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REFILED DOC. NO. 163
REVISED PURSUANT TO
ORDER OF THE COURT,
DOC. NO. 211, SEPT. 14, 2006

24 **IN THE UNITED STATES DISTRICT COURT**
25 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
26 **SAN JOSE DIVISION**


27 MICHAEL ANGELO MORALES,
28 Plaintiff,

vs.

JEANNE WOODFORD, Secretary of the
California Department of Corrections;
EDDIE YLST, Warden, San Quentin State
Prison, San Quentin, CA; and DOES 1-50,
Defendants.

) CASE NO. C 06 0219 (JF) (RS)
) C 06-926 (JF) (RS)

) JOINT PRE-HEARING CONFERENCE
) STATEMENT

) 
) HEARING DATE: Sept. 26, 2006
) TIME: 9:00 a.m.
) COURTROOM: 3

1 Pursuant to the Court's Order Scheduling Evidentiary Hearing and Pre-
2 Hearing Conference dated August 11, 2006, and the Standing Order re Pretrial
3 Preparation, the parties submit the following joint pre-hearing conference statement:
4

5
6 SUBSTANCE OF THE ACTION
7

8 Whether defendant CDCR's Operational Procedure 770 and the manner in
9 which it is performed by defendants violate plaintiff's rights under the 8th Amendment
10 of the U.S. Constitution.
11

12
13 RELIEF SOUGHT
14

15 Plaintiff seeks an order barring defendants from utilizing Operational
16 Procedure 770 and barring defendants from employing the manner and method in which
17 it performs the protocol with respect to his execution.
18

19
20 FACTUAL BASIS OF THE ACTION
21

22 (1) Undisputed Facts (Although not disputed, defendants reserve the right to object to the
23 admissibility of all facts marked "**").

- 24 1. No Warden has approved and signed Operational Procedure 770, March 6,
25 2006.
26 2. Defendants concluded that the modifications to Operational Procedure 770,
27 March 6, 2006, will allow a lethal injection execution to proceed more quickly and
28 efficiently. The changes were not made from any concern about the effectiveness or

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1 constitutional of the former procedure (Supp. Response to Interrogatory #6).

2 3. Defendant CDCR employs the people who execute inmates for the State of
3 California. These people are execution team members. Typically there are up to 14
4 members on the team.
5

6 4. The teammates select replacement members to the team as needed by
7 unanimous vote by the team, and thereafter solicit the new members to join the team.
8

9 5. There are no doctors on the execution team.

10 6. Currently, there are no Registered Nurses ("RN") on the execution team,
11 and there are no requirements that an RN be on the team.
12

13 7. Warden Arthur Calderon presided over four lethal injection executions. At
14 one time, Calderon claimed he personally selected all the teammates that conducted
15 executions when he was Warden.
16

17 8. Jeanne Woodford was Chief Deputy Warden at San Quentin in 1998 and
18 was responsible for the day-to-day operations of San Quentin. Woodford became
19 Warden in 1999. At one time, Warden Woodford claimed she personally assured herself
20 that each member of the execution team had a high degree of skill, competence,
21 professionalism, patience, and stability necessary to be on the team. Warden Woodford
22 presided over four lethal injection executions. Woodford was the Secretary of CDCR
23 during the scheduled execution of Michael Morales on February 21, 2006.
24

25 9.* Witness #5, a licensed peace officer employed as a guard at San Quentin
26 State Prison, was terminated by defendant CDCR, then reinstated with a five-month
27 suspension without pay for bringing illegal narcotics into San Quentin State Prison.
28

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1 10. Thereafter, Witness #5 was approved by Wardens Calderon and Woodford
2 for membership on the execution team, was selected by Warden Calderon to be the
3 execution team leader after Witness #10 was removed from the team. Witness #5 has
4 participated in 10 California executions, and was the team leader for the last eight
5 California executions.
6

