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1 P R O C E E D I N G S
2 THE COURT: The Court is ready. All
3 counsel ready to proceed?
4 MR. FISH: Yes, your Honor. Before the
5 Court this morning is Mr. Nathaniel Code. This is
6 Code versus Cain, your Honor, No. 138,860-A. Present
7 in court is Mr. Nathaniel Code, Jr., and he is
8 represented by Mr. Gary Clements and Mr. Sweeney,
9 Mr. Sam Sweeney. Counsel is present. The State's
10 ready to proceed, your Honor. Defer to the --
11 Mr. Code.
12 MR. CLEMENTS: Thank you, your Honor.
13 Before we begin bringing any -- calling any witnesses
14 to the stand, I would like to first of all refile in
15 open court a slightly corrected version of the motion
16 to dismiss indictments that we had filed approximately
17 two weeks ago because of the case numbers to clarify
18 it and to make a separate filing for each of Case
19 No. 138,860-B and Case 144,945.
20 THE COURT: You are filing the originals
21 into the record at this time?
22 MR. CLEMENTS: Yes, your Honor.
23 THE COURT: We'll show those filed. And
24 does the State wish to respond at this time? Or is
25 that an issue that we will address at a later time?
26 MS. ESTOPINAL: Your Honor, these are
27 cases that are separate from these capital cases,
28 although connected. And we would ask that it be
29 deferred to another time to argue the merits of the
30 motions.
31 THE COURT: Anything further by you,
32 Mr. Clements?

1 MR. CLEMENTS: No. Just simply that it
2 would be -- oh, on other matters?

3 THE COURT: No. On --

4 MR. CLEMENTS: On this matter?

5 THE COURT: Yes.

6 MR. CLEMENTS: It is simply the same
7 body of the motion that was done before.

8 THE COURT: All right. So noted. And
9 we will show those matters filed and deferred for
10 later.

11 MR. CLEMENTS: All right. Thank you,
12 your Honor. Secondly, your Honor, to raise -- excuse
13 me. On the matter of the certain parties that were
14 subpoenaed today in error, the jurors, I would like to
15 request as we did in our communication back in
16 January, to have those persons released until -- to be
17 resubpoenaed at a future date.

18 THE COURT: All right. There are some
19 individuals who have been subpoenaed, called to be
20 witnesses in this matter. And, Mr. Clements, if you
21 will give me their names.

22 MR. CLEMENTS: Yes, your Honor.

23 THE COURT: And I need those witnesses
24 who are present to stand. And the Court will be
25 releasing you on today, and you will be resubpoenaed
26 at a later time.

27 MR. CLEMENTS: Okay. The first is Gayle
28 Hamilton.

29 THE COURT: We'll note that he's not
30 present in court.

31 MR. CLEMENTS: We're not positive if
32 these people all were served, but this is the group.

1 Jerry Teer.
2 THE COURT: Jerry Teer? All right.
3 MR. CLEMENTS: Pamela Lynn Dove.
4 THE COURT: Spell the last name.
5 MR. CLEMENTS: D-O-V-E. And the middle
6 name, L-Y-N-N.
7 THE COURT: Pamela Dove? Also not
8 present at this time.
9 MR. CLEMENTS: Solace Marshall,
10 M-A-R-S-H-A-L-L.
11 THE COURT: Mr. Marshall is present, and
12 Mr. Clements, he is here. And at this time, sir, you
13 are free to go and ordered to respond to any subpoenas
14 that you may receive in the future. You are free to
15 go at this time, and you will be resubpoenaed at a
16 later time. And we do appreciate your coming.
17 Anything else, Mr. Clements, request as to him?
18 MR. CLEMENTS: Simply that it won't be
19 this week.
20 THE COURT: Okay. And just so you will
21 know, it will not be for later this week, sir. Thank
22 you for coming. And you may at some time want to
23 visit the clerk's office with your subpoena if you
24 have it. All right. If you will take that to the
25 clerk's office, sir.
26 MR. CLEMENTS: Two more names, your
27 Honor.
28 THE COURT: Proceed.
29 MR. CLEMENTS: Richard Gill.
30 THE COURT: Mr. Gill, apparently you
31 won't be needed this week. And the same as I told the
32 last gentleman, you are free to go at this time. But

1 understand that you will be resubpoenaed at a later
2 time. And we do not -- it will not be later this
3 week. Also, you may want to take your subpoena to the
4 clerk's office if you have it. Thank you for coming.

5 MR. CLEMENTS: Charles Dolph, D-O-L-P-H.

6 THE COURT: Mr. Dolph, thank you for
7 coming. Just like the other two gentlemen, at this
8 time you are released. You are free to go. However,
9 you will be resubpoenaed at a later date, and you will
10 be ordered to come back to court on that date. It
11 will not be another date this week. And we do
12 appreciate your coming. If you do have your subpoena
13 with you, you may want to take it to the clerk's
14 office. Thank you, sir.

15 MR. CLEMENTS: Thank you, your Honor.
16 The next item, just as a series of housekeeping
17 measures, is the issue of the instanter subpoenas,
18 that they are four individuals that I believe are not
19 present. I'm not positive. But I believe they are
20 not, mostly because they were attempted to be served
21 but they are discovered to be residents out of state
22 to the best of our information.

23 THE COURT: All right. Do you have
24 information for those instanter subpoenas?

25 MR. CLEMENTS: I have their names and
26 some information on their location.

27 THE COURT: All right.

28 MR. CLEMENTS: Dr. Mark Zweig,
29 Z-W-E-I-G. Beg the Court's indulgence, though I will
30 need to double check on the address that I have as
31 current for each one of these that I am going to give
32 you. Dr. Kenneth Perego, P-E-R-E-G-O. Dr. Royce

1 McAnally, M-C-A-N-A-L-L-Y, I believe. Dr. Thomas
2 Flynn, F-L-Y-N-N.

3 THE COURT: All right. The Court orders
4 that those instanter subpoenas issue. So you will
5 have to provide the clerk and the sheriff's office
6 with the appropriate addresses. And there is a
7 procedure for getting the presence of those witnesses,
8 and the Court will give you any further assistance
9 you may need on that later.

10 MR. CLEMENTS: Thank you, your Honor.
11 Perhaps at the lunch break we can deal with that then.
12 Would that be sufficient or --

13 THE COURT: Well --

14 MR. CLEMENTS: Or what would be the
15 preference of the Court?

16 THE COURT: Are these witnesses that you
17 will be wanting to call on today?

18 MR. CLEMENTS: No. No, your Honor.

19 THE COURT: All right.

20 MR. CLEMENTS: This week, though, would
21 be.

22 THE COURT: All right. Well, as soon as
23 practicable.

24 MR. CLEMENTS: Understood. The matter
25 -- there was a matter discussed between counsel in
26 your chambers, your Honor. And I just wanted to
27 recommend a submission of a written motion or a
28 written memorandum concerning that subject with the
29 agreement we would prepare that and agree to present
30 that to the State and have all parties sign it. And
31 we can prepare that later today. And --

32 THE COURT: So noted.

1 MR. CLEMENTS: At this time, your Honor,
2 we would like to begin calling the witnesses. We are
3 going to be -- oh, I'm sorry, your Honor. One other
4 housekeeping matter is that we would request a
5 sequestration of all witnesses. And we will have two
6 exceptions to that.

7 THE COURT: And you might want to go
8 ahead and make those of record, what your
9 exceptions --

10 MR. CLEMENTS: The exceptions would be,
11 first, Mr. Bruce Dodd, who is counsel for the
12 Department of Corrections at Angola; and, secondly,
13 Attorney Denise LeBoeuf who is -- will make a brief
14 witness appearance, but otherwise is counsel for
15 Mr. Code as part of the Capital Post-Conviction
16 Project who are counsel of record in this matter.

17 THE COURT: So noted. I need all the
18 witnesses to be identified for the Court, for them to
19 stand, and then I will give them further instructions.
20 We will need to get the ones that are outside of the
21 courtroom as well.

22 Mr. Clements, the Court needs you to identify
23 those witnesses for the record in the -- I'm going to
24 order that those witnesses stand, and then I will give
25 them further instructions.

26 MR. CLEMENTS: Your Honor, the best
27 information we have at the moment -- because we had a
28 lengthy subpoena list, the witnesses that are present
29 are Richard Peabody, Dr. Edmundo Gutierrez, Colonel
30 Fulton Rabalais, Major David Meredith, Captain --
31 these are ranks that may have been applicable at a
32 past time. Captain Johnny Butler. Blaine Edwards.

1 Alvin Dautat, D-A-U-Z-A-T. I believe that's the
2 proper pronunciation. Warden Burl Cain. Mr. Bruce
3 Dodd. Dr. Richard Rathbone, R-A-T-H-B-O-N-E. Deputy
4 Warden Sheryl Ranatza, R-A-N-A-T-Z-A. And Dr. Marvin
5 Ettinger, E-T-T-I-N-G-E-R. Ms. Dora Rabalais. If
6 there are others, I am not positive. I'm sorry? I'm
7 sorry. Dr. Anthony Tarver.

8 MR. FISH: Mr. Courts?

9 MR. CLEMENTS: Oh, I'm sorry.

10 MR. FISH: Mr. Courts? Dan Courts.

11 MR. CLEMENTS: Don. Donald.

12 MR. FISH: Donald Courts.

13 THE COURT: Any others, Mr. Fish?

14 MR. FISH: No, your Honor.

15 THE COURT: Mr. Clements, any others?

16 MR. CLEMENTS: Not that I am aware of.

17 THE COURT: All right. I am going to
18 ask that you be sworn. Madam Clerk, would you please
19 swear in the witnesses.

20 MR. FISH: Your Honor, Mr. Clements had
21 previously said that Mr. Dodd was not going to be
22 subject to the Rule. He is standing. I don't think
23 he needs to be -- you want him to be sworn at this
24 time but make a distinction as to what his status is
25 under the Rule?

26 MR. CLEMENTS: His distinction under the
27 Rule of Sequestration is that he will be acting as
28 part of his position as counsel for the Department of
29 Corrections at Angola. He will be advising certain
30 potential witnesses about matters, but will not
31 discuss his testimony and will not otherwise violate
32 the Sequestration Rule and discuss the testimony --

1 their testimony with him. And, further, that he will
2 most of the time not be present in the courtroom.
3 THE COURT: All right. Given that, I
4 believe the Court can still place him under the Rule
5 with those --
6 MR. CLEMENTS: With those stipulations?
7 THE COURT: -- stipulations to be agreed
8 upon between defense and the State. Or is there
9 something we want to do additionally?
10 MR. FISH: No. That's -- not on that
11 matter, your Honor. Can I make -- can I make one and
12 ask if there is any other witnesses?
13 THE COURT: Certainly.
14 MR. FISH: That are under subpoena. If
15 there is anyone else present in the courtroom who has
16 been subpoenaed here in State of Louisiana versus
17 Nathaniel Code or Nathaniel Code versus Burl Cain
18 whose name has not been called out? Is there any such
19 person present in the courtroom?
20 THE COURT: And for the record, the
21 Court will note that the State has made that
22 announcement and no one has answered, no one stood up
23 in addition to those already standing. Mr. Clements?
24 MR. CLEMENTS: One note about Attorney
25 Denise LeBoeuf also.
26 THE COURT: Proceed.
27 MR. CLEMENTS: I don't know if you want
28 her to stand or not on this.
29 THE COURT: If the request is that she
30 be under the Rule, but there be --
31 MR. CLEMENTS: She be exempted to the
32 Rule.

1 THE COURT: It is up to you as far as
2 what your request is, and the Court can grant the
3 request; and, certainly, if that's the agreement of
4 counsel, the Court -- we need to say so.
5 MR. FISH: Your Honor, the State has no
6 objection to Ms. LeBoeuf being exempt from the Rule.
7 THE COURT: So noted. So no necessity
8 for placing her under the Rule at this time.
9 MR. CLEMENTS: Okay.
10 THE COURT: That being said and done,
11 Madam Clerk, would you please swear in all witnesses
12 who are standing.
13 THE CLERK: Yes, your Honor.
14 (Witnesses sworn by the clerk.)
15 THE COURT: I need you to remain
16 standing and listen to my instructions. There has
17 been a request that you be placed under the Rule of
18 Sequestration, and it is so ordered. You are ordered
19 not to discuss this case or your testimony with
20 anyone. However, if either of the attorneys has a
21 question for you outside of the courtroom, you may
22 answer their questions. Do you understand those
23 instructions?
24 THE WITNESSES: Yes, ma'am.
25 THE COURT: Is there anything else
26 requested, Mr. Clements, by you regarding said Rule of
27 Sequestration and instructions of the Court?
28 MR. CLEMENTS: Just to clarify that they
29 will be required to remain outside.
30 THE COURT: I'm going to tell them that
31 part. But anything else?
32 MR. CLEMENTS: No. No, your Honor.

1 THE COURT: And Mr. Fish, anything else?

2 MR. FISH: No, your Honor.

3 THE COURT: And as Mr. Clements was
4 mentioning, when you are placed under the Rule of
5 Sequestration, what that means is that you will have
6 to take a place outside of the courtroom during the
7 hearing. When it is time for you to testify, the
8 bailiff will come and get you.

9 And, again, you are ordered not to discuss this
10 case with anyone, not between or among yourselves or
11 with anyone else. However, if either of the attorneys
12 has a question for you outside of the courtroom, you
13 may answer their questions.

14 (Witnesses placed under Rule of Sequestration.)

15 THE COURT: Ladies and gentlemen, do you
16 understand those instructions?

17 THE WITNESSES: Yes, ma'am.

18 THE COURT: All right. I need you now
19 to take a place outside of the courtroom.

20 Mr. Clements, you will let the Court know whom you
21 wish to call first.

22 MR. CLEMENTS: Your Honor, I would like
23 -- Mr. Code would like to call Dora Rabalais to the
24 stand.

25 (Witnesses ushered out.)

26 THE COURT: All right. And for the
27 record, we will be swearing in each witness as they
28 come forward to testify.

29 MR. CLEMENTS: Yes, your Honor.

30 THE COURT: All right.

31 DORA RABALAIS,
32 the witness hereinbefore named, having been first duly

1 sworn to testify the truth, the whole truth, and
2 nothing but the truth, was examined and testified
3 under oath as follows:

4 DIRECT EXAMINATION

5 BY MR. CLEMENTS:

6 Q. Good morning, Ms. Rabalais.

7 A. Hi.

8 Q. Would you please state your full name for
9 the record.

10 A. Dora Rabalais.

11 Q. Ms. Rabalais, where are you employed?

12 A. Louisiana State Penitentiary at Angola.

13 Q. And what is your position of employment at
14 Angola?

15 A. I am the director of legal programs for the
16 Louisiana State Penitentiary.

17 Q. And how long have you been employed at
18 Angola?

19 A. Thirty-three years.

20 Q. Has it been in that capacity the entire
21 time?

22 A. The past 25 years.

23 Q. Okay. As the legal director of Angola,
24 could you describe some of your responsibilities at
25 the prison?

26 A. My department is responsible for the
27 implementation of the inmate disciplinary system, the
28 inmate grievance or ARP system. We handle litigation
29 that comes where the department or the institution is
30 a defendant. We, of course, handle this by handling
31 paperwork related to the litigation, assisting the
32 attorneys in whatever paperwork needs to be gathered

1 from the institutional level, and I also supervise the
2 inmate legal aid program for the Louisiana State
3 Penitentiary.

4 Q. Do your duties also include maintaining any
5 records relating to the lethal injection protocols and
6 their application at individual executions?

7 A. I do not personally maintain those records,
8 although when a subpoena was issued for records, it
9 was directed to me to gather the information.

10 Q. I understand. Could you state for the
11 record approximately when you received that, when you
12 were first notified of that public records request?

13 A. It was faxed to me from Bob Barbor, who is
14 an attorney for the Department of Corrections, on
15 September 6th, 2002.

16 Q. I understand. Could you repeat that last
17 date again?

18 A. September 6th, 2002.

19 Q. Okay.

20 MR. CLEMENTS: Your Honor, I'd like to
21 be able to approach the witness.

22 THE COURT: You may.

23 MR. CLEMENTS: Your Honor, I am showing
24 the witness a copy of what we will file in evidence
25 later as Petitioner's Exhibit 104, which is the
26 original request for public records filed by myself in
27 this matter in a related matter back last year. I
28 will provide a copy for the clerk's office.

29 Q. (By Mr. Clements) Ms. Rabalais, is -- are
30 you familiar with this document?

31 A. No. This document is not the document that
32 I was working off of. This document is dated August

1 30th, 2002. And the one that I worked off of in
2 gathering documents was dated September 3rd, 2002.

3 Q. May I see that document? Other than the
4 date that you see that appears on the top of that
5 document, do you -- reviewing the two documents
6 together, do you see any other material difference?

7 A. Without reviewing word for word, I would
8 say, yes, it is basically the same document.

9 Q. Thank you. And you first saw this document
10 on September the 6th?

11 A. Yes.

12 Q. As it was faxed to you by Attorney Barbor
13 from the headquarters?

14 A. Yes.

15 Q. All right. Were -- did you receive any
16 written communication from Attorney Barbor or was
17 it --

18 A. The only document was a fax coversheet that
19 said Dora Rabalais from Bob Barbor. Please gather
20 info. And that was it.

21 Q. I understand. Thank you. So would you
22 describe for the Court the steps you took to comply
23 with Mr. Barbor's request?

24 A. When I received this, I started gathering
25 information. I knew that the different wardens'
26 offices handled -- had different files on executions.
27 I went to each office and gathered the files that they
28 had there.

29 I then proceeded to copy those in that -- those
30 records. And then I compared the records I had as
31 opposed to the listing of inmates who had been
32 executed by lethal injection and came up with one

1 record that I could not locate. And that was of John
2 Brown. I later learned -- we went on and provided the
3 documents that we did have.

4 And then later, in the interim period between the
5 time we provided you with the records and we went to a
6 public records hearing in Baton Rouge, we were able to
7 locate that record. It had apparently been pulled by
8 someone who is on maternity leave and had been
9 retained in her desk. So then we copied that record
10 and supplemented the records to you.

11 I made inquiries of the -- you had asked for a
12 written procedures on the execution research, the
13 Department of Corrections and Louisiana State
14 Penitentiary directives books that I have in my
15 control, the superceded directives that dealt with the
16 death penalty, and copied those documents to be
17 provided to you.

18 I made inquiries of different departments to learn
19 if they had any records at the Louisiana State
20 Penitentiary. And whatever documents I was able to
21 recover from these different departments, I gathered
22 and copied.

23 Q. Could you enumerate for us which of the
24 different departments you are referring to?

25 A. All right. Well, I contacted the warden's
26 office, Mr. Dodd's office. Mr. Dodd is the attorney
27 for the Louisiana State Penitentiary. I contacted
28 through e-mail the secretary's office to determine if
29 a new directive had yet been written relating to the
30 change in time of the execution and was told that that
31 was in the process of being done.

32 Q. If I might interrupt for a moment. When you

1 mentioned the secretary, are you referring to
2 Secretary Richard Staulder of the Department of
3 Corrections?
4 A. Yes. I did that through the warden's
5 office. I requested that the warden's secretary
6 contact headquarters to see if they had any changes on
7 that policy. And we submitted those e-mails that were
8 directed to and from the department in that case.
9 Q. I understand.
10 A. I contacted the pharmacy and asked if they
11 had any records and was told that there were no
12 written records relating to a protocol.
13 Q. Excuse me. If I could ask, interject a
14 question. Do you recall the name of the -- any
15 personnel at the pharmacy who gave you that
16 information?
17 A. Yes. I talked with Mr. Don Courts who is
18 our pharmacist.
19 Q. And it was your recollection at the moment
20 that Mr. Courts --
21 A. He told me that there were no written --
22 there was no written documentation establishing a
23 protocol for the execution, which is what I was
24 looking for, because that's what you were requesting.
25 Q. Your request to him was specifically in
26 line --
27 A. Yes.
28 Q. -- of that area?
29 A. Right. He directed me to Mr. Steve -- or
30 Colonel Steve Moreau, who is the head of our EMS
31 services.
32 Q. Uh-huh.

1 A. And I contacted him also with a request as
2 to an established protocol. My goal in contacting
3 these people was to ask for a protocol because that's
4 what you were -- you had requested in the public
5 records document. Having found nothing in writing, I
6 reported that we were unable to provide that.

7 Q. Just to backtrack for a moment. In your
8 conversations with EMS Director Steve Moreau, what
9 response did he give you specifically as to the
10 existence of --

11 A. He told me that to his knowledge that there
12 was no written procedure defining that protocol.

13 Q. I understand. Were there others besides
14 those you have mentioned so far that you approached?

15 A. No. That was the only -- of course, I
16 pulled all of the inmate records which I -- in our
17 administrative records and checked through that. But
18 those were the only areas that I had any knowledge
19 that anyone would have any records dealing with the
20 request that you made.

21 Q. That was your best educated guess as to
22 where any possible records might be located?

23 A. Right. That's right.

24 Q. Okay. And forgive me if you have answered
25 this. But did your request cover files of any nature
26 at the headquarters of the Department of Corrections?

27 A. No. I did not. Since this came to me
28 directly from headquarters, I presumed that they would
29 gather whatever records they had if any were there.
30 And under normal circumstances, when I am submitted a
31 record -- a request for documentation of records, I
32 limit my search to the records at the Louisiana State

1 Penitentiary.

2 Q. Okay.

3 A. I have no access to the records of the
4 department.

5 Q. Are you personally aware if any documents
6 were searched for at the department of headquarters --
7 headquarters?

8 A. I have no knowledge. I have no knowledge of
9 that.

10 Q. I understand. And so therefore are you
11 personally aware whether any were discovered there at
12 all?

13 A. I don't know.

14 Q. I understand. In addition to the protocol,
15 the public records request requested several different
16 types of documents. Do you recall where the following
17 specific items might have been searched for? You
18 basically have already talked about DOC regulations.
19 Any DOC regulations promulgated or revised since the
20 enactment of the lethal injection as the exclusive
21 manner of execution in Louisiana Revised Statute
22 15:569?

23 A. Well, my office, because we are so involved
24 with litigation and we have to keep track of the
25 directives and policies that were in effect at the
26 time -- at a specific time -- we keep copies of all
27 the current directives as well as all superceded
28 directives. And in relation to that, I searched
29 through my current directives and the superceded
30 directives to provide that information.

31 Q. All right. The same question basically
32 about where the search -- you may have conducted a

1 search or requested a search of any documents related
2 to the involvement of the warden of the prison. And
3 I'm at this -- speaking either of Warden John Whitley
4 or Warden Burl Cain.

5 A. Well, by doing that, I contacted the
6 different wardens' offices and requested whatever
7 files they had. It has always been the normal
8 procedure when there is an execution that a file is
9 set up on that individual.

10 And whatever communication is established in
11 relation to that execution is placed in that file. I
12 recovered those files and used that in my research for
13 the documents you were requesting.

14 Q. And to your memory, did all of the things
15 that you collected from those wardens, particular
16 wardens' files were produced in the response to this
17 request?

18 A. There were -- in a few of the cases, there
19 were a few things we did not produce. Each file had
20 letters in them from the warden or from the secretary,
21 to various state officials just announcing the date of
22 the execution and giving the emergency numbers in the
23 death house to be used in the event that a last-minute
24 stay should be issued.

25 We didn't feel that it was appropriate to make
26 those numbers available since they are the same
27 numbers that are used in each case. I withdrew those
28 letters from the files. And, basically, they were
29 just announcements of the execution, the date, time,
30 and listing those numbers. And they were like to the
31 clerk of court, to the governor's office, to the
32 governor's attorney. And each file had similar

1 letters, basically a form letter.

2 Q. Right. Is it your -- do you have personal
3 knowledge of whether any of those records were
4 eventually produced to my request?

5 A. I know that we went back after we had the
6 public records hearing in Baton Rouge and produced
7 additional records to you at that time. I think at
8 the second hearing that we had before Judge Janice
9 Clark in Baton Rouge, by that time Warden Ranatza had
10 -- they had compiled a protocol to give to you.

11 And it was not in existence at the time that I did
12 the research. But they compiled it based on their
13 knowledge of what -- you know, what happens at an
14 execution. And I think that was given to you sometime
15 in December at the second hearing.

16 Q. If I were to tell you that the two dates for
17 the appearances in December were on December the 9th
18 and December the 11th of 2002, in the 19th Judicial
19 District Court in Baton Rouge, would have any reason
20 to disagree?

21 A. No. I know that those dates are correct.

22 Q. Thank you. And this again was a -- and if I
23 were to say that the actual styling of the reason for
24 being in court at that time was that there had been a
25 writ of mandamus filed by our office to compel further
26 production of materials that had not been produced in
27 the original --

28 A. Yes.

29 Q. Would that -- would you agree with that
30 description?

31 A. Yes.

32 Q. Thank you.

1 MR. CLEMENTS: Your Honor, I would like
2 to approach the witness once again.

3 THE COURT: You may, Counsel.

4 MR. CLEMENTS: Your Honor, I would like
5 to approach the witness and show her a section of the
6 documentation that there has been testimony about at
7 this moment.

8 And this will be intended to be introduced as
9 Petitioner's Exhibit 101 in this matter. And that --
10 would ask the witness to -- the pages of this large
11 collection of documents have been Bates stamped for
12 easy reference, and would like to direct the witness
13 to pages 340 through 344.

14 A. Yes. I believe those were the documents
15 that were compiled to be presented at the December
16 11th hearing.

17 Q. (By Mr. Clements) Thank you. So in your --
18 in your testimony, then, Ms. Rabalais, you had stated
19 that documents that had not existed before this time
20 to anyone's knowledge that you were aware of, after an
21 exhaustive search of records to look for specifically
22 something that might be -- fall into the category of
23 something called a protocol or a procedure for lethal
24 injection, that this document itself was prepared and
25 produced into court in December?

26 A. Right.

27 Q. Okay. Now, do you have knowledge of who the
28 author of this document was?

29 A. No. I really don't. Although I believe
30 that it was Warden Ranatza. I really don't know,
31 though.

32 Q. All right. And just for the record, if you

1 recall, do you recall that there was a date placed on
2 this document? Would you like to refer --

3 A. No. There was no date on it.

4 Q. No date on the document. And is there any
5 letterhead from the Department of Corrections of any
6 nature?

7 A. I may have to look at that again.

8 Q. I'm sorry.

9 A. Well, it does say Louisiana State
10 Penitentiary at the top.

11 Q. In what style and in what way? Is that the
12 -- a standard way you might expect to see a letterhead
13 from the Louisiana State Penitentiary?

14 A. Well, it depends on what you are preparing.
15 It is not unusual to have documents labeled with just
16 the heading of Louisiana State Penitentiary.

17 Directives and policies and procedures follow a
18 certain format and will usually have the little seal
19 on the directive itself. But that's not a directive.
20 Depending on what document you are preparing.

21 Q. So because this document is not a directive
22 itself, it doesn't have -- that's one of the reasons
23 why you would think that the absence of a seal on it,
24 that might explain that absence of a seal?

25 A. Yes.

26 Q. And -- sorry to have to do this again. Do
27 you recall if there was a signature attached to this?

28 A. No. There was no signature.

29 Q. No signature done on it. In your
30 experience, assuming that something is not a
31 directive, is that a -- well, do you find that unusual
32 that there was no signature on this document?

1 A. Well, it is unusual to the -- if you were
2 just going to publish this to the institution, yes.
3 But to the extent that this was prepared for a
4 specific purpose to provide information to you that
5 you had requested that the Court had asked that we
6 produce, I wouldn't say it is all that unusual because
7 it had a specific intent was to give it to you at that
8 hearing.

9 Q. I understand. Does there appear to be any
10 -- excuse me. Strike that. Did you -- your
11 understanding was that this document was prepared
12 because matters discussed within this document had
13 never been reduced to writing before?

14 A. Yes. That was my understanding.

15 Q. Okay. And do you have any idea of what
16 specific matters in here were not -- had not been
17 reduced to writing before, or did you know?

18 A. I think just specific times and specific
19 chemicals and very detailed operational procedures
20 that we used in relation to the execution, this was
21 all things that everybody knew what they had to do and
22 when it had to be done. But to my knowledge, it had
23 never been put in written form before that day.

24 Q. So it is your testimony, then, that although
25 seven lethal injections had been conducted from 1993
26 through 2002, it was -- May -- May 10th, 2002, being
27 the seventh and most recent execution by lethal
28 injection, that up to that time -- excuse me. Up
29 until sometime in December of 2002, it had only been
30 done on an oral basis and not ever reduced to writing?

31 A. To my knowledge and based on the records
32 that I found, yes.

1 Q. Thank you. Do you have -- did you -- were
2 you able to locate any documents, and where would you
3 have done so, relating to the coroner of the parish of
4 West Feliciana or his deputy, which involved the
5 matters of Revised Statute 15:570(A)(2)?

6 A. To see if the coroner had records?

7 Q. Right.

8 A. No. I did not contact the coroner's office.
9 I searched strictly the Louisiana State Penitentiary
10 records.

11 Q. Do you recall if any documents relating to
12 the coroner were included then?

13 A. Well, each file contains a pro se verbal,
14 which is required by law, and which is usually signed
15 by the coroner or the deputy coroner as a witness.

16 Q. Thank you.

17 A. And I provided that information.

18 Q. Yes. Do you -- regarding any documents
19 relating to the physician summoned by the warden of
20 Louisiana State Penitentiary according to Revised
21 Statute 15:570(A)(3), did you have any memory of
22 documents found there?

23 A. Yes. The -- again, that physician, whoever
24 it is who is appointed by the warden to be the medical
25 witness, he signs the pro se verbal as well. And that
26 was also provided to you.

27 Q. Okay. Were there any other documents
28 relating to physicians that you recall?

29 A. There may have been in one execution -- and
30 I can't recall specifically which one it was -- where
31 Dr. Thomas Flynn was appointed as the deputy coroner.
32 And there was something from someone appointing him as

1 the deputy coroner for that particular execution.

2 Q. And that was due to a conflict with the --
3 Dr. Alfred Gould, I believe?

4 A. Yes.

5 Q. Thank you. But any other documents that you
6 can recall at the moment that related to medical
7 doctors, physicians, in anything that you came across?

8 A. There may have been a -- in some of the
9 files, if my memory serves me correctly, keeping in
10 mind that it has been several months since I dealt
11 with this, but there may have been in some of the
12 files some brief notes from the physicians saying the
13 time of death or something like that. But that was
14 also provided to you.

15 Q. And were those documents obtained by a
16 request to the hospital at Angola or the medical
17 director's office?

18 A. Those were documents that were contained in
19 the file maintained by the warden's office on each
20 execution and I presume was prepared as part of the
21 execution process.

22 Q. Understood. Do you have independent memory
23 -- and, again, I don't recall if you said this. But
24 if you had made original inquiries with the office of
25 the medical director of Louisiana State Penitentiary
26 for any documents responsive to this request?

27 A. I didn't. I did not contact the medical
28 director. I did contact the medical records
29 supervisor and asked if any documents other than the
30 death certificate was contained in the medical record.
31 And I was told that that was all that they would have.
32 I did collect the death certificates where we did have

1 them and included that in the information provided to
2 you.

3 Q. Okay. So to sum up, basically, the death
4 certificate is the sole document that that --

5 A. Right.

6 Q. That the medical offices were able to
7 provide. Did you recall any documents relating to the
8 person selected by the warden of Louisiana State
9 Penitentiary to administer the lethal injection
10 according to Revised Statute 15:570(A)(4)?

11 MR. CLEMENTS: And, your Honor, if I
12 could approach for a moment.

13 THE COURT: You may, Counsel. I thought
14 you meant to approach the witness. Counsel, I need
15 lawyers on both sides to come up.

16 (Off-the-record bench discussion.)

17 THE COURT: The Court has had an
18 opportunity to speak with both Mr. Clements and
19 Mr. Fish at the bench. And at this time, the Court
20 instructs the witness not to give the names of
21 emergency medical technicians, the individual, slash,
22 person involved who administered the lethal injection.
23 Any further request by Mr. Clements?

24 MR. CLEMENTS: No, your Honor.

25 THE COURT: By the State at this time?

26 MR. FISH: No, your Honor.

27 THE COURT: All right. Counsel may
28 proceed.

29 Q. (By Mr. Clements) All right. Let's see if
30 I can remember where I was in trying to explore
31 whether you -- where you may have looked for documents
32 relating to information regarding the person or

1 persons who are selected by the warden, according to
2 Revised Statute 15:570(A)(4), without mentioning any
3 specific names.

4 A. I reviewed the records that were maintained
5 on each individual who was executed and looked for any
6 information in those files that was pertinent to what
7 you had requested. I found nothing in those files
8 that indicated anything from any individual
9 administering the lethal injection.

10 Q. Thank you. To move on to any documents that
11 were related to any revisions in the process -- we may
12 have discussed this earlier -- from its inception in
13 1993, and the first execution on March 5th, 1993, to
14 the present, including but not limited to any changes
15 in the factors used by the Department of Corrections
16 to take into consideration the weight, age, physical
17 condition of the inmate in administering the dosage of
18 chemicals and the relation between the timing of the
19 lethal injection and the time and quantity of food
20 last ingested by the inmate, do you recall where you
21 may have looked and what response, what result you
22 received on that?

23 A. For that purpose, I reviewed our directives
24 and policies and procedures. I did provide the
25 department regulations C03001, which had been
26 superseded several times during the time period that
27 you indicated and provided copies of all the
28 superseded directives.

29 I found nothing in any of my research that would
30 indicate anything with the specific amount of
31 chemicals to be used in relation to an inmate's
32 weight, height, food ingested.

1 Q. Thank you. Moving on to any documents
2 relating to personnel regarding the actual preparation
3 for and execution by lethal injection of Louisiana
4 inmates beginning with the execution by lethal
5 injection of Robert Wayne Sawyer in 1993, and up to
6 and including the execution by lethal injection of
7 Leslie Dale Martin in May of 2002.

8 A. Again, in search of that information, I went
9 through those individual files maintained on each
10 inmate who was executed and provided whatever
11 information was in those files.

12 Q. I believe your earlier testimony was that in
13 looking through the -- trying to locate the files of
14 all seven persons who had been executed, you were
15 unsuccessful, initially, in locating the file of John
16 Ashley Brown?

17 A. Right.

18 Q. And that would have been an execution from
19 April 24th, I believe, 1997. The -- is there -- was
20 there any one place where all the other six groups of
21 files were located?

22 A. Yes. The other files were located in the
23 office of the deputy warden for security. All but the
24 last -- the last inmate who was executed, I don't
25 remember his name. But --

26 Q. Mr. Leslie Dale Martin.

27 A. Right. His file was maintained in the
28 office of Warden -- Deputy Warden Ranatza. It is my
29 understanding that there had been a change in that --
30 in who would maintain those records. Warden Ranatza's
31 secretary was appointed to maintain those files
32 thereafter, after Martin's execution. She had that

1 file. The other files were in the office of the
2 assistant warden for security. I obtained those from
3 his secretary. And then the John Brown file was in
4 the file of -- in the office of Cathy Fontenot who was
5 on maternity leave at the time that I did the
6 research.

7 And when she returned, she learned that we were
8 looking for that file. We had continued to look for
9 it. And she told me she had it, and she gave it back
10 to me. And then we supplemented the record.

11 Q. You had mentioned --

12 A. One thing I did not mention --

13 Q. I'm sorry.

14 A. Earlier in looking through my notes, I
15 noticed that at the time that we did the initial
16 research, we were looking for a logbook and things
17 that would -- one of the things you were asking for
18 were logbooks and notes from the time of the -- the
19 inmate was moved to the death house to the time of
20 execution.

21 We were unable to find any such notes at the time
22 that we initially did the research. However, in
23 continuing to look, I did find some logbooks that were
24 archived, and they were labeled death-watch books.
25 And they were found regarding John Brown, Antonio
26 James, and Leslie Martin. And we copied those entries
27 in the logbook and gave them to you at the December
28 11th hearing.

29 Q. Just to back up for a moment on the issue of
30 -- if you could describe for me the name of the
31 warden, the deputy warden for security. Which office
32 was that?

1 A. Darrel Vannoy.

2 Q. And also if you could identify what office
3 Cathy Fontenot --

4 A. She is currently the assistant warden for
5 treatment. However, at that time, she was the
6 director of classification. And she served a dual
7 purpose as director of classification and press agent
8 for the Louisiana State Penitentiary.

9 Q. Do you have any personal idea of why the
10 file of John Brown would have been in -- you are
11 saying that Cathy Fontenot was at that time the
12 classification warden?

13 A. She was the director of classification.

14 Q. Classification.

15 A. However, she also served as the press agent
16 for the Louisiana State Penitentiary. And I would
17 think that her having that file had more of a role
18 with her duties as press agent rather than as director
19 of classification. She maintained two offices. One
20 was in the classification department and one was at
21 the administration building. Her press agent job was
22 more or less the office of administration building,
23 and that's where the file was located.

24 Q. I understand. So do you think from your own
25 personal memory if there was anything special about
26 press involvement in the execution?

27 A. I don't know. And I didn't see anything
28 unusual in the file.

29 Q. I understand. Thank you. In your search
30 for any documents regarding the actual timing and
31 order of injection of the lethal chemical substances
32 or description of the competency, qualifications, and

1 medical training of the particular persons who
2 actually administered the lethal injections, where did
3 you go to look and what were the results?

4 A. Again, those same areas that we discussed
5 previously, the individual records. This was in
6 relation to discussing this with Mr. Don Courts, our
7 pharmacy supervisor, and Steve Moreau, in search of
8 when I looked for the protocol.

9 Q. Okay. And were you able -- do you have any
10 independent memory of finding anything about
11 qualifications or training of any of the personnel?

12 A. I found nothing in any of the records that I
13 reviewed.

14 Q. Responsive of that subject? Thank you. You
15 -- as far as any documents relating to detailed
16 procedure for Angola or the Department of Corrections
17 planned administration of the drugs in future
18 executions, including but not limited to the timing of
19 each step of the process, the anonymous description of
20 each person involved, and a description of the extent
21 of the medical training for any future execution, did
22 you find --

23 A. I found nothing. The logical place to
24 inquire about that would have been Warden Cain's
25 office, which I inquired there. I inquired Warden
26 Ranatza's office, and they had no documentation.

27 Q. I understand. Any and all -- regarding any
28 and all documents involving the comprehensive
29 description of the administration of lethal chemicals
30 and other requested information that are separate and
31 distinct from the cursory description of the names of
32 the three chemicals that are listed in DOC

1 regulations, C03001-11C --

2 A. In some --

3 Q. Are you familiar with that last document I
4 just stated to you? Do I need -- I can --

5 A. That document that we produced that December
6 11th?

7 Q. Let me --

8 MR. CLEMENTS: If I might, your Honor, I
9 would like to approach.

10 THE COURT: You may.

11 MR. CLEMENTS: Thank you. Let the
12 record reflect I am showing the witness page 10 of the
13 Exhibit 101.

14 A. This was one of the superceded directives
15 that I provided to you in relation to the CO3001
16 directive dealing with the death penalty.

17 Q. (By Mr. Clements) Okay. And if you could
18 look for the Bates stamped numbers on the bottom of
19 the pages, if you would indicate which pages those --
20 that directive covers.

21 A. 0010 through 13.

22 Q. 10 through 13?

23 A. This was the version that was dated January
24 20th, 1992, and was superceded by a directive dated
25 9/15/97.

26 Q. Thank you. And is this directive signed by
27 anyone?

28 A. It is signed by Mr. Richard L. Staulder,
29 secretary.

30 Q. Thank you. Okay. Regarding any other notes
31 either printed, typed, or handwritten, any reports,
32 statements, photographs, supplemental reports, initial

1 reports, memoranda, scientific reports, tapes of
2 statements, interview summaries, narratives,
3 affidavits, files, audio and video recordings,
4 drawings, sketches, physical evidence, inventory logs,
5 chronologies, summaries, witness statements, witness
6 interviews, and witness interviews which are
7 responsive to the foregoing requests.

8 A. I found nothing more than what we had
9 produced in response to the previous request.

10 Q. I see. Regarding any list of the responsive
11 documents which the Department of Corrections decided
12 to withhold and any supporting authority for their
13 nondisclosure.

14 A. I believe at the December 11th, or prior to
15 -- immediately before the December 11th hearing,
16 Warden Ranatza produced to you some prescriptions and
17 that were -- there were signatures on that detailing
18 who had received those medications. And those names
19 were redacted from those files for the purpose of
20 maintaining the identity of the people who --
21 confidential the identity of the people who had
22 received the drugs.

23 MR. CLEMENTS: May I approach again, the
24 witness, your Honor?

25 THE COURT: You may.

26 Q. (By Mr. Clements) I would like to direct
27 your attention to page 960. And if you could explain
28 to me what -- if you can read that and explain to me
29 what that appears to be.

30 A. This is an e-mail from Deputy Warden Sheryl
31 Ranatza to Don Courts, our pharmacy supervisor, in
32 which she was requesting information that she had

1 requested in a telephone conversation regarding Robert
2 Sawyer, Thomas Ward, Antonio James, Dobie Gillis
3 Williams, Feltus Taylor, and Leslie Martin.

4 Q. If you would, please, turn to the next page.

5 A. Okay. The next page, labeled 00961, is a
6 prescription written by Dr. Zweig, who was one of our
7 physicians, for medication. Looks like pentathol.

8 Q. And to whom is the prescription written to?

9 A. It's written to Warden Cain.

10 Q. And -- okay. Are there any redactions on
11 that?

12 A. No.

13 Q. Okay. Can you briefly look through the next
14 11 -- excuse me -- approximately 11 pages or so to
15 see, to compare those?

16 A. All right.

17 Q. Might be more.

18 A. Through Document No. 000978, those are
19 various prescriptions written to Warden Cain over a
20 period of time signed by different physicians,
21 Dr. Zweig, Dr. Heflin, and Dr. Tarver.

22 Q. Okay. Thank you. So on -- for example, on
23 page 968, that would be -- you recognize that to be
24 the signature of Dr. Anthony Tarver?

25 A. Yes.

26 Q. Thank you. And were there any redactions on
27 any of those prescriptions, copies of --

28 A. None of those documents had redactions.

29 Q. All right. Is that different than you
30 recall that you -- the plan that was for production?

31 A. No. The documents that were after that in
32 that file you just presented to me had redactions to

1 them.

2 Q. I understand. And what were those
3 redactions, if you can recall? Or do you --

4 A. I think those were people who had -- the
5 names of people who had received these drugs from the
6 prescriptions being filled.

7 MR. CLEMENTS: May I approach the bench
8 -- witness, your Honor?

9 THE COURT: You may.

10 Q. (By Mr. Clements) On page 979 and 980,
11 these are the pages with redactions?

12 A. Yes.

13 Q. And what is -- what is the wording over the
14 first set of blacked-out areas?

15 A. Okay. It says strap-down team.

16 Q. All right. And the second?

17 A. And alternates. Strap-down team and the
18 people who usually escort the prisoner to the
19 execution area.

20 MR. CLEMENTS: I want once again to
21 approach the witness, your Honor.

22 THE COURT: You may proceed.

23 Q. (By Mr. Clements) Show again the
24 prescriptions, and this is just another copy of a
25 slightly easier-to-handle version there. Not so many
26 pages. Referring to page 966, can you tell what
27 portion of the date do you see on that?

28 A. It says 1/8/90. And the rest could either
29 be '99 or '97. I can't tell.

30 Q. Understood. Okay. If I were to tell you
31 that there was an execution of Dobie Gillis Williams
32 on January the 8th, 1999 -- January 6, was it?

1 MR. CLEMENTS: Excuse me, your Honor. I
2 will check. May I approach again, your Honor?
3 Q. (By Mr. Clements) I'm going to show the
4 witness page 129 from the Exhibit 101. If you would
5 tell me what this is -- document is, appears to be?
6 A. This is the official copy of the official
7 pro se verbal of execution that the institution is
8 required by law to file following an execution.
9 Q. Okay. And what date do we see there?
10 A. January the 8th, 1999.
11 Q. And the inmate who was executed on that
12 date?
13 A. Dobie Gillis Williams.
14 Q. Thank you. If you would go to the next date
15 that appears different on the prescription.
16 A. The next date is -- looks like June the 6th,
17 2000. Although part of the date is marked -- is
18 blocked out.
19 Q. And if you will -- referring you to Page
20 No. 172, from Exhibit 101.
21 A. It's the pro se verbal of execution
22 regarding Donald R. -- oh, I am sorry. Regarding
23 Feltus Taylor, Jr., dated June 6th, 2000.
24 Q. All right. And finally on page 232 of the
25 Exhibit 101, what is that? What does that appear to
26 be?
27 A. This is the pro se verbal of execution
28 regarding Leslie Martin, dated May 10th, 2002.
29 Q. And does -- did you cross-reference that
30 then to the prescriptions that form the last cluster
31 of prescriptions beginning on page 973?
32 A. Yes. Those dates coincide with the dates on

1 the pro se verbal.

2 Q. That would be May the 10th, 19 -- 2002.

3 A. Right.

4 Q. With Leslie Martin's execution date?

5 A. Right.

6 Q. Thank you. Just as a point of reference,
7 has Louisiana always used lethal injection as the
8 means of executing inmates condemned to death?

9 A. No. They have not.

10 MR. FISH: Objection, your Honor, as to
11 foundation of this witness.

12 THE COURT: She has answered. But the
13 Court will note the State's objection. And does the
14 defense have any response?

15 MR. CLEMENTS: Yes, your Honor. The
16 reason for the question is to lay the foundation for
17 the transition of protocols from the prior form of
18 execution, electrocution, to the present form, all of
19 which occurred during the time that Ms. Rabalais was
20 employed in the legal department at Angola State
21 Penitentiary.

22 MR. FISH: Your Honor, my objection was
23 to the foundation of the basis of the knowledge of the
24 witness as to the history of lethal injection. But
25 also, now that counsel has further explained the
26 purpose of the testimony, I do make a relevance
27 objection as to what the past history has to do with
28 the procedure that's going to be used to execute
29 Mr. Nathaniel Code.

30 THE COURT: Your response, if any,
31 Mr. Clements?

32 MR. CLEMENTS: Simply put, your Honor,

1 it's necessary to get a very detailed understanding of
2 how the procedures for lethal injection were created
3 and what part they were based on past procedures in
4 whatever form and how documentation of these matters
5 were conducted and so forth. And all -- to get as
6 clear a picture as possible understanding the entire
7 protocol and its development and modification over
8 time.

9 MR. FISH: Your Honor, I do not -- once
10 again, I do not see the relevance as to what would --
11 the only thing the Court's concerned with here as to
12 the order of the Supreme Court to conduct this hearing
13 is whether or not the procedure for execution in this
14 state is -- whether or not it is cruel and unusual
15 punishment as vis-a-vis Mr. Code.

16 It doesn't have anything to do with the history of
17 capital punishment in Louisiana. It is whether or not
18 our -- the procedures that are in place now are
19 constitutionally -- if the execution is being -- would
20 be done in a -- in a manner that is not cruel and
21 unusual as under the Constitutions of the State of
22 Louisiana and the United States.

23 THE COURT: Anything else, Mr. Clements?

24 MR. CLEMENTS: If I may respond, your
25 Honor. My question about electrocution is the sole
26 question I had on that matter for the witness. It was
27 simply to discuss the transition. And I -- if I would
28 be permitted to continue along that line on the
29 transition, that is the critical area that we are
30 talking about here.

31 THE COURT: Well, the Court -- although
32 the witness did answer that particular question that

1 you asked. And the Court is noting that you indicated
2 that's the only question you wish to ask along those
3 lines. However, the Court does sustain the State's
4 objection.

5 MR. CLEMENTS: All right.

6 Q. (By Mr. Clements) Ms. Rabalais, do you know
7 when the transition was made between the two methods?

8 MR. FISH: Objection, your Honor, as to
9 relevance. There is no relevance as to the planned
10 execution of Mr. Code when the transition was made
11 from any historical reference for the death penalty.
12 It is what -- what is in effect now and what is going
13 to happen to Mr. Code that is important. Not the
14 history lesson.

15 MR. CLEMENTS: Your Honor, this is a
16 claim based on the Eighth Amendment, a violation of
17 the Eighth Amendment of the United States Constitution
18 prohibition against cruel and unusual punishment.

19 The essence of the argument is that we need to
20 know every single facet of the protocol as was
21 developed to show whether or not this has been already
22 practiced in an unconstitutional manner and at the
23 risk that is facing Mr. Code in particular at this
24 present time.

25 MR. FISH: Your Honor, if I may respond
26 briefly?

27 THE COURT: You may.

28 MR. FISH: Your Honor, the -- there is
29 no relevance. If there is -- if the procedures were
30 carried out in an unconstitutional manner in the past,
31 those cases are moot as they are no longer in
32 existence because those people are dead. The issue is

1 what's going to happen in this case and in this case
2 alone.

3 THE COURT: Will counsel approach the
4 bench so the Court can get some clarification as to
5 the direction that Mr. Clements is attempting.

6 MR. CLEMENTS: If I may have a moment,
7 your Honor?

8 THE COURT: Yes.

9 (Off-the-record bench discussion.)

10 THE COURT: The Court has spoken with
11 all counsel at the bench and with some clarification
12 on the questions to be asked. And the Court sustains
13 the State's objection, but will allow Mr. Clements to
14 lay the foundation that he wishes. And the Court will
15 give counsel a few moments to confer.

16 Q. (By Mr. Clements) Ms. Rabalais, could you
17 tell me, if you know, do you know how the lethal
18 injection protocol that exists today, the process that
19 is existing and has been used up till today in
20 Louisiana, was initially established?

21 A. No.

22 Q. Thank you. Do you know Ms. Annette Viator?

23 A. Yes.

24 Q. And who is -- are you aware of what, if any,
25 role Ms. Viator played in the establishment of that
26 protocol?

27 A. I don't know what role she played in the
28 establishment of the protocol. All I know is that she
29 was the chief counsel for the Department of
30 Corrections when she was employed there.

31 Q. All right. Thank you. Okay. Ms. Rabalais,
32 if you know, does the Department of Corrections

1 maintain any sort of archive or repository for files
2 that are a few years old?

3 A. Yes.

4 Q. Could you tell the Court what sort of policy
5 is involved with -- how do documents get into an
6 archive?

7 A. Well, each area has a specific -- we have an
8 archive building, and each department has a specific
9 section of that archive area to store archived
10 records. We are required by law to maintain records
11 for three years.

12 Q. I'm sorry. For how many years?

13 A. For three years.

14 Q. For three years. Okay. And when you say
15 "we" you are referring to the Louisiana State
16 Penitentiary at Angola?

17 A. Yes.

18 Q. Okay. Would you know if there is a similar
19 policy for the Department of Corrections headquarters
20 in Baton Rouge?

21 A. I don't know.

22 Q. Thank you. Is there -- to your knowledge,
23 are any specific type of documents exempt from the
24 policy to destroy them after three years or the
25 authorization to destroy them?

26 MR. FISH: Objection, your Honor. Lack
27 of foundation as to the basis of this witness to give
28 an -- a legal opinion. She has not been qualified as
29 an expert witness, and I think that requires that
30 foundation for this question.

31 MR. CLEMENTS: I'll rephrase.

32 THE COURT: All right. You may proceed,

1 Counsel.

2 MR. CLEMENTS: Thank you, your Honor.

3 Q. (By Mr. Clements) Ms. Rabalais, in the
4 course of handling legal affairs and so forth at -- in
5 your department at the Louisiana State Penitentiary at
6 Angola, have you ever had documents that needed to be
7 archived?

8 A. Yes. I frequently archive records.

9 Q. Do you have any -- have you in your personal
10 experience had any documents that you felt necessary
11 to shield, say, from a three-year period of where they
12 might be destroyed later?

13 MR. FISH: Objection, your Honor, as to
14 relevance to this proceeding, whether or not this
15 witness ever as long as she's worked at Louisiana
16 State Penitentiary has ever shielded documents from
17 being destroyed within a three-year period. I mean,
18 that's a wide-ranging question to be asked of the
19 witness.

20 And I fail to see the relevance as to whether or
21 not the penalty imposed by this Court on Mr. Code is
22 going to be taken -- carried out in a cruel and
23 unusual manner has to do with how many documents over
24 the years this witness has shielded from the
25 prohibition of destruction within a three-year period
26 of issuing the document as previously testified to by
27 the witness.

28 THE COURT: Mr. Clements, your response?

29 MR. CLEMENTS: My response, your Honor,
30 is I can rephrase the question very specifically to
31 the matter at hand.

32 THE COURT: The Court will allow you to

1 do that, noting the State's objection.

2 MR. CLEMENTS: Yes.

3 THE COURT: To the previous question.

4 Q. (By Mr. Clements) Ms. Rabalais, regarding
5 any documents of the nature of what we have been
6 discussing all morning long relevant to the lethal
7 injection process in Louisiana in any facet, make, or
8 manner, have you had any reason to archive any
9 documents of that nature personally?

10 A. No.

11 Q. Okay. Are you aware of any other personnel
12 that have archived documents of that nature?

13 A. Everybody at Angola has archived records.
14 Whether it is really an individual decision of whether
15 or not you want to save your records for longer than
16 three years, a lot depends on how much space you have
17 and what use you would have for those documents in the
18 future.

19 Q. If I can just go back to the testimony you
20 gave earlier, you -- your search, did it include a
21 search of any archived areas on -- at Angola?

22 A. Yes. The archived areas that my search of
23 archives revealed, as I indicated previously, those
24 death-watch books that we had not found initially that
25 I went back and did find in the archive records.

26 Q. Okay. Almost finishing up here.
27 Ms. Rabalais, your name appears on a list of employees
28 from March the 5th, 1993, which is the date of the
29 execution of Robert Sawyer. And that is a portion, a
30 subportion of the Exhibit 101, in globo, that we will
31 be introducing. Do you have any -- I can show you the
32 copy of that. It was an overtime sheet. Are you

1 familiar with that?

2 A. Sure. That was in 1993?

3 Q. Yes. On March the 5th.

4 A. I have played no role at all with -- in --
5 with any of the lethal injections at all since it went
6 to lethal injections. So I may have been working
7 overtime on that day for some other reason. My name
8 would have appeared on the memo. But I don't believe
9 that it was in relation to the execution.

10 Q. So you were not an official witness to the
11 execution?

12 A. No, I was not.

13 Q. And my final question is: Do you have any
14 medial training?

15 A. No.

16 MR. CLEMENTS: Thank you very much,
17 Ms. Rabalais.

18 THE COURT: Does the State have any
19 questions of the witness?

20 MR. FISH: Can I have one moment, your
21 Honor?

22 THE COURT: You may.

23 MR. FISH: State has no questions, your
24 Honor.

25 THE COURT: The witness may step down.
26 Are we releasing the witness from further testifying
27 at these hearings? Or is -- go ahead.

28 MR. CLEMENTS: Essentially, yes, your
29 Honor. But before doing so, would like to move to
30 have Exhibit 101, in globo, entered into evidence.
31 (Petitioner's Exhibit 101, in globo, was offered.)

32 MR. FISH: Your Honor, the State objects

1 to the introduction of 101, in globo. Your Honor,
2 does your Honor want to tell the witness?

3 THE COURT: If the witness will wait for
4 just a moment. Go ahead, Mr. Fish, unless there is
5 some reason you don't want the witness --

6 MR. FISH: No, your Honor.

7 THE COURT: Okay.

8 MR. FISH: She was moving, and I didn't
9 know if your Honor knew that. And I was just alerting
10 the Court.

11 THE COURT: Just a moment. If the
12 witness will remain. Mr. Fish, you may proceed.

13 MR. FISH: Your Honor, the State would
14 object to the introduction as to the document at this
15 time, reurging the grounds that I urged throughout the
16 questioning of this witness concerning the relevancy
17 of the historical nature of these regulations and so
18 forth.

19 Whether or not certain prescriptions were issued
20 for some execution for sometime in the past or whether
21 or not a certain regulation was in effect in the past
22 has nothing to do with this case whatsoever. The --
23 to say nothing of the facts, your Honor, the vast
24 majority of this exhibit hasn't been identified.
25 They're just isolated pages that Mr. Clements has
26 picked out and had this witness made reference to.

27 So, I mean, there is no basis for the
28 introduction. The ones -- the many pages of which no
29 reference was made to, and then the pages that were
30 made reference to, none of which has to do with the
31 execution of -- the potential execution of Mr. Code,
32 with the possible exception of Volume II, Petitioner's

1 Exhibit 101, Volume II, pages 340 to 345. Actually, I
2 think it was at 344, which is the -- which is the
3 protocol which is in effect now at the Angola State
4 Penitentiary for the execution of convicted murderers.

5 THE COURT: The -- Mr. Clements, do you
6 have any response to the State's objection?

7 MR. CLEMENTS: I certainly do. Your
8 Honor, I think that it is clear that even cocounsel
9 will admit that there is relevancy to the fact of the
10 -- we establish -- if we establish and when we
11 establish a case that the same type of protocol
12 essentially that has been used to unconstitutionally
13 execute seven individuals in the state of Louisiana
14 over the past 10 years is the same essential protocol
15 that Mr. Code is risking, you know, to be facing as a
16 potential future execution date.

17 We would assert that there is no way that this
18 could be considered irrelevant, and that the fact that
19 it goes to the core of our case of establishing it.
20 We, however, would reserve the introduction of this
21 document for the next two, you know, witnesses to help
22 further establish with particularity all 980 pages,
23 approximately, that we have in the document, should
24 the State feel it necessary.

25 This again, just as a point of reference, was a
26 document produced as a public record response by the
27 Department of Corrections itself in response to a
28 public records action styled: Denise LeBoeuf vs.
29 Richard Staulder, Secretary of the Department of
30 Corrections, filed in September and produced in first
31 part in September the 27th, I believe, approximately.
32 The second part on December the 9th, and the third

1 part on December the 11th. These were all responsive
2 to our particularized specific requests for any shred
3 of paper that they had involving a lethal injection
4 process. To say that the -- any of these things would
5 be irrelevant, I think, is error.

6 THE COURT: All right. Let me ask you
7 this, Mr. Clements. Are you now asking the Court to
8 allow you to defer introducing those documents that --

9 MR. CLEMENTS: Yes. Until the next two
10 witnesses, if needed, to substantiate that. And we
11 will go into painstaking detail on each page if
12 necessary.

13 THE COURT: And the Court is -- notes --
14 noted the -- notes the State's objection to the
15 introduction of the exhibit, and the Court grants the
16 request that you be allowed to -- or to introduce the
17 exhibit later after trying to establish the
18 admissibility of the exhibit after I believe you said
19 a couple more witnesses.

20 MR. CLEMENTS: That's correct, your
21 Honor.

22 THE COURT: And then that will also give
23 the State an opportunity to further argue its position
24 regarding said exhibit. At this time, the Court
25 grants that request.

26 Let's deal with the witness, however. The Court's
27 concerned that once the witness leaves here, leaves
28 the courtroom, I want to know, are counsel releasing
29 the witness so that she will know that she is not to
30 return to further testify?

31 MR. CLEMENTS: That would be fine, your
32 Honor.

1 THE COURT: Mr. Clements?
2 MR. CLEMENTS: For Mr. Code, that is --
3 that's perfectly fine.
4 THE COURT: And for the State?
5 MR. FISH: The State is agreeable to
6 that, your Honor.
7 THE COURT: All right. The Court will
8 give counsel a few moments. It may be that counsel
9 may not be in the position to make that decision. Do
10 you have an additional request?
11 MR. CLEMENTS: I do, your Honor. I
12 retract my further -- my previous thing and my
13 previous agreement on this ground: That if in the
14 course of examination of the next two witnesses, if
15 the State persists in objecting to the admission of
16 any of the documentation, we already know that the
17 testimony as been given by Ms. Rabalais so far has --
18 she has been able to identify every single example
19 that I have given to her, with particularity, as to
20 dates and times and relevancy. And that if there is
21 some need that --
22 THE COURT: You may need this witness
23 later?
24 MR. CLEMENTS: -- develops, I may need
25 to call her back again to --
26 THE COURT: I understand. I just wanted
27 to be clear.
28 MR. CLEMENTS: I understand.
29 THE COURT: So the witness understands.
30 Ms. Rabalais --
31 MR. CLEMENTS: And I apologize for the
32 confusion.

1 THE COURT: So noted. I -- the Court
2 doesn't mean to speak over you, Mr. Clements. I was
3 just trying to somewhat cut to the chase.

4 MR. CLEMENTS: Sure.

5 THE COURT: As far as the witness is
6 concerned, although excused from the stand at this
7 time, you are not released and you can't leave because
8 you may be re-called by counsel later. You may now
9 take a place outside of the courtroom.

10 Will counsel come up briefly so we can look at the
11 -- our schedule for the rest of the day.

12 (Off-the-record bench discussion.)

13 THE COURT: The Court has spoken briefly
14 with counsel at the bench, and we're -- it is almost a
15 quarter till 1:00. And we're probably at a good
16 juncture for the Court to recess for us to come back
17 at two o'clock, and we'll pick up where we left off.
18 For counsel's benefit, the Court will be upstairs if
19 you need me prior to two o'clock.

20 MR. CLEMENTS: Thank you.

21 THE COURT: Court's in recess until two
22 o'clock.

23 (Lunch recess taken.)

24 THE COURT: Do counsel wish to confer
25 with the Court before we begin?

26 MR. FISH: Yes, your Honor.

27 THE COURT: Briefly?

28 MR. FISH: Yes, your Honor. Briefly.

29 THE COURT: Come forward.

30 (Off-the-record bench discussion.)

31 THE COURT: We are kind of at ease. We
32 are waiting for other counsel before we proceed. So

1 we are at ease.

2 (Off the record.)

3 MR. CLEMENTS: Your Honor, we are ready
4 to proceed at this time.

5 THE COURT: The Court has spoken with
6 all counsel at the bench briefly on some matters of
7 how we will proceed this afternoon. We're back on the
8 record in this matter at about 10 after 2:00. And we
9 are ready to proceed. I understand we need to revisit
10 the issue about the admissibility of Exhibit 101, in
11 globo, to some extent.

12 MR. FISH: Yes, your Honor. At this
13 time, the State would withdraw it's previously entered
14 objection to Exhibit 101.

15 We still argue that much of it is going to be
16 irrelevant, ultimately. At the end of the day or when
17 we argue when this matter is briefed, our position is
18 going to be that it's -- that it is irrelevant.

19 But rather than keep out the exhibit as a piece of
20 evidence, we are going to withdraw our evidentiary
21 objection, and let's let our argument go to the weight
22 of the ultimate issue as to the relevance or
23 irrelevance of the contents of much of the document.

24 THE COURT: And does -- Mr. Clements, do
25 you have any response to the State's statement?

26 MR. CLEMENTS: Except that I am pleased,
27 and we are ready to move forward. And, secondly, in
28 addition to Exhibit 101, Exhibit 104, which was the
29 letter that we had introduced which was -- contained
30 the body of the original public records request that
31 was identified by Witness Rabalais, the only thing
32 that she noted the difference being was that the date

1 was four days, five days later. Our date on the
2 document, 104, is August 30, 2002. And the date that
3 she had in the final version that went out was
4 September the 3rd, 2002.

5 And the State has told me they had no objection to
6 introducing 104 as that, that as representative of
7 that document of the original public records request.

8 (Petitioner's Exhibit 104 was offered.)

9 MR. FISH: That's correct, your Honor.

10 THE COURT: All right. As to 104, it is
11 admitted. As to 101, in globo, the Court notes the
12 State's withdrawal of its evidentiary objection. And
13 the Court understands that both the State and
14 Petitioner will be briefing and arguing those issues
15 later. And 101, in globo, is therefore admitted --

16 (Petitioner's Exhibits 101, in globo,
17 and 104 were admitted.)

18 MR. CLEMENTS: Thank you.

19 THE COURT: -- at this time. And the
20 Court is ready for other witnesses. But I believe we
21 want to address the fact that Ms. Rabalais now can be
22 excused and will not be re-called to testify later, as
23 she was kept by the Court in anticipation of the
24 concerns about the admissibility of one of the
25 exhibits.

26 MR. CLEMENTS: Right.

27 THE COURT: And it is so ordered. She
28 can be notified by counsel that she is free to go. Or
29 that's -- I believe that's the last bit of
30 housekeeping we need to do. And the Court is ready.

31 MR. SWEENEY: Petitioner calls Warden
32 Sheryl Ranatza at this time.

1 DEPUTY WARDEN SHERYL RANATZA,
2 the witness hereinbefore named, having been first duly
3 sworn to testify the truth, the whole truth, and
4 nothing but the truth, was examined and testified
5 under oath as follows:

6 DIRECT EXAMINATION

7 BY MR. SWEENEY:

8 Q. Good afternoon, Warden Ranatza.

9 A. Good afternoon.

10 Q. Could you please state your full name for
11 the record and spell it, please.

12 A. Sheryl Ranatza. S-H-E-R-Y-L R-A-N-A-T-Z-A.

13 Q. Now, Ms. Ranatza, where are you employed?

14 A. Louisiana State Penitentiary.

15 Q. And what is your position at LSP?

16 A. Deputy warden for operations.

17 Q. And how long have you been in that position?

18 A. I've been at Angola for approximately eight
19 years, and in that position for about six and a half.

20 Q. Okay. What did you do in the year and a
21 half prior to that?

22 A. Assistant warden.

23 Q. Okay. In this position, the current
24 position, do your duties include maintaining any and
25 all records relating to the lethal injection protocols
26 and their application to individual executions?

27 A. No.

28 Q. No. In your position, do you -- do you
29 maintain any records concerning the lethal injection
30 process?

31 A. I have a -- no. I keep records on death-row
32 inmates.

1 Q. Okay. And what's -- what's included in
2 those records?
3 A. Just their parish of conviction and
4 information about the crime.
5 Q. Okay. Warden Ranatza, are you familiar with
6 the public records request that was made by us?
7 A. Yes.
8 Q. I'm going to show you what's been entered
9 into the record as Exhibit 104. It is a copy of that
10 request. And I am just going to ask you to read
11 through it briefly. Just try to digest the categories
12 of information that we sought, just very briefly.
13 MR. FISH: I just want to see what you
14 gave her.
15 MR. SWEENEY: Okay. Yeah. It's 104.
16 MR. FISH: Okay. 104.
17 Q. (By Mr. Sweeney) Have you seen this
18 document before?
19 A. Yes.
20 Q. Can you describe what it is?
21 A. The document itself?
22 Q. Yes.
23 A. It is a request for public records on
24 records maintained at Louisiana State Penitentiary
25 with regard to lethal injection process.
26 Q. And when did you first see this document?
27 A. Oh, I don't recall.
28 Q. Okay. Do you remember how you came to see
29 it?
30 A. I think that it was -- our attorney Bruce
31 Dodd showed it to me.
32 Q. Okay. And did he ask -- were you asked to

1 collect records or materials relating to this request?
2 A. No. That was given to Ms. Rabalais.
3 Q. Okay. Did you ask Ms. Rabalais to collect
4 the records relating to the public records request?
5 A. No, I did not.
6 Q. Did you ask anyone else to collect any
7 records relating to the request?
8 A. I did after, I think, court proceedings in
9 Baton Rouge in December.
10 Q. Okay. And who did you then?
11 A. I asked the warden's office.
12 Q. Okay. And what was the substance of your
13 request?
14 A. There was a record that was not included in
15 the original production of documents. And the lady
16 who had maintained that record had been out on
17 maternity leave during that time. So I asked the
18 warden's office to look in her office.
19 Q. And what was the result of that?
20 A. They found the record.
21 Q. Can you remember whose file that was?
22 A. I'm not sure. I think it was John Brown.
23 Q. Okay. Let me see here. So other than that,
24 that kind of specific request made to the warden's
25 office, you did not collect any records or ask anyone
26 to collect them?
27 A. I did -- yeah. I did ask the pharmacist.
28 Q. Okay. You asked the pharmacist as well?
29 A. Uh-huh.
30 Q. And what was the substance of your request
31 to the pharmacist?
32 A. For copies of prescriptions.

1 Q. And what was the result of that?
2 A. I think -- I think he was able to produce.
3 I am not sure if it was two or three. He informed me
4 that they don't keep those records more than five
5 years.
6 Q. Okay.
7 A. And we produced those. And I really don't
8 remember which -- who they were for.
9 Q. Do you know what happens to those records
10 after five years?
11 A. No, I don't. I assume he destroys them.
12 Q. Okay.
13 MR. SWEENEY: I'm showing the witness
14 page 340 through 343 of in globo Exhibit 101. Take a
15 brief look at that. 340 through 344. My mistake,
16 your Honor.
17 Q. (By Mr. Sweeney) Have you seen this
18 document before?
19 A. Yes, I have.
20 Q. Did you create this document?
21 A. I typed it.
22 Q. Who asked you to type the document?
23 A. I don't really recall who -- how it came to
24 come in existence. I don't recall that anyone in
25 particular really asked for it.
26 Q. Do you know how this document was put
27 together?
28 A. It was put together by the I.V. team.
29 Q. Okay. Warden Ranatza, without naming names,
30 could you explain what you mean by the I.V. team?
31 A. That's the people who actually prepare the
32 inmate for the process, hooking up the I.V. lines.

1 Q. Okay. And how did -- how did you learn this
2 information? How did you learn that they were -- did
3 you ask of them to -- or did you consult with them in
4 preparation for this document?

5 A. As far as organization of the document, yes.
6 Information contained in the document, it was provided
7 by them.

8 Q. Do you know who asked them to?

9 A. No, I don't. To prepare it? I'm sorry.

10 Q. To prepare the substance of the document?

11 A. No, I don't.

12 Q. Warden Ranatza, to the best of your
13 recollection, when did you type this document?

14 A. I don't -- I don't know. I really don't
15 know.

16 Q. How about an approximation?

17 A. Sometime last year.

18 Q. Okay. Do -- can -- do you remember whether
19 it was after or before the public records request?

20 A. Which is when? I really -- I don't
21 remember.

22 Q. Okay. Was it after May 10th, 2002?

23 A. I don't know. I really -- I really don't
24 know.

25 MR. SWEENEY: I'm going to refresh the
26 witness's recollection with Petitioner's Exhibit 102.
27 It's the -- it will be -- and it will be entered.
28 It's the hearing on the writ of mandamus to collect
29 the public records. It's a public hearing. Let me
30 confer with counsel for a minute. I think they are
31 out of order. Just a moment, your Honor. Okay. I'm
32 -- it is the December 9th portion of the hearing.

1 There are two dates. Page 5 and 6 of December 9th.

2 MS. ESTOPINAL: Okay.

3 Q. (By Mr. Sweeney) Okay. Could you read the
4 bottom of page 5 to the top of page 6, to yourself.

5 MR. FISH: Your Honor, I am going to
6 impose an objection at this time. The document that I
7 have, page 5 and 6 is not the testimony of this
8 witness. It is the testimony of Mr. Dodd. And I
9 don't think you can refresh a witness's recollection
10 with somebody else's testimony.

11 MR. SWEENEY: Your Honor, you can
12 refresh a witness's recollection with anything.

13 THE COURT: Will counsel approach the
14 bench.

15 (Off-the-record bench discussion.)

16 THE COURT: The Court has conferred
17 briefly with all counsel at the bench, and the Court
18 desires to take about a 10-minute recess. The witness
19 on the stand may step down and take a place outside of
20 the courtroom. Mr. Bailiff, when all counsel are
21 ready, call me, and I will come right back.

22 (Recess taken.)

23 THE COURT: Thank you, everyone. The
24 Court is ready. Re-call your witness.

25 MR. SWEENEY: Oh, I'd call Warden
26 Ranatza.

27 (Witness returns to the stand.)

28 MR. FISH: The State withdraws the
29 objection, your Honor.

30 THE COURT: So noted.

31 Q. (By Mr. Sweeney) Having reviewed that
32 document, does that refresh your memory of when you

1 were in court on the PRA request?
2 A. Yes. I remember being in court.
3 Q. And what date was that?
4 A. December, I think.
5 Q. Okay. Are you aware that it was December
6 the 9th? Would that -- would you quarrel with that?
7 A. No, I wouldn't. I don't know the specific
8 date. But, yeah, I remember it was in December.
9 Q. Does that -- does reading that refresh your
10 memory as to when you typed 340 through 343, pages 340
11 through 343?
12 A. No, it does not.
13 Q. Okay. Warden Ranatza, assuming that a
14 protocol does exist, do you know whose job it is to
15 maintain it?
16 A. No. I do not know that it is a specific
17 responsibility of anybody. I don't know that answer.
18 Q. Can you tell me who would know that?
19 A. I think those involved in the process.
20 Q. Okay. And could you elaborate on that
21 without naming particular individuals on the I.V.
22 team?
23 A. Elaborate as to?
24 Q. You said certain individuals. And I was
25 wondering if you could, you know, explain who those
26 individuals are?
27 MS. ESTOPINAL: Your Honor --
28 MR. FISH: Objection, your Honor.
29 MR. SWEENEY: Without naming names.
30 THE COURT: So noted. Go ahead. Go
31 ahead.
32 THE WITNESS: I don't -- I don't think I

1 followed your question.
2 MR. SWEENEY: Okay.
3 Q. (By Mr. Sweeney) I originally asked you who
4 would know whose job it is to maintain protocol.
5 A. Right. And I said those involved in the
6 process.
7 Q. Okay. And without naming names, who do you
8 mean by that?
9 A. I would -- I don't know for sure. I would
10 say the I.V. team.
11 Q. Okay. How many members of the I.V. team did
12 you speak to when you were typing this?
13 A. One.
14 Q. Okay. And how many times did you meet with
15 that person?
16 A. I think our conversation was over the phone.
17 I don't know that we ever met.
18 Q. Okay. How long was the phone call between
19 you and that person?
20 A. I don't really remember. I'm sure it was
21 short in nature.
22 Q. Could you approximate?
23 A. A couple of minutes.
24 Q. Okay. You said you were -- your sole
25 responsibility in preparing that document was the
26 typing of it?
27 A. Right. And the organization of the
28 document.
29 Q. Okay. On what documents or notes or
30 anything did you base, you know, your typing and
31 organization of the document?
32 A. I think it was something that was given to

1 me by the member of the I.V. team.
2 Q. Okay. And do -- can you recall what those
3 -- what those materials were?
4 A. It was basically the same information, just
5 in a different rough format.
6 Q. Where are those rough notes that you are
7 saying this was based on?
8 A. I am sure they were shredded. I don't -- I
9 don't have any knowledge of where they are, to tell
10 you the truth.
11 Q. Why would they have been shredded?
12 A. Just because of the nature of the document.
13 Q. And what is the nature of the document?
14 A. Confidential.
15 Q. Is it a policy -- would that be your policy
16 to shred documents relating to matters such as this?
17 A. Not necessarily, no.
18 Q. Okay. Warden Ranatza, were you aware that
19 the public records request asked for any notes
20 printed, typed, or handwritten?
21 A. Yes.
22 Q. And did you deem the information the EMT
23 gave you to be privileged? Is that why? Is that why
24 you shredded the notes?
25 A. No. I -- I don't know what happened to the
26 original notes. I said I assumed they had been
27 shredded.
28 Q. Did you shred them?
29 A. No, I did not.
30 Q. Do you know who shredded them?
31 A. No, I do not.
32 Q. Okay. When was the last time you saw those

1 notes?

2 A. I can't remember. Shortly before this
3 particular document was prepared, sometime last year.
4 I don't know the date.

5 Q. Okay. I'm going to actually turn your
6 attention now to -- to some questions about the
7 archiving process at LSP. If you know, does the
8 Department of Corrections or does LSP maintain any
9 sort of archive repository for files?

10 A. Yes, we do.

11 Q. And -- and where is that located?

12 A. It is located on the grounds, prison
13 grounds.

14 Q. Okay. If something -- if a document or some
15 documents are placed into the archive, is it subject
16 to destruction after a certain number of years?

17 A. Certain documents have a certain retention
18 period, yes. And then they are destroyed.

19 Q. Okay. Do you know what the retention period
20 on lethal injection documents would be?

21 A. I would think that would be -- I'm not sure.
22 It could be a three- to five-year retention period.

23 Q. To your knowledge, are there any specific
24 type of documents that are exempt from the policy to
25 destroy archived files after three to five years?

26 A. Yes.

27 Q. And which?

28 A. That would be an inmate master prison record
29 and medical records.

30 Q. Okay. And would that -- for death-sentence
31 inmates, would that include all the information on
32 those individuals?

1 A. His -- it would include what is in his
2 master prison record and his medical record, yes.
3 Q. Okay. And were -- if there was a document
4 responsive to this public records request that was
5 over three to five years old, do you know if that
6 document would have been destroyed under your records
7 policy?
8 A. I don't know.
9 Q. On the execution dates, Warden Ranatza, what
10 are your duties?
11 A. Mine are administrative in nature.
12 Q. Okay. Could you elaborate on that a little
13 bit more? Could you flush that out?
14 A. That's -- what I do is kind of work through
15 the mechanics of the day and who is doing what in
16 terms of staff, dealing with the inmates' visitors,
17 the families' visitors, the media, food services, and
18 such as that.
19 Q. Okay. Do you have any medical training
20 yourself?
21 A. No.
22 MR. SWEENEY: I have no further
23 questions at this time.
24 MR. FISH: One moment, your Honor?
25 THE COURT: You may.
26 MR. FISH: May the State have a moment,
27 please?
28 THE COURT: Certainly.
29 CROSS-EXAMINATION
30 BY MR. FISH:
31 Q. Warden Ranatza, going back to those notes
32 that counsel for Mr. Code brought up to you that

1 resulted in page 340 to 344, of State, in globo, 101,
2 line 2, what you typed up, would that be any different
3 in content from what your notes reflected?

