds of some inmates in the darkened cellblocks hollering at us as we passed by their windows. We filed into the Death House in the pre-designated order, as a prison staff member checked off our lottery numbers. I stood in the second of three rows, directly behind where Don was seated in the gas chamber chair. Three sides of the octagonal gas chamber had windows for viewing. As we entered and took our places, the blinds

were drawn. When all the witnesses were assembled, an official announced that Don's last appeal had failed and the execution would proceed. The door to the Death House viewing room was closed and an officer was ordered to roll up the blinds.

4. Don was strapped to the metal chair with numerous black restraints. He was facing away from us, dressed only in his underwear. I had been warned in advance of the ritualistic execution policies, and observed my fellow witnesses take on behavior which could only be described as "execution etiquette" — an unspoken but pervasive feeling that we were expected to act civilly and with detachment to the coming events. However, I was struck with a feeling of overwhelming despair as Don Harding, in the name of our government, had indeed been literally and figuratively stripped of his humanity.

5. I watched Don turn to look at one of his attorneys. He forced a slight smile, but could not disguise the child-like terror in his face. He turned the other direction and I believed he was looking for me. He never knew I was there, as he could not see the people standing directly behind him. He moved around in the chair, as much as the restraints would allow. He seemed to be mumbling to himself. He was agitated and fidgety. Knowing Don as I did, I realized that his agitation was born of his tragic desire to control one tiny aspect of this utterly dehumanizing spectacle. He wanted it to be quick and painless.

6. About 60 seconds after the blinds were lifted, the pellets were released under his chair. I heard the loud noise as they were dropped into the acid. It took about 5 seconds for the mist, and the first trace of fumes, to reach him. At that point, Don's naked back inflated against the chair as if he were taking a

large breath. His head was thrown back violently against the chair and he turned his head from side to side. He jerked and twisted as if gasping for air. At the same time, his body buckled against the straps. Severe convulsing began, and continued throughout. Even through the thick glass of the gas chamber, I heard him moan a low, guttural sound of sheer torment. I prayed for him to go quickly.

7. At one point, I was unable to sustain watching this prolonged suffering alone. I broke from my assigned standing spot and walked over to Don's minister. We held on to each other and with his arm around my shoulder, I noticed how badly I was shaking. From that position, I could closely see Don's hand and arm twitching. For the almost two minutes I stood there, his hand never stopped contorting in bizarre ways. His body, especially his back and neck had turned a deepening red. His head flung back and then drooped against his chest. The convulsions caused his body to shake so badly that I momentarily thought the chair would shake. The spasms and gasping lasted about seven minutes until his head dropped to his chest for the last time. Finally, he appeared to be dead, but I noticed what appeared to be involuntary movement of his left hand. I continued to pray that this spectacle be over.

8. I saw a prison doctor approach the glass from the other side of the chamber, in front of Don. He gazed dispassionately at Don's now quieted body and quickly moved away from the window and back into the shadows on the front side of the chamber. Soon, a prison official announced to the witnesses that the execution was complete. It had taken ten and one-half minutes. The last look at Don was one I will never forget. Where minutes before his body had been hot red, it was now slumped over and was ashen grey/beige -- the antiseptic color of the gas chamber itself. The

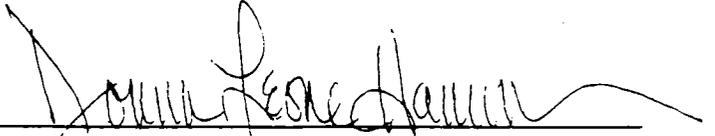
prison officials ordered the blinds to be closed. The door to the outside opened and we all filed out.

9. Nothing in my life prepared me to witness the prolonged, ritualistic torture of another human being. I have struggled to put this experience into any kind of human perspective. I had spent a lot of time imagining painful death before. My father burned to death in a plane crash when I was 21 years old. He died brutally and his body was charred beyond recognition. I am still plagued -- twenty-three years later -- by gruesome images of his unspeakable suffering in the last painful seconds of his life. Nonetheless, as I watched the agony suffered by Don Harding, I knew that his torment was far worse and much prolonged than that experienced by my father. I am told that my father probably died in 30 seconds. Don endured his torture for ten and one-half minutes. His suffering was palpable and sickening, and I felt it like a cloak draped over my body. I winced with every convulsion, moan, and every desperate contortion. Those ten and one-half minutes were the longest and most harrowing moments of my life.