7
8 11. Warden Ornoski left it to Witness #5 to select the teammates. Warden
9 Ornoski presided over the executions of Stanley Williams and Clarence Ray Allen, and
10 the scheduled execution of Michael Morales on February 21, 2006.
11

12 12. Witness #5 did not review the personnel files of any team members before
13 extending invitations to them to join the team. Witness #5 never periodically reviewed the
14 personnel file of any execution team member while he was the execution team leader.
15

16 13.* In 1995, Witness #1 was diagnosed with psychiatric disorders, including
17 clinical depression and Post-Traumatic Stress Disorder as a result of years of working in
18 the prison system. Witness #1 was found to be mentally disabled and could not attend
19 work at CDCR for several months. Witness #1 was treated for these psychiatric disorders
20 from 1995 to 1998.
21

22 14.* In 1998, Witness #1 was arrested and convicted for driving a vehicle while
23 intoxicated in Sacramento County. His blood alcohol level was 0.12 – 50 percent over the
24 legal limit. This conviction was reported to defendant CDCR, and thereafter became part
25 of Witness #1's disciplinary record at CDCR.
26

27
28 15.* Witness #1 has participated in the executions of eight inmates between 1999
and 2006.

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1 16.* In January 2006, Witness #1 again was diagnosed to be clinically depressed,
2 and was prescribed 300 mg of daily anti-depressant medication. At the time, Witness #1
3 had been elevated to be the co-team leader of the execution team. Among other things, he
4 was responsible to observe the mixing of the thiopental sodium for the execution of
5 Clarence Ray Allen in January 2006. While clinically depressed and medicated, Witness
6 #1 participated in Allen's execution in a learning position to take over as team leader.
7
8

9 17. Execution team members are not required, upon entry to the execution team,
10 to undergo psychological testing.
11

12 18. The team leader gives all directions to the execution team during an
13 execution; all team members are under his direction. It is important to have an execution
14 team leader in charge who is able to give clear and concise direction as to what the team
15 ought to be doing.
16

17 19.* In February 2006, Witness #1 became the sole team leader for the execution
18 team, and for the execution of Michael Morales scheduled for February 21, 2006. On
19 February 20-21, 2006, Witness #1 still was receiving treatment for clinical depression, and
20 was taking his daily dose of 300 mg of prescribed anti-depressant medication as he led the
21 execution team for 24 hours.
22

23 20.* Witness #13 is another execution team member who has been convicted of
24 drunk driving charges. This conviction was reported to defendant CDCR and was known
25 by team leader Witness #1. Neither defendant CDCR nor Witness #1 took any action to
26 preclude Witness #13's subsequent participation in the executions of Donald Beardslee,
27
28

1 Stanley Williams, Clarence Allen, and/or the scheduled Michael Morales execution as a
2 result of this conviction.
3

4
5 21.* Witness #5, the team leader for the last eight California executions, regularly
6 worked in the condemned inmate areas of the prison since 1978, including in the
7

8 [REDACTED] Witness #5
9 worked "substantial" hours in all of these areas, [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 22.* From about 1982 to 1987, Witness #5 worked [REDACTED]

14 [REDACTED] In that period of time, every condemned inmate [REDACTED]
15 San Quentin State Prison [REDACTED] including
16 plaintiff.
17

18 23.* Over the past several years, Witness #5 worked [REDACTED]
19 [REDACTED] where plaintiff is housed. [REDACTED]
20

21 working per each watch.

22 24.* Since being the execution team leader, Witness #5 was disabled from work
23 – requiring a number of medical appointments for a couple of years – as a result of
24 injuries sustained in a physical altercation with an inmate.
25

26 25. The RNs and LVNs on the execution team sometimes work in the
27 condemned prisoner area of San Quentin, and condemned inmates are treated by the RNs
28 and LVNs where they work in the prison.

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1 26. The execution team uses regular saline or water in the syringes during
2 training or practice sessions. The execution team does not practice mixing thiopental.