4 A. No.

5 Q. To your knowledge, then, there would be no
6 different -- the notes would be no different than
7 what's typed there as far as content goes?

8 A. Correct.

9 MR. FISH: No further questions, your
10 Honor.

11 MR. SWEENEY: Your Honor, I have no
12 further questions at this time. But I would move at
13 this point to enter into evidence Exhibit 102, the
14 transcription of the public records act hearing on
15 December 9th and 11th of 2002.

16 (Petitioner's Exhibit 102 was offered.)

17 THE COURT: Any --

18 MR. FISH: No objection, your Honor.

19 THE COURT: So noted. 102 is admitted
20 into evidence. The witness may step down.

21 (Petitioner's Exhibit 102 was admitted.)

22 MS. ESTOPINAL: Your Honor, is Deputy
23 Warden Ranatza free to leave? Is she released by
24 defense?

25 MR. SWEENEY: Yes, she is, your Honor.

26 THE COURT: So ordered. The witness is
27 free to go.

28 MR. CLEMENTS: One minute, please, your
29 Honor, just to confer with counsel who stepped out.

30 THE COURT: All right. The Court will
31 give counsel a few moments to confer.

32 MR. SWEENEY: Your Honor, counsel is

1 ready. Petitioner calls Johnny Butler to the stand.
2 JOHNNY BUTLER,
3 the witness hereinbefore named, having been first duly
4 sworn to testify the truth, the whole truth, and
5 nothing but the truth, was examined and testified
6 under oath as follows:
7 DIRECT EXAMINATION
8 BY MR. SWEENEY:
9 Q. Hello, Mr. Butler. Could you please state
10 your name for the record.
11 A. John Butler.
12 Q. And where are you employed?
13 A. Presently?
14 Q. Yes.
15 A. Halco Manufacturing.
16 Q. Okay. And where were you previously
17 employed?
18 A. Louisiana Department of Corrections at
19 Angola.
20 Q. And how long did you work for the Department
21 of Corrections at Angola?
22 A. I was employed there approximately 28 years.
23 Q. Okay. Who -- what was your job title and
24 rank at Angola during your -- when you left?
25 A. I went from being a sergeant in 1970, to
26 being an assistant warden before I retired.
27 Q. Okay.
28 A. Through all the ranks.
29 Q. So at the time of the March 5th, 1993,
30 execution of Robert Wayne Sawyer, you were employed at
31 LSP in what capacity?
32 A. What was the date?

1 Q. 1993.

2 A. I was probably a captain then, maybe a
3 major. No. I was probably a captain then.

4 Q. Okay. Have you ever participated in any
5 execution at Angola?

6 A. Yes, I have.

7 Q. And how many did you participate in?

8 A. If I can recall, and I am not sure about
9 this number. I think I participated in six
10 electrocutions and one lethal injection, if I'm
11 correct. I won't swear to that.

12 Q. And if I -- do you remember which inmate was
13 executed by lethal injection during that time?

14 A. I can't recall. I sure can't. It was the
15 first one, if I am correct, if I recall. But as far
16 as the name, I can't recall.

17 Q. Okay.

18 A. I been gone almost five years, and I kind of
19 left that behind me.

20 Q. Okay. If I were to tell you that it was
21 Robert Wayne Sawyer that was the first inmate executed
22 by lethal injection, would you quarrel with that?

23 A. No. If he was the first one, that's
24 probably the one I participated in.

25 Q. Okay. And what was your role in the
26 execution process?

27 A. I was part of the -- part of the what is
28 known as the strap-down team.

29 Q. Okay. And is that for all seven executions?

30 A. Yes.

31 Q. Okay. And if you could briefly describe,
32 what as a strap-down team member, what do you do?

1 What is the first thing you do on the day of the
2 execution?

3 A. As far as lethal injection or electrocution?

4 Q. Lethal injection.

5 A. Well, normally, the last day -- normally
6 they just have his -- yeah, of course, his attorney,
7 you know, the legal staff representing him visit him,
8 his family. And we kind of conduct the visit, you
9 know, coordinate that, provide security for it.

10 And then, of course, he is fed his meals during
11 the noon meal, not the last meal at the time. But his
12 family is also fed if they wish to eat. And we are
13 being as accommodating as we can to his family under
14 the circumstances.

15 And then as the time approaches, he gets his last
16 meal as he requested. And he is constantly seen by
17 his spiritual advisor or chaplain or whatever is --
18 what's his choice. And he's still just, you know, his
19 legal counsel is still there with him right up until
20 the time of the execution.

21 Q. Okay. And as a member of the strap-down
22 team, when is the first time you see the inmate or saw
23 the inmate during the day?

24 A. During that day?

25 Q. Yeah.

26 A. I don't remember if I was working at Camp F
27 in '93 or not. If I was still working at Camp F,
28 which is where the executions take place, I would see
29 him all day long because that is my area of
30 responsibility.

31 Q. Okay.

32 A. But if I was working somewhere else at the

1 time --

2 Q. Okay.

3 A. -- I would go to Camp F probably in the
4 afternoon, you know, and be there to prepare him for
5 his walk.

6 Q. Were the executions still carried out at
7 midnight in 1993?

8 A. When I left, they were.

9 Q. Okay. If you could remember, when did --
10 with keeping in mind, you know, the execution was
11 supposed to start at midnight. At what time did you
12 go to actually begin the specific duty of collecting
13 the inmate from his cell and leading him to the
14 chamber in relation to the midnight --

15 A. In the lethal injection, it's not as early a
16 preparation as it was for the electrocutions. I would
17 say with lethal injection, it was probably maybe 10
18 minutes to 12:00 when we started, I would say.

19 Q. So 11:50?

20 A. Yeah. Somewhere in there. I'm just -- give
21 or take a few.

22 Q. Okay.

23 A. I might not be exact.

24 Q. And after you would collect him from the
25 cell, where would you go next?

26 A. We'd place restraints on him and walk -- we
27 walked him from the holding cells through the lobby at
28 Camp F down a hallway past the witness room into the
29 execution chamber or room, whatever.

30 Q. Okay.

31 A. And he was strapped onto the execution
32 table.

1 Q. And how long would that whole process take?
2 A. I would say from the time the walk began to
3 he was strapped on and we exited the room was probably
4 a matter of three to four minutes, if that long.
5 Q. Okay.
6 A. I am not sure, you know.
7 Q. Okay.
8 A. It depends a lot on -- I mean, no one ever
9 resisted. But some of them walked slower than the
10 other one. We didn't drag them along or rush them,
11 you know. We just walked kind of at their pace, you
12 know. So some -- it is hard to say, you know, exactly
13 how long.
14 Q. Okay.
15 A. And I don't know if anyone ever timed it or
16 not.
17 Q. Okay. Just -- which part of the inmate's
18 body were you responsible for strapping down?
19 A. I strapped down the head.
20 Q. The head. And was that on each of the
21 executions?
22 A. We are just talking about lethal injections,
23 or are you talking about electrocution?
24 Q. Each of the seven.
25 A. No. Different ones, I had different parts.
26 Sometimes I did the legs, sometimes I did the arms,
27 sometimes the chest straps.
28 Q. Okay.
29 A. Each person knew before you went into the
30 room what your responsibility was.
31 Q. Okay.
32 A. They were rehearsed.

1 Q. Okay.
2 A. Not on inmates. On an employee of similar
3 size.
4 Q. How was it determined which part of the body
5 you would be responsible for strapping down?
6 A. It was just -- you were told, okay, we want
7 you to do this today and this today, you know.
8 Q. Okay. Was there any document to which you
9 would refer that guided you on that?
10 A. No. I don't know if anything was ever in
11 any writing as to who would do what as I recall.
12 Q. Okay.
13 A. As I say, we rehearsed it at least once and
14 sometimes more than once prior to the execution, to
15 every execution.
16 Q. Okay. How many members of the strap-down
17 team were there usually?
18 A. I want to say five. I'm not sure.
19 Q. And that was --
20 A. I want to say about five.
21 Q. Okay. And was -- and that was for lethal
22 injection as well as electrocution?
23 A. The best I can remember.
24 Q. Okay. When you would enter the chamber, who
25 else was present at that time in the chamber?
26 A. Whoever the warden at the time was was
27 present in execution chamber.
28 Q. Okay.
29 A. And besides him, it would be the strap-down
30 team.
31 Q. Okay.
32 A. And the inmate.

1 Q. Okay.

2 A. And as soon as we had them strapped in, the
3 team would exit the room.

4 Q. Okay. And would you remain to witness the
5 execution after exiting?

6 A. No. We didn't witness it. We left and went
7 out.

8 Q. Okay. Did you say that the strap-down
9 process was more complicated in lethal injection than
10 in electrocution?

11 A. The strap-down process itself was no more
12 complicated, but the preparation of the individual
13 was.

14 Q. Okay. And how was that so?

15 A. Well, on the electrocutions their head was
16 shaved. Their left leg was shaved below the knee.
17 And that had to be done prior to the time that we
18 walked him out.

19 Q. And none of that had to be done with lethal
20 injection?

21 A. No, sir.

22 Q. Did you prepare the inmate -- did you
23 prepare the inmate in any way before he -- before you
24 took him to the chamber?

25 A. For the lethal injection?

26 Q. Yes.

27 A. No. No more than -- I mean, he had his
28 spiritual advisor there to prepare him spiritually,
29 hopefully. And his legal counsel, you know. So,
30 really, all we did was actually walked him.

31 Q. Okay.

32 A. And strapped him down.

1 Q. If you are aware of this, how soon after
2 your finite role was completed did the actual
3 execution begin?

4 A. I would imagine within the next minute or so
5 'cause we would try to time it so we would have him
6 strapped into the chair before 12 o'clock, but he
7 wouldn't be sitting there any length of time, you
8 know.

9 Q. Okay.

10 A. So when the warden was standing -- I mean,
11 depending on how long it took the warden to nod his
12 head or --

13 Q. Okay.

14 A. Or make the signal to the executioner to
15 begin the process.

16 Q. Okay.

17 A. As far as I know, as soon as we walked out,
18 it began. I don't know. Like I say, we walked out
19 into a hallway and we weren't -- it was not visible.

20 Q. Is that -- does that apply for the lethal
21 injections as well as --

22 A. Yes. When we strapped them in, whether it
23 was execution or lethal injection, when we strapped
24 them in we walked out.

25 Q. Okay.

26 A. We gathered our restraints that we had on
27 him. We took them off as we were strapping him in.
28 We laid our restraints down. After he was strapped
29 in, we picked our restraints up and we exited the
30 building, the room.

31 Q. Okay. And if I am understanding you
32 correctly, all this took maybe three or four minutes

1 of transporting him from his cell to the chamber?
2 A. I would say -- I would say unless they just
3 really drug around. I don't ever recall any of them
4 doing that. No more than four minutes from the time
5 they left the cell until they were strapped in.
6 Q. And one to two minutes --
7 A. I can't say about that.
8 Q. -- of strapping him down?
9 A. Oh, it didn't take that long once we got him
10 in the room and sat him down or either laid him on the
11 table. I don't think it took over a minute or so
12 because everybody knew precisely what area they had to
13 take, had to be responsible for.
14 Q. Okay. After -- after you exited, do you
15 know what step in the procedure came next?
16 A. I had no vision and no -- could not hear
17 anything. I was out. I can't answer that.
18 Q. Okay. Did you -- do you have any knowledge
19 of that from --
20 A. All I could do is guess, and that is not
21 allowed.
22 Q. Okay. Mr. Butler, do you have any medical
23 training?
24 A. No.
25 Q. Okay. Before the actual execution date, how
26 many dry runs -- you said you did dry runs. How many
27 would you do?
28 A. Usually, we'd do one the day before. We
29 would have an officer of the approximate size and
30 build who was a volunteer, you know, to be used as
31 mainly to make sure all of our straps were adjusted
32 just right and everything as close as possible be

1 prepared. We always did one. And I -- sometimes we
2 may have done more than one, at first, when it first
3 started. But I know we always did one, anyway.

4 Q. And why would you go through the dry runs?

5 A. So -- that was not a pleasant scene. So it
6 would go as smooth as possible, you know, without any
7 more problems. I mean, you don't want to go in and
8 have a movie atmosphere, everything going wrong. You
9 don't want that, and that's not the way it happens.

10 Q. Okay. When you would be practicing the
11 strap-downs, did you take care to note how tightly you
12 strapped the inmate in?

13 A. We made them secure.

14 Q. And, you know, if you could elaborate on
15 that, how tight would that be?

16 A. I have no way of telling you how far -- as
17 far as pressure-wise or how much pounds of pressure.
18 I mean, I'm not qualified to say that.

19 Q. Okay.

20 A. We made sure the straps was secure.

21 Q. Okay. And that held -- that held true for
22 the actual --

23 A. Any time we strapped one in, we want it to
24 be secure. You don't want to redo something like
25 that.

26 Q. Okay. Did anyone with medical training
27 advise you about any of your tasks in the period
28 leading up to the execution or in -- in the period
29 leading up to the execution?

30 A. As far as doing what?

31 Q. Was there any medical consultation? Was
32 there any -- the medical director or anyone else

1 consult with you about your particular role in the
2 process?
3 A. No. Not as far as instructing us how to do
4 something. Because they had never done it. So they
5 couldn't really tell us how. You know, I mean, I'm
6 not being rude. But they -- the medical personnel had
7 never strapped anybody in. So they had never really
8 told us how to do our -- what we were doing.
9 Q. Okay. Mr. Butler, were you present when --
10 in 1995, when Antonio James was executed?
11 A. I think so. I don't know if he is the one I
12 walked to the chair or not, though. I can't recall
13 all the ones I did walk.
14 Q. Were you present for Thomas Ward's execution
15 in 1995?
16 A. I don't recall. I mean, I'm sure I was
17 there because I -- but I don't know if I actually
18 walked him to the chair or not. I don't have a list
19 of --
20 Q. In 1995?
21 A. '95? I was working, yes. I was there.
22 Q. And were you still a member of the
23 strap-down team at that point?
24 A. I am sure -- pretty sure I was. I don't
25 even -- like I say, I can't recall who all we walked.
26 Some I can recall and some I can't, as far as names.
27 Q. Okay. Was Warden Cain warden then?
28 A. In '95? I'm not sure. I'll be honest, I
29 can't recall when he came. I really can't. I don't
30 think he was. I think Warden Whitley was still warden
31 in '95. I'm not sure.
32 Q. Okay. Did you participate in any executions

1 in which Warden Cain was in the chamber?

2 A. Yes.

3 Q. And which one was that?

4 A. Like I say, I can't recall if it -- I don't
5 know exactly. I don't remember exactly when he came.
6 And I don't remember exactly the names of the ones I
7 helped strap in. So I can't tell you that. I mean,
8 I'm sure it is on the record somewhere. But I don't
9 have it.

10 Q. How many executions did you conduct while
11 Warden Cain was --

12 A. I don't know that either. Like I say, I
13 can't recall exact date when he came.

14 Q. Was it one or more?

15 A. I told you I can't recall.

16 Q. Were there any differences between Warden
17 Whitley and Warden Cain with regard to the strap-down
18 procedure?

19 A. In regards to executions?

20 Q. With regard to your specific role with the
21 strap-down procedure.

22 A. I may have had a different area to strap
23 down. But as far as procedures, they were pretty much
24 the same under both administrations.

25 Q. Okay. And how -- how did you come to be a
26 member of the strap-down team?

27 A. Well, I was -- I was the shift supervisor
28 over at Camp F when the -- when the executions first
29 resumed when Robert Wayne Williams was executed. And
30 by me being a supervisor over there, I wasn't on the
31 strap-down team then. You have someone -- what were
32 then the older more senior officers. They were

1 members of the strap-down teams then.
2 Q. Okay.
3 A. And as time went by, some of them retired.
4 A couple passed away. And some -- of course, we were
5 younger then. But not now. But some of the younger
6 ones, as we were coming up, we just kind of stepped
7 into those shoes.
8 Q. Was it the policy to --
9 A. No.
10 Q. -- have more senior members?
11 A. Well, yes. More or less.
12 Q. And did that policy persist through Warden
13 Whitley's tenure?
14 A. Yes.
15 Q. And did it continue into --
16 A. As I know right up -- the night before I
17 left, it was still that way, yes. Some of the more
18 senior officers.
19 Q. Okay. Did you volunteer for the duty?
20 A. You didn't ask to do it. But it was there,
21 and you just of, like I say, it's kind of your --
22 you're following some of these people's shoes in your
23 profession. And you just kind of step into it.
24 And if anybody had any problems with it or didn't
25 want to do it, you were certainly never told to or --
26 and I recall one person. I'm not going to call his
27 name. He participated in one, and he never
28 participated in another one. Nobody ever questioned
29 him why and nobody ever -- it was never brought up.
30 Just like it was maybe his own feelings. And I'm not
31 going to bring up that person's name.
32 Q. Sure.

1 A. But it's -- you were not told to do it. You
2 were not -- came and said, Hey, will you do it? It
3 was something that you kind of flowed into.

4 Q. Can you recall any execution where an inmate
5 struggled or fought?

6 A. Never.

7 MS. ESTOPINAL: Your Honor, I'm -- I was
8 going to object as far as Mr. Butler's source of
9 knowledge. If he has not witnessed an execution, then
10 it would just be hearsay.

11 MR. SWEENEY: It would be just to the
12 time in which he observed the inmate, which would be
13 the time from transporting him to -- from his cell
14 to --

15 THE COURT: And not the actual act?

16 MR. SWEENEY: To the chamber. Just in
17 that time, within that time frame.

18 THE COURT: All right. The Court notes
19 the State's objection.

20 MS. ESTOPINAL: Thank you, your Honor.

21 MR. SWEENEY: Could you repeat your
22 answer?

23 THE COURT: The witness may answer. You
24 may have to repeat your question.

25 THE WITNESS: Yeah. I'm kind of
26 confused a little bit.

27 Q. (By Mr. Sweeney) In the course of your
28 duties from walking the inmate from his chamber to the
29 execution -- to the actual chamber, the execution
30 chamber, do you recall if any inmate fought or
31 struggled on his way to the chamber?

32 A. I have never seen one resist in any manner.

1 Q. Okay. Mr. Butler, have you ever seen a
2 written protocol at LSP regarding lethal injection
3 protocols?
4 A. The injection?
5 Q. Yes.
6 A. No. All we did was strap them in. As far
7 as the injection itself, we didn't carry that out. We
8 put him in the chair and we left.
9 Q. And how were your specific duties
10 communicated to you?
11 A. Through our supervisors.
12 Q. Okay. And how -- and how was that relayed
13 to you?
14 A. We usually had a meeting prior to the
15 practice run and just went over what everyone would
16 do. You know, everyone pretty much knew what to do.
17 We were just told more specifically what we would be
18 doing on that particular day.
19 Q. And how long will those meetings last?
20 A. I don't really know. There is a lot of
21 times it's during the course of another meeting where
22 the other subjects would come up, not any pertaining
23 to the execution, after that was addressed.
24 So we may do the execution part of the meeting, we
25 may do some other security measures or policies and
26 talk about anything else that might be going on not
27 related to this. The meeting may last an hour, it may
28 last 30 minutes. But it may not all be about
29 preparations.
30 Q. Okay. Is it safe to assume, then, that
31 there were some members of the strap-down team present
32 and other members who had nothing to do with the

1 strap-down team?

2 A. No. Whoever is going to be on the
3 strap-down team for that particular execution was
4 going to be present at that meeting.

5 Q. Okay.

6 A. No one was left out to walk into the dark,
7 you know, just walk in uninformed.

8 Q. Okay. With -- I just want to clarify. With
9 regard to your specific role in strapping the inmate
10 down, did you ever consult or see or read any written
11 document relating to your duties?

12 A. No.

13 Q. Okay.

14 MR. SWEENEY: That's all I have at this
15 time.

16 CROSS-EXAMINATION

17 BY MR. FISH:

18 Q. Mr. Butler, I believe I heard your testimony
19 to be that you never actually witnessed an execution,
20 whether it be lethal injection or electrocution?

21 A. No, sir. I did not witness it.

22 Q. When you had your dry runs, your practices?

23 A. Yes, sir.

24 Q. The inmate himself was not used; is that
25 correct?

26 A. No, sir. Usually, the inmate was not even
27 on the premises at that area sometimes. We always
28 used a volunteer employee.

29 Q. Was there someone who was supervising the
30 run-throughs telling people what to do or making sure
31 they did what they were supposed to?

32 A. Yes, sir. We had our supervisors there.

1 Q. Was that ever your job?

2 A. To supervise?

3 Q. Yes, sir.

4 A. No, sir.

5 Q. What position did the person hold that was
6 the supervisor of the -- running the practice?

7 A. Usually, during the practice run, the
8 warden, the deputy warden. Sometimes -- and usually
9 the warden over security would be there, and then
10 other members of the strap-down team.

11 Q. And the purpose of that supervision was
12 what?

13 A. Mainly to ensure a smooth operation.

14 MR. FISH: The State has no further
15 questions, your Honor.

16 MR. SWEENEY: Petitioner has no further
17 questions, and the witness is released at this time.

18 THE COURT: The witness may step down,
19 and the witness is free to go.

20 THE WITNESS: Your Honor, I have a
21 question. Could I ask you a question? I know you
22 don't want to be questioned. But I do have something
23 I need to ask.

24 THE COURT: Does it have to do with
25 whether you can leave or not?

26 THE WITNESS: No, ma'am.

27 THE COURT: Okay. Let me ask you to do
28 this. If you will step down, then I'll figure out a
29 way for you to ask the question without you just
30 asking out at this time.

31 THE WITNESS: Okay. Thank you.

32 THE COURT: All right. Will counsel

1 come up briefly.

2 (Off-the-record bench discussion.)

3 THE COURT: Are we ready for our next
4 witness?

5 MR. CLEMENTS: Just a moment, please,
6 your Honor.

7 THE COURT: All right.

8 MR. CLEMENTS: Alvin Dauzat, your Honor.
9 We would call Alvin Dauzat to the stand.

10 THE COURT: Is that D-A-U-S-A-T?

11 MR. CLEMENTS: D-A-U-Z-A-T, to the best
12 of my knowledge.

13 THE COURT: Z-A-T? We will get the
14 spelling.

15 ALVIN DAUZAT,
16 the witness hereinbefore named, having been first duly
17 sworn to testify the truth, the whole truth, and
18 nothing but the truth, was examined and testified
19 under oath as follows:

20 DIRECT EXAMINATION

21 BY MR. CLEMENTS:

22 Q. Good afternoon, Mr. Dauzat.

23 A. Afternoon.

24 Q. Would you please state your name for the
25 record.

26 A. Alvin Dauzat.

27 Q. And spell it. Spell your last name, please.

28 A. D-A-U-Z-A-T.

29 Q. Thank you. Mr. Dauzat, where are you
30 currently employed?

31 A. I'm self-employed.

32 Q. All right. At the time of the March 5th,

1 1993, execution of Robert Wayne Sawyer, were you
2 employed with the Department of Corrections at Angola?
3 A. Yes, sir.
4 Q. And who was the warden at Angola then, to
5 your memory?
6 A. Tell you the truth, I don't remember.
7 Q. That's fine. If I were to say John P.
8 Whitley, would you --
9 A. Yeah. I think it was.
10 Q. Okay. What was your job title and rank at
11 Angola in 1993, at that time?
12 A. I was sergeant. And I was working death row
13 mostly.
14 Q. Okay. Have you ever participated in any
15 manner at any execution at Angola?
16 A. I have stayed with inmate till the
17 execution. But, know you, I never took part in the
18 execution part of it. But like I would sit with him
19 his last 12 hours.
20 Q. I see. Is that a procedure that is known as
21 a death watch?
22 A. Yes, sir.
23 Q. I see. Did you ever participate in a
24 strap-down team?
25 A. No, sir.
26 Q. Did you -- when -- the duties that you had
27 in conducting the death watch, how many different
28 inmates did you do that for, can you think?
29 A. Seven, eight, ten. Maybe ten. I'm not
30 sure. It has been a few of them though. I would say
31 maybe approximately eight, ten.
32 Q. So in 1993, though, with the Robert Wayne

1 Sawyer, do you remember that that was a function that
2 you did at that execution?
3 A. Yes, sir.
4 Q. That you stayed with him for about that
5 last --
6 A. Yes, sir.
7 Q. -- 12 hours?
8 A. Yes, sir.
9 Q. And in 1993, the executions were conducted
10 starting at midnight; is that correct?
11 A. Yes, sir.
12 Q. And so what you are telling me is that
13 approximately from noon until midnight?
14 A. Well, we would come on shift like that
15 morning.
16 Q. Okay.
17 A. It depends what time they move them toward
18 the death house.
19 Q. Right.
20 A. That when he'd go back and visit all day
21 with his family while I stayed in the visiting area
22 with his family and him.
23 Q. Okay.
24 A. When the family leaves at 6:00 in the
25 afternoon, I would sit with him at his cell until
26 approximately 11:00, 11:30. Then I was, you know,
27 they would remove me and the supervisor would take
28 over.
29 Q. The last part I didn't quite catch. They
30 removed you and the supervisor -- and your --
31 A. Yeah. Supervisor would take over.
32 Q. And the supervisor would take over?

1 A. Yes, sir.
2 Q. And to the best of your knowledge -- I know
3 you were removed. But what do you think happened next
4 to Mr. Sawyer?
5 A. Well, he was --
6 MS. ESTOPINAL: Your Honor? I'm sorry,
7 your Honor. This sounds speculative. If maybe the
8 question can be a little more --
9 MR. CLEMENTS: All right.
10 MS. ESTOPINAL: -- pointed as to the
11 witness's actual personal knowledge.
12 THE COURT: So noted.
13 Q. (By Mr. Clements) To your personal
14 knowledge, sir, was the next -- the next action that
15 happened with Robert Sawyer was that he was then
16 escorted by the strap-down team to the death chamber?
17 A. Yes, sir. Best I can understand.
18 Q. Okay. You never heard of anything else in
19 happening in between that?
20 A. No, sir.
21 Q. And then approximately when was this -- did
22 you get relieved? Just --
23 A. You know, 11:15, 11:30 at night.
24 Q. Okay. Were -- at that time, would the
25 lawyers for Mr. Sawyer still have been around towards
26 the end of that time?
27 A. I think they would stay till that time. I
28 know religious advisors and lawyers would stay late.
29 Q. Spiritual advisors would be present?
30 A. Yes. Yes, sir.
31 Q. Okay. Was Robert Sawyer the last inmate
32 that you conducted this death watch for, or were there

1 others later?

2 A. No, sir.

3 Q. Can you recall if the person who was
4 executed, that they received the next lethal
5 injection? Robert Sawyer being the first lethal
6 injection in Louisiana; the next one being Thomas Ward
7 in 1995. Can you recall if you were present for that
8 one as a death watch in that capacity?

9 A. I can't rightly say if I was present with
10 Ward or not.

11 Q. Okay. Can you recall the names of any other
12 death-row inmates after Robert Sawyer that you might
13 have conducted the death watch on?

14 A. Antonio James.

15 Q. Uh-huh.

16 A. I know.

17 Q. Okay. That would have been in 1996.

18 A. And that was the last one I recall after
19 that.

20 Q. I understand. Is there -- that's when you
21 retired?

22 A. Yeah.

23 Q. I'm sorry. Yes. Okay. So your testimony
24 in sum is that there were two separate lethal
25 injection and -- inmates that were executed by that
26 fashion that you were -- conducted the death watch
27 for. And for each one, did you keep a log?

28 A. I kept a log while I was assigned, yes.

29 Q. And what, basically, was the point of the
30 log?

31 A. People going in and out, attorneys, phone
32 calls, any security comes in and out, supervisors, you

1 know, any wardens, anybody would come in and out of
2 the death house by itself, I have it logged up.

3 Q. So this was done in handwriting?

4 A. Yes, sir.

5 Q. And it was done in like a notebook?

6 A. Yes, sir.

7 Q. Okay. And do you know why they kept those
8 notes?

9 A. Well, if something would happen or
10 anything. They knew exact time anybody came in there,
11 you know. And every time the door was unlocked, every
12 phone call he made. I imagine just for security
13 reasons.

14 Q. And so what would likely be the last entry
15 in that book for what you wrote?

16 A. When I get relieved by a supervisor.

17 Q. Okay. So and you would have put the time on
18 that too?

19 A. Yes, sir.

20 Q. Okay. So the time would have recorded --
21 that logbook would have recorded that time when that
22 transfer began?

23 A. Yes, sir.

24 Q. And other things took place that you were
25 not involved in with Mr. Sawyer after that?

26 A. Yes, sir.

27 Q. Okay. And do you have -- what happened to
28 those logbooks?

29 A. Oh, I don't know. I turned them over to my
30 supervisors.

31 Q. And, if you could, tell us the name of that
32 person.

1 A. Oh, Lord.
2 Q. If you remember.
3 A. I don't remember right off. You had to see
4 it -- whoever the supervisor -- you know, there's
5 eight, ten, fifteen supervisors around.
6 Q. Was this a particular kind of a department
7 or division or something that this person would have
8 been a supervisor in or like a camp or something?
9 A. Well, all the supervisors except the
10 wardens, you know, was all assigned to a certain camp.
11 But, I mean, supervisors from all the camps would be
12 there at that time.
13 Q. Uh-huh. So -- right. That night. But your
14 memory basically -- I'm sorry.
15 A. I'm saying myself that the log should have
16 been kept at Camp F. I'm sure it was put in the safe
17 at F.
18 Q. Okay. So your best memory is that it would
19 have been kept at --
20 A. Camp F. I assume the record was kept at
21 Camp F.
22 Q. I understand. You have no reason to think
23 anything else different than that?
24 A. No, sir. I mean, that's --
25 Q. Okay. And did you ever see these logbooks
26 after you handled them on those nights?
27 A. No, sir.
28 Q. As far as lethal injection, those two, you
29 never saw them again?
30 A. No, sir.
31 Q. Okay. Do you know, if you know at all,
32 personal knowledge about whether any kind of these

1 logs, whether they are kept or destroyed or put in an
2 archive or anything like that?
3 A. I wouldn't know, sir.
4 Q. You wouldn't know?
5 A. No, sir.
6 Q. Okay. Do you have any reason to -- see if
7 this name helps refresh your memory that possibly kept
8 -- and James Arnold might have been somebody -- the
9 supervisor you turned it over to?
10 A. James Arnold was a supervisor there.
11 Q. Was he possibly the person that turned it
12 over, do you think? Or --
13 A. He would be the person that probably would
14 have told them where to put the log or, you know, have
15 knowledge of where the logs are.
16 Q. I see.
17 A. I mean, he was head of death row.
18 Q. I understand. Okay. Did -- during the
19 course of the 12 hours that you were with the inmate
20 on the last day, did you ever dispense any medications
21 to him personally?
22 A. I don't really recall. But -- I hate to say
23 it. I am not sure.
24 Q. Let me -- go ahead.
25 A. I tell you the truth, I don't quite
26 remember.
27 Q. All right.
28 A. The practice back then was if the inmate
29 needed medicine, like say his regular medicine --
30 Q. Right.
31 A. You know, the officer on duty at the time
32 would give it to him.

1 Q. Okay.
2 A. But actually recall giving one of his
3 medicine, I might have. But I just don't recall it.
4 Q. So your testimony is that if either Robert
5 Sawyer or Antonio James were regularly receiving
6 medication at that time, you would --
7 A. I probably would have.
8 Q. You would have been likely the one --
9 A. Yeah.
10 Q. -- to have given that to him. Okay. Would
11 you have noted that in your logbooks?
12 A. Yes, sir.
13 Q. Would you have noted what kind of medication
14 you were dispensing to them?
15 A. No, sir.
16 Q. Okay.
17 A. They usually sign a sheet that have the type
18 of medication and the time it's given, and the inmate
19 would initial the sheet that he got his medicine.
20 Q. Kind of like a receipt?
21 A. Yeah.
22 Q. And then where would that paper go?
23 A. They have a safe at each camp with all the
24 medicines. It was probably returned in there, you
25 know, locked as a record.
26 Q. So it was a separate system of recording?
27 A. Yeah. Yeah.
28 Q. Medications. That you didn't go into that
29 detail into your -- the specific name of the medicine?
30 A. No, sir.
31 Q. Into your logbook.
32 A. That was all premade before I, you know, I

1 have it. And the paper. You give him his medicine,
2 get him to sign it.

3 Q. All right. Do you know -- do you know -- do
4 you remember whether either inmate that you did the
5 death watch for, Robert Sawyer or Antonio James,
6 received any Valium in the time period that you
7 were --

8 A. Not that I know of.

9 Q. Do you know if any was offered to them?

10 A. No, sir. I don't know.

11 Q. All right. You don't know if it was or not?

12 A. No. To my knowledge, it wasn't.

13 Q. To your knowledge, it was not?

14 A. Yeah.

15 Q. Okay. Was it policy for the prison --
16 standard policy for the prison for you personally to
17 dispense medication to an inmate in any other kind of
18 circumstance?

19 A. Yes, sir.

20 Q. It was. Okay.

21 A. If you work -- anywhere you work on a cell
22 block, you dispense of the medicine.

23 Q. Okay. And just for the record, do you have
24 a background in medicine at all?

25 A. No, sir.

26 Q. Okay. Are you a -- would you say that you
27 would call yourself -- that somebody else took care of
28 the prescriptions and all of that, and you just helped
29 pass on what they passed to you?

30 A. Yes, sir. At one time, we would receive the
31 medicine like in a manila envelope, each inmate's
32 medicine was in a sealed pack.

1 Q. All right.
2 A. With his name and his charts.
3 Q. Uh-huh.
4 A. And you get him to sign his charts and open
5 his bag and give him his medicine.
6 Q. Uh-huh.
7 A. Now, before I left Angola, they came out
8 where they would send them a -- it was a card with all
9 their medicine sealed on the card. And they would
10 send it down, and you just go down with the card and
11 pop out his pill on the cards with his name on it.
12 Q. Do you remember when they made that change
13 if they had sent out a memo saying there is going to
14 be a change about that?
15 A. I'm certain that they did.
16 Q. Why do you say you are certain?
17 A. Because -- I don't know. It seems like I
18 remember, you know, it was going one way for years and
19 years, we give out medicine one way.
20 Q. Uh-huh.
21 A. And I think the pharmacy notified the camps
22 that they were going to these pill packs, as they call
23 them.
24 Q. Right.
25 A. You know.
26 Q. In general, would changes of procedure like
27 that be put in a memo form?
28 A. Yes, sir.
29 Q. Would that kind of a memo be signed by
30 somebody?
31 A. Yes, sir.
32 Q. And --

1 A. A memo would have had to be signed. Yeah.
2 Q. A memo had to be signed?
3 A. Yeah.
4 Q. What do you mean by that?
5 A. Well, I mean if the pharmacy puts it out
6 what they going to change and all that, I mean, the
7 pharmacist would sign it; or if it was put out by
8 administration, a warden or a camp supervisor would
9 sign it.
10 Q. Can you recall memos that were not signed
11 that were circulated, in general?
12 A. No, sir.
13 Q. And how many years did you work at Angola,
14 approximately?
15 A. Twenty-one.
16 Q. Twenty-one years. And you can't recall a
17 memo that didn't have a signature on it?
18 A. No, sir.
19 Q. As far as a policy change?
20 A. As far as a policy change.
21 Q. Would these memos have dates on them?
22 A. Yes, sir.
23 Q. Would you have memory of any memos that came
24 out that didn't have a date on them?
25 A. No, sir.
26 Q. And why do you think that was?
27 A. Well, in order to see when this was going to
28 take effect. You know, when it was approved to take
29 effect. If it is not dated and signed, somebody
30 better ask a question about it, then.
31 Q. Somebody will ask a question, yes. Would
32 you think or do you know -- pardon me. Do you know if

1 -- strike that. Did you ever see a memo written about
2 your type of participation? In other words, the death
3 log, death-watch work? Did you see a memo ever
4 written about that?
5 A. Not that I recall.
6 Q. Okay. Do you recall seeing any kind of memo
7 about the legal injection, any other aspect of lethal
8 injection process as carried out at Angola?
9 A. No, sir.
10 MR. CLEMENTS: That's it, your Honor.
11 Thank you.
12 THE WITNESS: All right, sir. Thank
13 you.
14 THE COURT: Just a moment.
15 MR. CLEMENTS: Excuse me.
16 THE COURT: The State may have some
17 questions.
18 THE WITNESS: Oh.
19 MR. FISH: One moment, Mr. Dauzat.
20 THE WITNESS: Oh, all right.
21 THE COURT: Just a moment.
22 MR. FISH: May I have a moment, your
23 Honor?
24 THE COURT: You may.
25 MR. FISH: No questions, your Honor.
26 THE COURT: All right. The witness may
27 step down.
28 THE WITNESS: Thank you.
29 MR. CLEMENTS: Yes. Thank you.
30 MS. ESTOPINAL: Your Honor, is
31 Mr. Dauzat released?
32 THE COURT: Mr. Clements, do you intend

1 to re-call the witness later?
2 MR. CLEMENTS: I have no intention to
3 re-call Mr. Dauzat. Thank you for your testimony.
4 THE COURT: The witness is free to go.
5 Thank you.
6 THE WITNESS: Thank y'all.
7 MR. FISH: Thank you.
8 MR. CLEMENTS: We call David Meredith.
9 David Meredith.
10 DAVID MEREDITH,
11 the witness hereinbefore named, having been first duly
12 sworn to testify the truth, the whole truth, and
13 nothing but the truth, was examined and testified
14 under oath as follows:
15 DIRECT EXAMINATION
16 BY MR. CLEMENTS:
17 Q. Mr. Meredith, would you please state your
18 name for the record.
19 A. David Meredith.
20 Q. And would you spell your last name.
21 A. M-E-R-E-D-I-T-H.
22 Q. Thank you. Mr. Meredith, where are you
23 employed?
24 A. I am presently employed at a nuclear plant,
25 the River Bend Nuclear Plant in Saint Francisville.
26 Q. Could you possibly move the microphone just
27 a little bit straighter at your face? I just can't
28 hear quite through -- thank you.
29 At the time of the March 5th, 1993, execution of
30 Robert Wayne Sawyer, were you employed with the
31 Department of Corrections at Angola?
32 A. Yes, I was.

1 Q. And who, to your memory, was the warden at
2 that facility at that time?

3 A. I'm not absolutely sure. I can't remember
4 if it was Warden Whitley or if it was Warden Cain or
5 it was Warden Butler. We had three wardens there
6 right --

7 Q. Okay. If I were to state that the warden on
8 the record of various documents was Warden Whitley at
9 that time in 1993, would you have any reason to doubt
10 that?

11 A. No.

12 Q. Okay. What was your job title and rank at
13 Angola at that time, 1993?

14 A. I believe I was a major or a lieutenant
15 colonel. I have been retired for a while.

16 Q. And what -- when did you retire?

17 A. I retired in '99.

18 Q. 1999. Have you ever participated in any
19 capacity at any execution at Louisiana State
20 Penitentiary?

21 A. Yes, I have.

22 Q. Okay. How many, approximately?

23 A. Three or four.

24 Q. Three or four. And could you recall which
25 ones?

26 A. No. I believe I participated in two of the
27 lethal injections, one or two of the other, actual.
28 Now, I was involved in a lot of them, but not
29 particular, you know, in some form or other, you know,
30 I worked.

31 Q. And the distinguishing thing in your mind
32 was -- what capacity did you perform in, say, the two

1 lethal injections that you recall?

2 A. I was on the strap-down crew.

3 Q. Okay. So there may have been other
4 executions that you were also the strap-down team
5 member for prior to lethal injection?

6 A. One that I recall.

7 Q. I understand. And you may have been
8 involved in some other capacity, but it wasn't to the
9 level of a strap-down team involvement?

10 A. That's correct.

11 Q. Okay. Would it have been some sort of
12 administrative type of deal or --

13 A. Different jobs. We had openings for certain
14 security areas that --

15 Q. Okay.

16 A. That, you know, we had to be on post at.

17 Q. I understand. Is there any kind of, you
18 know, special extra security at the time of an
19 execution?

20 A. Some.

21 Q. Okay. Do -- we have -- I think we have
22 established that you were present for the 1993 lethal
23 injection for Robert Sawyer. In the next execution
24 that took place in Louisiana by lethal injection was
25 that of Thomas Ward in 1995. Do you think that that
26 was the other one that you participated in?

27 A. I believe so.

28 Q. They were like one right after -- right
29 after the other.

30 A. Right.

31 Q. Who was warden at the time of that 1995
32 execution?

1 A. I believe that Warden Cain was.

2 Q. Okay. What -- could you describe your
3 duties as a member of the strap-down team in the
4 lethal injection process?

5 A. Well, I had several duties. Usually, I was
6 the one who went to the cell while they were on death
7 watch. It was my job to handcuff and shackle and open
8 the door.

9 Q. Okay.

10 A. Then we would proceed to the death chamber,
11 and I was on the strap-down crew, which it was several
12 of us on the strap-down crew. And my job was to strap
13 the feet section down.

14 Q. Feet.

15 A. And check the other straps on the side that
16 I was working on.

17 Q. So you had two functions with the straps
18 strapping down the feet and then double-checking the
19 straps?

20 A. That's correct.

21 Q. On one side of the body?

22 A. That's correct.

23 Q. Okay. When you first came to the cell door
24 and met the inmate there to handcuff him, as you say,
25 and so forth, was there any -- who was the guards that
26 were there? What function did they have?

27 A. They usually had one officer posted there in
28 front of the cell.

29 Q. Right.

30 A. And when we, the strap-down crew, came on
31 the tier together, they usually would leave unless
32 that person was part of the strap-down crew. Usually,

1 this person was not. He would generally leave the
2 area.
3 Q. Was the person that was already there before
4 you came, the person that was recording a death log, a
5 death-watch log --
6 A. That is correct.
7 Q. Thank you. I want to talk a little bit now
8 about the time frame in which you performed your duty.
9 First, I'm going to ask you about -- well, both your
10 executions were executions that took place by statute
11 beginning at midnight; is that correct?
12 A. That's correct.
13 Q. Okay. In those executions that took place
14 on or after midnight, at what time did you first see
15 the inmate at that cell door to handcuff them,
16 approximately, to the best of your knowledge?
17 A. At the cell door or --
18 Q. Yeah.
19 A. -- prior to that? Because sometimes he
20 visited with --
21 Q. Okay.
22 A. -- some of his family or his legal --
23 Q. So you saw him during the day?
24 A. Uh-huh. Yes, sir.
25 Q. Okay. But as far as that last, very last
26 activity --
27 A. Okay.
28 Q. Approximately what time did you and other
29 members of the strap-down team appear?
30 A. When we were told to.
31 Q. Do you know if there was a particular
32 regimented time set aside for that?

1 A. Generally -- it is really hard to say. I
2 could guess. But maybe five or ten minutes prior.
3 Maybe even a little more.
4 Q. Do you mean five or ten minutes prior to
5 midnight?
6 A. Before we carried them to the death chamber.
7 Q. Oh. Do you have any idea what time of night
8 that was?
9 A. It was prior to midnight unless we received
10 other instructions.
11 Q. I understand. And how would you get those
12 other instructions?
13 A. Generally, through the warden.
14 Q. Okay. And would you be talking about the
15 head warden when you are saying that?
16 A. The head warden or maybe even the assistant
17 warden if --
18 Q. Who would be the assistant warden, let's
19 say, in the case of the Robert Wayne Sawyer execution,
20 if you recall? Warden Whitley being the head warden,
21 who would have been that assistant warden that would
22 have transported, you know, given some sort of
23 information, if any?
24 A. Well, we had three wardens that were
25 generally involved in that. The head warden and then
26 we had like the assistant warden, and then we had the
27 deputy warden who were there. Any of us -- any of
28 them could give us instructions in case there was a
29 last-minute stay or something of this nature.
30 Q. All right.
31 A. That's why I told you earlier it would --
32 may could have been different times.

1 Q. I understand.

2 A. Yeah.

3 Q. But assuming that there were no special
4 orders that came down or any kind of flurry about a
5 last-minute stay, was there a time that you have in
6 your memory as to when things were supposed to happen,
7 if it didn't, you know, that they planned to have it
8 happen?

9 A. Just prior before midnight. A lot of it had
10 to depend on the inmate, what -- how he was acting or
11 whatever.

12 Q. Uh-huh.

13 A. When we expected problems, then we might
14 would go a little earlier. But, generally, this
15 wasn't a decision that we made on our own. This was a
16 decision that was made by someone else.

17 Q. I see. So if -- information that you would
18 get, then, if someone else had done some homework or
19 something to discover whether they thought that some
20 extra special measure ought to be taken, and you might
21 come a little earlier than otherwise?

22 A. I really couldn't -- I really couldn't say
23 because each time was a little different.

24 Q. Okay.

25 A. In some cases, the -- Warden Cain, for
26 instance, would bring us and speak to us prior.

27 Q. And do you recall where that meeting took
28 place?

29 A. There at Camp F where the death house was
30 located.

31 Q. All right. And do you recall approximately
32 how long that meeting took?

1 A. No. I don't recall.
2 Q. Okay. What was the nature of those
3 discussions as you remember?
4 A. Well, one particular time, I remember we had
5 prayer and checking to see how we were.
6 Q. Okay. Do you recall, was that with the --
7 with Warden Cain?
8 A. That's correct.
9 Q. And -- okay. So judging from your earlier
10 testimony, then that inmate who was executed on that
11 evening would have been Thomas Ward?
12 A. That's correct.
13 Q. And the -- just to clarify, too, that would
14 have been the first execution by lethal injection that
15 Warden Cain ever officiated over?
16 A. I believe that's correct.
17 Q. All right. How long, if you could estimate,
18 did it take for you to go on the walk after the person
19 had -- after the inmate had been --
20 A. After he was removed from the cell?
21 Q. Correct.
22 A. Three to five minutes.
23 Q. Three to five minutes. Okay. Do you recall
24 any execution in which the inmate fought with guards
25 or struggled or gave some resistance of any nature in
26 that walk?
27 A. Never while I participated.
28 Q. Not in your presence?
29 A. Not in my presence.
30 Q. Do you recall any -- you are familiar with
31 the layout at Camp F of where the death chamber is and
32 then the witness area and so forth?

1 A. That's correct.

2 Q. Do you recall whether witnesses were present
3 in the viewing area when you escorted in Robert
4 Sawyer, for example?

5 A. I cannot remember. Because there was a set
6 of curtains there. I can't remember if the curtains
7 were open because as far as my job, it wasn't to view
8 the witnesses.

9 Q. Sure.

10 A. It was to bring that person, and my full
11 attention was on the inmate that we were bringing in.

12 Q. Right. Do you recall whether measures in
13 general were taken to protect your identity as far as
14 anybody in the public or even the witnesses,
15 officially?

16 A. At one time, yes.

17 Q. And when you say at one time, can you
18 clarify what that means?

19 A. We were asked once before whether due to
20 documentaries that were being done on death row and
21 other cases that had come up where people who would
22 want to interview about the death penalty or doing
23 some documentary of some type asked would we -- was
24 our identities -- would be, you know, hidden, and we
25 said yes. Then after reviewing some of the tape, it
26 was such a blur that you couldn't see anything because
27 we were so close together. So we were all asked then
28 at a later time could our identities be shown or our
29 faces. And I think all but one or two agreed. I'm
30 not absolutely sure.

31 Q. Did you ever see the final product of that
32 film?

1 A. I don't watch any of those.
2 Q. Right.
3 A. I watched what I had to. But as far as any
4 of the documentaries or anything like that, I hardly
5 ever watch them.
6 Q. I guess I was wondering if you had any
7 personal knowledge of like what the end result was,
8 was that one person had their face obscured somehow or
9 not, or you don't know?
10 A. I have no idea.
11 Q. Okay.
12 A. Because I never saw it -- saw it after.
13 Q. And can you recall at whose execution that
14 was?
15 A. No.
16 Q. Was -- do you recall whether that was an
17 electrocution or a lethal injection?
18 A. I don't recall.
19 Q. All right. Do you recall like what kind of
20 -- was it a film company or a TV station or something
21 like that?
22 A. Seems like it was a news -- Discovery
23 Channel maybe or -- I'm not sure.
24 Q. Okay.
25 A. I am not sure.
26 Q. All right. Okay. When you as a group on
27 the strap-down team entered into the death chamber
28 itself where the gurney is and you proceeded to help
29 strap down the inmate, who else was in the room with
30 you?
31 A. Generally, the warden and the assistant
32 warden.

1 Q. So you have the warden, assistant warden,
2 the inmate, and the strap-down team. Would that have
3 been everybody, in your memory?
4 A. Sometimes it was different because soon as
5 the inmate was strapped down we all left. So I don't
6 know what happened.
7 Q. Sure. And I'm only talking about from the
8 time frame in which you were present in that final
9 death-chamber area while --
10 A. Well, generally, we walked them back. After
11 they were strapped down, we left the area. Most of
12 the time what I can recall was the warden and -- it
13 seems like one occasion I remember the assistant
14 warden there. But I know he left because he came out
15 right behind us.
16 Q. The assistant warden?
17 A. I think so.
18 Q. Uh-huh.
19 A. I believe so.
20 Q. And do you recall which assistant warden
21 that was?
22 A. No. I don't even remember.
23 Q. Okay. And the -- did you -- there is the
24 death chamber, am I correct, and then there is a
25 smaller room, an alcove, so to speak, or something and
26 then another room past that; is that correct as far as
27 the layout of this?
28 A. That is correct.
29 Q. And that the wall that separates the death
30 chamber from the alcove area, is that alcove area is
31 where the execution team operates from, so to speak?
32 Or do you know that?

1 A. Possibly.
2 Q. I'm sorry?
3 A. Possibly.
4 Q. Possibly. Okay. Now, do -- were -- was
5 anybody present in that second alcove room at the time
6 when you were passing to leave? There was no one
7 there?
8 A. I don't remember.
9 Q. You don't remember?
10 A. Because I couldn't see. When we came in the
11 room through the front door that goes into --
12 Q. Right.
13 A. All you see is the gurney there. This would
14 be in a lethal injection or during execution, it was a
15 chair. To the left was a wall, and it had a window or
16 mirror right there, but you could not see through.
17 Q. Okay.
18 A. So we on the shake-down crew, unless we had
19 prior knowledge, which I didn't, I had no idea who was
20 behind there.
21 Q. Right. And I am not trying to go down a
22 road to ask you any -- of names. What I am asking,
23 though, is that room where that mirror or -- we'll
24 assume for the moment a mirror or a window of some
25 sort. Did you -- the wall where that mirror is, did
26 you pass from the death chamber into that room where
27 that is and pass out, or you went out another way?
28 A. No. We come in -- we went out the same way
29 we came in.
30 Q. And that -- the door to do that is from --
31 A. From the front.
32 Q. And where is that in relation to where this

1 room that has the mirror?

2 A. When you came -- when you come down the
3 hall --

4 Q. Uh-huh.

5 A. -- at Camp F, you are going toward the death
6 chamber. You go through two doors. The second door,
7 you are in the actual death chamber. There is the
8 gurney.

9 Q. Right.

10 A. After the inmate was strapped down, we would
11 immediately turn; and we would come out the same door
12 that we went in, and we would exit to the lobby area.
13 And that's where we would remain until we were
14 dismissed.

15 MR. CLEMENTS: Your Honor, may I
16 approach the witness?

17 THE COURT: You may.

18 Q. (By Mr. Clements) I would like to ask the
19 witness if he could just make a very, very simple
20 sketch of the -- of what he just described so that we
21 have a better understanding of -- just say a rectangle
22 for where the death chamber is.

23 A. But you don't have a layout of the death
24 chamber?

25 Q. Well, I am not sure that I do. I thought I
26 did. But it doesn't sound like it makes sense to me.

27 A. Could I see what you do have?

28 Q. Well, all that that existed is this, if I
29 could, it's page 787 out of Exhibit 101. This is a
30 graphic of -- a graphic that was produced just to
31 explain in a general fashion from -- it doesn't have a
32 date on it. But --

1 A. Okay.
2 Q. It is done at the first time, of the first
3 execution. Is that about right?
4 A. Through the door right here. (Indicates.)
5 Q. There's a door in the area that is on this
6 area?
7 A. Right here. (Indicates.)
8 Q. Okay.
9 A. Then there is a small hallway. If you turn
10 to the right, this is the observation room.
11 Q. The observation room being where the
12 official witnesses that go back and sit?
13 A. That is correct. The second door which I
14 referred to earlier is the door that actually goes --
15 here's where the --
16 Q. Where the gurney is?
17 A. Where the gurney is. When you were
18 referring to -- this is the room that I thought you
19 were referring to.
20 Q. That's what we call the alcove.
21 A. We did not go through the alcove room.
22 Q. You have no purpose or --
23 A. We had no purpose, no reason to go back
24 there. Once the inmate was strapped here on the
25 gurney --
26 Q. Uh-huh.
27 A. -- then we filed out through the same way
28 that we came back in.
29 Q. I understand.
30 A. That was through the door, into the hallway,
31 through a second door, into the main lobby out here.
32 Q. Okay. And just so that this is for the

1 record, because you can't really see it, in this
2 drawing there is that little word "hallway" that
3 appears; is that correct?
4 A. That's --
5 Q. Which is the same thing that you are
6 referring to as the hallway?
7 A. That's correct.
8 Q. There appears a door on the right-hand side
9 of that which leads into what's the observation room?
10 A. That's correct.
11 Q. That is noted in the diagram. And at a
12 90-degree angle to that door is a door that you say is
13 the one you entered in with the strap-down team. And
14 then there appears to be some sort of a squiggly line
15 like a curtain or something like that? That you
16 can --
17 A. Yeah. That curtain -- I believe there was a
18 curtain there that could have been pulled.
19 Q. At any rate, it would be through that area
20 where this curtain appears that you would pass through
21 immediately?
22 A. That's correct.
23 Q. After you went through that second door, you
24 would go in through that curtain area and then you
25 would be right there in the death chamber?
26 A. That is correct.
27 Q. I understand. And so that this little
28 alcove area, which is completely separate from any of
29 the areas you have just described, is an area that
30 you -- neither you nor any of the strap-down team had
31 to be in?
32 A. We had no reason to be there.

1 Q. I understand.
2 MR. FISH: Do you want to introduce this
3 or something? Did he draw on it?
4 MR. CLEMENTS: He didn't.
5 MR. FISH: Oh. Okay.
6 MR. CLEMENTS: He didn't really draw on
7 it. It's just --
8 MR. FISH: Okay. All right.
9 MS. ESTOPINAL: Okay.
10 MR. CLEMENTS: Thank you. Again, that's
11 page 787, out of the Exhibit 101. All right.
12 A. The first door I referred to --
13 Q. (By Mr. Clements) Yes, sir.
14 A. That door stays locked. And the reason why
15 that door was there was that anybody coming into the
16 lobby, that would keep them from wandering back to the
17 back where the observation room was or where the
18 gurney was.
19 Q. Okay.
20 A. Even though there was two doors, and both of
21 them were locked. That drawing doesn't show the first
22 door coming from the lobby into the little hallway.
23 MR. CLEMENTS: I'd like to reapproach
24 the witness, and with a red pen, have him mark on
25 this. And then we'll make this a separate exhibit.
26 THE COURT: You may.
27 Q. (By Mr. Clements) If you would, please,
28 mark what you just described as that first door that's
29 locked.
30 A. (Witness complies.)
31 Q. I see. And --
32 A. You have a door here.

1 Q. Uh-huh.
2 A. And then you have, once you enter this door,
3 you can either turn and go to the observation room.
4 If not, this door here, you enter into where the
5 gurney is, the execution table. (Indicates.)
6 Q. I see. And have you ever stood in the area
7 that is the observation room?
8 A. When I was over Camp F, I wanted to make
9 sure that area was clean.
10 Q. Okay. And -- okay.
11 A. It was mainly for housekeeping, you know.
12 Q. Sure.
13 A. And make sure it had the right chairs and
14 whatever that was needed of what we were required by
15 law that had to be there.
16 Q. Could you just put -- draw a line from where
17 you drew that door, and just sign your name? And that
18 way we will know what document we are talking about.
19 A. Uh-huh. (Witness complies.)
20 Q. Thank you very much.
21 A. Okay, sir.
22 MR. CLEMENTS: We will produce that as
23 soon as possible, your Honor.
24 Q. (By Mr. Clements) Mr. Meredith, do you have
25 any medical training?
26 A. I was an EMT at the time. I am no longer an
27 EMT.
28 Q. Okay. Were you an EMT -- did you have that
29 training during --
30 A. At that time?
31 Q. At the time when you were on the strap-down
32 team for those two?

1 A. Part of the time. Not -- I believe the last
2 -- before I retired, I let it go because I was in
3 school taking college courses at the time. And I
4 couldn't keep up my EMT as well as that also.
5 MR. CLEMENTS: Your Honor, may I
6 approach, please? Excuse me. To approach the bench,
7 please.
8 MS. ESTOPINAL: Oh.
9 THE COURT: Counsel come up.
10 (Off-the-record bench discussion.)
11 THE COURT: Mr. Bailiff, let's take a
12 ten-minute recess, and then we'll come back and pick
13 up where we left off.
14 (Recess taken.)
15 THE COURT: The Court is ready.
16 MR. CLEMENTS: Yes, your Honor. We're
17 ready to resume questioning. And we dealt with the
18 matter that we had a concern about, and it is not a
19 problem.
20 THE COURT: You may proceed.
21 MR. CLEMENTS: Thank you.
22 Q. (By Mr. Clements) Mr. Meredith, before the
23 actual execution date, did the strap-down teams that
24 you participated in do dry runs?
25 A. Yes, we did.
26 Q. And approximately how many dry runs would
27 you do before a lethal injection execution?
28 A. It depended how well -- if we had someone
29 new on the strap-down crew, it may take a little
30 longer.
31 Q. Uh-huh.
32 A. But we would go, generally, at least three,

1 sometimes more.

2 Q. Three separate dry runs, complete dry runs
3 of the walk?

4 A. That's correct. Because in a time like
5 that, you know, you wanted to be as efficient and
6 professional as you could. But yet, you know, you
7 wanted to do it according to law and like it was
8 supposed to be done. We didn't want to make any
9 mistakes or anything.

10 Q. Right. In these practice runs, were -- how
11 did you know how to do them? How was that conveyed to
12 you?

13 A. We were told. And then that's what the
14 practice runs were for because it was our job to --
15 whether it was during a electrocution or lethal
16 injection, what we had to do, what had to be done, was
17 told to us.

18 And this -- to tell you the truth, I just don't
19 remember who actually -- in other words, you supposed
20 to come up and do this, you supposed to do this and do
21 this. Generally, we had one person who were -- was
22 over the whole strap-down crew. This would either be
23 the warden or the deputy warden or his designee. This
24 is what I am speaking of, the dry runs that you talked
25 about.

26 Q. Right.

27 A. And generally we were told. And some had
28 done this prior, some of us, and they would explain to
29 us the do's and the don'ts of what had to be done.

30 Q. Okay. Would -- it would be your testimony
31 then -- would it be accurate to say that it was all
32 done by word of mouth?

1 A. We -- the dry runs was a practice.
2 Q. The instructions, I mean, though.
3 A. The instructions was part of the practice
4 also.
5 Q. But were those ever -- can you -- what form
6 were those instructions communicated?
7 A. If you -- well, they were verbally told. I
8 never was given anything in writing, if that's what
9 you are asking.
10 Q. That's what I am getting at. You never saw
11 a piece of paper that said this is how it is done?
12 A. No. Either legal programs or one of the
13 deputy wardens would instruct us on the legal aspects
14 and what had to be done. And generally the persons
15 who were on the strap-down crew would also tell us
16 some of the do's and the don'ts of what had to be
17 done, the time limit.
18 Q. As far as the legal aspects, can you recall
19 generally what those entailed about your work?
20 A. They changed a lot through the courts.
21 Like, I believe, the last from the 12:00 midnight
22 was changed.
23 Q. Okay.
24 A. And I think some of the things according to
25 the visitors that the person had, the time they had
26 with the inmate prior to his execution, the family
27 members, what time they left. This changed over the
28 years. And as far as me telling you specifics, I
29 can't because --
30 Q. Sure.
31 A. Every one was a little different.
32 Q. Right. And do you know if those changes

1 were ever put down in writing?
2 A. I have no idea.
3 Q. Okay. You never saw them personally, any --
4 A. I have no idea.
5 Q. Okay. And you mentioned about the time
6 change. Because at the time of the Thomas Ward and
7 the Robert Wayne Sawyer execution -- I believe we have
8 already gone over this. But those executions were
9 statutorily required to begin at midnight?
10 A. That's correct. Correct.
11 Q. And were you involved in any lethal
12 injection that took place at an earlier time of the
13 evening?
14 A. I don't recall. I think that we got right
15 up to the hour or two prior maybe, and the inmate
16 received a stay.
17 Q. I'm sorry. Let me rephrase the question.
18 What I am getting at is this. I understand what you
19 are saying about a stay, and that -- that's fine.
20 A. Two is all I remember, if that's what you're
21 asking.
22 Q. No. What I am asking is this: The statute
23 changed from midnight to 6:00 p.m. as being the time.
24 A. Uh-huh.
25 Q. Did you ever work on a lethal injection --
26 A. No.
27 Q. Okay. Because you mentioned about time
28 change, and I didn't know. Were you aware that the
29 time change occurred, but didn't -- weren't on the
30 team anymore?
31 A. That's correct. Because right prior to the
32 time change, I asked to be taken off of the strap-down

1 crew.

2 Q. I understand. Was there a particular reason
3 why you made that request?

4 A. I didn't want to do it anymore.

5 Q. Okay. Was there any problem with it that
6 you --

7 A. No. It wasn't a problem. It wasn't
8 anything as far as feelings. I had just done it
9 enough, you know. And I just asked if there was
10 someone else that could take it.

11 Q. Sure.

12 A. Because I had other responsibilities and
13 stuff. I was running an out-camp at the time. And as
14 the old saying, I just had so many irons in the fire
15 at the time. And I had been there for many years, and
16 I was just tired of, you know --

17 Q. I understand. Did -- the two executions by
18 lethal injection that you did participate in, you
19 mentioned at least for the second, being Thomas Ward,
20 where Warden Cain was; and Warden Cain convened a
21 small prayer meeting or a meeting at which a prayer
22 was given shortly before you went in to work, so to
23 speak, went into action. Was there any meeting of
24 you-all that night afterwards with Warden Cain?

25 A. I don't recall.

26 Q. Okay. Or in the prior execution with Robert
27 Sawyer, did you have any meeting before or after with
28 Warden Whitley, that you remember?

29 A. I believe when we had the dry run -- or we
30 didn't call them dry runs. We called them
31 walk-throughs.

32 Q. Walk-throughs?

1 A. Right. Generally, he or one of his
2 designees would come and watch some of the dry runs.

3 Q. In these walk-throughs that the warden
4 observed personally, did he make comments or
5 suggestions or changes? Maybe say, oh, well, you
6 know, there is something?

7 A. I don't recall. That's been too many years
8 ago for me.

9 Q. Too many? Okay. But it is your testimony
10 that certain aspects of -- certain components of the
11 execution process seemed to change each time, one way
12 or another?

13 A. Well, not the actual execution, maybe. Just
14 some of the visiting times.

15 Q. I understand.

16 A. Or, you know --

17 Q. Okay.

18 A. All the executions to my knowledge was held
19 by law by what was told to me.

20 Q. Okay.

21 A. You know.

22 Q. All right. Did you ever have shown to you
23 or did you ever find yourself, read a document that
24 outlined those legal constraints on or legal
25 particulars, so to speak, about lethal injection? Did
26 you ever read something like that?

27 A. It seems I might have read something. But I
28 just don't recall. I know that paper that you just
29 showed me --

30 Q. Uh-huh.

31 A. And seems like there was another paper was
32 describing some of the things that was done, I may

1 have read. I mean, working with the Department of
2 Corrections, it wasn't uncommon for me to read a
3 hundred, 150 things, you know, a day of different
4 changes of some aspect or the other, whether it was
5 through legal programs -- but if it was through the
6 Court, deferred right to our strap-down abilities,
7 then we were instructed on it.

8 Q. You were instructed in --

9 A. Verbally.

10 Q. When you say verbally, you mean by word of
11 mouth directly and not on written paper?

12 A. Word of mouth is all I recall.

13 Q. I understand. You mentioned that you had
14 received certain information about legal aspects of
15 the lethal injection process. Did you receive
16 similarly any information either in paper or by word
17 of mouth about any medical aspects of the lethal
18 injection process?

19 A. No. Because I never had anything to do with
20 the medical.

21 Q. Okay. Do you -- when you are practicing and
22 going through the walk-throughs and the actual
23 strap-down practices, was it considered important how
24 tightly you strap the inmate down?

25 A. Just as long as the inmate was secure.

26 Q. Okay. Did you have any -- was there any
27 presence of any medical personnel in any capacity
28 whatsoever during those practice runs commenting on
29 any aspect of the procedure?

30 A. Occasionally, I believe we were watched by
31 medical when we would go through the walk-through. It
32 seems like a couple of times. But we may have one

1 practice run, and then a couple of days later, we
2 might have another practice run.
3 Q. Right. But it is your recollection that
4 perhaps on some occasions there were -- would this
5 have been perhaps an EMT?
6 A. Are you talking about the practice runs now?
7 Q. Right.
8 A. Or the actual?
9 Q. Practice runs.
10 A. It is a possibility.
11 Q. Okay. Do you recall any comments
12 specifically made to any member of the team about if
13 you do this this way, you know, or if you do that that
14 way, it would be better or worse?
15 A. I don't recall.
16 Q. From a medical point of view?
17 A. I don't recall.
18 Q. You don't recall that? Okay.
19 MR. CLEMENTS: That concludes my
20 questions at this time.
21 THE COURT: Does the State --
22 MR. CLEMENTS: I'd also like to enter
23 Exhibit 115, which is that drawing that was added to
24 by Mr. Meredith.
25 (Petitioner's Exhibit 115 was offered.)
26 MR. FISH: No objection, your Honor.
27 THE COURT: And that's Exhibit 115?
28 MR. CLEMENTS: That is correct, your
29 Honor.
30 THE COURT: Okay. 115 is admitted.
31 (Petitioner's Exhibit 115 was admitted.)
32 THE COURT: Does the State have any

1 questions of the witness, or you need a moment to
2 confer?

3 MR. FISH: I have a couple of questions,
4 your Honor.

5 THE COURT: You may proceed when you are
6 ready.

7 CROSS-EXAMINATION

8 BY MR. FISH:

9 Q. Mr. Meredith, my name is Howard Fish. I'm
10 an assistant district attorney in Caddo Parish for the
11 State of Louisiana. Did -- during these practice
12 runs, did -- was there someone who was directing
13 you-all or watching you-all and telling you what to
14 do during the practice runs?

15 A. That is correct.

16 Q. And if there was something -- and what --
17 I'm not asking for a name now. But I am asking for --
18 do you know what -- can you remember what the position
19 was of that person?

20 A. Generally, the person who was over the
21 practice runs, whether -- who it would be, the warden
22 or his designee, would generally stand at the back of
23 the wall where he could see the complete -- as we
24 walked in. But, generally, he would stand up in the
25 hallway.

26 And as we approached, he would back on into the
27 execution chamber or the lethal injection chamber and
28 just back up to the wall. And we would go through the
29 process of strapping down, and he would observe. If
30 he saw anything that we could do better or, you know,
31 not fumble anything on it, then he would send us out
32 and we would do it over again. And we would continue

1 to do it until, you know, we made the best effort that
2 we could in the most reasonable amount of time to
3 bring the inmate from where he was going to be brought
4 out of the holding cell, down the hallway, through the
5 doors, into the room where the gurney was, and
6 strapped down.

7 Q. Now, the individual who was being strapped
8 down during the practice runs, this was not an inmate,
9 was it?

10 A. No, it wasn't.

11 Q. Was this a volunteer employee?

12 A. This was a volunteer employee generally of
13 the same height, weight, and physical aspects of, as
14 close as we could get someone to volunteer.

15 Q. And sometimes the warden himself would do
16 this, do the instructing, supervision of the practice
17 runs?

18 A. Supervision. I wouldn't say so much the
19 instruction, but supervision.

20 Q. Okay.

21 A. Of course, you know, he was there. And if
22 he saw something that we may could do better or he
23 thought, then he would make a comment. And we would
24 discuss it, or we would go back and we would try it
25 over again, you know.

26 MR. FISH: The State has no further
27 questions, your Honor.

28 MR. CLEMENTS: Just a couple of
29 questions, your Honor, in rebuttal.

30 REDIRECT EXAMINATION

31 BY MR. CLEMENTS:

32 Q. Mr. Meredith, in these sessions that were

1 either where the warden or deputy warden was
2 supervising or giving instructions, if they did
3 anything like that, do you know if any of these people
4 that were doing the supervising or instructing had any
5 medical background at all?

6 A. I have no idea.

7 Q. You have no idea?

8 A. I have no idea.

9 Q. Did it appear to you that any of the
10 comments that they made were comments that had to do
11 with a medical concern in mind, that you were aware
12 of?

13 A. One time, I believe.

14 Q. And what was that?

15 A. It was about the leg section, that the
16 shackles not be put too tight on the leg section.
17 That's the only thing I can ever recall right off my
18 head.

19 Q. Do you recall with more specificity what was
20 said about the leg, the tightness on the legs? What
21 was too tight and why that might have been an issue?

22 A. Well, when the inmate was brought in, the
23 inmate would have a set of leg shackles on.

24 Q. Okay.

25 A. When the inmate was placed upon the gurney,
26 he was helped up by some of the inmate -- I mean, some
27 of the officers who were on the strap-down crew to get
28 up on the gurney. Down toward the bottom in the foot
29 area, there was a strap that went across the legs.
30 The shackle had to be moved down some. And I remember
31 especially on the first one, since this was the first
32 one. I don't remember who it was made the statement.

1 It could have been the warden. It could have been one
2 of his designees, or it could have even been one of
3 the persons on the strap-down crew, said it would be
4 better and more efficient if we did it a certain way
5 as far as the leg irons were concerned on the feet
6 area and the straps that were used.

7 Q. And you at this time feel that that was
8 something medically related to that comment?

9 A. I don't know if it was medical or not. It
10 was sensible.

11 Q. Okay. I -- the reason I asked that was just
12 because I thought that was -- you responded to my
13 question about --

14 A. Well, it just made more sense.

15 Q. -- something that came to your mind when I
16 asked that, though.

17 A. It made more sense.

18 Q. Uh-huh.

19 A. And it -- by doing it the way that we
20 eventually started doing it --

21 Q. Uh-huh.

22 A. -- it relieved a lot of pressure off of the
23 ankles. Because it is hard to walk in shackles.

24 Q. Okay.

25 MR. CLEMENTS: No further questions.

26 MR. FISH: The State has no further
27 questions, your Honor.

28 THE COURT: The witness may step down.

29 THE WITNESS: Thank you.

30 MR. CLEMENTS: We will not require his
31 presence further.

32 THE WITNESS: I can leave?

1 THE COURT: The witness is free to go.
2 THE WITNESS: Thank you.
3 MR. FISH: Thank you for coming.
4 MR. CLEMENTS: Your Honor, after
5 conferring with cocounsel and closing counsel, I
6 believe we would like to suggest that we retire for
7 the day, and we would reconvene at 8:30 tomorrow
8 morning in a deposition format, taking on the first
9 witness in the deposition and see just how quickly we
10 can proceed in that direction.
11 THE COURT: All right. We have a 9:30
12 docket that we will take care of. And I trust that
13 counsel will inform the Court the status of the
14 depositions.
15 MS. ESTOPINAL: Yes, your Honor. If you
16 wish, we could report to you at 2:00 or at -- if you
17 will be -- I don't know if you are intending to have a
18 two o'clock docket tomorrow.
19 THE COURT: No. I'm thinking whatever
20 we have, we will dispose of tomorrow morning.
21 MS. ESTOPINAL: Your Honor, I would like
22 -- I would be happy to call your office when we are
23 through with the depositions and let you know.
24 THE COURT: Okay. And you are thinking
25 two o'clock?
26 MS. ESTOPINAL: I was hoping, your
27 Honor.
28 MR. CLEMENTS: I'm hoping.
29 THE COURT: Okay. Well, we can do two
30 o'clock.
31 MS. ESTOPINAL: Can't promise anything.
32 THE COURT: We can do two o'clock. Or

1 one thing I need to mention to counsel about tomorrow.

2 But come forward briefly on that.

3 (Off-the-record bench discussion.)

4 THE COURT: So on the record, we will
5 have -- I need staff and the usual people here for
6 9:30, for the 9:30 docket. And counsel will apprise
7 the Court, and we're tentatively setting this matter
8 to resume tomorrow at two o'clock p.m. And we will
9 just wait to hear from you on that.

10 MR. FISH: Thank you, your Honor.

11 MS. ESTOPINAL: Thank you, Judge.

12 MR. CLEMENTS: Thank you, your Honor.

13 THE COURT: Anything else we need to do
14 today before we recess for the day?

15 MR. FISH: The State has nothing, your
16 Honor.

17 THE COURT: Petitioner?

18 MR. CLEMENTS: No, your Honor. Nothing.

19 THE COURT: All right. Court is in
20 recess for the rest of the day.

21 (Court recessed for the day.)

22 (Case continued to 2/11/03.)

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REPORTER'S CERTIFICATE

STATE OF LOUISIANA:
PARISH OF CADDO:

I, Joyce A. Wheeler, Registered Professional Reporter, Certified Court Reporter, and Official Court Reporter in and for the First Judicial District Court of Caddo Parish, State of Louisiana, do hereby certify that the foregoing represents a true and accurate transcription of the proceedings had in said court and were reported by me to the best of my knowledge and ability.

SUBSCRIBED AND SWORN TO on this the 24th day of February, 2003.

Official Court Reporter R, CCR

1 IN THE FIRST JUDICIAL DISTRICT COURT
2 IN AND FOR THE PARISH OF CADDO
3 STATE OF LOUISIANA

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5

6 NATHANIEL R. CODE, JR.

7 VS. NO. 138,860-A

8 BURL CAIN

9
10

11 APPEARANCES:

12 FOR THE STATE:

13 MS. CATHERINE M. ESTOPINAL

14 Assistant District Attorneys

15 FOR THE PETITIONER:

16 MR. SAM SWEENEY

17 Capital Post-Conviction Project of Louisiana

18
19

20 PROCEEDINGS HAD in the above

21 entitled matter before Her Honor,

22 RAMONA L. EMANUEL, Judge

23 of the First Judicial District Court,

24 in and for the Parish of Caddo,

25 State of Louisiana,

26 held February 11th, 2003.

27

28 SPECIAL HEARING, VOLUME II

29

30

31 Reported by:

32 Official Court ReporterPR, CCR

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1 PROCEEDINGS

2 (Case continued from 2/10/03.)

3 THE COURT: The Court is ready.

4 MR. CLEMENTS: Counsel for Petitioner is
5 ready.

6 THE COURT: Is the State ready?

7 MR. FISH: The State's ready, your
8 Honor,

9 MS. ESTOPINAL: Yes, your Honor.

10 THE COURT: All right.

11 MR. FISH: Mr. Code is present with his
12 lawyers, Mr. Clements.

13 THE COURT: So noted. I trust that the
14 matters that you were taking care of this morning went
15 fine, and we are ready to proceed.

16 MS. ESTOPINAL: Yes, your Honor.

17 THE COURT: Mr. Clements?

18 MR. SWEENEY: Petitioner calls
19 Dr. Marvin Ettinger.

20 DR. MARVIN ETTINGER,
21 the witness hereinbefore named, having been first duly
22 sworn to testify the truth, the whole truth, and
23 nothing but the truth, was examined and testified
24 under oath as follows:

25 DIRECT EXAMINATION

26 BY MR. SWEENEY:

27 Q. Afternoon, Dr. Ettinger.

28 A. Good evening.

29 Q. Could you state your full name for the
30 record, please.

31 A. Dr. Marvin M. Ettinger.

32 Q. And what does the middle initial stand for?

1 A. Morris.

2 Q. Morris. Are you currently employed?

3 A. I am retired.

4 Q. And before your retirement, what was your
5 occupation?

6 A. Most of my career, I've been a general
7 surgeon. The last 10 to 12 years, doing family
8 practice of various kinds, including, I think, a two-
9 year stint at Angola.

10 Q. Okay. When did you retire?

11 A. Well, it was kind of off and on. I was in
12 Mississippi. I guess about two years ago.

13 Q. Okay. And how long --

14 A. Three years ago.

15 Q. I'm sorry. How long were you a practicing
16 physician?

17 A. I finished medical school in '51.

18 Q. Okay. Were you licensed to practice
19 medicine on March 5th, 1993, the day of Robert Wayne
20 Sawyer's execution?

21 A. Yes.

22 Q. Did you serve in any capacity at Robert
23 Wayne Sawyer's execution?

24 A. Yes. As a -- I suppose you would call it a
25 medical witness, serve the purpose of pronouncing him
26 dead.

27 Q. Okay. Were you a permanent employee of
28 Angola?

29 A. Yes. At that time.

30 Q. You were? And what was your job title at
31 Angola?

32 A. I think just physician. Staff physician.

1 Q. Staff physician? Okay. And you said you
2 worked there for two years at Angola?

3 A. Yes, sir.

4 Q. Okay. Are you board certified in any
5 medical specialties?

6 A. In surgery, yes.

7 Q. In surgery. Okay. Are you certified in
8 anesthesiology?

9 A. No.

10 Q. Okay. Besides Robert Wayne Sawyer, did you
11 attend -- were you a participant or did you attend any
12 other executions by lethal injection?

