



March 16, 2017

The Hon. Terry McAuliffe  
Governor of Virginia  
Office of the Governor  
Patrick Henry Building, Third Floor  
1111 E. Broad Street  
Richmond, Va. 23219

Dear Gov. McAuliffe:

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION  
OF VIRGINIA  
701 E. FRANKLIN ST.  
SUITE 1412  
RICHMOND, VA 23219  
T/804.644.8080  
F/804.649.2733  
WWW.ACLUVA.ORG

For the fourth time this year, we write to you about the death penalty and the process of executions in the Commonwealth on behalf of the more than 20,000 ACLU members in Virginia.

We have obtained and reviewed redacted copies of two different versions of the Virginia Department of Corrections' (DOC) "Execution Manual." One of these is dated June 30, 2016, and the other is dated as being effective on Feb. 7, 2017, 20 days after the Jan. 18 execution by lethal injection of Ricky Jovan Gray, and 14 days after we wrote to you to express significant concerns about problems with Mr. Gray's execution.

You will recall that during Mr. Gray's killing by lethal injection, he spent an extended period of time (33 minutes) behind a curtain and shielded from the view of official, media and victim witnesses – including one of his attorneys – as IVs were being inserted but prior to the administration of drugs. Also, a doctor entered the execution chamber after drugs were administered and used a stethoscope to confirm Mr. Gray's death, while death was confirmed under DOC protocol in past executions only by watching a heart monitor. These circumstances suggest that something unusual happened during this execution.

In our Jan. 24 letter, we urged you to direct the DOC to revise its execution protocols to conform to standards of the American Bar Association's Death Penalty Representation Project before any additional executions are carried out. Specifically, Mr. Gray's execution violated the ABA's 2015 Execution Transparency Resolution in that:

- The Commonwealth's execution protocols themselves were not promulgated in an open and transparent manner with an opportunity for public comment,
- The entire execution process – including the setting of IVs – was not viewable by witnesses in attendance, and
- Certain information about drugs used in the execution is being held in secret.

In that letter, we also urged you to order an immediate independent investigation of Mr. Gray's execution in keeping with the ABA resolution, which calls for "an immediate, thorough, and independent review of any execution where the condemned prisoner struggles or appears to suffer, where the execution is otherwise prolonged, or where the execution deviates from the

adopted protocols and regulations concerning the execution process.” To the best of our knowledge, you have neither asked for such a review nor directed the DOC to update its protocol to reflect the ABA standards.

Nonetheless, copies of the DOC’s “Execution Manual” that we obtained show that the DOC did update its protocols effective on Feb. 7, less than three weeks after Mr. Gray was put to death. In fact, at least 30 identifiable changes to the protocols were made at that time. It is possible that more revisions were made but we are unable to determine that with certainty because portions of the document were redacted 39 times. These changes were made without notice to the public or any opportunity for comment.

The ACLU of Virginia is troubled and dismayed by the substance of many of the recent unannounced changes to the protocol. Among our most significant concerns are:

- Keeping curtains for the non-contact visiting room and the official witness rooms closed when visitors enter and opening them only after IVs have been administered. The ABA resolution specifically states that “an execution process, including the process of setting IVs, be viewable by media and other witnesses from the moment the condemned prisoner enters the execution chamber until the prisoner is declared dead or the execution is called off.”
- The inclusion of a new protocol that would allow the attending physician to use a stethoscope at their discretion to confirm the person has been killed.

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Denying witnesses the opportunity to see the person about to be killed as they are brought into the execution chamber is particularly problematic. This is the only opportunity for the public to observe the inmate's condition, e.g., whether he is bruised, scarred, ambulatory, aware of his surroundings, heavily medicated, etc. Essentially, witnesses will be deprived of the ability to confirm that the inmate has not been maltreated prior to execution.

These significant, regressive changes appear to be in direct response to problems we identified with respect to Mr. Gray’s execution. Taken together, these procedural changes imply that (with your tacit or explicit approval) the DOC’s answer to these problems is to impose further restrictions and secrecy on the execution process in Virginia, rather than seek to solve the actual problems at hand and bring transparency to the policies and the procedures.

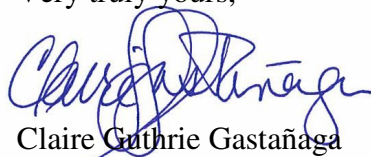
Virginia already has a system that allows the state to contract in secret with secret compounding pharmacies to make secret drugs, and now the DOC has moved to remove the actual process of executions further and further from public view. These additional restrictions on the public’s right to know are shocking, shameful and in direct contradiction with the principles of open government and accountability upon which our democracy is founded. It seems that, when confronted with questions and criticism over issues with the written protocols and actual practice of executing people in Virginia, the DOC and the administration’s posture is to ignore these concerns and then tighten the veil of secrecy even further to avoid uncomfortable questions in the future.

Your attention to this matter is urgent as Ivan Teleguz is scheduled to be killed on April 25 using the same process of lethal injection as Mr. Gray, albeit with the additional, more restrictive protocols enacted on Feb. 7. As you know, we previously asked you to commute Mr. Teleguz’s sentence from death to life without parole. We also urge you now, again, to halt

not only Mr. Teleguz's killing but any future executions in the Commonwealth at least and until such time as the DOC's "Execution Manual" has been updated to reflect the ABA standards through an open process that allows the public to understand, review and comment on all proposed changes.

We hope you will act with dispatch to ensure that Virginia's protocols for administering the death penalty exemplify the highest standards of transparency and accountability. This truly is a matter of life and death. Your failure to act would confirm that, only by keeping the process shrouded in secrecy, you and your administration can avoid the opprobrium, shame and public condemnation that would come with greater public awareness of the inhumanity and cruelty of each execution. It is time to open wide rather than close the curtains on these public killings.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire Gastañaga". The signature is fluid and cursive, with a large loop at the end.

Claire Cathrie Gastañaga  
Executive Director

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