3
4 27. Between January, 1996 and January 18, 2006, five grams of thiopental were
5 used in an execution. A single back up syringe of thiopental was prepared for each
6 execution which contained 1.25 grams.

7
8 28. Starting with the Siripongs execution and for every execution thereafter, the
9 procedure changed to using four syringes of sodium thiopental, each containing 1.25
10 grams of sodium thiopental.

11
12 29. Prior to the execution, the execution team trains two times a week leading
13 up to the week before the scheduled execution. The team then comes off post and trains
14 continuously, eight hours a day, a week before leading up to the execution. The team goes
15 through it "over, and over, and over," at least seven or eight times in the course of two
16 hours. It is important that everybody is comfortable with their roles and what they are
17 doing.

18
19
20 30. Execution practice sessions consist of meetings and dry runs through the
21 procedure exactly as it is expected to proceed at an execution, except that the thiopental is
22 not actually mixed into solution; the catheters are not inserted into anyone's veins; water
23 is used in the syringes and IV bags; the IV lines empty the fluid into a bucket; the RN
24 typically takes the position of the Warden; and team members simulate the position of the
25 inmate.

26
27
28 31. There are no documents that are referred to at the training or generated
during the training. No one takes down any notes while the training is going on.

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1 32. For each execution, the lethal drugs are mixed by the medical members of
2 the execution team (RNs and LVNs), along with the person charged with administering
3 the drugs and the team leader.

4
5 33. During the last eight California executions, there were no practice sessions
6 where people practiced mixing Pentothal. Witness #1 has not been trained in mixing the
7 drugs. Witness #1 was responsible to ensure that the drugs are mixed correctly.

8
9 34. The first time Witness #4 mixed Pentothal was on the evening of a
10 scheduled execution. Prior to mixing Pentothal for an execution, Witness #4 had never
11 received any training in doing that. On each of the four occasions when Witness # 4
12 mixed the lethal drugs, he would mix the drugs with Witness #1. Witness #4 observed
13 that when the Pentothal is mixed, it is a yellowish, brownish tan color.

14
15 35. The packaging material for each 500mg vial of Pentothal states that each
16 500mg of thiopental sodium is to be dissolved in 20 mL of sterile water. Accordingly,
17 one gram of Pentothal is to be dissolved in 40 mL of sterile water.

18
19 36. The new Operational Procedure 770, March 6, 2006, provides that 5 Gm of
20 Sodium Pentothal will be mixed thoroughly with the 250 mL bag of Sodium Chloride
21 (saline).

22
23 37. In the new Operational Procedure 770, March 6, 2006, the thiopental drip is
24 set at a rate such that it will last 20 to 30 minutes for all the fluid to run out.

25
26 38. The drip rate for the IV saline bags is set by the team member who
27 administers the drugs.
28

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1 39. The saline drips are set so that the MTAs can tell from looking at the IV drip
2 whether they have successfully placed the catheters.

3
4 40. The packaging material for each 500mg vial of Pentothal provides: Store at
5 controlled room temperature 15° to 30°C (59° to 86°F). See USP. Keep reconstituted
6 solution in a cool place.

7
8 41. Under new Operational Procedure 770, March 6, 2006, an IV drip bag
9 containing five grams of thiopental sodium is to be hung above the execution chamber
10 with two other IV bags. The drugs are to be mixed sometime after 11:00 p.m. The IV bag
11 is then placed at a distance of roughly six to nine inches from a lamp fixture consisting of
12 an incandescent light bulb with red glass and a silver, cylindrical reflective metal sheath.
13 On the night of a scheduled execution, this lamp is turned on at approximately 11:40 p.m.

14
15 42. While the execution team attempts to begin the execution fairly close to
16 midnight, the execution sometimes does not start until a little later. The execution team
17 did not begin to administer Pentothal until 12:22 a.m. during the execution of Stanley
18 Williams, and until 12:18 a.m. in the executions of Donald Beardslee and Clarence Allen.