13 A. No.

14 Q. And at Robert Wayne Sawyer's execution,
15 could you detail the full extent of your involvement
16 in that execution?

17 A. I was asked by Dr. Gutierrez, who was -- I
18 think he was the medical director, senior physician,
19 whatever -- to participate in it. And my only
20 function was to pronounce the person dead.

21 Q. Okay. Was there any other medical doctor
22 present as an official witness to the execution?

23 A. Yes. Dr. Gutierrez was. I don't know if
24 there was a requirement that there be two or it just
25 happened that way.

26 Q. And do you know what capacity he was
27 attending the execution in?

28 A. The same, as far as I know.

29 Q. Medical director?

30 A. Yes, sir.

31 Q. Do you know if there was a representative
32 from the West Feliciana Coroner's Office at the

1 execution?

2 A. I had met the coroner a couple of times.

3 But I can't say for sure. I seem to think that he

4 was.

5 Q. Okay.

6 A. But, I mean, I cannot say that with

7 certainty.

8 Q. Okay. To whom were you referring when you

9 -- which was --

10 A. I don't even know.

11 Q. You don't know his name? Okay.

12 A. I know what he looked like.

13 Q. If I -- if I told you that Dr. Alfred Gould

14 was the coroner for West Feliciana Parish during that

15 time, would that refresh your memory?

16 A. Ring any bells with me? That's been 10

17 years.

18 Q. And during Mr. Sawyer's execution, where

19 physically were you located?

20 A. As I recall, I was in the witness box

21 originally.

22 Q. Okay.

23 A. And at some point when he was -- I guess

24 when he was assumed to be dead, I was asked to go into

25 the chamber and take a --

26 Q. Okay. Did both of you certify death, or

27 did --

28 A. I believe we both did, yes, sir.

29 Q. Okay. You mentioned the witness room or the

30 observation room. Was that separated by a glass wall

31 from the death chamber?

32 A. Yes, it was.

1 Q. Okay. Were you able to see two pieces of
2 monitoring equipment that were attached to Mr. -- that
3 were -- there were lines attached to Mr. Sawyer which
4 ran into the control room?

5 A. Yes.

6 Q. Were you able to see -- first of all, were
7 you able to see the lines?

8 A. I think so, yes.

9 Q. Okay. Were you able to see the two
10 monitoring pieces of equipment, the pulse oximeter and
11 the EKG, the actual equipment?

12 A. I have no memory of that. That's very
13 possible.

14 Q. Okay. Do you remember if either of those
15 machines was present in the death chamber itself?

16 A. I don't know.

17 Q. Okay. What -- what aspects of the process
18 do you recall witnessing?

19 A. Really, very little that you could see.

20 Q. Okay. Did you witness the inmate being
21 escorted into the execution room by the strap-down
22 team?

23 A. Not into the room, but in the corridor. We
24 were, I guess, with the witnesses in a room, sort of
25 like a reception room. And the security officers
26 came through with the prisoner.

27 Q. So the witnesses were not in the
28 observation -- in the witness room at that --

29 A. This was before that time.

30 Q. That time? At that time? How much time
31 passed from when you saw Mr. Sawyer being -- passing
32 you till the time you went into the observation room,

1 approximately?

2 A. I just can't recall that much. If I had to
3 make a wild guess, I would say 15 or 20 minutes.

4 But --

5 Q. Fifteen or twenty minutes?

6 A. Uh-huh.

7 Q. Okay. When you actually entered the witness
8 area, was the inmate already strapped down?

9 A. Yes.

10 Q. Did you witness any persons preparing any
11 I.V. lines on the inmate?

12 A. No. It was not visible. It was not visible
13 from the witness box.

14 Q. It was not visible? You couldn't see the
15 lines being prepared?

16 A. No.

17 Q. How about the lines themselves? Was the
18 inmate covered by a sheet? Could you see the -- or
19 any of it -- was there any obstruction to your view of
20 the I.V. lines?

21 A. I don't recall the actual I.V. site, whether
22 I could see it or not. I think so. But I can't be
23 certain.

24 Q. Okay. So you think it may have been? He
25 may have been covered by a sheet?

26 A. Yes.

27 Q. Okay. So by the time you actually took your
28 place in the observation area, the lines were already
29 -- the I.V. lines were already placed in the inmate?

30 A. Yes.

31 Q. Okay. Do you recall where on the inmate's
32 body the I.V. lines were placed?

1 A. No. I may have a faint memory that it was
2 in the arm.

3 Q. In the arm?

4 A. Rather than a leg or ankle. But I can't be
5 certain.

6 Q. Okay. Where -- who else was in the
7 execution chamber besides the inmate?

8 A. I can remember one or two individuals, but I
9 can't be positive. There were a couple of -- I think
10 there were senior security officers.

11 Q. And do you know where they were located? Do
12 you remember where they were located in the execution
13 chamber?

14 A. I really can't say with certainty. I just
15 would be guessing.

16 Q. Okay.

17 A. Now, in the witness -- well, you are not
18 asking about the witness box. I mean, the -- yeah.
19 Witness chamber or whatever you call it.

20 Q. Besides yourself and Dr. Gutierrez, do you
21 remember anyone else in the witness room?

22 A. Well, there were a number of people there
23 that I was told -- a couple were journalists,
24 newspaper reporters, family, I think.

25 Q. Okay.

26 A. Victim's family. And I think -- yeah. I
27 know Sister Prejean.

28 Q. Okay. How long -- do you remember how long
29 the entire procedure lasted? Your observation of the
30 procedure?

31 A. I would guess that it was probably --
32 probably just a short time, say, five to ten minutes

1 before they asked me to step in.

2 Q. Okay. Who asked you to step in?

3 A. I don't know. I can't tell you that.

4 Q. You don't remember. Okay. Besides serving
5 as an official witness and pronouncing death, did you
6 have any other function as a medical professional that
7 evening?

8 A. No. I had -- the AMA Code of Ethics
9 prohibits physicians from actually participating in
10 executions.

11 Q. And what specifically --

12 A. And, in fact, at that time, I don't think
13 they even had an exception for pronouncing death.
14 They later clarified that.

15 Q. At that time, though, it was --

16 A. I am not sure.

17 Q. Okay. Do you remember at that time what
18 functions or actions did they prohibit?

19 A. I think it was any active participation.
20 The pronouncement of death is not considered that
21 because it is a legal requirement, I guess.

22 Q. Okay. In your capacity as official witness,
23 did you bring any medical equipment or supplies with
24 you?

25 A. I don't recall bringing my own stethoscope,
26 for example, and so on.

27 Q. Were you asked to bring any?

28 A. I don't think so.

29 Q. Okay. Before witnessing Robert Sawyer's
30 execution, did you have occasion to see any document
31 from the Department of Corrections that described any
32 medical aspects of the lethal injection process?

1 A. No.

2 Q. Before witnessing Robert Sawyer's execution,
3 did any DOC personnel ever orally discuss with you any
4 medical aspect of Louisiana lethal injection protocol?

5 A. No. In fact, I had spoken to Dr. Gutierrez.

6 And he simply told me -- when he asked me to come, he
7 told me what it was.

8 Q. I'm sorry?

9 A. That was the only person I would have talked
10 to who mentioned the execution.

11 Q. Okay. You said he told you what it was.

12 What do you mean by that? I'm a little unclear.

13 A. Told what I -- what my role would be.

14 Q. Okay.

15 A. I had no conception because I had not done
16 that.

17 Q. And what did he tell you about your role?

18 A. Well, he said pronounce the person.

19 Q. Okay. Dr. Ettinger, are you familiar with
20 the chemical agents that are used in the Louisiana
21 lethal injection protocol?

22 A. Yes. I think so.

23 Q. Could you identify them?

24 A. I'm not positive. It's pentathol, I know,
25 is massive pentathol dose first. And I know the KCl
26 is the agent that stops the heart.

27 Q. Okay.

28 A. Oh, they use a muscle relaxant too.

29 Probably Anectine or something similar.

30 Q. Okay. Do you know the name of that? Do you
31 recall the name of that?

32 A. Anectine is one. I don't know if that's

1 what is used. I am a surgeon. That's what we use in
2 the operating room.

3 Q. Okay.

4 A. I don't know.

5 Q. Are you familiar with the medical equipment
6 that is used in the lethal injection process?

7 A. Only from television.

8 Q. Okay.

9 A. I saw a television show.

10 Q. So you don't know of any specific equipment
11 that's --

12 A. No, I don't.

13 Q. -- either in the control room or in the
14 chamber.

15 MR. SWEENEY: May I have a moment, your
16 Honor?

17 THE COURT: You may.

18 Q. (By Mr. Sweeney) You mentioned a muscle
19 relaxant or a -- if I mention the name pancuronium
20 bromide, does that --

21 A. That's the same class drug, yes.

22 Q. Okay. And could you describe for us how
23 that drug works?

24 A. It neutralizes part of the pathway that
25 starts muscle contraction so that it paralyzes muscle.

26 Q. Okay.

27 A. By eliminating that part of the pathway.

28 Q. Okay. Does it serve -- does it paralyze the
29 lungs as well?

30 A. You mean the muscles? Lungs don't have
31 muscle.

32 Q. Okay. Does it paralyze the muscles that --

1 A. Control?

2 Q. That -- yeah, control. Okay.

3 A. The respiratory muscles too.

4 Q. Does it affect any other muscles other than
5 the breathing muscles?

6 A. It affects all skeletal muscles. That is
7 all -- when most people think of as muscle.

8 Q. Okay.

9 A. Not particularly the muscle of the gut, the
10 uterus, organs like that which are a different kind of
11 muscle.

12 Q. Okay. Would it be accurate, then, to say
13 that the pancuronium paralyzes all the voluntary
14 muscles in the body?

15 A. Yes.

16 Q. To your knowledge, does pancuronium cause
17 unconsciousness or sedation?

18 A. Not that I am aware of. I don't know that
19 for certain. But I don't think so.

20 Q. Okay. You mentioned that all voluntary
21 muscular activity is paralyzed under pancuronium
22 bromide. What would you expect an animal or a human
23 to look like if they had been given a large dose of
24 pancuronium bromide?

25 A. Well, I don't know anything about a large
26 dose or a massive dose. The doses we use in surgery
27 on someone are -- it is obvious that the patient
28 ceases activity because they don't have any muscular
29 activity. Of course, they are already -- they are
30 already knocked out anyway from some other drug,
31 pentathol. I don't know that massive doses would make
32 any difference. It wouldn't be any more, visibly.

1 Q. So you would see no physical evidence of
2 muscle --

3 A. Just no activity. Right.

4 Q. Do you know if they would have a peaceful or
5 serene look on their face?

6 A. I don't think so. I don't understand the
7 question.

8 Q. Well, assuming -- the voluntary muscles in
9 the jaw and the rest of the face, how would their face
10 look?

11 A. Well, the muscles and facial expression are
12 voluntary muscles. So you wouldn't have a big frown
13 or -- there wouldn't be anything like that because
14 those muscles are not working. So if you -- if that's
15 what you mean by peaceful, it would be sort of blank.

16 Q. The facial muscles would be relaxed
17 completely?

18 A. Right.

19 Q. Would -- as a physician, would you have any
20 way of knowing just from observing someone under
21 pancuronium bromide whether they were awake or asleep?

22 A. Very few people had the opportunity of
23 seeing anyone like this. So I really wouldn't know.
24 It is talked about by anesthesiologists and so on.
25 And, you know, there have been a couple of stories,
26 fiction stories, written about someone who received
27 that but didn't receive any sedation.

28 Q. And what would be your opinion on -- your
29 medical opinion on that?

30 A. If you are talking about ordinary doses like
31 are used, you know, medically, that would be very
32 frightening because you couldn't breathe; and you

1 would still be awake, of course. If you are talking
2 about massive doses, I don't --

3 Q. May I -- may I interrupt for a moment?

4 A. Uh-huh.

5 Q. Would there be any physical evidence of that
6 process in the body taking place, that suffocation
7 that you talked about?

8 A. Now, you mean to examination --

9 Q. Through just the --

10 A. Or just the observation?

11 Q. Would there be any outward --

12 A. Obviously, he's got a pulse.

13 Q. -- physical manifestation?

14 A. Not if you didn't examine the patient, you
15 wouldn't.

16 Q. Okay. So just visual observation?

17 A. You would have a pulse and a heartbeat and
18 everything else, of course.

19 Q. But just visual observation?

20 A. I don't think so. You just -- looks like he
21 was asleep.

22 Q. Okay. If they were -- if the inmate were --
23 or patient were in severe pain or suffocating, would
24 there be any way for them to cry out or move or tell
25 you of their suffering?

26 A. Not in the instance you are giving where the
27 patient is given only that.

28 Q. Okay.

29 A. Only Anectine kind of drug.

30 Q. Okay. Dr. Ettinger, do you know what the
31 dose of sodium pentathol that's used in the Louisiana
32 lethal injection?

1 A. I have heard that it is several times -- I
2 can't say with authority. Maybe seven, eight times
3 the therapeutic dose is given.

4 Q. Seven, eight times the therapeutic dose?

5 A. The therapeutic usual kind.

6 Q. Okay. And what would the therapeutic dose
7 of sodium pentathol be?

8 A. You are embarrassing me. I have been
9 retired for a while. I am trying to forget all doses.

10 Q. That's okay.

11 A. I don't know exactly.

12 Q. That's okay.

13 A. I am not an anesthetist, anyway.

14 Q. Okay. If you were to view two persons on a
15 gurney side by side and one person had been
16 administered a dosage of sodium pentathol followed by
17 a dosage of pancuronium bromide, and the other person
18 had only received the pancuronium bromide, would you
19 have any way to tell the difference between the two
20 persons just by observing them?

21 A. I think not. But this is not based on any
22 personal experience.

23 Q. Okay. It's just your medical opinion?

24 A. Yes, sir.

25 Q. During Mr. Sawyer's execution, could you see
26 the chemicals that were being injected into him?

27 A. No.

28 Q. Did you see the set of syringes loaded with
29 the chemicals beforehand?

30 A. No.

31 Q. Before or after the execution, did you see
32 any inventory reports that documented the chemicals

1 involved in the process?

2 A. No. I had no part in that at all.

3 Q. Okay. Did you have occasion to see any

4 inventory reports that documented the amount of

5 chemicals that were actually used in the execution of

6 Robert Sawyer?

7 A. No.

8 Q. And did you have occasion to see any

9 inventory reports that documented the chemicals that

10 were left over after the execution?

11 A. No.

12 Q. Is sodium pentathol, to your knowledge, a

13 controlled dangerous substance?

14 A. Yes. It is a barbiturate. So it comes

15 under the --

16 Q. Do you know what kind of barbiturate it is?

17 A. It's just an ultra-fast-acting.

18 Q. Okay. Does the FDA regulate the usage of

19 sodium pentathol?

20 A. As far as I know, they do. Although it's

21 not something that would be taken by an addict for any

22 kind of pleasurable sensation or anything like that.

23 Q. Sure.

24 A. Something like that.

25 Q. Do you know if the FDA requires strict

26 documentary tracking of the amounts of sodium

27 pentathol that are checked out from a pharmacy?

28 A. I think so, yes. Okay. Like I say, it is a

29 barbiturate.

30 Q. Okay. But those same strict documentary

31 tracking requirements hold for the amounts that are

32 actually used?

1 A. I'm not sure I understand the question.

2 Q. Well, let me break it down.

3 A. Okay.

4 Q. Do those documentary tracking requirements
5 apply to the amount of sodium pentathol that's checked
6 out from the pharmacy?

7 A. Yes. There has to be some kind of record of
8 any kind of controlled substance going from the
9 pharmacy to --

10 Q. And does that -- and that was -- would --
11 you know, would those requirements -- well, would that
12 requirement that they be tracked persist through the
13 use and return of the chemical back to the pharmacy?

14 A. Not necessarily. Not in the same way that
15 narcotics -- for example, narcotics, morphine, for
16 example, is used in a hospital. A nurse records each
17 dose and has to account for each vial and so on. I
18 don't think it is that tight a control on
19 barbiturates.

20 Q. So to the best of your knowledge, it's just
21 the initial --

22 A. But just generally the transfer from the
23 pharmacy.

24 Q. Okay. Is there any way you can be medically
25 certain as to the names and amounts of chemicals
26 administered to Robert Sawyer on March 5th, 1993?

27 A. I have no knowledge of that at all.

28 Q. Okay. After what we have discussed about
29 the effects of pancuronium bromide and how there is
30 little difference between someone who is under the
31 effect of pancuronium bromide and one who is under
32 sodium pentathol and pancuronium bromide, would you

1 characterize your witnessing of Robert Sawyer's
2 execution as an incomplete view of the process?

3 A. I had vision. I mean, I had him in my
4 vision. Is that what you mean? During the process?

5 Q. Well --

6 A. From the witness box.

7 Q. Given what we have talked about, the
8 chemicals and their effects, if Robert Sawyer had
9 risen to consciousness and been experiencing pain,
10 would you have --

11 A. Oh, yes. I was just a couple of feet away.

12 Q. But would you have been able to have seen
13 that, given the pancuronium bromide dosage?

14 A. I think you are getting back to the question
15 of someone getting only a large dose of the
16 pancuronium. I have never experienced that or ever
17 even heard of such a case. I don't know.

18 Q. Do you know of the amounts of sodium
19 pentathol and pancuronium bromide that are used in a
20 lethal injection?

21 A. No, I don't.

22 Q. And then do you know more specifically the
23 amounts of each of those drugs that Robert Sawyer
24 received?

25 A. I don't know.

26 Q. Would it be accurate to say, Dr. Ettinger,
27 that you could not medically certify anything except
28 that Robert Wayne Sawyer died early on the morning of
29 March 5th, 1993?

30 A. That's correct. That was my only function.

31 MR. SWEENEY: That's all I have at this
32 time.

1 THE COURT: The State may have some
2 questions for you.

3 THE WITNESS: Oh, I'm sorry. Thank you.

4 CROSS-EXAMINATION

5 BY MR. FISH:

6 Q. Dr. Ettinger, my name is Howard Fish. I'm
7 an assistant district attorney of the First Judicial
8 District, and I represent the State of Louisiana. I
9 have some questions for you.

10 A. Yes, sir.

11 Q. Doctor, you say that you were -- practiced
12 medicine since 1951?

13 A. Yes, at one point.

14 Q. And your area of expertise is surgery?

15 A. For most of the time. All except the last
16 ten years where it is family practice.

17 Q. And so you were present through your career
18 at a number of surgeries that you conducted yourself;
19 is that correct?

20 A. Yes, sir.

21 Q. And that would be surgeries that a general
22 anesthetic would be administered to the patient before
23 you began the cutting on the patient; is that correct?

24 A. Yes. Right.

25 Q. And the anesthesiologist who would be
26 administering the general anesthetic, would it be
27 normal practice to intubate the patient during that
28 process?

29 A. Not necessarily. It depends on the length
30 of the operation and the extent.

31 Q. Okay.

32 A. Many fairly minor procedures are done

1 without intubation, but with the ability to do it if
2 necessary.

3 Q. On the ones that it is required to intubate
4 the patient, why is that done?

5 A. To protect the airway. If there is not a
6 tube in the trachea and the airway becomes obstructed,
7 then it's -- can be a hassle to try to get it
8 intubated quickly and keep them oxygenated. So --

9 Q. So and what could happen is the patient
10 could die; is that correct?

11 A. Yes. In certain events, could be possible.

12 Q. Now, the -- one of the drugs that's
13 administered in the Louisiana lethal injection is the
14 pancuronium bromide in amount of 40 milligrams. If --
15 would it be from your experience as a doctor if a
16 patient was administered that drug in a 40-milligram
17 dosage and no effort was made to intubate that
18 patient, would it be likely that they would die?

19 A. I am trying to get the scenario we are
20 talking about. If that happened -- as I say, I have
21 never seen it or heard of it ever happening.

22 If it happened to somebody that was given the dose
23 without any other normal procedures, he wouldn't
24 breathe. And, obviously, he would become blue,
25 cyanotic, at which time he most certainly would be
26 intubated. Intubation would be very easy because he's
27 already had the muscle relaxant.

28 Q. But if you didn't intubate them, they would
29 die, would they not?

30 A. Certainly.

31 Q. They would suffocate?

32 A. No respiratory activity at all. Right.

1 Q. On the sodium pentathol, the administering
2 of the sodium pentathol, I know you have already
3 testified that you can't recollect what the
4 therapeutic dosage was. But you thought that the
5 dosage that was administered to -- in the lethal
6 injection procedure was about seven to eight times
7 more. If I were to hypothetically -- seven or eight
8 times more the therapeutic dose.

9 If I were to hypothetically -- give you as a
10 hypothet that the -- that the people who are executed
11 are given 2 grams of sodium pentathol, what -- from
12 your experience, what would happen to somebody who was
13 given 2 grams intravenously of sodium pentathol?

14 A. As far as I know of massive doses of that
15 type, probably result in unconsciousness as well as
16 muscle paralysis.

17 Q. Okay. Now, have you witnessed any other
18 executions besides that of Mr. Sawyer?

19 A. No, I haven't.

20 Q. When you witnessed the execution of Mr.
21 Sawyer, what did you observe as far as his reaction to
22 the procedure?

23 A. Understand that we are talking about 10
24 years ago.

25 Q. Yes, sir.

26 A. And my memory -- I'm 76 years old.

27 Q. Yes, sir.

28 A. I remember having -- oh, sort of a slight
29 cough. And maybe like just a very brief little snore
30 type of thing. Nothing unusual, otherwise.

31 Q. When you say snore, is that like when
32 someone's sleeping?

1 A. Yeah. Just like -- it was a very brief type
2 thing that I recall. Mainly there is nothing.
3 Nothing really to be seen.

4 Q. Would it be accurate to characterize Mr.
5 Sawyer's reaction to the lethal injection is that he
6 went to sleep?

7 A. Correct.

8 Q. Did he appear to be in any pain?

9 A. No.

10 Q. Did -- I would also like to ask you about
11 the atmosphere, the tone of the proceeding. Would you
12 characterize it as being a solemn -- being treated as
13 like a solemn event by those that were participating
14 in the execution and those that were witnessing it?

15 A. Yes. It impressed me, having not -- not
16 having seen it before -- that the security officers,
17 for example, who participated in it were all in what
18 you would call dress blues, I guess. But in very --
19 militarily immaculate-looking.

20 Q. And was the conduct of those that were in
21 the employ of the Department of Corrections at Angola
22 there who were conducting this procedure, did it seem
23 -- did it appear to have a professional air about it?

24 A. Yes. They seemed to know exactly what they
25 were doing.

26 Q. Was there any untoward or inappropriate
27 conduct by anyone who was in an official capacity
28 conducting the execution in your vision?

29 A. No, sir.

30 Q. Mr. Sweeney asked you whether or not someone
31 who receives pancuronium bromide would have a serene
32 look on their face. But let me ask you this. Was Mr.

1 -- did Mr. Sawyer have a serene look on his face?

2 A. I would say his appearance was like someone

3 who is sleeping. It's just simply tranquil and then

4 just -- nothing special.

5 Q. Okay.

6 MR. FISH: Can I have a moment, your

7 Honor?

8 THE COURT: You may.

9 MR. FISH: Thank you, Doctor.

10 THE WITNESS: Yes, sir.

11 THE COURT: Mr. Sweeney, any further

12 questions of the witness?

13 MR. SWEENEY: There's no redirect, your

14 Honor.

15 THE COURT: The witness may step down.

16 THE WITNESS: Thank you.

17 MS. ESTOPINAL: Your Honor, may I ask if

18 Dr. Ettinger is free to leave? Has he been released?

19 MR. SWEENEY: Yes, he has.

20 MR. CLEMENTS: Yes, your Honor.

21 MR. FISH: Thank you.

22 THE COURT: The witness is free to go.

23 MR. CLEMENTS: Your Honor, we'd call

24 Annette Viator to the stand.

25 ANNETTE VIATOR,

26 the witness hereinbefore named, having been first duly

27 sworn to testify the truth, the whole truth, and

28 nothing but the truth, was examined and testified

29 under oath as follows:

30 DIRECT EXAMINATION

31 BY MR. CLEMENTS:

32 Q. Good afternoon. Would you please state your

1 name for the record, please.

2 A. My name is Annette Viator.

3 Q. Ms. Viator, where are you currently
4 employed?

5 A. I am employed by East Baton Rouge Parish
6 School Board.

7 Q. And were you formerly employed with the
8 Louisiana Department of Corrections?

9 A. I certainly was.

10 Q. And what was your position with the
11 Department of Corrections?

12 A. I was the chief legal counsel for the
13 Department of Corrections.

14 Q. How long were you employed as chief legal
15 counsel with the Department of Corrections?

16 A. Approximately 18 years. From 1984 or '83
17 through '90 -- 2001.

18 Q. And so as chief counsel, could you describe
19 some of your responsibilities at the department of
20 corrections?

21 A. Well, as the chief legal counsel, I was the
22 general counsel for the department, the entity of the
23 Department of Corrections, and represented the wardens
24 in the capacity as representatives of the Department
25 of Corrections, represented the secretary of
26 corrections at the time as his chief legal advisor,
27 and did various other things in line with being an
28 attorney for any major department. But basically my
29 duties revolved around the secretary and the governor
30 of Louisiana.

31 Q. Thank you. Who was the secretary for the
32 Department of Corrections in 1991?

1 A. Bruce Lynn.

2 Q. Thank you. Were you involved at all in the
3 1991 federal district court evidentiary hearing in the
4 Eastern District of Louisiana regarding an Eighth
5 Amendment challenge to the method of execution by
6 electrocution in the case of Sawyer v. Whitley?

7 A. I was.

8 Q. Who was Sawyer?

9 A. Robert Wayne Sawyer was an inmate on death
10 row at that time at Angola.

11 Q. Who was Whitley?

12 A. John Whitley was the warden of Angola at the
13 time.

14 Q. What was the result of that evidentiary
15 hearing?

16 A. I believe Judge Mentz ruled that there was
17 no Eighth Amendment claim and turned down the request
18 of Mr. Sawyer.

19 Q. Did another result outside of the courtroom
20 take place, however?

21 A. Yes. Another result did. As a result of
22 the Sawyer hearing, and because of incidents in terms
23 of questions, we decided to change from electrocution
24 to lethal injection.

25 There were other reasons, sir. Let me just make
26 sure you do understand. It was not strictly the
27 Robert Wayne Sawyer. But as a result of it, I went to
28 the legislature that summer and wrote some legislation
29 to change Louisiana's method of execution from
30 electrocution to lethal injection.

31 Q. Before we go further, if you could describe
32 what those other incidents were besides the Sawyer

1 hearing.

2 A. Well, there had been -- I don't want to say
3 a human cry. But there had been rumblings in the
4 state for a couple of years with different groups
5 going to the governor, going to some human rights
6 organizations through the governor. And there was
7 also a couple of people who were instrumental
8 politically in asking the governor to give the green
9 light to change it.

10 And so because of those reasons and then the
11 Sawyer trial, which was a major trial on the subject
12 of whether it was cruel and unusual, by that token the
13 governor believed that we should just go ahead since
14 Sawyer was over and change it from electrocution to
15 lethal injection.

16 Q. At that time, who was governor of Louisiana?

17 A. Charles Roemer.

18 Q. Okay. Could you explain how the change
19 technically came about? What steps were taken?

20 A. Well, the first step was the legislation.
21 After it was passed, signed, and enacted, which would
22 have been fall of the same year -- it takes a while to
23 enact it.

24 I believe my next step was to check with the
25 number of states in the United States who presently
26 had lethal injection. There were 10 or 12, I believe.
27 And from that point, I began gathering a group of what
28 I considered experts for the State, and I wanted to
29 find out how it was done.

30 There was almost nothing written about it. And so
31 I gathered up people within corrections, a warden. I
32 gathered somebody in a medical field, somebody in

1 security, and I began visiting as many states as I
2 could to talk to people in those states. We tried to
3 talk to them by phone. They were not willing to
4 discuss it over the phone. So we went to four or five
5 states. I could not give you an exact number.

6 Q. Thank you. Would you -- you had mentioned
7 several people just in the last minute or so, one of
8 them being a warden. Which -- which warden were you
9 referring to?

10 A. I'm referring to the warden of Angola at
11 that time. John Whitley.

12 Q. Okay. You mentioned somebody in charge of
13 security matters. Was that another --

14 A. It was. But who it was escapes me.

15 Q. Thank you. And you mentioned someone in the
16 medical field. But before we -- appreciate it. Not
17 to mention any names, but could you tell us what the
18 type of training or something -- was this a medical
19 doctor?

20 A. No. We were not allowed to use medical
21 doctors.

22 Q. And why was that?

23 A. I checked with the American Medical
24 Association and the local Louisiana Medical
25 Association and was told that it was a very tenuous
26 area, and that if any doctor told them that they were
27 doing -- they were in danger of losing their license
28 to practice medicine. So it was never going to be a
29 doctor who came with us. It was, as I recall, an EMT.

30 Q. An EMT. And by that you mean an emergency
31 medical technician?

32 A. I do.

1 Q. Okay. Would this group of people, including
2 yourself, do you consider that it was some sort of a
3 committee that was working on this as a group or --

4 A. The secretary of corrections asked me to
5 head up that very thing, a committee. His concern was
6 that when we did convert, that it be done a hundred
7 percent legally, a hundred percent ethically, and with
8 as much humanity and respect as possible. And this is
9 what that committee was empowered to do. And at any
10 cost, time, or whatever. He wanted it done right. He
11 said it repeatedly.

12 Q. And this is the of --

13 A. Bruce Lynn.

14 Q. Bruce Lynn. Okay. You may have discussed
15 this in a general fashion, but what was the first step
16 that the committee basically did as a group?

17 A. Well, we felt like we were starting from
18 nothing or inventing the wheel, as it were. And so we
19 talked to as many of our counterparts in the other
20 states before we actually made the visits.

21 I called attorneys in many of the states. The
22 warden called the warden of, I would say, seven or
23 eight states including the state that had done more of
24 them than anyone, which was Texas. And the EMT tried
25 to find anybody who would speak to him about the
26 medical circumstances of executing someone by lethal
27 injection. That was our first step.

28 Our second step probably revolved around my
29 office. My attorneys tried to find as much legal
30 research on the Eighth Amendment possibilities. We
31 were still very, very aware of the Robert Wayne Sawyer
32 trial which had been certainly about the electric

1 chair, but more geared toward Eighth Amendment claims.
2 So we had that staring over our shoulder. And so
3 before we even went, we researched the Eighth
4 Amendment claims exhaustively as we could, then we
5 went on the tour to the states. And then once at the
6 tour, those questions came up.
7 Also, just the mechanics of it, how to do it, what
8 to do. As petty as things like how do you build this
9 table. What do you do? Where do you get it? We had
10 to go to the states to ask them privately.
11 Q. Okay. And what was the ultimate goal of the
12 committee?
13 A. The ultimate goal was to present to the
14 secretary of corrections a coherent reasonable and
15 well put-together policy on how we are going to
16 execute by lethal injection when the first execution
17 was ordered.
18 Q. I see. You had mentioned several states
19 involved that you personally went to. Did every
20 member of the committee that you have already referred
21 to always go together to all of the states?
22 A. No. I think some people went to some and
23 not to others. I don't remember everyone going. And
24 there might have even been a couple of more people
25 that I haven't mentioned. Mr. Lynn came to one of
26 them but didn't go to the others. So it was more or
27 less whoever could get away to go to this many states.
28 Q. Do you -- did the committee member who was
29 an EMT travel to Texas with the larger committee?
30 A. Yes, he did.
31 Q. Did the committee member who was an EMT
32 travel to any other state besides Texas with the

1 committee, to your knowledge?

2 A. Well, I can't remember specifically. But I
3 know he must have gone to at least one more. But I
4 couldn't tell you which one.

5 Q. Can you describe what your visit to the
6 Texas prison system was like?

7 A. Well, surprising would be a good word. It
8 was very, very surprising to hear a warden say to us
9 what he said to us, I suppose, would be the best way
10 to put it. If that's the sort of information you are
11 looking for, you will have to be more specific.

12 Q. I will.

13 A. And maybe I can help you.

14 Q. You say "surprising." Could you be -- I
15 mean, what was -- what was the most surprising thing
16 about what the warden shared with you?

17 A. May I give you some background on that
18 visit? Because I would hate to just come out with
19 this.

20 Q. I understand.

21 A. Without being fair to --

22 Q. That would be fine.

23 A. This warden had been in the Texas Department
24 of Corrections 30, 40 years, worked his way up. He
25 was quite a yeoman in the Department of Corrections.

26 And basically the reason -- he told us as soon as
27 we walked in that he apologized for putting us to so
28 much trouble to come all the way to Texas, but that he
29 didn't say things on the phone that he would rather
30 say in person. He asked us if any of us had tape
31 recorders, if any of us were wired. And, basically,
32 he pretty much told us in blunt terms that he didn't

1 really have so much of a policy about it, as he did
2 just sort of -- they did whatever worked at the time.
3 He pretty much told us that he didn't have a strict
4 policy. And when we asked him -- which we were very
5 concerned about the medical portion of it.

6 Again, he surprised us by telling us that the only
7 thing that mattered was that the guy ended up dead and
8 that he wasn't worried too much about the amount of
9 medicine. He had certainly used the same types of
10 medicine, but that he wasn't totally concerned about
11 the amounts or what it may or may not do. They ended
12 up dead, and that's all that he was worried about.

13 The rest of our conversation with him tracked that
14 same thing. He was not terribly concerned about
15 policy, procedure, or who did what, when, where. Just
16 so the right result happened.

17 Q. So is it fair to say when you refer to the
18 Texas warden saying he was -- he had no strict policy,
19 that he had no written policy?

20 A. If he did, he surely didn't show it to us.

21 Q. Did you request a copy of something like
22 that to work with?

23 A. Oh, yes. We were such innocents. We didn't
24 know. We definitely asked for it in writing. But he
25 didn't have it.

26 Q. Was there a particular aspect of the lethal
27 injection system that you were interested in when
28 visiting Texas?

29 A. There were a couple. We already knew how to
30 do a strap-down procedure because we figured it was
31 going to be very much the same as with electrocution.
32 That -- that wasn't going to change tremendously. Our

1 death house wasn't going to change except for a table.
2 So the two things we were most concerned about was the
3 table itself because it is not just some ordinary
4 kitchen table.

5 And the other thing, and more importantly, was the
6 medications, how they are administered, in what
7 amount, and by whom. This was really the information
8 we traveled for. And we could understand that no one
9 wanted to tell us over the phone. It was -- you know,
10 this is a very serious topic.

11 Q. By the time you finished your visit, did you
12 have any understanding of what the answers to those
13 questions as far as which chemicals and what
14 quantities?

15 A. We did. But we found out also,
16 especially -- I believe it was in Colorado or perhaps
17 Nevada. One of the -- what we considered more
18 progressive states. They had written policies. They
19 had procedures. They let us talk to their medical
20 people who gave us the whys and the wherefores.

21 And so when we came back, we knew what it was
22 going to take. And although the three medications
23 that were used, if I recall, one to put the inmate to
24 sleep, one to slow breathing, and one to actually
25 administer the execution, had to be administered
26 sometimes in direct correlation to the inmate's
27 medical history and to the weight of the inmate.

28 This is what we were told. But they gave us
29 estimates, at least in these other states, and we knew
30 what we were doing at that point. And we came back
31 and used the information from the other states and
32 actually did have a better start on it.

1 Q. But just to revisit Texas for a moment, did
2 you -- you received some information about quantities
3 of chemicals, you say? But none in writing?

4 A. Well, no, not exactly. No. My memory, and
5 I'm sure I could be flawed, my memory is that the
6 warden said these are the three medications. We get
7 them. And we hook them up.

8 And you know, remember, the warden of Texas was
9 not real forthcoming. If he had a policy, if he had
10 amounts, we were not privy to them. He never
11 indicated that to us that he had them; and he
12 certainly indicated to us that nothing was written
13 down at that point.

14 Q. So it's your -- is it your recollection that
15 coming away from this experience, that aspect of the
16 Texas system, in other words, not documenting things
17 on paper, was a model or not a model to follow?

18 A. We were shocked. I think our impression --
19 let me speak for myself. My impression of that visit
20 was I was going to do what Texas wasn't doing. I was
21 not going to follow -- we did not use, to my
22 knowledge, anything we learned in Texas to implement
23 lethal injection in Louisiana. We went the opposite
24 direction.

25 Q. In going in the opposite direction, did you
26 personally or the committee or some of the committee
27 members create any records of the draft of the
28 Louisiana lethal injection protocol?

29 A. Well, there is a couple of steps in between
30 that, sir. When I got back -- and I had been to all
31 the states. The secretary of corrections sat down
32 with all of us, and with me in particular as his

1 counsel, and asked what it was going to take to
2 implement it. We had large discussions about it. He
3 reviewed -- I made copious notes all across the United
4 States. I had all the legal research which I put all
5 together. There were files and files on it.

6 After the secretary reviewed that, he then ordered
7 us to make two policies. One of them would be the
8 department regulation, which comes out of
9 headquarters. That regulation is going to be dated
10 and signed by the secretary of corrections. Nothing
11 can come from the institutions unless the secretary
12 allows it.

13 Then, from that, he wanted us to make a policy and
14 procedure for Angola to implement and, you know, know
15 what we were doing on the death sentence in terms of
16 the actual minute to minute -- not to mention even
17 days before what was to be done. So it was two
18 policies. And based on my notes to the secretary of
19 corrections and my files, so there was a procedure
20 there.

21 Q. When you used the phrase "minute by minute,"
22 could you explain what you are referring to there?

23 A. Well, again, you know, I hate to keep going
24 back to the Sawyer trial. But it made a huge
25 impression on us, and we wanted to make sure that we
26 could back up anything we had.

27 I truly believed as the advisor to the secretary
28 of corrections that we were getting ready to have
29 another Eighth Amendment trial as soon as we
30 implemented lethal injection. This time we were going
31 to have the notes from the beginning. My notes
32 started with the legislature, when I went, when I got

1 that in, how I wrote the legislation, what the
2 comments were in the committees, how we decided to
3 implement it, meetings with the wardens, meeting with
4 the security at Angola, meetings with all the states,
5 and then meetings with the secretary. So that should
6 we ever have to litigate it again, which we really
7 thought we would, we would have complete records,
8 history, notes on what we had done, why we had done
9 it, and how careful we were about doing it so that we
10 could justify what we were doing on an Eighth
11 Amendment level.

12 Q. So it's fair to say that you had a copious
13 amount of documents generated that delved -- divided
14 into at least two categories, one of which were
15 official departmental policies dated and signed by the
16 secretary and other policies that were internal
17 policies of the Louisiana State Penitentiary at
18 Angola?

19 A. As you would on anything. I mean, of
20 course, lethal injection had so much more of an
21 impact. But it's the same thing you would have any
22 time you have a department policy and an internal
23 policy. It is the same thing. Lethal injection just
24 had more far-reaching impact.

25 Q. So just to clarify, this -- the subject
26 matter of lethal injection is not unique in as far as
27 producing documentation to be able to establish what
28 policies are and what direction the agency is going?

29 A. Well, I worked at corrections also as a law
30 clerk for years before I became an attorney there.
31 And I have never known any policy that didn't have
32 that attached to it. It is just the nature of writing

1 something that could have legal ramifications later.

2 You save it. Especially if you think you are going to
3 be challenged on it.

4 Q. Where did you file or store these documents
5 that you are referring to?

6 A. They should be at headquarters. I left all
7 my files at headquarters when I retired from
8 corrections.

9 Q. And you say that you retired in what year,
10 now, again?

11 A. Well, I look took a leave of absence, and
12 then I actually left in 2001.

13 Q. Okay. So when was the last time you think
14 you probably had any reason to have seen or known of
15 these documents?

16 A. Other states would call me all the time.
17 Once you have done it and someone else is considering
18 it -- it's sort of like -- I also did privatization of
19 new prisons. And as soon as you do something like
20 that and another state is in the same position you
21 are, then they start calling you.

22 And so I would say as late as '99, I saw the file
23 because I would have dealt with another state. I
24 couldn't tell you which one it was. But states call
25 quite frequently to just get your feel for it, just
26 like I did with other states. And I'm sure I would
27 have seen it then.

28 Q. All right.

29 A. I would have pulled my files.

30 Q. Okay. And these were files that, again,
31 were created by you and others in the committee in --
32 at what time, what time frame?

1 A. Well, it would have started in '91. It
2 would have had the bulk of it, '91 through '93, when I
3 first -- I believe our first lethal injection was.
4 And then be added on to as anything -- whenever I keep
5 a file, it wasn't called a particular file. In other
6 words, this wasn't the Robert Wayne Sawyer file. This
7 was the lethal injection file.

8 So as we went, if anything new in lethal injection
9 came across the warden's desk or one of my attorneys
10 who was working with me or for me on this, we put it
11 in the file. So the file was a continuing file at
12 corrections headquarters.

13 Q. So you are saying that if you had to put it
14 in one of two categories, would you call it an active
15 file or an archived file?

16 A. Active file. In my opinion, it was an
17 active file because I kept using it.

18 Q. And that would have been up until 1999?

19 A. '99. I left. And I was not at headquarters
20 in '99. I went to Hunt Correctional Center. So my
21 files from headquarters would have been there when I
22 left.

23 Q. Thank you. Do you have any idea where these
24 documents might be located today?

25 A. In the filing cabinets at headquarters, I
26 imagine. I don't know. I have never asked for them.

27 Q. Have I had any conversations prior to today,
28 telephone conversations with you concerning this
29 issue?

30 A. Yes. We discussed whether or not there
31 would be any files.

32 Q. And approximately when was that

1 conversation?

2 A. Oh, maybe a week ago.

3 Q. All right. Did I send you any copies of any
4 documents?

5 A. Yes. I asked you if you could find any of
6 the stuff so that I could remember any of this. It's
7 been a long time. And you sent me a few documents
8 that were sent to you.

9 Q. Right. On --

10 MR. CLEMENTS: If I may approach the
11 witness?

12 THE COURT: You may, Counsel.

13 Q. (By Mr. Clements) I am going to place this
14 collection of documents in front of you. And if you
15 would just take a moment and -- oh, actually, just
16 this. There is one set and so forth. Tell me if you
17 are familiar with -- if these are the documents that
18 you believe that I had sent to you.

19 MS. ESTOPINAL: Your Honor, if Counsel
20 could identify specifically for the record what
21 exactly those documents are?

22 MR. CLEMENTS: All right. First of all,
23 in this selection is a subset of the documents that
24 are contained within Exhibit 101, in globo. And I can
25 give specific page numbers.

26 But, roughly, the first section is a continuous
27 collection of the documents that range from page 1
28 through page 24, which would have been originally to
29 my personal memory, a separate file called just
30 Capital Post-Conviction Project. And the next would
31 be a -- page 263 through 266, which was a four-page
32 document entitled Louisiana State Penitentiary Lethal

1 Injection Equipment, slash, Supply Inventories
2 Checklist, which, incidentally, is a duplicate of an
3 earlier collection of pages but just has the
4 difference of having annotated notes on it.
5 The next section being a document entitled Lethal
6 Injection Execution Procedures, pages 329 through 331.
7 A document that appears to be -- is the title page is
8 page 4, on the top of it, which is page 332 and 33 --
9 and continuing through 335.
10 Another document that has been referred to in this
11 hearing, more specifically, at several times entitled
12 Confidential Louisiana State Penitentiary Lethal
13 Injection Procedures, pages 340 through 344. A
14 duplication of that same document that appears on page
15 606 through 60 -- excuse me -- 610.
16 Another duplication under or close to what appears
17 to be a duplication of a previous document called
18 Lethal Injection and Execution Procedures, pages 612
19 through 61 -- through 6 -- pardon me -- 618. Then the
20 documents, pages 652 through 653, called Confidential
21 Execution Procedures, dash, Administrative Services.
22 Another set of documents entitled Execution
23 Procedures for Administrative Services, 655 through
24 656. Another document, page 668, called Execution
25 Preparation List. Another document called Lethal
26 Injection Execution Procedures, pages 714 through --
27 that's a single page there.
28 Document entitled Drugs for Use for Lethal
29 Injection, on page 759; Monitoring Equipment for
30 Lethal Injection, 785; Drug Use for Lethal Injection,
31 again, 786; monitoring equipment repeated again at
32 860; drugs repeated again at 861; Lethal Injection

1 Execution Procedures with an annotation of the word
2 "old" handwritten in the top right-hand corner, pages
3 867 through 870, otherwise not dated or signed. A --
4 finally, a document with -- on Department of Public
5 Safety and Corrections letterhead, dated June the 5th,
6 2000, pages 887 through 888.

7 Again, a repeat of the drug list on three -- to
8 928, and again on 932. And then a collection of the
9 prescriptions that -- copies of prescriptions actually
10 used in the last three lethal injections, with pages
11 running from 961 through 978.

12 And 979 through 980, being two copies of
13 essentially the same thing of redacted names of --
14 called Strap-Down Team and Alternates. And this --
15 these are the documents that were provided.

16 MS. ESTOPINAL: Thank you.

17 THE COURT: Excuse me. Before you
18 proceed with questions, the Court is going to take
19 about a ten-minute recess, and we'll come back and
20 pick up where we left off.

21 (Recess taken.)

22 THE COURT: The witness may retake the
23 stand.

24 THE WITNESS: Thank you, your Honor.

25 THE COURT: And Counsel may proceed when
26 ready.

27 MR. CLEMENTS: We are ready, your Honor.

28 Q. (By Mr. Clements) Ms. Viator, could you
29 comment on the general policy that existed at DOC
30 headquarters when you were there regarding the storage
31 of documents?

32 A. Well, of course, there is a public records

1 law, and it says how long you have to keep documents.
2 But as the chief legal counsel -- and I was not the
3 only one. There had been two chief legal counsels
4 before I became chief legal counsel, one that I worked
5 for and one that was in between.

6 And we all had, I guess, the same feeling, which
7 is when you are dealing with inmates, unless they die
8 and then they have been dead three or four years, we
9 kept almost everything.

10 Now, what was kept in archive and what was kept at
11 headquarters was according to how much of a chance we
12 might have to refer to it again. And so we made the
13 decisions -- I rarely, if ever, threw away
14 headquarters' files, especially where they might
15 concern, you know, an event or something that we were
16 doing that was ongoing. And lethal injection would
17 have been an ongoing file.

18 Q. And another way to categorize this
19 collection of documents about lethal injection is that
20 -- I believe your prior testimony was that these were
21 produced, in part, in anticipation of future
22 litigation?

23 A. Absolutely.

24 Q. All right. Did you have any kind of
25 articular system that would indicate in general when
26 certain documents might be ripe for destruction?

27 A. No. But there is a set of files at
28 headquarters that was started 20 years before I got
29 there on matters -- I'll give you an example. Inmates
30 over the years have gone back and forth on a plasma
31 donation system. Plasma is a way that inmates used to
32 earn money. I don't even know if they do it anymore.

1 It would come and go. And somebody wanted to pay the
2 inmates and had the money and was starting a company.
3 So we never threw away files that we thought were
4 coming up again.

5 Even though when I first got there, we hadn't had
6 plasma in years, the file was still there. And years
7 later when we started again, we used it. So there was
8 a certain set of files that I would consider part of
9 those ongoing files.

10 Q. Okay. I'm going to switch gears right now
11 and discuss the fact that the documents that you
12 reviewed a moment ago, which were a portion of the in
13 globo Exhibit 101, were produced by the Department of
14 Corrections in response to a public records request by
15 myself about anything for lethal injection.

16 And I would like to go through with just some of
17 the categories of the request and see if you recall
18 ever having created a document that might be
19 responsive to that request, in your memory.

20 A. Okay.

21 MR. FISH: Your Honor, at this point, I
22 want to object to this line of questioning. I don't
23 see what the relevance is to our issue as to whether
24 or not the anticipated execution of Nathaniel Code is
25 going to be done in a cruel and unusual manner.

26 As to whether or not this witness, who no longer
27 works for the Department of Corrections, hasn't in
28 some time, whether or not certain documents that she
29 created years ago may or may not have been in the
30 custody of the Department of Corrections when counsel
31 made his public records request. I mean, the State
32 has been giving the Petitioner a wide leeway through

1 wide-ranging areas of inquiry that I first addressed
2 when I objected to 101, in globo, and later withdrew
3 my objection. But I think we really are going very
4 far afield now. I don't see what the relevancy is to
5 Mr. Code's execution.

6 THE COURT: Before you respond,
7 Counselor, can you tell me if any of these issues
8 were raised in connection with the public records
9 hearing?

10 MR. CLEMENTS: Absolutely. And I'm --
11 maybe I need to ask --

12 THE COURT: That was not before this
13 Court?

14 MR. CLEMENTS: Could you repeat?

15 THE COURT: I said: Were these issues
16 raised during a public records hearing that I believe
17 you had?

18 MR. CLEMENTS: We repeatedly asked if
19 the department had anything anywhere. Basically, yes,
20 your Honor. That was the whole point of the mandamus.

21 THE COURT: In connection with this
22 witness?

23 MR. CLEMENTS: I'm sorry?

24 THE COURT: In connection with testimony
25 of this witness?

26 MR. CLEMENTS: In connection with
27 documents created by herself personally or her --

28 THE COURT: Was this witness testifying
29 when you asked those questions at the public records
30 hearing?

31 MR. CLEMENTS: She did not. She was not
32 present at the hearing. No, your Honor.

1 THE COURT: Okay. Your response to the
2 objection?

3 MR. CLEMENTS: My response to the
4 objection, your Honor, is that it appears there is a
5 large body of documentation that exists or has existed
6 in the past in the custody of the Department of
7 Corrections. We asked for everything that they had.
8 It came in a piecemeal manner.

9 And, in fact, I just discovered at lunch today, I
10 was told that the -- a new set of documents have just
11 been found today dealing with some activities with a
12 visit that the witness is speaking about, about the
13 visit of people to Texas back in the early 1990s. We
14 haven't seen those yet, and so we have no idea what
15 they are going to look like.

16 But to be very honest, that's kind of surprising
17 to us. And we feel that in order to be able to raise
18 the Petitioner's claim about the constitutionality
19 of lethal injection, it is very important that we have
20 every piece of information that we go on to understand
21 just how the department as an entity has conducted
22 itself and continues to conduct itself in these
23 matters.

24 Because we have not got a clear picture yet of
25 just what Mr. Code personally is facing in his own
26 situation. And there's no way to understand that
27 without knowing where we have been.

28 THE COURT: And there has been no
29 proceeding before this Court such as a rule to show
30 cause or anything for documents; and any other request
31 for documents has been addressed before another court.

32 MR. CLEMENTS: It was addressed in front

1 of the 19th Judicial District Court, your Honor,
2 primarily because of the fact that the Department of
3 Corrections was based in that district.

4 THE COURT: That's exactly where I am
5 going with this.

6 MR. CLEMENTS: Yes. And it was felt at
7 that point that in order to perfect a public records
8 -- actually, the reason we went to court was not on
9 the public records request, per se, because we just
10 filed that directly with the Court.

11 What then followed was because we felt that we had
12 only received about 324 pages, and we didn't think
13 those were sufficient to response, we asked for the
14 Court to conduct a -- we filed a writ of mandamus to
15 compel production, further production.

16 That yielded us up to 980 pages, and appears that
17 that number is going to exceed 980, as soon as we get
18 what the latest finding is.

19 THE COURT: Okay. But you are asking
20 this Court instead of that court?

21 MR. CLEMENTS: At this point, yes, your
22 Honor. Because of the complexities of having to go
23 back and forth in different -- we went, basically, as
24 far as -- we were told in open court there that that
25 was -- that a continuing search was going on, but that
26 that's all that we could find.

27 And that the only thing they would not give us
28 were certain particular identities of certain parties,
29 but that everything else had been produced. And we
30 didn't -- we still felt that there was deficiencies in
31 the production, and feel so, based upon the testimony
32 of this witness and other --

1 THE COURT: Will counsel approach the
2 bench.

3 (Off-the-record bench discussion.)

4 THE COURT: Mr. Clements, I believe you
5 might have had some additional argument to make for
6 the record before the Court makes its ruling.

7 MR. CLEMENTS: Your Honor, just to
8 continue, the position of the Petitioner is that the
9 questions, again, that we are going into now, although
10 they involve documents that were produced pursuant to
11 both a public records request and to a writ of
12 mandamus action against the Department of Corrections
13 back in December of 2002, the -- in the 19th Judicial
14 District Court, that, in fact, because these documents
15 are particularly -- they are absolutely relevant to
16 the issue of the lethal injection protocol and the
17 system and how it is carried out in Louisiana, that
18 going into particulars about it was important to
19 follow through with this witness in order to ascertain
20 this witness's memory of whether certain classes of
21 documents were created that would have been responsive
22 that we haven't seen yet; and to see and then to
23 determine whether those documents either exist or were
24 perhaps destroyed since this witness's memory of
25 seeing them last.

26 THE COURT: Does the State have anything
27 further?

28 MR. FISH: No, your Honor.

29 THE COURT: All right. The Court
30 sustains the State's objection as to relevance.

31 MR. CLEMENTS: Note our objection for
32 the record.

1 THE COURT: So noted. The Court notes
2 Petitioner's objection to the Court's ruling.

3 Q. (By Mr. Clements) Ms. Viator, did you on
4 the day of Robert Wayne Sawyer's execution, March 5th,
5 1993, attend the execution in any capacity?

6 A. Well, attend is a big word. What we had at
7 headquarters was an attendance off site. There was
8 the people at Angola and the people at headquarters
9 who were there throughout the whole event, in touch
10 with Angola.

11 Q. Okay. Did you ever travel -- excuse me --
12 to the Louisiana State Penitentiary and personally
13 witness any practice sessions as to carrying out of
14 the intended -- for the intended execution of Robert
15 Sawyer?

16 A. I didn't go to any walk-throughs of
17 Sawyer's. But I was around many, many times with the
18 strap-down team, with the medical team, doing
19 walk-throughs on different parts of it. It was not
20 the Robert Wayne specifically, though. It was on a
21 regular basis. It was also meetings in conjunction
22 with it about the procedure.

23 Q. I'm sorry. The last part I didn't catch.

24 A. We had meetings before Robert Wayne's about
25 the procedure so that we could do it.

26 Q. Okay. So -- and do you believe there were
27 memorializations of the discussions at those meetings?

28 A. There were.

29 Q. And that those would likely be stored or had
30 been stored at one time at Angola's headquarters -- at
31 DOC headquarters in Baton Rouge to your best -- to
32 your knowledge?

1 A. Absolutely.

2 Q. Ms. Viator, do you personally have any
3 medical training?

4 A. No, I do not.

5 MR. CLEMENTS: Thank you. That
6 concludes my questions for the time.

7 MR. FISH: The State has no questions,
8 your Honor.

9 THE COURT: The witness may step down.

10 THE WITNESS: Thank you, your Honor.

11 MS. ESTOPINAL: Your Honor, the State
12 asks if Ms. Viator is released as a witness and free
13 to go?

14 MR. CLEMENTS: Yes. We have no further
15 need of Ms. Viator's testimony.

16 THE WITNESS: Thank you, your Honor.

17 THE COURT: The witness is free to go.
18 You're welcome.

19 MR. CLEMENTS: Call John P. Whitley,
20 please. John P. Whitley.

21 JOHN P. WHITLEY,
22 the witness hereinbefore named, having been first duly
23 sworn to testify the truth, the whole truth, and
24 nothing but the truth, was examined and testified
25 under oath as follows:

26 DIRECT EXAMINATION

27 BY MR. CLEMENTS:

28 Q. Good afternoon.

29 A. How are you?

30 Q. I'm Gary Clements, counsel for Mr. Code,
31 along with Sam Sweeney. Would you please state your
32 name for the record.

1 A. John Whitley.

2 Q. And could you tell me where you are
3 currently employed?

4 A. I think as of the first of this month, I am
5 retired.

6 Q. Sounds nice. Were you formerly employed
7 with the Louisiana Department of Corrections?

8 A. Yes, sir.

9 Q. What was your position with the Department
10 of Corrections in 1991?

11 A. I was the warden at the Louisiana State
12 Penitentiary.

13 Q. And how long were you employed at the
14 department?

15 A. Twenty-five years.

16 Q. And when did you leave the Department of
17 Corrections employment?

18 A. February of '95.

19 Q. Can you describe some of your
20 responsibilities at the Department of Corrections at
21 Angola as warden?

22 A. I was responsible basically for the daily
23 operation of the penitentiary, the policies and
24 procedures, the deputy warden, the three assistant
25 wardens. I guess you could say the buck stopped with
26 me.

27 Q. I understand. Mr. Whitley, if I may, in the
28 time that you were first head warden at Angola, what
29 method of execution was carried out at Louisiana State
30 Penitentiary?

31 A. Electrocution.

32 Q. And at the time of your departure, what was

1 it at that --

2 A. Lethal injection.

3 Q. Could you talk to us a little bit about the
4 transition between those two methods, how that came
5 about?

6 A. When I was first at Angola, the legal method
7 of execution was electrocution. I'm not sure of the
8 dates. But at some time the legislature changed the
9 method of execution to lethal injection. I believe
10 the first time it was just for new cases that were to
11 be found guilty of the death penalty.

12 Q. Prospective application?

13 A. Correct. And then they passed a second --
14 an amendment to that or a second law, I don't remember
15 which, taking everyone who was sentenced to death and
16 making the form of execution lethal injection.

17 Q. The practical effect was that every -- at
18 the time that the decision was made to transfer to
19 lethal injection, had there been any other
20 electrocutions carried out in Louisiana?

21 A. I didn't quite catch that.

22 Q. At the time that the decision was made to
23 make the transfer -- and you had said that there was
24 one initial that was prospective in nature only and
25 applied only to certain inmates. Was there ever
26 another electrocution carried out after that point?

27 A. I really don't remember the dates. I know
28 that while I was there, we had two electrocutions and
29 one lethal injection.

30 Q. If I were to say that the 1990 electrocution
31 of Dalton Prejean was in that year --

32 A. Correct.

1 Q. Would that refresh your memory?

2 A. Correct. That was the first one.

3 Q. And in March, the next execution of any

4 nature took place on March the 5th, 1993, with Robert

5 Wayne Sawyer, and that that was a lethal injection.

6 A. That was a lethal injection. Correct.

7 Q. Do you know what involvement Department of

8 Corrections Secretary Bruce Lynn had in this

9 transition?

10 A. Well, Mr. Lynn was the secretary of

11 corrections at the time the laws were changed. He and

12 myself, the attorney for the Department of

13 Corrections, my deputy warden, and, I believe, one EMT

14 went to Texas, Nevada, and Colorado to look at their

15 procedures for lethal injection.

16 Q. All right. What particular aspects of those

17 systems conducted in those states were you personally

18 interested in understanding?

19 A. Basically, I was looking at the -- the

20 procedure that was used for the lethal injection.

21 This was something that was brand-new to us. We

22 really didn't have a lot of knowledge about it. So I

23 was looking for the procedure to use.

24 We had an EMT with us who was looking more at the

25 medical procedures to be used. My deputy warden was

26 also interested in the medical procedures. And we had

27 the attorney for the department that was there looking

28 at the legal aspects of it.

29 Q. And who was the deputy warden that you

30 mentioned, that you can remember?

31 A. Richard Peabody.

32 Q. Richard Peabody. And do you recall that the

1 -- you had mentioned the states of Texas, Nevada, and
2 Colorado, to your knowledge. Did all of those people
3 that you mentioned travel to all of those states?

4 A. No. I think after Texas, which was the
5 first institution we went to, Huntsville, I believe
6 myself, the department attorney, and I believe the EMT
7 went on to Colorado and Nevada.

8 Q. Okay. And would it be fair to say that you
9 had a number of meetings to discuss your findings over
10 the course of months, around the time of this
11 investigation of other states' protocols?

12 A. You are referring to after we went to these?

13 Q. Yes.

14 A. Correct. Basically, we had to determine who
15 we were going to use. We had to get the procedures
16 for the strap-down. In fact, we had to get procedures
17 in place for the process in general. And this
18 involved the deputy warden who worked with the medical
19 department and then the security warden that worked
20 with the strap-down team.

21 Q. Is that the same deputy warden you mentioned
22 a moment ago that worked with the medical department?

23 A. Correct.

24 Q. Okay. That would be --

25 A. Richard Peabody.

26 Q. Richard Peabody. Okay. He worked
27 specifically with the medical aspect of things, so to
28 speak?

29 A. Correct.

30 Q. Okay. What were some of your principal
31 concerns when you were developing a draft for the
32 lethal injection process in Louisiana?

1 A. I think the main concerns came from our
2 visit to Texas. Talking with the warden or the
3 medical people, I don't recall just which, they had
4 informed us that if you inject the poisons too fast,
5 that this could lead to a convulsion from the inmate,
6 or if -- I think some of the solutions could
7 crystallize in the I.V. line.

8 If that happened, it could cause some bad results
9 with the inmate, some type of convulsion. And we
10 wanted to make sure that we were doing this, you know,
11 as safely as possible to get the procedure done.

12 Q. With that intention in mind, did you then
13 reduce your findings or, you know, hopes and
14 aspirations in this project to a written document or
15 documents?

16 A. I feel sure we did.

17 Q. Okay. Would these have been documents that
18 were department policies?

19 A. They would have been prison policies. And I
20 think the department would have had its own policy.

21 Q. Okay. What is the major distinction between
22 a prison policy and a department policy?

23 A. The prison policy would be a policy strictly
24 for the people at the prison. This would be a policy,
25 say, that I issued under my signature to the
26 employees. A department policy would be a policy
27 issued to all prisons. In this case, it would only
28 apply to us, and that would be issued under the
29 secretary's signature.

30 Q. I understand. You mentioned the phrase
31 "under my signature" or "over my signature." Does
32 that mean that a -- are you telling me, then, that

1 policies that you -- that were strictly focused for
2 the Louisiana State Penitentiary at Angola as opposed
3 to department-wide policies would have contained a
4 signature from you?

5 A. Correct.

6 Q. Would these documents have also contained a
7 date?

8 A. Correct.

9 Q. What would be the purpose of including a
10 signature or a date on those documents?

11 A. Well, these documents could be used in legal
12 proceedings. They could be used in civil service
13 proceedings. The date would show when a particular
14 policy went into effect.

15 Q. Okay. And if a policy were somehow amended,
16 would -- what would be a common format for that to be
17 represented? Would that -- would that policy be then
18 retyped and put under a new date and signature? Or
19 would it --

20 A. If it was amended?

21 Q. Yeah. If there was an adjustment made into
22 some content in the procedure or document.

23 A. Just trying to remember back, I mean, it is
24 very possible it would be a new policy. I -- there's
25 -- I would have to have an example to --

26 Q. I understand.

27 MR. CLEMENTS: If I might approach the
28 witness.

29 THE COURT: You may, Counsel.

30 MR. CLEMENTS: Thank you.

31 Q. (By Mr. Clements) This actually is a
32 department-wide policy but -- because I don't have any

1 with your signatures, I don't believe. But this is
2 page 10 through 13 of Exhibit 101. And then there is
3 a handwritten notation at the top.

4 A. Yeah. I have seen this one.

5 Q. Okay. This document, although it is over
6 the signature of Richard Staulder, does it represent
7 in general the kind of document that you were
8 describing earlier about having a date and time -- I
9 mean, a date and a signature?

10 A. Well, a department policy would also have a
11 date and a signature. A prison policy would be from
12 the prison, and it would also have a date and a
13 signature.

14 Q. Okay. As far as policies that were created
15 by you as warden and governed at Angola, would these
16 documents have been stored and kept at Angola State
17 Penitentiary?

18 A. Correct.

19 Q. And would they be -- is there an archive
20 system at the penitentiary for storing documents past
21 a certain age?

22 A. There is. Or there was. Now, I haven't
23 been there since '95. So I don't know what they are
24 doing right now. But we had a building where we
25 archived older material.

26 Q. And this building was on the prison grounds
27 itself?

28 A. Correct.

29 Q. And did -- are you aware of any policy in
30 general that governed the destruction of documents
31 past a certain age in any sort of a tracking articular
32 system that would help identify when documents might

1 be faced with the possibility of being destructed?

2 MR. FISH: Your Honor, at this time, I
3 am going to reurge, again object to this line of
4 questioning. The -- this witness has just testified
5 that he hasn't been at the Louisiana State
6 Penitentiary in official capacity since 1995.

7 We are not interested in the history of the
8 documents, production, and historical aspect of their
9 record-storing in this proceeding. We are interested
10 in the executions that have taken place and what --
11 and what has transpired at those events.

12 But I think that in -- in the -- I think this
13 exhaustive inquiry into the recordkeeping policies at
14 the Louisiana State Penitentiary, especially of a
15 witness who hasn't been there in an official capacity
16 in seven years, is of no relevance as to whether or
17 not this defendant, Nathaniel Code, Jr., is going to
18 be constitutionally protected when he is executed.
19 And I object to it on that basis.

20 THE COURT: Petitioner's response to the
21 objection?

22 MR. CLEMENTS: My response to the
23 objection is that it is extremely relevant, especially
24 for matters that deal with the time period of 1995,
25 and earlier, during the time that Warden Whitley would
26 have had personal knowledge from being at Angola State
27 Penitentiary as we have seen in our own review of the
28 documents which we feel are instructive to us to
29 discover with detail and with particularity what did
30 actually happen; and, therefore, what is likely to
31 continue to happen or change with regards to lethal
32 injection. Because right now, the areas that we are

1 the most deficient in are documents that -- involving
2 executions from the era where Warden Whitley was the
3 warden of the prison.

4 And I specifically refer at this moment to the
5 fact that prescriptions, amounts of chemicals that are
6 particularly involved, we have no clear understanding
7 of the amounts that were used. We have no
8 prescription slips, for example. Nothing past the
9 last three executions.

10 So we are talking about executions that happened
11 in 1993 and 1995, for an example, were times -- were
12 documents that are not -- there are counterparts to
13 those that do exist in our public records response
14 that don't exist from those time periods. And we are
15 trying to ascertain, you know, what happened to those.

16 And 'cause we know that those kind of documents
17 apparently have existed, based on testimony we have
18 heard from other witnesses and deponents. So I would
19 argue that they are relevant; and my line of
20 questioning in this regard is on point of relevance
21 for the Petitioner.

22 THE COURT: The Court has a similar
23 question that I had with regard to the similar
24 objection made with the other witness. And you might
25 be able to summarily just tell me if the -- at the
26 public records hearing, was there any testimony at any
27 point?

28 MR. CLEMENTS: Essentially, your Honor,
29 no. There was no testimony. There was only
30 presentation by counsel Mr. Bruce Dodd for the
31 Department of Corrections and by myself for Denise
32 LeBoeuf, who was the Petitioner in name for the record

1 as representative of our office on behalf of Mr. Code.

2 But the discussions that we have -- I believe we have
3 already entered them into evidence.

4 If we have not, we can certainly ask to do so, the
5 transcripts from those hearings from December the 9th
6 and 11th, 2002, from the 19th Judicial District Court.
7 This -- yes. Petitioner's Exhibit 102, I believe, has
8 already been introduced, and it seems like a long time
9 ago. I guess it was yesterday.

10 And it contains basically the hearings, the
11 transcripts from those two hearings as I had mentioned
12 it. So the entirety of representation on the record
13 appears in these matters.

14 And they basically -- if I may summarize -- and
15 counsel for the opposition can certainly go to the
16 contrary. And we will expect to have Mr. Dodd on the
17 stand tomorrow morning to go into further detail if
18 needed.

19 But, essentially, we were told that this is
20 everything they could find after repeated searches.
21 And so that's -- with the exception of not turning
22 over the names of certain particular individuals, and
23 that they explicitly said they were claiming no
24 privilege to withhold any documentation.

25 So on the basis of that representation by Mr. Dodd
26 in open court and Mr. Billy Kline on the second day in
27 open court for the party, then we feel that we had
28 exhausted that to that extent.

29 THE COURT: And you are not asking this
30 Court to be of any assistance in producing documents.
31 You are just trying to find out from this witness
32 whether documents existed at some point?

1 MR. CLEMENTS: As of yet, your Honor, we
2 have not filed a particular motion at this moment, no.
3 But we are just trying to ascertain through the
4 witnesses based on the information that we have so far
5 and based on the understanding that that was allegedly
6 everything that did exist.

7 We are trying to determine the answer to the
8 question: Did documents exist that people can
9 identify? And then if they were just, you know -- if
10 they have not been found, can we presume that they
11 were destroyed, or have they just been located in some
12 place that no one has discovered yet?

13 THE COURT: All right. The Court is
14 concerned, as I was before, about the relevance of
15 this line of questioning with regard to this witness.
16 But the Court is going to give the Petitioner some
17 latitude, particularly if you stick with the specifics
18 that you have mentioned just now in your response to
19 the objection.

20 MR. CLEMENTS: All right.

21 THE COURT: So the Court is overruling
22 the State's objection to an extent in giving the State
23 -- I mean, giving the Petitioner, rather, some
24 latitude.

25 MR. CLEMENTS: Thank you, your Honor.

26 Q. (By Mr. Clements) I think we need to
27 revisit the question that was a few minutes ago, which
28 was: Did you -- are you aware of any policy that
29 governed the issue of destruction of records or
30 archiving of records, in general? And any that would
31 be applicable to lethal injection documents, in
32 particular, would be, of course, of great help to us.

1 A. I am generally aware of a policy that states
2 how long we are supposed to keep certain documents. I
3 personally don't recall what those -- what the
4 document said, for what period of time we were
5 supposed to keep certain documents.

6 Q. Would you have considered any of the
7 documents -- let me rephrase this. You are familiar
8 with the litigation that took place, and you are one
9 of the -- you were the named parties in Sawyer v.
10 Whitley, concerning a challenge against the -- about
11 the unconstitutionality of electrocution as a means of
12 execution in Louisiana?

13 A. Correct.

14 Q. And is it fair to say that documentation
15 that you created or was created by yourself and others
16 that were studying the protocols of other states in
17 developing the protocol here, that one of the things
18 in the back of your mind was to create a paper trail
19 in case of a similar litigation as to what we are
20 actually seeing today?

21 A. Not necessarily on my part. I would have
22 been interested in making sure that we had the
23 policies and procedures together for the employees so
24 that they understood what we were doing and how we
25 were going to do it. We would have worked with
26 headquarters to work with the legal department there
27 to have the policies from a department level, if
28 that's what you are referring to.

29 Q. Okay. So the perspective that I was
30 referring to, you think, would be more likely to be
31 something in the mind of someone in the legal
32 department than -- as perhaps their concern, but not

1 yours. Your concern was on employees?

2 A. My concern was more of what was actually

3 going to happen at the prison during a lethal

4 injection.

5 Q. Uh-huh.

6 A. It would have been up to the legal

7 department to -- although I would be concerned about

8 it, it would be up to them to worry about what we had

9 to do as far as a lawsuit.

10 Q. Yeah. Okay. And, again, your primary

11 concerns as far as carrying out -- especially after

12 what you saw in Texas, what did you come away feeling

13 were a primary concern of what you needed to address

14 in Louisiana as lethal injection and the development

15 of a protocol here?

16 A. What we wound up doing was pooling the

17 information that we had from the three states that we

18 had visited. Warden Peabody, along with whatever

19 medical personnel he was using at the time, from what

20 I can recall, made calls to other states that were

21 involved in lethal injection to get more information

22 and to start to work on our policies. Now, that would

23 have been from the medical point of view.

24 Q. Are you aware personally of any reason why a

25 doctor of medicine, a medical doctor, might have a

26 difficulty in participating in a lethal injection?

27 A. I could understand it, yes.

28 Q. Do you know of any policy reasons why they

29 might feel constrained not to?

30 A. Are we talking prison or medical board?

31 Q. Medical board.

32 A. They would probably have a reason not to.

1 Q. Are you aware of the American Medical
2 Association having taken any position about physician
3 involvement in executions?

4 A. I was aware of it. I don't recall it at the
5 present.

6 Q. Do you recall whether there was any --
7 whether that concern for physician involvement or
8 whether there was a limitation on that might have
9 affected the kind of medical expertise that you chose
10 to rely upon in developing the protocol?

11 A. Now, in developing the protocol or in the
12 actual --

13 Q. Well, first in developing, and then we can
14 talk about after.

15 A. I personally was not as involved in that as
16 Warden Peabody was. He was working with the medical
17 people to come up with the procedures and protocols.
18 Once he had gotten his information and the assistant
19 warden for security had worked on his part, then they
20 would have brought it to me as a policy.

21 Q. Do you recall whether -- when you met with
22 Warden Peabody that this was nothing more than a word-
23 of-mouth oral discussion, or was there, perhaps, some
24 documentation provided by Warden Peabody concerning
25 his findings or research?

26 A. I would just have to guess that it was word
27 of mouth because -- if we are talking about him
28 relaying information to me --

29 Q. Okay.

30 A. -- about what he had found out. It would
31 have probably been a verbal conversation.

32 Q. Would the ultimate form of decision on what

1 to do with the information in the form that you
2 decided, the protocol, the process that you finally
3 decided to carry out at Louisiana State Penitentiary,
4 would that have remained at a word-of-mouth level?
5 A. No. That would have been what we considered
6 a policy.
7 Q. And would have been reduced to a written
8 document?
9 A. Correct.
10 Q. And with a signature and a date?
11 A. Correct.
12 Q. With your signature and date, if it was at
13 your time?
14 A. It would have been my signature if I was the
15 warden at that time.
16 Q. And you were the warden of Angola at the
17 time of the execution of Robert Wayne Sawyer?
18 A. Correct.
19 Q. The first person to have a lethal injection
20 in Louisiana?
21 A. That's correct.
22 Q. Okay. Warden Whitley, if I could use that,
23 could you explain your role on the day of the
24 execution of Robert Wayne Sawyer as concerning the
25 process of carrying out that first lethal injection?
26 A. My role on the first date -- on the last
27 date?
28 Q. On the day -- on March the 5th, and the
29 night of March the 4th.
30 A. We would have made sure that Robert Sawyer
31 was moved to the -- call it the death cell. It is a
32 cell at Camp F where the inmate is taken before

1 execution. I would have -- you are talking about
2 just me personally?

3 Q. Yes. You personally.

4 A. I would have talked to him several times
5 during the day just to make sure that he was doing all
6 right. We would have been arranging for his family
7 visit, his attorney, his spiritual advisor. And other
8 than that, I just kind of kept away.

9 MR. CLEMENTS: (Coughing.) Excuse me,
10 your Honor.

11 Q. (By Mr. Clements) Warden Whitley, you were
12 in the death chamber with Mr. Sawyer. Right?

13 A. Correct.

14 THE COURT: Counsel, can the Court be of
15 any assistance to you? Do you need a few moments?

16 MR. CLEMENTS: Maybe a moment, your
17 Honor. I am sorry.

18 THE COURT: All right. Let's be at ease
19 and recess for about five minutes or so.

20 (Recess taken.)

21 MR. CLEMENTS: Thank you, your Honor.
22 Appreciate the recess.

23 THE COURT: You are welcome, and you may
24 proceed. The Court has something of the same problem.

25 MR. CLEMENTS: Certainly.

26 THE COURT: And you may want to keep
27 some water at the counsel table across the board for
28 all counsel. And let me know if I can be of any other
29 assistance to you. Counsel may proceed.

30 MR. CLEMENTS: Thank you, your Honor.

31 Q. (By Mr. Clements) Warden Whitley, I would
32 like to explore the area of the internal process that

1 you-all had there of the people who were working on
2 developing this protocol. I'm curious about the
3 decision-making process. One example of something
4 that came up was that some states do things in one
5 way. And, I mean, not every state does it exactly the
6 same way. Correct?

7 A. Correct.

8 Q. So y'all went out and took a sampling. And
9 from that, you picked and chose and decided to craft
10 the system that you have that -- I don't know whether
11 you think it matches one particular other state
12 exactly or not. Do you -- would you have any idea?

13 A. I would say it matches the Texas system
14 probably more than either of the others.

15 Q. All right. Well, one of the things that --
16 believe that's an issue in some states that do
17 differently in Texas is that instead of having a
18 person that pushes a syringe manually, they use a
19 machine.

20 A. Correct.

21 Q. And was that an issue that y'all discussed
22 amongst yourselves?

23 A. I remember considering -- I forget the name
24 of the machine. I have seen the --

25 Q. I believe Dr. Fred Leuchter calls it the
26 lethal injection machine.

27 A. Okay. I remember discussing it. I forget
28 why this particular thing was not considered. I think
29 it had to do with cost and having people actually do
30 the process. Again, this is something that -- I
31 recall it. But I can't recall every --

32 Q. With every -- every sharp detail, of course.

1 It's been how many years, now?

2 A. Since '93.

3 Q. Right. In general, though, who would have
4 been sitting around a table discussing the merits of
5 one versus the other of that kind of an issue? Maybe
6 not that particular issue, but other issues where you
7 were making a decision between Option A and Option B.

