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1 PROCEEDINGS

2 MR. FISH: Your Honor, before the Court  
3 is Mr. Nathaniel Code and his lawyers Mr. Gary  
4 Clements and Mr. Sam Sweeney. The State is ready to  
5 proceed. This is Docket No. 138,860-A.

6 THE COURT: So noted. Mr. Clements,  
7 are you ready to proceed?

8 MR. CLEMENTS: Counsel is ready to  
9 proceed.

10 THE COURT: All right. Anything we need  
11 to make of record before you begin with calling  
12 witnesses?

13 MR. CLEMENTS: One brief note, your  
14 Honor, and that is that Mr. Code has brought it to my  
15 attention that the wrist restraints, the black box, he  
16 has been in that since five o'clock this morning.  
17 That is a -- it's a restraint that is taken as an  
18 extra security precaution.

19 But we're just trying to see if there is a  
20 possibility -- because at some of the time in the  
21 prior week, we were able to have a condition where he  
22 did not have that and had his hands in regular shackle  
23 restraints. And ask the Court to consider having the  
24 black box aspect removed for the -- during the  
25 hearing.

26 THE COURT: Mr. Bailiff, for the Court's  
27 clarification, is there any difficulty or some  
28 impediment or problem with Mr. Code having the  
29 restraints that he had previously?

30 THE BAILIFF: He's going to have to keep  
31 the black box on.

32 THE COURT: All right. Is there

1 something that counsel wish to visit with the Court  
2 and the bailiff staff with before we proceed? Or you  
3 want to just -- because I don't have any additional  
4 information to give you. I'm -- I mean, that's where  
5 I am at this point. It may be some circumstances that  
6 you need to share with the Court, which the Court  
7 would then be able to show counsel --

8 MR. CLEMENTS: If it's possible that we  
9 could just take a moment to confer with the bailiff  
10 and your Honor.

11 THE COURT: All right. We are going to  
12 be in recess for a few moments, and we can step in  
13 this area right behind the courtroom.

14 (Recess taken.)

15 THE COURT: The Court is back as well as  
16 all counsel. We've had an opportunity to briefly  
17 confer with the bailiff. And based on representations  
18 regarding the box apparatus on Mr. Code's hands, Mr.  
19 Clements, I'll give you a moment to confer with Mr.  
20 Code.

21 MR. CLEMENTS: All right.

22 THE COURT: And I'm going to make those  
23 matters of record.

24 MR. CLEMENTS: Thank you.

25 (Defense counsel confer with defendant.)

26 THE COURT: Let me know when you are  
27 ready, Mr. Clements.

28 MR. CLEMENTS: One point of order to add  
29 on is that Mr. Code reports that he cannot write with  
30 the situation.

31 THE COURT: Well, let's see. Have you  
32 asked him to write something?

1 MR. CLEMENTS: No, I have not. I have  
2 just asked him.

3 THE COURT: Okay. I will give you a  
4 chance to do that. And I don't know if he wrote the  
5 last time. But I think the Court has allowed verbal  
6 communication, as I would always, anyway.

7 MR. CLEMENTS: All right.

8 THE COURT: Okay. It was previously  
9 brought to the Court's attention via Mr. Clements on  
10 behalf of Mr. Code. He was concerned about the box  
11 type of apparatus on his hands. The Court conferred  
12 with all counsel as well as the bailiff off the record  
13 during a brief recess.

14 And the Court, based on those representations by  
15 the bailiff, believes that whatever apparatus is on  
16 Mr. Code's hands is appropriate and does not prevent  
17 him from being able to confer and -- with his counsel  
18 or to write if he needs to. And any request for any  
19 other box or any other apparatus at this time, the  
20 Court denies said request.

21 THE DEFENDANT: Excuse me, your Honor.

22 THE COURT: Speak through counsel,  
23 Mr. Code.

24 THE DEFENDANT: I would like to address  
25 the Court. If I can address the Court -- she said no.

26 THE COURT: Through counsel.

27 (Defense counsel and defendant confer.)

28 THE COURT: For the record, the bailiff  
29 is attempting to maybe loosen the apparatus. It may  
30 be of some assistance to Mr. Code. And the Court  
31 doesn't know if that's what he was conferring with  
32 counsel or not, but I'm just trying to record or make

1 it clear for the record what the Court is observing to  
2 be occurring in court. And, Mr. Clements, the Court  
3 will look to you to apprise the Court of whatever it  
4 was that I told you to confer with Mr. Code about.