10. A little more than a week later, I am still in shock over what I witnessed. I awake during the night startled and unable to sleep because of the terrifying images of Don suffocating to death. The images of his convulsing and with his hand clenched to the chair will be etched in my mind forever.

11. I am humiliated for my fellow man. Don's punishment was to torture him in view of 25 witnesses. It was not the act of civilized people. He suffered in discernable agony for over ten minutes. I talked with Don's family about his execution, but I could not bring myself to tell them just how brutally he died. Death by gas is barbaric, and an inhumane infliction of torture.

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability, and that this declaration was executed on April 14, 1992 at Tempe, Arizona.



Donna Leone Hamm

WARREN GEORGE
CAROLYN L. REID
McCutchen, Doyle, Brown & Enersen
3 Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 393-2000

MICHAEL LAURENCE
MATTHEW A. COLES
American Civil Liberties Union
Foundation of Northern California, Inc.
1663 Mission Street, Suite 460
San Francisco, California 94103
Telephone: (415) 621-2493

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

DAVID FIERRO, ROBERT HARRIS, and
ALEJANDRO GILBERT RUIZ, as
individuals and on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

JAMES GOMEZ, as an individual, and in his
capacity as Director, California Department of
Corrections, and DANIEL VASQUEZ, as an
individual, and in his capacity as Warden of
San Quentin Prison,

Defendants.

No. C-92-1482-MHP

**DECLARATION OF CARLA
McCLAIN SUBMITTED IN
LIEU OF LIVE TESTIMONY
BY STIPULATION OF THE
PARTIES**

DECLARATION OF CARLA McCLAIN

I, Carla McClain, declare the following:

1. On April 6, 1992, at approximately 12:10 a.m., I was a media witness to the execution of Donald Harding, the first execution in Arizona in twenty-nine years. I have been a reporter for almost twenty-five years, and for the last thirteen years have written on health and medicine policy issues for the Tucson Citizen. I was chosen to witness this execution from among the Citizen's staff based on seniority and experience.

2. I was escorted along with the other witnesses to the freshly painted death house, where we were taken inside one by one. The three windows which we faced were covered with blinds. Slowly, the blinds were lifted. Mr. Harding was already strapped into the execution chair. Mr. Harding was stripped to his undershorts and the white flesh of his body seemed to fill the heavy metal chair. He was tightly strapped to the chair.

3. Mr. Harding seemed agitated, his hands moving about under the straps. He appeared startled when the curtains were lifted and he was facing the Arizona Attorney General. Turning his head, Mr. Harding saw his attorney and gave him a thumbs up sign and a smile.

4. I could see the warden through the chamber as he stood with his hand on the lever that would lower the cyanide into the acid. I saw him drop his arm and heard the clank of the heavy lever which sent the pound of cyanide pellets into the vat of acid beneath the chair. I saw the deadly gas enshroud Mr. Harding in a fine, white mist.

5. Mr. Harding shuddered deeply, then slowly raised the middle finger of his left hand, aiming it at the warden who had set the execution in motion by bringing the lever down. Mr. Harding breathed deeply, his hands clenching. He groaned loudly and began to choke to death. His head dropped forward, and then swung up high and back. He groaned again and again, gasped, and his body turned bright red, almost purple as he clenched and convulsed in obvious pain.

6. As his head rolled to the right I saw his eyes begin to close. His head jerked up again, then rolled forward and then slowly down onto his chest. He was unconscious, finally, after more than two minutes.

7. For several more minutes his chest convulsed and his muscles quivered. He seemed to continue gasping and shuddering. His body heaved, and then he was still.

8. The witness room was silent. Several more minutes

passed. Then the public information officer for the prison entered and announced the execution was complete. Eleven minutes had passed.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Dated this 20th day of October, 1993.


CARLA McCLAIN