19
20 43. The anteroom is the location where the execution team administers the lethal
21 drugs into the IV lines during an execution. The room would “comfortably
22 accommodate” 16 or 17 people, “but certainly not any more than that.” Hon. J. Fogel RT
23 3/30/06 at 185; see also 122. During an execution, however, there are a few more than
24 that. Dr. Calvo testified that there are “so many people . . . in the room that you didn’t
25 even know who they were and [why] they were there.” Warden Ornoski reports that he
26 would “shuffle from side to side a foot or two, but I mean, it’s fairly crowded back there.
27
28

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1 There's not much room for me to maneuver." During Clarence Allen's execution, "it was
2 even more crowded at that time, and I don't believe I could move from my spot much, if
3 any."
4

5 44. During Stanley Williams' execution, Dr. St. Clair noted that "[s]ome big
6 fellow from Sacramento" "was in [his] way." "[I]f I recall, I'm holding a clipboard, and
7 he kind of hit me . . ." The same individual stood in front of Dr. St. Clair during the
8 execution of Clarence Allen. "[O]ne of the problems with the big guy was not only was
9 he [was] blocking -- he'd block this way, but he'd block the light that comes from that
10 little room that helped to allow me to see what I'm doing."
11

12 45. During Stanley Williams's execution, a "rather large" CDCR official was
13 standing in front of the antechamber window to the execution chamber. The large man
14 did not take any part or role in the execution of Mr. Williams. Witness #4 was attaching
15 the syringe of lethal drugs from the cart to be administered to Stanley Williams to the
16 stopcock, and the large man "was standing in Witness #4's way. Witness #4 had to nudge
17 him a couple of times because it was a territorial imperative. He was a large gentleman,
18 and he was tending to take up more and more space. Dr. St. Clair stood behind this large
19 person.
20
21
22
23

24 46. It "was a packed house" during the Thompson lethal injection execution.

25 47. The three phones in the anteroom of the execution chamber are dedicated to
26 the clerk at the state Supreme Court, the Attorney General's office, and to the prison's
27 operations center.
28

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1 48. The inmate is then restrained on the gurney with restraints on the wrist,
2 shoulders, across the chest, over the waist and through the groin area. Some execution
3 team members depart from the chamber before catheters are inserted into the inmate.
4

5 49. Catheters are regularly set in the inmates' arms by LVNs during executions.
6 Witness #3, a LVN, has set catheters in seven of nine executions since he has been on the
7 execution team. He has set the catheter in the inmate's right arm in, among others, the
8 executions of Donald Beardslee, Stanley Williams, and Clarence Allen. Witness#3 only
9 recalls setting the catheter in the inmate's left arm on one occasion.
10

11 50. Witness #4, a LVN, set a catheter in Donald Beardslee's left arm for his
12 execution, after initially blowing the inmate's vein.
13

14 51. Witness #3 and Witness #4 were assigned to set the catheters in Michael
15 Morales during his scheduled February 21, 2006 execution.
16

17 52. There were no medically licensed individuals on the execution team for the
18 scheduled execution of Michael Morales other than Witness #3 and Witness #4.
19

20 53. Witness #4 may have read 10 or 12 pages of Procedure 770, but only once
21 and only after Beardslee's execution. Witness #3 never has read Procedure 770. Dr.
22 Calvo, who was present for the executions of Keith Williams, Babbitt, Siripongs,
23 Anderson, Rich, Massey, and Stanley Williams, and perhaps others, has not read
24 Procedure 770.
25

26 54. The doctors present at executions do not have any supervisory
27 responsibilities during the execution. The LVNs do not act under the direction of a
28

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1 physician during an execution. The setting of these catheters is performed in the execution
2 chamber.