5 MR. CLEMENTS: Your Honor, we are ready  
6 to proceed. That is much looser and much more  
7 tolerable situation for Mr. Code.

8 THE COURT: All right. So noted.

9 MR. CLEMENTS: Thank you.

10 THE COURT: If you are ready to call  
11 your witness, the Court is ready. But what I was  
12 earlier asking, were there any things we needed to  
13 make of record? I can only assume that we're going  
14 with discovery matters that we spoke about in chambers  
15 earlier have been addressed by counsel, and there is  
16 no action being requested by the Court regarding the  
17 most recent motion for discovery filed by Mr. Clements  
18 on Mr. Code's behalf.

19 MR. CLEMENTS: Your Honor, just as a  
20 point of order the -- as far as matters regarding the  
21 motion for production, we are attempting again through  
22 Mr. Bruce Dodd to obtain the information. That  
23 information has not yet -- no information as to any of  
24 the identities of any of the John Does requested has  
25 been produced as of this time.

26 And if we come to a stalemate on that matter, then  
27 we will reapproach the judge, the Court just to  
28 determine where we are going to proceed from there.  
29 But at the moment, we will proceed with the witnesses  
30 in court as well as preparing for tentative  
31 depositions later this week outside of the courtroom.

32 THE COURT: So noted. Is that the

1 State's position and understanding as well?

2 MR. FISH: Your Honor, I was present  
3 when Mr. Clements was talking to Mr. Dodd and -- and  
4 it is my understanding that he is going to endeavor to  
5 provide them as John Does as was previously done.  
6 Although he is expressing some concern that he doesn't  
7 -- he isn't sure he knows all who all those people are  
8 since he himself wouldn't have been present or may not  
9 -- if he was present, doesn't remember. He is -- but  
10 he is endeavoring to find out that information here  
11 and at the prison.

12 THE COURT: Anything else you want to  
13 add to that, Mr. Clements?

14 MR. CLEMENTS: Simply that we would hope  
15 to match the process that we used last time as far as  
16 keeping everything as highly confidential as possible  
17 so that we were able to proceed.

18 THE COURT: So noted.

19 MR. CLEMENTS: And maintain that.

20 THE COURT: All right.

21 MR. CLEMENTS: Thank you.

22 THE COURT: Counsel may proceed when  
23 ready.

24 MR. CLEMENTS: Like to call Bruce Dodd.

25 BRUCE DODD,  
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 morning.



1 A. Good morning.

2 Q. Would you please state your name for the  
3 record.

4 A. Bruce Dodd.

5 Q. Thank you. Mr. Dodd, you testified  
6 previously in this matter, last month?

7 A. That's correct.

8 Q. Okay. I don't feel we need to go into the  
9 background so much, but you're counsel for Louisiana  
10 State Penitentiary?

11 A. Department of Public Safety and Corrections,  
12 assigned to Louisiana State Penitentiary.

13 Q. Assigned to. Very well. I think I will  
14 just start with the -- this morning we had a brief  
15 meeting, did we not?

16 A. That's correct.

17 Q. Okay. And you produced a document, a set of  
18 documents to me?

19 A. That's correct.

20 Q. And I'd like --

21 MR. CLEMENTS: And if I might approach  
22 the witness, your Honor?

23 THE COURT: You may, Counsel.

24 Q. (By Mr. Clements) Mr. Dodd, was counsel for  
25 the State, Howard Fish, present also?

26 A. That's correct.

27 Q. Thank you. Just want to show you the  
28 materials here and see if they appear to be the  
29 materials that you presented to me and to Mr. Fish  
30 this morning.

31 A. Yes, sir. This is the folder and envelope  
32 that it was sealed in.

1 Q. Okay. And this document, you said it's  
2 sealed, so that before you had opened it in our  
3 presence, you had --

4 A. I had not looked at it, no, sir.

5 Q. It had been delivered to you in a sealed  
6 form?

7 A. Correct.

8 Q. Okay. And could you give a very brief  
9 summary of what it appears, the content?

10 A. Appears to be the old correspondence, death  
11 row rules and regulations from the '80s concerning  
12 death row.