8 A. Again, we are talking lethal injection?

9 Q. We are talking specifically lethal injection
10 components, protocol components.

11 A. Okay. Just the people that I probably would
12 have had there would have been my deputy warden, my
13 assistant warden for security, probably the business
14 manager if this included purchasing, and possibly
15 medical people. I am not sure. I think the deputy
16 warden would have handled that part.

17 Q. Okay. So since we have heard about an
18 individual who had emergency medical technician
19 training and expertise, your testimony is that it is
20 possible, but not necessarily so, that that person
21 themselves were present at that kind of a meeting
22 discussing issues?

23 A. I don't recall a specific meeting where we
24 discussed these things. I am sure that we had them
25 because we had to get procedures, the procedure
26 together, and I had to get information from my
27 different staff. But I don't recall the meeting that
28 was held.

29 Q. Right. Could you tell us -- you mentioned
30 the deputy warden. And forgive me, but is that Warden
31 Peabody?

32 A. Correct.

1 Q. Okay. I keep -- I'm still working on
2 deputies and assistants, you know.

3 A. One deputy, three assistants.

4 Q. One deputy and three assistants?

5 A. Correct.

6 Q. And of the three assistants, which assistant
7 would have been the one? Or was there a category or
8 what they were in charge of?

9 MR. FISH: Your Honor, I'm going to
10 object again. I mean, the minutia that we are going
11 into these past executions without really even talking
12 about the execution. We're talking about meetings to
13 discuss whether -- how we are going do it. I mean,
14 the State objects to this.

15 It is not relevant to the method and operation of
16 the procedures of the injections that are going to
17 happen to this defendant eventually. And I think that
18 the -- I don't want to express any kind of intent on
19 the part of the Petitioner's counsel, because I really
20 can't even imagine what it is. But it is -- this is
21 irrelevant questioning. The State objects to it.

22 THE COURT: Petitioner's response, if
23 any?

24 MR. CLEMENTS: Your Honor, respectfully
25 would submit -- the Petitioner submits that it is not
26 irrelevant. We are trying to understand every
27 particularity of the development and putting into
28 practice of what appears to be a medical procedure and
29 repeated references to no doctors' permitted
30 involvement or very, very limited involvement of
31 emergency medical technicians. I am trying to
32 ascertain whether educated guesses and calculated

1 decisions were made on the basis of information and
2 was shared so that we can lay a foundation or
3 understanding which we will bring to this Court in
4 much more detail tomorrow with presentation of further
5 witnesses that will make this a lot more clear to show
6 just what the depth of the deficiencies are.

7 And the record that we are developing here is to
8 show with particularity that the deficiencies started
9 at the very moment when this entire process was
10 dreamed up and thought up as a very beginning idea to
11 the point at which it was then put into action and
12 carried out and repeated with seven times.

13 And I would also respectfully submit that there is
14 -- you know, if Petitioner were to prevail, there will
15 be no chemicals injected into his body under this
16 method. Thank you.

17 MR. FISH: Your Honor, can I make a
18 brief response there?

19 THE COURT: You may.

20 MR. FISH: Your Honor, the only person
21 that's called this a medical procedure is Mr.
22 Clements. This is not a medical procedure. This is
23 an execution. Now, you now, he can phrase that
24 however he wants, and I am sure he will.

25 But that's -- just because he says it is so
26 doesn't make it so. And that characterization there
27 has not been proven up in this Court as of yet; and I
28 doubt very seriously if it ever will be.

29 That's probably why they have those regulations
30 about the doctors being involved in it that he has
31 already elicited from a number of witnesses about
32 certain standards of the American Medical Association.

1 So it is -- I would take issue with that
2 characterization. And it hasn't been proven here at
3 this point in this hearing.

4 THE COURT: Anything else, Mr. Clements?

5 MR. CLEMENTS: Yes. Briefly put, that,
6 again, tomorrow there will be further testimony to
7 explain to the satisfaction, I would presume, of the
8 State that this is indeed a medical procedure; and I
9 would like to continue questioning of the witness.

10 THE COURT: Now, you are not about to
11 ask this witness about the medical, about in that
12 area?

13 MR. CLEMENTS: I will probably be able
14 to focus on the lack of understanding or -- not lack.
15 His lack of expertise, I can ask that quickly as I
16 have done with all of them.

17 THE COURT: You may.

18 Q. (By Mr. Clements) Mr. Whitley, do you have
19 particular -- do have any medical training or
20 background yourself?

21 A. No.

22 Q. Is there any other aspect of the
23 decision-making process that you feel that you --
24 would help the Petitioner understand a little clearer
25 just how the final collection of parts became a whole
26 here?

27 A. Could you ask the question again? Just --

28 Q. Sure. I was wondering if there was -- if
29 you feel there is any other aspect of your memory of
30 how this process was created, if there is any aspect
31 of that that you could be able to help us understand,
32 better understand exactly how the final product that

1 was created as of 1993, March 5th, came into being.

2 A. I think really I would just -- I would have
3 to go back and say we made the trips. We talked to
4 the people in charge of the executions. We talked to
5 the medical people at the facilities. We gathered
6 information that they had. We brought that back to
7 Angola.

8 The deputy warden working with the medical people
9 made other calls to other institutions getting further
10 information. He and the people that he was working
11 with would have come up with, let's say, the ideas of
12 the procedures that they wanted to pursue from a
13 medical viewpoint.

14 Q. Okay.

15 A. I had an assistant warden who would have
16 been coming up with policies and procedures from a
17 security point of view, which would have been the
18 strap-down team. We would have discussed this. And,
19 again, I don't recall a particular meeting where this
20 was all discussed. But I know we had one.

21 Q. And -- okay.

22 A. There were issues that we had to decide.
23 And like I said before, I would make the final
24 decision. This was also -- well, I can't -- I can't
25 say that because I don't recall it. I am sure
26 headquarters was involved in this in some way.

27 Q. Yes, sir. I understand. Briefly, if you
28 know, would Deputy Warden Peabody have any medical
29 training or expertise himself?

30 A. He is a social worker.

31 Q. Okay. All right. And getting close to
32 concluding, in the transition of your administration

1 to that of your successor, Warden Burl Cain, was there
2 any particular discussions that you had with him on
3 the subject of lethal injection?

4 A. None.

5 Q. No? After the March 5th execution of Robert
6 Wayne Sawyer, do you recall whether you had any sort
7 of a debriefing or a session of any sort to discuss
8 how everybody thought things went and if they thought
9 there was room for improvement or a change of anything
10 that they might and -- first of all, just that.

11 A. Okay. This would be the same as the meeting
12 that we had to discuss the procedures to start with.
13 We had it.

14 Q. There was one?

15 A. But I can't --

16 Q. Okay.

17 A. -- pinpoint the facts. I can remember a few
18 things that were kicked around that we were concerned
19 about and were talking about making changes.

20 Q. Can you recall any one particular one of
21 those things that you might have been talking about?

22 A. I remember when we did this execution with
23 Robert. We had him strapped to the table.

24 Q. Uh-huh.

25 A. The I.V. put in before the witnesses were
26 brought in.

27 Q. Right.

28 A. And when the witnesses came in, Robert was
29 so calm, he just laid there. And from my point of
30 view, it was hard to tell if he was alive or dead at
31 that time.

32 Q. This is before you -- anything had been --

1 any chemicals had been administered?

2 A. Correct. He was just laying there.

3 Q. He was just resting there? Okay.

4 A. Also at that particular time, I had Robert
5 write his last words, and that was distributed to the
6 witnesses.

7 Q. Uh-huh.

8 A. One of the -- or two of the things that we
9 thought about were maybe not having him strapped to
10 the table before the witnesses were brought in and
11 also letting him speak his own final words. It was
12 just a problem of whether or not people thought he was
13 alive or dead at that time.

14 Q. What was your major concern about what the
15 witnesses would -- what would be going on there?

16 A. The witnesses are there to witness an
17 execution. They need to see that the person is alive
18 when they get there.

19 Q. Right. Did you have any particular concerns
20 from your visit to Huntsville, Texas, about that
21 particular matter?

22 A. Which matter, now?

23 Q. The matter of witnesses being -- or someone
24 appearing not to be alive when the witnesses first
25 come in.

26 A. I don't recall. I just remember that while
27 I was standing next to him and the witnesses came in,
28 he was so still. And even I was kind of wondering at
29 first.

30 Q. Uh-huh.

31 A. I spoke to him, and he spoke back to me.

32 Q. Okay. Do you know if, from your own

1 personal knowledge, you were still -- were you still
2 at the Louisiana State Penitentiary at Angola when
3 Warden Cain assumed administrative -- became a warden
4 of the prison?

5 A. Physically?

6 Q. Yeah.

7 A. I was maybe there a day or so.

8 Q. Oh. A very short time?

9 A. Right.

10 Q. Do you have any knowledge of whether any of
11 these ideas that you had come up with in a debriefing
12 or a postmortem session might have been considered or
13 adopted by Warden Cain in a future execution?

14 A. Several of the ones that I have mentioned I
15 know are -- have been changed. How they came about to
16 be changed, I couldn't -- I couldn't say.

17 Q. Okay. Do you know what other kinds of
18 things have been changed besides the -- what we just
19 -- you just discussed here?

20 A. I can't recall any others other than
21 strapping him down when the witnesses are there and
22 letting him read his last statement.

23 Q. Okay. So at what time, if you can recall,
24 during Robert's execution, at what time, roughly, was
25 he collected from his cell and escorted to the death
26 chamber?

27 A. I am going to estimate approximately a
28 quarter to 12:00, maybe 20 to 12:00.

29 Q. Right. And this, again, was an execution
30 that was carried out by statute after midnight?

31 A. Correct.

32 Q. Between midnight and 3:00 a.m.?

1 A. That's correct.

2 Q. And it was -- fair to say the practice of
3 the prison was to conduct those as closely as possible
4 to midnight?

5 A. Correct.

6 Q. And is it -- do you have -- were you
7 personally present when the I.V. technicians set up
8 the intravenous connections to Mr. Sawyer?

9 A. I was there when the --

10 Q. In the room?

11 A. I was there in this room.

12 Q. Do you recall -- is it your recollection
13 that that also occurred before the witnesses came in?

14 A. Correct.

15 Q. And that then the witnesses came in at what
16 time, approximately?

17 A. Shortly before 12:00 or at 12:00.

18 Q. Okay. And then you gave -- how did you --
19 how did the process officially begin at that point
20 when all the witnesses were seated and in their place?

21 A. I would signal the executioner that it was
22 time. Once I signal the executioner, they would
23 start, start the injection. They were monitoring
24 Robert with a -- well, his pulse and his heart rate.

25 Q. All right. Do you know how -- how did you
26 convey that signal, was it -- to them to start?

27 A. We had a door between myself and the
28 executioner, who was in another room.

29 Q. In the alcove area.

30 A. The door was left slightly ajar.

31 Q. I see.

32 A. When it was time to start, I would just

1 reach over and shut the door.

2 Q. And that was the understood signal?

3 A. Correct.

4 Q. To begin. Did you then -- where did you

5 remain throughout the time that the lethal chemicals

6 were introduced into Mr. Sawyer? Did you stand in the

7 same location as when you pulled the door closed or --

8 A. I stood next to him at the table.

9 Q. Next to him at the table. Would you say

10 that you stood there for most of the time after you

11 closed the door?

12 A. I stood there the whole time.

13 Q. The whole time. On what side did you stand,

14 if you recall?

15 A. I stood on the side away from the witnesses,

16 but facing the witnesses.

17 Q. And if I'm -- is it correct to assert that

18 Mr. Sawyer's laying position was that his head was

19 towards the small concealed area where the technicians

20 were and the executioner were located?

21 A. Correct.

22 Q. With his body going straightaway out from

23 there with his feet the farthest away from where that

24 one-way mirror was?

25 A. Correct.

26 Q. And so that when you were on the side

27 opposite to the audience of official witnesses, you

28 were on the left side of Mr. Sawyer?

29 A. Correct.

30 Q. And where approximately on -- in the length

31 of his body might you have stood, if you recall?

32 A. From what I recall, around his chest.

1 Q. Around the chest area. And would you recall
2 whether there was any kind of a sheet placed over his
3 body at all during the process or not?

4 A. When you mentioned it, it sounds familiar.
5 But I can't --

6 Q. And when -- and you stayed at that position
7 throughout the entire time. Is there -- what was the
8 point at which you moved from that position?

9 A. Once the executioner had finished injecting
10 the chemicals, they had monitored the pulse and the
11 heart rate, and they felt that the -- Robert was now
12 dead. They would signal me, and I would ask the
13 doctor to come forward and pronounce him dead.

14 Q. They would come forward, you say? One of --
15 how did they do that? Did they signal to you?

16 A. The signal to me?

17 Q. Yeah.

18 A. They would reopen the door that I had shut.

19 Q. So it was just the opposite of the signal
20 you gave to them, then?

21 A. Correct.

22 Q. So you didn't even necessarily hear a sound,
23 a word spoken or -- just the actual opening of the
24 door was the --

25 A. That was the signal.

26 Q. That was the signal to you?

27 A. That it was over.

28 Q. All right. And do you recall from your own
29 memory, if you could, where the intravenous
30 connections were placed on Mr. Sawyer's body?

31 A. From what I recall, somewhere in between the
32 arm. (Indicating.)

1 Q. Okay.

2 MR. CLEMENTS: And let the record
3 reflect that the witness is indicating on the crook of
4 the elbow. I'm not a medical expert either. But in
5 the inside of the bend of the arm.

6 A. Correct.

7 Q. (By Mr. Clements) And was there one on each
8 side? One on each arm?

9 A. I don't recall.

10 Q. All right. Do you have any reason to think
11 that the position of your body might have impeded the
12 view of anybody in the other room trying to look over
13 at Robert?

14 A. No.

15 Q. Okay.

16 MR. CLEMENTS: No further questions at
17 this time.

18 THE COURT: Does the State have any
19 questions?

20 MR. FISH: Yes, your Honor.

21 THE COURT: You may proceed.

22 CROSS-EXAMINATION

23 BY MR. FISH:

24 Q. Mr. Whitley, from your description of
25 Mr. Sawyer's execution, would I be correct in
26 characterizing your concern about when the witnesses
27 came in was that he passed away so smoothly that there
28 was no physical evidence of it?

29 A. No. What I was saying was we had him on the
30 table strapped down waiting for the injection. And he
31 was so calm just laying there that it looked as if he
32 had already been injected and was deceased.

1 Q. But he wasn't, was he?

2 A. Correct.

3 Q. He was still alive?

4 A. That's correct.

5 Q. And then he was dead. Right?

6 A. After the injection. Correct.

7 Q. Right. But there was no physical change

8 from when he was lying there not dead, not injected,

9 and then he became dead; is that right?

10 A. Correct.

11 Q. So as he appeared to everyone, he was just

12 sleeping; is that not correct?

13 A. I'm not sure what they thought. I thought

14 he was -- I guess sleeping would be a good word.

15 Q. Is that what appeared to happen to you? Did

16 he appear to go to sleep?

17 A. We are talking about when he --

18 Q. Yes, sir. When he got the -- when he got

19 the lethal injection.

20 A. I spoke to him several times. And just to

21 show that he was alive. One time, I spoke to him, he

22 didn't answer. And I knew at that time that it was

23 over. That's the only change I saw.

24 Q. When you were involved in this procedure to

25 implement the new execution procedure of lethal

26 injection, were you concerned that the -- was one of

27 your concerns that the patient not suffer any pain or

28 discomfort?

29 A. Correct.

30 Q. Were you also concerned that the execution

31 be done in a dignified manner?

32 A. Correct.

1 Q. When you witnessed the electrocutions under
2 the old law, would there be any doubt in the
3 witnesses' mind of when the execution was happening in
4 that procedure during the electrocution?

5 A. Would there be any doubt as to when it was
6 happening?

7 Q. Yes, sir.

8 A. No. No doubt.

9 Q. The lethal injection that you presided over,
10 was it done in a dignified manner?

11 A. I think so.

12 Q. Was -- did you have to admonish anyone
13 afterwards for unprofessional conduct in the
14 implementation of the execution?

15 A. No.

16 Q. When you indicated before that you were not
17 interested in creating a paper trail, but you were
18 instead more concerned about what actually happened,
19 in that regard, that -- that concern, was that in
20 partial -- in part directed at making sure that the
21 person that was executed did not feel any pain or
22 discomfort?

23 A. It was to make sure that the people involved
24 in the process did it properly. And at the same time,
25 that would have been accomplished.

26 Q. Even if it wasn't written down on paper; is
27 that right? I mean, the net result was the -- was
28 what you were looking for. You got an execution like
29 you wanted it, even if it wasn't written down on
30 paper; is that correct?

31 A. Correct.

32 MR. FISH: I have no further questions,

1 your Honor.

2 MR. CLEMENTS: A few in response to
3 questions, your Honor.

4 THE COURT: You may proceed.

5 MR. CLEMENTS: Thank you.

6 REDIRECT EXAMINATION

7 BY MR. CLEMENTS:

8 Q. Warden Whitley, although you may have not
9 been -- your primary concern may not have been with
10 developing a paper trail, a paper documentation was
11 created about these procedures; is that not correct?

12 A. Correct.

13 Q. And to your knowledge, did these
14 documentations contain detailed information about
15 amounts and types of chemicals, to your knowledge?

16 A. I can't swear to that.

17 Q. Uh-huh. All right. You mentioned that --
18 and Mr. Fish went into it for a moment -- about that
19 there was a time when the witnesses came in and that
20 Robert was so quiet that you had questions yourself,
21 even, as to whether he was still alive?

22 A. Correct.

23 Q. Subsequently -- because there was no
24 movement whatsoever?

25 A. Correct.

26 Q. But subsequent to that, you asked him a
27 question, at which time he became more animated and
28 said something to you. And that's how you knew he was
29 still alive?

30 A. I asked him several questions several times.

31 Q. Okay.

32 A. And he would look over at me and answer the

1 question.

2 Q. And he can engage in a conversation with
3 you. And that was one of the signals, one of the
4 signs that you knew that he had -- not only that he
5 was alive, but that he was still conscious?

6 A. Correct.

7 Q. That he could -- he was alive to the world
8 still?

9 A. Correct.

10 Q. So that even though the appearance of
11 stillness occurred, he was still a conscious being at
12 that moment?

13 A. That's correct.

14 Q. Okay. At a later point, he appeared still
15 again. You would ask him questions. You heard no
16 response eventually?

17 A. That's correct.

18 Q. Are you aware of the effects of pancuronium
19 bromide?

20 A. I was.

21 Q. At the time?

22 A. At the time. I don't recall at this
23 particular time.

24 Q. Not right now? Okay.

25 MR. CLEMENTS: I have no further
26 questions. Thank you. And we will be -- the witness
27 would -- you know, we have no further need to -- of
28 the witness.

29 THE COURT: The witness may step down,
30 and the witness is free to go.

31 MR. CLEMENTS: If I may, your Honor, one
32 brief note of housekeeping. And that would be to this

1 effect, that during the deposition this morning, a
2 copy of the page 787 from Petitioner's Exhibit 101, in
3 globo, had some additional annotations placed in red
4 ink on it by the deponent, John Doe Number One, and
5 they are signed John Doe Number One.

6 They are pictures that add a little more detail to
7 the graphic representation of the death chamber and so
8 forth. We would like to move to enter those into
9 evidence in this matter.

10 (Petitioner's Exhibit 116 was offered.)

11 MR. FISH: No objection by the State,
12 your Honor.

13 THE COURT: The exhibit is admitted.

14 (Petitioner's Exhibit 116 was admitted.)

15 MR. CLEMENTS: We have nothing else
16 except that we are looking at a deposition, one more
17 today upstairs if we can, a brief one.

18 THE COURT: And we will be ready in
19 court in the morning for 9:30.

20 MR. FISH: 9:30?

21 MR. CLEMENTS: Yes, your Honor.

22 THE CLERK: What exhibit number is this
23 one?

24 MR. CLEMENTS: 116. I'm sorry.

25 THE COURT: All right. Anything else by
26 Petitioner?

27 MR. CLEMENTS: Nothing else today, your
28 Honor.

29 THE COURT: Anything else by the State?

30 MR. FISH: No, your Honor.

31 THE COURT: All right. We will resume
32 at 9:30 in the morning. And court is in recess for

1 the rest of the day.

2 (Court recessed for the day.)

3 (Case continued to 2/12/03.)

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1 REPORTER'S CERTIFICATE

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3 STATE OF LOUISIANA:

4 PARISH OF CADDO:

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6 I, Joyce A. Wheeler, Registered Professional

7 Reporter, Certified Court Reporter, and Official Court

8 Reporter in and for the First Judicial District Court

9 of Caddo Parish, State of Louisiana, do hereby certify

10 that the foregoing represents a true and accurate

11 transcription of the proceedings had in said court and

12 were reported by me to the best of my knowledge and

13 ability.

14 SUBSCRIBED AND SWORN TO on this the 27th day of

15 February, 2003.

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Official Court Reporter R, CCR

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1 IN THE FIRST JUDICIAL DISTRICT COURT
2 IN AND FOR THE PARISH OF CADDO
3 STATE OF LOUISIANA

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6 NATHANIEL R. CODE, JR.

7 VS. NO. 138,860-A

8 BURL CAIN

9
10

11 APPEARANCES:

12 FOR THE STATE:

13 MS. CATHERINE M. ESTOPINAL

14 Assistant District Attorneys

15 FOR THE PETITIONER:

16 MR. SAM SWEENEY

17 Capital Post-Conviction Project of Louisiana

18
19

20 PROCEEDINGS HAD in the above

21 entitled matter before Her Honor,

22 RAMONA L. EMANUEL, Judge

23 of the First Judicial District Court,

24 in and for the Parish of Caddo,

25 State of Louisiana,

26 held February 12th, 2003.

27

28 SPECIAL HEARING, VOLUME III

29

30

31 Reported by:

32 Official Court ReporterPR, CCR

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EXHIBIT INDEX

PETITIONER'S EXHIBITS

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(Dr. Mark Heath)		

STATE'S EXHIBITS

EXHIBIT	MARKED	OFFERED	ADMITTED
PAGE/VOLUME			
(Document)g 1	10/III	11/III	11/III

1 PROCEEDINGS

2 (Case continued from 2/11/03.)

3 THE COURT: I know they were waiting to
4 bring Mr. Code. But I just thought I'd come down and
5 see if the lawyers need to visit with me on anything
6 ahead of time and let you know I'm upstairs and just
7 waiting.

8 MS. ESTOPINAL: Thank you, your Honor.

9 THE COURT: And I appreciate your
10 patience and diligence. It shouldn't be too much
11 longer.

12 MR. CLEMENTS: That's fine.

13 (Off the record.)

14 THE COURT: The Court is ready. It is a
15 few minutes until 10:00, and all counsel are present
16 as well as the Petitioner, Mr. Code. And we are ready
17 to proceed. Is the State ready?

18 MR. FISH: The State is ready, your
19 Honor.

20 MS. ESTOPINAL: Yes, your Honor.

21 THE COURT: Is Petitioner ready?

22 MR. SWEENEY: Petitioner is ready, your
23 Honor.

24 THE COURT: All right. Counsel may
25 proceed.

26 MR. SWEENEY: Petitioner calls Mr. Bruce
27 Dodd to the stand.

28 BRUCE DODD,
29 the witness hereinbefore named, having been first duly
30 sworn to testify the truth, the whole truth, and
31 nothing but the truth, was examined and testified
32 under oath as follows:

1 DIRECT EXAMINATION

2 BY MR. SWEENEY:

3 Q. Morning, Mr. Dodd.

4 A. Morning.

5 Q. Can you please state your name for the
6 record.

7 A. Bruce Dodd.

8 Q. And, Mr. Dodd, where are you employed?

9 A. I'm employed at the Department of Public
10 Safety and Corrections. I'm an attorney assigned to
11 represent Louisiana State Penitentiary at Angola.

12 Q. Okay. How long have you been employed at
13 Angola?

14 A. Five years this month.

15 Q. And your position, again, is?

16 A. The department has several attorneys that
17 are assigned to different prisons. I am the only
18 attorney assigned to represent Louisiana State
19 Penitentiary at Angola.

20 Q. Okay. Is your office then located on the
21 grounds?

22 A. It's located on the grounds in the
23 administration building.

24 Q. Do you also serve as Mr. Cain's lawyer?

25 A. Personally or --

26 Q. Yes.

27 A. No, sir. Not for -- years ago, I did. But
28 I have not since I have been an attorney for the
29 State.

30 Q. Okay.

31 A. I -- and let me clarify that. I might have
32 told him something at one time or another. But as far

1 as retained counsel personally, no.

2 Q. Is having a separate lawyer at LSP, is that
3 a new development?

4 A. It was set up about five years ago. The
5 bulk of the work, I -- I don't know what percentage.
6 But Louisiana State Penitentiary, Angola, has 5,108
7 inmates. The large percentage of the inmate suits are
8 filed there. The largest percentage of civil service
9 cases are filed there. And then Angola has a
10 tremendous -- about a \$90-million budget.

11 We do a lot of contracts with outside people. We
12 have a -- what we call B-Line. We have a thousand,
13 1,200 people live on B-Line. So you have domestic,
14 just an -- a sundry of problems or legal matters that
15 can occur at Angola that don't occur at other prisons.

16 Q. And those matters are your responsibility?

17 A. That's correct.

18 MR. SWEENEY: Your Honor, may I approach
19 the bench?

20 THE COURT: The witness?

21 MR. SWEENEY: Yeah. The witness. I'm
22 sorry.

23 THE COURT: You may.

24 Q. (By Mr. Sweeney) Mr. Dodd, I'm showing you
25 what's been marked as Petitioner's Exhibit 104. I'll
26 just ask you to look at the front cover and identify
27 it if you can.

28 A. This was a public records request that was
29 served on headquarters. I received a copy from Bob
30 Barbor, who is -- I think his title is executive
31 counsel. He's another attorney for the department.
32 He sent it to me. I gave it to Dora Rabalais who puts

1 all our stuff together, or to Warden Ranatza. I'm not
2 sure whether I showed it to her and then gave it to
3 Dora, but it eventually went to Dora Rabalais to put
4 the information together.

5 Q. Did you yourself collect any records at LSP?

6 A. No, sir.

7 Q. And you said that you delegated that duty to
8 Dora Rabalais, Sheryl Ranatza, and anyone else?

9 A. Well, I don't know if it was delegated to
10 Sheryl Ranatza. She is the deputy warden for
11 administrative services. If I remember right, I would
12 have shown it to her.

13 Dora Rabalais is over legal programs, answers all
14 of our discovery requests, and requests like this. So
15 I gave it to her. I think she even received a faxed
16 copy from Bob Barbor herself, if I remember right.

17 Q. Okay. Do you know where Ms. Rabalais
18 searched for?

19 A. I have no idea.

20 Q. Okay. Mr. Dodd, you represented Angola in
21 the public records hearing we had in Baton Rouge?

22 A. I was there on the Monday. I left to go out
23 of state. I think Billy Kline appeared on my behalf,
24 on the department's behalf on Wednesday. I wasn't
25 there when he --

26 Q. Do you remember the dates of those hearings?

27 A. I don't. Well, it was the first parts --
28 first, second week of December.

29 Q. Okay. If I said December 9th and 11th,
30 would that --

31 A. That's probably correct.

32 Q. And that hearing arose out of the litigation

1 that's taking place on this issue in this court?

2 A. It arose out of this public records request.

3 Q. And do you know, you know, where -- do you

4 know where the -- what the public records request was

5 intended for?

6 A. I assume they were intending in this --

7 several years now I have had some conversations with

8 Mr. Clements about the documents and in relation to

9 this case.

10 Q. Okay.

11 A. Relating to lethal injection.

12 Q. Mr. Dodd, did anybody report to you about

13 where things were found and when they were found?

14 A. No, sir. I do -- I don't know where. It

15 seems like at the last hearing I did hear Ms. Rabalais

16 say they found an old logbook at Camp F, or something,

17 that they produced or that we had not located until

18 Monday. I was -- I was not there Wednesday. But

19 that's my understanding. And it seems like somebody

20 told me they found that in a -- somewhere at Camp F in

21 a closet or something.

22 Q. Okay. And so after the materials were

23 collected, were they delivered to you?

24 A. I don't believe I ever -- I saw a copy. But

25 I think Ms. Rabalais -- and I don't know whether she

26 mailed them or y'all had a runner pick them up. So --

27 I saw a copy. But the materials went to y'all. No, I

28 did not see them before they went to y'all.

29 Q. Do you know if Warden Cain saw them?

30 A. I would -- I would say no that he did not.

31 I don't know that. But I would -- I would suggest

32 that he did not.

1 Q. Mr. Dodd, could you explain what your role
2 is on the day of the execution?

3 A. Officially, I have no specific role. I go
4 to Camp F to where the executions take place sometime
5 that afternoon. Really, no designated duty. Several
6 occasions, we have gotten last-minute stays from the
7 Supreme Court, of which I read, interpret then for any
8 legal problems that may arise.

9 Q. And do you have any medical training, Mr.
10 Dodd?

11 A. No.

12 Q. Do you --

13 A. I am the deputy coroner for East Feliciana.
14 But, no, I don't have any medical training.

15 Q. Okay. And as deputy coroner, I'm assuming
16 that doesn't require any medical license?

17 A. No.

18 Q. Okay. As the lawyer at LSP, do you help
19 delineate policy as it affects death row?

20 A. I probably look at it. Security pretty much
21 controls everything at Angola. I would look at it to
22 see whether there are any great constitutional issues
23 that would jump out at me. But as far as making
24 policy, I don't know that I make it, no, sir.

25 Q. Do you participate in any meetings that
26 concern policy?

27 A. I would say that, yeah, I have. I don't
28 know of any specific ones. But I imagine in five
29 years I have sat in on policy meetings.

30 Q. And can you remember any of the substance of
31 those meetings?

32 A. No, sir.

1 MR. SWEENEY: Nothing further.

2 THE COURT: Does the State have any
3 questions?

4 MR. FISH: Yes, your Honor.

5 THE COURT: When you are ready.

6 MR. FISH: Yes, your Honor. I do need a
7 moment, your Honor. I'm sorry.

8 THE COURT: All right.

9 MR. FISH: Your Honor, I'm marking for
10 identification this document as State PCR Hearing One.
11 Copies have already been given to counsel for the
12 Petitioner.

13 (State's Exhibit PCR Hearing One was marked.)

14 MR. FISH: May I approach the witness,
15 your Honor?

16 THE COURT: You may.

17 CROSS-EXAMINATION

18 BY MR. FISH:

19 Q. Mr. Dodd, I would like to show you a
20 document and ask me -- ask if you could identify this
21 document.

22 A. Just from looking at it, it's Department Reg
23 C-03-001, concerning the death penalty.

24 Q. Would you take a minute to look at that
25 document? And what I am going to ask you is: Is that
26 the department regulation in effect at this time for
27 the lethal injection procedure?

28 A. I would have to guess it is without looking
29 at the book to see if there is something that
30 supercedes this one. I would say this is the policy.

31 Q. To your knowledge, is that the last one?

32 A. Yes, sir.

1 MR. FISH: Your Honor, I'd file and
2 introduce into evidence State PCR Hearing One.
3 (State's Exhibit PCR Hearing One was offered.)
4 THE COURT: Any objection by Petitioner?
5 THE WITNESS: Excuse me. If I can
6 clarify that. I did not look all the way through it.
7 There was some -- there was an amendment, I believe,
8 to it when the legislature changed the time of
9 execution from 6:00 to midnight, or whatever. It
10 might have been amended. I didn't see that in there.
11 MR. FISH: Yeah.
12 THE COURT: Does the --
13 MR. FISH: This is a copy of the
14 document that I just introduced into evidence. Look
15 at number nine. Is that what you are referring to?
16 THE WITNESS: 6:00 to 9:00. It's there.
17 I'm sorry.
18 THE COURT: All right. With that
19 clarification, is there any objection to the exhibit
20 that's being offered?
21 MR. SWEENEY: No objection, your Honor.
22 THE COURT: And is the State offering it
23 to be entered into evidence?
24 MR. FISH: Yes, your Honor.
25 THE COURT: It is admitted.
26 (State's Exhibit PCR Hearing One was admitted.)
27 MR. SWEENEY: I have a brief redirect.
28 MR. FISH: I'm not sure I am finished
29 yet, your Honor. I might be. But it's --
30 MR. SWEENEY: I'm sorry. I thought --
31 THE COURT: The State may proceed.
32 Q. (By Mr. Fish) Mr. Dodd, when you go to Camp

1 F for the -- in case any legal problems or
2 interpretations come up on execution day, do you
3 actually witness the executions?

4 A. No, sir.

5 Q. Have you ever witnessed an execution?

6 A. No, sir.

7 MR. FISH: I have no further questions,
8 your Honor.

9 REDIRECT EXAMINATION

10 BY MR. SWEENEY:

11 Q. Mr. Dodd, I'm going to refer you to this
12 document that's just been marked as State's Exhibit
13 No. 1.

14 MR. SWEENEY: May I approach the
15 witness, your Honor?

16 THE COURT: You may, Counsel.

17 Q. (By Mr. Sweeney) Mr. Dodd, can you tell us
18 the date on that policy?

19 A. At the top it says the 20th of December,
20 2002.

21 Q. And to your knowledge, does that postdate
22 the public records hearing we had in December?

23 A. If your -- if the date you are telling me
24 the 9th and 11th are --

25 Q. If the record reflects it's the 9th and the
26 11th?

27 A. Uh-huh.

28 Q. And what is the fax date on the upper
29 left-hand corner?

30 A. February 6, 2003.

31 Q. Okay. Do you know if there is any document
32 that supercedes -- that in the period between February

1 6th and today's date that would supercede this
2 document?

3 A. Not that I know of.

4 Q. Okay. Do you know of any other discovery
5 since -- since the initial request that we made and
6 since the public records hearing in Baton Rouge?

7 A. I do. And as I indicated to counsel
8 yesterday, Warden Sheryl Ranatza, the deputy warden,
9 called me. And they had located a -- I'm not sure
10 what it is. From my understanding, some notes or
11 information that was gathered by Warden Peabody. And
12 I don't know who went on the trip. I understand when
13 they -- before the actual lethal injection was
14 actually set up is my understanding.

15 And Warden Peabody will bring that information to
16 you tomorrow. And let me -- Angola is 18,000 acres.
17 We have camps scattered all over it and documents
18 stored. You know, sometimes it's not -- it's not as
19 easy to locate historical stuff as it is in a lot of
20 places.

21 Q. Mr. Dodd, do you know when the documents
22 were found?

23 A. I assume they were found when Warden Ranatza
24 got back after she testified Monday. 'Cause she
25 didn't -- she didn't know about them when she was
26 here.

27 Q. Okay. Did you ask her to look for them?

28 A. Everybody since your records request has
29 looked or -- I don't know, actively searched. But any
30 time they find something, if they find it, would
31 notify me or notify Ms. Rabalais.

32 Q. Okay. And were they found on the grounds of

1 Louisiana State Penitentiary?

2 A. I assume they were. I don't know, now.

3 Q. And you don't know specifically where they

4 might --

5 A. No, sir.

6 MR. SWEENEY: Nothing further, your

7 Honor.

8 MR. FISH: Your Honor, State has a brief

9 redirect.

10 THE COURT: Proceed.

11 RECROSS-EXAMINATION

12 BY MR. FISH:

13 Q. Mr. Dodd, I'm going to show you what's

14 already been introduced into evidence as Petitioner's,

15 in globo, one hundred -- 101, numbers -- documents

16 numbered at 340, 341, 342, 343, and 344, and ask you

17 to take a moment to look at this exhibit before I ask

18 you some questions about it.

19 A. (Witness complies.)

20 Q. Do you recognize this document?

21 A. I have seen it before, yes, sir.

22 Q. Do you know what it is?

23 A. It is a procedure for lethal injection.

24 Q. Is that the procedure that's in effect at

25 Angola State Penitentiary at this time?

26 A. To my knowledge, yes, sir. I have no -- I'm

27 not there during it, so I'm assuming it is.

28 Q. Okay.

29 MR. FISH: I have no further questions,

30 your Honor.

31 THE COURT: Anything else by Petitioner

32 of this witness?

1 MR. SWEENEY: Two brief questions.

2 THE COURT: Proceed.

3 MR. SWEENEY: If I might approach the
4 witness?

5 THE COURT: You may.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. SWEENEY:

8 Q. I'm showing you pages 340, from Petitioner's
9 in globo.

10 A. Same document I just looked at.

11 Q. Could you take a look through that?

12 A. Sure. Same document Mr. Fish just showed
13 me.

14 Q. And is that document dated?

15 A. I don't see a date on it, no, sir.

16 Q. And is there a signature on that document?

17 A. No, sir. I don't see one.

18 Q. And is there any official LSP letterhead on
19 that document?

20 A. No, sir.

21 Q. Okay.

22 MR. SWEENEY: That's all I have.

23 THE COURT: Does the State have anything
24 further?

25 MR. FISH: No, your Honor.

26 THE COURT: The witness may step down.

27 THE WITNESS: This set of documents, do
28 you want these given back to counsel?

29 THE COURT: I think if you leave them
30 there, counsel will get them. Thank you.

31 THE WITNESS: Thank you, your Honor.

32 THE COURT: Is the -- I am assuming this

1 witness may not be leaving at this time. But he -- I
2 need some direction so that I can tell him what he
3 needs to do.

4 MR. CLEMENTS: We will -- Petitioner has
5 no further use, and he is still -- it's under the same
6 conditions that we originally set up so it doesn't --

7 THE WITNESS: And I am leaving, your
8 Honor.

9 THE COURT: So noted. And we will note
10 that the witness is leaving. And if, Counsel, at some
11 later time feel you need to get him, we'll know how to
12 do that. All right. And, again, I'm not trying to
13 create obstacles for Petitioner or for the State. But
14 I don't want us to have people missing.

15 MR. CLEMENTS: Certainly.

16 THE COURT: And they don't know where to
17 be or where not to be.

18 MR. CLEMENTS: Thank you.

19 THE COURT: Counsel may proceed. The
20 next witness?

21 MR. CLEMENTS: Next witness would be
22 Warden Burl Cain.

23 WARDEN BURL CAIN,
24 the witness hereinbefore named, having been first duly
25 sworn to testify the truth, the whole truth, and
26 nothing but the truth, was examined and testified
27 under oath as follows:

28 DIRECT EXAMINATION

29 BY MR. CLEMENTS:

30 Q. Good morning, Mr. Cain.

31 A. Good morning.

32 Q. Would you please state your name for the

1 record fully.

2 A. Burl Cain.

3 Q. And Mr. Cain, where are you employed?

4 A. Louisiana State Penitentiary.

5 Q. And what is your position with the

6 Department of Corrections at that facility?

7 A. Warden five.

8 Q. Does that indicate that you are the head or

9 chief warden at that facility?

10 A. Right.

11 Q. Thank you. How long have you been employed

12 as the head warden at the Department of Corrections?

13 A. At Angola?

14 Q. At Angola State Penitentiary. Pardon me.

15 A. Eight years.

16 Q. At eight -- for eight years. And so that

17 would be your first year that you were employed as

18 such was in 1994 or --

19 A. Actually went to Angola February the 1st, in

20 '95, I believe.

21 Q. '95. Okay. Prior to that position, where

22 were you located within the Department of Corrections?

23 A. I was warden at Dixon Correctional Institute

24 for 13 years.

25 Q. Thirteen years. Thank you. And could you

26 describe some of your responsibilities in general at

27 Angola State Penitentiary?

28 A. My responsibilities are all-encompassing.

29 Everything that goes on from the food to the clothes

30 to the -- part of the farm, and everything that

31 involves inmate life, how it is operated, and how it

32 is managed and so forth. I am the paid fall guy.

1 Q. And is it accurate to say that Angola is one
2 of the largest, if not the largest, prison in the
3 country, if not the world, as far as acreage and -- is
4 that your understanding?

5 A. It is the largest maximum-security prison in
6 the United States. It is not actually the largest in
7 population. I think Mississippi has that at Parchman.
8 But maximum security, basic, that type inmates, yes,
9 it is the largest.

10 Q. And complexities would follow suit with that
11 kind of size, I would imagine?

12 A. It is in -- it is incredible.

13 Q. We had a comment yesterday from Warden
14 Whitley, basically that: "The buck stops here."
15 Would you consider that to be a similar philosophy of
16 yours?

17 A. It is. I am accountable and I am
18 responsible; and I accept that responsibility and, you
19 know, totally. And I don't pass the buck anywhere.
20 So the buck does stop with the warden, from the B-Line
21 operation where you have the city of 600 people, and
22 you are the mayor and the town counsel, to the entire
23 operation of the prison.

24 Q. Just from my understanding, could you
25 clarify what a B-Line, what that term refers to?

26 A. Well, that's the city inside the prison. We
27 say we live in a gated community; but our gate has
28 guards, and our guards have guns.

29 But, anyway, there is about 6 or 700 people that
30 live inside Angola in a little community, in a city
31 where children play, and it's a safe place. And the
32 school bus comes, the garbage truck comes, and we have

1 a recreation center, a swimming pool, golf course we
2 are building. And we have, you know, baseball field,
3 tennis courts, all this. It's a regular contained
4 city.

5 Q. And again --

6 A. And our own post office. It's the only
7 prison in America with its own ZIP code and post
8 office.

9 Q. And if I understood you correctly,
10 approximately 6 to 700 employees that live inside of
11 the facility?

12 A. Right.

13 Q. And then there is, of course, many, many
14 more employees?

15 A. There is 1800 employees and about \$90-million
16 budget for Angola.

17 Q. Warden Cain, as you know, we are focusing on
18 the issue of lethal injection at this hearing.

19 A. Right.

20 Q. And when you were warden at Dixon
21 Correctional Center, was this an issue that was one of
22 your immediate concerns?

23 A. No.

24 Q. It became a concern when you arrived at
25 Angola State Penitentiary?

26 A. Well, while at Dixon I witnessed an
27 electrocution. But when I came to Angola, it was not
28 a big concern. It was a big concern to just
29 understand -- and understand the place, and so forth.
30 And it wasn't many months until we did have an
31 execution.

32 Q. I understand.

1 A. So then it became a concern. But right off,
2 it was not a concern.

3 Q. And your -- if you could -- you had said it
4 was February, I believe, was it?

5 A. February the 1st, I actually took the reins.
6 I became permanent in March. I was detailed February
7 the 1st.

8 Q. Okay. During -- about how much of that time
9 was Warden Whitley still physically on the prison
10 grounds as far as in any capacity for you to --

11 A. He was gone.

12 Q. He was gone. So, basically, you didn't have
13 any physical colap?

14 A. I went out the 20th of January. I rode
15 around with him a time or two and rode around the farm
16 and kind of picked his brain to understand what -- and
17 so forth.

18 I had all the policies and procedures for Angola;
19 and I read all those, and I studied all that. And I
20 spent two weeks just studying and trying to
21 understand. I was familiar with Angola because I had
22 operated a farming industry in my early life in
23 corrections.

24 So I knew all about the farm and operation and so
25 forth because my degree is in agriculture. And so
26 then when he -- when I came, he left. And that's
27 really the way it is supposed to be.

28 Q. I understand. Could you estimate how many
29 inches thick of policies you had to go through? Just
30 a guess.

31 A. Well, I went to Colorado reading them. And
32 I had stacks in the car. And I finally threw them all

1 out when I got past Amarillo so I would have some room
2 because I had read them all by then. But it was
3 stacks of them. It was just, you know, lots of
4 policies. And it was everything from the food, from
5 the post orders, from each drop in that prison, there
6 is a post order.

7 Everything is written, and everything is there.
8 And you try to read through and understand it. But
9 then most of it, again, is common sense. And most of
10 those policies that he left with aren't there now. We
11 have different policies. I do it different than he
12 does.

13 Q. Okay.

14 A. The warden is the captain of the ship, to
15 best explain it. And so it has one captain. He was
16 gone to another ship.

17 Q. So would it be fair to say your philosophy
18 of management is you really feel like it is important
19 to size up the situation for yourself and determine
20 what you think is --

21 A. If Warden Whitley went to Angola today, he
22 wouldn't know how to operate it. Totally different
23 than how he did it.

24 Q. He would have difficulty recognizing certain
25 things?

26 A. Well, I have unit management. He didn't
27 have that. I have more accountability with wardens.
28 I have more wardens than he had. I have probably 15
29 wardens, assistant wardens.

30 So we just do it differently because I want to
31 hold people accountable. And then if they don't do
32 their job -- I can give them a job. I can't help them

1 keep it. There was -- there is no shift in the buck
2 now hardly, you know. Everybody knows what they are
3 going to do and what their job is.

4 Q. Can you -- to best of your knowledge,
5 because you weren't there at Angola at the time, but
6 what was your understanding of how Warden Whitley's
7 system of management differed from yours? You said he
8 didn't have them. But what did he do to the best of
9 your knowledge?

10 A. The prisons, all prisons, take on the
11 character of their warden. And all wardens operate
12 differently, as all human beings do. For instance, I
13 don't micromanage anything. I detail everything. I
14 don't do details. And then when people can't do their
15 details or they don't do it, then I get rid of them.

16 Warden Whitley, I think, may have been a little
17 more prone to be more hands-on. I don't know. I
18 don't really understand how he did, I don't really
19 know. I only know how I do.

20 Q. I understand.

21 A. And so I just -- I just went through it and
22 made all accountable. I really pushed religion. I
23 changed a lot of things in the prison because -- you,
24 know, for all kind of reasons. I'm off the subject,
25 so I'll hush.

26 Q. Well, basically, to draw it a little a more
27 closely to the subject of the hearing at the moment,
28 concerning policies about -- concerning the lethal
29 injection process, for lack of a better way of saying,
30 or protocol, do you recall if in your initial review
31 of documents that you ran across, came across anything
32 that handled that particular subject matter?

1 A. I read that. And Warden Whitley and I
2 discussed it and talked about it a little bit. But it
3 was there, you know, and was just another thing we do.

4 Q. Do you have any specific memory of any
5 content of that discussion?

6 A. Yes. He told me not to ever let the inmates
7 know how I felt about it, you know. And I thought
8 that for a while. But then I realized I -- if I
9 didn't believe it, I wouldn't do it. And they all
10 know me to be real true to my word and how I feel, and
11 inmates know where I stand on everything.

12 So therefore, then they know how to behave, what I
13 expect of them and what I don't. And so that's really
14 the only thing we discussed. And so I realized later
15 that I felt like that that was how he did it. They
16 know that I -- if I didn't -- wasn't for it, I
17 wouldn't do it. And so that's honest, I think, for
18 them.

19 Q. So, basically, the aspect of lethal
20 injection that you did have a brief conversation with
21 Warden Whitley about concerned that topic, that
22 subsection of the whole issue of lethal injection as
23 far as the warden saying, Look, there is a real
24 special part of this that has to do with -- I think is
25 important to talk about, you know, don't show your
26 feelings. And that's what you talked about?

27 A. Yeah. And another thing, to explain
28 further. I follow the law. I believe in the law.
29 And I want the inmates to understand the law, that
30 they broke the law. And so the law of the land is
31 that we do this. So as long as the law of the land
32 said we do that, then that's why I'm for it. It's not

1 because I want to be morbid and go do this. It's
2 because it's the law of the land. And so for them to
3 accept responsibility for what they did and how they
4 broke the law, they have to learn to respect the laws.
5 So, therefore, I respect the law. I am for it. They
6 need to respect the law and realize don't break the
7 law. And so it's a thing with inmates to really grasp
8 themselves part of rehabilitation, which is, I think,
9 what we've done greatly to do that.

10 It's like today. We don't lockdown or do anything
11 special if we are going to have an execution.
12 Everybody knows that is his issue. That's what he
13 did, that's his charge, that's what the law said for
14 him to get. Everything is normal business when we
15 have an execution. We do nothing different with that
16 whole prison population of 5,000, and they accept
17 that.

18 Q. If I can understand correctly, you are
19 saying that one of the distinctions then that --
20 between your predecessor and yourself was how a
21 lockdown procedure was initiated by Warden Whitley.
22 Did I understand that?

23 A. I don't know that he did that or not. I
24 just know that -- I don't know that he locked down or
25 not. I don't know what he did.

26 Q. Well, what would --

27 A. I just know that --

28 Q. Oh, I'm sorry.

29 A. -- we don't do anything.

30 MR. FISH: Your Honor, I'm going to
31 object to counsel interrupting the witness while he's
32 answering.

1 THE COURT: So noted.

2 MR. CLEMENTS: I apologize, your Honor,
3 I really do. I'm sorry.

4 Q. (By Mr. Clements) Could you just briefly
5 define what a lockdown is so I will have better
6 understanding?

7 A. Well, the lockdown would be that you are
8 going to just, you know, stop all the movement like
9 going to church and like going to clubs and going to
10 organizations, and you are going to just lock
11 everything down and stop assemblies of inmates in
12 groups and just keep everybody in their place, lock
13 all the dorm doors so that -- which they are normally
14 locked. But lock all the cells, don't let anybody up
15 and down the tier. Just put everybody in their cell,
16 don't do exercise time. Just -- every door just lock,
17 everybody stay in their place. That's a lockdown.

18 Q. And if I understand --

19 A. I have never done one of those.

20 Q. I apologize.

21 A. Excuse me. I butted into you.

22 THE COURT: The Court understands that
23 given the nature of the testimony and the type of
24 hearing that what happened, there may be some
25 discussion over each other. However, we are just
26 trying to keep the record clear.

27 MR. CLEMENTS: Yes.

28 THE COURT: And the Court understands
29 that counsel are endeavoring to do that as well the
30 witnesses.

31 MR. CLEMENTS: Thank you, your Honor.

32 THE COURT: You may proceed.

1 Q. (By Mr. Clements) If I can get back to
2 where I was going, now. Let me think. So if I can
3 understand, can you tell me if my understanding of
4 your previous testimony is correct that your position
5 or one of your policies at Angola State Penitentiary
6 is that you do not do a lockdown or any kind of
7 special thing like that?

8 A. I do nothing different. It's just as though
9 anything else would happen as far as the stability of
10 the prison, anything. It's just a common normal day.
11 It is a day that we are going to do this. It is
12 quieter, you know, and so forth.

13 But everybody accepts that this is his sentence.
14 This is what's going to happen. And there's not going
15 to be anybody object or whatever. It's just going to
16 be what happens that day.

17 Q. Okay.

18 A. Which is good. I think it's a healthy
19 environment for the prison.

20 Q. Right. If a lockdown were used, for
21 example, would that affect the timing of an execution
22 as far as when you might decide -- if you have a
23 window of time as the statute describes, and that
24 window of time at this moment is between 6:00 p.m. and
25 9:00 p.m. And it was just -- it was always starting
26 at 6:00 p.m. in the last couple of years.

27 Would the potential idea of a lockdown have any
28 effect upon the time of which an execution is
29 actually -- the final process is started?

30 A. That's such a hypothetical question because
31 that's not going to happen. And so I have never had a
32 lockdown in my career. Why would I have one that

1 night, you know?

2 Q. Okay. All right. Just for clarification,
3 it hasn't happened, then?

4 A. No.

5 Q. Okay. So anything with timing involved as
6 far as your choice within the window of time that is
7 available would not be related to that?

8 A. No. The only thing that had to do with
9 timing is I don't like that -- and this is the things
10 I have said in public, and I talk about it a lot more
11 than my predecessor. I don't like choosing the time
12 when someone dies. I like the legislature, and it's
13 more godly. When it gets down to the minute and the
14 second -- I like to do it when it gets dark because
15 then God let it get dark, and I didn't pick dark. And
16 so that's when it gets dark, and that's when I like to
17 do it.

18 Q. I understand.

19 A. That's why. It's not for any other reason.

20 Q. Warden Cain, would you say that it is
21 accurate to say that -- well, let me ask you this.
22 What role do you play on the day of the execution?
23 Let's say, when you wake up?

24 A. You want me to just go through my day?

25 Q. If you would, please.

26 A. Okay. I'm going to know that they are going
27 to move him to the execution building that morning. I
28 may or may not be there. Depends. I just might or
29 might not. And so when I get there, I will have
30 already talked to him a week before. You want me to
31 go back to all that?

32 Q. This is to --

1 A. I mean, it all ties in.

2 Q. Let's go back to that. Actually, yes, let's
3 please do go back.

4 A. You want me to just tell the whole story,
5 how it works?

6 Q. Well, I was narrowing it down to a day. But
7 let's start from your perspective.

8 A. That day goes back a week. Because a week
9 before -- this goes back to the first execution when I
10 didn't do these things that I felt, you know, a little
11 bit of guilt about, a good bit.

12 About a week before, I talk with him about -- I
13 talk with him about his soul, if he is a Christian or
14 if he is not. Now, if he is a different religion like
15 a Buddhist, like the last one was, then I don't do
16 that because I don't infringe on what his religious
17 belief is.

18 But we do talk about this. The first one was not
19 a Christian. The last one was a Buddhist. The other
20 four were Christians. But we are going to talk about
21 his soul. We are going to talk about Jesus dying on
22 the cross when he says: "This day I will see you in
23 paradise."

24 And we're going to -- I'm going to talk to him
25 about that that really assured him that when he dies,
26 he is going to Heaven if he is a Christian. And we
27 are going to talk about the thief on the cross, I
28 mean, he goes right then.

29 And then we are going to talk about when I am
30 asking: Well, how do I get there? We talked about
31 the Billy Graham book I read about angels, angels,
32 angels, how the angels take your soul to Heaven and

1 so forth. If you are really a Christian, they are
2 going to be there with you. This is the part too that
3 gets him to be able to do it. Because he knows he is
4 going there if he is a Christian. If he's not, he'll
5 accept that if I am a Christian, I am going to have
6 life after death.

7 And so then that morning when I get there, we are
8 going to talk about that a little bit again. I'm
9 going to already know what he wants for his last meal.

10 One of them wanted a lobster. We wouldn't -- the
11 State didn't buy the lobster. But me and Warden
12 Vannoy bought the lobster, and just because he wanted
13 one.

14 And I can't talk about this, but I always think
15 about the victim. I couldn't be there to do this for
16 the victim, but I can be here to do this with him. So
17 this is the right thing to do with him. But I never
18 forget the victims and their families, because that's
19 another part of the day we will get to.

20 Anyway, we talk about that. We talk about the
21 last meal. And then his attitude comes into play a
22 lot. Because sometimes I will let them visit in the
23 -- kind of the little visiting room there, the little
24 chapel room like we have. But sometimes I won't. It
25 depends on him and how I feel about him; and it's just
26 a gut instinct thing about human nature, and I have a
27 good instinct for this, and I can tell.

28 And so I don't feel good with it, then I'll make
29 him visit in his cell with his family and so forth.

30 And they won't get to, you know, maybe hug him until
31 right at the end. But I like for his mama to get to
32 touch him because I realize that his family is victims

1 too. And I didn't realize that until the first one.

2 And I feel a lot of compassion for his family. Warden

3 Whitley, when the visiting stopped -- and I am

4 rambling around. But on that subject, when the

5 visiting ceased, he sent the family, you know, off the

6 prison.

7 Well, I made a place at Camp C where I have a TV,

8 a private room, and I have a chaplain to sit with the

9 inmate's family to be with them. And little did he

10 realize when he killed somebody, that he -- how bad he

11 was hurting his own family.

12 And so -- and that's part of the saddest part is

13 when you tell them to stop visiting. And I go and

14 tell them, I said, "Now you -- you got to be strong."

15 I whisper to them when he came -- "You got to be

16 strong. You got to get up and go on out of here.

17 Don't cry, don't be emotional, because it's going to

18 make it harder for him to get through this tonight."

19 And so I really encourage them to go on. Because once

20 they leave him, then he's rattled a little while. And

21 so --

22 Q. If I -- maybe I'll just save you and say

23 just for clarification --

24 A. I'm just going everywhere.

25 Q. No. No. It's a -- it's a chronological

26 thing, and I think that that's important to have a

27 full scope of understanding.

28 Would it be fair to say that your -- there is no

29 one else who could testify to anything like this in

30 Louisiana? About six out of the last seven lethal

31 injections that you're --

32 A. I don't have a clue. I know that that's how

1 I do it. I don't know if anybody else does this in
2 any other prison in any other state. That's just how
3 I do it, what I do.

4 Q. I understand. But I'm -- just as what's
5 happening in this state, you're -- you are the person
6 who knows the most details of certain -- of certain
7 things that there would be no one else who could put
8 all of those different parts together?

9 A. I doubt it.

10 Q. I understand. I just wanted to clarify a
11 statement that you had made a moment ago about
12 telling certain people to be strong. You were
13 referring to your words to victims -- to the
14 defendant's family? Is that --

15 A. Yes.

16 Q. Okay. Thank you. Continue, please.

17 A. Now, it is different with every one of them.
18 Okay? Different things happen with each one of them
19 because you are dealing with people's emotions.

20 Okay. Meanwhile, then back to the day. His
21 attorney is going to be -- some will come and they
22 usually will have a team where there is one going to
23 be in New Orleans or wherever they go. And they are
24 really struggling real hard to do the appeals and all
25 this.

26 Then they are going to have another one be there
27 with him to talk and encourage him and keep him up,
28 and I really -- excuse me. I really appreciate them
29 doing this because we don't want to have to carry
30 anybody in there. You know, we want them to walk in
31 there. It's easier for us. And so the attorneys do a
32 really good job of this, normally. Only had one time

1 when they didn't, and I didn't like -- and, you know,
2 in a different time. But, anyway, they normally do
3 really well here. And then the family is going to get
4 there about 9:00 or 10:00, and we are going to start
5 letting them visit.

6 And if he's one we let go visit in the room where
7 they have a contact visit, we are going to let most --
8 within reason, anybody that he wants to come visit
9 that's on his visiting list, but it's close. It's got
10 to be a real family thing. It can't be somebody just
11 wants to get there and just see and so forth. He can
12 have his spiritual advisor, one.

13 And then we'll ask him who -- we'll ask him, you
14 tell us, kind of, who you want to come. And I really
15 -- I wouldn't really want this out. But then I'll
16 tell everybody else they can't. It'll be me that
17 won't let them come. It won't be you, because you
18 want everybody and nobody to be mad at you today. And
19 so we do that so then I am the bad guy. He is not the
20 bad guy.

21 Many times, it might be him told me that, you
22 know, I just want to see this one and this one and
23 this one. But he is dealing with his emotions, you
24 know. And like he has a close aunt he wants to see.
25 Well, then we are going to do that. We are going to
26 accommodate him as best we can. And, again, I think
27 of the victim. Nobody did that for them. But I
28 wasn't there.

29 So then that's going to continue on through the
30 day. We'll have cokes there, he'll have a meal with
31 them at lunch, and so forth. And anything they want
32 -- if he wants ice cream, we'll go to the store and

1 get it. Just, you know, treat him good the last day.
2 It's his last day. Then at three o'clock, I'm going
3 to tell them -- and I may go to 3:30, it depends on
4 how they are, just, you know, just how it's going --
5 that it is time to go. And I'll tell Warden Vannoy
6 you need to -- I'll tell him how long to let them
7 stay.
8 And then it -- he'll go and we'll go tell them.
9 Like if it's going to be 3:30, we are going to tell
10 them at 3:00 these things are about -- doing good.
11 And he won't know we really tell him that. Then at
12 3:30 or 3:00, whenever we decide, then they will
13 leave.
14 Then he is there with us. And then we are going
15 to send him back to his cell, let him kind of get his
16 thoughts together. His attorney is going to go with
17 him probably. The spiritual advisor is going to
18 probably go with him, and they are going to spend time
19 with him until, you know, 4:00 or 4:30 or 5:00.
20 Then about 4:00 or 4:30, we're going to bring the
21 last meal. I normally want to eat the last meal with
22 them because I want him to understand I am not his --
23 one other time I got called a killer and all this
24 stuff. I am not that, I am carrying out the law. And
25 so it's not I'm against him, he's against me.
26 And so I am going to eat the last meal with him,
27 and Warden Vannoy normally will too, and his attorney
28 can and his spiritual advisor can. And we are going
29 to say the blessing, and we are going to do this. And
30 depending on the person, sometimes they eat more,
31 sometimes they don't. You can tell they are nervous
32 and so forth. And I go back to Dobie Gillis Williams,

1 what happened when he got his stay for a month, you
2 know. He actually just almost collapsed over in the
3 gumbo. He was eating a bowl of gumbo. When I came in
4 and I -- I got a call, went out. And I came back and
5 said, "Dobie, you got a stay."

6 Which I realized I gave that man the best news
7 he's probably ever heard in his life. But he just
8 fell over in it, you know, and we just -- he was so
9 happy and joyous. You never see somebody happy to go
10 back to death row; but he is, you know. And that's
11 kind of how the day goes. And then, you know, at six
12 o'clock, we are going to get into the other procedure.

13 Q. Okay. I will -- going to want to explore
14 all of that in specific detail. And I am going to
15 want to proceed, actually, each execution one at a
16 time.

17 A. Oh, okay.

18 Q. So that we can try to draw upon your memory.
19 And I'll direct you with as much understanding of
20 where we are trying to focus that.

21 A. Okay.

22 Q. The global background here, though, is an
23 important foundation for us to get -- all to get a
24 picture of what we are looking at in general that
25 might be overall applicable to each case, and that's
26 very helpful.

27 At this time, though, I would like to go back to
28 1995, and specifically to the first lethal injection.
29 Now, I'm just trying to make certain that I have the
30 date correct on that, that execution. And bear with
31 me one moment. May the 15th -- May 16th, pardon me.
32 As, you know, after midnight on 1995. If I were to

1 tell you that that was the date of the execution of
2 Thomas Ward, would you --

3 A. Sure.

4 Q. -- find that to be correct? Okay. Thomas
5 Lee Ward was his name. You -- your previous testimony
6 is that you did a little bit of work in January
7 getting some preliminary review of things but that you
8 really didn't touch down physically and set up your
9 operation at Louisiana State Penitentiary until
10 February the 1st. So we are basically talking three
11 and a half months, roughly? Is that --

12 A. Uh-huh.

13 Q. That you had.

14 A. Right.

15 Q. Between the time when you first set eyes on
16 that executive office and then the time when you were
17 brought into dealing with this situation. That's
18 correct, three and a half months?

19 A. Right.

20 Q. And, of course, no execution happens in a --
21 without any fairly extensive advance notice. How soon
22 in your memory did you realize after you came that you
23 were facing a possibility of a real execution coming
24 down?

25 A. Well, I got the death warrant a month
26 before.

27 Q. Uh-huh.

28 A. And those aren't really a big deal. They
29 are, but they are not because you get them, you know,
30 you got a number of stays and so forth. And I didn't
31 know that he was going to really go, and so it went on
32 down to the last week. Then it got a little more

1 serious. But I kind of -- I wasn't real sensitive at
2 that point. I hadn't ever done one. So I wasn't real
3 sensitive. I was just kind of just doing my thing.

4 Q. Sure.

5 A. As it came -- you want me to tell you about
6 that one?

7 Q. I will get to that in a moment.

8 A. All right.

9 Q. So basically you are saying -- I mean, you
10 have a pretty full plate of duties administratively,
11 and it wasn't until the very final week, say
12 approximately May the 8th, or something in that
13 neighborhood, that it finally went, okay, this one is
14 not -- this train is keeping on moving. It's not --
15 it's not stopping and staying.

16 A. No. You are missing it. I didn't have a
17 full plate to keep me from it. I just wasn't that
18 concerned with it. I just was waiting and it just --
19 when it came, it came. And so it was just a -- as it
20 got closer and I realized, well, it's probably going
21 to happen, so we better get ready and we're going to
22 do it. And that's just that.

23 Q. I understand. Sorry for my
24 misunderstanding. In any event, did -- the real
25 intense focus came approximately a week beforehand.
26 Could you tell us what -- or am I -- excuse me. You
27 seem to have an --

28 A. It's the definition of intense. The intense
29 focus to me personally came after I did it. So
30 before, it didn't bother me. Nothing bothered me. I
31 just do it, part of what I do. I just -- bebopping on
32 along and do it.

1 Q. All right. I'm sorry. I'm not trying to

2 put words in your mouth.

3 A. It was just a normal thing, just do it.

4 Q. Okay. It is part of your duties.

5 A. Yes.

6 Q. And I understand. Your testimony has been

7 very clear about that. Let me try to figure out

8 another way to say it so that I am not, you know,

9 missing the point. The -- what involvement did any of

10 the other deputy wardens, assistant wardens, and other

11 rank officers have with you that began to take more of

12 the minutes of your day just going through things as

13 they needed to be? When, approximately, did that

14 start increasing?

15 A. Well, the week before, we -- and Warden

16 Peabody was there with a lot of experience, Warden

17 Vannoy, and I think warden -- at the time. A week

18 before, we put him -- moved him from the regular cell

19 up to the front of the tier, put him on his suicide

20 watch, and just did the normal things, kept right on

21 going.

22 That's about all we did until the morning of it.

23 We just living our life, going right on with our

24 meetings, and doing our thing. And then the day that

25 it occurs is whatever you do what you do that day. So

26 there was not really any -- I'm not grasping what you

27 are trying to find here.

28 Q. Okay. I'm not sure -- I guess I am having

29 difficulty figuring out how to phrase it. There is a

30 number of things that you are just doing because you

31 know that these things need to be done.

32 A. I'm trying to get across it's not in my

1 mind, you know, that anything is different. I mean,

2 I'm just -- it's just my level is level. I'm just

3 level. I'm just cool. I'm just going right on up --

4 Q. Right.

5 A. -- with just what I am going to do that day.

6 Q. Okay.

7 A. Just like I'm going to do anything else.

8 Q. Well, then, let me ask this question. Maybe

9 this is a way to approach it. Because it is the first

10 time that you have done this -- we are talking in 1995,

11 in May. How did you know what those things were to

12 do?

13 A. Well, my job is not a lot to do. I don't

14 have a lot to do.

15 Q. Uh-huh.

16 A. But they have a lot to do, and they are

17 going to do their job. And they all knew what to do;

18 and I knew they knew what to do. And we did the

19 little practice thing a day or so before, and I went

20 to that to see how they did that and what we were

21 going to do. And we did a little practice, and all

22 that was cool and everything worked fine.

23 All -- everything was there. It was all in place.

24 So just wait until the time. And that was at a

25 midnight. We did that one, you know, at 12:00

26 midnight to 3:00 a.m.

27 Q. Right. Right. And when you say a practice,

28 is it accurate to say you are talking about a practice

29 with a strap-down team?

30 A. Right. We'd get someone about the same size

31 and we would go do everything, put him in the cell,

32 dress him like an inmate. Then we don't -- then we

1 come get him, and then we -- everybody knows who is
2 going to get him, they know how they are going to get
3 him. They going to know how they going to walk out,
4 in what order, who is going to be on each side of him,
5 who's going to be behind him, who's going to be in
6 front of him. I know where I am going to be standing,
7 and everybody gets where they are going to be, and
8 then we just do it. You know, we bring him all in.
9 It's exactly, a dress rehearsal.

10 Q. Right.

11 A. And it goes in, and we just put him on the
12 table, we stop, let him make his last statement. We
13 then walk him over there and lay him on the table.
14 And a hand and a hand, and a leg and a leg, and a
15 chest man, and they all just -- we do it.

16 I stand back at the side and watch them do it.
17 Then when he is all strapped down good, then we check
18 all the straps, and then we ask him: Is it too tight?
19 Then we, you know, just see that it all works. And if
20 it all works good and we didn't -- we like it, we'll
21 stop.

22 But in this case, I believe we practiced again.
23 Didn't all work so good. And so we had maybe a new
24 person or two on the strap-down team. We went back
25 and did it all over again. We do it until we get it
26 perfect. It may take more than once, may take twice,
27 may take three times. I don't remember how many it
28 took, but it was more than once. Because I wanted to,
29 you know, be sure.

30 Q. I understand. Do you have a memory at the
31 moment of what part didn't work, as you say, in your
32 dress rehearsal the first time?

1 A. No. It was minor. It was probably -- I
2 don't have a clue. I don't remember what it was. It
3 just wasn't smooth.

4 Q. Just something didn't flow right?

5 A. Just could be like somebody didn't know
6 really how to -- they could get their straps mixed up
7 and put the wrong one in.

8 Q. I see.

9 A. You know, we modified the table after some
10 experiences I've had, you know. But you just fix it
11 that night.

12 Q. Could you -- we can go into it more
13 specifically at the time of when we talk about that
14 particular execution. But when you mentioned that you
15 modified the table, do you have a memory of when? Was
16 it after Thomas Ward's?

17 A. Yeah.

18 Q. It was after that?

19 A. Uh-huh.

20 Q. Was it after any others after that?

21 A. After Antonio James.

22 Q. After Mr. James' 1996 execution?

23 A. Yes.

24 Q. I will be talking about that a little more
25 later.

26 A. Okay.

27 Q. For the moment, though, to get back to
28 Mr. Ward's execution, could you draw us a little
29 closer to the midnight hour or explain any other
30 details since the practice time or dress rehearsal?

31 A. Okay. I am going to explain that one. You
32 want me to do that now?

1 Q. Yeah.

2 A. Okay. So it got -- we just did our thing.

3 We were just -- well, actually, I was pretty cold. I
4 was just doing my thing, you know. And I don't want
5 to use the term "being macho." It was not that. We
6 were just doing our deal. And it just was kind of
7 inhumanized.

8 We didn't talk to him about anything about his
9 soul. We didn't say a word to him. And so then when
10 it came time to take him to the execution chamber, I
11 remember that he didn't really walk. And so there was
12 two guys on each side of him, one behind, and one in
13 the front. The two on each side had him under each
14 arm, you know, and they were kind of -- and so it went
15 on up they were kind of holding him off the floor, and
16 his feet weren't really touching the floor. But they
17 were just kind of carrying him.

18 He didn't say a word, not a word. And so then we
19 went in the room and I was in front of them, and we
20 turned and took him over to make his statement. And
21 he didn't say a word.

22 And I saw when he came in the door, I saw the fear
23 on his face. That's why I said later that these
24 should be televised. Because if it is going to be a
25 deterrent, man, that was a deterrent because when he
26 saw that table it -- then I thought of the victim.
27 That's how the victim must have felt, you know, when
28 he shot them.

29 And so that's when I -- and I later said it should
30 be televised for that reason. But then, you know,
31 that fell by the way. And I can explain that later.
32 But, anyway -- if you want. But anyway, they strapped

1 him on the table and laid him down and so then I gave
2 a signal, and I gave a signal I shouldn't have given.
3 I will never do that -- I have to live with that. And
4 then --

5 Q. Could you -- excuse me. If I might --

6 A. It was a bad deal. Go ahead.

7 Q. The signal, I don't understand. What was it
8 that you say you --

9 A. Well, I have to give them a signal when I'm
10 ready. I'm the only one in there. And so I did my
11 thumb like that. (Indicating.) And I thought about
12 -- to just get an emotion of it, I thought about what
13 Nero did to the Christians in the Colosseum -- I mean,
14 Caesar did to the Christians in the Colosseum. I
15 said, "Man, you did that very same thing."

16 And this was after it was over and he was -- and
17 he was dead. He was laying on the table. And I said,
18 "Look what you did. You just killed him." And I
19 said, you know, "You did that bad. That was bad with
20 that signal."

21 And I said -- but the worst thing to myself was:
22 "You were the last person on this Earth -- " And my
23 mother told me when I went to be a warden, she told me
24 -- and I treasure this greatly. Way back before
25 Dixon, she said, "You are responsible for their souls,
26 and God is going to hold you accountable for them."

27 She was a strong Christian lady. I was raised in
28 a real strong Baptist home, you know. We didn't dance
29 and all that stuff until I went to LSU. But,
30 anyway -- anyway, I remember what she told me. And I
31 said, "Man, you were the last person on this Earth
32 alive to talk to him. You could have said something

1 to him, and you didn't have the courage or you didn't
2 do it. You didn't say a word to him." I said, "You
3 probably just sent his soul to hell, and you didn't
4 say a word."

5 I thought my mother was -- she was dead, you know,
6 she's been gone. And I thought, Man, what would she
7 think of me? I didn't do this right. And so that
8 really bothered me. So that's the part that bothered
9 me, that I didn't say anything to him.

10 Q. To Mr. Ward?

11 A. I just did it. Pardon?

12 Q. I'm sorry. To Mr. Ward, you are saying? To
13 Thomas Ward?

14 A. Yes. So the next day I went to see the
15 preacher, a Presbyterian preacher at this time. And
16 so we talked about it. And he said, well -- I said,
17 "You got to give me some scripture to tell me to get."
18 You know, I mean, it's one thing to be for the death
19 penalty. It's another to lay this man on the table
20 and just do it.

21 And so he talked about Genesis 9:6, when he said:
22 "He who sheds man's blood, so shall his blood be
23 shed," in the Old Testament. I said, "Huh-uh. I got
24 to have something in the New Testament." They killed
25 everybody in the Old Testament. Something in the New
26 Testament.

27 So he said, "I'll give you the -- let's go to
28 Romans, the 13th chapter, the first six verses." And
29 so we read those. And that's where it says -- it was
30 Pilate telling the Romans to obey the law of the land.
31 And it's the law, so obey the law. So then it really
32 gave me great comfort, which I referred earlier, that

1 if it's the law of the land, then I am to carry out
2 the law of the land. And it says in there that
3 there's an agent of wrath in the King James version.
4 And I may be that agent of wrath maybe, you know. I
5 don't know. But anyway, so I got great comfort.
6 And that's where the tradition came then that I
7 would read those scriptures to the strap-down team an
8 hour before, and we would say that prayer, you know,
9 that we would be in God's will, and we do that. Every
10 time after that, we did it differently because that
11 was a very profound effect on me. And it really made
12 me change my life a lot. So --
13 Q. If I might interrupt at this moment and
14 ask -- you say that you had a prayer gathering of the
15 strap-down team. Did I understand that correctly?
16 A. Every time. Every time.
17 Q. And this is before?
18 A. After.
19 Q. Afterwards, you are saying?
20 A. Uh-huh. And every one since.
21 Q. I understand. But -- okay. So that each --
22 those meetings happen as a prayer meeting after the --
23 after the execution is completed?
24 A. No. Before.
25 Q. Before? Okay.
26 A. We are going to do it at dark. I'm going to
27 do it about an hour before we are going to do it.
28 Everybody involved, including Cheney Joseph from the
29 governor's office, Secretary Stalder, whoever is there
30 that's going to have anything to do that's going to --
31 that's going to come to this little prayer meeting.
32 And we are going to -- it's not really a prayer

1 meeting. It's where I'm going to read these two
2 scriptures.

3 Q. I understand.

4 A. And then I am going to say a prayer that,
5 you know, God be with us and so forth, and be with
6 him. And we pray for his soul.

7 Q. Okay. And just so I understand carefully,
8 too, that has become a standard practice for you after
9 the first one? Did that occur at the first one,
10 Thomas Ward?

11 A. No.

12 Q. Okay. It's something you learned that you --

13 A. Yeah. I explained that.

14 Q. Yes. Yes. Thank you. If you would
15 continue now from the point of -- let's see. Well,
16 you were talking about dress rehearsals. I don't know
17 where exactly in the day we have -- that we talked
18 about you and the family having been dismissed in
19 general.

20 Is there anything you can recall specifically
21 about that with this particular execution of Thomas
22 Ward that day? Was there family?

23 A. I don't even -- I just made sure we had good
24 security. I didn't talk to them. And I don't think
25 that he really had a lot of family. I don't -- I don't
26 remember.

27 Q. All right. Do you remember if he had an
28 attorney present?

29 A. I'm sure he did.

30 Q. Okay. Do you --

31 A. I don't remember who.

32 Q. If I were to mention the name of -- the last

1 name of Hoffman, an attorney from Boston,

2 Massachusetts, there?

3 A. Yeah. He was -- yeah. I remember him.

4 Q. David Hoffman, I believe it was?

5 A. Yeah. He's the guy that was the attorney,

6 and Thomas Ward didn't have a spiritual advisor. And

7 he was a Jew. That's what it was. And he didn't have

8 a spiritual advisor. And so normally, the lawyer,

9 attorney would leave and the spiritual advisor would

10 take charge.

11 And so what I did is I said, "Okay, you quit being

12 a lawyer right now, and you are going to be the

13 spiritual advisor." And that way Thomas Ward could

14 keep someone with him of his faith.

15 And so then -- even though there was no rabbi

16 there. Then that was cool, and Hoffman became the

17 spiritual advisor and actually stayed with him through

18 the whole time.

19 Later, Hoffman wrote some bad articles about us.

20 And I thought it was bad he did that since I had been

21 so continually nice to him and accommodated him and

22 Thomas Ward. And -- but he did that.

23 Q. You were surprised to see that article come

24 out?

25 A. I was disappointed because, you know, I had

26 treated him with dignity and respect, and Thomas Ward.

27 And I was just carrying out the law. And he kind of

28 blasted us, you know, being from Boston, I guess. But

29 he was wrong in doing that.

30 Q. Would -- would you have any memory of -- that

31 Thomas Ward considered -- considered himself an

32 Israelite? That was one of the things that

1 Mr. Hoffman --

2 A. Yes, he was. He said that.

3 Q. Okay. That he considered himself an

4 Israelite and -- and so your decision about the

5 Attorney Hoffman taking a role as a spiritual advisor

6 had to do with the attorney's Jewish religion?