3
4 55.* Witness #3 never has taken any course work or training to become an RN.
5 He was trained to set catheters [REDACTED] over 14
6 years ago. [REDACTED] instructional training regarding setting catheters took place all
7 within a minute. As an LVN at CDCR for the past 11 years, Witness #3 has received no
8 medical training from CDCR.
9

10 56.* LVNs do not set catheters at San Quentin's Treatment and Triage Area
11 ("TTA"); that is the responsibility of a registered nurse or physician. General anesthesia
12 is not applied in the TTA.
13

14 57.* It is very infrequent that an IV line is placed in an inmate in the medical
15 units at San Quentin other than in the TTA.
16

17 58.* Witness #3 is a LVN assigned to [REDACTED]

18 59.* Witness #4 is a LVN assigned to [REDACTED]

19 60.* Fourteen years ago, Witness #3 practiced setting catheters [REDACTED]
20 [REDACTED] After demonstrating three successful venal punctures or IV starts,
21 Witness #3 became certified by CMF to start IVs as a LVN. Witness #3 has no estimate
22 regarding how long his CMF IV training or IV course lasted, and he does not know upon
23 whom he set the catheters.
24
25

26 61. An LVN who is training for an execution does not practice setting the
27 catheter in the simulated inmate's arm; they tape the catheter to the outside of the
28 simulated inmate's arm.

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1 62. Procedure 770 requires that two catheters be properly set in the inmate and
2 operating before an execution begins.

3
4 63. During the Massie execution, there was a difficulty with one of the IV lines.

5 64. For the executions of Keith Williams, Bonin, Siripongs, Thompson, Rich,
6 Babbit, Massie, and Anderson, respirations were measured by Dr. Calvo who has
7 observed and counted respirations for almost 40 years.

8
9 65. For the executions of Keith Williams, Bonin, Siripongs, Thompson, Rich,
10 Babbit, Massie, and Anderson, Dr. Calvo measured respirations by watching the inmate
11 for a full minute and counting the number of respirations.

12
13 66. When measuring respirations, Dr. Calvo started when he heard the
14 instruction for each of the three drugs given.

15
16 67. When recording respirations, Dr. Calvo recorded rhythmic breathing
17 movements at a certain rate.

18
19 68. When observing the execution of Manuel Babbit, Dr. Calvo noted shallow
20 respirations after the administration of pancuronium that were at the same rate as
21 previously noted, but were not deep breaths.

22
23 69. When observing Manuel Babbit, Dr. Calvo noted spasmodic, jerking
24 movements of the upper abdomen and chest area one minute after the administration of
25 the pancuronium which lasted a minute, after which all breathing stopped.

26
27 70. When observing the execution of Darrell Rich, Dr. Calvo noted that after
28 respirations ceased, Mr. Rich had what Dr. Calvo characterized as agonal breathing
movement which was not rhythmic one minute after the administration of the

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pancuronium, that lasted a minute at least but could have been two minutes, which he considered to be unusual.

71. The saline flush administered after the sodium thiopental flushes the remaining sodium thiopental in the tubing into the inmate.

72. For the executions of Keith Williams, Bonin, Siripongs, Thompson, Rich, Babbit, Massie, and Anderson, Dr. Calvo observed the administration of a saline flush before the administration of the pancuronium and before the administration of the potassium chloride, and after the administration of the potassium chloride.

73. For the executions of Stanley Williams and Clarence Allen, Dr. St Clair measured breathing by counting breaths for 15 seconds and multiplying by four.

74. Inmates are evaluated prior to execution to determine if they have useable veins. They are not evaluated to determine if they have any condition or characteristic that may alter the effect of any of the drugs administered during the lethal injection process.

75. When the Warden orders the execution to commence, the execution team is required to first administer Pentothal to the inmate. To do so, an execution team member selects a syringe from the top of a cart where syringes containing Pentothal, pancuronium bromide, sodium chloride, and saline are placed.

76. When a syringe is selected, it is inserted into a stopcock on the outside wall of the execution chamber and the syringe's contents are plunged into the stopcock, which is attached to an IV line that flows from an IV bag of saline hung on top of the execution chamber to the stopcock and then through the execution chamber wall to a catheter set in the inmate's arm.

