

**IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

NORMAN TIMBERLAKE,)	
)	
Plaintiff,)	
)	No. 1:06-cv-1859-RLY-WTL
v.)	
)	
ED BUSS,)	
)	
Defendant.)	

DEFENDANT’S RESPONSE TO DISCOVERY

Defendant Buss, by Steve Carter, Attorney General of Indiana, by his deputy, Thomas D. Quigley, Deputy Attorney General, although mindful of the Court’s local rule proscribing filing of discovery materials, submits the instant response to the plaintiff’s discovery due to the accelerated discovery schedule and the expected unavailability at this time of the plaintiff’s counsel. The defendant believes that, under the circumstances, the Court and the parties are best served by filing this response with the Court.

Except with respect to the information submitted *infra*, the defendant OBJECTS to the plaintiff’s discovery, a copy of which is attached hereto, for the following reasons:

During the telephonic conference conducted at noon on January 3, 2007, the plaintiff was asked to identify the discovery he would require. The plaintiff responded that he desired to know the rules regarding the manner in which the death penalty is carried out. He stated that he wanted to know which drugs will be administered and the basis for the decision. He stated that he wanted to know the qualifications of the persons who would be responsible for inserting the

intravenous tubes used to carry the substances, and to know the standards for determining which blood vessels would be used.

These matters were in keeping with the complaint, in which the plaintiff seems to raise two basic issues. The plaintiff seems to want to determine that the State of Indiana will use adequate quantities of the substances it will inject to insure that he does not suffer unnecessarily; and he wants to establish that those substances enter his bloodstream in a timely manner, which he tacitly contends depends upon a properly qualified person or persons using a blood vessel or vessels adequate to the task. When the Court asked the plaintiff to state his goals orally, however, the plaintiff failed to do so.

The Court then advised the defendant to be prepared to submit documents regarding the substances that would be used and the quantities of those materials. The Court suggested that the parties agree as to maintaining the confidentiality of information submitted by the defendant. At the defendant's request, the Court ordered the plaintiff to put his discovery request in writing and to submit it within 48 hours. The Court afforded the defendant 48 hours thereafter to respond to the plaintiff's request.

The plaintiff complied with the Court's deadline by electronically transmitting a request for production by noon on Friday, January 5, 2007. That request consists of 24 requests for production that, together with qualifications and specifications, consume more than 8 pages of typed materials. A copy of the request is attached to this response.

The requested materials vastly exceed the scope of the discovery as discussed on January 3 and as contemplated by the defendant's counsel, and they exceed the scope of discovery warranted by the limited issues reflected in the complaint. The 24 requests seek materials that em-

employees of the Department of Correction would reasonably require 60 days, not 2 days, to assemble, compile, assess, review, and transmit.

In a sentence, the requested discovery is unreasonable, overbroad, and grossly unduly burdensome, and it seeks information that is neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence. If the plaintiff insists upon discovery of that information, then he has waited too long to file the case at bar. Such a tactic smacks of an attempt at manipulation, and the Court should dismiss this action under the reasoning of *Nelson v. Campbell*, 541 U.S. 637, 649-50, 124 S. Ct. 2117, 2126 (2004), which was cited with approval in *Hill v. McDonough*, 126 S. Ct. 2096, 2104 (2006), that “there is a strong equitable presumption against the grant of a stay where a claim could have been brought at such time as to allow consideration of the merits without requiring entry of a stay.”

Despite the objectionable nature of the whole of the plaintiff’s request, the defendant now provides the following discovery:

1. The defendant tenders herewith a copy of Operation Directive ISP 02-04, which has been redacted to delete references to communication methods, identities of individuals involved in the execution process, offender movement, and internal security. These matters are all beyond the scope of the claims in this case. The nature of each redaction is indicated at the place that the redaction occurs. The defendant is willing to make an unredacted copy of this document available to the Court for its inspection in camera, but object to providing any other party with the same materials absent a court order specifically requiring them to do so.

2. The defendant also tenders herewith a copy of Operation Directive ISP 06-26, a draft of a revised death penalty protocol, redacted in the same way as stated *supra*. This directive was very recently submitted for approval by the administration of the Department of Correction, but

has not yet been approved. The defendant tenders this draft under the same terms as stated with respect to ISP 02-04.

3. The defendant also submits the following information regarding the substances expected to be used for the lethal injection of the plaintiff: Five grams of sodium pentothal, to be followed by 50 milligram of saline solution, followed by 100 milligrams of pancuronium bromide, followed by 50 milligrams of saline solution, followed by 100 milligrams of potassium chloride.

4. The defendant submits the following list of qualifications of the members of the team responsible for placement of the catheters:

A. Subject has served on the execution team for 10 years and has participated in 11 executions. Subject has a background in Emergency Medical Services and Emergency Medical Technician.

B. Subject has served on the execution team for 5 years and has participated in 9 executions. Subject has been trained as an Emergency Medical Technician and served in the military.

C. Subject has served on the execution team for 10 years and has participated in 14 executions. Subject has been trained as an Emergency Medical Technician and served in the military.

D. Subject has served on the execution team for 9 years and has participated in 5 executions. Subject has been trained as an Emergency Medical Technician, and served in the military.

F. Subject has served on the execution team for 10 years and has participated in 14 executions. Subject has background in the private health care industry.

G. Subject has served on the execution team for 9 years and has participated in 13 executions. Subject has been trained as an Emergency Medical Technician, Red Cross First Responder, has a background in the private health care industry and served in the medical area while in the military.

H. Subject has served on the execution team for 10 years and has participated in 14 executions. Subject has a background in Home Hospice, and as an Emergency Medical Technician in the military.

I. Subject has served on the execution team for 10 years and has participated in 14 executions. Subject has been trained in medical services in the military and as an Emergency Medical Technician.

5. The quantities of substances to be used have been determined by surveying the methods and quantities used in other jurisdictions and have been discussed with medical personnel. These quantities are considered to be well above the maximum doses that would ever be required. The defendant is, however, amenable to increasing any or all of them in an effort to resolve this suit.

6. The method of finding a suitable blood vessel and maintaining a flow through that blood vessel are considered to be medical matters that will be addressed through standard medical methods and procedures.

Respectfully submitted,

STEVE CARTER
Attorney General of Indiana

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2007, a copy of the foregoing response to discovery was filed electronically. Notice of this filing will be sent to the following persons by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Brent Westerfeld, Esq.
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I hereby certify that on January 8, 2007, a copy of the foregoing response to discovery was mailed, by first-class U.S. Mail, postage prepaid and properly addressed to the following:

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