7 A. Yes.

8 Q. Okay. And --

9 A. I didn't have to do that.

10 Q. Pardon me?

11 A. I didn't have to do that, but I did. And so

12 I was disappointed he didn't appreciate it.

13 Q. You felt that the -- that the article was

14 critical of you?

15 A. Well, it was. I didn't have to feel it.

16 Q. I see.

17 A. It was.

18 Q. All right. The -- could you take us to the

19 time past when Mr. Hoffman, the attorney for Thomas

20 Ward, finally did leave, to what you know of that?

21 A. Well, he just left. I don't know.

22 Q. Okay. I don't mean about him. But, I mean,

23 what happened next with Thomas Ward?

24 A. Well, I mean, we finished the execution.

25 And I thought about that, and then I drove home. And

26 I thought about that on the way home a few times. I

27 was married, and I talked to my wife about it. I felt

28 real bad about it, a lot of guilt.

29 Q. If we could backtrack for a bit of time,

30 more precisely to the moment that Mr. Hoffman left,

31 would that have been the time when the strap-down team

32 then came to Thomas Ward's cell, approximately?

1 A. The strap-down team did what?

2 Q. Would have come to Mr. Ward's cell to help
3 escort him.

4 A. No. No. You see, Hoffman went in to be
5 with him, then he walked behind him. And I think
6 Hoffman was even a witness because he was a spiritual
7 advisor, and he was a witness. And I think that
8 Hoffman didn't leave until the execution was over and
9 probably we had done the press conference. I don't
10 know when he left.

11 MR. CLEMENTS: Your Honor, may I
12 approach please?

13 THE COURT: You may.

14 MR. CLEMENTS: The witness, please.

15 Q. (By Mr. Clements) Warden Cain, I'm going to
16 be showing you -- I'm sorry -- page 26 of Exhibit 101,
17 which is the -- you haven't been here, so you don't
18 know. Exhibit 101, we asked the Department of
19 Corrections to provide us paper on anything and
20 everything they could possibly put their hands on
21 about lethal injection, and close to a thousand pages
22 have been produced to this day.

23 And one of the documents that is a standard
24 procedure by law is a -- I never know precisely the
25 pronunciation -- proces-verbal of the execution.
26 Would you look at that? It's page 26, of the Exhibit
27 101, in globo.

28 A. Uh-huh.

29 Q. Could you tell me if you see the name of
30 Attorney David Hoffman listed as one of the
31 signatories indicating that these were the official
32 witnesses of the execution?

1 A. I don't see it. Do you see it?

2 Q. I also do not see it. Do you believe that
3 that would indicate that he was not an official
4 witness?

5 A. If he is not on this official witness, then
6 he wouldn't be an official witness.

7 Q. Okay. Thank you. To go back to your
8 description, though, and it is your memory that
9 Attorney Hoffman at least walked -- helped -- did he
10 walk with the strap-down team in part, part of the way
11 at all?

12 A. I feel like he did. I think he did. I
13 don't know, now.

14 Q. Right. Would there be a difference if he
15 were to have walked with him in that part? Is there a
16 difference between that, doing that part? Let's say
17 if he then turned around and left with the strap-down
18 team or before the strap-down team.

19 Let's say he didn't even enter that room, the
20 final death chamber room where the gurney is.
21 Attorney Hoffman didn't go in there, and just turned
22 around and left. Is that, you know, a different
23 function getting that far, even, than being one of the
24 persons that signed that document you just looked at
25 and who sat in a room?

26 MS. ESTOPINAL: Your Honor, I am going
27 to object at this time. We let this go on to see if
28 there is some point relevant to the issue of the
29 Eighth Amendment lethal injection and whether Mr.
30 Hoffman was present in the cell, walked behind him in
31 the hall, or witnessed it, I think is irrelevant
32 unless counsel can explain otherwise.

1 THE COURT: Your response, if any, Mr.
2 Clements?

3 MR. CLEMENTS: I am fully prepared to
4 explain otherwise, your Honor. The official witnesses
5 to a lethal injection or any kind of execution ever
6 carried out is a statutorily mandated procedure under
7 the Revised Statutes of Louisiana.

8 And in there, these witnesses are named and
9 provided for, some by function, and then some by duty
10 of their office, and some in a more discretionary
11 fashion. The purpose of their witnessing is to be
12 able to witness the actual events that occurred.

13 And so determining who was and who wasn't a witness
14 and how it happened can potentially give critical
15 evidence to the foundation of our claim. And I
16 respectfully submit that it is absolutely relevant.

17 MS. ESTOPINAL: Your Honor, if I may
18 respond. Unless Petitioner intends to produce those
19 witnesses to testify as to what they actually witnessed
20 when the execution was carried out, it is still
21 irrelevant whether Mr. Hoffman was there or not.
22 Obviously, there were witnesses because a number of
23 them are listed and signed the proces-verbal. So I
24 don't think Mr. Hoffman was a necessary witness.

25 THE COURT: The Court is somewhat
26 concerned about the relevance. However, the Court is
27 going to give Petitioner some latitude. And the Court
28 overrules the State's objection.

29 MR. CLEMENTS: Thank you, your Honor. I
30 will continue.

31 Q. (By Mr. Clements) Mr. -- Warden Cain, if we
32 could then continue with your memory of the events

1 that occurred as the strap-down team has entered the
2 lethal injection chamber. Can you recall whether
3 there was a curtain in that room or not? That
4 separated the -- there was a window between the
5 observation room, and I can bring a drawing of it to
6 refresh your memory if you need.

7 A. There was a curtain.

8 Q. There was a curtain on that window. Were
9 you present in the chamber when Mr. Ward was brought
10 in?

11 A. Yes.

12 Q. And was that curtain open or closed, as you
13 remember?

14 A. Open.

15 Q. It was opened. And do you remember, if you
16 can, whether the official witnesses at that time when
17 Mr. Ward was being brought in were present in there
18 already seated and observing anything happening, or
19 were they not yet there?

20 A. Yes. They were there.

21 Q. They were already there. And do you recall
22 whether -- the time of this? In relation to -- I know
23 time is a very critical element, and it's a tough
24 thing to remember something specific that many years
25 back. But the statutory critical point is midnight.

26 Could you recall if in your memory -- do you think
27 that Mr. Ward was brought into that room before
28 midnight or after, if you can remember?

29 A. After.

30 Q. After midnight? Close after midnight?

31 A. Close.

32 Q. Close. And -- and so the witnesses were

1 already seated, you are saying, at that point. So at

2 least by midnight, they are sitting down too?

3 A. Yes.

4 Q. Thank you. And it is your memory that the

5 curtain was open?

6 A. Yes.

7 Q. Do you remember whether the curtain was

8 closed and you may have opened it yourself, or it was

9 opened, or do you recall if it was just open all the

10 time?

11 A. I don't recall.

12 Q. I understand. Do you -- was that curtain,

13 to your memory, in that execution of Thomas Ward ever

14 closed during the time all the way through the death

15 of Mr. Ward?

16 A. It was closed.

17 Q. It was closed?

18 A. At one time?

19 Q. At one time. Could you -- before going into

20 explaining when that event took place, could you then

21 describe exactly what the -- taking an assumption that

22 now we have the strap-down team present with Mr. Ward

23 in that room, could you describe -- you were there to

24 see this, you were an eyewitness to that part of it

25 yourself?

26 A. Yes.

27 Q. And you -- can you describe for us your

28 memory of those events?

29 A. Describe my memory of what? The whole event

30 or what? I am really confused.

31 Q. I'm sorry. Step --

32 A. I talked too much a while ago, and I'm going

1 to hold back my --

2 Q. All right.

3 A. -- comments to yes or no as much as I can.

4 Q. Let me break it down with more direction.

5 First of all, what -- did the strap-down team have any

6 special job that they had to do at that point when he

7 brought -- when they escorted him in?

8 A. Yes.

9 Q. What was that job?

10 A. To strap him down.

11 Q. And can you briefly describe what that

12 entailed?

13 A. Walked in the door to the table.

14 Q. Uh-huh.

15 A. They strapped him down on the table.

16 Q. Okay. And the straps that were used, could

17 you describe -- very briefly, just describe what kind

18 of straps we are talking about here.

19 A. They are like seat belts in your car.

20 Q. Thank you. Would those have been the same

21 kind on -- about how many, roughly, were there to do

22 that?

23 A. How many belts?

24 Q. Yeah.

25 A. I don't know. Several.

26 Q. Can you remember approximately what parts of

27 the body were strapped down?

28 A. Legs, thighs, hips, waist, chest, shoulders,

29 arms.

30 MR. CLEMENTS: Your Honor, may I

31 approach the witness, please?

32 THE COURT: You may, Counsel.

1 Q. (By Mr. Clements) Your Honor -- Mr. Cain,
2 this again is page 787, out of the Exhibit 101, in
3 globo. And what it is -- it is a drawing; is that
4 correct? And some descriptions by words of the
5 drawings. What's the largest drawing on the top?
6 A. Man laid on a gurney.
7 Q. Okay. In your memory, does this drawing
8 here, is it -- does it represent what you remember
9 being the situation in Thomas Ward's execution?
10 A. Yes.
11 Q. Is it pretty accurate?
12 A. Pretty accurate.
13 Q. Pretty accurate. Okay. Do you see any
14 difference between -- do you see the seat belt type of
15 restraints that you mentioned?
16 A. Yes.
17 Q. Okay. And do you see anything that looks
18 like it might be a different kind of restraint on his
19 arms?
20 A. Velcro straps.
21 Q. Velcro straps. Okay. Maybe if we could
22 just keep that here. I'm not sure. We'll probably
23 need it in case we discuss others. While I am here, I
24 will just ask.
25 There is another drawing here below that, and that
26 would be -- what would -- how would you describe that,
27 that smaller drawing? Or could I ask, is it a layout
28 of the -- pretty much a general layout of what
29 the death chamber --
30 A. Right. It's a layout.
31 Q. Okay. And do you think from your memory,
32 does that seem pretty accurate?

1 A. Yes.

2 Q. Okay. Anything that stands out at all that
3 might, you know, be different from your memory?

4 A. No.

5 Q. Okay. Does it show a presence of a curtain?

6 A. Yes.

7 Q. Does the location of the curtain in that
8 drawing match your memory?

9 A. No.

10 Q. And what is the difference between that and
11 your memory? What does it show in the picture? If
12 you could just describe it a little bit, where it is
13 at.

14 A. The curtain's on the back wall where the
15 phones are. Where the curtain really goes, along the
16 side wall at the foot. It is a collapsible curtain so
17 that it can be expanded to cover the window.

18 Q. All right. Thank you. All right. If you
19 could say where approximately -- were you ever located
20 in one place, or did you move around in the room while
21 you were --

22 A. Move around.

23 Q. Thank you. If you would continue, let's
24 assume we are at the point this time when Mr. Ward has
25 been strapped down. Do you have any -- does this
26 drawing indicate the presence of any kind of sheet,
27 white sheet of any nature placed over any portion of
28 the inmate's body?

29 A. No.

30 Q. Do you recall whether such a sheet was ever
31 present in the room with Mr. Ward's execution?

32 A. No.

1 Q. Okay. So is it your testimony that there
2 was not, or you just don't recall?

3 A. Don't recall.

4 Q. Thank you. Do you -- if I can remember now,
5 I believe your prior testimony was that the curtain
6 was closed at a certain point?

7 A. Yes.

8 Q. Can you tell me in your memory what point
9 that was?

10 A. When the EMTs came out to start the I.V.s.

11 Q. Okay. And where were the EMTs coming from
12 when they came out? You say "came out." Where did
13 they come out from?

14 A. Came out from the door at the head of the
15 gurney.

16 Q. Okay. And that door leads to what area?

17 A. To the room where the I.V.s are hanging on
18 the pole.

19 Q. Okay. And is it -- is -- okay. So they
20 came from that location. And what was the reason that
21 the curtain was closed, in your memory?

22 A. To keep secret the identity of those people
23 involved.

24 Q. I understand. When you're -- was the -- you
25 are speaking specifically of the EMTs at this time,
26 then?

27 A. Yes.

28 Q. And not the members of the strap-down team?

29 A. The identities weren't kept confidential.

30 Q. I'm sorry? I --

31 A. Their identities were not kept confidential.

32 Q. Their identities were not kept confidential.

1 I understand. Just for clarification, after the
2 strap-down team had secured Mr. Ward to the gurney,
3 where did they go, or did they leave?

4 A. They returned out the door they came in.

5 Q. Do you have any -- could you explain your
6 understanding of what the distinction was about, you
7 know, closing the curtain for the EMTs, but not
8 closing the curtain when the strap-down team was
9 present?

10 A. The identity of the one to remain anonymous
11 was required and was not of the other.

12 Q. Is there any reason why?

13 A. No.

14 Q. Do you know if this was a -- the same
15 practice -- do you know or do you not know whether
16 that was the same practice that Warden Whitley used in
17 the first lethal injection in 1993?

18 A. I don't know.

19 Q. Thank you. Do you recall, Warden Cain,
20 whether -- if you had any -- I think you mentioned
21 this. But just to be certain, if you had any specific
22 conversation with Warden Whitley about details of this
23 nature, of anything that you are talking about right
24 now in the last 10, 15 minutes, about -- with him
25 about the lethal injection process?

26 A. I don't recall.

27 Q. Do -- to proceed now with -- again, to
28 focus on Mr. Ward, he now is strapped down on the
29 table. Do you recall where the intravenous lines were
30 connected to him?

31 A. Yes.

32 Q. And do you -- where was that, to your

1 memory?

2 A. To each arm.

3 Q. To each arm. And approximately midarm?

4 A. Yes.

5 Q. Inside of the elbow area. Okay. And do

6 you -- after those intravenous connections were

7 established by the EMTs, what did the EMTs do at that

8 point?

9 A. Went back through the door from which they

10 came.

11 Q. Into the -- into the area where the I.V.

12 lines went, did you say?

13 A. Yes.

14 Q. Thank you. The -- do you recall how many

15 EMTs were involved in that, to your memory?

16 A. Not sure.

17 Q. Was it more than one?

18 A. Yes.

19 Q. Is it possible there was more than two?

20 A. Don't know.

21 Q. Okay. But it absolutely was more than one

22 person?

23 A. Yes.

24 Q. Thank you. Do you recall or did you know if

25 anyone else was in that back room? And, oh, if I

26 could save you for this, as you could see with the

27 EMTs, I am not asking for any names at all, and I do

28 not ever intend to. Hopefully, everyone understands

29 that I am not asking for any specific names.

30 Confidentiality is something we've been taking very

31 carefully into consideration here. Do you -- my

32 question originally was: Do you recall if there was

1 anyone else in that back room where the I.V. lines
2 were going besides the -- at least one EMT, and
3 possibly another?

4 A. Yes.

5 Q. And do you recall how many other people to
6 your knowledge were in that room?

7 A. No.

8 Q. Do you -- it was at least one other person,
9 though?

10 A. Yes.

11 Q. Okay. And without naming names or any
12 identifying thing, what was -- what was the reason
13 that person was in there? Do you know what job they
14 performed?

15 A. Push the drug.

16 Q. Thank you. And by "push the drugs" you mean
17 operated the syringes, to the best of your knowledge?

18 A. Yes.

19 Q. Thank you. Now, do you recall approximately
20 -- okay. It is at this point you made a little
21 earlier reference to the Thomas Ward execution that
22 you gave a signal. And as you indicated, I believe,
23 by your motion, perhaps a thumbs-down type of a
24 signal. Is that accurate?

25 A. Yes.

26 Q. Okay. And that just -- that just happened.
27 You were going to give a signal of some nature to them?

28 A. Right.

29 Q. And the reason for that was what? What was
30 the signal needed for?

31 A. So they would know to start the process.

32 Q. Thank you. And the -- and so to your

1 knowledge, that process was then started?

2 A. Yes.

3 Q. All right. And the -- you were then the

4 closest human being on the planet Earth to Thomas Ward

5 at that moment, physically?

6 A. Yes.

7 Q. Could you describe any -- what you saw in

8 the next few minutes with Mr. Ward?

9 A. I saw him stop breathing.

10 Q. And if I could ask, by that, do you mean you

11 saw the chest not moving up and down?

12 A. Yes.

13 Q. Okay. Do you recall -- do you recall what

14 any other -- do you have any other memory that sticks

15 with you about those few minutes?

16 A. No.

17 Q. Okay. Would you say that, in your opinion,

18 that -- would you say -- what was the look on his face

19 as far as when he was laying down after you had given

20 the signal?

21 A. No look. Just laying there.

22 Q. No look. Would you -- would it be fair to

23 say a relaxed look?

24 A. Laying there.

25 Q. Laying there. Any movement?

26 A. None.

27 Q. No. Would you tell me -- did you then, you

28 know -- how did you know, to your mind, that the

29 process had been completed?

30 A. They gave me a signal it was completed.

31 Q. "They" meaning one of the people in that

32 room?

1 A. From behind the door.

2 Q. And do you know what kind of a signal? How
3 was that communicated to you?

4 A. Nod of the head.

5 Q. Could you tell me the layout of that room?
6 How could you see those people?

7 A. Crack the door.

8 Q. There was a door to that back room. It was
9 opened? Was it open the entire time?

10 A. No. He cracked the door.

11 Q. They cracked the door open, and that was --
12 and then you could see them?

13 A. Yes.

14 Q. All right. Thank you. At that point, what
15 did you do as far as -- was there any other official
16 function that had to happen?

17 A. Walk to the microphone, ask the doctor and
18 the coroner to come in.

19 Q. So you walked to the microphone and asked
20 the doctor -- do you recall who those doctors are or
21 were?

22 A. No.

23 Q. Those are -- I'm sorry?

24 A. No.

25 Q. You do not. Okay. Without a specific --
26 would it refresh your memory if I were to say the name
27 of Dr. Marvin Ettinger? Does that name ring a bell?

28 A. I don't know who was the doctor.

29 Q. And Dr. Gutierrez, the medical director of
30 Angola Medical System?

31 A. I don't know who the doctors were.

32 Q. I understand. And about how long did it

1 take for them to come into the room?

2 A. Fifteen seconds.

3 Q. All right. And then once they did that,

4 what did they do when they came in?

5 A. Listened to his heart, looked at the clock,

6 pronounced him dead.

7 Q. Thank you. At that time, what happens with

8 the witnesses in the witness room?

9 A. They are dismissed to sign a document. And

10 they are welcome to go to the press conference.

11 Q. That document being that document that I

12 showed you earlier, that proces-verbal?

13 A. That document I made a mistake on.

14 MR. CLEMENTS: Your Honor, if I may ask

15 for a very short break here, I would like to announce

16 I am finishing the questions about this particular

17 execution, and I would like to -- if I could get a

18 couple of minutes.

19 THE COURT: Let's take about a 15-minute

20 recess, and we'll come back.

21 (Recess taken.)

22 THE COURT: You may proceed.

23 MR. CLEMENTS: Yes, your Honor. We are

24 ready. Petitioner's ready to resume. If I might,

25 just one housekeeping matter before we begin. This

26 afternoon, we intend to present the expert testimony

27 of a Dr. Mark Heath.

28 And we would ask at this time, with no opposition

29 from the State, to allow Dr. Heath, pursuant to

30 Article 615 of the Louisiana Code of Evidence,

31 subsection 3(A)(3), that he be permitted to enter the

32 room, enter the courtroom, and observe the testimony

1 of Warden Cain.

2 MR. FISH: No objection by the State,
3 your Honor.

4 THE COURT: So noted. So ordered.

5 MR. CLEMENTS: Thank you, your Honor. I
6 would like to just make a preface note that the
7 questions that I am going to be asking from this point
8 on are going to be more in the nature of the future --
9 of the subsequent executions.

10 We will not be like going through every single
11 detail like we've been doing Mr. Ward. Mr. Ward's
12 was, I felt, important to do that because it was the
13 first and kind of laid out exactly. And I'll be
14 asking for differences, more or less, from that
15 experience.

16 And if I may approach the witness one time? I
17 realize that I have made an error earlier, and I want
18 to correct that.

19 THE COURT: You may.

20 Q. (By Mr. Clements) Warden Cain, this is that
21 same document I showed you, the proces-verbal. And I
22 will just ask you -- page 26, of Exhibit 101, I had
23 mentioned the names of doctors, if you recognized the
24 names at Thomas Ward's execution. And I had mentioned
25 the name of Dr. Marvin Ettinger. I was in error, and
26 I wanted to point out.

27 My staff pointed it out to me that according to
28 the proces-verbal, that doctor's name is not on here.
29 And I just wanted to apologize and make that noted for
30 the record that there was another doctor, Dr. Royce
31 McAnally, who was the coroner of West Feliciana
32 Parish, as well as Dr. Edmundo Gutierrez.

1 A. Okay.

2 Q. Thank you. All right. I would like to draw
3 your attention at this time, Warden Cain, to March the
4 1st, 1996, which was the date after midnight on which
5 Antonio James was executed.

6 And, again, as I just mentioned, I do not intend
7 to go into any kind of detail about all of those
8 different steps of the day and so forth except to ask
9 you if you can convey to us your memory of any
10 differences in your mind.

11 You did mention one thing, earlier testimony, I
12 believe. If you could explain in a little more
13 detail, that you admit there was a modification change
14 done to the gurney table. I think that you said after
15 the first -- after Mr. Ward's execution. I believe
16 that was your testimony. Correct me if I am wrong.

17 A. You are wrong. It was after Antonio James's
18 execution.

19 Q. I apologize. Could you at this moment then
20 explain what that change was, if you could?

21 A. Well, we changed the Velcro straps to a
22 strap that did not restrict the blood flow to the arms.

23 Q. Right.

24 A. The Velcro, if it was tight, restricts the
25 blood and made it harder to -- for the EMTs to find
26 the veins.

27 Q. I understand.

28 A. We also put leg irons on the end of the
29 gurney table so that we could put the leg irons on the
30 inmate. Before, he had no restraints other than just
31 straps.

32 Q. I see. Did inmates, when they are walking,

1 have leg shackles on at that time?

2 A. They do.

3 Q. Okay. And then -- but then when they got on
4 the table, this was a new device that helped to make a
5 substitute set or something?

6 A. There was no way to attach the leg irons on
7 their legs to the gurney.

8 Q. I understand.

9 A. So we made a mechanism, added a mechanism so
10 we could attach the leg irons on their legs to the
11 gurney itself.

12 Q. Okay. And this was primarily a matter of
13 security and then --

14 A. Right.

15 Q. Okay. Thank you. Could you explain, if you
16 remember, concerning the issue of helping to find
17 access to veins that led you -- that led to this
18 changing of the types of straps on their arms, could
19 you explain if there were any difficulties, to your
20 memory, in the execution of Antonio James?

21 A. Yes.

22 Q. Could you explain your memory of that in
23 detail?

24 A. Well, we took the -- removed the straps from
25 his arms, and he made a fist and we -- so they could
26 find the vein. The vein would reappear or whatever.
27 I'm not a medical person. I don't even know that I am
28 using the right terminology. But the making the fist
29 and so forth, then they were able to get the I.V.s in
30 both arms. They had one arm. But we wanted to do --
31 have to do both arms.

32 Q. So one arm was more or less easily or fairly

1 readily -- there was an I.V. line inserted into one
2 arm, but the other arm was more difficult; is that
3 correct?

4 A. Yes, sir.

5 Q. And do you recall from the time that -- how
6 much time passed from when they started to try to find
7 a vein to the -- when they finally succeeded in
8 getting that second line in?

9 A. No.

10 Q. Would you say it was more than 15 minutes?

11 A. No. It wasn't that long.

12 Q. Okay.

13 A. Maybe five.

14 Q. Do you recall asking Mr. James if there was
15 anything he could do to help to find a vein?

16 A. Told him to make a fist, and he was very
17 agreeable. Everything was cool, you know.

18 Q. Uh-huh.

19 A. I don't know that I told him. Someone told
20 him. I was just standing there.

21 Q. Someone. Someone. Okay. So somebody in
22 that room, perhaps an EMT or yourself?

23 A. Yes, sir.

24 Q. Did this. And that making of the fist you
25 said was done after his -- his arms were loosened from
26 the Velcro straps that were originally been set up on
27 him?

28 A. Well, it was eight years ago, and I am
29 reluctant to try to say who did what.

30 Q. Sure.

31 A. And after the deal with Hoffman. Because,
32 you know, it is there. That's how it happened. But I

1 don't know specifically.

2 Q. Sure. I understand. That's completely
3 understandable. Do you have a memory of any other
4 aspect of Mr. James's execution that stands out in
5 your mind, say for that entire day, if there was
6 anything that stands out in your mind? It was
7 different than the way you described Mr. Ward's.

8 A. Well, everything we didn't do for Mr. Ward
9 we did do for Antonio James.

10 Q. All right. You had mentioned about
11 initiating a prayer service prior to the strap-down
12 team and others beginning their duties. Is that part
13 of the changes that you mentioned?

14 A. Yes. And he had asked me to hold his hand.

15 Q. I see. And could you explain that? I'm not
16 sure I'm understanding. At what time are we talking
17 about here?

18 A. Well, he had asked me a few days before.

19 Q. I see.

20 A. Because he wanted to be connected to this
21 Earth while he reached for the next Earth, for the
22 next -- not Earth. But when he reached up, you know,
23 to Heaven.

24 Q. So his request --

25 A. So he asked me would I hold his hand. I
26 said sure.

27 Q. And, therefore, you -- just to be more
28 precise, you are talking about that he was asking you
29 to hold his hand while he was strapped down on the
30 table?

31 A. No. Once I started the process.

32 Q. Once the process had begun. I understand.

1 Thank you. You had earlier mentioned that the -- a
2 signal that you gave in the first execution had
3 troubled you, and you had -- on reflection, you
4 thought that, you know, it wasn't the way you would
5 have wanted to do it maybe. Did you do something
6 different the second time?

7 A. Yes. I nodded my head.

8 Q. Nodded your head. I see. And so it is
9 possible then for the persons inside of the small room
10 to see that nodding?

11 A. Yes.

12 Q. And how do they do that?

13 A. Well, I can't see them.

14 Q. Uh-huh.

15 A. I just know that they are there.

16 Q. There is a one-way mirror?

17 A. Yes.

18 Q. I understand.

19 A. I just know that they are there. So when I
20 am ready and I have talked to him and we're -- and he
21 and I are kind of ready, I just give the nod.

22 Q. Thank you. Any other distinctions in your
23 mind of differences between the way you described
24 Mr. Ward and this, Mr. James's?

25 A. We talked.

26 Q. Okay. Yes. You had said that before you
27 had not talked. And this time you did?

28 A. We talked during the process.

29 Q. During the process of the -- after you had
30 given the signal, the nodding of your head?

31 A. Yes.

32 Q. I understand. Do you recall in your memory

1 approximately how long you talked?

2 A. Yes.

3 Q. And what -- how long was that?

4 A. About 115 -- about 75 seconds.

5 Q. I see.

6 A. About a minute and 15 seconds we talked.

7 Then he closed his eyes. And then within 15 more

8 seconds, he breathed two breaths. (Indicating sound.)

9 He stopped moving.

10 Q. After those two breaths that you had just

11 made particular sounds, is that indicating like a some

12 sort of a heavier than average type of breath or --

13 A. Exactly what I did. (Indicating sound.)

14 Q. Okay. It's -- I am just trying to figure

15 out how to put it into words for the record. I don't

16 know. Because we are trying to be able to get kind of

17 a clarity to that. But we'll -- well, we'll go with

18 that, I think. Do you feel like his lips were pursed

19 or something when he did that? Or just, you know --

20 A. No. He just went to sleep.

21 Q. All right.

22 A. He just closed his eyes, breathed the two

23 breaths, and went to sleep.

24 Q. All right.

25 A. No movement whatever.

26 Q. And after that time of the two breaths and

27 the appearance of going to sleep, did you -- you say

28 there was -- to confirm, there was no other movement

29 that you saw with Mr. James from that point on?

30 A. No movement.

31 Q. Okay. Do you know about how long before you

32 received a signal back from the EMTs?

1 A. From the time I gave the signal until I got
2 the signal back was really real close to six minutes.

3 Q. Approximately six minutes. Okay. And then
4 you basically followed the same procedures you
5 described before with -- in Thomas Ward's execution.

6 A. The two breaths, yes. The time, yes.

7 Q. Okay. I -- my question is after you
8 received the signal back --

9 A. Six minutes, yes.

10 Q. Did you then go and give a -- did you ask
11 for the --

12 A. Yes.

13 Q. -- two official witnesses to come in?

14 A. Walked around the table and asked the
15 witnesses, the two doctors to come in.

16 Q. Thank you. And they came in and pronounced
17 his death?

18 A. Yes.

19 Q. Okay. Okay. I would like to move on now a
20 little more than a year later to 1997, I believe April
21 24th, to the execution of John Ashley Brown, and
22 basically pursue the same kind of questions here. Do
23 you have any special -- well, let me just ask this one
24 thing on Mr. James. Do you know what kind of material
25 the new straps were made of?

26 A. Yes.

27 Q. Could you describe that a little?

28 A. Leather with a series of notches that
29 slipped over a little prong that stuck up to hold it
30 in place that stuck out far enough that the strap
31 could be stuck through that after it went around his
32 wrist. It went around and back through.

1 (Indicating.) I'm sorry.

2 Q. Okay. And what was it if you remember --
3 what was it about this other kind, this newer kind of
4 strap that you felt helped out?

5 A. It didn't restrict the blood flow.

6 Q. Okay. And was -- do you remember who
7 developed the idea for that specific type of system?

8 A. No. It was one on my staff. I don't know.

9 Q. One of your staff. You are not sure. If I
10 were to ask if you know any -- if this person had a
11 medical background or not, would that refresh your
12 memory as to who did it, who gave the suggestion?

13 A. I don't think he did.

14 Q. Okay. Moving forward in time, again, now to
15 John Brown's execution. In general, again, were there
16 any -- now, we have these new type of straps; is that
17 correct? In this -- and this -- he would have been
18 the first person to have that type of a setup?

19 A. Yes.

20 Q. Were there any other changes to the physical
21 equipment that you are aware of?

22 A. That and the legs. The --

23 Q. And then -- I'm sorry. The shackles?

24 A. Yeah.

25 Q. And that was instituted, again, after Mr.
26 James's execution?

27 A. Right.

28 Q. Thank you. With Mr. Brown's execution,
29 besides those two changes, can you recall any other
30 significant differences or differences of any -- even
31 if they were minor in your mind, between the way --
32 the events that happened in the execution chamber once

1 you came in and the strap-down was done?

2 A. What do you mean?

3 Q. I -- what I'm trying to see is if -- again,

4 so not to go through the detail type of questioning

5 about each minute and second and movement of every

6 person.

7 Did anything seem to your memory now to have been

8 different than, say, for the other preceding two

9 lethal injections that you had been witness -- or

10 anything stand out that's different in your mind

11 besides what you talked about, about the straps and

12 the shackles?

13 A. You know, one of them -- what you are

14 asking probably is that one of the arms, they didn't

15 do the I.V. They did the I.V. in the neck on the left

16 side.

17 Q. Are you referring to Mr. Brown or to another

18 inmate?

19 A. Brown.

20 Q. Mr. Brown. It's your memory that in Mr.

21 Brown's execution, one of the intravenous lines was

22 placed into the neck?

23 A. Left neck.

24 Q. The left side of the neck area. Was there

25 any other inmate whose execution either before or

26 after Mr. Brown where you remember that occurring,

27 that kind of a procedure occurring?

28 A. No.

29 Q. I understand. Now, to focus again on

30 Mr. Brown, what does your memory of what was happening

31 with that -- why was -- do you have any idea why that

32 had to happen?

1 A. Yes. They had problems with the I.V. in the
2 arm.
3 Q. Okay.
4 A. The left arm.
5 Q. All right. And do you know -- and, again,
6 when you say "they" I just -- just to be as clear as
7 possible, you are --
8 A. EMTs.
9 Q. -- talking about the EMTs?
10 A. Right.
11 Q. And there is only the EMTs and you and Mr.
12 Brown in the room at that moment that they are trying
13 to do the intravenous; is that correct?
14 A. I think, yes.
15 Q. Okay. As far as where -- do you know -- if
16 you can remember this much detail, when they had first
17 tried to find a location in the left arm and were
18 unsuccessful, do you know did they go straight to the
19 neck, or did they try some other location first before
20 they did that?
21 A. Straight to the neck.
22 Q. Straight to the neck. And do you recall if
23 it was the EMTs who performed that function?
24 A. The I.V.?
25 Q. This I.V. in the neck area.
26 A. The EMT.
27 Q. The EMT did that. And the EMT, then -- do
28 you recall about how much time that aspect of it took?
29 A. One try.
30 Q. One try. I guess about how much -- seconds,
31 minutes, anything?
32 A. The same time it would take to do the I.V.

1 in the arm.

2 Q. Oh, I see.

3 A. Just assume.

4 Q. Okay. And do you recall any discussion

5 about difficulty? Let -- strike that. If you would

6 think of comparing -- because it seems to me in a

7 sense that what you are describing before that neck

8 position, the neck insertion was done, that, in fact,

9 they had had some trouble with Mr. James finding one

10 arm also. And they ended up loosening Velcro straps

11 and so forth. And they solved the problem, they

12 finally found one in the arm?

13 A. Yes.

14 Q. Was that a similar type of function that was

15 done with Mr. Brown? Do you remember?

16 A. No. We didn't have to release the strap

17 because it was a different strap.

18 Q. Right.

19 A. They just couldn't do it. So --

20 Q. So -- I'm sorry.

21 A. So they wanted to know did I want to go with

22 one. I said no. I have to have two, so find another

23 one. So then they went and did this one.

24 Q. So it's your memory that the -- one of the

25 EMTs asked you if one -- if you just wanted to go with

26 one --

27 A. I.V.

28 Q. -- intravenous line?

29 A. Because it was flowing freely, doing well.

30 Q. And because that -- they had already seen

31 that that line was moving and flowing freely, as you

32 say?

1 A. That's right.

2 Q. And but you answered them, said no.

3 A. No.

4 Q. And you explained you need two?

5 A. The rule says two, and I want two.

6 Q. I understand. And do you have personal

7 knowledge of why two might be better than one?

8 A. Only an opinion.

9 Q. Could you tell us if --

10 A. Well, you wouldn't want to get half through

11 the process and lose the vein for whatever -- I don't

12 know that you can do that. I am not a medical person.

13 Q. I understand.

14 A. And then you have the other one.

15 Q. Right. Okay. So just -- that was your

16 understanding. And when you said that that was the

17 rule, could you explain to me, is this -- when you

18 mentioned the rule about two hookups, do you -- are

19 you referring to a written rule or just some other

20 form of a rule or how -- what kind? I am not sure

21 what rule we are talking about here.

22 A. I think there is procedures somewhere in

23 those papers that's going to say how you do it.

24 Q. Okay.

25 A. It is in those procedures.

26 Q. So in some of the documents. And what you

27 are referring to are the entire set of documents that

28 in this hearing have been identified as Exhibit 101,

29 in globo, which is that public records release that I

30 -- the almost thousand pages of material?

31 A. Right.

32 Q. Okay. And have you had a chance to see them

1 at all at any time?

2 A. No.

3 Q. You have been -- you are familiar with the
4 fact of generally what they are?

5 A. Yes.

6 Q. Somebody told you? And who told you about
7 what they -- just generally? Was that --

8 A. It is my job to know about the rules.

9 Q. I understand. So if -- so if basically --
10 if people say that these are, you know, what is in
11 here, included in here amongst other things are rules,
12 then you say, well, then I know what those are because
13 I have seen them?

14 A. Yeah.

15 Q. Okay. It's not that you have seen this
16 particular pile of paper right now?

17 A. Right.

18 Q. Do you know -- because it kind of takes me
19 back. You had talked about you had like this
20 foot-and-a-half pile of paper when you first came to
21 Angola. Do you -- because I keep looking at that one,
22 and it seems like it too almost. Do you recall if in
23 any of those papers there was anything about rules
24 about lethal injection?

25 A. Yeah. Yes, sir.

26 Q. Okay. So you did review some at that early,
27 early time?

28 A. I read all those rules. I read every rule
29 there is at Angola at one time.

30 Q. I understand. And so that -- and that just
31 as a quick, quick reference again, that would have
32 been in 1995, early on? When you first -- that's when

1 you first became warden?

2 A. That would have been the first time.

3 Q. Right. And then other times too, I take it?

4 As, you know, whenever you --

5 A. If I had a question, I wondered about

6 something, I'd go reference the rule.

7 Q. You would go to the written rules?

8 A. Uh-huh.

9 Q. Thank you.

10 A. Policies and procedure manual is what it is.

11 Q. I understand. So the policy and procedure

12 manual and -- and, generally speaking, that would --

13 would that be the way you would approach any

14 situation, whether it be lethal injection or ordering

15 food, or whatever? You would, if you had a question

16 about something, you might -- one source of

17 information you might go to would be a written policy

18 or procedure; is that correct?

19 A. Right. But most of them, you know, we

20 change or write on my watch.

21 Q. Uh-huh.

22 A. You know, to -- so I am going to know them.

23 And it's common sense, too.

24 Q. Right. I understand. Would you classify

25 the kinds of policies and procedures involving lethal

26 injection to be common sense or something in a

27 different category?

28 A. I'm sure that the medical people would have,

29 you know, great impact on what the rules are. Because

30 it's a medical procedure, basically. So we are going

31 to follow that. And the doctors and pharmacists and

32 so forth are going to be involved in the writing of

1 the rules. But common sense, to me, would dictate to
2 have two I.V.s.

3 Q. I understand. You just mentioned doctors
4 and pharmacists. Do you -- is -- was there something
5 that you understood from someone else that these two
6 kinds of people, doctors and pharmacists, had
7 something to do with the creation of the policy and
8 procedure about lethal injection?

9 A. Well, the doctor has to write the
10 prescription.

11 Q. Right.

12 A. The pharmacist has to fill the prescription.

13 Q. Okay.

14 A. The prescription is written to me, I think.

15 Q. Okay. Yes. I think the record reflects
16 that that -- another witness testified to that. We
17 had a couple of copies of prescriptions at the tail
18 end of all that.

19 MR. CLEMENTS: One moment, please. Okay.

20 Excuse me.

21 Q. (By Mr. Clements) Aside from the insertion
22 of one of the lines in the neck area, do you recall
23 anything else that stands out about the John Brown
24 execution in your mind? And the other things you have
25 mentioned already, just anything. And during that
26 time period after you gave the signal and you received
27 a signal back, if anything.

28 A. To what degree, if anything?

29 Q. Well, I'm not sure. If you could tell me if
30 the -- did you give a -- did you continue the idea of
31 having a conversation with the inmate? Did you talk
32 with Mr. Brown?

1 A. I held his left hand.

2 Q. You held his left hand. Okay.

3 A. And I had my right hand on his shoulder a
4 little bit, and I talked to him.

5 Q. I understand.

6 A. We talked.

7 Q. Did you -- after you gave the signal, did
8 you see him convulse at all?

9 A. Okay. Now, you are being more specific.

10 Q. Yes.

11 A. Okay. After I gave the signal and I was
12 holding his hand, and we were talking about seeing
13 Jesus' face. Because I said, "Get ready for the ride.
14 You're fixing to see Jesus' face." I had my hand on
15 his shoulder, and I was holding his hand.

16 And then what happened was he got some sort of
17 rush, the best way I can explain it. And so he raised
18 up in the straps and he looked at me, and he said,
19 "Wow." It wasn't a painful thing to -- that I would
20 determine as being painful or whatever. He just
21 raised up in the straps.

22 So at that point, I put my thumb under the strap
23 that goes by his shoulder so that that strap did not
24 rub the I.V. right here. (Indicating.) And as I had
25 my hand on his shoulder, and I had my thumb under the
26 strap.

27 So I pulled the strap away from his neck and
28 pushed back down on his shoulder and just kind of held
29 that so he wouldn't -- so he wouldn't rub the strap.

30 And then I held his hand and he -- and he said, "Wow,"
31 you know. And like it wasn't a painful -- it wasn't
32 anything painful or whatever. Just wow, you know.

1 It's kind of like he looked at me in his eyes and he
2 said, "Wow." You know, like I would say to you, wow,
3 as we were talking. And then he relaxed back down,
4 laid back down, and then he made the two breaths.

5 The only one that didn't make the two breaths was
6 the last. And I noticed one other thing. It seemed
7 like that it was a faster process, maybe four, four
8 and a half minutes instead of the six.

9 Q. And it --

10 A. So that he -- by the time they opened the
11 door and said -- you know, gave me the nod.

12 Q. Okay. Because you mentioned a couple of
13 different occasions, then let me just clarify that.

14 When you are talking about it seemed a little faster,
15 which execution were you referring to then?

16 A. Most all have taken six minutes.

17 Q. I understand.

18 A. Real close to six. His was faster, a little
19 bit faster.

20 Q. His being -- I'm sorry.

21 A. A little bit shorter time, maybe 30 seconds,
22 a minute. It was a noticeably shorter time to me that
23 they give me the signal that it was all over.

24 Q. And just to clarify for the record, when you
25 are saying that, that the person to whom you are
26 referring it took a shorter time, was that John Brown?

27 A. Yes.

28 Q. All right. Thank you. Do --

29 A. There was one other thing.

30 Q. Yes.

31 A. He was white. So I noticed on -- I noticed
32 that was first white person. And so I noticed the

1 change in his color. And the change in his color was
2 about -- he breathed the two breaths. (Indicating
3 sound.) And then he went about another 45 seconds, 30
4 seconds, and I started seeing this pale blue color
5 come over him.

6 Q. Okay. And because of the fact that he was a
7 white person and the two previous persons were not
8 white persons, this was something you could see
9 differently?

10 A. Yes. I think that's what it was. It was
11 just different color skin.

12 Q. We've gone into some very specific details.
13 Are there any other details of that specificity about
14 Mr. Brown's execution that you recall?

15 A. No.

16 Q. Thank you. I would like to move to the
17 1999, January 6 -- no, no. Yes. No. January the
18 8th, 1999, execution of Dobie Gillis Williams and ask
19 if you can recall, again, any particular -- first of
20 all, if there were any changes instituted after
21 Mr. Brown that you can think of?

22 A. No.

23 Q. Okay. And -- and so no changes at that
24 point in table straps, shackling, it was all the newer
25 version had been kept at that point?

26 A. Right.

27 Q. Okay. And as far as specific conversations
28 with Mr. Williams, did you engage in conversation with
29 him?

30 A. Yes.

31 Q. And hold his hand, his left hand, say?

32 A. Yes.

1 Q. Do you recall, again -- and I think you
2 have said. But just to clarify, did you recall
3 whether it was any difficulty in finding veins in
4 Mr. Williams?

5 A. I don't think so.

6 Q. Okay. So from that I would have to assume
7 that there was no neck --

8 A. No.

9 Q. -- operation or procedure done there. Thank
10 you. And the -- the -- were there any other -- okay.
11 As far as after you gave the signal, the signal was a
12 nod, again?

13 A. Nod my head.

14 Q. And it was always a nod after that?

15 A. Always a nod.

16 Q. Understood. That, again, the breaths, the
17 double-breath situation?

18 A. The double breath.

19 Q. Same type of situation, similar time frame
20 as you just mentioned, except for Mr. Brown?

21 A. It's always a minute and a half,
22 thereabouts. And the conversation was different. We
23 talked about, you know, a little bit about his crime.
24 And then the same time frame, same everything. We
25 talked right up until he closed his eyes.

26 Q. If -- and was Mr. Williams white or black?

27 A. Black.

28 Q. Okay. If I could ask you just to jump back
29 again quickly to Mr. Brown, one other point. Do you
30 recall this color change in his skin, facial color
31 from white to kind of a bluish color, as you
32 described, did that color change happen? How did --

1 in what time did that happen, if you can remember, in
2 relation to the when you gave the -- or when the
3 signal was given back to you? That the --

4 A. Close to -- it was right about the minute
5 and a half. He closed his eyes, breathed the two
6 breaths. And then within 15 seconds, I started seeing
7 the color change, first in his lips; and then I
8 started seeing it flow over his whole body, his face,
9 you know, all the part I could see. He turned this
10 pale blue real quick. It was in 15 seconds to 30
11 seconds after that first -- he closed his eyes, a
12 minute and a half.

13 Q. Right. And so you had given a -- you were
14 talking with him for about a minute and a half after
15 you had given the nod that --

16 A. Usually, about a minute and 15, 20 seconds.
17 And then they start -- the eyes start to -- can't stay
18 open. Only on the last one did they stay open. The
19 eyes can't stay open, and then he just goes to sleep.
20 And then after he goes to sleep, the two breaths, and
21 that's all within a 15-second deal there. (Indicating
22 sound.)

23 Q. And --

24 A. The blue then followed.

25 Q. Started changing color at that -- within 15
26 seconds, you said?

27 A. He had the change of blue before they
28 probably got even any or a part of the second drug,
29 start turning blue.

30 Q. I'm sorry. My hearing is getting a little
31 -- I'm getting too old. But if you could repeat the
32 last line about -- what you just said about the

1 timing. I think I missed some of that.

2 A. It had to be with the first, you know, close

3 to the first drug or right along after.

4 Q. Okay. All right. And, again, just for as

5 best as you can recall, approximately how long did it

6 take before you -- after you saw the color before you

7 received a signal from the opening of the door

8 cracking open?

9 A. Couldn't have been more than two and a half

10 more minutes.

11 Q. Okay. All right. And --

12 A. It's quick.

13 Q. All right. Okay. So that was again what we

14 -- the person of whom we were just speaking in the

15 last couple of minutes ourselves --

16 A. Was John Brown.

17 Q. -- was John Brown. And now we -- we're kind

18 of jumping back and forth between Mr. Brown and Mr.

19 Williams. And just to clarify again, is there any

20 other thing that you can recall that stands out about

21 Mr. Williams's execution?

22 A. No.

23 Q. All right.

24 A. Six minutes. The same process.

25 Q. Same process. All right. Okay. I would

26 like to proceed on to the execution in June the 6th,

27 of 2000, of Feltus Taylor. Again, were there any

28 changes to basic equipment or anything that you are

29 familiar with between -- after Mr. Williams and then

30 used first -- if any, for the first time with

31 Mr. Taylor?

32 A. None.

1 Q. Straps, tables, shackles?
2 A. None.
3 Q. All the new stuff, same thing?
4 A. The same.
5 Q. Okay. How about again the process of
6 holding his hand and being close to him and talking
7 with him in the beginning?
8 A. Talking about which one?
9 Q. After you have given the signal.
10 A. Feltus Taylor?
11 Q. Yes. I'm sorry. Yes.
12 A. Same thing.
13 Q. Okay. So very, very -- the same thing.
14 Okay. And same time frame, basically, that you are
15 saying?
16 A. Right.
17 Q. Do you -- do you recall if there were any
18 difficulties with intravenous connections?
19 A. None.
20 Q. Okay. Do you recall how many EMTs were
21 involved in hooking up those intravenous lines?
22 A. I think there is two.
23 Q. Right.
24 A. One goes to each arm.
25 Q. Yeah.
26 A. Best I recall. I am not a hundred percent
27 sure, but 99.9.
28 Q. I understand. Do you recall if there were
29 -- how many people were in that back room, to the best
30 of your knowledge?
31 A. I don't know.
32 Q. Okay. Did you have any reason to believe or

1 suspect that there was some -- that there was a
2 different number of persons in that back room for
3 Feltus Taylor's execution than there were in the
4 previous three -- four that you had seen already, you
5 have been over?

6 A. No. I'm trying to recall. I added one at
7 one point.

8 Q. I understand.

9 A. To be sure I had, you know, security because
10 the door out is not a secure door. But no.

11 Q. So when you are talking about adding a
12 security, was -- my question originally had been about
13 that little room.

14 A. That's way back to Antonio James, after
15 that.

16 Q. Oh.

17 A. After that first one.

18 Q. So Antonio James, it was at that point.

19 A. Yes.

20 Q. Would that person, extra security I think
21 you just called it, is that what you are -- that's the
22 kind of person it was or --

23 A. Yeah.

24 Q. Was that person in the back room with the
25 EMTs in a kind of a concealed room there?

26 A. Yes.

27 Q. So there were, in fact -- if you could, tell
28 me if you know this is accurate. Starting with the
29 time of Antonio James's execution and not with
30 Mr. Ward, you think that there may have been two
31 persons who were EMTs, one person that was a syringe
32 operator, for lack of a better word, and another

1 security person?

2 A. I don't know. I can't answer that because
3 there was a door from the outside. So I know
4 basically pretty close. But I can't tell you exactly.

5 Q. Sure. Did you ever go into that room
6 yourself during this entire time period?

7 A. Never.

8 Q. I understand. And is there a reason for
9 that?

10 A. No. I just don't.

11 Q. Okay. So that makes it difficult for you to
12 be a hundred percent sure about how many people are in
13 that room?

14 A. I can't because I never go look.

15 Q. Okay.

16 A. I know who is within reason, you know, with
17 maybe one or two. But I can't tell you exactly.

18 Q. And so it is your memory, though, that an
19 additional person, and that this person was in that
20 room, and that was for a security-based reason?

21 A. Well, you are trying to ask me how many is
22 in that room and get me to guess as close as I can.
23 If you are, ask me, and I'll answer you.

24 Q. Okay. How many people to your best guess in
25 that room?

26 A. About five.

27 Q. About five persons in that room. Do you
28 have an understanding of approximately what their jobs
29 were, what function they performed in that room?

30 A. It was probably six.

31 Q. In that room?

32 A. Now that I think about it, yeah.

1 Q. Okay. Can you tell me if you know what
2 their purposes were, what their purpose in being in
3 that room was?

4 A. Well, there is some security in that room.

5 Q. Okay.

6 A. There is -- there is two people who're going
7 to be there that could push the drug, and the EMTs are
8 in that room.

9 Q. Okay. Just so that I can be certain, you
10 have just -- is it your testimony that there are two
11 people there to, as you say, push the drugs? What are
12 their -- I mean, I'm -- tell me as much as you can
13 about that, if you know anything about it.

14 A. I just know when I say do it, they do it.

15 Q. I understand. So do you have any idea based
16 on -- let me ask you this. Thomas Ward's execution,
17 were there up to -- upwards of five or six people in
18 that room the first time that you had an execution,
19 lethal injection?

20 A. I don't have a clue. I'm sure that there
21 was probably five. But probably.

22 Q. Probably five to your knowledge. Do you
23 have any idea or would you know whether there was
24 anything -- any difference with -- and I know you were
25 not there. But did you ever hear of anything about
26 the Sawyer execution?

27 MS. ESTOPINAL: Your Honor, I object to
28 any hearsay.

29 THE COURT: You kind of answered that
30 while you were asking the question. Mr. Clements, any
31 response to the State's objection?

32 MR. CLEMENTS: I'll try to rephrase,

1 your Honor.

2 THE COURT: I'll allow you to, noting
3 the State's objection.

4 MR. CLEMENTS: Thank you.

5 Q. (By Mr. Clements) Mr. Cain, did you see any
6 document that reported the -- any kind of detail about
7 the numbers of people in positions or at Robert
8 Sawyer's execution? Anything detailing or documenting
9 what happened as far as --

10 MS. ESTOPINAL: I'm sorry, your Honor.
11 Robert Sawyer, this was before Mr. Cain was warden.
12 Am I correct?

13 MR. CLEMENTS: Yes. I'm asking if he
14 saw a report about that afterwards that --

15 MS. ESTOPINAL: I'm sorry. I just
16 wanted to clarify that, your Honor.

17 MR. CLEMENTS: Oh, absolutely.

18 MS. ESTOPINAL: I didn't understand the
19 purpose behind that question.

20 MR. CLEMENTS: Robert Sawyer's execution
21 predated Warden Cain's presence as chief warden.

22 THE COURT: So noted. You may proceed
23 to ask the question.

24 Q. (By Mr. Clements) Again, just to repeat,
25 Warden Cain, did you ever see a document that
26 described anything special to that, to how many
27 personnel were located at different times during
28 Robert Sawyer's execution?

29 A. No.

30 Q. Did you -- do you have any reason to believe
31 that there was a difference between what happened --
32 that the number of people in the executions that you

1 were present for as opposed to that that happened

2 under Warden Whitley, meaning Robert Sawyer?

3 A. I have no idea.

4 Q. No? You are not -- you don't have any idea?

5 A. No.

6 Q. Okay. Fine. Do you have any idea, again,

7 where the practice -- do you know how the practice or

8 the tradition, so to speak, of having five or six

9 people in that small room where it -- how it was

10 developed or decided upon?

11 A. I don't know what was prior to me.

12 Q. Right.

13 A. I only know what happened with us.

14 Q. Right.

15 A. And that's what I thought --

16 Q. Well, yeah. How that --

17 A. -- was essential to be there.

18 Q. I'm -- I spoke over you. I'm sorry. You

19 just decided what you felt was needed, is that more or

20 less --

21 A. It just -- and there is two EMTs.

22 Q. Right.

23 A. There's two others, and there's a security

24 person.

25 Q. Okay.

26 A. Maybe there could be two security people.

27 If I decide that I don't feel good with this one or I

28 feel like there's going to be some kind of problem or

29 I get, you know -- it's like the man outside the door

30 with the gun. I might decide I want another one just

31 because. And I just do that.

32 Q. Would -- if you could, could you tell me if

1 you -- what your primary concern about -- that
2 security was a very big concern of yours, concerning
3 the number of people that had to be put in that room?

4 A. Not really. But it's -- I'm not at -- a
5 prison is not in the -- a gambling thing.

6 Q. Right.

7 A. If you're going to gamble, you lose if you
8 gamble. So I'm just -- you know, we are just
9 overcautious with everything.

10 Q. Okay.

11 A. And at best, you still have problems every
12 once in a while.

13 Q. Okay. Let me ask this. To your
14 understanding, the decision to have those people in
15 there, in other words, those besides the EMT and
16 anyone who is involved with pushing a plunger, was
17 there a medical reason for having them in there that
18 you know?

19 A. No.

20 Q. Okay. It was something other than a medical
21 reason to have them there, and security was --

22 A. Yes.

23 Q. -- one of them. Okay. Do you know how large
24 that space is?

25 A. No.

26 Q. Okay.

27 MR. CLEMENTS: Your Honor, I would like
28 to approach the witness, please.

29 THE COURT: You may.

30 Q. (By Mr. Clements) Again, I'm going to show
31 you page 87, of Exhibit 101, in globo, and to let you
32 look at that diagram again of that small room as well

1 as the room where the table is.

2 A. The diagram is wrong regarding the small
3 room.

4 Q. Okay. Could you explain --

5 A. Yes.

6 Q. -- what the differences were?

7 A. The little -- okay. The back wall of the
8 little room is probably twice as long as in the
9 diagram. And there is a door to the side of the
10 little room goes to the outside that's not even there.
11 I don't see it on there.

12 Q. All right.

13 A. And so, therefore, the little room is not
14 nearly as small as it looks here. Looks like a closet
15 here. It's not. It's a long room, kind of long. You
16 could actually put a bed in it if you wanted to.

17 Q. If you will -- one -- let me get a red pen
18 and ask you if you could -- and I don't expect you to
19 be a Picasso or anything. But if you could just make
20 a notation as to in your best memory, you know.

21 A. All right.

22 Q. Roughly where that wall to your
23 understanding truly goes for that back room.

24 A. (Witness complies.)

25 Q. Okay.

26 A. There's no door there. It's all --

27 Q. No door there?

28 A. Yeah. There is a door -- only other door is
29 right here on this side. Somewhere along in here is a
30 door. (Indicating.)

31 Q. I see.

32 A. Okay.

1 Q. Okay. And is the door that you have just
2 indicated here the door in which all of the people
3 that go into that room enter and go out?
4 A. No. Some people enter this door here. Some
5 people enter the door through the execution chamber.
6 Q. I understand. Okay. If you wouldn't mind,
7 I would just like to draw two lines on this diagram
8 away from where your drawing is. And I'm going to
9 draw one out to here, if you don't mind. We will put
10 -- what would you call that room, that smaller room
11 that's actually much bigger according to this drawing
12 here? What -- do you have a name for it? Do you
13 know?
14 A. No.
15 Q. Okay. Can we call it the concealed room? I
16 mean, I don't know. Tell me. I am trying to figure
17 it out.
18 A. I don't care. Pick a name.
19 Q. Okay. How about the room where the I.V.
20 poles are?
21 A. Great. Good name. I.V. room.
22 Q. I will put that down. Room where --
23 A. Just say I.V. room.
24 Q. Okay. I.V. We'll just call it I.V. room.
25 Now, if that would be to this location, this line I
26 have drawn here with an arrow to point to that point,
27 that's the I.V. room?
28 A. Right.
29 Q. And then I will write the actual dimensions.
30 Is that --
31 A. Yeah. Larger.
32 Q. -- closer? Yeah. Actual larger dimension.

1 Okay. Now, and if you would, this other -- this is a
2 -- this other thing here, which is the location of the
3 door?

4 A. Door. Outside door.

5 Q. I'm going to then --

6 A. A nonsecure door.

7 Q. A nonsecure door, an outside door. And I am
8 drawing a big loop around here to just say outside
9 nonsecure door.

10 A. And we put a curtain by this door so nobody
11 can see who comes and goes through that door.

12 (Indicating.)

13 Q. Could you repeat? I didn't catch what you
14 -- I was writing when you pointed to that.

15 A. There's a curtain around the out -- walled
16 up little deal like a curtain by the outside door so
17 that people can't really see from the -- the inmates
18 over here looking out can't see who goes in that door.

19 Q. Okay. And could you draw where that curtain
20 is on there?

21 A. Okay. I'm not a very good artist. (Witness
22 complies.) Somewhere right here. There's a road out
23 here. (Indicating.)

24 Q. Okay. And then I will just draw one, two
25 other notes. One, I will just say road; and this line
26 here, to indicate curtain.

27 A. Okay.

28 Q. Thank you. And then if I would -- and just
29 so the -- if you would just sign your name on that,
30 and that way they will know that that's what we are
31 talking about here.

32 A. (Witness complies.)

1 MR. CLEMENTS: I would like to enter
2 this exhibit -- show you all of these. And when we
3 make copies, it would be Exhibit 117.

4 MR. FISH: The State has no objection,
5 your Honor.

6 MR. CLEMENTS: I would like to move to
7 enter this, 117.

8 (Petitioner's Exhibit 117 was offered.)

9 THE COURT: Admitted.

10 (Petitioner's Exhibit 117 was admitted.)

11 MR. CLEMENTS: I'll get copies of this
12 at the break. Thank you.

13 Q. (By Mr. Clements) Okay. So from the
14 drawing that you have given, it shows that room being
15 significantly larger than it appeared to be --

16 A. It is.

17 Q. -- in the original drawing. Okay. And --
18 and your knowledge of that fact is based on what?
19 About how big that room is roughly, that it's
20 different than this picture. What's your knowledge
21 based on?

22 A. Maybe three times as large as that picture.

23 Q. All right. But how do you know that?

24 A. Well, I've been in it.

25 Q. You've been in it. Okay. Thank you. But
26 not at a time during an execution process, as I
27 believe your earlier testimony -- you've never been in
28 there during that time?

29 A. No.

30 Q. Great. Thank you. Now, I know we have kind
31 of drifted away for a moment here. And we were
32 actually getting close -- anything else that you can

1 recall about the Feltus Taylor execution that stands
2 out in your memory?

3 A. No. It was normal, other than that.

4 Q. I understand. That brings us then to the
5 May 10th, 2002, execution by lethal injection of
6 Leslie Dale Martin. And, again, the same basic
7 questioning about -- do you have any memory of any
8 event that stood out as different?

9 A. Yes.

10 Q. Could you explain that?

11 A. He didn't breathe the two breaths.

12 Q. Okay.

13 A. And he didn't close his eyes.

14 Q. And he didn't close his eyes. So by the
15 time that the signal had been given back from the
16 room, it's my understanding that his eyes were still
17 open?

18 A. Right. The doctor came in, examined him,
19 pronounced him dead. They didn't close his eyes, so I
20 closed his eyes.

21 Q. I understand. The -- as far as the
22 particulars of holding his hand and talking to him,
23 did those events occur at that execution?

24 A. Didn't hold his hand.

25 Q. Okay. Is there a particular reason that you
26 can remember for that?

27 A. There was a reason, but it's personal.

28 Q. A personal reason you would rather not share
29 with the Court?

30 A. Am I supposed to tell you?

31 MR. FISH: Your Honor, I'm going to
32 object as to what the relevancy is of this question.

1 Counsel has established that the procedure
2 differentiated from the last few concerning the
3 talking to and the hand-holding. The -- I fail to see
4 the relevancy to --

5 MR. CLEMENTS: I withdraw the question.

6 THE COURT: So noted. And the Court
7 understands, Mr. Clements, that you are withdrawing
8 that particular question.

9 MR. CLEMENTS: That particular question
10 as to the more specific nature of the reason.

11 THE COURT: So noted.

12 MR. CLEMENTS: Thank you.

13 Q. (By Mr. Clements) As far as the location of
14 where the intravenous lines were located, can you
15 remember where that was?

16 A. Same thing.

17 Q. Meaning the arm, both arms at the elbow
18 area?

19 A. Same way, both arms.

20 Q. Okay. Was it your recollection at all that
21 Mr. Martin had a sheet placed over his body in any --
22 at any time then?

23 A. (Nods negatively.)

24 Q. Okay.

25 A. No. No sheet.

26 Q. So pretty much had -- you could see all the
27 straps and everything on his body. If I could ask --
28 and I had forgotten to ask this. And it may be the
29 same answer for all of them. But how was the inmate
30 dressed?

31 A. Jumpsuit. It -- one of them wanted to wear
32 a T-shirt, a certain kind of T-shirt. I don't even

1 remember which one. We didn't care.

2 Q. Uh-huh.

3 A. It doesn't matter. And then maybe the

4 jumpsuit, normally. One was blue jeans, I believe, at

5 one point.

6 Q. Okay. So various possible types of

7 clothing?

8 A. Yes. That's --

9 Q. In -- in Leslie Martin's case, that he was

10 in a jumpsuit, do you think?

11 A. He was a higher level security situation to

12 me. So he wore the jumpsuit.

13 Q. I understand. Okay. In regards to higher

14 level security, was Mr. Martin moved at a different

15 time than standard procedures like other -- with the

16 other inmates as far as being moved --

17 A. No.

18 Q. -- from death row to the --

19 A. He was. He was. You are right. He was.

20 We moved him at one point. We had him there twice.

21 Q. That's --

22 A. At one point -- I don't remember if it was

23 the second. It may have been both times. We put him

24 there a month early. We moved him on over when we got

25 the death warrant.

26 Q. Okay. Is it your recollection that in a --

27 a couple of months before his actual execution in May

28 that Mr. Martin did receive a stay of execution?

29 A. He got a stay of execution. Right. And he

30 was already over -- he was within 20 minutes. And I

31 went in to get him, he thought. But I went in to tell

32 him he had a stay. And he was real shocked because

1 he had a stay. He didn't have to go that night. And
2 so he had been over there a month. We took him back
3 to death row. And I don't remember how long until he
4 came back again the second time.

5 Q. If I were to suggest that the date of the
6 stay was approximately February the 8th of 2002, would
7 you have any reason to dispute that? Approximate
8 date?

9 A. Whenever you say. I don't have a clue.

10 Q. Okay. And so -- but you are saying that
11 whatever the date of that stay, he had been in the --
12 the Camp F area?

13 A. He was within 20 minutes.

14 Q. I'm sorry?

15 A. I was going to get him within 20 minutes of
16 when I -- when that stay came.

17 Q. But as far as having been moved from death
18 row -- and I haven't gone into this detail, except you
19 had mentioned it with Mr. Ward at the beginning. And
20 I haven't gone over this part --

21 A. Yeah.

22 Q. -- with anybody else. But he had been moved
23 a little early? He had been moved earlier?

24 A. About a month earlier.

25 Q. About a month earlier. And when a new
26 execution date was reset, which was for May the 10th,
27 and that's when it really did occur, he had also been
28 moved back for a month's time?

29 A. Yeah.

30 Q. Thank you. But as far as the location of
31 intravenous lines, the same, and no breaths; is that
32 right as you recall?

1 A. No breaths. No closed eyes.

2 Q. No special breaths.

3 A. And I didn't hold his hand.

4 Q. And you did not hold his hand. And basic to

5 your knowledge, the same number of personnel in that

6 small room?

7 A. Yeah.

8 Q. Of whatever nature. How about -- just as a

9 curiosity, because Mr. Martin -- Mr. Martin was white.

10 Right?

11 A. Was what?

12 Q. Was white?

13 A. He was white.

14 Q. Right. Did you happen to see the same

15 bluish color phenomenon? Do you remember?

16 A. I did. The difference in he and the other

17 white man is it took him the six minutes. The other

18 one just seemed to -- he died faster, like four and a

19 half to five.

20 Q. And so the -- the onset of the bluish color

21 took longer, in your memory?

22 A. No. Same time.

23 Q. Okay.

24 A. But for some reason, they didn't give me the

25 signal for another minute and a half.

26 Q. Okay. So the time for the signal that after

27 the bluish color started was a longer period of time

28 than it was with Mr. Brown?

29 A. That's right.

30 Q. I understand. And you think that perhaps

31 another minute and a half longer than you recall it

32 being for Mr. Brown?

1 A. Yeah.

2 Q. Something -- because I think you had
3 mentioned before, Mr. Brown, perhaps four and a half
4 minutes total between start and finish; first, your
5 signal, and received -- receiving back signal?

6 A. Right.

7 Q. And with Mr. Martin, six minutes as with
8 others?

9 A. That's right.

10 Q. Okay. You briefly mentioned, Warden Cain, I
11 think maybe a couple of times that, you know, you
12 personally don't have medical -- you are not a doctor
13 or something. Is that -- if I just asked you straight
14 up, do you have any medical experience or training?

15 A. No.

16 MR. CLEMENTS: No further questions at
17 this time.

18 MR. FISH: Can I have a moment, your
19 Honor?

20 THE COURT: You may.

21 MR. CLEMENTS: Excuse me, your Honor.
22 If I could, I would like to consult with counsel. I
23 may have a couple of other questions.

24 THE COURT: You may.

25 (Defense counsel confer.)

26 THE COURT: Mr. Clements, did you have
27 something to say?

28 MR. CLEMENTS: Yes, your Honor. If I
29 may, I would like to retract my statement of finishing
30 and ask a couple of more questions.

31 THE COURT: All right. The Court will
32 allow it.

1 MR. CLEMENTS: Thank you, your Honor.

2 Q. (By Mr. Clements) Warden Cain, thinking
3 back to your testimony about a couple of the changes
4 that you had, for example, the changing of the Velcro
5 straps to the different leather kinds and so forth,
6 can you give us a detailed understanding of how that
7 decision was changed? And, in other words, did people
8 meet? Did you meet with those? Did someone bring
9 it -- how did that happen?

10 A. With Antonio James, since they had trouble
11 with the vein, we undid the Velcro strap.

12 Q. Right.

13 A. Then we undid the strap at the upper arm.
14 So, therefore, he was not restrained with his arms at
15 all. And so having in mind that little door outside
16 was not a real secure door, even though I had adequate
17 security outside, and in mind that I didn't have
18 anything on his leg other than the leg irons itself,
19 but nothing attached to the table, something had to be
20 different because I didn't like that situation.

21 Q. Uh-huh.

22 A. So I told them, we got to find a better way
23 since the Velcro strap obviously stops the flow of
24 blood, or it can restrict it. And so, therefore, then
25 we had to figure out another way. And I don't
26 remember who figured out the other strap, just how the
27 other strap came out.

28 I told them to put an eyebolt in the end of the
29 table and put another set of leg irons there. And we
30 don't actually put it on the legs, but we hook it on
31 to the chain that's on his legs so that we have him
32 restrained at the table.

1 Q. Right.

2 A. And so that's the two changes.

3 Q. Do you remember -- and you described it
4 some. But let me just try to draw out a little more
5 detail.

6 A. All right.

7 Q. As far as you say that -- I mean, you
8 observed problems yourself? You were right there.

9 A. Oh, yeah.

10 Q. You saw these problems. And the EMTs
11 experienced the difficulty of not being able to get a
12 vein easily. And do you -- and you had testified
13 earlier about, you know, you could see a problem. But
14 was it the EMTs also that made a comment or something
15 that, okay, there seems to be -- these straps seem to
16 be the -- what one of the problems is about flow of
17 blood so it is hard to get a vein that way?

18 A. Yeah. And it probably did take -- to get it
19 from once it started to finally get the vein, it
20 probably did take 15 minutes.

21 Q. Okay.

22 A. But they finally, I think -- and I am just
23 -- I don't like guessing with you 'cause you hold my
24 feet to the fire.

25 Q. Yeah.

26 A. But it was probably the -- it was probably
27 that the EMT was saying I am having trouble getting a
28 vein. We need to undo the strap. And he would look
29 -- I think, as I recall, he looked at me because
30 nobody would dare take the straps off unless I told
31 them they could.

32 Q. Sure.

1 A. And so then, after -- obviously, we had to
2 since we had released the straps on the hand.

3 Q. Okay.

4 A. So then that wasn't enough. So then he said
5 we still needed to try to get the arm. We released
6 that one, and that's when they asked me do I want to
7 go with one. And I said, again, on that one, no. We
8 got to have two. They said we are having trouble with
9 it. In this case, was the right arm. He was laying
10 on the table like this. (Indicating.)

11 Q. Uh-huh.

12 A. So the right arm. Because I remember my
13 back was to the witnesses. Even though the curtain
14 was closed, as I was watching them try to do it.

15 Q. Right.

16 A. And they would apologize. "Man, we're sorry
17 for sticking you," you know.

18 Q. Right. As you recall though, let's say
19 after everybody has left that room after the execution
20 is completed, did a meeting take place between you and
21 others?

22 A. No.

23 Q. That discussed these changes?

24 A. No. We -- we never have a meeting. Is that
25 what you are asking?

26 Q. Yeah. About the --

27 A. No. We don't ever have an official meeting
28 that night.

29 Q. How about at any other time after that
30 execution to discuss, hey, what -- let's really make
31 sure, you know, what we want to do about this
32 situation.

1 A. Well, it's not an official meeting. I will
2 talk to the deputy warden and tell them, you know,
3 when you -- I think we will discuss -- we needed to
4 fix this. How did it go? What do we need to do to do
5 it different? If we -- if it was pretty well perfect,
6 what can we -- critique it. And we may talk about
7 that. But it won't be at an official time.

8 I knew that night we had to change those straps,
9 though, and I knew we had to put something on the end
10 of the table. So I left, myself, telling them to do
11 that. No meeting. No meeting to --

12 Q. So it was pretty much that you saw a problem
13 because you were right there firsthand and saw it.
14 And you -- in the presence of the EMTs, you were able
15 to think -- you were able to figure out one thing, how
16 to deal with it right then. And then you thought of
17 an idea of how to deal with it, and then communicated
18 that to deputy warden or somebody else that this is
19 what we need to change?

20 A. No. No. That's not what happened.

21 Q. Okay. I'm sorry.

22 A. They couldn't get the I.V. started. They
23 wanted to release the strap on the hand, as I recall.
24 And I'm -- this is a long time ago.

25 Q. Right.

26 A. And so -- and so we released the strap on
27 the hands. And then that wasn't good enough. Still
28 didn't get it. So we did the one on the arms.

29 Q. Did I understand you to say a moment ago
30 that you kind of did have like perhaps just a
31 one-on-one conversation with Deputy Warden Peabody
32 about this or how it went in general? Or did I

1 misunderstand?

2 A. Wouldn't have been with Warden Peabody. It
3 would have been one of the security wardens. It would
4 have been with -- when I went out.

5 Q. Okay. So one of the security wardens. But
6 perhaps just a one-person-on-one-person meeting to
7 discuss it?

8 A. No. It would just be me commenting as I,
9 you know -- because I made the -- there was no
10 meeting. I made the decision.

11 Q. Okay.

12 A. And then just tell them what to do.

13 Q. I understand.

14 A. We don't have to meet. Let them -- it's not
15 a meeting.

16 Q. Okay. So it is not a meeting. It's
17 basically a directive somehow to -- here is a change
18 that needs to be done.

19 A. Yeah. I see a -- we going to fix it. Fix
20 it.

21 Q. Fix the problem. Okay. Are you aware of
22 any changes in the procedure as to the types of
23 chemicals or the dosages that were ever used?

24 A. No. 2 grams of the sodium pentathol.

25 Q. Uh-huh.

26 A. 40 milligrams of the pancuronium bromide.
27 120 milliequivalents of the potassium chloride.

28 Q. I understand. To your knowledge, that was a
29 uniform for all the -- all the six executions that
30 you were involved in, your understanding was that
31 that's what the quantities and the names of the
32 chemicals involved?

1 A. Right.

2 Q. And, coincidentally, that that's what the
3 order they were presented in -- they were injected
4 into the person? The sodium pentathol first,
5 pancuronium bromide second, and finally potassium
6 chloride?

7 A. That's right.

8 Q. I understand.

9 A. From a minute and 30 seconds to watch and
10 then another minute; 30 seconds to watch, another
11 minute.

12 Q. So your -- and because it's -- I'll assume
13 it was unlikely you had any knowledge of those things
14 before you came -- became warden at Angola. How is it
15 that you came to know those facts that you just told
16 the Court?

17 A. Well, that's just the drugs they use, and I
18 want to know what we do.

19 Q. I guess my --

20 A. So I asked somebody or read. I don't know
21 where I found it. I just knew what we did, what they
22 are.

23 Q. Is it possible you read it in a policy or a
24 procedure or anything?

25 A. Could have.

26 Q. That kind of detailed information?

27 A. Right. Could have.

28 Q. Okay.

29 A. Could have read it there. I'm sure I did --
30 read it or I wouldn't have remembered it. I would
31 have to read that.

32 Q. Is it possible that it was another way

1 besides reading it that you might have known it?

2 A. No. I can do tours, and I won't remember.

3 And I'll ask somebody, what do we use? And they will

4 tell me again. You know, just --

5 Q. You hold onto it?

6 A. Yeah.

7 Q. Good. Does -- as warden of Angola, did you

8 ensure that the EMTs were certified to perform the

9 function that you had referred to as happening to

10 John Brown in the neck?

11 A. The EMTs are certified to be EMTs.

12 Q. Uh-huh.

13 A. And so they are EMTs.

14 Q. Okay.

15 A. I know they are certified.

16 Q. Do you know if -- well, do you know of any

17 name for that particular kind of procedure that's, you

18 know -- if it is called anything besides what -- you

19 know, that's different than placing an intravenous

20 line in the arm?

21 A. I have no clue.

22 Q. Do you know -- have you ever heard of the

23 term "cutdown"?

24 A. I have.

25 Q. Are you familiar -- could you describe what

26 your understanding of what that is?

27 A. I -- it's my understanding of cutdown, which

28 we have never done, is someone to make an incision of

29 some sort and put some kind of deal or device so that

30 then you can insert the vein there -- insert the

31 needle and the I.V. there.

32 Q. Uh-huh. And -- and are you familiar with

1 any other -- with something that's called -- something
2 called inserting a central line? Are you familiar,
3 does that phrase mean anything to you medically or --

4 A. No.

5 Q. Okay. Do you know if there is equipment
6 available for the EMTs to do a cutdown if necessary?

7 A. Let me explain. I don't like explaining.

8 But I will try just briefly. Before you ever go
9 there, they are going to know and they are going to --
10 will have seen, and they are going to know if they
11 think they are going to have a problem.

12 Q. Okay.

13 A. And if they did, we would address it. At
14 this point in my career, we've never had the problem.
15 And we could anticipate ahead of time if they would.
16 But we have never had the problem.

17 Q. Okay.

18 A. So it hasn't been a necessity. If there
19 ever was an inmate who for some reason they thought we
20 not going to be able to find his veins, and then I
21 would deal with that then.

22 Q. And I know this is -- this would be -- you
23 have just testified that this situation has not
24 occurred. But what would you be prepared to do in the
25 event that something like that became apparent that it
26 might be a likely possibility?

27 A. Let's go back to common sense. As many
28 veins as is in your body, I would be real disappointed
29 if they told me they couldn't find one with your feet,
30 your hands, your arms. So I just would hardly -- and
31 I would just tell them that. Are you telling me you
32 can't find one anywhere? And they would have to tell

1 me no, I can't find one anywhere. And I would wonder
2 just how good an EMT are they.

3 Q. Okay.

4 A. And I would tell them that. I just believe
5 you could find one. I just don't think you have to
6 resort to that other. Maybe I am wrong. There is a
7 doctor here that can say. My opinion.

8 THE COURT: Excuse me, Mr. Clements.
9 It's about one o'clock, and the Court is going take a
10 recess until about 2:15. Is there any request for any
11 other time other than that time by counsel?

12 MR. FISH: Not by the State, your Honor.

13 THE COURT: All right. Petitioner?

14 MR. CLEMENTS: We have one constraint of
15 time, and that is Dr. Heath. And he needs to get a
16 flight back out of town. He'll probably need to leave
17 at 4:30. And with that in mind, we would want to --
18 we will be concluding with Warden Cain very soon. I
19 know the State will have some questions, and then we
20 would proceed with Dr. Heath as soon as possible.