13 Q. All right. Does it appear that it has any  
14 direct mention of lethal injection?

15 A. No, sir, it did not appear.

16 Q. Initially?

17 A. No, sir.

18 Q. Okay. And how was it that you came into  
19 possession of this?

20 A. I received a copy of your motion for  
21 discovery. And in that effort and in a continuing  
22 effort, we just -- we made an additional search for  
23 documents that you had requested.

24 Those documents were produced from headquarters.

25 And, again, I don't think we are under the -- in the  
26 motion or in any of the information you requested.

27 But they did concern death row, so headquarters sent  
28 them to me. I brought them to you.

29 Q. Okay. Would it be fair to say that this was  
30 produced from the legal department of Department of  
31 Corrections?

32 A. Yes, sir. It came out of the legal section

1 at headquarters.

2 Q. And that in part comes from the contents of  
3 the material having to do with correspondence?

4 A. That's correct.

5 Q. From the legal department back and forth.

6 Okay.

7 MR. CLEMENTS: Your Honor, we are going  
8 to hold off on possibly introducing that at a later  
9 date.

10 THE COURT: So noted.

11 MR. CLEMENTS: We need to be able to  
12 review it more carefully.

13 THE COURT: All right.

14 Q. (By Mr. Clements) Mr. Dodd, I would like to  
15 focus upon a separate document that was brought to  
16 light in February of this year and ask you if you  
17 recall one of the days during the hearing in February  
18 where you had a conversation with me and -- I'm not  
19 positive who else was with me -- about the fact that a  
20 new set of documents had been discovered at that time.

21 A. I would assume you are referring to some  
22 documents that were found at Angola concerning  
23 something Warden Peabody had put together that --  
24 that I told Warden Peabody to deliver to you.

25 Q. Yes. Yes.

26 A. I was not here. But I assume that's the  
27 documents.

28 Q. Okay. Did you ever see those documents?

29 A. I looked at them after they were delivered  
30 to you. I did not see them prior to being delivered  
31 to you.

32 Q. Okay.

1 MR. CLEMENTS: Your Honor, again, may I  
2 approach the witness, please?

3 THE COURT: You may.

4 MR. CLEMENTS: Thank you. Let the  
5 record reflect that I am first showing -- I have two  
6 documents. And I am showing him one, the first one  
7 that is -- and ask that the witness see if he can  
8 recognize this.

9 A. This appears to be it. I did not pay a  
10 whole lot of attention to the document. The only  
11 thing I was concerned, at that time, there was  
12 something in it from Texas, if I remember correctly,  
13 Warden Peabody was concerned with that was given to  
14 him he thought might be confidential. And I  
15 instructed him that our position was it was not. If  
16 we had it, give it to you.

17 Q. I understand. And do you recall when you  
18 had that conversation with Deputy Warden Peabody?

19 A. I don't. It was -- I was -- it wasn't  
20 while I was here, though. I had left and had not seen  
21 the documents. So any conversation I had with him was  
22 very general because I didn't know, really, what he  
23 was referring to. When I had the conversation with  
24 him, I had not seen the document.

25 Q. But, in general, would it have been in  
26 February?

27 A. Yes, sir.

28 Q. Okay. February of this year, 2003? And  
29 not some other time?

30 A. No. That's correct.

31 Q. Okay. Because of the ongoing desire to keep  
32 certain --

1 A. Excuse me. Let me clarify. I don't know  
2 that I actually told Warden Peabody that. It seems  
3 like maybe Ms. Rabalais or somebody relayed that to  
4 Warden Peabody. I don't know that I actually had that  
5 conversation with him. I know he had expressed some  
6 concern through Dora Rabalais or something about the  
7 confidentiality of something in here. And I told them  
8 no, tell him that -- to give you the document, there  
9 wasn't anything in there.

10 Q. Okay. And, again, that conversation with  
11 whomever it is probably would have been in February?

12 A. Would have been in February.

13 Q. Thank you.

14 MR. CLEMENTS: Your Honor, just as a  
15 point of order, this is the document that we received  
16 two copies of on the 13th of February, and which we  
17 provided one to the State and had one for ourselves.  
18 We did not move it into evidence at that time.