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1 77. Witness #3, the LVN who has participated in seven of the last nine
2 executions, believes that in each instance, he selected the syringe from the cart – including
3 during the Stanley Williams and Clarence Allen executions – and passed it to another
4 LVN for insertion into the stopcock, then the empty syringe was returned to him and he
5 made the selection of the next syringe from the cart. Witness #3 has practiced this with
6 the team “over, and over, and over.”
7

8
9 78. Witness #4, the other LVN who has been scheduled to participate in five
10 executions and participated in the Beardslee, Stanley Williams, and Allen executions,
11 believes that in the Williams and Allen executions, he selected the syringes off the cart for
12 insertion into the stopcock, and then he returned the empty syringes to the cart before
13 selecting the next syringe.
14

15
16 79. Infiltration is when the IV catheter delivers fluid into the tissue surrounding
17 the vein. Witness #4 believes the arm will swell up, but not before 10 or 15 minutes.
18

19 80. Once an RN or LVN places the catheter, they leave the chamber and the
20 chamber door is closed. The left IV – which will need to be used in the event the right IV
21 fails – is not monitored by the execution team for infiltration during an execution.
22

23 81. Only one LVN or RN is positioned in a spot that they are able to see into the
24 chamber area to the right arm where the primary IV is set.

25 82. Witness #4 handled the syringes for both the executions of Stanley Williams
26 and Clarence Allen. Witness #4 neither practiced nor was trained by CDCR on how to
27 make a visual inspection of the IV lines during the executions.
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83. Witness #3, the LVN who has set catheters in seven of the last nine executions, cannot see the inmate above the waist from where he stands in the anteroom during an execution and cannot see the inmates' arms.

84.* Witness #4 was trained as an LVN [REDACTED] to examine catheters to see whether infiltration was occurring. Catheter inspections were part of his regular routine. These IVs would be the same as used during the execution. In every instance, Witness #4 was taught to get as close as you can get to the patient; bedside; no farther than arms length; touching their arm if necessary. In all instances, Witness #4 would get much closer than in the case of an execution. Witness #4 can get no closer than eight feet from the inmate's catheter during the execution, and is in a separate room with "subdued lighting" looking through a window.

85. During Stanley Williams's execution, both an RN and Witness #3, a LVN, inspected a catheter setting while inside the chamber and concluded that it was set properly, when in fact it was not. Standing outside the execution chamber, Witness #4 could not tell whether the catheter was set properly – the only way he could tell whether or not it was successful was by the way the RN reacted to it. It was not based in any part on his observation of the IV or the catheter itself. Witness #4 was not sure whether it was set properly.

86.* Witness #3 was trained [REDACTED] to monitor the flow of an IV by having the IV bag and drip chamber above the person that you're starting an IV on, and then stand right next to it – within a foot. The IV drip bag and the drip chamber during an execution are located above the execution chamber, approximately nine to 10 feet off the

1 ground, accessible only in the anteroom to the execution chamber. The catheter, the
2 inmate, and IV tubing are located inside the execution chamber. The length of IV tubing
3 is approximately 11 feet for each line inside the chamber, from the point at which the line
4 goes through a hole in the chamber wall to the catheter placed at the inmate's elbow.
5

6 87.* Witness #5, the former execution team leader, never received any training in
7 infiltration. Witness #5 was the person who trained the next team leader, Witness #1, on
8 how to administer lethal drugs. The only other person to train Witness #1 in this regard
9 was the RN [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 [REDACTED]
13 [REDACTED] This is the same RN who improperly
14 set the catheter in Stanley Williams, failed to recognize it was not set properly, and then
15 failed to advise Witness #5 of this failure until after the execution.
16