21 THE COURT: All I'm saying is when we do
22 recess, we are going to come back at 2:15. And I have
23 concerns about staff.

24 MR. CLEMENTS: We would be here,
25 absolutely, for 2:15. And would -- if there is any
26 way possible sooner, would be prepared to do that too.

27 THE COURT: All right. Well, are you
28 finished with this witness? Because the State hasn't
29 had an opportunity to --

30 MR. CLEMENTS: Very, very, very close.

31 THE COURT: All right.

32 MR. CLEMENTS: Another question.

1 THE COURT: We can go for an additional
2 period of time. All I'm saying is when we do finish,
3 if the request -- if your request is that we finish
4 with this witness before taking a lunch recess, it's
5 still the Court's intention for us to come back at
6 2:15.

7 MR. CLEMENTS: I understand. I
8 understand. So that you would like to have the State
9 finish its response before the lunch break?

10 THE COURT: Well, you are requesting.

11 MR. CLEMENTS: I -- yes. Well, I just
12 would like to know.

13 THE COURT: So --

14 MR. CLEMENTS: I am just looking at the
15 tail end. And I am trying to figure out -- I don't
16 know what the Court's pleasure is as far as starting
17 or finishing particular stages. But I know I need to
18 try to take advantage of the doctor's presence. And I
19 appreciate it. We will do everything we can to work
20 with that. And I am almost, like I said, very close.

21 Q. (By Mr. Clements) Warden Cain, have you
22 ever lectured at universities, colleges, and such
23 about the lethal injection process?

24 A. Yes.

25 Q. Could you -- have you been a part of a panel
26 discussion in front of the American Psychological
27 Association about the lethal injection process?

28 A. Yes. More about the -- yes.

29 Q. Could you explain a little bit about what
30 the actual part of the process that you talk about in
31 front of them -- that you did, I mean?

32 A. About what we talked about today and then

1 about the impacts, some on the staff.

2 Q. The impact on the staff meaning -- a little
3 more detail there?

4 A. Just that we provide psychiatric treatment
5 for anyone on the staff who might desire it, out of
6 sight, away from the site, and confidential, even to
7 me. I don't even know.

8 Q. Are you familiar with a Dr. Howard Osofsky?

9 MS. ESTOPINAL: Your Honor, I'm going to
10 object as to the relevancy of this.

11 MR. FISH: Your Honor, the -- we're
12 going to interpose an objection to this line of
13 questioning. The issue in this case is whether or not
14 the intended execution of Nathaniel Code, Jr.,
15 violates the United States constitutional prohibition
16 against cruel and unusual punishment.

17 The issue is not whether or not it is cruel and
18 unusual punishment for the employees of the Louisiana
19 State Penitentiary to be involved in this process.
20 And it is totally irrelevant what -- what assistance
21 the warden or the State provides these people to
22 execute their duties within the system is totally
23 irrelevant for what that -- that's a political
24 question that needs to be addressed by the legislature
25 if that's a problem.

26 But it is not a basis to in any way prevent the
27 execution of this defendant; and, therefore, it should
28 not be a subject matter of this hearing. And I think
29 it may very well violate privileges that may be in
30 effect with certain members of the staff of the
31 penitentiary being -- getting psychiatric or
32 psychological treatment, if they are in fact doing

1 that, which -- and, therefore, I think it's a bad area
2 to get into, and we object to this line of
3 questioning.

4 THE COURT: The Petitioner's response --

5 MR. CLEMENTS: The Petitioner's
6 response --

7 THE COURT: -- to the objection?

8 MR. CLEMENTS: Excuse me, your Honor.

9 Yes. First of all, the -- I would be -- maintain
10 strict confidentiality and not ask any names about
11 anybody receiving treatment. Secondly, that would be
12 in line with everything we've been doing in this
13 hearing and before it.

14 Secondly, I would refer to Exhibit 104, I believe,
15 where the -- with the transcript of the hearings in
16 Baton Rouge in which -- I'm sorry? 102 -- excuse
17 me -- which is the transcript of the hearings in Baton
18 Rouge in which I laid out the same -- an answer to the
19 same objection that was raised at that time about
20 probing about this sort of a matter.

21 The basis is simply this. A report came out in
22 the Lake Charles American Press on May the 14th, 2002,
23 entitled -- an article entitled "Executioner Steps
24 Away After Four Lethal Injections."

25 And in it there were references to the reports of
26 a person that was reported to -- unidentified, but
27 reported to have conducted four -- been the person
28 that pushed the plunger on four separate lethal
29 injections. And that the difficulties he had when a
30 real execution date came, that his hands would begin
31 to shake and that he had trouble sleeping, and that it
32 was a difficult time. And without going into further

1 detail -- because this is just a -- one simple
2 newspaper article. However, the point I made in that
3 argument on December, I believe, the 11th, the
4 transcript will reflect, and I will make that same
5 argument here, is simply that I would like to know if
6 a person is -- if a person is pushing the plunger in
7 as delicate a situation as this, has hands that are
8 shaking, then, yes it does affect.

9 If testimony, you know, brought out at the
10 depositions has been along the line that, yes, indeed,
11 the key thing is that these -- the number one thing is
12 that pushing the plunger slowly is of primary
13 importance in doing their job.

14 And somebody with shaking hands, there is a
15 reasonable basis to assume that that might be a
16 possibility in a case like this. So -- and I am not
17 going to go any further than that. But that's the
18 reason I came into it at all. And this is -- this is
19 the problem that we are trying to do.

20 And we, again, have been totally respectful, I
21 believe, of confidentiality. And we don't have any
22 way of knowing. I have talked with both the persons
23 who were involved in interviewing people, of guards
24 they had done.

25 This is a public meeting that Warden Cain was at
26 and reported journal articles have come out about it
27 and references in newspaper articles and so forth.
28 And it is a completely public matter with super
29 confidentiality maintained of everybody at the same
30 time. I am just saying that I just was probing the
31 idea, did he have these kind -- did he meet, and
32 verify that those meetings did occur. I had -- have

1 no intention of going any further down this line.

2 MR. FISH: Your Honor, just because a
3 newspaper article writes this and reports that someone
4 left the job because they felt maybe that they weren't
5 able to complete the job in no way reflects on what is
6 -- what was done at any particular execution.

7 If -- the proper question would be to ask either
8 in the depositions or of this witness if they ever saw
9 someone with shaking hands not be able to finish their
10 job. This -- the fact that the -- a newspaper article
11 appeared in a newspaper does not make this line of
12 questioning relevant.

13 MR. CLEMENTS: If I may, your Honor, I
14 don't believe everything I see in the newspapers
15 either. And I don't make everything that I do on the
16 basis of that. But I will say this, that we don't
17 have any idea who the syringe plungers are. And it's
18 only been the action of the State so far that has
19 produced one such person for a deposition; and that
20 deposition took place earlier this week.

21 It's clear from the description of things that if
22 there is even any basis for the fact that the person
23 in the article -- if the only thing in that article is
24 true is that that person can -- you know, was
25 participant as a syringe pusher for four executions,
26 we didn't meet that person yet, and we still don't
27 know that person.

28 That's when I would want to ask that question.
29 And the -- so we are still at a disadvantage because
30 of the confidentiality and secrecy involved in this
31 process. We are hamstrung in being able to pursue a
32 full exploration. And all I am saying, I am not

1 intending to pursue any further with Warden Cain
2 except to ask if that was something that did happen
3 this past May, that he did, you know -- that he did
4 appear at the American Psychological Association
5 discussing lethal injection. And he's already given
6 answer to that effect, then I'm satisfied with that.

7 THE COURT: What was the question?

8 MR. CLEMENTS: The question originally
9 to Warden Cain was --

10 THE COURT: Yeah. The --

11 MR. CLEMENTS: Did he appear at or was
12 he part of a panel of the American Psychological
13 Association? And the topic being about matters
14 related to lethal injection. And the warden already
15 answered that.

16 MR. FISH: That's not the question that
17 was objected to, your Honor.

18 MR. CLEMENTS: I'm sorry. Could you --

19 THE COURT: Yeah. I didn't think it was
20 either. I think we may have gotten --

21 MR. CLEMENTS: Okay. I stand corrected.
22 It's been -- the question I --

23 THE COURT: The Court had no problem
24 with that question.

25 MR. CLEMENTS: I understand.

26 THE COURT: And the witness did answer.

27 MR. CLEMENTS: The question had to do
28 with the seeking of treatment, psychiatric treatment
29 or psychological treatment. And I would rephrase.

30 THE COURT: Well, the Court is concerned
31 about the relevance of and some of the ramifications
32 of the question that I believe you are asking of this

1 particular witness.

2 MR. CLEMENTS: The simple connection is
3 this, that the stress and trauma of performing this
4 function by a human being goes to the performance of
5 that function.

6 And the performance of that function directly
7 impinges on the capacity to this person to even be
8 able to give a constitutionally sufficient protection
9 that this person is not suffering cruel punishment in
10 violation of the U.S. Constitution's Eighth Amendment.
11 That's the connection.

12 THE COURT: And you believe this
13 witness -- that would be within the purview of this
14 witness's knowledge?

15 MR. CLEMENTS: I believe that he could
16 at least lay a foundation to say that, yes, he is
17 aware of perhaps if anyone has sought psychiatric
18 treatment, without naming names, to deal with this
19 issue of the stress and of performance on the job on
20 this particular action.

21 MS. ESTOPINAL: Your Honor, I believe
22 that Mr. Clements had asked about some study from
23 Dr. Olshansky [sic] and his son, also Dr. Olshansky
24 [sic] about psychological stress. If he had asked
25 as direct a question as he has now stated, the State
26 will concede that that would be relevant as far as the
27 person performing the pushing of the drugs, whether he
28 or she could perform their duty. That the State would
29 not object to.

30 THE COURT: Would that be your question,
31 Mr. Clements?

32 MR. CLEMENTS: Yes, your Honor. I would

1 be satisfied with having that question posed to the
2 witness. And I can --

3 THE COURT: Okay. So noted. And the
4 Court will allow the question.

5 Q. (By Mr. Clements) The question again,
6 Warden Cain, is if -- are you aware of and whether
7 employees of Louisiana State Penitentiary who have
8 been involved in the process of pushing the plunger --
9 and I'm not asking any names, no revealing of names or
10 identities -- but if they have -- if you are aware
11 that they have sought psychiatric or psychological
12 treatment for the stress related to this that has, in
13 fact, impacted their performance on this particular
14 job function of pushing that plunger?

15 A. I'm aware that it did not affect anyone's
16 performance, them pushing the plunger. I am aware
17 that one person asked me to not do it anymore. But
18 the reason he gave me was because he felt like his
19 confidentiality had been breached. He didn't want his
20 mother to know, and that he didn't want to do it
21 anymore.

22 But also, then, we conveyed to this person too
23 that if he needed to talk or have any psychiatric help
24 that it was available. Here is how, when, and where.
25 Whether or not he actually did that, I don't know.

26 Q. I understand. Thank you.

27 A. Okay.

28 MR. CLEMENTS: I have no further
29 questions. Thank you.

30 THE COURT: The Court is going to recess
31 until 2:15. We will come back at that time, and the
32 State can ask its questions and we will try to finish

1 with this witness to get to the next one. Court is in
2 recess until 2:15.

3 (Lunch recess taken.)

4 THE COURT: Good afternoon, Counsel.

5 You are not late. You still actually have about three
6 more minutes. My watch is a little fast to make sure
7 I am in court on time.

8 MS. ESTOPINAL: Thank you, Judge. I
9 appreciate that.

10 THE COURT: So if you need the
11 additional few moments or minutes you may have them.

12 MR. FISH: Your Honor, the State is
13 ready to proceed.

14 THE COURT: Is the Petitioner ready?

15 MR. CLEMENTS: Petitioner is ready to
16 proceed.

17 MR. FISH: Your Honor, Mr. Code is
18 present with his lawyers, Mr. Clements and
19 Mr. Sweeney.

20 THE COURT: So noted for the record.
21 The Court understands that we are picking up where we
22 left off before the recess. And, I believe, the State
23 was about to question the witness.

24 MR. FISH: Yes, ma'am. That's correct.

25 THE COURT: All right. The witness was
26 previously sworn. I remind you that you remain under
27 oath. You may proceed.

28 CROSS-EXAMINATION

29 BY MR. FISH:

30 Q. Warden Cain, you had -- in your direct
31 testimony this morning, you had indicated some
32 concerns about security during the execution process.

1 The atmosphere at a prison and in running a prison
2 such as you do, security is always an important
3 consideration, is it not?

4 A. It is.

5 Q. If you would, please, would you think back
6 to revisit the testimony you gave this morning about
7 having to loosen the straps on the subject's arm
8 that's being executed.

9 And you said you had some security concerns.
10 Could you articulate what those concerns were in
11 specifics that you were attempting to guard against
12 later?

13 A. Yes. I appreciate you said later. Because
14 Antonio James was a very peaceful inmate and so forth.
15 But I realized when we released the straps from the
16 arms, and actually, if he had been a mind to or wanted
17 to, he could have actually fought with us because his
18 arms were free.

19 And in a situation like the execution chamber, you
20 don't want to let that situation exist at all. Not
21 that he could get away, but he could even struggle.
22 But no one ever has, but he could have.

23 So, therefore, realizing that, I realized I wanted
24 to keep the arms restrained, but yet not interfere
25 with the flow of blood through the veins making it
26 harder for the EMTs. And so that was my concern.

27 Q. Also, you expressed some security concerns
28 about the room in where -- the room from which the --
29 in which the drugs are pushed?

30 A. Right. If the arms were free and he had a
31 chance, he could press the snaps on the straps and
32 release the straps. And then his feet, nor was he in

1 any way confined to the table. So then there was two
2 doors out. He would have to pass through, you know,
3 myself and other people to get through the two doors.
4 But neither door was a secure door. It was not a
5 jailhouse door. It was a door like your house, with
6 maybe just a thumb-bolt lock on it.

7 So, therefore, I wanted him to be chained to the
8 table. And so those two things I realized and noticed
9 while we were doing this. Even though the chair --
10 the table had been that way for years, I just didn't
11 feel good with it, and I recognized that. And so I
12 made those changes.

13 Q. Now, in the six executions that you have
14 been involved in, there was actually no resistance on
15 the part of those that are being executed?

16 A. Never.

17 Q. But it is something that you nonetheless
18 must guard against. In a worst-case scenario, even if
19 you believe it to be a remote possibility, it's
20 something that you have to guard against, is it not?

21 A. Oh, yes.

22 Q. Is this something that permeates your
23 considerations of security throughout the prison?

24 A. Yes. With Les Martin, we had indications
25 that he would attempt to escape. And so we were
26 concerned not only about him, but would someone try to
27 free him, would someone interfere, you know.

28 Q. And that -- those concerns that you just
29 articulated about somebody trying to free a prisoner,
30 would that apply to those nonsecure doors that you had
31 talked about before that lead out from the room where
32 the drugs are pushed from?

1 A. Yes.

2 Q. So you have --

3 A. For sure.

4 Q. Excuse me? Go ahead.

5 A. For sure.

6 Q. And is it your intent in the way that you

7 conduct these executions at Angola State Penitentiary

8 to have these procedures done in a dignified,

9 professional, humane, and compassionate manner?

10 A. We go to great extreme to ensure that, and

11 we will not tolerate anyone who performed otherwise.

12 Q. If you had -- when you tell your people to

13 do something, do you expect them to do it?

14 A. Yes.

15 Q. If you instructed an employee to do

16 something and they did not do it, would they be

17 disciplined?

18 A. Probably be fired.

19 Q. In going back to the procedure itself, the

20 six specific occasions that the execution has been

21 conducted in your -- under your regime, the -- I want

22 to revisit what you -- some of the -- the time line,

23 basically, on when you are in the room with a person

24 being executed, and you give the signal for the drugs

25 to begin to flow.

26 What is the -- could you revisit the number of

27 seconds it takes for some reaction to be visible on

28 the part of the recipient of the lethal injection?

29 A. I can revisit it. But it takes about a

30 minute and a half. And I am pretty close to being

31 accurate. I watch. I can see the drug go down the

32 line, (indicating sound) after I give the signal.

1 Q. Okay. A minute and a half from the time you
2 give the signal?

3 A. In a minute and a half, he's going to be
4 closing his eyes, and pretty well will have breathed
5 those two breaths and stopped breathing. Now, the
6 only exception was the reaction I saw from John Brown
7 was sooner, you know.

8 Q. And Leslie Dale Martin's eyes did not close?

9 A. They didn't close. They weren't closed.
10 And I -- they were, you know, about half.

11 Q. And from the one and a half minutes from the
12 time that the -- that you give the signal, the drugs
13 -- when the drugs flow, and then you see the -- what
14 is the first thing that you see?

15 A. First thing I see is they will close their
16 eyes, and then they will go (indicating sound.)
17 That's at right at a minute and a half. And then they
18 -- their stomach and their chest quits moving, and
19 they are just flat laying there. In the first
20 execution, I thought he was -- he was, you know, dead
21 then. But I kept wondering why was it taking them so
22 long to tell me, you know, otherwise because I had not
23 experienced this. And it takes within another, you
24 know, four and a half or so minutes normally, on five
25 of the six, for them to open up the door and to nod
26 their head.

27 MR. FISH: I tender, your Honor.

28 MR. CLEMENTS: No redirect, your Honor.

29 THE COURT: The witness may step down.

30 MR. CLEMENTS: Your Honor, I call Denise
31 LeBoeuf to the stand.

32 MS. ESTOPINAL: Your Honor, I would like

1 to ask if Warden Cain is free to leave and go where he
2 likes?

3 MR. CLEMENTS: I have no problem.

4 THE COURT: Is the Petitioner finished
5 with the witness?

6 MR. CLEMENTS: We are finished with the
7 witness.

8 THE COURT: All right. The witness is
9 free to go.

10 THE WITNESS: Thank you.

11 THE COURT: Thank you.

12 DENISE LEBOEUF,
13 the witness hereinbefore named, having been first duly
14 sworn to testify the truth, the whole truth, and
15 nothing but the truth, was examined and testified
16 under oath as follows:

17 DIRECT EXAMINATION

18 BY MR. CLEMENTS:

19 Q. Would you please state your name for the
20 record.

21 A. Denise LeBoeuf.

22 Q. And, Ms. LeBoeuf, could you state your
23 occupation.

24 A. I'm an attorney. My current position is
25 director of the Capital Post-Conviction Project of
26 Louisiana.

27 Q. Ms. LeBoeuf, on April 24th, 1997, were you
28 one of the official witnesses at the lethal injection
29 execution of John Ashley Brown?

30 A. I was.

31 Q. Can you recount for the Court what you
32 witnessed as a part of the -- when you were in the

1 observation room?

2 A. Mr. Brown was brought in. He made his last
3 statement. He got up on the table. I remember that
4 he actually got up on the table and put his head at
5 the wrong end; and Warden Cain, who was present in the
6 room, told him no, to put his head at the other end.
7 And he did that.

8 The curtain was shut. When the curtain was
9 reopened, he had I.V.s hooked up to him. I was
10 present in court when Warden Cain was testifying.
11 However, I couldn't tell you whether the I.V.s were in
12 his arm or his neck. I simply don't remember that.

13 I did see -- Mr. Brown was looking at me, and I
14 was looking at him. And that continued for some few
15 moments. It's hard to estimate time. I did see at
16 some point his body, upper body, at least strained up
17 against the straps.

18 Q. If I could interrupt for a moment, could you
19 tell me, did this straining you are describing, did
20 this occur, if you are aware or not, before or after
21 the warden may have given a nodding signal? Did you
22 -- were you -- did you ever see that?

23 A. I -- I'm sure I did. But I cannot -- I
24 can't remember.

25 Q. Thank you. Continue.

26 A. I can't remember seeing that. And Mr.
27 Brown's face, the best way I can describe it is that
28 the skin rippled. It went from -- it would be top to
29 bottom, the top of his head down. But, of course, he
30 was laying horizontally. So it was from my left to my
31 right. And it rippled just like a wave, like a --
32 waves passing through his skin.

1 Q. Which side of Mr. Brown's body was closest
2 to you as an observer?

3 A. I could only see his right side.

4 Q. His right side. Thank you. Do you have any
5 other specific memories of that execution that you
6 witnessed?

7 A. Many. But, I mean --

8 Q. That are relevant to this portion that you
9 have already described?

10 A. No. No.

11 MR. CLEMENTS: Thank you.

12 CROSS-EXAMINATION

13 BY MR. FISH:

14 Q. Ms. LeBoeuf, say again where you are
15 employed presently.

16 A. I'm the director of the Capital
17 Post-Conviction Project of Louisiana.

18 Q. And could you describe for the Court what
19 that is?

20 A. It's a project of the Louisiana Indigent
21 Defense Assistance Board charged with representation
22 of inmates in -- death row inmates in post-conviction.

23 Q. So your -- do you have any private practice
24 besides that?

25 A. No.

26 Q. So your entire 100-percent professional
27 focus is on freeing death row inmates?

28 A. Well, no. That's not accurate. My entire
29 focus is on assessing if death row inmates have had
30 fair trials and fair sentencing hearings. And in many
31 of the cases, the focus is on the sentencing hearing
32 as opposed to the trial. So freeing, as it means

1 normally, freeing from prison, no. I wouldn't say
2 that's accurate.

3 Q. Well, if it's not freeing from prison -- if
4 they were free from prison, they wouldn't be getting
5 the death penalty. Right?

6 A. That's right.

7 Q. All right. And if they just were in prison
8 serving a life sentence, they wouldn't get the death
9 penalty. Right?

10 A. Right.

11 Q. Okay. So you are either trying to get them
12 free from a life sentence -- or from a death sentence
13 to a life sentence, or some reduced sentence?

14 A. That's right. As an advocate, I represent
15 people on death row. And I'm -- my position is to --
16 representing individual clients is to attempt to have
17 either the death sentence or the conviction
18 challenged.

19 Q. And that's 100 percent of your professional
20 focus?

21 A. Yes, sir.

22 Q. And before going to work for the -- this
23 agency, where else -- where else have you worked as an
24 attorney?

25 A. My practice has been exclusively capital
26 defense since 1992, first with the Loyola Resource
27 Center, and then with the Center for Equal Justice,
28 and as an independent attorney. Prior to that, I
29 clerked for Judge -- Justice Jack Watson at the
30 Louisiana Supreme Court, and I worked as a criminal
31 defense lawyer with a couple of firms.

32 Q. And what was the Center for -- what was

1 that?

2 A. Center for Equal Justice was also an
3 exclusively capital defense organization.

4 Q. So would it be correct to say that you have
5 been involved in this area of litigation the entire
6 time you have been an attorney?

7 A. Except for the year that I clerked at the
8 Supreme Court.

9 Q. So you are personally opposed to the death
10 penalty?

11 A. I certainly am.

12 Q. With every fiber of your being, are you not?

13 A. Absolutely.

14 Q. The -- have you ever reviewed a case in
15 which someone was sentenced to death where you thought
16 they had a fair trial and a fair sentencing hearing?

17 A. Not yet. I'm certainly logically open to
18 the possibility that that could happen. But I have
19 never seen one.

20 Q. And how many years have you been doing this?

21 A. Fourteen years.

22 Q. Well, I guess there is hope. And, now, were
23 you representing -- involved in the representation of
24 the man whose execution you testified to, Mr. Brown?

25 A. John Ashley Brown. I was one of his
26 lawyers, yes.

27 Q. And you say you have noticed a number --
28 you've witnessed a number of executions, have you not?

29 A. No, sir. That's the only execution I have
30 ever witnessed.

31 Q. Oh. That's the only one?

32 A. Yes, sir.

1 Q. Okay. And at Mr. Brown's execution, were
2 you crying?

3 A. No, sir.

4 Q. And did you hear Mr. Brown say, "Wow"?

5 A. No. You can't hear what's said in the
6 death chamber unless the person is at the microphone.

7 Q. Okay.

8 A. I saw him strain, and I saw his lips move.
9 But I couldn't tell if it was moving in speech or not.

10 Q. And how many of the six cases that have been
11 lethal injection cases in Louisiana that Warden Cain
12 has been -- administered over, how many of those did
13 you -- were you involved in the representation of
14 those defendants?

15 A. I -- I mean, I'm not -- don't want to be
16 cute. If you define involved as having at least some
17 slight -- I represented Antonio James and John Ashley
18 Brown. I had absolutely nothing to do with the
19 representation of Thomas Ward. And I consulted in the
20 representation of Dobie Williams and Feltus Taylor,
21 and I represented Leslie Martin.

22 Q. How many of those did you read the records
23 of?

24 A. I read Mr. James', Mr. Brown's, portions of
25 Mr. Williams', portions of Mr. Taylor's, and portions
26 of Mr. Martin's.

27 Q. And at the risk of pointing out the obvious,
28 you obviously didn't find anything -- you found -- you
29 didn't think any of those trials were fair either.
30 Right?

31 A. It is really -- I really couldn't answer
32 that that simply, Mr. Fish. I -- as a lawyer, I

1 raised claims and extensive litigation on behalf of
2 the three of those men that I actually represented.
3 There are extensive pleadings, hundreds of pages, and
4 raised claims in those. I consulted on the other two
5 cases.

6 My opinion is not -- I mean, it's -- I'm an
7 advocate. I raised good-faith claims that were
8 eventually defeated. But a number of them were
9 treated quite seriously by courts.

10 Q. Right. And I'm not --

11 A. And it succeeded in obtaining stays.

12 Q. And I am not suggesting otherwise. But I
13 was -- you said you have never seen a record in which
14 anybody got a fair trial or a fair sentencing hearing.
15 And I was trying to ascertain if that meant that you
16 thought that all six of those executed persons were
17 unfairly tried and unfairly sentenced.

18 A. I think that there were serious
19 constitutional flaws in their trials and sentencings,
20 yes, sir.

21 Q. Of course, you don't think that anybody
22 should be executed. Right? Under the -- under the
23 Eighth Amendment of the United States Constitution?

24 A. Are you asking for my personal opinion about
25 it?

26 Q. Yes, ma'am.

27 A. Yes. It's my personal opinion that the
28 State should not kill people.

29 Q. Okay.

30 A. It would not, of course, color my testimony
31 as to facts I observed when I am testifying under
32 oath.

1 MR. FISH: I have no further questions,
2 your Honor.

3 MR. CLEMENTS: No redirect, your Honor.

4 THE COURT: The witness may step down.

5 THE WITNESS: Thank you, your Honor.

6 MR. CLEMENTS: Call Dr. Mark Heath,
7 please.

8 DR. MARK J.S. HEATH,
9 the witness hereinbefore named, having been first duly
10 sworn to testify the truth, the whole truth, and
11 nothing but the truth, was examined and testified
12 under oath as follows:

13 DIRECT EXAMINATION

14 BY MR. CLEMENTS:

15 Q. Would you state your full name for the
16 record, please.

17 A. My name is Mark John Sherman Heath.

18 Q. And, Dr. Heath, where do you work?

19 A. I work in New York City, at a hospital
20 called Columbia Presbyterian.

21 Q. And what is your occupation?

22 A. I am an anesthesiologist.

23 Q. When did you receive your medical license?

24 What year?

25 A. I think that was -- you have my CV there, so
26 you can correct me.

27 Q. Right.

28 A. I think it was in 1989.

29 Q. Okay. And how long have you worked as an
30 anesthesiologist at Columbia?

31 A. I began my training in 1988, in
32 anesthesiology training. And I still work there. So

1 almost 15 years.

2 Q. Are board certified in the medical specialty
3 of anesthesiology?

4 A. Yes, I am.

5 Q. And what year was that?

6 A. I think that was 1991.

7 Q. Okay. And you provide anesthesiology in the
8 operating rooms at Columbia University?

9 A. That's right.

10 Q. Do you have any other responsibilities in
11 your job at Columbia?

12 A. It's a teaching hospital. So one of the
13 main elements of my job is to teach residents and
14 fellows how to provide safe anesthesia.

15 Q. In addition to your clinical practice and
16 your teaching, do you have any other responsibilities
17 in your job at Columbia?

18 A. I run a research lab.

19 Q. And what kind of research do you do?

20 A. Neuroscience research on brain chemistry and
21 neurotransmitters.

22 Q. Okay. And who pays for that research?

23 A. That's paid for by a grant from the National
24 Institute of Health.

25 Q. Dr. Heath, do you have any financial
26 interests or conflicts that could affect your
27 testimony here today?

28 A. No, I don't.

29 Q. Okay. Are you aware that the --

30 MR. CLEMENTS: I would like to tender
31 this witness as an expert in the field of
32 anesthesiology.

1 THE COURT: Does the State have
2 questions on the qualifications?

3 MR. FISH: Yes, your Honor.

4 THE COURT: You may proceed when you are
5 ready.

6 EXPERT QUALIFICATION EXAMINATION

7 BY MR. FISH:

8 Q. Please state your name again, Dr. Heath.

9 A. My first name is Mark, and then I have two
10 middle names, John Sherman. And the last name is
11 Heath.

12 Q. And your vitae says that you have dual
13 citizenship?

14 A. That's right.

15 Q. And how did that come to be?

16 A. My parents were both born in England. They
17 came over here before I was born. But --

18 Q. And you -- where did you grow up?

19 A. In New York City, mostly.

20 Q. And did you go to high school in New York
21 City?

22 A. Yes.

23 Q. And what high school did you attend?

24 A. Excuse me. I went for 9th grade at a school
25 called Collegiate and another high school called
26 Exeter in New Hampshire.

27 Q. Exeter, New Hampshire?

28 A. Yes.

29 Q. And then you attended Harvard University?

30 A. That's right.

31 Q. And you studied biology there?

32 A. Yes.

1 Q. And that's what you received your degree in?

2 A. That's right.

3 Q. And did you receive any minors?

4 A. I also studied philosophy. They don't

5 really have a major and minor system at Harvard so --

6 Q. Okay. And then you went to medical school

7 at the University of North Carolina?

8 A. That's right.

9 Q. What -- you are a teacher right now, are you

10 not?

11 A. It's -- I'm what's called an academic

12 physician or a physician scientist. The job has a

13 mixture of elements. And one of them is to teach,

14 yes.

15 Q. And that's at Columbia University Hospital?

16 A. That's right.

17 Q. In New York?

18 A. Yes.

19 Q. And what -- how many surgeries are you

20 involved in on a weekly basis?

21 A. Most of the operations I am involved in

22 right now are cardiac operations, which we usually

23 only do two a day, per operating room. So typically

24 four, five, six operations. And some weeks I might be

25 involved in lots of smaller operations.

26 Q. And the operations that you are involved in

27 all involve general anesthesia?

28 A. No. There are many different kinds of

29 operations. In some operations we do what's called a

30 regional anesthesia, where we use a spinal to make

31 part of the body insensitive. And some operations

32 just use a light level of sedation.

1 Q. And why would you use a -- what is general
2 anesthesia, to distinguish from those that you have
3 already recounted?

4 A. Sure. Except we do not -- if I could do it
5 by distinction. Sedation means that the person is --
6 has a lowered level of consciousness who would still
7 be able to respond to questions, and may have some
8 memory of what happened during the procedure.

9 Regional anesthesia means that part of the body is
10 made to go to sleep. For example, a woman having a
11 cesarean section would get a spinal or an epidural,
12 and that would make the lower part of her body go to
13 sleep, but she'd still be awake and experiencing
14 conversation in the OR.

15 And then there is general anesthesia, which means
16 that the entire nervous system is affected by drugs
17 and so that the brain is not functioning properly, and
18 there is no consciousness, no awareness, no sensation
19 of pain, no fear.

20 Q. No -- what was the last word?

21 A. No fear.

22 Q. Okay.

23 A. There is no consciousness. So --

24 Q. Right. And why wouldn't you use general
25 anesthesia in all your operations that you are
26 involved in?

27 A. It -- it would be possible to do it with, I
28 think, virtually every operation. And there has been
29 a lot of research into which is safer. Obviously, in
30 some operations, you have to do general anesthesia.
31 For a heart transplant, you can't just put that part
32 of the body to sleep. But there are operations, say,

1 a C-section, where we basically can leave it up to
2 patient preference, in most instances, because it
3 could be done either way.

4 Q. But it is not purely patient preference, is
5 it not? It's also -- isn't there some safety
6 concerns?

7 A. Well, I mean, if there were a real safety
8 concern, depending on the kind of procedure, I would
9 make a very strong recommendation to the patient.

10 And, again, if the patient said I want to have a heart
11 transplant, but with a spinal, I would just say I am
12 sorry, I can't do that.

13 So to the extent that -- in many cases, there is a
14 choice. I'll talk with the patient. And, usually, in
15 many cases, the risks are the same or they add up to
16 the same.

17 Q. I'm sorry. I didn't hear that last word.

18 A. The risks are -- there are different risks
19 for the two different techniques. But then some of
20 the risks is comparable, and so I'll leave it up to
21 the patient's preference.

22 Q. But why wouldn't you be able to do a spinal
23 for a heart transplant?

24 A. There's a couple of reasons. And the --
25 when one does a heart transplant, one has to open up
26 the chest. And when the chest is open, that means
27 that the lungs would not expand and contract with
28 breathing. The air would come in and out of the big
29 incision, but it wouldn't make the lungs inflate and
30 deflate. And so you have breathing problems. You
31 also might find that -- again, I think it would be a
32 very strange person who would want to be awake for a

1 heart transplant. But even if we physically,
2 medically could do it, I think it would be -- clearly,
3 they would be very apprehensive about -- in the middle
4 of the operation, they would probably want to end up
5 going to sleep because it would be pretty scary.

6 Q. And when you have to put somebody under
7 general anesthesia like that, you do stop the lungs
8 from breathing, do you not?

9 A. No. We -- we stop their brain from
10 generating respiratory drives, and then we put them on
11 a ventilator where we somehow establish breathing for
12 them.

13 Q. All right. You breathe for them?

14 A. We breathe for them, but we make -- the
15 lungs have to keep breathing unless they are going
16 onto a heart-lung bypass machine.

17 Q. Right. And have you ever lost a patient
18 during any of these procedures that you have been
19 involved in?

20 A. I have had patients die during surgery, yes.

21 Q. Okay. And was it related to the anesthesia?

22 A. No. I've never had a patient die directly
23 related to anesthesia.

24 Q. And what were the reasons that they died?

25 A. Had patients -- what we call exsanguination,
26 bleeding to death, uncontrollable bleeding. Had
27 patients who we -- in doing a heart transplant or
28 other cardiac procedures, when we tried to restart the
29 heart, it wasn't pumping properly and was unable to
30 pump enough blood to get the patient out of the
31 operating room. Those would be the main things that
32 come to mind.

1 Q. Okay. That last one that you referred to,
2 the coming out of the anesthesia, they couldn't get
3 their heart pumping right?

4 A. No. Maybe I misspoke. During the middle of
5 a heart operation, to work on the heart, the surgeons
6 put the patient onto a heart-lung bypass machine.
7 That means the heart is stopped. They will do surgery
8 on the heart.

9 And then once the surgery on the heart is
10 finished, you have to turn off that heart-lung machine
11 and get the heart to take over the pumping again.
12 Sometimes the heart is damaged by the surgery or by
13 something that went wrong and -- or it is a very weak
14 heart in the first place; or if it's a transplanted
15 heart, sometimes it's just a no-good heart because
16 it's been sitting in a bucket of ice for too long.
17 And then we can't get it to start properly.

18 Q. Would it be correct to say, though, that you
19 put somebody under general anesthesia to -- well, you
20 have already stated why you do that. But if it's
21 something that can be avoided, y'all do avoid that.
22 You would rather -- you don't do that precipitously.
23 You try to do it with a spinal or some other kind of
24 anesthesia other than a general, do you not?

25 A. No. I wouldn't say that's accurate. Again,
26 like I was saying, for most operations, the evidence
27 -- as literature shows and my experience also shows,
28 that it is equally safe either way. There are some
29 operations, like I say, heart operations, for example,
30 where I would really never entertain putting somebody
31 on -- doing it with a regional anesthetic. I would
32 always do general. There are other operations, you

1 know, something on somebody's toe or what have you, if
2 it was a tiny thing, where I would be reluctant to do
3 it under general anesthesia just because I think it
4 would be, you know, unnecessary.

5 Q. And how would you define anesthesiology?

6 A. It is a medical specialty that -- I think
7 the best definition for it is that we are
8 perioperative internists. We are like internal
9 medicine doctors, but we specialize in medicine that
10 happens around the time of surgery.

11 So we are involved in making sure the patients are
12 prepared for surgery, that they safely survive surgery,
13 and that they have a good postoperative course. It's
14 also -- as a profession, we try to -- we do research
15 to try to improve and modify our practices so that we
16 can get better and better at it. It's also an
17 academic specialty that involves teaching.

18 Q. Is it not correct, though, that an important
19 part of anesthesiology is actually bringing the person
20 out of their anesthetized state alive?

21 A. Right. I mean, I can -- strictly speaking,
22 some operations, we take them to the ICU and an
23 intensivist will be responsible for having them wake
24 up. But, absolutely, it's clearly a therapeutic goal
25 that the person at the end of -- at the end of their
26 hospital stay at least has an intact nervous system
27 and is alive, yes.

28 Q. And so wouldn't it be accurate to say that
29 almost everything that you do as an anesthesiologist
30 is directed at bringing the person ultimately alive
31 from the surgical process?

32 A. That's certainly one of the principal goals

1 of the procedure. But it's also a principal goal of
2 making the person be comfortable or, if needed,
3 unconscious so that they can be comfortable.
4 Like if the only goal were to have them survive
5 surgery, you could just tie them down and do the
6 operation. And all you need -- to be an
7 anesthesiologist, all you would have to be would be a
8 rope expert. But, certainly, a main part of it is
9 also having the person not experience any suffering or
10 discomfort to the extent --

11 Q. But also to --

12 A. To the extent that that's possible.

13 Q. But also to get them off the -- the -- the
14 operating table and walking around again as opposed to
15 dead.

16 A. Right. In this country, in the United
17 States, there is -- anesthesiologists don't
18 participate in a legal euthanasia. So you're right.
19 The goal, one of the goals is to have the person be
20 alive.

21 Q. Okay.

22 A. And to survive the surgery, yes.

23 Q. So while you have had patients die, you have
24 never been involved in an execution?

25 A. That's correct.

26 MR. FISH: Tender, your Honor.

27 MR. CLEMENTS: Your Honor, just a couple
28 of points specific to the nature of this.

29 THE COURT: Proceed.

30 EXPERT QUALIFICATION EXAMINATION

31 BY MR. CLEMENTS:

32 Q. Dr. Heath, are you aware that the protocol

1 for lethal injection is based on methods used to
2 induce general anesthesia?

3 A. Yes. I am aware of that.

4 Q. And these are things that you learned about
5 in your training to become an anesthesiologist?

6 A. Not about the lethal injection part of it.

7 But I'm aware of --

8 Q. About general anesthesia?

9 A. Yes.

10 Q. Okay. And as part of your job, you teach
11 young anesthesiologists in training as to how to use
12 drugs involved in anesthesia?

13 A. That's right.

14 Q. And --

15 MR. CLEMENTS: And, your Honor, based on
16 this testimony, I would like to introduce Dr. Heath as
17 an expert anesthesiologist who can provide testimony
18 about the effects of the drugs used for the lethal
19 injection process in Louisiana.

20 THE COURT: Any response by the State?

21 MR. FISH: Yes, your Honor. I have to
22 -- I would like some additional questioning, your
23 Honor.

24 THE COURT: You may.

25 EXPERT QUALIFICATION EXAMINATION

26 BY MR. FISH:

27 Q. Have you ever been qualified as an expert
28 witness before?

29 A. I have testified as an expert witness, I
30 think. I'm not a legal expert, but when you say
31 qualified, that means the process we just went through
32 here?

1 Q. Right.

2 A. Yes, I have.

3 Q. And how many times?

4 A. I think maybe four or five. I'm not exactly
5 sure off the top of my head.

6 Q. And what states?

7 A. I know in Pennsylvania, in Georgia, here
8 just now. And I don't want to say for certain that it
9 wasn't anywhere else also.

10 Q. Okay. So you have never been qualified as
11 an expert witness in Louisiana?

12 A. That's correct.

13 Q. And those are state courts in Georgia and
14 Pennsylvania?

15 A. Sir, I'm sorry. I'm not sure what the
16 actual level of the court was. But they were -- I'm
17 not sure what judicial level they were.

18 Q. And have you ever been refused as an expert
19 in any state or any court, any time, anywhere?

20 A. No, I haven't.

21 MR. FISH: Could I have a moment, your
22 Honor?

23 THE COURT: You may.

24 MR. FISH: Your Honor, I object to Mr.
25 Heath's being qualified as an expert witness in this
26 case on the tender that counsel made. He hasn't said
27 anything about the drugs used in the state of
28 Louisiana, that I have heard.

29 MR. CLEMENTS: Your Honor, I could
30 submit further questions on these three specific
31 drugs.

32 THE COURT: You may proceed, Counsel.

1 MR. CLEMENTS: Thank you.

2 THE COURT: Take the time that you need.

3 MR. CLEMENTS: Thank you very much.

4 EXPERT QUALIFICATION EXAMINATION

5 BY MR. CLEMENTS:

6 Q. Dr. Heath, there's been testimony in this

7 hearing that three specific drugs -- and I presented

8 you with documents you've also reviewed that involve

9 the lethal injection procedure in Louisiana?

10 A. That's right.

11 Q. Can you state for me and for the Court which

12 -- what those three chemicals are?

13 A. The Louisiana protocol uses three chemicals.

14 The first one is sodium thiopental, which is also

15 called pentathol. The second drug to be injected is a

16 drug called pancuronium, which is also know as

17 Pavulon. And the third, maybe you wouldn't call it a

18 drug, it is technically a salt. But it's potassium

19 chloride, the third medication, if you want to call it

20 that.

21 Q. Are you familiar with these drugs?

22 A. Yes.

23 Q. And from your training and experience?

24 A. Yes, I am.

25 Q. Are you familiar with their chemical

26 properties?

27 A. Yes, I am.

28 Q. Are you familiar with their effects on the

29 human body?

30 A. Yes, sir.

31 MR. CLEMENTS: We can go into more

32 detail, your Honor. But I would tender at this time,

1 again.

2 MR. FISH: I have further questions,
3 your Honor.

4 THE COURT: Proceed.

5 EXPERT QUALIFICATION EXAMINATION

6 BY MR. FISH:

7 Q. Okay. Doctor, what do you know about sodium
8 pentathol, and how did you -- how did you learn it?

9 A. How long do you have? Do you want a
10 one-minute answer or one-hour answer?

11 Q. Feel free.

12 A. Could you give me some guidance as to the
13 detail that you would like?

14 Q. And what is sodium pentathol?

15 A. Sodium pentathol is a sedative drug that is
16 a member of the class of drugs called barbiturates.

17 Barbiturates are drugs that operate by causing
18 depression of the brain. They enhance the activity of
19 an inhibitory neurotransmitter.

20 And it can be divided into four different classes,
21 depending on how long they act for. There is a class
22 called the long-acting barbiturates,
23 intermediate-acting, short-acting, and then
24 ultra-short-acting barbiturates.

25 Q. And where does sodium pentathol fit into
26 that?

27 A. It's ultra-short-acting.

28 Q. And what are -- what is its -- how long does
29 it last?

30 A. It's like a complicated question. Its
31 duration in the body is hours. And so it's --
32 half-life from that point of view is hours. But the

1 way it works and the reason we use it as
2 anesthesiologists is because its duration of action in
3 the brain is very short. That's a very desirable
4 property for us.

5 When we have patients go to sleep with sodium
6 pentathol, we're not always sure that we can take over
7 their breathing for them. And as you indicated,
8 that's an important thing that we need to do during
9 surgery.

10 And in the event that we can't take over their
11 breathing for them, we want them to wake up right away
12 and resume breathing on their own so that they don't
13 die. And that's why we use sodium pentathol, the
14 ultra-short-acting agent.

15 Q. And what -- what is the usual surgical dose?

16 A. I wouldn't use the term surgical dose. But
17 if you wanted a dose for inducing anesthesia? I'm not
18 sure what you mean.

19 Q. Well, let me put it --

20 A. What do you mean by surgical dose?

21 Q. Okay. The dose you would give somebody so
22 that you could give them a heart transplant.

23 A. Well, we -- again, we only -- only use it
24 for the first part of the operation to have them go to
25 sleep. We don't use it to -- let me backtrack a
26 little bit.

27 Anesthesia, a general anesthesia, is divided into
28 three parts by time. There's the induction, the
29 maintenance, and the emergence. And I think those
30 terms speak for themselves. The induction is where we
31 give some drugs to make the person fall asleep. And
32 we like to use very short-acting drugs for that part

1 of it for the reason that I said, in case we're unable
2 to progress to a safe maintenance, and we'd want to
3 wake -- have them wake back up immediately.
4 And there's the maintenance phase. And we don't
5 use pentathol for the maintenance phase, purely
6 because it is so short-acting, you would have to give
7 lots and lots of it over the time of a heart
8 transplant.

9 And so I am not sure, really, how to answer your
10 question of how much would I give during a heart
11 transplant. I actually wouldn't use it during a heart
12 transplant.

13 Q. Okay. Well, what would you use it as?

14 A. I don't use pentathol very much now because
15 it has been supplanted by superior induction drugs.
16 So -- but if you want to go back a few years, I'd use
17 it for inducing anesthesia for patients who had strong
18 cardiovascular systems because pentathol can be bad
19 for the pumping function of the heart. And heart
20 transplant patients, by definition, don't have good
21 cardiac pump function.

22 Q. Right. Though -- you would have a risk of
23 killing them, then?

24 A. That's -- if I used pentathol on a patient
25 who needed a heart transplant?

26 Q. Right.

27 A. Yes, I would.

28 Q. Okay. And what dosage would you risk
29 killing them in?

30 A. Well, somebody who needed a heart
31 transplant, you can -- sometimes patients are
32 virtually having a cardiac arrest as they come into

1 the operating room. So if I -- doing nothing, they
2 are about to die. So I -- you know, one -- the
3 tiniest amount would make it worse and could tip them
4 over the edge.

5 Q. One milligram could kill them?

6 A. For somebody getting a heart transplant,
7 zero milligrams. I mean, literally, some people, we
8 are resuscitating them. So the mere absence of
9 resuscitation would kill them, let alone doing
10 anything that could -- that could make them more sick.

11 Q. Well, obviously, no milligrams -- no
12 milligrams of anything is not going to kill them, is
13 it?

14 A. If it was accompanied by lack of
15 resuscitation, then it will kill them. That's what
16 I'm trying to say.

17 Q. Right.

18 A. Some people are so --

19 Q. I'm more interested in the anesthesiology
20 aspect of it, the knock-out aspect, if you would.

21 A. Right. Right. Yeah. No, some people are
22 so sick that I would not want to give them any amount
23 of pentathol or many other anesthetics. That's
24 correct.

25 Q. But even -- but some people could die from
26 just a milligram --

27 A. Right.

28 Q. -- of sodium pentathol.

29 A. I think I am exaggerating. What I'm trying
30 to say is that some people could -- they are so close
31 to dying that any adverse thing whatsoever could tip
32 them over the edge. So --

1 Q. But you did say that, did you not, that one
2 milligram of sodium pentathol could kill a heart
3 transplant patient?

4 A. I think that I said that. But I think that
5 you are trying to take it a little bit out of context.

6 Q. And the three that -- could you tell me
7 again what the three stages of anesthesia,
8 anesthesiology are?

9 A. Sure. Yeah. For a general anesthesia, we
10 are talking about there is induction, which is where
11 the patient is taken from being awake to being
12 unconscious. And then, again, if we don't move to
13 that maintenance phase, they would then wake right
14 back up if you -- assuming that they have survived the
15 induction.

16 We then move on to the maintenance phase. And
17 once the maintenance is established, we allow the
18 surgeons to begin the operation. And then as the
19 operation is ending, assuming it is an operation where
20 we want them to wake up immediately, then we will
21 begin the emergence phase, which is when we turn down
22 the drugs that are keeping them asleep and prepare
23 them to wake up.

24 Like I say, some operations, we keep them asleep
25 until they have left the operating room and they go to
26 the intensive care unit. So the maintenance continues
27 and they don't really have an emergence in the
28 operating room.

29 Q. Now, when applied to the Louisiana lethal
30 injection procedure, there really isn't any third
31 phase there, the wake-up phase, is there?

32 A. Nor is there a second phase. There's no

1 maintenance phase either. There's just an induction,
2 and nothing follows that.

3 Q. Right. In fact, you could be killed just by
4 the sodium pentathol, could you not?

5 A. Some people would be killed by it. Yeah.
6 Absolutely. For some people, that would be a lethal
7 dose.

8 Q. And when you give pancuronium bromide, if
9 you didn't start ventilating, they are going to die
10 from that as well. Right?

11 A. The doses being given of pancuronium bromide
12 is unequivocally a lethal dose.

13 Q. Okay. But you could also die of that on the
14 operating table, could you not, if you weren't
15 ventilated? Whatever the dose --

16 A. Die of -- die of what?

17 Q. You could suffocate on the operating table
18 if someone didn't ventilate for you.

19 A. Oh. If somebody gave you pancuronium and
20 didn't give you anything else, then absolutely you
21 would -- you'd be wide awake. It doesn't have any
22 sedative properties. But you wouldn't be able to
23 move, and that would include the breathing muscles.
24 The heart muscle would still pump because it's a
25 different kind of muscle than the breathing muscles.

26 Q. But you would die?

27 A. You'd die. If nobody intervened, you would
28 definitely die from that intravenous pancuronium.
29 That's right.

30 Q. And sometimes due to -- due to medical
31 malpractice by anesthesiologists, that's how people
32 die on the operating table, is it not?

1 A. That they are not --
2 Q. Ventilated properly.
3 A. That they are given pancuronium
4 specifically, or that they are not ventilated
5 properly?
6 Q. Yes. Not ventilated properly.
7 A. Yes. That -- through -- there can be
8 failure to ventilate. Iatrogenic failure to ventilate
9 can be a cause of death.
10 Q. And that -- that is even with a far, far
11 less dosage of the kind of anesthesia that's being
12 given in a lethal injection case, is it not?
13 A. Sure. I mean, if you want me to just give
14 enough to stop somebody from breathing and then if you
15 don't breathe for them, they will die. I'm not sure
16 exactly what you are trying to say. But, yes, you
17 could give somebody pancuronium. You could give
18 somebody 8 milligrams of pancuronium and walk out the
19 room, and they would be guaranteed to die.
20 Q. Okay.
21 A. It would be torture. But they would be
22 guaranteed to die.
23 Q. Okay. And what -- what is the therapeutic
24 use for potassium chloride?
25 A. Right. Well, potassium ions and chloride
26 ions are both essential ions in our bodies, in the
27 fluids of our bodies and in our bloodstreams for our
28 bodies to work for and, specifically, for our hearts
29 to pump properly. Some people can end up with low
30 levels of potassium in their blood, for example, from
31 diuretic drugs that are designed to remove fluid from
32 the body also often remove potassium from the body.

1 If the potassium level gets too low, then that can
2 cause cardiac problems; and so we need to replace the
3 potassium. That's what it is used for.

4 There are other instances where, you know, in
5 cardiac surgery, we want to stop the heart so that the
6 surgeon can operate on it. And, again, I would
7 underscore that that would be while the patient was on
8 a heart-lung machine so that the heart function wasn't
9 needed. And then potassium is used to stop the heart
10 in those cases.

11 Q. And once again, even on a -- is it -- is not
12 the therapeutic use that you just described a much
13 smaller dosage than what is used in the lethal
14 injection procedure?

15 A. Certainly, you would never give that. You
16 might have to give that dose over a period of days.
17 But you would never give that as one, what we would
18 call a bolus. You would never give it at one time.

19 Q. But they would -- if you gave them the
20 therapeutic dosage and didn't put them on the
21 heart-lung machine, they would also die?

22 A. If you give a therapeutic dosage of
23 potassium?

24 Q. Yes.

25 A. A therapeutic dose of potassium?

26 Q. Yes.

27 A. No. Potassium would not -- gave -- if
28 somebody needed a therapeutic dose of potassium, then
29 by definition of it being therapeutic, it would not be
30 a lethal dose.

31 Q. Okay. But you -- what would you need the
32 heart-lung machine for, then?

1 A. Oh. If you are doing cardiac surgery.

2 Q. Right.

3 A. I thought you were talking about a

4 therapeutic dose for somebody who had a low potassium

5 level.

6 Q. I'm sorry. I might have confused those

7 terms.

8 A. Pardon me. I gave two different times when

9 one might need to use potassium for therapy. There

10 was the time of a person who's walking around on the

11 street who has a low potassium level, they get

12 potassium pills every day. They might even need an

13 I.V. injection of it if they get real low.

14 Then the other setting I mentioned was during

15 cardiac surgery where you need to stop the heart. And

16 you're right. I think your question was -- that's a

17 different therapeutic dose. It's a much higher

18 therapeutic dose, and it's also delivered directly

19 into the heart so that -- to -- as opposed to being

20 sped up throughout the body, it goes directly to the

21 heart.

22 And, yes, it does stop the heart. And if they

23 weren't on a heart-lung machine or if you turned off

24 the heart-lung machine, they would die, yes.

25 Q. And that's a much smaller dose than the

26 surgical use of the -- of potassium chloride, is a

27 much smaller dosage than what's used in the lethal

28 injection procedure in Louisiana.

29 A. During a heart operation, one might end up

30 giving quite a few. If the time on bypass is long,

31 then you have to repeat that potassium dose over and

32 over again. But -- and, remember, it's going directly

1 to the heart. It's hard to -- little bit of an
2 apples-and-orange situation. But, certainly, if you
3 are asking is the potassium dose used in Louisiana a
4 lethal amount, unequivocally, it is.

5 Q. Okay. But in a surgical context, it would
6 also be lethal, a much smaller amount if you didn't
7 put them on the heart-lung machine?

8 A. Right. And you're giving it directly to the
9 heart. So it does, it stops the -- stops the heart.
10 That's correct. They are already on the heart-lung
11 machine before you give that potassium.

12 Q. But the only difference you're talking about
13 there is giving it directly to the heart, as opposed
14 to running it through the veins before it gets to the
15 heart. Right?

16 A. Right.

17 Q. I mean, it's eventually going to get to the
18 heart anyway.

19 A. Right. But when we give it direct to the
20 heart, you give one-fiftieth the dose because the
21 heart is -- I'm making up the numbers, approximately.
22 But the heart is a much smaller percent of your
23 overall body.

24 Q. And that's the way you do it in surgery?

25 A. Yes.

26 Q. About one-fiftieth of what the dosage is in
27 the lethal injection procedure?

28 A. No. I'm not trying to compare to the lethal
29 injection. I'm saying if you want to raise somebody's
30 overall blood level of potassium, one milliequivalent,
31 to make up an amount, which would be a typical target
32 -- or just say two milliequivalents, if you are trying

1 to raise the potassium level for the whole body, you'd
2 have to give a lot more potassium than if you're
3 trying to raise the potassium level just in the heart
4 to stop the heart.

5 Q. Well, we're just trying -- we are just --
6 let's just talk about stopping the heart.

7 A. Okay.

8 Q. I'm not worried about somebody who's not
9 eating enough bananas. I'm talking about stopping the
10 heart.

11 A. Uh-huh.

12 Q. What -- what would be the dosage to stop the
13 heart in a surgical context?

14 A. Like if you gave 10 milli- -- 10 milli- --
15 much less than the Louisiana dose. Ten
16 milliequivalents directly into the heart would stop
17 it.

18 Q. Right. And --

19 A. If that's what you are trying to ask.

20 Q. That's where I --

21 A. Okay.

22 Q. That's where I was headed.

23 A. Good. Okay.

24 Q. Okay.

25 MR. FISH: No further questions, your
26 Honor.

27 THE COURT: Mr. Clements?

28 MR. CLEMENTS: Your Honor, I just reurge
29 tendering Dr. Heath as an expert in anesthesiology who
30 can provide testimony about the effects of the drugs
31 used in the lethal injection process in Louisiana.

32 THE COURT: Does the State have any

1 response to the tender?

2 MR. FISH: No, your Honor.

3 THE COURT: Accepted as tendered. You
4 may proceed.

5 MR. CLEMENTS: Thank you, your Honor.

6 Your Honor, may I approach the witness, please?

7 THE COURT: You may, Counsel.

8 DIRECT EXAMINATION (continued)

9 BY MR. CLEMENTS:

10 Q. First, just may I ask these questions?

11 Dr. Heath, a few months ago, my office sent you some
12 documents relating to the protocols for lethal
13 injection in Louisiana. Have you reviewed those
14 documents?

15 A. Yes.

16 Q. And have you reviewed, specifically, the
17 equipment list provided in the protocol?

18 A. Yes.

19 Q. And have you reviewed the medications used
20 in the protocol?

21 A. Yes.

22 Q. And, now, are the equipment and medications
23 that are described in the protocol familiar to you?

24 A. Yes. And there is a cutdown kit described,
25 and I am not sure what's in the Louisiana cutdown kit.
26 But I can imagine what would be there.

27 MR. CLEMENTS: Your Honor, may I
28 approach the witness?

29 THE COURT: You may.

30 Q. (By Mr. Clements) I'm just referring to in
31 globo -- Exhibit, in globo, 101, pages 4 through 7.
32 They are slightly out of order. But the first one on

1 page 6 has a title "Lethal Injection Equipment/Supplies
2 Inventory Checklist." Are you familiar with having
3 reviewed this checklist?

4 A. I'll have to look since you say the pages
5 are out of order. Yes. This is the list that I
6 looked at.

7 Q. Thank you.

8 A. Yes.

9 Q. All right. All right. I would like to
10 focus your attention on this list, which is a list of
11 equipment for carrying out the lethal injection. I
12 would like to ask you some questions about -- first,
13 about intravenous access. Could you explain for the
14 Court and me what intravenous access is?

15 A. Sure. Some medications we can take by
16 mouth. Other medications work better when they go
17 into -- directly into the bloodstream. And the way I
18 would do that if you want to get drugs into the
19 bloodstream is to put a hollow tube, it can either be
20 a needle or a plastic tube which we call a catheter,
21 into a vein and then attach that to a tube of a
22 carrier fluid, a saline fluid, and then use that to
23 inject drugs.

24 Q. Thank you. And where can that I.V. catheter
25 be placed?

26 A. I.V. means intravenous. It can be placed
27 into any vein in the body. Generally, it's broken
28 down into two main types of veins or access. There's
29 peripheral I.V. access, which would mean access in a
30 peripheral structure on the body like the arms, the
31 hands, or the legs or the feet. And then there is
32 central I.V. access, which means that the I.V. goes

1 into one of the veins that's central to the body, in
2 the chest or the abdomen, and, therefore, has a more
3 direct route to the heart. Those places could be the
4 neck or subclavian, in the top of the chest, or in the
5 groin, the femoral vein in the groin.

6 Q. And, again, so these are central lines.

7 Where would they normally be put in?

8 A. Central lines are -- probably the three main
9 places that are used are the neck, the jugular vein in
10 the neck, the subclavian vein at the top of the chest
11 on the inner side of the chest, and the femoral vein,
12 which is in the groin.

13 Q. And as part of your practice, do you put in
14 peripheral I.V.s and central lines?

15 A. All the time, yes.

16 Q. Dr. Heath, looking over the equipment list,
17 do you see things that are used for establishing I.V.
18 access?

19 A. Yes. There are many things on the list for
20 that.

21 Q. Could you name a couple of them?

22 A. Sure. It would be helpful to have a list
23 in front of me.

24 Q. I'm sorry.

25 A. But angiocatheters, tubing, lidocaine, lots
26 of things there.

27 Q. Let me just leave this copy with you.

28 A. Sure.

29 Q. Pages 4 through 7, again.

30 A. I just want to make sure I start on the
31 right page. So things like adhesive tape, tourniquet,
32 I.V. pole, gloves, towels, syringes, a list of

1 angiocaths of different -- it says GA, which means
2 gauge. That specifies the diameter of the angiocath.
3 Saline bags. That's it, that I see on quick look.

4 Q. Okay. Could you describe what a cutdown kit
5 is? Is that an item that's listed on there?

6 A. Sure. A cutdown kit is -- generally refers
7 to a sterilely-packed package of tools that are used
8 for doing a cutdown. And a cutdown is a surgical
9 procedure where the skin is opened, and then the
10 subcutaneous tissue is opened, and one basically
11 progressively cuts into the person to expose a vein.

12 Q. When would a cutdown kit be used?

13 A. They are not used that often at all now in
14 most medical situations, at least in the United
15 States. They used to be used a lot. But they have
16 since been replaced by a thing called a percutaneous
17 kit that uses a percutaneous procedure.

18 One time when it still would be used would be if
19 somebody's been in trauma, a car accident, let's say,
20 or a gunshot wound, and has lost a lot of blood, then
21 it can be difficult to get an I.V. in with the
22 standard techniques used in catheters.

23 It can be difficult to do it using the
24 percutaneous technique. And then as a last resort,
25 we'll do a cutdown. I won't personally do that. But
26 it would be done by -- by a surgeon, usually.

27 Q. Percutaneous means going through the skin?

28 A. Right. It means using a needle to make just
29 a puncture in the skin, and then the plastic catheter
30 goes in through that puncture.

31 Q. And, again, that would be a needle puncture
32 versus a scalpel cut?

1 A. That's right. As opposed to doing what's
2 really an exploration to find a vein, which means you
3 are going in and opening things up and looking around.
4 It means just a much more discreet and small hole.

5 Q. I see. So are you saying that a cutdown
6 technique is more invasive?

7 A. That's right. Much more invasive.

8 Q. Would it hurt more than a percutaneous
9 technique?

10 A. Yes, it would.

11 Q. How often do you see a cutdown performed for
12 the purpose of putting in an I.V. in a central line?

13 A. I haven't seen --

14 Q. Central vein, pardon me.

15 A. I haven't seen it in many years.

16 Q. And so is it accurate to say that a cutdown
17 is an antiquated technique, and that the standard of
18 medical care is to use the less traumatic percutaneous
19 technique?

20 A. Well, certainly, as the first go around,
21 absolutely. One would use a percutaneous technique.
22 If it was an emergency situation and there was no
23 alternative, then I wouldn't say it's completely
24 antiquated. There would be a place for it then.

25 Q. I understand. Just so I can be sure, are
26 you saying that there is a problem with this lethal --
27 for this equipment and supplies list for the lethal
28 injection?

29 A. Well, I heard the warden testify earlier on
30 that it's very important to him that this be done in a
31 humane and dignified manner. And so that, to me,
32 implies that one would want to do it relatively up to

1 date on techniques that we would want to use on a
2 patient in a hospital and avoid things that were
3 needlessly painful and avoid things that medical
4 professionals who are there may not be skilled and
5 proficient in performing.

6 So, yeah. The -- I think this list should include
7 a percutaneous kit. And I am not really sure what the
8 place of a cutdown kit is on the list.

9 Q. Okay. And, again, did you see any equipment
10 in that list related to the percutaneous technique?

11 A. No. It is not listed there.

12 Q. If, hypothetically, a doctor had been asked
13 to put in a central line in a prisoner and he had used
14 the percutaneous technique, not the cutdown technique,
15 what would you say about the practice?

16 A. I would say he was being a good -- he or she
17 was functioning as a good doctor. They were doing the
18 right thing. I would say they were in violation of
19 this protocol. They must have snuck in a kit on their
20 own or something. I don't -- you know, I don't know
21 where they would have gotten it from.

22 Q. Okay.

23 A. But they are not following what the
24 protocol indicates, which was to do a cutdown.

25 Q. So you see nothing in any of the pages that
26 you have reviewed that refers to a percutaneous
27 technique?

28 A. I didn't see it anywhere, no.

29 Q. Okay. And could that doctor, he or she even
30 do that with the equipment on the list?

31 A. No.

32 Q. Okay. And what if the doctor were not

1 prepared in that way with the percutaneous kit?

2 A. Then they would -- if it was felt that the
3 execution needed to proceed, then the physician would
4 have to either decline to participate because they
5 didn't -- you know, weren't able to do the cutdown, or
6 go ahead and proceed with the cutdown.

7 I'm not sure exactly what you're asking. But,
8 basically, if you don't have a percutaneous kit, you
9 can't use it.

10 Q. Right.

11 A. You'd have to use this inferior technique
12 and this less humane technique.

13 Q. I understand. If the doctor used the
14 percutaneous technique, he would be going outside the
15 protocol as you have seen it?

16 A. It doesn't explicitly prohibit the use of a
17 percutaneous technique. But that's certainly my
18 reading of it.

19 Q. All right.

20 A. Just as if he -- if the doctor threw in an
21 extra drug, a fourth drug, I would say that would be
22 going outside the protocol, even though I don't see a
23 specific prohibition against using a fourth drug.

24 Q. Okay. Do you think that this part of the
25 protocol needs to be rewritten?

26 A. Again, my understanding of the legislative
27 intent is that this be done in a reasonably humane
28 way. And given that this is a change that could be so
29 simply made, it wouldn't cost anything, and it -- it
30 would be more humane for the condemned prisoner. I
31 think that should be changed.

32 Q. All right. Does a percutaneous kit cost

1 more than a cutdown kit?

2 A. I think they are both, you know, a few tens
3 of dollars. I don't know the exact amount.

4 Q. And another thing, which would be faster, a
5 cutdown or percutaneous?

6 A. Percutaneous would be faster.

7 Q. Okay. Dr. Heath, I would like to turn to
8 the drugs that are used specifically in the lethal
9 injection. I know you have already testified at some
10 length with the State. But just to be clear, the
11 three drugs -- there are three drugs that are used in
12 the Louisiana protocol; is that correct?

13 A. For the actual execution, yes.

14 Q. For the execution. I'm sorry.

15 A. That's right.

16 Q. Again, the first drug is pentathol. Could
17 you give a brief summary again of what that does, just
18 very briefly?

19 A. Sure. It's in the class of drugs called
20 sedative hypnotics, which is a fancy way of saying it
21 makes you sleepy. And if you give enough, it knocks
22 you out, makes you unconscious.

23 Q. Right.

24 A. And as I said before, those drugs are
25 divided into four groups based -- there are different
26 ways of dividing, depending on how you want to look at
27 it. But one way that they are divided is based on how
28 long they act for. And as I said, pentathol is in the
29 shortest-acting group of drugs, the barbiturate. It's
30 in the ultra-short-acting class.

31 Q. Okay. And the Pavulon, the second drug?

32 A. Right. The Pavulon is a completely

1 different drug. You could almost think of it as the
2 opposite of pentathol. Instead of making somebody
3 unconscious, it has no effect whatsoever on awareness
4 or cognition or sensation.

5 It is very specific for just blocking one's
6 ability to move the muscles that we normally can move.
7 It's also called a muscle relaxant, which is a soft
8 way of saying it's a paralytic agent, which is another
9 correct term for it.

10 Q. And which muscles does that paralyze, again?

11 A. One way of looking at the muscles in our
12 body is dividing them up into three groups. There are
13 the ones that we can control in our arms and legs and
14 faces, and also our breathing muscles, we can control
15 those.

16 Then there are muscles that we have no control
17 over at all that are called smooth muscles. And that
18 would be, for example, the uterine muscles that
19 contract basically on their own.

20 The muscles that surround blood vessels that can
21 constrict to raise or lower our blood pressure, we
22 don't really control those directly with our minds.
23 And then there is another kind of cardiac muscle,
24 which, again, we don't control and which beats on its
25 own.

26 Q. And Pavulon affects which of those?

27 A. Sorry. It only affects the ones that we can
28 control, the voluntary muscles. It has no effect or
29 no significant effect on cardiac muscle and no
30 significant effect on the smooth muscles.

31 Q. Okay. And the final drug, the potassium
32 chloride, its purpose or its -- in this dosage?

1 A. It's purpose in this dosage is to kill, to
2 stop the heart, and thereby kill.

3 Q. And so overall, in your review of the
4 materials that you looked at, what, in your opinion,
5 would be the goal of the Louisiana lethal injection
6 procedure?

7 A. My understanding of the goal, the
8 legislative intent, would be twofold, is to (a), have
9 the person be dead at the end of it; and, (b), have
10 that done in a -- in a humane fashion.

11 Q. How do you know there is a goal to do it in
12 a humane manner?

13 A. I'm actually not a legal expert. And so I
14 take that -- as a citizen of this country, I take that
15 as a matter of faith that that's a goal.

16 Q. Okay. Does the use of pentathol give you
17 any --

18 A. I'll also say -- I'll also say that I heard
19 the warden testify that that's one of his goals.

20 Q. Right. Is there -- as far as the humane
21 aspect, does pentathol suggest anything to you, the
22 use of the pentathol? As far as you may --

23 A. Of the three drugs that are used, the
24 pentathol is the one that is -- is there for the goal
25 of making it humane.

26 Q. Is a potassium injection painful at the
27 dosage -- or at any dosage -- but the dosage that's
28 here?

29 A. This -- the dosage that's being described
30 here would be extraordinarily painful. It's --
31 potassium activates nerve fibers. And the veins, as
32 anybody knows who has had an I.V. put in, veins have a

1 lot of fibers running along inside of them. And as
2 the potassium travels up the vein, it causes
3 excruciating pain.

4 And then I have every reason to think, although I
5 can't prove it, that it would also cause excruciating
6 pain upon arriving in the heart and stopping the
7 heart.

8 Q. So the pentathol injection is there to make
9 the injection of potassium humane. Would you agree
10 with that?

11 A. That's right. Yes.

12 Q. Okay. About the second drug, pancuronium,
13 why is that drug there in the protocol?

14 A. I don't think it should be in the protocol.

15 I don't think it really has any place in the protocol.

16 Again, if the goal is to make the person dead,
17 potassium does that. Just to keep them comfortable,
18 the pentathol does that. The pancuronium really has
19 no place at all.

20 Q. And why should it -- it's use -- let me be
21 sure I have this right. Are you saying with a high
22 degree of medical certainty that pentathol for sleep
23 and the potassium for death is all that is needed to
24 carry out the State's goal of a humane execution?

25 A. In the doses -- in sufficient doses, yes.
26 In tiny doses they would not be sufficient. But in
27 adequate doses, that would be sufficient. In fact,
28 most recent state -- or recent states to adopt lethal
29 injection have foregone the use of pancuronium and
30 just use pentathol and potassium.

31 Q. Why, then, do you think the pancuronium is
32 put in there? What does it do?

1 A. Well, it has a very strong effect, which is
2 to provide a hundred-percent guarantee that the
3 execution looks peaceful, humane, and serene.

4 Q. What would you say about its effect on the
5 muscles in the face?

6 A. Like just because we control all the muscles
7 in our faces, pancuronium would completely relax them,
8 and that gives an appearance of peace and serenity.

9 Q. So a person who's been given pancuronium
10 just lies there not moving and not breathing?

11 A. That's right. Sort of what we were
12 discussing earlier on. That's right. They would lie
13 there completely still and not breathe.

14 Q. What about the heart? You have already
15 explained that that is not affected by pancuronium?

16 A. Like the heart will keep beating.
17 Pancuronium can speed up the heart a little bit. But
18 it doesn't have any significant effect on its pumping
19 ability.

20 Q. And the brain, does pancuronium affect the
21 brain?

22 A. There's a thing called the blood-brain
23 barrier which keeps some drugs from entering the
24 brain. So, for example, patients with certain kinds
25 -- with infection in their brain, we had to give them
26 special antibiotics that do get into the brain. And
27 pancuronium is one of the many drugs that just doesn't
28 get into the brain. And it certainly does not affect
29 -- it's been well established that it doesn't affect
30 consciousness or awareness or sensation in any way.

31 Q. So you're saying that pancuronium can
32 completely paralyze someone but have no effect on

1 their thinking or sensation?

2 A. Well, it can't have no effect. It does have
3 no effect, yeah. It would completely paralyze, and
4 there would be no effect on thinking or sensation. It
5 would be a secondary effect of terror from being
6 paralyzed and awake. So in that sense, it would
7 affect thinking.

8 Q. What sensation might the person have if they
9 were awake, if they received that dosage of
10 pancuronium bromide?

11 A. Well, just imagine letting all the breath
12 leave your lungs and breathing all the way out and
13 then not breathing in and staying like that for as
14 long as you could. That would be the sensation. It
15 would be a sensation of suffocation, asphyxiation.

16 Q. Is there any testimony you heard earlier
17 today from the warden about the skin coloration of any
18 of the inmates who received execution that would
19 relate to your discussion at this point about the --

20 A. Yeah. I believe to both the pentathol and
21 the pancuronium that it could be an effect of either
22 one of those drugs.

23 Q. And that that was the effect about turning
24 blue?

25 A. Pardon me?

26 Q. The effect of the -- in the turning blue?

27 A. Turning blue, yeah. Pentathol -- pentathol
28 is a drug that can stop breathing, and that would make
29 somebody turn blue. And pancuronium is a drug that
30 definitely stops breathing. Again, the qualifier for
31 both of these, if they are given in sufficient doses.
32 Potassium would also do the same thing. If we gave

1 somebody potassium and nothing else, their heart would
2 stop and they would turn blue because, (a), when their
3 heart stopped, they would stop breathing; and (b),
4 their heart would not be pumping blood through their
5 lungs. So all three of those drugs, if given in
6 sufficient doses, will cause someone to turn blue.

7 Q. Could you do an operation just using --
8 using just pancuronium for anesthesia?

9 A. Yes. And it actually used to be done. That
10 could be done. It would be totally -- it's not
11 recognized. That's barbaric and inhumane. But it
12 could and has been done. It is prohibited now. And
13 it's prohibited now for veterinarians also to use
14 pancuronium without adequate anesthesia and monitoring
15 to demonstrate adequate anesthesia.

16 Q. So it's your understanding that even dogs
17 and cats cannot be euthanized with pancuronium
18 injections?

19 A. I think it is professionally prohibited
20 among veterinarians. I don't -- I'm not sure what the
21 law is in Louisiana about that.

22 Q. I understand. Is there -- was that why you
23 gave additional drugs during surgery besides
24 pancuronium?

25 A. That's one of the many reasons we give
26 additional drugs, yes.

27 Q. Okay. Does it ever happen that patients
28 ever wake up in the middle of surgery?

29 A. Yes. I think your colleague alluded to
30 that, and he's quite correct. Patients do sometimes
31 inadvertently or sometimes through deliberate action
32 are -- can wake up in the middle of surgery.

1 Q. Just to be sure, are you saying that
2 patients can wake up in the middle of surgery, but
3 because they are paralyzed by pancuronium, they cannot
4 move?

5 A. Yes. That's a very real problem.

6 Q. Is there a name for this problem?

7 A. It can be called intraoperative awareness or
8 conscious paralysis.

9 Q. Is this something that you bring to the
10 attention of your students and the residents in
11 training?

12 A. Oh, yes. It's a fundamental part of
13 training anesthesiologists.

14 Q. So how do you try to stop this problem, this
15 intraoperative awareness from occurring?

16 A. That's one of the key parts of the
17 maintenance of anesthesia is while the induction drugs
18 are wearing off, once we have their airway established
19 and we are able to breathe for them, then we begin the
20 maintenance phase before the other drugs wear off.

21 And we keep them asleep with whatever drug we
22 choose to use or drugs that we choose to use. And
23 we're constantly monitoring for the signs or
24 indications that somebody might need more anesthesia
25 or that they might need less anesthesia. That's
26 called titrating to effect.

27 Q. I understand. So, in other words, you
28 individualize your dosage of anesthesia that you
29 introduce?

30 A. That's right, yes.

31 Q. On what -- what factors do you take into
32 consideration in determining a dosage besides -- of

1 pentathol if it were being used? What factor should
2 be used?

3 A. Yeah. I teach the residents just some
4 classic things to think about. The most obvious one
5 is the patient's weight. Generally, the more somebody
6 weighs, the more you have to give to achieve the same
7 effect. Medical condition is a -- can have a big
8 influence.

9 Whether they have a history of taking any drugs
10 that can cause sedation or that can affect sedative
11 drugs. Say, for example, somebody who drinks a lot of
12 alcohol every day, my anticipation would be that they
13 would need a lot more anesthetic drugs to keep them
14 asleep. Somebody who's been taking a lot of Valium or
15 a related drug every day would need more anesthesia in
16 all likelihood.

17 Also, I mean, the fact of the matter is that while
18 we have indicators of what might make somebody more
19 sensitive or less sensitive, every patient is
20 different, and you can be really surprised sometimes.

21 There will be a tiny elderly woman, very
22 frail-looking who looks like it will just take a tiny
23 amount to knock her out, and she can be
24 extraordinarily resistant for reasons that I can't
25 explain.

26 And other times, you'll have some brawling
27 construction-worker-type fellow who looks like it will
28 take a lot to knock him out, and it just takes a tiny
29 amount. And there's -- it's -- we are not able to
30 fully predict. And so what we do is, again, titrate
31 to effect.

32 Q. All right. And is it an important factor

1 for you to consider whether -- what a person has eaten
2 before the surgical procedure and when they have
3 eaten?

4 A. It is for me because if someone has what's
5 called a full stomach, if they've eaten within the
6 last few hours, then the concern can be that when they
7 are anesthetized, that the gastric contents will come
8 up into their airway and plug their airway or get into
9 the lungs and damage the lungs.

10 Q. What would -- what would that experience be
11 like to have the gastric contents come up?

12 A. If one were anesthetized it wouldn't be a
13 problem for the person. They wouldn't experience it.
14 But if they were awake, then it would be
15 extraordinarily unpleasant to have -- to be inhaling
16 very acid gastric contents.

17 Q. Understood.

18 A. It would be agonizing.

19 Q. Okay. I would like to ask, if you had two
20 people who had been given pancuronium, hypothetically,
21 one is wide awake, the other is under anesthesia.
22 Would they look exactly the same outwardly?

23 A. Right. That's the amazing thing about the
24 drug. You really could have two people lying in front
25 of you, as long as they both have been given
26 intravenous pancuronium, one of them could be
27 absolutely wide awake and hearing and seeing
28 everything, and the other be lying there unconscious
29 from a barbiturate or some other drug. You would not
30 be able to tell the difference.

31 Q. They would -- neither one would move?

32 A. Completely unable to move, whether awake or

1 asleep.

2 Q. They would both have a peaceful, serene

3 expression on their face?

4 A. The appearance would be identical.

5 Q. But one person would be wide wake and

6 suffocating and suffering horribly, and they would

7 look no different from the person who was sedated and

8 paralyzed?

9 A. Right. You would have to get up very close,

10 and maybe you might see that the person who is awake,

11 their pupils might be very dilated from fear or terror

12 or discomfort from suffocating. They might be a

13 little bit sweaty. But looking across the room, you

14 would be absolutely unable to tell the difference.

15 Q. Let's get back to the use of pancuronium in

16 the lethal injection protocol. Again, why is it being

17 used? Does it make the execution more humane?

18 A. It in no way contributes to the execution

19 being humane.

20 Q. And what do you think its purpose is here

21 though, again?

22 A. Again, I wasn't present when this protocol

23 was devised, and I don't know who devised it. So I --

24 I would have to be speculating as to what was in their

25 minds. I think the purpose is to make it look serene

26 and make the execution -- I hate to use this term, but

27 foolproof. So if the prisoner or anybody is given

28 this dose of pancuronium, there is an absolute

29 guarantee that they will die and that it will look

30 nice.

31 Q. The pancuronium doesn't kill the prisoner

32 immediately? In this protocol, what is intended?

1 A. The pancuronium is not -- the pancuronium is
2 not what kills the person in this protocol, no. It's
3 the potassium that kills.

4 Q. All right. And the pancuronium does not
5 make the execution more comfortable for the inmate?

6 A. In no way contributes to comfort. And, if
7 anything, you know, presents a significant risk of
8 discomfort or agony.

9 Q. Again, which class does the pentathol fall
10 into in the barbiturates?

11 A. Ultra-short-acting.

12 Q. And that means it lasts for just a few
13 minutes?

14 A. That's right.

15 Q. Now, the pancuronium, the drug that is given
16 to make the execution look peaceful, how long does
17 that last for?

18 A. Well, again, it's in a --

19 Q. In the dose given here.

20 A. So it's in a class of drugs that the muscle
21 relaxants are, the paralytic agents. And those are
22 also divided up by how long they last. The
23 pancuronium is the opposite of pentathol in that way
24 also. It's a long-acting paralytic agent.

25 It's actually -- of the ones that are used in
26 clinical practice in the U.S., it's the longest-acting
27 of the muscling relaxants or the paralytic agents.

28 And I think you asked me how long I would expect
29 this dose to last for. I'd -- you know, I can't
30 imagine ever giving a dose close to this to anybody.
31 But I would be surprised if they were able to move
32 within 10 or 12 hours. I would be amazed.

1 Q. So there's a discrepancy in the duration of
2 the action of these two drugs? Is that what -- would
3 you agree with that?

4 A. Right. Which is very different from how we
5 do things in the operating room. We -- we, for
6 obvious reasons, pick -- when we want something to --
7 we match short-acting drugs with short-acting drugs
8 and long-acting drugs with long-acting drugs.

9 Q. Okay. So what is the problem again with
10 that, the pentathol?

11 A. The problem with matching pancuronium with
12 pentathol?

13 Q. In -- yes.

14 A. Well, you are giving one drug that is
15 definitely going to wear off much sooner than the
16 other drug.

17 Q. I understand. Dr. Heath, to your knowledge,
18 has this ever occurred?

19 A. Has it occurred in an operating room or in a
20 -- it has certainly occurred in operating rooms many
21 times. The patients have been given pentathol or some
22 other induction drug and a paralyzing drug like
23 pancuronium, but then not been brought into the
24 maintenance phase and remain paralyzed.

25 Q. How do you know that it can happen to
26 patients who are having the surgery? How do you know
27 that they were awake in the middle of an operation,
28 awake and paralyzed and feeling everything?

29 A. Well, there can be indications during
30 surgery that there is a problem if their heart rate or
31 blood pressure go up or whatever. But that doesn't
32 prove that they were actually awake. And, again, they

1 are paralyzed so they can't tell you that they are
2 awake and feeling things. So they can't motion that
3 they are in pain. They are locked in completely.

4 But at the end of the surgery, assuming it all
5 goes well and you are able to talk with them, then
6 patients will very often, I think, probably all the
7 time, relate to the anesthesiologist and the other
8 physicians and to the nurses, you know, Hey, you
9 didn't knock me out for that operation. I remember a
10 lot of it.

11 They may remember it with pain or they may
12 remember it -- would not have felt pain. But they are
13 often able to provide -- when this happens, they are
14 able to provide detailed descriptions of the goings-on
15 in the operating room. They can describe
16 conversations about people's vacations or golf game or
17 what have you, whatever was talked about.

18 Q. Dr. Heath, if you heard testimony from
19 another person that they would look for signs to try
20 to figure out if somebody had awoken or that there was
21 something like that, and what they would look for were
22 movements to see if their eyes were moving or parts of
23 their body where the hands were moving, what would you
24 think about the comments of that person?

25 A. Just to be clear, are you talking about a
26 patient?

27 Q. In a lethal injection.

28 A. In a lethal injection. So a prisoner has
29 been given this large dose of pancuronium?

30 Q. Right.

31 A. And the question is: How would you know if
32 there were awake or not?

1 Q. Right.

2 A. And the answer is they would move their face

3 or their arm or something like that?

4 Q. Correct.

5 A. That person would -- clearly doesn't

6 understand anything about how pancuronium works.

7 Because it's a --

8 Q. If that person were an emergency medical

9 technician and made a comment of that nature, what

10 would you say about their understanding, again?

11 A. It wouldn't matter who they were, if they

12 made that comment, they don't understand how

13 pancuronium works.

14 Q. And that's because -- there couldn't be that

15 movement because of their paralysis.

16 A. Like somebody who has had this amount of

17 pancuronium would be completely unable to move.

18 Q. Okay. When people who witness lethal

19 injection and then afterwards say that it looks

20 peaceful, what does that mean to you?

21 A. For a prisoner who has been given

22 pancuronium, no matter what else happens, no matter

23 what the experience, whether it's humane or whether

24 it's agonizing, they will look to the witnesses

25 exactly the same.

26 They will have -- they will be still. They will

27 have a peaceful and serene look on their face. They

28 may or may not close their eyes. But, to me, it

29 indicates that the witnesses really didn't witness the

30 critical part of the execution; or, certainly, they

31 would not be in a position to comment on whether the

32 demise was a humane and comfortable one, comfortable

1 demise, or whether it was agonizing.

2 Q. So would you say, in effect, that the
3 pancuronium used at this dosage actually prevents
4 witnesses from being able to carry out their function
5 of reporting what's actually happening?

6 A. Well, if the function of the witness is to
7 be able to say that this was definitely a humane
8 execution and that he was comfortable until he was
9 dead, or she was, then pancuronium makes it impossible
10 to say that.

11 You can -- one would be able to comment about what
12 it was like putting in the I.V.s, did that -- did you
13 hear screams or pain from the I.V.s going in and other
14 things. But once the pancuronium has taken effect,
15 anybody who is more than a few feet away would be
16 totally unable to ascertain if it was painful or
17 agonizing or not.

18 Q. Okay. You heard -- you, I believe -- you
19 were present for -- during the testimony of the Warden
20 Cain earlier today about a neck connection or an I.V.
21 that was attached in that procedure?

22 A. I heard him testifying about that, yes.

23 Q. Based on his description of things, can you
24 comment what problems, if you saw any, with that
25 description or of what happened as far as the finding
26 -- trying to have this be a humane and -- process?

27 A. A couple of things. First of all, I was
28 impressed by his dedication to have this be a humane
29 process. He clearly cares about it being humane for
30 his -- the prisoners who are under his care and his
31 charge. So that impressed me. I was a little
32 concerned that he basically said he did not have a

1 backup plan or a contingency plan for -- in a
2 situation where it might be difficult to get
3 peripheral I.V. access.
4 I think he described that case where they got an
5 I.V. in one arm but couldn't find an I.V. anywhere
6 else, and so they used the neck. He indicated that,
7 basically, his employees would be able to assess ahead
8 of time, I presume days ahead of time, whether or not
9 I.V. access would be a problematic issue and that if
10 they reported to him that they were concerned about
11 I.V. access, and he said that well, then, I would do
12 something.

13 But he says that it hasn't been needed yet. I
14 really take issue with that. I -- in my experience,
15 and I know it is the case for many people or basically
16 all people who put in I.V.s, sometimes it can be
17 extraordinarily difficult to obtain I.V. access. And
18 sometimes one has to put in central lines.

19 Q. Dr. Heath, are you familiar with any
20 problems with executions in other states who carry out
21 lethal injections? Have you heard of anything?

22 A. I've read about problems.

23 Q. You've read about them?

24 A. Yes.

25 Q. Do you -- would you say that problems that
26 have existed in some of those ways would be
27 foreseeable here based on the conditions of which you
28 are aware of at this time?

29 A. Sure. We discussed the issue of the
30 shutdown. It's certainly foreseeable that a prisoner
31 might need to have a central line placed. That's
32 absolutely foreseeable. Assuming that they are a

1 human being, then it's possible they would need a
2 central line.

3 And that could be increased if they had had a
4 history of drug abuse or if they are overweight and
5 have their veins underneath fatty tissue or if they
6 have had chemotherapy; or some people are just plain
7 difficult to get an I.V. into.

8 So it's certainly foreseeable that that could be a
9 problem. And the equipment list here is, I think, not
10 adequate to deal with that in the -- in an
11 easily-available humane technique.

12 Q. In the comments of the warden about the
13 execution of Johnny Brown and the testimony that you
14 heard from Eyewitness LeBoeuf, do you have any
15 comments about the -- what you -- and also in light of
16 testimony earlier, hypothetically, that if an EMT said
17 that at that same execution, that they observed
18 nothing from their vantage point of looking at the
19 inmate, Johnny Brown, that they saw no --

20 A. Again, I think there is no doubt that once
21 pancuronium is given, nobody can really make any
22 assessment about what the prisoner -- what the
23 condemned prisoner is experiencing. There's just no
24 way of telling. And that's why I don't think
25 pancuronium has any place in the execution procedure
26 in Louisiana.

27 Q. What are some of the -- are the -- what are
28 the complications that are inherent in having a --
29 posing a line, if needed, if there were no other
30 choice to do but to do some procedure to go into the
31 neck area or the lower neck area?

32 A. Right. So there are two --

1 Q. Clavicle.

2 A. -- commonly used places. And I know they
3 have been used for executions, including one that was
4 described here, to get a central vein. If one can't
5 get a peripheral vein, the two main places are the
6 neck, the jugular vein in the neck, or the subclavian
7 vein which runs along -- underneath the clavicle,
8 which is the collarbone.

9 When you put a -- when you do a cutdown in that
10 area or put a needle into that area, one can cause a
11 problem called a pneumothorax where air goes through
12 that hole or that cut and gets into the inside of the
13 chest. It is outside the lung, and it makes the lung
14 collapse. And that makes it difficult or impossible
15 to breathe sufficiently.

16 Q. Does it matter, because they are going to
17 die anyway?

18 A. Well, I think it would be a problem, again,
19 from my understanding of the intent of this -- the
20 procedure here. The intent is that they die, but also
21 that it's done in a -- as humane way as is reasonably
22 possible. And this would be a very uncomfortable way
23 to die. To have a tension pneumothorax and suffocate
24 to death would be extraordinarily uncomfortable,
25 agonizing.

26 Q. Would you also say easily preventable in
27 that particular sense?

28 A. Sure. I mean, it is a concern that we have
29 whenever we put in central lines and then subclavian
30 or internal jugular vein, and, you know, you are
31 prepared to deal with that. You can put in a thing
32 called a chest tube, which sucks the air out of the

1 area outside the lung and allows the lung to
2 reinflate. And that basically cures the condition.

3 Q. Does the chest tube exist on the supply
4 list in Louisiana?

5 A. It is not listed there.

6 Q. Do -- are you saying --

7 A. I'm not sure that anybody that I am aware of
8 who is present would know how to put a chest tube in.

9 Q. Right. I'm sorry. The emergency medical
10 technicians are the personnel that have -- the only
11 testimony we have heard is that they are the ones that
12 are putting in these lines. Are they certified --
13 even if they are at a paramedic level, are they
14 certified to perform this sort of function?

15 A. Certification of paramedics and EMTs varies
16 from state to state, and I don't know specifically
17 what Louisiana's requirements and credentials are for
18 that procedure.

19 Q. If a paramedic in Louisiana testified that,
20 in fact, he were not and that a medical doctor would
21 be required to perform that function, would you agree
22 with -- would you -- would you say that that was a --

23 A. If he were under oath I would believe him,
24 yeah.

25 MR. FISH: Objection, your Honor. The
26 witness has already said he doesn't know what it is in
27 Louisiana. Now we're having the lawyer testify for
28 the witness about what another witness said as to --
29 as to the basis of his -- his legal opinion, which he
30 has already said he can't give.

31 THE COURT: The Petitioner's response,
32 if any, to the objection?

1 MR. CLEMENTS: Just one moment, please.

2 I'll withdraw the question.

3 THE COURT: So noted.

4 Q. (By Mr. Clements) Dr. Heath, in your expert
5 opinion, do you have concerns that overall that the
6 lethal -- Louisiana lethal injection process causes
7 needless suffering?

8 MR. FISH: Objection, your Honor. It
9 calls for the expert to give an opinion as to the
10 ultimate issue at -- in contention at this proceeding,
11 prohibited by the Code of Evidence, cite State of
12 Louisiana vs. Curtis Deal.

13 THE COURT: Any response?

14 MR. CLEMENTS: It was a hypothetical
15 question, your Honor.

16 THE COURT: Sustained.

17 MR. CLEMENTS: One moment please, your
18 Honor.

19 Q. (By Mr. Clements) Just a few more
20 questions, Dr. Heath. Could you please comment -- you
21 heard the testimony earlier today from Warden Cain and
22 separately from Witness Denise LeBoeuf about straining
23 of John Brown against the straps, raising up?

24 A. Right.

25 Q. The Warden Cain having to put his hand --
26 can you comment on that evidence?

27 A. I'm not surprised by -- when somebody is
28 given pentathol, it is carried to the brain by the
29 different arteries that go to the brain. It reaches
30 there at slightly different times. And so if the
31 brain isn't turned off or sedated all at the same time
32 and some parts work and some parts aren't, some parts

1 aren't working for a period of a few seconds, and
2 during that time patients -- and I wouldn't be
3 surprised a prisoner -- might make some vague
4 movements, respiratory movements, or otherwise a
5 twisting, a mild writhing, something along those
6 lines.

7 I wouldn't take it as an indication that -- if you
8 are trying to say that I think that that would be
9 painful or suffering, I wouldn't take it as an
10 indication of that.

11 Q. Okay. Do you -- are there easy changes,
12 Dr. Heath, that could be made, changes that could be
13 -- make it more likely for this -- for an execution in
14 Louisiana to be humane?

15 A. Yeah. There are foreseeable problems with
16 the situation as it's been -- as it's outlined here.
17 And as the warden testified, there are foreseeable
18 problems that I think could easily be addressed.

19 Q. Like removing the cutdown kit and replacing
20 with percutaneous kit?

21 A. That would be an -- a significant
22 improvement.

23 Q. Taking pancuronium out of the protocol?

24 A. That would be a significant improvement.

25 Q. Having equipment for treating a
26 pneumothorax?

27 A. That would be a significant improvement,
28 yeah.

29 Q. Using a long-acting barbiturate instead of
30 an ultra-short-acting?

31 A. Again, if you -- yeah. That would certainly
32 take care of a lot of problems also, yeah.

1 Q. Okay.

2 MR. CLEMENTS: No further questions for
3 the moment. Oh, if I may also to move to have Exhibit
4 118 into the record, the curriculum vitae of Dr. Mark
5 Heath.

6 (Petitioner's Exhibit 118 was offered.)

7 MS. ESTOPINAL: No objection.

8 THE COURT: It's admitted.

9 (Petitioner's Exhibit 118 was admitted.)

10 THE COURT: The State may proceed with
11 questions.

12 MR. FISH: Can I have a moment, your
13 Honor?

14 THE COURT: You may. Being mindful of
15 the time, would it be helpful to give a few moments
16 of recess, maybe five minutes? And --

17 MS. ESTOPINAL: Thank you, your Honor.
18 I think five minutes would be adequate. Appreciate
19 it.

20 THE COURT: Maybe about five? Let's
21 take five minutes, and then we'll come back.

22 (Recess taken.)

23 THE COURT: The Court is ready.

24 MS. ESTOPINAL: Yes, your Honor. The
25 State is ready.

26 MR. CLEMENTS: Petitioners are ready.

27 THE COURT: Okay. Does the State have
28 questions?

29 MR. FISH: No questions, your Honor.

30 THE COURT: All right.

31 MS. ESTOPINAL: May I ask that the
32 witness be excused?

1 THE COURT: The witness may step down.
2 Does Petitioner have anything else with the witness?
3 MR. CLEMENTS: No.
4 THE COURT: All right. The witness may
5 step down.
6 THE WITNESS: Thank you, your Honor.
7 THE COURT: And is free to go.
8 MR. CLEMENTS: Now, I need an extra
9 minute, your Honor.
10 THE COURT: Okay.
11 MR. CLEMENTS: Just to consult.
12 THE COURT: All right. Five minutes,
13 ten minutes?
14 MR. CLEMENTS: Yes. Five. Five minutes
15 would be sufficient.
16 THE COURT: About five minutes? Okay.
17 Mr. Bailiff, I'm going to be back here.
18 (Recess taken.)
19 THE COURT: Petitioner ready?
20 MR. CLEMENTS: Your Honor, Petitioner is
21 ready. We would like to suggest to the Court that
22 partly based on the number of hours we put in
23 yesterday, 11 hours, that we would be able to
24 reconvene tomorrow morning instead of continuing
25 forward.
26 THE COURT: Okay. You don't want to
27 call any more witnesses today?
28 MR. CLEMENTS: If not -- I would prefer
29 that, yes.
30 THE COURT: Keeping that kind of
31 schedule, are we going to be able to finish at a
32 reasonable time by the end of the week?

1 MR. CLEMENTS: Yes. I do believe so,
2 your Honor.

3 THE COURT: Does the State agree?

4 MS. ESTOPINAL: Well, your Honor, it's
5 Petitioner's case.

6 THE COURT: I know.

7 MS. ESTOPINAL: We're ready to proceed
8 whenever they are. So --

9 THE COURT: All right. The Court has no
10 problem with us finishing up for today and coming back
11 in the morning. Do you want an earlier time than
12 9:30?

13 MR. CLEMENTS: Exactly. It would be
14 perfectly agreeable to us at nine o'clock or so.

15 THE COURT: We have a -- we have a
16 regular docket.

17 MR. CLEMENTS: Okay.

18 THE COURT: With quite a bit of stuff on
19 it tomorrow, which we would have to stop our
20 proceeding to address at 9:30, and I think we may also
21 have something set at 1:30 tomorrow. But it's just a
22 matter of moving those things. So if we started at
23 8:30 in the morning, we'd still have to stop at 9:30
24 to address those other matters. Would that make an
25 appreciable difference?

26 MR. CLEMENTS: I'm contemplating the --
27 we were planning tentatively that we have some
28 remaining depositions to conduct, and then perhaps
29 those could be replaced so that they don't -- they
30 allow that freedom of the Court to continue here
31 otherwise on the other docket. But the only problem
32 is I need to figure out the logistics to make certain

1 that the court reporter could -- I'm sorry.
2 Apparently, they've -- we've made arrangement for
3 Friday instead.

4 THE COURT: Okay. So --

5 MR. CLEMENTS: I apologize.

6 MR. FISH: Your Honor, one point of
7 clarification vis-a-vis schedule.

8 THE COURT: Okay.

9 MR. FISH: Is when counsel said that
10 they would finish by the end of the week --

11 THE COURT: I mean with this portion.
12 I'm thinking Friday. But, you know, there is
13 Saturday. And --

14 MR. CLEMENTS: If I could say, your
15 Honor, at this point, we would -- we are prepared to
16 continue and to finish up every possible witness that
17 we can at this point with the lethal injection claim.
18 But it was my understanding initially that the
19 presentation of this case has multiple claims and that
20 I had --

21 THE COURT: It does. I mean for the
22 week. Yeah.

23 MR. CLEMENTS: Right.

24 THE COURT: I don't know that you are
25 prepared to present any other claim.

26 MR. CLEMENTS: I'm not prepared to
27 proceed on others because of this. I've canceled the
28 preparation to --

29 MR. FISH: That's the clarification I
30 was seeking, your Honor.

31 THE COURT: Okay.

32 MR. CLEMENTS: I understand.

1 THE COURT: All right. So and now it is
2 clear with the State.

3 MR. CLEMENTS: Yeah.

4 THE COURT: All right. And that's what
5 I was speaking of too, just to know as far as this
6 week is concerned.

7 MR. CLEMENTS: Certainly.

8 THE COURT: The only alternative we
9 would have past Friday would be Saturday. But
10 thinking not that we would be coming back next week on
11 other claims. I think we need to -- but I do advise
12 you to start looking at your calendars. Because
13 there's no use in dragging, you know, too far out and
14 scheduling too far away.

15 Now that we have gotten started, we need to be
16 diligent in our efforts to reschedule the presentation
17 of the remaining claims for disposition. Let's go
18 ahead and just start at -- I'll start court at 9:30.
19 And we'll endeavor to move our morning docket as
20 quickly as we can and be as brisk as we can to
21 accommodate this matter.

22 MR. FISH: Does your Honor wish me to
23 have Mr. Owen and Ms. Grey make some attempt to do
24 that now?

25 THE COURT: No. I think they have done
26 that, or they were instructed to do that. And the
27 rest of the week they have done it to the extent they
28 could. There may be a few minute entries still that
29 need to be made on tomorrow. But it won't take the
30 bulk of tomorrow, by any means.

31 MR. FISH: Yes, your Honor.

32 THE COURT: We do have another matter

1 that is being handled by special prosecutor.

2 MR. FISH: The Expo Hall shooting with
3 Mr. Cox?

4 THE COURT: And I'm thinking -- I'm not
5 looking at the docket for tomorrow. I have not seen
6 it. But I don't -- is that for 1:30, Mr. Bailiff?
7 Two o'clock? Okay. Well, two o'clock, there again, I
8 think it is mostly minute entries, even though it is a
9 volume of codefendants.

10 MR. FISH: Do you want me to alert Mr.
11 Cox and opposing counsel that it doesn't look like it
12 is going?

13 THE COURT: I have told them that.

14 MR. FISH: Oh, okay.

15 THE COURT: And I told them that we -- I
16 assumed we would be well into this matter. And I have
17 signed writs to have the codefendants appear tomorrow.
18 But I think all of it's for minute entries anyway.
19 And if -- it is better to keep it on the docket to
20 reschedule with everyone.

21 MR. FISH: Yes, your Honor.

22 THE COURT: Than to try to do it
23 piecemeal. So I'm just letting you know that I will
24 accommodate this hearing. This is a priority matter,
25 and we'll move those other matters as briskly as we
26 can to accommodate counsel in this case, et cetera.

27 MR. CLEMENTS: Thank you, your Honor.

28 THE COURT: I wasn't thinking about what
29 was on tomorrow's docket until I had actually asked
30 the question. So I apologize. But anyway, the Court
31 appreciates your diligence thus far, and we will
32 recess for the day to resume court at 9:30 in the

1 morning.

2 MS. ESTOPINAL: Thank you, your Honor.

3 (Court recessed for the day.)

4 (Case continued to 2/13/03.)

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1 REPORTER'S CERTIFICATE

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3 STATE OF LOUISIANA:

4 PARISH OF CADDO:

5

6 I, Joyce A. Wheeler, Registered Professional

7 Reporter, Certified Court Reporter, and Official Court

8 Reporter in and for the First Judicial District Court

9 of Caddo Parish, State of Louisiana, do hereby certify

10 that the foregoing represents a true and accurate

11 transcription of the proceedings had in said court and

12 were reported by me to the best of my knowledge and

13 ability.

14 SUBSCRIBED AND SWORN TO on this the 7th day of

15 March, 2003.

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Official Court Reporter R, CCR

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1 P R O C E E D I N G S
2 (Case continued from 2/12/03.)
3 THE COURT: The Court is ready to
4 proceed. The counsel for Petitioner as well as
5 Petitioner are present, as well as both counsel for
6 the State. Petitioner ready?
7 MR. CLEMENTS: We're ready to proceed,
8 your Honor.
9 THE COURT: The State?
10 MR. FISH: State is ready, your Honor.
11 THE COURT: All right.
12 MR. FISH: Mr. Code is present, your
13 Honor.
14 THE COURT: Yeah. He's noted to be
15 present.
16 MR. CLEMENTS: Petitioner calls Carol
17 Weihrer to the stand.
18 THE COURT: And for the record, we're
19 continuing with our hearing, and the State -- I mean,
20 the Petitioner has just called its first witness for
21 the day. What docket number do we show?
22 MS. ESTOPINAL: Your Honor, it's
23 138,860-A.
24 THE COURT: So noted. Thank you.
25 Counsel may proceed when ready.
26 MR. CLEMENTS: Yes. Your Honor, because
27 of the special circumstances of this witness's visual
28 impairment, I would like to make a special request to
29 conduct my examination somewhat closer to the witness
30 so that --
31 THE COURT: You may.
32 MR. CLEMENTS: Thank you. It allows her

1 to see my head which she cannot see from the place
2 where I normally conduct examination.

3 THE COURT: If there are any other
4 special circumstances you need to mention for the
5 record, do so so that the record is clear.

6 MR. CLEMENTS: Thank you, your Honor.

7 CAROL WEIHRER,
8 the witness hereinbefore named, having been first duly
9 sworn to testify the truth, the whole truth, and
10 nothing but the truth, was examined and testified
11 under oath as follows:

12 DIRECT EXAMINATION

13 BY MR. CLEMENTS:

14 Q. Good morning. Would you please state your
15 name for the record.

16 A. Carol Wehrer.

17 Q. Could you please spell your name, too.

18 A. C-A-R-O-L. Last name, W-E-I-H-R-E-R.

19 Q. Thank you, Ms. Wehrer. Can you tell me
20 where -- what is your present residence?

21 A. Reston, Virginia. R-E-S-T-O-N.

22 Q. And can you tell us what -- the Court what
23 your occupation is?

24 A. I am president and founder of the Anesthesia
25 Awareness Campaign, Inc., a nonprofit organization.

26 Q. Okay. Would you please explain the
27 circumstances that came to your founding of this
28 organization?

29 A. On January 24th, 1998, I had my right eye
30 surgically removed, and things did not go as planned.
31 I was wide awake while the surgery was going on, yet I
32 was paralyzed so I could not move or communicate in

1 any way. And as a result of that traumatic experience
2 and the sequelae that follow and the ignorance about
3 this condition, I decided that I would take it upon
4 myself to spread the word and empower and give
5 knowledge and education for prevention of this
6 happening to anyone ever again to the best of my
7 ability.

8 Q. If I could ask you to be more specific on
9 one point, when you said ignorance of this condition,
10 to what condition exactly were you referring?

11 A. Anesthesia awareness, which is also
12 sometimes referred to as intraoperative awareness or
13 unintended awareness. It's when the -- one of the
14 three parts of the anesthesia cocktail which consists
15 of a brain scrambler, mostly the drug Versed, so that
16 you don't remember anything, you are not conscious of
17 what is going on around you; the narcotic part to
18 relieve the pain, and the paralytic drug, which is
19 mainly for the physician's convenience and sometimes
20 the physician's necessity, but more often the
21 physician, the surgeon's convenience; and anesthesia
22 awareness occurs when the brain-scrambler part of that
23 cocktail is not sufficiently or properly administered
24 or maintained during the surgery.

25 Q. So if I could state it another version --
26 first of all, I just want to clarify that you were
27 under general anesthesia during this, is that what you
28 mean as --

29 A. Yes. Full general anesthesia, intubated,
30 unable to breathe on your own.

31 Q. And from your understanding, why was that
32 that you were unable to breathe on your own?

1 A. Because once --

2 MR. FISH: Objection, your Honor. No
3 foundation for the witness to give an opinion on a
4 medical matter.

5 THE COURT: Your response, if any,
6 Mr. Clements, to the State's objection?

7 MR. CLEMENTS: My response is that this
8 witness, although not a medical doctor, has had a very
9 profound experience in -- as a result of a medial
10 procedure and has taken to informing herself and
11 teaching herself, has gone to the point -- I could
12 also withdraw that question at this moment and lay a
13 greater foundation of some of the bases of her
14 knowledge and to how widely recognized her knowledge
15 is in this area by the medical community.

16 THE COURT: Yeah. But still as a lay
17 witness?

18 MR. CLEMENTS: Yes.

19 THE COURT: All right. Is the State
20 interested in the Petitioner attempting to lay further
21 foundation?

22 MR. FISH: Yes, your Honor. The State's
23 position is that the -- the nature of our objection is
24 that the -- that this witness is giving an opinion.

25 THE COURT: I understand. He just said
26 he would lay the foundation. I will allow him to do
27 that. I just want to be sure that you are continuing
28 in your objection.

29 MR. FISH: Yes, your Honor.

30 THE COURT: So noted. And the Court
31 will give Mr. Clements an opportunity to lay the --
32 attempt to lay the foundation.

1 MR. CLEMENTS: Thank you, your Honor.

2 Q. (By Mr. Clements) Ms. Weihrer, at the time
3 after this experience in your surgical procedure where
4 the anesthesia did not operate as planned, did you
5 know anything about this situation before, up to that
6 point?

7 A. No. It was never mentioned to me in the
8 preoperative interview with the anesthesiologist,
9 though it is widely known in the anesthesia community
10 to be one of the risks. And it is commonly not
11 brought forth to the patients as a risk even though
12 they commonly say that death can occur.

13 Q. Yes. Thank you. Let me ask you this. Are
14 you familiar with what the term "grand round" means?

15 A. Yes, sir. I have presented at three grand
16 rounds.

17 Q. Could you explain to the Court what the term
18 "grand round" means?

19 A. Well, there can be general grand rounds
20 which is open to any doctor in a teaching hospital.

21 Q. If I could -- if you could step back a bit
22 more and just let me ask you this. In where -- in
23 what context is the phrase "grand rounds" used at all?
24 Is it something with a -- of a hospital?

25 A. It can be a general hospital or a teaching
26 hospital associated with a university.

27 Q. Okay. And is grand --

28 A. And it's usually held once a week or once a
29 month.

30 MR. CLEMENTS: Excuse me. The witness
31 cannot see, and I am trying to indicate in some way to
32 interject a question. If I -- I would like to ask you

1 to try to -- I'll try to make my questions very
2 specific so that you can answer a brief answer. And
3 then if I say if you could explain more fully, then
4 you can do that.

5 THE WITNESS: Certainly.

6 Q. (By Mr. Clements) Do you have experience in
7 testifying in a courtroom?

8 A. No.

9 Q. Okay. All right. Thank you. Ms. Weihrer,
10 to return to the issue of the phrase "grand rounds,"
11 is -- is it your understanding that -- what is a --
12 you mentioned just a moment ago a general hospital and
13 a teaching hospital. Is it your understanding that a
14 grand rounds is a type of a teaching experience in one
15 of those, either one of those facilities?

16 A. Yes.

17 Q. Thank you. And if you could then, under
18 that context -- grand rounds is a teaching tool or
19 experience. Explain who is the teacher and who are
20 the students in that situation.

21 A. A speaker is invited to address an audience,
22 either all physicians and nurses and professionals in
23 a hospital or a specific department. For instance,
24 the anesthesia department.

25 Q. Thank you. And has it been -- is it your
26 experience that one type of person that can become or
27 be invited to be a teacher, so to speak, or to present
28 information at a grand rounds, might be somebody who
29 doesn't have a medical degree?

30 A. Yes, it is.

31 Q. And how would you know that?

32 A. I have given three grand rounds myself.

1 Q. Could you explain just briefly at which
2 institutions you have done that and approximately
3 when?

4 A. At Saint Vincent's Hospital in New York, two
5 anesthesia grand rounds, which was about 90 practicing
6 anesthesiologists and residents. As to the exact
7 year --

8 Q. Sometime since the time of your surgery?

9 A. I would say 2000. Somewhere along in there.

10 Q. That's sufficient. Thank you. And the
11 other two?

12 A. The University of Virginia in
13 Charlottesville. Again, that was an anesthesia grand
14 rounds, but they also invited nurse anesthetists and
15 surgical staff and psychiatric staff. That was this
16 year. I mean, last year. Excuse me. 2001.

17 Q. And the third?

18 A. And the third was a telephone grand rounds
19 to the entire hospital in Redwood, California.

20 Q. And approximately when?

21 A. That was September of last year.

22 Q. And what is your understanding of why they
23 would have been interested in having you be a speaker?

24 A. Because I am a victim who is able to
25 articulate what it is like to have been awake and
26 aware. And in most cases, in fact, in all of the
27 cases that I have spoken at grand rounds, those
28 physicians have never heard a victim speak.

29 Q. From your experience personally in these
30 grand rounds and anywhere else, are you -- would you
31 -- is it your understanding that members of the
32 medical profession, especially anesthesiologists, are

1 they aware that this problem exists at all?

2 A. Oh, yes. They are aware. But they are in
3 denial.

4 Q. And, secondly, are you aware -- if I can
5 just make certain that I understood -- understand your
6 testimony a minute ago, they -- although they may be
7 aware of it in some fashion, do they -- have they ever
8 heard an actual person describe the experience to them
9 before you spoke?

10 A. Not the ones that I have spoken to.

11 Q. And, collectively, you -- would you say that
12 you have in the midst of just these three grand rounds
13 situations had the experience to have spoken to over
14 300 or so?

15 MR. FISH: Your Honor, I'm going to
16 object to counsel intentionally eliciting hearsay
17 responses from the witness in an effort to backdoor
18 her qualifications somehow. I mean, this is not a
19 foundation for an expert witness.

20 THE COURT: Well, that's why I asked the
21 question. Is this the foundation to be laid for the
22 -- just to give the Court an understanding of the
23 witness's background and familiarity in the area, and
24 not an attempt to qualify the witness as an expert?

25 MR. CLEMENTS: We are not attempting to
26 qualify the witness as an expert. I'm sorry. As an
27 expert witness -- we are trying to establish the basis
28 of her understanding from personal experience, how she
29 has developed it over the five-year period.

30 THE COURT: Mr. Fish, the Court notes
31 your continuing objection, and I'm going to give
32 Mr. Clements some latitude in the entire area.

1 MR. FISH: I'm sorry, your Honor. I did
2 think he -- I thought -- I misunderstood. I thought
3 he was qualifying as an expert witness or I wouldn't
4 have made --

5 THE COURT: I understand. And the Court
6 became similarly concerned, and that's why I asked the
7 specific question. Now that we know where he is
8 headed --

9 MR. FISH: Okay. I understand, your
10 Honor.

11 THE COURT: The Court overrules your
12 objection.

13 MR. FISH: I withdraw the objection,
14 your Honor.

15 THE COURT: So noted. Mr. Clements, you
16 may proceed.

17 MR. CLEMENTS: Thank you, your Honor.
18 Again, my intention was for a contextual understanding
19 of how this witness became able to speak of the
20 matters of which she will be speaking on a personal
21 experiential level.

22 THE COURT: So noted.

23 MR. CLEMENTS: Thank you, your Honor.

24 Q. (By Mr. Clements) Ms. Wehrer, can you
25 relate to us now in Court the kind of things that you
26 relate in these grand rounds? And let us start with
27 the specific types of -- let's do it, if we can, in a
28 chronological fashion. If you would -- let me ask
29 you, do you speak in the grand rounds about your
30 personal experience in that surgical operation you
31 underwent?

32 A. Yes, I do.

1 Q. All right. And is it -- without going into
2 the specifics of things, do the doctors and other
3 attendees at these grand rounds ask you questions?

4 A. Yes.

5 Q. About --

6 A. Always.

7 Q. Do you first give them an overall
8 explanation?

9 A. I give my presentation and then I open the
10 floor for questions and answers.

11 Q. I understand. And just so -- just for a
12 general understanding, approximately, has there been
13 any -- for the first one at Saint Vincent's, how many
14 minutes or hours did this process last?

15 A. I believe they had an hour for grand rounds,
16 and it ran over an hour and 20 minutes. And I was
17 supposed to be available in the -- in the surgeons'
18 waiting room. And the person that invited me was
19 talking with me about setting up protocols for
20 awareness, and I was not able to go to that waiting
21 room. And he kept receiving calls from the
22 anesthesiologists saying: Where is she? We would
23 like to talk to her.

24 Q. Thank you. Did you find a similar type of
25 length-of-time experience at the other two teaching --

26 A. Yes. Grand rounds are usually an hour long.

27 Q. I see. Thank you. And if you would,
28 please, give us a report, first of all, of how you
29 introduce the situation in your presentation to them?

30 MR. FISH: Your Honor, I'm going to
31 object now as to relevancy. I understand the -- what
32 this witness is being presented for. But we are not

1 investigating hospital ethics, hospital procedure,
2 doctors' ethics, bad doctors, good doctors, bad
3 anesthesiologists, good anesthesiologists. This is
4 not a medical malpractice lawsuit.
5 This is a inquiry into whether or not the proposed
6 sentence of this defendant that was given by this
7 Court a number of years ago that he be executed for
8 the murder of four people should be carried out. And
9 the -- and whether or not it violates the United
10 States or Louisiana Constitutions' prohibitions
11 against cruel and unusual punishment.
12 The -- I understand this witness is being offered
13 to -- as someone who has experienced some kind of
14 surgical difficulty of an anesthesia-related
15 catastrophe and -- although I have questions about
16 that, the relevance of that testimony in general,
17 that's not the basis of my objection.
18 I'm not going to object to her testifying to what
19 has happened to her. But I do object to her --
20 counsel eliciting her description of a procedure in a
21 hospital that resulted from her incident.
22 I mean, her talking hearsay responses about what
23 doctors told her, the feedback she got from doctors,
24 what doctors told her, what -- you know, stuff like
25 that, as opposed to -- and then her testifying as to
26 what these procedures that she was invited to by
27 hospitals after the catastrophe that was inflicted
28 upon her. I mean, that is not relevant, and it's --
29 it is hearsay when it deals with what anybody is
30 telling her back about the -- about the experience
31 that she recounts. So that's the nature of my
32 objection.

1 THE COURT: Mr. Clements, do you have
2 any response to the State's objection?

3 MR. CLEMENTS: Yes. My -- the
4 Petitioner's response is this, your Honor, that we can
5 go directly to the issue of having the witness testify
6 to her experiences, and that's pretty much where we
7 are at. The -- again, the preceding questions having
8 to do with laying the context as to how the medical
9 community in general is personally sensitive to this
10 issue.

11 That issue is something that I believe the
12 preceding witness yesterday, Dr. Mark Heath, talked
13 about. It was actually mentioned in other testimony.
14 However, I will be willing to direct questions to that
15 in the exact point. And I can drop the preface of --
16 okay, if this is what you did at a grand round, let's
17 talk about -- you know, tell me what you said. Then I
18 will just ask directly, here we are right now, you
19 tell us.

20 Because the essential point is here -- is that we
21 are talking about a coexistence of consciousness and
22 paralysis and lack of anesthesia. And those are the
23 central points of our case.

24 THE COURT: I will note that the Court
25 is satisfied with the foundation laid by Mr. Clements
26 per the State's previous objection. And the Court
27 sustains the latter objection, understanding now that,
28 Mr. Clements, that you are going to proceed to ask
29 questions that are, in fact, relevant, or certainly
30 more so, and on point.

31 MR. CLEMENTS: We will go on point
32 without further reference to the grand rounds. And we

1 will return to them if necessary, if that appears.

2 THE COURT: So noted.

3 MR. CLEMENTS: Thank you, your Honor.

4 Q. (By Mr. Clements) Ms. Weihrer, would you
5 please describe for the Court exactly what the
6 experience was that you underwent in your surgical
7 operation approximately five years ago?

8 A. Starting at what point?

9 Q. When you -- you have already testified that
10 you received no particular warning from the
11 anesthesiologist about this issue?

12 A. That's correct.

13 Q. You had no awareness of it, did not know
14 about this issue. You then were, I presume, ready to
15 start surgery. Okay. Did you, in fact, receive a
16 sedative to begin the operation, to get you prepared
17 for operation?

18 A. I received no sedative at all.

19 Q. Let me rephrase. Did you -- there has been
20 -- excuse me. Did you receive anesthesia to begin
21 with to prepare you for the operation?

22 A. Yes.

23 Q. Okay. The -- the first -- did you, in fact,
24 lose consciousness?

25 A. Yes.

26 Q. Okay. Can you explain what happened next?

27 A. Okay. I awoke and was as aware as I am
28 right now, as cogently thinking as I am at this
29 moment. And the first thing I remember is hearing
30 disco music and being surprised, knowing my surgeon
31 as I did, that he would choose that music. I am a
32 musician by training and was just contemplating, you

1 know, why is he listening to disco music, and
2 thinking, well, the surgery must be over.
3 The next thing I heard was his voice saying to the
4 resident -- because they had introduced themselves
5 before I went under, and I knew who was on what side,
6 and I knew the voices, the surgeon saying to the
7 resident, "Cut deeper."
8 And it took a moment. But I realized if they were
9 saying cut deeper, the operation was not over. And at
10 that point, terror set in. And I said to myself --
11 all this dialogue was in my head because I could not
12 speak. I could not move.
13 Q. To the best of your understanding, why is it
14 that you could not move or could not speak?
15 A. I -- I knew I had a tube down my throat, so
16 I couldn't speak. I knew that they used paralytic
17 drugs. But until that point, I believed that when you
18 were paralyzed, you gave up all effort to move, which
19 is not the case. I was fighting to move with every
20 ounce of energy that I had.
21 And so I knew that I had a paralytic drug. But I
22 did not really understand what paralyzed meant until
23 that moment. So I am thinking, you know, I am going
24 to make a face. I don't want to do anything big in
25 moving my body; and, you know, I can overcome this
26 because I have to let them know I am awake.
27 And then I felt the cloth on my face, so I knew
28 there was a drape over my face, that if I were able to
29 move my face, they would not see that. And I said,
30 Good God, get me out of here. You know, I have got to
31 do something to let them know. I -- I can't do this.
32 Because I had studied and knew quite a bit about how

1 the procedure went, and I knew it was scheduled for
2 four hours. It turned out five and a half.

3 I proceeded then to try to move a finger. I tried
4 to move a foot. I was thinking, You have got to keep
5 trying. You can't give up. You have got to keep
6 trying to get something to work. And the panic got
7 deeper, and the pleas to God to get me out of there
8 became more and more frantic and more and more
9 frequent.

10 But at the same time, I am thinking very
11 logically, What can I move? What can I try to move
12 next? What can I do? I heard the surgeon continuing
13 to tell the resident to cut deeper and to pull harder
14 and that it takes a lot of force.

15 And I was unable to let my head go with the force
16 of the pulling. Much like having a tooth pulled, you
17 know, you would turn your head so that you could go
18 with the force. But I was unable to do that.

19 And we went through several repetitions of cut
20 deeper, pull harder, you really have to pull hard.
21 Don't be afraid to pull hard. And then I heard the
22 surgeon say on two different occasions that she was
23 moving. She is moving.

24 And I am thinking, All right. Good. They know I
25 am awake. Soon they will do something about this.
26 And I was waiting for something to happen. And there
27 was no acknowledgment from the anesthesiologist until
28 the second time when the surgeon said, "Do something
29 about it." On both occasions, when the surgeon said,
30 "She is moving," I felt tremendous heat, just like --
31 literally like being on hot coals, as if I were on
32 fire. And I had -- I believed that the room had to be

1 120 degrees because I couldn't feel that hot and the
2 room not be that hot around me. That was more
3 paralytic drug going in.
4 The pleas to get out, the pleas even to die -- I
5 would rather die than stay like this, knowing how long
6 I had to go and what was -- what was coming. And they
7 were still cutting their six sets of muscles that had
8 to be detached, and the continuing instructions to cut
9 deeper and to pull harder.
10 Then I heard the anesthesiologist say, "There is
11 something wrong with the equipment." And I felt him
12 putting things on my chest and saying that it would
13 take at least an hour to get new equipment, and
14 thinking to myself, I can't last this long. I can't
15 do this. I will -- I just want to die. I can't. I
16 can't do this.
17 And then I got another shot of paralytic drug.
18 And at that point, they cut the optic nerve, and I saw
19 everything go black. And when that second shot of
20 paralytic drug came in, I was even more on fire. I
21 felt like I was laying on a barbecue.
22 And I thought to myself, Well, I -- I can't see
23 the proverbial light. Maybe I am following its heat.
24 And that was okay. And then I thought longer, and I
25 thought maybe I am in hell and laying on fires of
26 hell. And that's okay too.
27 I just don't want to be alive. I can't -- I can't
28 stay alive through this. I -- I just can't do it.
29 And to this day, I do not know whether I passed out or
30 whether they fixed it. I do know from friends after
31 the fact.

32 MR. FISH: Objection, your Honor.

1 Hearsay.

2 THE COURT: Mr. Clements, any response?

3 MR. CLEMENTS: Your Honor, I will direct
4 a question to -- it's not the proper thing for you to
5 be able to say what other people told you.

6 THE WITNESS: I'm sorry.

7 MR. CLEMENTS: That's fine.

8 (Assistant hands tissue to witness.)

9 THE WITNESS: Thank you. I'm sorry.

10 MR. CLEMENTS: Let me know when you are
11 ready to continue. Okay.

12 Q. (By Mr. Clements) When you came out of the
13 entire operation, did you report what had happened to
14 you to anyone?

15 A. Do I remember reporting it, or did I report
16 it?

17 Q. I'm sorry. Did you report it?

18 A. I reported it. I was screaming in the
19 operating room. I was screaming being run down the
20 hallway, the length of the hospital. I remember a
21 nurse saying in the operating room that I could not
22 have something to another nurse, who was about to give
23 me whatever it was, and her saying, "There is more to
24 this than you know. I will tell you outside."

25 I remember telling my pastor -- this was at 9:30
26 at night -- that I was awake while they took my eye
27 out. And the same thing to my mother, "I was awake.
28 I was awake while they took my eye out." I remember
29 being called at six o'clock the next morning by a
30 friend and being hysterical and saying, "I was awake.
31 I was awake." That was all I could say to anybody. I
32 remember reporting that to my ophthalmologist, who did

1 not remove the eye, at 6:05 on a Sunday morning when
2 my friend called him and said, "Something terribly
3 wrong has happened."

4 I remember telling that to the pastor who was back
5 in the hospital at 5:30 in the morning, you know, "I
6 was awake." And I remember telling that to anyone
7 that came in.

8 I remember asking the nurses if it was on my chart
9 that I was awake, and they would not tell me. I
10 remember telling the surgeon when he came in, and he
11 was devastated, just absolutely devastated.

12 Q. Did you after these initial few days, after
13 this surgery, try to discover an explanation for what
14 had happened?

15 MR. FISH: Objection, your Honor.
16 Hearsay.

17 MR. CLEMENTS: I'll rephrase, your
18 Honor.

19 THE COURT: You may.

20 Q. (By Mr. Clements) Ms. Wehrer, is there any
21 doubt in your mind that you were conscious during your
22 operation?

23 A. Absolutely none.

24 Q. Is there any mind -- is there any doubt in
25 your mind that you were paralyzed during the course of
26 your operation?

27 A. Absolutely none.

28 Q. Is there any doubt in your mind that once
29 you were -- once a tiny -- whatever it was that
30 happened during the operation, that you were
31 administered more paralytic agent?

32 A. Absolutely none.

1 Q. Is there any doubt in your mind that when
2 you did receive that paralytic agent that it had an
3 intense burning sensation?

4 A. Without a doubt. A very painful burning
5 sensation.

6 Q. Burning and painful?

7 A. Oh, extremely. I thought I was on fire.

8 Q. So if I can understand your testimony
9 accurately, this pain sensation was separate from the
10 painful sensation of the extraction of your eye?

11 A. Oh, yes. This was totally and -- separate.
12 I -- may I go back and clarify another thing that
13 happened in the surgery?

14 Q. Yes.

15 A. I had an automatic blood pressure cuff on,
16 and I remember it going off and thinking, Now they
17 have to know. Like my blood pressure has to be off
18 the record, off the, you know, the chart. And, again,
19 nothing happened when that blood pressure cuff went
20 off.

21 Q. Did you ever see any written records later
22 of what was recorded during your operation?

23 MR. FISH: Objection, your Honor.
24 Hearsay.

25 THE COURT: It is. But I'll allow it.
26 Just get to the point, Mr. Clements, and move on.

27 MR. CLEMENTS: Thank you.

28 Q. (By Mr. Clements) Were -- is it your
29 understanding that records are kept during an
30 operation, a general operation such as this?

31 A. Yes. And separate anesthesia records are
32 kept.

1 Q. Separate anesthesia records are kept. To
2 your knowledge, did any of those records reflect
3 anything of this incident having occurred?
4 A. Well, after four months of calling daily, I
5 did get my anesthesia records and my surgical records.
6 And there were three and a half hours of the surgery
7 where there was not a single mark on my records. No
8 blood pressure, no medication, no heart rate, no
9 nothing.
10 MR. CLEMENTS: I need a moment, your
11 Honor. Your Honor, we tender the witness.
12 THE COURT: The State may --
13 MR. FISH: The State has no questions,
14 your Honor.
15 THE COURT: Excuse me for talking over
16 the State. But that being said, the witness may step
17 down.
18 MR. CLEMENTS: The witness may step down
19 and we'll --
20 THE COURT: And is the witness free to
21 go?
22 MR. CLEMENTS: The witness is free to
23 go, and your assistant will come now to help you.
24 THE COURT: The witness may step down.
25 Thank you.
26 MR. CLEMENTS: Your Honor, I'd like to
27 request a 10-minute recess.
28 THE COURT: Let's take 10 minutes.
29 (Recess taken.)
30 THE COURT: The Court is ready.
31 MR. CLEMENTS: Your Honor, there has
32 been a development that's been referenced by -- in

1 earlier testimony and statement in court about the
2 fact that the Department of Corrections has discovered
3 a new batch of documents. And, in fact, we have just
4 -- when I went over to see who the witnesses were that
5 were standing by, I would like to state that Deputy
6 Warden -- I think it's deputy warden -- Richard
7 Peabody delivered me two -- it would appear to be two
8 identical copies.

9 So, therefore, we have given one to the State to
10 look at, and we would request at this time that before
11 we take him that we have a chance to try to absorb at
12 least superficially what some of this stuff is and --

13 THE COURT: What time period are you
14 requesting?

15 MR. CLEMENTS: The lunch period. And I
16 don't know --

17 THE COURT: Are you ready to take that
18 now?

19 MR. CLEMENTS: Yeah. If that's --

20 THE COURT: Okay. This might be a good
21 juncture for us to recess --

22 MR. CLEMENTS: Yeah.

23 THE COURT: -- for this morning. And
24 you can have a chance to review the documents and
25 determine what we are going to do next and get lunch
26 or anything else.

27 But we will come back for our afternoon docket for
28 two o'clock because that's just how we scheduled it.
29 But for your information, I think it will take 15, 20
30 minutes. It's a multiple-defendant situation. But
31 the main thing we are doing is getting a new date for
32 the next proceeding and making a minute entry in that.

1 Is there any request that I come back at any time
2 before 2:00? Or when I come back at 2:00, take up
3 that matter? Do you think you will then be ready to
4 pick up with this matter?

5 MR. CLEMENTS: I think Petitioner would
6 be -- based on what I understand, two o'clock would be
7 fine.

8 THE COURT: Amenable to the two o'clock?
9 What about the State?

10 MS. ESTOPINAL: Whatever the Court
11 wishes, your Honor.

12 THE COURT: Okay. Well, let's just come
13 back at two o'clock. And if you find that you need
14 some additional time, the Court will certainly give it
15 to you. And the Court is mindful that we are later in
16 the week, and we need to probably talk about how late
17 we think we may be this evening, which the Court is
18 not putting any restrictions on anyone, and what we
19 anticipate to be able to do and need to do on
20 tomorrow. We'll discuss all of that later. That
21 being said and done, Court's in recess until two
22 o'clock.

23 (Lunch recess taken.)

24 THE COURT: The Court is ready.

25 MR. CLEMENTS: Counsel for the
26 Petitioner is ready.

27 MS. ESTOPINAL: The State is ready to
28 proceed, your Honor.

29 THE COURT: And note that Mr. Code is
30 present in court. Mr. Clements?

31 MR. CLEMENTS: Your Honor, over the
32 lunch break we were able to begin to give a -- what I

1 would have to say is a superficial review of the
2 documents that are in this. And I am going to
3 estimate, because there isn't like any Bates stamp
4 pagination of the entire document, but approximately a
5 ream of paper, so about 500 pages, maybe a little
6 less.

7 I'm going to guess it's that volume, and just note
8 that it is a single-bound document. And an exact copy
9 has been provided to the State to the best of our
10 knowledge.

11 Again, at this time, I tentatively would be
12 prepared to present the -- bring -- call Deputy Warden
13 Richard Peabody for the limited purpose only at this
14 moment of explaining about the production of this
15 document, and that alone.

16 And at that point then, to explain to the Court,
17 that we don't really feel that we could proceed with
18 any other witness because essentially everybody else
19 in there has a medical background. There are two
20 doctors and a pharmacist.

21 And the contents of this, in general, are going to
22 be dealing with matters that we feel that our medical
23 expert Dr. Mark Heath, who spoke yesterday, needs to
24 have a chance to review and to determine.

25 Because just even on a cursory review, I've seen
26 things that are contradictory to some of the testimony
27 and so forth. But I -- it's just too early to be able
28 to go into that.

29 THE COURT: That's -- I'm sorry. I will
30 allow the State to respond, and then I'll ask a
31 question and maybe make a comment.

32 MS. ESTOPINAL: Thank you, your Honor.

1 There are several issues that I would like to address
2 regarding this latest public records response. It
3 seems to consist of mailings received from the
4 departments of corrections of other states which
5 practice lethal injection, all received in the early
6 '90s.

7 And we have already had testimony from members of
8 the Louisiana State Penitentiary staff that they
9 consulted with other states over their lethal
10 injection procedures in order that they may determine
11 what would be the best procedure in Louisiana.

12 Now, it appears that every document in here falls
13 under that category, either from another state
14 detailing their procedures or letters from our
15 Department of Corrections staff to those other states
16 regarding the same.

17 The first problem is that some of these letters
18 and some of these documents contain security
19 procedures used at other prisons. Even though these
20 are some 12 or 13 years old, as we know, procedures
21 may not necessarily change over time.

22 The warden has expressed to us concern that these
23 documents were sent to them under the impression that
24 they -- or even under the express condition that they
25 be kept confidential and not released to the general
26 public.

27 I have copied a portion of Louisiana's public
28 records law that relates in part to this, and I have a
29 copy of that for the Court, for the Court's
30 convenience. And that is that the disclosure of
31 Department of Public Safety and Corrections records
32 which relate to security procedures, including but not

1 limited to physical security information, proprietary
2 information, operational plans, and other internal
3 security information.

4 Of course, realizing that this is intended for the
5 most part for Louisiana Department of Corrections
6 procedures themselves and not necessarily those from
7 other states.

8 However, the State would like to request, and I
9 believe that Petitioner has no objection to this, that
10 -- that this document remain under seal for the
11 Court's eyes only and for appellate courts that may be
12 reviewing this matter, and that both sides be reveal
13 -- be ordered not to reveal any sensitive content from
14 this document. Now, that's one area of concern.

15 The other area of concern is Petitioner's
16 indication that he wishes to recess this hearing so
17 that his expert Dr. Heath might go through these
18 documents. Now, as stated, these documents only
19 appear to be merely other states' procedures for
20 lethal injection. And first glance, the chemicals
21 that they use are the same that are used in Louisiana.

22 We've already had testimony of how that decision
23 was reached by Louisiana officials and what is
24 actually used. So the State's position that this
25 document is -- does not form a legitimate basis for
26 recessing the hearing at this time.

27 That if counsel later can produce some convincing
28 argument to the Court that there is a need to reopen
29 it, that at that time that matter should be addressed.
30 But that since we have been here for four days now,
31 people have come from all over the country at
32 considerable inconvenience to themselves and expense

1 to various arms of the State and the LIDAB, that the
2 State wishes to proceed with witnesses that Petitioner
3 has on this issue so that we may reach some form of
4 closure on this particular issue.

5 As the State is well aware and the Court is well
6 aware, there's still at least two other general areas
7 of concern in this case that have yet to be addressed
8 and that the State hopes will be able to be set within
9 the next month or two for evidentiary hearing.

10 And if at that time there is some additional
11 matters relating to the lethal injection could be
12 brought up then. But that since the witnesses are
13 here, that the Court should order -- and the State
14 requests the Court should order that their testimony
15 in this matter be adduced.

16 THE COURT: Your response, if any,
17 Mr. Clements?

18 MR. CLEMENTS: I certainly do have a
19 response. First of all, one -- one comment concerning
20 the first section of the matters that we had -- and I
21 kind of hate going into so much description about a
22 meeting that happened around the corner. And I am
23 sure that Deputy Warden Peabody will come in and
24 clarify it again exactly.

25 But one of the -- there was a comment made from
26 somewhere, and maybe it wasn't from him, but in the
27 group of people we were standing where opposing
28 counsel and myself -- is that something to the effect
29 that Bruce Dodd said that this document was good to
30 go. So -- and that what was understood by that was
31 that this document, you know, did not pose any sort of
32 a concern as far as that matter in Mr. Dodd's mind.

1 And so there seems to be some, perhaps, confusion
2 about that matter.

3 There was -- and I should say that one action was
4 taken. And Ms. Estopinal and Mr. Fish can certainly
5 verify that, that on the -- basically there is a
6 cover letter on the front page that sort of -- as a
7 cover that -- for the whole mass of paper.

8 And on that, both sides agreed to scratch and
9 redact one name, and that name is the name of a person
10 that has been -- whose confidentiality has been
11 protected up until this point. And I will just like
12 to make the record clear that person is John Doe
13 Number One.

14 That's been referenced. Of course, it's been in
15 deposition of John Doe Number One, and there has been
16 a reference on, you know, to actions involving that
17 person. But there has been no mention of names, and
18 that is being protected. We are very interested in
19 preserving and going -- stepping out of our way to do
20 so.

21 But relating to -- and so -- and so I am a little
22 -- I was actually not interested in placing this
23 document into the -- into the record at this moment
24 until we've had a chance to be able to determine if
25 there are special particular sections that do need to
26 have an address for security issues, whether within
27 the state or without the state.

28 You know, it's not our intention, again, to breach
29 security measures anywhere, anywhere in the United
30 States. That's not our goal. Our goal is to address
31 the constitutionality of lethal injection practiced in
32 Louisiana. And we think that this document -- because

1 it in part refers to documents that we felt have been
2 missing. And we still have a very strong belief that
3 there are further documents beyond this that are yet
4 to be produced.

5 Because these do not comply with -- completely
6 with the testimony of Witness Annette Viator the other
7 day who talked about her research. This can be
8 adduced more fully by a brief cursory examination of
9 Richard Peabody on one -- on that level.

10 The second matter, though, concerning the ability
11 or inability to proceed beyond this point with the
12 three remaining witnesses at this moment, I will have
13 to say this. First of all, I understand there is an
14 inconvenience.

15 But I will absolutely not take -- on behalf of the
16 Petitioner will not take any responsibility for the
17 inconvenience because we were prepared to go ahead
18 based on what we knew. This produces a massive amount
19 of information that we do not know, and I am not a
20 doctor. I cannot understand the import of these
21 documents.

22 And history, unfortunately, is part and parcel of
23 the development here. There has been discussion by
24 Ms. Estopinal -- I think I would like to challenge a
25 characterization of what she said is that, you know,
26 we've known what the chemicals are. We know what the
27 protocol is and so forth.

28 Well, the larger and more detailed picture is
29 that, in fact, we still don't know what the amounts of
30 the chemicals are. Warden Cain gave his version of
31 what he thought they were. And there's been -- I'll
32 have to just say, frankly, that there's been

1 contradictory testimony produced in the depositions
2 about specifics on the amounts of these things. And
3 so I was -- you know, that's something I intend to
4 explore. But not until I know what's going on in
5 here.

6 Because one of the things that we heard was that
7 when, you know, this group of people went to Texas to
8 see how they went amongst their other states, that
9 they decided to make changes. And they made
10 reductions in the amounts of chemicals, and they made
11 calculated decisions.

12 But I'll tell you right now, a cursory review, I
13 looked in here, and I am not sure exactly what they
14 are talking about. And I am seeing changes, not
15 lesser, but I am seeing greater amounts being used in
16 some ways but not in others.

17 And I -- and it's a complicated procedure. This
18 is a complicated procedure. Whether one wants to call
19 it a medical procedure because there's a doctor or
20 not, it is involving medicine. It's involving things
21 that are beyond the scope of lay witnesses and
22 attorneys who are not dually certified as physicians.

23 And we -- the Petitioner is just not qualified at
24 this moment to proceed with detailed examination, and
25 it would be simply a waste of time to go forward.

26 And, again, we -- we feel that there is -- it's a
27 great imposition for a few witnesses that have come.

28 And I regret that that has happened. But it is not
29 our fault. It is not the fault of the counsel for the
30 State. Because I believe that we have all been
31 surprised by the discovery of this material, as I
32 imagine the Court has been also. And I just -- this

1 is stuff -- excuse me. These are documents that we
2 have been asking for. And I can refer to the record
3 that I believe is Exhibit 104 -- I'm not positive.
4 It's basically the hearings back in Baton Rouge in
5 December the 9th and December the 11th.

6 I entered an affidavit in there in which I laid
7 out a painstaking chroniclization of everything I have
8 done since 1999 to get paper. Mr. Bruce Dodd
9 responded to me with a single-page fax with a cover
10 sheet that said this is all I can find.

11 And the page on it -- and yet in the
12 memorializations -- 'cause I don't just take people's
13 phone calls and write them down. I memorialize them.
14 I put it into an affidavit format. I have sworn to
15 it, and I am an officer of the Court.

16 And I said that these things, you know -- he told
17 me in a phone call that there were things in Richard
18 Peabody's office and that he knew where they were and
19 other places. And that's -- I believe that's what --
20 that the record will reflect.

21 Let me, if I could -- I'm sorry. I don't know if
22 it's in it. It's Exhibit 107. If it hasn't been
23 entered, I would put this in the record. This was an
24 affidavit that I entered into the Court as an exhibit
25 with the -- in the December 9th hearing, and the
26 record will reflect that from exhibit --

27 THE COURT: Mr. Clements, let me ask you
28 a question, and then I'll let you finish.

29 MR. CLEMENTS: I'm sorry.

30 THE COURT: This is what I was bringing
31 up yesterday and tried to do at the bench, to tell you
32 my concern at that time was that if you felt you

1 didn't have complete records, then maybe our hearing
2 was premature. And I couldn't understand why you
3 wanted to proceed with the --

4 MR. CLEMENTS: I understand.

5 THE COURT: -- questioning of those
6 witnesses at the time. And I kept asking about
7 matters that are actually before this Court. And I
8 even referred to the public records hearing.

9 MR. CLEMENTS: Right.

10 THE COURT: Asked you -- because I was
11 not there, I was not here in this court -- were those
12 issues raised in some way in that proceeding and had
13 you asked the Court to take any action regarding any
14 of that. And -- and you know what your responses
15 were.

16 MR. CLEMENTS: I do know that.

17 THE COURT: And so now here we are.

18 MR. CLEMENTS: I understand. If I might
19 respond to that. I am not positive at the -- which
20 time frame that was in reference to the testimony of
21 Witness Viator. To be very clear, I don't recall.
22 The days are getting to be a blur.

23 But I do know this, that when we were in open
24 court in Baton Rouge, we were told that they had done
25 painstaking reviews and that this is what they had
26 found, and that we were left with the conclusion --
27 they said the only thing that they never gave us was
28 the names. That's all they said they had, and that
29 the only thing that was left open by Judge Clark was
30 to come back and see whether there was some way that
31 we could find -- that we could think that they could,
32 you know, produce the names. Those names have been --

1 come about in a different fashion now, some of them.
2 And I reurge the fact that the John Doe Number Three
3 person who was a syringe pusher is not the person that
4 we were led to believe that we were going to be
5 brought. Because we were told we would be brought the
6 person who was the most experienced.

7 THE COURT: Okay. And --

8 MR. CLEMENTS: I'm sorry, your Honor.

9 THE COURT: Let me -- and I am going to
10 let you finish. My concern is there are a lot of
11 claims that the Court is going to have to have the
12 evidentiary hearing on.

13 MR. CLEMENTS: I understand.

14 THE COURT: You made the choice to
15 proceed with these issues.

16 MR. CLEMENTS: Yes. And I -- based on
17 the --

18 THE COURT: And the posture.

19 MR. CLEMENTS: We believed that we had
20 everything that was going to be available.

21 THE COURT: At that time though, you --
22 on yesterday you indicated to me that there were
23 documents that someone told you that they had
24 discovered. And I'm assuming this is something like
25 a -- and since it's not from the State, it's almost a
26 continuing discovery situation.

27 And there has been no rule or anything filed in
28 this Court to provide or to assist you in getting any
29 additional documents that I can recall.

30 MR. CLEMENTS: You're right, your Honor.

31 THE COURT: And that's my concern. You
32 made the decision, tactical or whatever reason, to go

1 with these issues when you might have had more
2 complete information on some other issues that the
3 Court is going to have to conduct hearings on. But
4 you pushed all those aside to do this one, and then
5 you find yourself where you are now. And here we are.

6 The three witnesses that will be called -- not
7 Dr. Heath who already testified -- are those witnesses
8 expected to testify with regard to the documents that
9 you are speaking of that you just got?

10 MR. CLEMENTS: In this collection, I
11 believe that at least two of them would have to be
12 because they -- and I can give you their names. They
13 are Dr. Edmundo Gutierrez who was to the best of our
14 information, I believe, as reflected in the
15 proces-verbals of the early executions, was the
16 medical director of Louisiana State Penitentiary at
17 Angola. Don Courts, the pharmacist, he is also
18 referenced in earlier documents. And so --

19 THE COURT: Would it -- I mean, is it
20 that -- are you -- have you talked to them at all?

21 MR. CLEMENTS: No, your Honor.

22 THE COURT: About their knowledge of
23 what you do have?

24 MR. CLEMENTS: No. No, I have not, your
25 Honor.

26 THE COURT: So suppose they already know
27 what this is.

28 MR. CLEMENTS: If the question is do I
29 know, I don't really know what's in here. That's the
30 problem. And I don't what -- how to -- I am not sure
31 how to frame questions to them. I thought that I -- I
32 was ready to ask them questions based on the --

1 THE COURT: Could you be ready tomorrow?

2 MR. CLEMENTS: I don't think so, your
3 Honor, frankly. I want to -- I don't know. I mean, I
4 know that right now I have talked with Dr. Heath.
5 Literally, I talked to him this morning at about eight
6 o'clock, and he was going into surgery. I don't know
7 if he is available or not right now. And I really
8 don't want to go into it.

9 THE COURT: I mean the witnesses that
10 are here, we already know.

11 MR. CLEMENTS: Oh, if they would be
12 ready, I don't know. All I can say is I don't believe
13 that I would be prepared in that frame of time. I'm
14 concerned about it. I couldn't be sure.

15 I mean, I want to be able to read everything in
16 here. I don't know if any -- if this is going to be
17 in the nature of the documents that we have had where
18 a vast majority of it is not particularly relevant to
19 the pieces. But I can't tell you that until I have
20 read them.

21 And I really haven't been able to do a careful,
22 thoughtful review and gone through with the assistance
23 of the medical expert that I have employed. I
24 apologize for the inconvenience that this is
25 presenting.

26 But -- and I will -- if this Court thinks -- I
27 will go back to the 19th Judicial District and submit
28 this as a supplement to their discovery there. It's
29 just I -- you know, we asked for things and we were
30 told they don't exist. You know, we can't find
31 anything else. We don't have any privilege. We don't
32 have -- we are not claiming any privilege. We are not

1 holding anything back. And, yet, now these new things
2 are discovered. So this is where I am at.

3 THE COURT: Does the State have
4 something else?

5 MS. ESTOPINAL: Yes. Thank you, your
6 Honor. First, I have two points that I would like to
7 address. The first is that the response to the public
8 records request is not an issue before this Court.
9 And the State has always submitted that it is not
10 particularly relevant to -- for the most part -- to
11 what this Court is being asked to determine.

12 The second is that the witnesses who are waiting
13 outside will be able to tell the Court specifically
14 what the exact dosages are because one is the
15 pharmacist who actually fills the prescriptions for
16 the lethal drugs and the other is the doctor who was
17 at one time medical doctor for Angola.

18 And that Petitioner has said that he doesn't know
19 what the exact dosages are, and the State submits that
20 these are the witnesses who do know and who will be
21 able to tell the Court with authority what those
22 dosages are, and that their testimony should be taken
23 at this time.

24 MR. CLEMENTS: If I may, your Honor?

25 THE COURT: Yes. Yes, Mr. Clements.

26 MR. CLEMENTS: Just to respond again,
27 it's not just a question of what their testimony will
28 be. It is my ability to properly frame a direct
29 examination on knowledge and a knowing direct
30 examination of these witnesses on technical matters.
31 And details are something that I like to pride myself
32 that I am able to absorb and to work with. But even

1 I can't go through this much stuff that fast.
2 Especially not without, you know, the help of my
3 expert.
4 THE COURT: And any witnesses who are
5 out there are just the three remaining people that --
6 the two doctors and --
7 MR. CLEMENTS: For today, there are two
8 former medical directors and a pharmacist that I think
9 has been, to my knowledge, present throughout the
10 entire period in question. The other fourth person,
11 of course, is Deputy Warden Peabody.
12 And tentatively we were looking at having
13 depositions tomorrow morning, I think, or tentatively.
14 We have been trying to arrange that up to the
15 remaining John Doe so there would be -- not the name,
16 but their classification as EMTs, and to explore
17 because we are getting a different picture from
18 everybody. I'll tell you that right now, especially
19 after what I heard from Warden Cain yesterday.
20 THE COURT: Okay. I'm going to take
21 about a 10- or 15-minute recess. And I want counsel
22 to meet with me in chambers upstairs.
23 MR. CLEMENTS: Thank you.
24 (Recess taken.)
25 THE COURT: Have we made any headway?
26 MS. ESTOPINAL: Well, your Honor, we've
27 been speaking with the witnesses, and they have
28 informed me that they would like to go ahead and
29 testify today and, if necessary, tomorrow.
30 THE COURT: And Mr. Clements, you've
31 talked to them too?
32 MR. CLEMENTS: We did talk to them. We

1 talked with them first. Then we left them with
2 counsel for the State. I understand -- I'm not sure
3 about tomorrow. But in any event, my feeling is this,
4 is that we made it very clear to them that they could
5 almost assuredly count on their reappearance at a
6 later time, number one.

7 And we would be prepared to commence questioning
8 at this time, but I need a moment because I want to be
9 able to set up the mechanics to notify the people for
10 tomorrow morning, not to be -- have creating the
11 inconvenience. And I need another minute to do that.

12 THE COURT: All right. You may do that.

13 (Off the record.)

14 MR. CLEMENTS: Petitioner calls Deputy
15 Warden Richard Peabody. Again, this will be for a
16 limited examination.

17 THE COURT: So noted.

18 MR. CLEMENTS: Thank you.

19 THE COURT: Counsel may proceed when
20 ready.

21 MR. CLEMENTS: Thank you, your Honor.

22 DEPUTY WARDEN RICHARD L. PEABODY,
23 the witness hereinbefore named, having been first duly
24 sworn to testify the truth, the whole truth, and
25 nothing but the truth, was examined and testified
26 under oath as follows:

27 DIRECT EXAMINATION

28 BY MR. CLEMENTS:

29 Q. Would you please state your name for the
30 record.

31 A. It's Richard L. Peabody.

32 Q. Mr. Peabody, where are you employed?

1 A. Louisiana State Penitentiary.
2 Q. And what is your position?
3 A. Deputy warden.
4 Q. Okay. Is that like a -- the immediate
5 position -- I have heard of assistant and deputy. If
6 you could explain the difference between that?
7 A. At the present time, there's three deputy
8 wardens over various areas of the prison.
9 Q. Okay. What area are you in charge of?
10 A. At the present time, as of about a week ago,
11 it's programs.
12 Q. Programs. And what does that entail, in
13 general?
14 A. Direct supervision of the assistant warden
15 for treatment as well as legal programs department and
16 some other areas.
17 Q. Okay. Sir, do you have any medical
18 background?
19 A. I have limited.
20 Q. I'm sorry? I didn't catch that.
21 A. Very limited.
22 Q. Very limited? Okay. And then what -- if
23 you could be a little more -- a description. Is it --
24 what limited experience?
25 A. In the late '60s, I worked at Charity
26 Hospital in New Orleans in respiratory therapy.
27 Q. I understand.
28 A. I also for a period of time was a basic EMT.
29 Q. All right. And about how long ago did you
30 effectively stop doing anything like that?
31 A. That would have been the mid '80s.
32 Q. Okay. Mid '80s. Thank you. Deputy Warden

1 Peabody, were you involved at all in the 1991 Federal
2 District Court evidentiary hearing in the Eastern
3 District of Louisiana regarding an Eighth Amendment
4 challenge to the method of execution by electrocution
5 in the case of Sawyer v. Whitley?

6 A. I was.

7 Q. Okay. Who was Sawyer?

8 A. A death row inmate.

9 Q. And Whitley?

10 A. The warden of the institution at the time.

11 Q. Thank you. And what was the result of that
12 evidentiary hearing, if you recall?

13 A. I don't recall exact result. But I believe
14 that he didn't prevail in his pleadings.

15 Q. All right. And do you know if there was any
16 other result about the use of electrocution as a means
17 of execution in Louisiana that happened subsequent to
18 the time of that hearing?

19 A. As a result of that hearing?

20 Q. Not necessarily as a result. But just
21 subsequent to it.

22 A. Subsequent to, yes.

23 Q. Could you explain, in general, what that
24 change was?

25 A. I believe it was the act of the legislature
26 in 1990, changed the method of lethal injection for
27 all inmates sentenced from that time forward to lethal
28 injection.

29 Q. Okay. And was there any adjusting of that
30 legislation that you are aware of?

31 A. The following year they amended, I assume,
32 that statute to allow all inmates previously sentenced

1 to electrocution to be executed by means of lethal
2 injection.

3 Q. And is it your understanding that as of the
4 time of the effective date of that second amendment or
5 that latest amendment you mentioned, that no other
6 electrocutions were ever carried out in Louisiana?

7 A. It is.

8 Q. Thank you. Could you describe for the Court
9 how -- how the change occurred, maybe in an outline
10 form, if you can, based on your personal experience,
11 if any. The change -- how is it that the change was
12 effected between that one process of electrocution and
13 the lethal injection? What -- did you have any role
14 in that change?

15 A. I did.

16 Q. Could you explain your role in that?

17 A. Basic -- basically, to gather information
18 regarding methods of lethal injection being used by
19 other states or being proposed to be used by other
20 states as well as retrofitting the execution chamber.

21 Q. All right. I'm going to continue on with
22 that for a moment. But not to -- we have always been
23 very sensitive about security issues in general here,
24 and then taking great pains to keep that in foremost
25 concern. But if you could explain if -- without
26 revealing anything specific.

27 A. Uh-huh.

28 Q. But if you could explain, in general, if
29 that retrofitting involved changing any dimensions of
30 any rooms involved -- where the room was -- where the
31 lethal injection chamber was as opposed to --

32 A. I don't know about the dimensions. The

1 overall dimensions of the room did not change. Some
2 of the space within the area changed from one process
3 to the other, yes.

4 Q. All right.

5 THE WITNESS: Excuse me. (Witness
6 coughs.)

7 MR. CLEMENTS: Your Honor, I'd like to
8 approach the witness, please.

9 THE COURT: You may.

10 MR. CLEMENTS: Thank you. All right. I
11 am -- let the record reflect that I am showing the
12 witness a copy of Petitioner's Exhibit 117, which
13 contains diagrams in black ink as well as red ink,
14 drawings by a previous witness, Burl Cain, about
15 dimensions of the room.