17 88.* Witness #5 and Witness #1 are friends. Since Witness #5 [REDACTED]
18 communicates with Witness #1 by e-mail and telephone. They discuss what is going on at
19 San Quentin, [REDACTED] Witness
20 #1 told Witness #5 that he had his deposition taken in this case, and they discussed his
21 deposition before Witness #5 appeared for his deposition. Witness #1 and Witness #5
22 discuss family issues. Witness #1 recently has called Witness #5 from the airport to
23 discuss a very personal family crises which Witness #5 is unable to share. Witness #5
24 communicated about the scheduled execution of Michael Morales by e-mail with Witness
25 #1 on three occasions. Witness #5 does not have access to those e-mails.
26
27
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1 89.* Witness #5 obtained copies of the depositions of Witness #3 and Witness #4
2 before he appeared for his deposition. When he obtained these deposition transcripts, they
3 were both in the possession of Witness #3.

4 90. Witness #1 never has had training on how to feel for a clogged IV when
5 pushing on a syringe nor about instances where IVs can become clogged after they've
6 started dripping.

7 91. The execution team does not practice removing bubbles in an IV line during
8 training. There is no procedure that goes into effect should someone note a bubble in the
9 IV line during an execution.

10 92. No member of the execution team monitors the inmate's anesthetic depth
11 during an execution.

12 93.* Anesthesiologist #2 ("A2") was requested by Darc Keller, Assistant
13 Secretary, Office of Health Care Policy for defendant CDCR, to participate in the
14 scheduled execution of Michael Morales pursuant to the February 14, 2006 order of the
15 Hon. Jeremy Fogel.

16 94.* A2 was advised by Keller that they needed a "backup" anesthesiologist to be
17 present for the execution. A2 "asked, 'What would that entail?'" and Keller advised,
18 "That would entail nothing."

19 95.* A2 inquired, "What do you mean by 'nothing'?" and Keller advised that he
20 "would simply be there to observe. You would have no responsibilities."

21 96.* A2 "wasn't to go through training" because he "had no responsibilities."
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97.* A2 agreed to be present as a backup after confirming his understanding that he would not be in the chamber, that he would have no responsibilities other than to be present.

98.* A2 never had any understanding that he was ever to give any professional opinion.

99.* A2 had no understanding that “if there was a problem with the primary anesthesiologist, [his] role would escalate to something else.”

100.* On the Saturday before the scheduled execution of Michael Morales, A2 attended an execution rehearsal at San Quentin. A2 never was given a copy of execution Protocol 770 to read; he didn’t know there was such a thing. A2 was not given any pharmaceuticals to review that were kept at San Quentin, any former execution logs, or medical devices, and he brought no medical equipment to the prison.

101.* A2 did not provide any advice on how to prepare Pentothal, how to set a catheter, how to operate the IV system, how to use the stopcocks, how they could do an execution better or the amount of Pentothal that should be used.

102.* A2 never has induced general anesthesia from a remote location, nor seen anyone do it.

103.* A2 provided no advice regarding the methods of using the syringes or comment on the location of the IV bags.

104.* At the rehearsal, A2 was in the anteroom of the execution chamber, and was told to stand in the corner, and he did. As you walk into the anteroom, circle all the way around to the end of the circle, and A2’s location was in the far right-hand corner. A2

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1 could not see into the chamber from where he was standing. He stayed there for an hour,
2 and never relocated himself.

3
4 105.* A2 does not recall what transpired during the rehearsal because he wasn't
5 paying that close attention. A2's observations of the rehearsal were limited because he
6 chose not to pay much attention.

7
8 106.* It was A2's assessment, based upon his conversations with Darc Keller of
9 CDCR, that CDCR was requesting his presence merely as a "warm body." A2 had no
10 plans to do anything but stand there. The only instruction A2 had was to stand there,
11 given by the warden. That's the only order he ever received.

12
13 107.* At the rehearsal on February 18, 2006, A2 was handed a headset, and was
14 told to tell Dr. Singler that he was signaling the patient was unconscious. That was the
15 first time A2 learned that he was going to be asked to perform this role. This was not
16 consistent with A2's role as he understood it, and he refused to perform the role.