16 Q. (By Mr. Clements) And I am just trying to
17 get some understanding here. Warden Peabody, there is
18 two large diagrams, one being a person strapped down
19 on a gurney, and with lots of definitions and
20 explanations of things there. And then there is a
21 diagram in general of the lethal injection room area.
22 Now --

23 A. Yes.

24 Q. Tell us, if you could, in just the black ink
25 portions of it, not any red markings on it, if you can
26 say whether you think in your memory that reflects an
27 accurate representation of that actual place or if you
28 have any comments about that.

29 A. It's very similar to the actual itself. I
30 don't see any major differences.

31 Q. Okay. Warden, I'm going to direct your
32 attention -- I'm going to be pointing to a rectangular

1 section, a line that's shaped -- do you understand
2 what I've pointed to?
3 A. It's an extension of what was on the
4 original drawing to show a larger room. Is that what
5 you are referring to?
6 Q. Yes. Yes. Does that drawing of an
7 extension there comport with your understanding of
8 what the dimensions of that room are?
9 A. It would.
10 Q. It does. Okay. Do you know, is that part
11 of the retrofitting that you talked about at all? Or
12 is that just --
13 A. That space as drawn in in red was there.
14 But part of it was not readily available as part of
15 the work area, for lack of a better term.
16 Q. Okay.
17 A. But, no, nothing -- no structural changes.
18 Q. Okay.
19 A. As far as the building itself.
20 Q. Thank you. Coming back to the time frame
21 of the early 1990s again, if you would, did -- do you
22 have knowledge of any action or directive from
23 secretary -- DOC Secretary then Bruce Lynn about an
24 intention to study lethal injection in other states?
25 A. About what, now?
26 Q. About an intention to -- organizing some
27 sort of a study or research about lethal injection,
28 how it's carried out in other states.
29 A. I don't remember any specific
30 correspondence. But I know it was discussed with
31 Mr. Lynn.
32 Q. Okay. Were you part of any kind of a group

1 of people that was involved in that study? And if you
2 were, if you could name the other people in that group
3 with the exception of any possible EMTs.

4 A. Well, as far as the same visit that I did go
5 on was to Huntsville in Texas.

6 Q. All right. So you -- you personally
7 attended an on-site visit to Huntsville Penitentiary
8 in Texas?

9 A. Right.

10 Q. And do you recall the -- how many other
11 people attended that with you from Louisiana?

12 A. It was the warden from the institution,
13 Warden Whitley, the attorney for the department,
14 Ms. Viator, and a third party.

15 Q. Thank you. And you made the fourth party
16 being complete? The number four?

17 A. That's correct.

18 Q. Thank you. And what did you find when you
19 went to Texas in your research?

20 A. What did I find?

21 Q. Well, what did the committee find, or you
22 remember personally?

23 A. We found basically what we -- what I
24 anticipated we would find was an area to bring the
25 inmate to, to restrain the inmate, and the procedure
26 and method for administering the drugs and providing
27 for confidentiality of the parties involved with the
28 administration of the drugs.

29 Q. All right. And was there -- can you recall
30 if you and the other members of the committee made any
31 kind of decision about the Louisiana potential system
32 based on what they had seen at the Texas system?

1 A. Well, at the time I don't think that we made
2 a final decision. I do believe that our final
3 decision paralleled the procedure in Texas fairly
4 closely.

5 Q. Okay. So would it be fair to say that in
6 many respects you adopted the Texas system as a model?

7 A. I believe so.

8 Q. All right. Do you know of any particular
9 deviations that you can remember from that Texas
10 model?

11 A. The only deviation was the -- one of the
12 deviations, which is not significant in terms of
13 administering the drugs, was the signal that was used
14 by those administering the drugs to advise the warden
15 that the injections were completed.

16 Q. And could you describe what that signal
17 difference was? Or what was it in Texas, to the best
18 of your knowledge?

19 A. As I recall, they had a portal, a hole
20 through a concrete-block-wall-type affair that the
21 I.V. lines ran through from the executioner's room
22 into the actual death chamber. And at the completion
23 of the administration of the drugs, they would sit a
24 roll of tape in that hole, for lack of a better term,
25 and that would be the warden's signal at that time
26 that the drugs had been administered.

27 Q. I see. So to recap, they placed an object,
28 a roll of tape?

29 A. Right.

30 Q. In a hole space that was in between the two
31 rooms?

32 A. Uh-huh.

1 Q. And that was an understood predetermined
2 signal?
3 A. Right.
4 Q. That was felt to be -- I mean, that's not a
5 procedure that was used in Louisiana, to your
6 knowledge?
7 A. We chose to do it a little bit different.
8 Q. And do you recall what was the intention to
9 use in Louisiana?
10 A. What we used in Louisiana?
11 Q. Yeah. What did you use?
12 A. I can't say on the last one or two
13 executions because I haven't been involved in those
14 two. But -- I think it's two. But prior to that time
15 it was when all the drugs had been administered and
16 we were ready for the warden to call in the coroner to
17 examine the body, the door to the rear chamber --
18 which I don't see on the thing that you gave me --
19 Q. Right.
20 A. -- would be cracked open.
21 Q. Right.
22 A. So his signal basically was opening the door
23 slightly.
24 Q. Okay. So a slight opening of a door instead
25 of a placing of roll of tape in a place?
26 A. Correct. I mean, it's just a matter of one
27 signal or another.
28 Q. Aside from that particular deviation, any
29 other deviations that you can call to mind?
30 A. It is not a deviation, per se. We did have
31 some questions at that point about the administration
32 of the drugs. And they seemed -- or whoever we spoke

1 with, and I don't recall who that individual was --
2 they seemed to have theirs based around a time frame
3 that was fairly tight for administrating the drugs.
4 I didn't really deal with that directly because I
5 couldn't -- I didn't feel that that was something
6 within my expertise to address. That was referred
7 back to our staff.
8 Q. I'm sorry. It was referred back to whom?
9 A. To the staff at the institution.
10 Q. Okay. And could you be a little more
11 specific? Not necessarily using names, but job title,
12 classification, something of that nature?
13 A. Medical director, pharmacy.
14 Q. Okay.
15 A. I don't remember who the individuals -- and
16 I think at the time we had a medical director at
17 headquarters that was also involved.
18 Q. Do you recall who the medical director at
19 the headquarters was at that time?
20 A. Dr. Vance Byers. (Phonetic spelling.)
21 Q. I'm sorry. I'm having too much trouble
22 hearing.
23 A. Dr. Vance Byers.
24 Q. Do you know how you spell that last name?
25 A. I really don't.
26 Q. Byers, though?
27 A. He is deceased, as I have been told.
28 Q. Okay. Anyone else that you think might have
29 been consulted about that matter?
30 A. About which matter?
31 Q. That particular matter of the particular
32 chemicals and so forth.

1 A. Well, I contacted a number of institutions,
2 as I said previously, regarding their procedures. So
3 we got information from them. I believe that --
4 whether it's the medical director at headquarters or
5 -- I don't believe our medical director at the time
6 did it. But I am not sure. But I believe our
7 pharmacy staff did contact the staff -- their
8 equivalents at other institutions for additional
9 information.

10 Q. Okay. Could you tell me, was Mr. Donald
11 Courts the pharmacist around this time?

12 A. He was there, yes.

13 Q. Okay. Is there more than one pharmacist on
14 the facility?

15 A. Yes.

16 Q. Do you know how many, approximately?

17 A. Right now, I believe there is five. But I
18 might be wrong. It may be four.

19 Q. Okay. Would Mr. Courts be like the most
20 senior of them?

21 A. He's the pharmacy director and has been.

22 Q. All right. Do you -- you have already told
23 us that you really don't have an extended medical
24 background. But do you happen to recall what aspect
25 of the -- either the chemical, you know, the name of
26 the -- the identity of the chemicals or their amounts
27 or concentration or anything that was something of a
28 concern to bring to them about that from Texas?

29 A. A concern?

30 Q. Or what was the -- I mean, you -- it's my
31 understanding that this was an area that was brought
32 to the attention.

1 A. Uh-huh.
2 Q. Do you feel that there was any changes made
3 in your knowledge?
4 A. Uh-huh.
5 Q. And with those items or those categories
6 of --
7 A. I'm not sure that I ever really knew exactly
8 the amounts of any particular drug. I probably was
9 informed of that. But I do know what the drugs were
10 and, certainly, the information requested from the --
11 our staff members who would have that knowledge was to
12 review and then see the appropriateness of the drugs
13 involved. That -- that was beyond me.
14 Q. Okay. Do you know if -- or do you know what
15 the purpose of having the emergency medical technician
16 be a part of the group that went to the Huntsville
17 prison?
18 A. Since it was a -- just a
19 information-gathering type of event and those
20 individuals are familiar with how to start
21 venipunctures and things of that nature, we asked for
22 that type person to accompany us.
23 Q. I understand.
24 A. And also keeping in mind that we were trying
25 to keep the proceedings at this point not exactly
26 confidential, but certainly not something that we were
27 going to tell everyone what we saw at the moment
28 either.
29 Q. Quiet. Keep it quiet for the time being?
30 A. Right.
31 Q. Is there -- is there any reason why -- you
32 have already identified the four people who went --

1 why either the medical director or the pharmacy
2 director or any pharmacist was asked to join that
3 committee to come?
4 A. Was asked or wasn't?
5 Q. I mean, do you know why they were not?
6 A. I don't know if they were or they weren't.
7 They may have been by the warden or by the secretary
8 of corrections. I do know that the individual who
9 went with us was -- and the medical directors were
10 aware that he would be bringing back information to go
11 over with them.
12 Q. And just to clarify for the record, the --
13 to your knowledge, the emergency medical technician
14 was not a licensed physician, not a medical doctor?
15 A. Correct. He was not.
16 Q. Okay. Did you or the committee create any
17 records relating to the intended lethal injection
18 protocol?
19 A. I'm not sure about the other members. You
20 say committee?
21 Q. Well --
22 A. The group?
23 Q. The group of people that went to Texas.
24 A. I'm not sure what records they may have
25 generated. I know that I kept some documentation from
26 that.
27 Q. Okay.
28 A. And I created some.
29 Q. All right. And do you know about how much
30 -- what, you know, for lack of a better idea, would it
31 have been a quantity of paper like this volume's size,
32 or would it have been something different than that?

1 A. That is a copy of the information I
2 collected in my research with other states.
3 Q. Okay.
4 A. Primarily regarding lethal injection.
5 Q. I understand.
6 MR. CLEMENTS: Let the record reflect
7 that I have lifted a volume that is approximately
8 about a ream of paper.
9 Q. (By Mr. Clements) Is that fair to say?
10 A. I don't know what a ream is.
11 Q. A few couple of inches of paper with tabs
12 and so forth.
13 A. Certainly.
14 MR. CLEMENTS: For informational
15 purposes and housekeeping, I would like the record to
16 reflect that -- oh, well, we'll go into detail in a
17 minute about how I came to hold this paper, but that
18 we are not intending at this moment to introduce it
19 formally into the record. May I approach the witness,
20 please?
21 THE COURT: You may.
22 MR. CLEMENTS: Thank you, your Honor.
23 Q. (By Mr. Clements) Mr. Peabody, would you
24 briefly look at this document and tell me if this is a
25 -- if you are familiar with it?
26 A. (Witness complies.) I can tell you I am. I
27 looked at this prior to bringing it to court today.
28 Q. Okay. Now, were there any other copies of
29 this, or just this single one?
30 A. There were two copies brought today. And as
31 far as I know, the original is still where it has been
32 for a length of time.

1 Q. Okay. Before getting back to that, can you
2 note -- there appears to be a line drawn through
3 certain words on the one cover page, a memo dated
4 April 22nd, 1991.

5 A. Right.

6 Q. Was that originally in the document when you
7 brought it to court today?

8 A. The name was there, yes.

9 Q. The name was there. But that line was not
10 there?

11 A. Correct.

12 Q. Okay. Thank you very much. Warden Peabody,
13 is it -- a moment ago, you had mentioned how this
14 document -- am I correct in remembering that you said
15 that you -- this was in your possession?

16 A. When I brought it up this morning, yes.

17 Q. Right. It was in your -- this morning.

18 Could I ask where you obtained this?

19 A. It was obtained from the office that I used
20 to -- the secretary's office that was assigned to my
21 office when I was here prior to being out on leave.

22 Q. Okay. And do you know how or -- who was
23 that? You say -- you say from a secretary from your
24 former office?

25 A. Uh-huh.

26 Q. Could you tell the Court who that would be?
27 Do you know?

28 A. I don't want to say because I can't
29 remember. It is Warden Ranatza's secretary. I don't
30 remember the lady's name.

31 Q. Okay. So --

32 A. Basically, Warden Ranatza -- during my

1 absence, we changed offices around. And she is in the
2 office I had, and her secretary is in the office that
3 my secretary had at the time.

4 Q. Okay.

5 A. The secretary had at the time I went out
6 ill.

7 Q. I see. So you and Warden Ranatza switched
8 office places and support staff?

9 A. Well, the end result was that she and her
10 secretary ended up in that particular office.

11 Q. In your space. She got the nicer one, huh?

12 A. It's a matter of taste.

13 Q. Okay. The -- can you tell the Court when
14 this document came most recently into your possession?

15 A. It would have been -- we were here Monday.
16 We were here Tuesday. It would have been Wednesday
17 afternoon.

18 Q. Wednesday afternoon, and today being
19 Thursday. So yesterday afternoon?

20 A. Yes. My days are running together.

21 Q. Believe me, I know what that is. Now, and
22 you received this, you were back at Angola when you --

23 A. Correct.

24 Q. Okay. Now, did -- what was your
25 understanding of where they had -- they found it in
26 that office, in your former office, is that it?

27 A. Correct.

28 Q. And do you know when they found it?

29 A. They found it after I returned to work and I
30 learned by then about this particular proceeding and
31 understood that there was a -- some type of subpoena
32 for documents. And I don't remember whom. I asked if

1 a document regarding our collection of information
2 relative to lethal injection had been produced.
3 Evidently it had not.

4 Q. And to the best of my knowledge, no one realized
5 it was sitting right there in front of them -- or I'm
6 saying in front of them. It was sitting there in an
7 office that when I moved -- was moved out of the
8 office, was left in the office.

9 Q. Okay.

10 A. I thought it had probably been destroyed. I
11 didn't know that it existed anymore.

12 Q. Okay.

13 MR. CLEMENTS: One moment, please.

14 Q. (By Mr. Clements) Warden Peabody, could you
15 give us a time period when you were out on leave?

16 MS. ESTOPINAL: Your Honor, I'm going to
17 object to the relevance of this. Once again, we are
18 going into matters that -- about acquiring public
19 records that are not relevant to whether lethal
20 injection as administered in Louisiana is cruel and
21 unusual punishment under the Eighth Amendment. I
22 would ask that we be able to move on to something that
23 is relevant to that issue.

24 THE COURT: Mr. Clements?

25 MR. CLEMENTS: Your Honor, I absolutely
26 have a very strictly relevant reason. And within a
27 minute, I can make that painfully -- plainly clear to
28 everyone in the courtroom. But there is a time
29 reference that I do need to have in order to make some
30 understanding of that. And it involves the time
31 period that the witness has mentioned that are --

32 THE COURT: All right. The Court

1 overrules the objection.

2 MR. CLEMENTS: Thank you, your Honor.

3 Q. (By Mr. Clements) Again, Warden Peabody,
4 just if -- a general remembrance of when your leave
5 time was from -- and this is a leave away from the
6 LSP, Angola?

7 A. Right. I have been back to work, this is my
8 second week back to work. Prior to that time, I had
9 been off in excess of two and a half years, probably
10 closer to three.

11 Q. Close to three years. Okay. So -- all
12 right. During that time when you were on leave, were
13 you ever contacted by Bruce Dodd about any request?
14 And I'm talking about towards the very beginning
15 period of your leave, actually.

16 A. Not that I recall.

17 Q. Okay.

18 MR. CLEMENTS: Your Honor, I would like
19 to approach the witness, please.

20 THE COURT: You may.

21 MR. CLEMENTS: Your Honor, I have in my
22 hands a document that I referred to a little earlier
23 this morning. Petitioner's Exhibit 107, and that has
24 not been entered into evidence yet. But it is an
25 affidavit actually signed by myself that was entered
26 into court in Baton Rouge in December of this past
27 year.

28 Q. (By Mr. Clements) And a portion of the
29 documentation in there, if you could -- if you could
30 just read through that and tell me what it appears to
31 be.

32 A. You want me to read it into the --

1 Q. Yeah. Just read it out to yourself for a
2 minute, and then tell me, you know.
3 A. (Witness complies.) Okay.
4 Q. What does the document appear to be just on
5 the face of it here?
6 A. Some request for the information, I believe.
7 Q. All right. And can you tell more or less
8 what the date on that is?
9 A. It's 1/28/2000.
10 Q. Okay. And who is this request made to?
11 A. Bruce Dodd, the attorney for Angola.
12 Q. And who is --
13 MS. ESTOPINAL: I'm sorry. I'm having a
14 little trouble understanding the witness.
15 THE WITNESS: I'm sorry.
16 MS. ESTOPINAL: Soft voice.
17 A. It's made -- it's a request of Mr. Bruce
18 Dodd, the attorney representing Angola.
19 Q. (By Mr. Clements) And the rest is from
20 myself?
21 A. Appears to be.
22 Q. Okay. And it references subsequent
23 materials; is that correct?
24 A. Right. Correct.
25 Q. Okay. A two-page request for documents?
26 A. Correct.
27 Q. And -- and I ask you to pay specific
28 attention to this. It's -- this next page is a
29 document addressed -- this is the attached document
30 addressed to Mr. Dodd?
31 A. I'm sorry. Could you ask that again?
32 Q. It's -- who does this appear to be addressed

1 to?

2 A. It's addressed to Mr. Dodd.

3 Q. And could you just talk -- refer to the
4 bottom to -- just the bottom paragraph here, this last
5 full paragraph, the first --

6 A. "On the 12/6/99 phone call, you said you
7 were familiar with the document which I was
8 requesting, reported that it was not in wider
9 circulation, but instead that it was in the office of
10 Deputy Warden Peabody."

11 I don't know what document you are referring to
12 without reading more.

13 Q. Well, we can go into that if you want to, to
14 go back and --

15 A. Go back for?

16 Q. And refer, go back up. You could just start
17 at the beginning and --

18 A. (Witness complies.) All right.

19 Q. Okay. Based on your reading of this portion
20 that you just covered that refers back to what -- what
21 is your understanding of what was being requested by
22 myself to Mr. Dodd at that time?

23 A. It appears it is a document containing
24 procedures for carrying out lethal injection.

25 Q. Okay. And, again, to repeat what it was on
26 your conclusion here or -- the report of a
27 conversation from December the -- 1999?

28 A. This refers that the document was in my
29 possession or in my office.

30 Q. Right. And but -- and noting that you were
31 on leave?

32 A. I didn't read that part.

1 Q. I'm sorry.
2 A. (Witness reviews document.) All right.
3 Q. Does it appear to reflect that you had been
4 out on leave and that --
5 A. It does. It indicates that I was absent.
6 Q. And that you, meaning Mr. Dodd, would ask
7 for copies at the first opportunity?
8 A. That's what it says.
9 Q. Okay. And that this is a faxed
10 memorialization of telephone -- a series of telephone
11 conversations I had with Mr. Dodd back in -- in both
12 1999 and 2000?
13 A. That's what it appears to be.
14 Q. I understand. Thank you.
15 A. I don't know the accuracy of all that. But --
16 Q. I understand. This, again, was a submitted
17 document to the Court back in Baton Rouge, the 19th
18 Judicial District Court. What is this document?
19 A. This appears --
20 Q. Could you tell me what that document appears
21 to be on the first page?
22 A. On the top of the page says it's a
23 transmission verification report with a time of
24 01/25/2000, 10:30. Name, LCAC. I don't need to read
25 all that, I assume.
26 Q. But does it appear to be a verification of a
27 fax sent in January 25th, 2000?
28 A. It does.
29 Q. Thank you. And that the number of pages
30 referred to that as saying?
31 A. I haven't looked at one of these in years.
32 Q. I understand.

1 A. That 03 indicates pages, I believe.
2 Q. Yes. Three pages and -- and that the
3 document including the cover sheet that is immediately
4 -- that would be a cover sheet, one page, and then a
5 two-page document for a total of three pages?

6 A. That's my understanding of what it says.

7 Q. Thank you,

8 MR. CLEMENTS: Your Honor, at this time
9 I would like to move to have Petitioner's Exhibit 107
10 be entered into the record.

11 (Petitioner's Exhibit 107 was offered.)

12 MS. ESTOPINAL: Your Honor, the State
13 objects, as this witness actually has nothing to do
14 with the affidavit except his name appears in it.
15 Mr. Dodd was here yesterday and appears to have been a
16 party to it. So if counsel is attempting to introduce
17 this through Mr. Peabody, the State submits that he is
18 not a proper witness for such a purpose.

19 MR. CLEMENTS: Your Honor, I can
20 withhold this, and we will call Mr. Bruce Dodd back
21 again at a future date to do that. It's not mandatory
22 that we do it at this moment.

23 THE COURT: So noted. The Court notes
24 that you are not offering -- withdrawing the offer of
25 Petitioner's Exhibit 107 into the record. And we will
26 endeavor to have it introduced at a later time with a
27 different witness.

28 (Offer withdrawn for Petitioner's Exhibit 107.)

29 MR. CLEMENTS: Thank you. And I might
30 just add that had I realized that this document came
31 from the source that has now been confirmed that it
32 did come from, I probably would have asked Mr. Dodd

1 about that.

2 THE COURT: So noted, Mr. Clements.

3 MR. CLEMENTS: Thank you.

4 Q. (By Mr. Clements) To your knowledge, Warden
5 Peabody, does this collection of bound papers here
6 constitute all of the documents that you are aware of
7 that are in the possession or in the vicinity of your
8 office at this time?

9 A. In the vicinity of my office, definitely.
10 There is nothing in my office. So there is no more
11 documents in my office.

12 Q. I understand.

13 A. Not to be facetious, but I can testify to
14 that.

15 Q. And any in the office that you were
16 previously occupying, if you would have any knowledge?

17 A. I have no direct knowledge, no.

18 Q. I understand. Just to be certain, are you
19 aware of any information that you would have believed
20 to be privileged information or not responsive, that
21 would have been responsive otherwise to the public
22 records request, but that you, in your own personal
23 opinion, thought might have been privileged and not --
24 and that shouldn't be turned over? Or --

25 A. I'm really not in a position to answer that.
26 I don't know what documents were submitted. I did not
27 have an opportunity to review them. To the best of my
28 knowledge, you have everything that was available.

29 Q. Did you ever come across any documents that
30 you felt you -- that you personally felt were
31 privileged that -- about lethal injection? And since
32 the time that you became aware of the public records

1 request?

2 A. No. As I have said, I am not aware of what
3 the request was, how it was handled, or what was
4 turned in. I really cannot answer that.

5 MR. CLEMENTS: One moment, please.

6 A. If the question is -- did I personally
7 withhold anything for -- as being confidential? Is
8 that the question?

9 Q. I am sorry. My attention was diverted.
10 Could you repeat that?

11 A. I will let you ask the questions. I'm
12 sorry.

13 Q. All right. I understand. Fine. I didn't --

14 MR. CLEMENTS: Your Honor, may I
15 approach the witness, please?

16 THE COURT: You may.

17 MR. CLEMENTS: Let the record reflect
18 that I am showing the witness a copy of Exhibit 104,
19 Petitioner's Exhibit. And --

20 MS. ESTOPINAL: I'm sorry, your Honor.
21 I am not sure what it is the witness is looking at.

22 MR. CLEMENTS: I'm sorry.

23 Q. (By Mr. Clements) In general, could you --
24 does this document appear to be a public records
25 request?

26 A. It appears to me. I am not real familiar
27 with them. But it appears to be.

28 Q. Have you ever seen this document before?

29 A. I don't ever recall seeing it, no.

30 Q. Have you ever -- again, how long have you
31 been back at Louisiana State Penitentiary subsequent
32 to your leave?

1 A. As of tomorrow, two full weeks.
2 Q. So during the time that you have been there
3 for two weeks, have you noticed -- have you heard
4 anything about a public records request?
5 A. I knew there was a corporate request to
6 produce documents. And that's -- I never saw the
7 request nor what documents were provided. I don't
8 know.
9 Q. All right. Thank you.
10 MR. CLEMENTS: Your Honor, if I might
11 have a moment, please?
12 THE COURT: You may.
13 MR. CLEMENTS: Just taking a moment,
14 your Honor, to see if we can verify that
15 communications made to Mr. Dodd about the intended
16 subpoena witnesses -- deposition witnesses tomorrow.
17 THE COURT: All right.
18 MR. CLEMENTS: I understand that we may
19 end up going ahead with the remaining witnesses, as
20 needed, tomorrow morning. And we will be prepared to
21 go ahead and do that on the limited scope that we have
22 discussed already, but as the Court desires and
23 counsel. But I am still trying to make sure that we
24 get this communicated okay.
25 Q. (By Mr. Clements) Warden Peabody, could you
26 explain -- I believe you had mentioned much earlier
27 that the last couple of executions by lethal injection
28 probably took place during the time when you were on
29 leave. So you weren't around. But prior to your
30 leave, you were present at Louisiana State
31 Penitentiary, I take it?
32 A. I was.

1 Q. Were -- and what were your functions on an
2 execution day? Say, starting around the first one by
3 lethal injection under the Warden Whitley
4 administration on March the 5th, 1993. What exactly
5 was your role that day?

6 A. Basically to ensure that all procedures and
7 practices were carried out appropriately and deal with
8 any problems that came up during that time.

9 Q. Okay. So you had a fairly large supervisory
10 role over a number of functions?

11 A. Correct.

12 Q. Okay. Did you personally witness any -- the
13 execution on that date?

14 A. On which date?

15 Q. Robert Sawyer's execution in --

16 A. I don't believe that I did.

17 Q. All right. And did you -- were you present
18 with the strap-down team at all during --

19 A. At some point, yes.

20 Q. And were you part of the strap-down team?

21 A. No.

22 Q. All right. And -- all right. And where
23 were you present with the strap-down team, if I could
24 ask that?

25 A. Where was I present?

26 Q. Was it our understanding that you said you
27 were with the strap-down team?

28 A. Right.

29 Q. Where was that?

30 A. I would have been in the same area as they
31 were during the time that the inmate was moved from
32 the holding cell to the execution chamber, and until

1 such time as the strap-down team left the -- the
2 execution chamber.
3 Q. Okay. Could you tell us from your memory
4 what time frame you think that that movement from
5 extraction from the cell to transport to the injection
6 chamber, roughly where -- what time that was?
7 A. It would have been shortly after midnight.
8 Q. Okay.
9 A. At that time executions was after midnight
10 at the time, I believe.
11 Q. All right. And could you -- let's see.
12 Okay. Just as an overview, in the subsequent
13 executions in 1995, Thomas Ward; 1996, Antonio James;
14 1997, John Ashley Brown, did -- and I don't know if
15 you were there in 1999 with Dobie Gillis Williams.
16 But did your involvement differ in any marked degree?
17 A. No.
18 Q. Okay. So basically your focus was --
19 A. I -- I'm sorry.
20 Q. -- with the strap-down? Basically, your
21 focus with the strap-down teams?
22 A. Was the overall supervision of the entire
23 process.
24 Q. Right. When you were last seeing the
25 strap-down team, where did you go?
26 A. I remained in the execution chamber.
27 Q. And -- and how long did you do so?
28 A. Until such time as the inmate had been --
29 had the intravenous lines connected and those
30 individuals departed the chamber, which time I did
31 also.
32 Q. All right. And is that -- would that then

1 have been the case in each of the executions I had
2 mentioned or that you had attended?

3 A. In the ones I had attended, I am not sure,
4 but I believe there was one in that period that I did
5 not, was not involved in.

6 Q. Okay. But just so I could be sure, let's --
7 just to be focussing again, in the 1993 execution,
8 which may stand out better in the sense that this was
9 the first one.

10 A. Correct.

11 Q. And it was Warden Whitley, to distinguish in
12 that way too.

13 A. Correct.

14 Q. Did -- did -- you were in the same vicinity
15 with the strap-down team. You were in the lethal
16 injection chamber, so to speak, the room with the
17 actual gurney table. You -- do you witness the
18 strap-down team perform their function; is that
19 correct?

20 A. Correct.

21 Q. You then witnessed the -- and the
22 technicians put the intravenous lines together?

23 A. The individuals, yes.

24 Q. And -- and then you put -- and then where
25 did you walk to exactly?

26 A. Behind the area where the individuals who
27 would administer the lethal drugs were located.

28 Q. When you say "behind the area," do you mean
29 in that same alcove area?

30 A. Into that area with them, yes.

31 Q. You were there with them, present. Thank
32 you. And is that the case with each of the

1 executions? Was that the, basically, same procedure
2 in each one of those?

3 A. That's correct.

4 Q. Okay. And after the time that the execution
5 was completed, did you then exit that area with
6 everybody or separately, or how was that?

7 A. Once the execution had been completed and
8 the witnesses were removed from the witness room, I
9 would exit at that time.

10 Q. Could you describe what your function was in
11 that room?

12 A. Just to oversee the process in terms of
13 ensuring that we had adequate personnel, equipment,
14 supplies, training, whatever. Whatever might occur.
15 To act as the warden's representative to oversee it
16 directly.

17 Q. Okay. Did you -- did you ever act as a --
18 an intended backup for any of the personnel in that
19 room?

20 A. Beg your pardon?

21 Q. Did you ever act or as a -- were you
22 prepared to act as the backup or replacement person
23 for anybody in that room for any of the other
24 functions that they were performing?

25 A. It was never necessary. So I really can't
26 answer that question.

27 Q. I guess my question was: Were you prepared
28 to do any other kind of function than just observe?

29 A. Here again, we had adequate personnel to
30 deal with the situation. It didn't occur. Had it
31 occurred, I am not quite sure how I would have handled
32 it, but we would have handled it.

1 Q. Okay. Could you explain to the best of your
2 recollection how many individuals were in that room
3 during the execution of Robert Wayne Sawyer? Without
4 naming any names, of course.

5 A. Probably three to five.

6 Q. Three to five persons. Can you -- if you
7 were to think of functions of persons --

8 A. Uh-huh.

9 Q. If you could break that down a little more
10 precisely, we would appreciate it. Can you think of
11 that? And that help us -- help you to determine that
12 number better. Just for that one execution, the
13 Robert Wayne Sawyer.

14 A. I don't quite understand the question.

15 Q. Can you tell us what the functions of the
16 people who were in that room were as far as their job
17 duty? There was someone there to push a plunger.
18 There was someone there -- there were at least one
19 person who was an emergency medical technician; is
20 that correct? One of each of those?

21 A. Not necessarily, no. I don't --

22 Q. You are not sure if there was at least one
23 syringe operator or one EMT present?

24 A. I think that's an area where I just really
25 can't say what the function would have been at the
26 time.

27 Q. All right.

28 A. We also -- clarify that a little bit?

29 Q. Okay. Sure.

30 A. It is a very small space in terms of having
31 a lot of people in there.

32 Q. Right.

1 A. There were people available if necessary
2 that could have been called upon immediately adjacent
3 to that area. There were EMTs available at the
4 execution area in order to transport the body and also
5 to assist anyone who might have a medical problem
6 during -- prior, during, or after the execution. We
7 have had witnesses faint, things of that nature.

8 Q. Right. And could you identify approximately
9 how many EMT staff would have been present in your
10 estimation outside of that area?

11 A. Probably in the neighborhood of about four
12 to six.

13 Q. Four to six. Okay. But going back just to
14 that particular room, which I have heard called an
15 alcove or a concealed chamber, that room there that we
16 are talking about, the one that you said is admittedly
17 a fairly small confined space --

18 A. Uh-huh.

19 Q. Do you recall where you stood personally, if
20 any one place?

21 A. Generally, behind the individuals involved
22 in administrating the drugs.

23 Q. Okay.

24 A. In such a position that I could -- they
25 could keep me informed as to the proceedings.

26 Q. Okay. So one of the things that you would
27 be able to do was to update that person, syringe
28 operator, you say? I mean, that's my phrase. But is
29 that -- as to -- what proceedings are you talking
30 about exactly?

31 A. They would simply advise me as they went
32 through the steps of the procedure that Drug A given,

1 Drug B given, et cetera, et cetera.
2 Q. I see. So it was them reporting to you,
3 then?
4 A. Correct.
5 Q. I misunderstood earlier. Okay. So let's --
6 if you wouldn't mind, I'd like the -- if you could
7 explain, what is your memory of what equipment as far
8 as syringes was available?
9 A. As I said, I don't have an extensive medical
10 background. It appeared to be various types of I.V.
11 setups, I.V. bags, and normal saline. There was other
12 medical equipment. All of it was kept in a secured
13 cot -- cart -- pardon me -- in that room.
14 Q. Okay. And were you present when that
15 secured part of the cart was opened?
16 A. Yes.
17 Q. Did -- what did you see pulled out and set
18 up, so to speak?
19 A. I know the equipment to start the I.V.s was.
20 And prior to -- and I guess I would have to ask you at
21 what point are you talking about?
22 Q. Okay. I am talking about -- is it possible
23 that these -- when you say "secure" that something was
24 locked up?
25 A. Correct. All of it was locked.
26 Q. Okay. So at the point at which it was
27 unlocked.
28 A. It was unlocked for two reasons, the first
29 reason being for -- to lock the injections they use in
30 the procedure into a locked box that was locked inside
31 of another locked cabinet prior to the execution.
32 Myself and another individual verified that the

1 appropriate medicines were there and counted and
2 accounted for, and performed an inventory, basically,
3 of what was there. And I reviewed that normally and
4 initialed it or something. I don't really remember.

5 Q. Okay. I would like to explore that in a bit
6 more detail.

7 MR. CLEMENTS: Excuse me a moment. All
8 right. It's probably a communication with Mr. Dodd we
9 are trying to figure out there.

10 Q. (By Mr. Clements) If I could to focus again
11 back on this, your viewing of the precise -- the
12 container has been opened. It's unlocked, and you are
13 now seeing these things. They are being prepared for
14 use. And as somebody -- what you were just saying is
15 that there was some sort of an inventory taken. How
16 was this inventory carried out?

17 A. It was done prior to the execution itself,
18 and it was also done on a periodic basis. Normally,
19 once a month or so during the -- if we didn't have an
20 execution immediately available.

21 Q. All right.

22 A. Not available -- or scheduled. Sorry.

23 MR. CLEMENTS: Your Honor, may I
24 approach the witness?

25 THE COURT: You may.

26 MR. CLEMENTS: Thank you. Let the
27 record reflect that I am showing the witness four
28 pages, pages 4, 5, 6, and 7, from the Petitioner's
29 Exhibit, in globo, No. 101.

30 Q. (By Mr. Clements) And going to page 6,
31 which is out of the four pages, was truly the first
32 one of them.

1 A. Uh-huh.
2 Q. And ask if you have seen -- if this is
3 anything like what you have seen.
4 A. It appears to be the forms that were used to
5 conduct the inventory at the execution room, yes.
6 Q. Could you look carefully to see if that --
7 and I would like you to look carefully at all four
8 pages to see if that does -- really does refresh your
9 memory and verify that.
10 A. (Witness complies.)
11 Q. One more and then two back.
12 A. One more and two back? Okay. No. Some of
13 this is -- I don't remember seeing that.
14 Q. Okay.
15 A. As I recall, this has items on it that were
16 not on the inventory that I was familiar with. The
17 inventory that I was familiar with, I don't know that
18 it had the items like phones and batteries and things
19 of that nature.
20 Q. Okay. You had just reviewed pages 6 and 7,
21 and I apologize. It is somewhat out of order. But
22 there are two more pages, and they are indicated on
23 page 4 and 5, which is really page 2 and 3. It just
24 got put in one -- out of order together.
25 A. I can't say that that's the exact form or
26 not. There was a form that was very similar, that it
27 basically inventoried equipment, and not necessarily
28 drugs, as I recall. The drugs were handled, I
29 thought, separately. I don't know that they were on
30 that inventory.
31 Q. All right. When you're saying "the drugs,"
32 I -- are you referring specifically to the three

1 chemicals of the lethal injection process?
2 A. I am.
3 Q. And those would be into your memory?
4 A. Pancuronium bromide -- well, pardon me.
5 Sodium pentathol, pancuronium bromide, and potassium
6 chloride.
7 Q. And, to your memory, the way you just
8 recited those is the actual chronological order in
9 which they are administered to the inmate?
10 A. Correct.
11 Q. Thanks. The -- but is it your testimony
12 that after reviewing that checklist, pages 4 through
13 7, that, in fact, your memory at this moment -- I'm
14 really at this time, again, just focusing on the
15 Robert Wayne Sawyer execution.
16 A. Okay.
17 Q. That that checklist may have not included
18 certain items. I think you had mentioned phones and
19 things like that. But also that it didn't actually --
20 that that -- the list that you have in your memory
21 didn't have the drugs there on that list. It was
22 actually -- there was something else that had to do
23 with drugs?
24 A. I truly don't recall. I don't remember them
25 being on the equipment-list inventory.
26 Q. Okay.
27 A. They may have been and I simply didn't
28 appreciate that fact at the time.
29 Q. Okay. And -- okay.
30 (Defense counsel confer.)
31 MR. CLEMENTS: I'm sorry for the
32 interruption, your Honor.

1 Q. (By Mr. Clements) To the best of your
2 memory, Deputy Warden Peabody, what -- could you
3 describe what you recall the inventories of the drugs
4 themselves to be like? Or what -- what was it they
5 were inventorying exactly?

6 A. What I do recall with regard to the drugs
7 actually used during the lethal injection process was
8 that those drugs were to be drawn from the pharmacy.
9 They were assigned to a person. Those drugs were
10 brought to me. And me and a person personally went to
11 camp -- the area and secured those drugs prior to an
12 execution.

13 Q. And after the conclusion of the execution,
14 do you recall any facet of record-keeping or
15 inventorying of the amount of drugs that were actually
16 used?

17 A. I know that all the drugs were accounted
18 for. The exact method that we did that or it was done
19 by other individuals, I don't recall. I do know that
20 we had to document the disposition of all the drugs.

21 Q. And so when you say documentation, you mean
22 that it was actually something that was written down
23 somewhere, not just reported orally?

24 A. I can't say that I ever saw it. I knew we
25 had to account for the drugs. How it was done, I am
26 not familiar with.

27 Q. Do you believe that in the other four
28 executions by lethal injection that you personally
29 were -- you were in that room in each one of those; is
30 that correct?

31 A. Correct.

32 Q. Or was it your testimony that at one of them

1 you may not have been present at all?
2 A. I don't recall without going back over the
3 list and looking. I believe I missed one for whatever
4 reason. I am not sure.
5 Q. If I were to give you the exact dates, do
6 you think that might help refresh?
7 A. That wouldn't help me at this point.
8 Q. I've got you.
9 A. I would have to go back to some other
10 document.
11 Q. If I gave you names, would that help, of the
12 executed persons? Would that refresh your memory?
13 A. No. It would not.
14 Q. Okay. But thinking about those others in a
15 more global overview, do you recall whether there was
16 any marked deviation in those things that you have
17 just been talking to me about, about the -- this
18 supply sheet and any other inventorying of drugs that
19 you are aware of?
20 A. No. I don't believe that anything changed
21 significantly. I believe it remained basically the
22 same.
23 Q. All right. Do you know -- and it was --
24 we've, you know -- you are familiar with how
25 strap-down teams did dress rehearsals?
26 A. Correct.
27 Q. Do you -- is your memory that the personnel
28 involved in that alcove, concealed room, did they
29 every do dry -- rehearsals or dress rehearsals, so to
30 speak?
31 A. They practiced.
32 Q. Do you know if they practiced in that very

1 room?

2 A. I know they were made familiar with the room
3 and were there before. But I don't believe the
4 practice thing itself occurred there. Not to my
5 knowledge.

6 Q. Do you know if they did any kind of --
7 whether it was in that room or another room, if that
8 practice session involved setting up I.V.s? Not,
9 actually, you know, puncturing anybody or, you know,
10 putting a vein -- you know, into their veins or
11 anything. But any kind of a setup with all of the
12 overall equipment placement? Do you know if anything
13 like that ever --

14 A. With the basic equipment, yes.

15 Q. And could you explain how that was done?
16 It's not important so much where, but how, what kind
17 of a -- components of dress rehearsal did you do?

18 A. Practicing utilizing the needles, syringes,
19 and I.V. lines and solution bags to administer the
20 practice injections.

21 Q. Okay. Do you recall if it was the general
22 practice in these practice sessions to have the person
23 who was intending to be the actual person doing Role X
24 to be the one who practiced that thing in the dry run?

25 A. Yes.

26 Q. And do you recall whether the -- that would
27 have made -- that would have been -- what you just
28 told me applied to every single person that was in
29 that room?

30 A. No.

31 Q. Could you explain what differences that you
32 -- who was -- who was, and then who was not in that

1 dress rehearsal?

2 A. I don't know what practice was done by
3 certain individuals in that room other than the
4 practices I actually reserved -- observed. And that
5 was on specific functions; and those functions that I
6 observed were those functions which those individuals
7 were likely to perform.

8 Q. And, again, if you could, which functions
9 were those?

10 A. Specifically?

11 Q. Yes.

12 A. The administration of the drugs themselves?

13 Q. Okay. So it is your testimony that the
14 person who was involved in the actual pushing of the
15 syringe plunger was involved in the overall practice
16 session for that I.V. team or --

17 A. If I understand your question correctly, you
18 are -- we did not have one overall practice session --

19 Q. Okay.

20 A. -- for all aspects of the procedure, no.

21 Q. Okay. But -- okay. It's my -- when you say
22 that, I mean, I am not asking you if you had a joint,
23 you know, from the moment of extraction from the cell
24 with the strap-down team, like that was joint practice
25 between those two teams.

26 Would you agree that it could be -- these two
27 teams might be described as the I.V. team and the
28 strap-down team?

29 A. Basically, yes.

30 Q. Okay. I am not talking about like a joint
31 practice session between those two groups, 'cause this
32 -- there were practice sessions with the strap-down

1 team. Right?
2 A. Correct.
3 Q. And there was some sort of a practice dress
4 rehearsal with the I.V. teams too?
5 A. Correct.
6 Q. And -- but with I.V. teams, I'm -- what I am
7 asking is that the number of people that you remember
8 in that room, did they all go to get those -- that
9 unit together? Let's call them the I.V. team for --
10 A. Did they go to what together? I'm a little
11 confused now.
12 Q. The four -- whoever is in that back room.
13 A. Yes.
14 Q. We will just call them the back-room team
15 for a moment.
16 A. Uh-huh.
17 Q. Did the back-room team ever practice
18 together as a unit?
19 A. No.
20 Q. Okay.
21 A. Not to my knowledge. It may have occurred,
22 but not to my knowledge.
23 Q. But if you were a member of that back-room
24 team by your presence there, so to speak, then there
25 was none to your memory, so that not the entire group
26 practiced together.
27 And your -- and I am not sure. I just need to ask
28 this again. Maybe you just answered this a moment
29 ago. But is the practice -- aside from you as the
30 overall superintendent of keeping an eye on how
31 certain things are going, do you know that other --
32 everybody else practiced together as a subunit of the

1 back-room team?

2 A. I'm sure they did. But I have no direct
3 knowledge of that, no.

4 Q. Okay. All right. And so as far as the
5 composition of everybody, including you, who were in
6 that back room together, the only time that that truly
7 ever happened was when you were all in there at the
8 actual time of an actual execution being carried out?

9 A. Yes.

10 Q. Okay. Now, are you aware of whether the
11 syringe plunger did any kind of practice independently
12 or with anybody else or anything that you are aware of
13 personally?

14 A. Other than what I have already stated they
15 did?

16 Q. Yeah. I mean, you -- well, if you could
17 repeat just as to that particular person's role.

18 A. The individual who was going to be pushing
19 the drugs --

20 Q. That's right.

21 A. -- into the I.V. did practice independent of
22 the other people that may have been in the area, other
23 than the other person that might have pushed drugs.

24 Q. Do you know if -- first of all, who trained
25 that person to do their job? Would you have knowledge
26 of that?

27 A. And we're still talking about the people
28 that administer the drugs themselves?

29 Q. Yep.

30 A. Do I know who trained them to do function?
31 Yes, I do.

32 Q. I'm -- I apologize. Do -- if you could

1 repeat.

2 A. I know who provided the training for the
3 individuals that were utilized to push the drugs on
4 the --

5 Q. Okay.

6 A. -- inmates involved, the death row inmates.

7 Q. Okay. Do you know -- I'm not asking for
8 names, ever.

9 A. Yes. I do know who that was. I know where
10 it was done and how it was done.

11 Q. Okay. And you do know how it was done?

12 A. Correct.

13 Q. Could you describe what that was?

14 A. As I said before, they -- we utilized the --
15 they were trained on the use or practiced on the use
16 -- whatever the correct terminology would be -- on the
17 use of injecting drugs through an I.V. line and taught
18 how to inject those drugs in such a manner as to be
19 well-trained at it, and including the procedure of
20 clearing the lines with normal saline in between
21 particular drugs.

22 Q. And -- excuse me. In the specific function
23 of clearing the lines, do you recall how that was
24 done?

25 A. Do I recall how that was done?

26 Q. Right.

27 A. I believe it was done with the I.V. solution
28 in the I.V. bag. It may not have been. It may have
29 been done with a second syringe of saline in between
30 the drugs. I don't think it was. But I don't -- I
31 couldn't say absolutely.

32 Q. Okay. So one of those two possibilities

1 occurs to your mind at the moment, to your memory?

2 A. Correct.

3 Q. And is it possible if one of those choices
4 might have happened at one time, and another choice
5 might have happened at another execution? Is that a
6 possibility?

7 A. I don't think we changed our procedure at
8 any time. We kept the same procedure as best I can
9 remember.

10 Q. Okay.

11 A. I don't think there was any variance on
12 that.

13 Q. All right. And, to your knowledge, was
14 there ever any variance in the amount of actual
15 contents of the syringes, the chemicals?

16 A. The chemicals used, no. They were always
17 the same.

18 Q. As far as the both identity of the chemical
19 and the quantity and strength of it?

20 A. Correct. To my knowledge, they were all the
21 same.

22 Q. All right. And do you recall -- can you
23 picture in your mind's eye when this container was
24 unlocked and opened and you could see syringes, do you
25 recall how many syringes you saw?

26 A. We had multiple sets of everything we
27 needed. I don't remember how many sets, but we
28 specifically had this cart equipped so that we would
29 have an adequate supply in case of a need for
30 additional equipment beyond what you might actually
31 use if everything worked perfectly.

32 Q. I understand.

1 A. Or have equipment problem.
2 Q. I'm sorry?
3 A. Or there was an equipment problem such as,
4 you know, people drop things or something of that
5 nature.
6 Q. Okay. I understand. Besides someone
7 dropping something, can you recall what other problems
8 either in equipment nature or otherwise that you or
9 others in this group of people that were in the back
10 room were aware of or concerned about?
11 A. There was no problems that we were overly
12 concerned about, and I had never observed any problems
13 or was advised that there were any problems with
14 regard to the administration of the procedure.
15 Q. When -- jumping back for a moment to your
16 visit to the state of Texas to the Huntsville prison,
17 when you observed anything there, was there any
18 feeling on your part or others that there might have
19 been potential problems there that you were aware of?
20 A. As I said previously, this was the --
21 probably the only trip that I made for a site visit,
22 and it was fairly early in our information gathering.
23 And we had questions, depending upon the particular
24 aspect of the execution, of the different ones of us
25 might be involved with.
26 Q. And because you have subsequently explained
27 that your presence in the actual alcove or concealed
28 chamber room and your overall supervision of the
29 administration or hearing someone report to you that,
30 you know, Chemical No. 1 has been administered; and,
31 you know, a report out loud, sounds like you were a
32 person that that was an area, that particular part of

1 the process was something that you had a lot of focus
2 on?

3 A. I wouldn't necessarily say that. They
4 didn't say Syringe No. 1, 2, 3, et cetera. They
5 simply went through the syringes and advised me at the
6 time when all the medicines had been administered.

7 Q. So is it -- perhaps it would -- do I
8 understand that your testimony is that it wasn't that
9 there was a ridged reporting of now this Syringe No. A
10 has been emptied?

11 A. They may have -- they or the whoever --

12 Q. Whoever?

13 A. -- may have done that. I just don't recall
14 it being something that we asked to be done, no.

15 Q. All right. Do you -- are you familiar with
16 whether in addition to backup of equipment, like other
17 syringes, that there may have been backup of human
18 beings in case of need?

19 A. Here again, that's one of the reasons I was
20 available in the area is if it went beyond what we
21 anticipated we might need in the case of an emergency,
22 we would have had to deal with it at that time. It
23 never did occur. We had adequate staff to cover it.

24 Q. Okay.

25 A. And we're prepared for most of the things
26 that could occur.

27 Q. Were you prepared to take on the plunger
28 position yourself if need be? If for some reason that
29 is completely unforeseen --

30 MS. ESTOPINAL: Your Honor, I'm going to
31 object. I don't see the relevance of this
32 hypothetical.

1 THE COURT: Any response to the
2 objection? I'll give you time to confer.
3 MR. CLEMENTS: Sure. Sure. There has
4 been one deponent has testified that there was a
5 backup for -- this was John Doe Number Three, am I
6 correct?
7 MR. SWEENEY: Yes.
8 MR. CLEMENTS: John Doe Number Three,
9 who was a syringe plunger, said that there was another
10 person there as his backup. I'm asking if this
11 gentleman was that -- one of those potential people.
12 MS. ESTOPINAL: And, your Honor, and I
13 don't think the question is fair of this witness. For
14 one thing, I thought we were supposed to be keeping
15 confidential names of any persons who might be
16 administering those drugs.
17 And if I also recall, that John Doe Number Two has
18 acted in that capacity in the last two years when this
19 witness was on medical leave and would not have been
20 present in the room in any case.
21 MR. CLEMENTS: I stand corrected and
22 counsel for the State is absolutely right about the
23 timing on that, I admit. And --
24 MS. ESTOPINAL: I'm sorry. John Doe
25 Number Three.
26 MR. CLEMENTS: It's John Doe Number
27 Three. She's right.
28 MS. ESTOPINAL: I get confused because
29 John Doe Number Two hasn't been deposed yet.
30 MR. CLEMENTS: Two hasn't been deposed
31 yet.
32 MS. ESTOPINAL: I'm sorry.

1 THE COURT: So noted. And does it
2 appear that that clarifies the situation?
3 MR. CLEMENTS: It clarifies the point
4 that the prior testimony is not conflicting
5 necessarily because he's -- they are talking two
6 different time periods. They did not overlap. And I
7 withdraw the question at the moment.
8 THE COURT: So noted.
9 MR. CLEMENTS: If in further depositions
10 find out other information, we'll have to pursue this
11 at a more --
12 THE COURT: I understand, Mr. Clements.
13 MR. CLEMENTS: Thank you.
14 THE COURT: And I understand that's why
15 you said for the moment.
16 MR. CLEMENTS: I understand, your Honor.
17 THE COURT: And I'm noting that for the
18 record.
19 MR. CLEMENTS: Thank you, your Honor.
20 Q. (By Mr. Clements) Warden Peabody, would one
21 of the things that you were observing -- did you have
22 an ability to see out that one-way mirror into the
23 chamber?
24 A. I could see into the chamber during parts of
25 the procedure.
26 Q. Oh, I'm sorry. Coming back to the time when
27 you were actually -- before you went into that room --
28 A. Correct.
29 Q. -- you, I believe, testified that you were
30 present when the I.V.s were set up?
31 A. Correct.
32 Q. Okay. Looking at -- specifically at the

1 execution of -- in 1995 -- no. Strike that. In 1996,
2 of Antonio James, can you call to mind what that
3 particular -- that particular execution?
4 A. I have no particular recollection of that
5 versus the others, no.
6 Q. If I were to say that there has been reports
7 that it took approximately at a minimum of 15 minutes
8 to 25 minutes or so to find a vein in one of the two
9 arms on Mr. James, would that refresh your memory?
10 A. I don't remember it being that long or being
11 that particular inmate. There was some inmate that it
12 took longer than normal, for lack of a better term.
13 Q. Okay.
14 A. What I would not consider an extended period
15 of time, by any means.
16 Q. All right. Do you recall what measures were
17 taken at the moment about that process?
18 A. No, I don't.
19 Q. Would you recall if straps on an arm were
20 removed in order to -- that would allow a more free
21 access of that particular arm with the trouble?
22 A. That did happen on occasion, yes.
23 Q. Can you recall on how many occasions that
24 did occur on?
25 A. At least once that I specifically remember
26 it occurring, and I think we made the concern or the
27 -- was that the strap-down team was -- the restraints
28 were too tight to get a good circulation. So there
29 was some adjustment made.
30 Q. Okay.
31 A. I don't think that that was an ongoing
32 problem, no.

1 Q. Okay. And would -- why do you think it was
2 not an ongoing problem? Was there some action taken
3 to change something?

4 A. We practiced with our strap-down team who
5 basically were the same individuals, many of whom had
6 performed electrocutions, which we made adjustments
7 for the change in method of execution.

8 Q. Okay. And just to summarize briefly, what
9 would that major change be between the strap-down
10 team's practice with electrocution versus lethal
11 injection?

12 A. Tightness of the restraints.

13 Q. All right. Do you, Warden Peabody, have
14 memory of the execution of John Ashley Brown in 1997?

15 A. Not independent memory.

16 Q. Okay.

17 A. I'm -- if I was there, I am sure.

18 Q. You remembered it in general?

19 A. If it was one I was at, I am sure I was
20 there. And --

21 Q. Okay. If I were to say it was one of the
22 white inmates?

23 A. That wouldn't help me.

24 Q. I'm sorry?

25 A. That wouldn't make any difference. I don't
26 have any independent recollection.

27 Q. Okay. I just thought perhaps that some way
28 to help identify -- do you recall any lethal injection
29 process where an arm I.V. was -- let me ask this. In
30 Antonio James's where there was -- the arm was
31 loosened and so forth, what was the ultimate location
32 that an intravenous line ended up being put in that

1 one that was tough to find, if you remember?

2 A. As far as I know, it was the arm. I don't
3 remember if we had to go to alternate sites or not.

4 Q. Okay.

5 A. I wasn't -- I know that we were able to
6 successfully have I.V.s started, and that was my
7 concern.

8 Q. Okay. Now, in a subsequent lethal
9 injection, do you recall anywhere -- at least one of
10 the intravenous sites was not an arm?

11 A. There may very well have been. I just don't
12 -- I don't remember.

13 Q. I understand. Do you -- would you consider
14 it that you were there present to observe?

15 A. Correct.

16 Q. And to sort of supervise the overall
17 product. If there -- and, again, you do not have
18 medical training?

19 A. No.

20 Q. And although you were an EMT at one point --

21 A. A basic.

22 Q. Would you have considered yourself qualified
23 or capable to intercede on behalf of somebody trying
24 to put in an intravenous line at an execution if
25 something happened?

26 A. No. That wouldn't have been my call.

27 Q. That wouldn't have been. When you say "that
28 wouldn't have been your call," could you explain what
29 you mean by that?

30 A. Mean that if the determination was made that
31 this man could not have an I.V. started in a certain
32 location, I wouldn't be -- I didn't feel I was

1 qualified to say that you can or can't do it or move
2 to an alternate site or whatever. That's not my call.
3 Q. Right. Whose call would you consider it to
4 have been?
5 A. The -- ultimately the people working the
6 I.V.s.
7 Q. Okay. Are you familiar with a procedure
8 called a cutdown?
9 A. I am.
10 Q. Could you explain for the Court what your
11 understanding of that is?
12 A. It is a very rudimentary understanding, that
13 it's a procedure involving an incision and to open up
14 the access to a blood vessel to start an I.V.
15 Q. Okay. Do you know if the supply checklist
16 -- if there was some sort of a mechanism to perform
17 that function if needed?
18 A. There was.
19 Q. Do you recall if one was ever done?
20 A. Not in my presence.
21 Q. Do you know -- well, I take it that your
22 presence is sort of an overall, you know, observation
23 of things and some of the planning and so forth, that
24 -- trying to plan for as many contingencies as
25 possible?
26 A. Correct.
27 Q. Is that fair to say?
28 A. Yes.
29 Q. What contingency did you envision if a
30 cutdown was needed?
31 A. It would be performed by a person who had
32 previously volunteered to provide that service who was

1 qualified to do so.
2 Q. And without naming names, was that person
3 one of those people that was in that back room?
4 A. No.
5 Q. Where would that person come from?
6 A. They were available in the area.
7 Q. Okay. And when you say "the area" could you
8 be a little more precise?
9 A. Within the immediate area of the location of
10 the execution chamber?
11 Q. I see.
12 A. Within -- if you want to talk in terms of
13 time, within less than five minutes.
14 Q. Okay. Would this have been a duty doctor on
15 duty at the Barrow Treatment Center?
16 A. Might have been.
17 Q. And approximately how far away is that?
18 A. Are you saying was this?
19 Q. No. I'm just saying approximately how far
20 away -- oh, I'm sorry. What does that mean, was it?
21 Has that moved? I was asking how far away is --
22 that's the hospital, name of the hospital.
23 A. Are you suggesting that the person who might
24 perform this function might also be a duty doctor on
25 duty at the infirmary?
26 Q. Yeah. I --
27 A. No.
28 Q. That's not who we are talking about?
29 A. No.
30 Q. Okay. Then could you explain, if you could,
31 without, you know, revealing identities again, what
32 you mean by the area as far as --

1 A. To be immediately in that room within two to
2 three minutes, maybe less.

3 Q. Are you speaking of another EMT?

4 A. No, I am not.

5 Q. Okay. Are you speaking of a medical doctor?

6 A. Yes.

7 Q. Okay. Are you speaking of a doctor who may
8 have been one of the statutorily-required official
9 witnesses for the execution?

10 A. I'm not really -- don't want to answer that
11 because I really don't know.

12 Q. All right.

13 A. But I know on each occasion.

14 Q. If I could just say for your -- some
15 background, if it clarifies anything in your memory,
16 that basically the coroner for West Feliciana Parish
17 who sometimes maybe is not even a doctor, but that
18 person is there to pronounce death.

19 A. That was not the person.

20 Q. That was not the person. And then another
21 medical doctor --

22 MS. ESTOPINAL: Your Honor, I'm going to
23 object. I don't see what difference it makes as long
24 as it was the medical doctor. This could it have been
25 this one, could it have -- as long as it's the medical
26 doctor, I think that's all that matters. And this is
27 all hypothetical anyway, since they've never had to
28 perform a cutdown. So I ask if we could get on to
29 something -- and a little more relevant and less
30 repetitive since we've had testimony about this
31 before.

32 THE COURT: Your response, if any,

1 Mr. Clements?

2 MR. CLEMENTS: Yes. The problem is
3 that the devil is in the details, your Honor. And the
4 -- this is new information. It appears to be new
5 information. It is not a repeat of anything that I am
6 -- it is not clear to me that it is a repeat of
7 anything I have ever seen on paper or that I have ever
8 heard in this hearing.

9 And the reason for that being that the only
10 evidence that we have seen presented so far in either
11 form is that there are two physicians maximum that are
12 in the witness room, and that they are always standing
13 by. And maybe this is who the doctor is referring to.
14 And I don't know.

15 The other issue is that if there is a medical
16 doctor that's willing to perform a portion of the
17 function that's required to do the lethal injection,
18 then it is just very -- we are trying to understand.
19 Because it's been a real tension throughout the
20 history of the process in this state because of a
21 concern as enumerated by various witnesses that doctors
22 aren't allowed to participate.

23 So it's -- I am just trying to explore a little
24 more carefully how this conundrum is being addressed
25 and prepared for because there has been testimony
26 that, you know, this problem is not -- is a
27 hypothetical. It hasn't happened yet. And I am not
28 positive that that's the case completely because I am
29 not a doctor myself. But -- but, you know, I mean,
30 there is clearly testimony about I.V. access problems,
31 and gosh knows where they are going, how far they are
32 going to develop. And my concern is probably more

1 with that of Mr. Code here because he is facing the
2 prospect of this. And, you know, I want to know
3 what's facing him.

4 Not -- that's what Mr. Fish and the others in the
5 State have been very carefully pointing out that we're
6 talking about Mr. Code, and that's really what we are
7 here to talk about. What is he looking at? And I --
8 you know, perhaps certain things haven't happened yet
9 and some other things have.

10 And to be very clear and honest about it, I am not
11 sure that I have a clear picture because there is so
12 much special attention to detail. We are finding out
13 every day new things, every day. There's no question.
14 I mean, no one can dispute that.

15 The fact of this witness's presence in a
16 supervisory category, you know, position, in both the
17 intravenous lines and that back room are -- is news to
18 me and to anybody who has read the record so far. We
19 are now at 5:30 on Thursday. We've been here since
20 Monday morning at 9:30. And, you know, this is just
21 coming out right now.

22 We have asked for detailed descriptions of
23 protocols. We've been told that, you know, you have
24 got that. We don't know this, and we are just finding
25 it out. And it is just, you know, I am going through
26 what appears to be, and it is, admittedly, a seemingly
27 very painstaking detail. But that's the only way I
28 can seem to be drawing this out. And I'm just a lucky
29 guy once in a while, when I'm fishing I'm pulling a
30 fish up here.

31 THE COURT: The Court overrules the
32 objection.

1 MR. CLEMENTS: Thank you.
2 THE COURT: The Court is going to give
3 Petitioner some latitude.
4 MR. CLEMENTS: Thank you, your Honor.
5 Q. (By Mr. Clements) Just to sum up where we
6 were for a moment there, Deputy Warden Peabody, there
7 is a medical doctor on standby in the area, as you
8 testified?
9 A. Correct.
10 Q. And then that person is probably available
11 within how many minutes or less, if you could guess?
12 A. Two to five.
13 Q. Two to five minutes. Okay. So somehow,
14 somewhere, there is a doctor. And could you tell us
15 at all -- I mean, is it because they are not on duty
16 when you answered -- when I asked the question about
17 the on-duty doctor? Is it because they are not on
18 duty, or is it not a doctor from the facility? I just
19 -- I know it is a doctor. But I'm still trying to
20 figure out where this person is coming from. Is it
21 somebody brought in special?
22 MR. FISH: Your Honor, I'd like to
23 object. It really is a point of clarification. Are
24 we talking about a specific execution?
25 MR. CLEMENTS: All right.
26 MR. FISH: In the past?
27 MR. CLEMENTS: Right. I'm trying to
28 understand the protocol. And I will go with
29 particularity and detail on each execution as the
30 witness can remember.
31 Q. (By Mr. Clements) 1993, March 5, Robert
32 Wayne Sawyer. Can you recall if there was a physician

1 on standby at that execution?

2 A. One available, yes.

3 Q. There was one available. Do you know if
4 this person, he or she, were employed by the Louisiana
5 State Penitentiary?

6 A. I don't know that I should answer that.

7 Q. Okay. Is this an issue of confidentiality
8 that you --

9 A. Yes.

10 Q. I understand.

11 A. If you are asking was that person the person
12 who might do a certain procedure.

13 Q. Uh-huh. Okay. I understand. So,
14 basically, we are faced with a dilemma that we were
15 with the person that performs the pushing of the
16 syringe, that we will have to try to find an alternate
17 method to try to have them produced for a deposition.
18 This would be a very helpful thing.

19 MR. FISH: Your Honor, I want to impose
20 another objection. And I think -- I think it is
21 important to understand the testimony of this witness
22 as being someone who hasn't been involved in the
23 process in two years.

24 Warden Cain has already testified concerning his
25 -- and he is -- he's the best witness that we would
26 have on any of these issues, since he is the man in
27 charge, has already testified. And I -- your Honor,
28 counsel -- I don't know. Do you want me to excuse the
29 witness when I discuss Warden Cain's testimony?

30 MR. CLEMENTS: Please.

31 THE COURT: All right. The witness may
32 step down and step out of the courtroom for the moment

1 as we address the objection fully.

2 (Witness exits courtroom.)

3 MR. FISH: Warden Cain, your Honor,
4 testified -- and, your Honor, the witness has left the
5 room.

6 THE COURT: So noted.

7 MR. FISH: Warden Cain testified that
8 the -- that if there was going to be a need for a
9 cutdown procedure, they would have known that ahead of
10 time and would have been prepared for it; and that he
11 didn't see that happening, though, because the EMTs
12 would always be able to find a vein. And if they
13 weren't going to be able to find a vein, they would
14 have known it ahead of time.

15 So I -- and this -- this has never happened before
16 in any of these executions that have been conducted at
17 this penitentiary. So, you know, I think that's -- I
18 think a lot of this testimony we're going into with
19 this witness is, once again, of a historical nature
20 and is not necessarily relevant as to what the
21 procedure will be for Mr. Code.

22 THE COURT: Mr. Clements?

23 MR. CLEMENTS: Respectfully beg to
24 differ with counsel for the State, your Honor. The
25 testimony of Warden Cain was disputed by the testimony
26 of Petitioner's expert, Dr. Mark Heath, who said that
27 in advance of a -- it was always possible that someone
28 might have -- they might find -- have a difficulty to
29 finding a vein before, immediately before they came
30 in. And that this idea of going and double-checking,
31 you know, at some prior time in coming out is no
32 foolproof method for knowing exactly what you are

1 going to be facing. They have contingency plans, in
2 addition to which I could just state summarily for the
3 record that the protocol information here, every shred
4 of paper here that has any information at all, put a
5 maximum of three people in that back, concealed
6 alcove, secret room, whatever you want to call it.
7 Two EMTs and a plunger pusher.

8 That number has doubled now to six people with the
9 testimony of Warden Cain. Then it is fluctuating
10 around here. The deponent told us four. The
11 plunger-pusher deponent told us it was four who had
12 performed in the last two executions. This witness,
13 who does not overlap with the testimony of that
14 person, also gave us a number I can't remember right
15 now.

16 It's three to five. I mean, three to five is a
17 pretty big range. I don't -- I just really am having
18 a difficulty understanding the lack of precision here.
19 And this is the disadvantage that the Petitioner is
20 at. We are being told don't worry, it's all taken
21 care of.

22 And Mr. Code is going to have a constitutionally
23 lethal injection procedure to face he -- if that day
24 comes. And I am saying that I haven't seen it yet.
25 We just haven't seen it. And we don't even know what
26 we are looking at because we get new testimony now at
27 six o'clock in the evening. And it just -- it just --
28 it boggles the mind, frankly.

29 MR. FISH: Your Honor, all I can say to
30 that is that, you know, it is -- it's -- when we are
31 getting into a history lesson, it is a -- you know,
32 what's going to come out is witnesses are going to

1 remember things differently. There is going to be a
2 human factor of -- of memory. And there's -- there is
3 -- I think counsel for Petitioner is trying to read
4 too much into that and to make a mountain out of a
5 mole hill on it.

6 And I think it's just -- it's just trying to cloud
7 the issue of what we are really about. And I -- and I
8 would reurge the objection.

9 THE COURT: All right. Mr. Clements,
10 where you are wanting to go, I think you just did
11 historically one of the executions in asking this
12 witness about the availability of a physician, who I
13 don't think he said was in the actual area, but could
14 be retrieved from some area --

15 MR. CLEMENTS: Right.

16 THE COURT: -- within a matter of some
17 five minutes or so.

18 MR. CLEMENTS: Right. I guess --

19 THE COURT: Is it your intention to go
20 through each one of them and ask that particular
21 question?

22 MR. CLEMENTS: Only in the format that I
23 did in the last.

24 THE COURT: Okay.

25 MR. CLEMENTS: You know, by going more
26 intensively and then just saying, okay, what is the
27 difference in the other that you know of, if you know
28 of any.

29 THE COURT: All right. The Court
30 overrules the State's objection and will allow the
31 questions. I think the witness may have had to go to
32 the rest room. Mr. Bailiff, can we see if the witness

1 is available to come back in the courtroom and resume?

2 (Witness returns to the stand.)

3 THE COURT: All right. The witness has
4 retaken the stand. Mr. Clements?

5 MR. CLEMENTS: Yes, your Honor. I'm
6 ready to presume -- resume.

7 THE COURT: You may do so.

8 Q. (By Mr. Clements) Deputy Warden Peabody, do
9 you -- we just talked for a moment about -- to refresh
10 your memory -- about the 1993, March 5, execution of
11 Robert Wayne Sawyer and your discussion about a sort
12 of standby physician.

13 And without going into further detail at the
14 moment, just ask -- in the subsequent four lethal
15 injections that you were present at, as I understand
16 your testimony, that would be in 1995, with Thomas
17 Ward; 1996, with Antonio James; 1997, with John Ashley
18 Brown; and 1999, maybe with Dobie Gillis Williams, did
19 you remember any variance from this policy about
20 having a medical doctor on standby, whether they were?

21 A. As far as I know, there was no variance. I
22 can't say that I can name which doctor was available
23 for which execution, though.

24 Q. Okay.

25 MR. CLEMENTS: Your Honor, may I
26 approach the witness, please?

27 THE COURT: You may.

28 MR. CLEMENTS: Thank you.

29 THE WITNESS: (Coughing.) Excuse me.

30 Q. (By Mr. Clements) Warden Peabody, if you
31 wouldn't mind looking at this? What I am approaching
32 the witness with is a copy of the Louisiana Revised

1 Statute, this is the 2002 edition. But as far as this
2 section I'm looking at, I don't think it is any -- I
3 think it is current law.
4 This is Revised Statute 15:570, and there is some
5 subsection. I just wanted to ask if you would read
6 it. It's kind of -- here, please take that.
7 (Handing.) Look at just everything up to the
8 subsection -- including subsection (3) under (A).
9 A. Okay. (Witness complies.)
10 Q. What does (3) refer to?
11 A. The physician summoned by the warden of the
12 institution at Louisiana State Penitentiary. That's
13 one of the witnesses, yes.
14 Q. Oh, that's one of the witnesses.
15 A. Correct.
16 Q. Okay. So without going into other
17 identifying detail with employee or not --
18 A. Uh-huh.
19 Q. Is that person -- is that person the same
20 person or not? Can you tell us that?
21 A. It might have been and might not have been.
22 Depends upon the occasion.
23 Q. I understand. Thank you very much. Okay.
24 MR. CLEMENTS: With the stipulation that
25 -- or the clarification, your Honor, that we reserve
26 the right to have this witness examined further after
27 examining this document that we have received today,
28 we tender the witness.
29 MR. FISH: The State has no questions,
30 your Honor.
31 THE COURT: All right. And the Court
32 notes the statements by Mr. Clements as to the fact

1 that this witness may be called later. It was
2 discussed between the Court and counsel that further
3 pleadings may become necessary in re-calling some of
4 the witnesses.

5 MR. CLEMENTS: Yes, your Honor.

6 THE COURT: This witness may step down.
7 And the Court understands that he is free to go at
8 this time.

9 MR. CLEMENTS: Yes, your Honor. If --
10 and I am not sure. Maybe I'm just not -- I just want
11 to be super careful that this witness is understanding
12 that they are not allowed to discuss their testimony.

13 THE COURT: Was he here with the -- when
14 I placed them under the Rule?

15 MS. ESTOPINAL: I don't think Warden
16 Peabody was here. The original --

17 THE WITNESS: Yes.

18 MS. ESTOPINAL: Were you?

19 THE COURT: Okay. For the record,
20 Mr. Peabody was here.

21 MR. CLEMENTS: Okay.

22 THE COURT: At the time of being placed
23 under the Rule. However, now that we know we have
24 witnesses who may be re-called, I will reiterate the
25 fact that the witness is not to discuss the testimony
26 with anyone except the questions that may be asked by
27 the attorneys. All right. The witness may step down
28 and is free to go.

29 THE WITNESS: Thank you.

30 THE COURT: It's about a quarter to
31 6:00. Do we have other witnesses to call today, or
32 are we going to resume in the morning? Which the

1 Court can do at nine o'clock, I believe. I don't know
2 what -- Mr. Bailiff, have you seen our docket for
3 tomorrow? Do we have one?

4 MS. ESTOPINAL: Your Honor, can we have
5 a minute to --

6 THE COURT: Yes, you may. We are at
7 ease for a few moments. And let me confer about our
8 docket tomorrow.

9 MS. ESTOPINAL: Your Honor, if I could
10 have a moment to find out about the witnesses?

11 THE COURT: You may.

12 (Off the record.)

13 THE COURT: For the benefit of counsel,
14 we don't have any other docket matters, just this case
15 for tomorrow.

16 MS. ESTOPINAL: Your Honor, if I may,
17 the other witnesses now are saying that they would
18 prefer to come back on another occasion because of the
19 lateness of the hour, and they have other obligations,
20 professional and personal. And I assume that's all
21 right with Mr. Clements since that's what he wanted to
22 do in the first place with all of them.

23 THE COURT: Well, we tried to get to who
24 we could on today. And --

25 MS. ESTOPINAL: And I appreciate the
26 Court's attempting to take care of as much as we
27 could. But that is where we currently are, and we've
28 also canceled our depositions for tomorrow. So --

29 THE COURT: Okay. Do I need to speak to
30 the witnesses? Do we need to bring them in the
31 courtroom for me to give further --

32 MS. ESTOPINAL: If you would like, your

1 Honor, I'll --
2 MR. CLEMENTS: That would probably be
3 good.
4 MS. ESTOPINAL: I'll call them in.
5 MR. CLEMENTS: They would probably
6 appreciate that.
7 THE COURT: All right.
8 MR. CLEMENTS: They have heard so many
9 different things that they would probably like to hear
10 it.
11 (Witnesses ushered in.)
12 THE COURT: All right. For the three
13 gentlemen who just came in, we still have Mr. -- the
14 last witness, he has already testified. Gentlemen, we
15 appreciate your patience and your diligence in being
16 here. We were going to try to get to you this evening
17 or else get you back in tomorrow for your testimony.
18 We understand that you would prefer not to have to
19 come back tomorrow. And due to the lateness of today,
20 we won't be able to get to all three of you.
21 I want to remind you that are not to discuss this
22 case or your testimony with anyone unless either of
23 the attorneys has a question for you. And further,
24 you will be resubpoenaed at a later date, and that
25 date at this time we do not know. But you will be
26 notified when you have to come back to testify. Go
27 ahead.
28 MR. CLEMENTS: Your Honor, I just want
29 to convey on behalf of the witnesses that one of the
30 issues that they did talk about for this contingency
31 was consideration by the Court of the distance of
32 their travel, that a time of their appearance be set

1 such that they don't have to appear necessarily for
2 9:30 in the morning.

3 THE COURT: I understand. And that's
4 just what our subpoenas say because that's when our
5 docket starts. But that's flexible, you know, to the
6 extent of counsel who are actually the people
7 subpoenaing the people.

8 MR. CLEMENTS: Yeah. We will work it
9 out.

10 THE COURT: We'll work -- the Court will
11 work with you the best that I can and try to
12 accommodate you. And, again, we do appreciate your
13 patience and your diligence with us this week.

14 Also if -- you may need to see the clerk if you
15 are here tomorrow. The clerk would not be available
16 today. But anything that we can do to help you along
17 those lines, we would be willing to do that. Is there
18 anything -- any other request by counsel with regard
19 to these three gentlemen?

20 MS. ESTOPINAL: I don't think we have
21 anything else, your Honor. Perhaps we could -- if the
22 Court is -- has some time free in the morning, perhaps
23 counsel could meet with your Honor about picking the
24 next dates?

25 THE COURT: Scheduling?

26 MS. ESTOPINAL: Yes. Yes, ma'am.

27 THE COURT: That's fine with the Court.
28 But, gentlemen, thank you very much for coming. You
29 will be resubpoenaed. We will help you in getting the
30 nominal fee from the clerk and be of any assistance
31 we can with that for you on tomorrow. And other than
32 that, you are free to go. And thank you very much.

1 THE WITNESSES: Thank you, your Honor.
2 THE COURT: All right. You are welcome,
3 sirs. And, again, thank you for your patience.
4 MS. ESTOPINAL: Your Honor, also since
5 we are not going to be having any more court
6 proceedings at this time, I would ask that the Court
7 order the prisoner be taken back to Angola as soon as
8 possible.
9 THE COURT: So ordered. So what time do
10 y'all want to meet with me tomorrow with your
11 calendars? I'm available basically all day.
12 MR. CLEMENTS: For tomorrow?
13 THE COURT: Yeah. Want to come for
14 nine o'clock, 9:30?
15 MR. CLEMENTS: Nine o'clock is fine with
16 us.
17 THE COURT: Nine o'clock?
18 MS. ESTOPINAL: Nine o'clock is fine,
19 your Honor.
20 THE COURT: All right. Just come to my
21 office at nine o'clock and we will pick subsequent
22 dates. Thank you everyone. Everyone have a good
23 evening.
24 MS. ESTOPINAL: Thank you, your Honor.
25 MR. CLEMENTS: Thank you, your Honor.
26 (END OF PROCEEDINGS.)
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REPORTER'S CERTIFICATE

STATE OF LOUISIANA:
PARISH OF CADDO:

I, Joyce A. Wheeler, Registered Professional Reporter, Certified Court Reporter, and Official Court Reporter in and for the First Judicial District Court of Caddo Parish, State of Louisiana, do hereby certify that the foregoing represents a true and accurate transcription of the proceedings had in said court and were reported by me to the best of my knowledge and ability.

SUBSCRIBED AND SWORN TO on this the 10th day of March, 2003.

Official Court Reporter R, CCR