17
18 108.* Thereafter, the warden approved A2's request to be allowed, during the
19 execution, to stand in the small room off the anteroom where the lethal drugs are mixed –
20 an area where it would be impossible for A2 to see into the execution chamber.

21
22 109.* When A2 left San Quentin on February 18, 2006, it was his understanding
23 that, in attending the execution of Michael Morales scheduled for February 21, 2006, he
24 would have to do nothing other than show up at the prison and stand in that little room.

25
26 110.* Darc Keller, Assistant Secretary, Office of Health Care Policy for defendant
27 CDCR, used CDCR funds to pay A2 his normal anesthesiology fee for these services.
28

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1 111.* On February 20, 2006, A2 arrived with Dr. Singler at San Quentin at 8:00
2 p.m., and within the first one minute, before he sat down, Bruce Slavin from CDCR said,
3 “we have a problem.” Slavin proceeded to show A2 the first document A2 ever saw in
4 writing of a court order describing the expectation of Dr. Singler and A2.
5

6 112.* After reading two pages of the February 19, 2006 order from the Ninth
7 Circuit in this case, A2 immediately stated: “I can’t participate -- I can’t proceed.” Dr.
8 Singler concurred.
9

10 113.* A2 absolutely never gave anyone any reason to believe after 8:15 p.m. on
11 Monday night, that he was going to be present during the execution.
12

13 114.* A2 left San Quentin around midnight or 1:00 a.m. CDCR did not advise
14 Michael Morales that it was not proceeding with the scheduled 12:01 a.m. execution until
15 after 2:36 a.m. Neither CDCR nor the Attorney General ever advised Michael Morales’s
16 counsel that CDCR was not proceeding with the scheduled 12:01 a.m. execution until
17 after 2:45 a.m., when counsel was advised by Lt. Vernell Crittendon of CDCR.
18

19 115.* In response to the Court’s February 14, 2006 order, a meeting lasting
20 approximately an hour to an hour and a half took place in Sacramento for CDCR to
21 review its lethal-injection protocol.
22

23 116.* The meeting was called by the Governor’s legal affairs director, Andrea
24 Hoch, and was attended by Robert Singler, M.D., Dane Gillette, Andrea Hoch, Steven
25 Ornoski, Bruce Slavin, Dan Maguire, Tami Bogert, Peter Szkrenyi, and Darc Keller.
26
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1 117.* All present had read a copy of this Court's February 14, 2006 order, and
2 appeared to be familiar with this Court's respectful suggestion to CDCR that it review its
3 lethal-injection protocol.
4

5 118.* At the conclusion of the meeting, no one was assigned any tasks or
6 responsibilities to take any further action in this regard. Warden Ornoski knows of no
7 other actions taken by CDCR with respect to the Court's suggestion. Warden Ornoski left
8 that meeting with the belief that the issue would be resolved at the hearing by this Court
9 and that CDCR would be told by the Court what its new procedure was going to be.
10

11 119.* Warden Ornoski requested that Dr. Thomas Rosko, the San Quentin Chief
12 Psychiatrist and a former anesthesiologist, assist in revising Operational Procedure 770.
13

14 120.* Dr. Rosko's task was to devise the procedures to employ for the infusion of
15 sodium thiopental. At that time, Dr. Rosko believed that the initial bolus dose would be
16 5000 milligrams of sodium thiopental.
17

18 121. No state other than California uses a bolus dose of sodium thiopental that is
19 less than 2 grams.
20

21 122. Texas uses 3 grams of sodium thiopental during an execution.
22

23 123.* Dr. Rosko performed 15 minutes of research on the Internet to determine the
24 concentration of sodium thiopental to be in the infusion, and the drip rate.

25 124.* During Dr. Rosko's Internet search, he did not have access to a Medline
26 account that would allow him to review entire articles in certain journals.
27

28 125. Inmates Allen, Anderson, Massie, and Siripongs received a second dose of
potassium chloride during their executions.