19 And we would like to produce a document to be  
20 filed under seal at this time to maintain  
21 confidentiality, if needed at all, concerning the  
22 subject matter of the different items inside.

23 Q. (By Mr. Clements) And I would ask if the  
24 witness could identify, generally, these two documents  
25 to see if -- they are bound differently. The document  
26 to be entered into evidence that we propose is Bates  
27 stamped.

28 A. Appears to be a copy of the same document.

29 THE COURT: Okay. Is that being offered  
30 at this time?

31 MR. CLEMENTS: Yes, your Honor. I'd  
32 like to offer and move this item as Exhibit 119.

1 (Petitioner's Exhibit No. 119 offered.)

2 MR. FISH: Your Honor, the State has no  
3 objection, would join with plaintiff's counsel, your  
4 Honor, in the motion to seal this particular exhibit  
5 and join in that concern about the need for possible  
6 security concerns about some of the information  
7 inside. And we would -- the State would join in the  
8 motion to seal the document for -- and be available  
9 for any court that subsequently would review it.

10 THE COURT: The only question the Court  
11 has is did we give that a number or --

12 MR. CLEMENTS: 119.

13 THE COURT: 119. And that exhibit is  
14 admitted, and the Court grants the joint motion that  
15 the documents be placed under seal.

16 (Petitioner's Exhibit No. 119 admitted.)

17 MR. CLEMENTS: All right. At this time  
18 would note that there are two separate sections to the  
19 document just because of the size of it.

20 THE COURT: Noted as well.

21 MR. CLEMENTS: And that the document  
22 consists of 483 Bates-stamped pages.

23 THE COURT: Madam Clerk, I want to be  
24 sure that all of the documents are sealed or placed  
25 under seal.

26 THE CLERK: Yes, your Honor.

27 THE COURT: And that's Mr. Clements as  
28 well as Mr. Fish are endeavoring to make sure the  
29 Court does that.

30 Q. (By Mr. Clements) Now, Mr. Dodd, I would  
31 like to ask you, is it -- did I have a -- have  
32 conversations with you about seeking materials in this

1 matter even several years ago?

2 A. Many conversations.

3 Q. Many conversations.

4 MR. CLEMENTS: Your Honor, again, I'd  
5 like to approach the witness.

6 THE COURT: You may, Counsel.

7 MR. CLEMENTS: Thank you.

8 THE COURT: Excuse me, Mr. Bailiff. May  
9 I have a box of Kleenex?

10 THE BAILIFF: Yes, ma'am.

11 MR. CLEMENTS: Let the record reflect  
12 that I am approaching the witness and showing him a  
13 copy of Petitioner's Exhibit 107, which has not been  
14 entered and offered at this time. Actually, it was  
15 offered but held back last month.

16 Q. (By Mr. Clements) And I'd ask if you could  
17 look through these pages here.

18 A. (Witness complies.) Do you want me to  
19 read? I'm reading this whole thing. I don't --  
20 that's going to take a long time.

21 Q. If I could direct your attention to a couple  
22 of matters, then. The first section is an affidavit  
23 from myself summarizing various transactions of  
24 communication between yourself and myself. And  
25 Attachment (A), if you could explain what that appears  
26 to be?

27 A. Looks like a fax from you to me, you being  
28 Gary Clements. Two-page request for documents that  
29 are issued. And there is a -- looks like the same  
30 thing you put in the affidavit.

31 Q. Uh-huh. And would it be fair to say that  
32 that's a summary of some of the communications,

1 history of communications, appears to be?

2 A. Yeah. I don't really remember the  
3 communication. But I would say yeah. Our  
4 communication -- the subject of our communication  
5 was of records.

6 Q. Right. And this section here, that is  
7 Attachment (B)?

8 A. Uh-huh.

9 Q. As in boy.

10 A. Looks like a fax I sent you back, fax you  
11 sent me back.

12 Q. Okay. And in the fax in exhibit -- in  
13 Attachment (B), that you -- if you could just read the  
14 -- read the message on there.

15 A. Just says this is all I could find.

16 Q. Okay. And it is indicating it is a  
17 coversheet of two pages?

18 A. Including the coversheet.

19 Q. Right. And that that second page -- will  
20 you summarize?

21 A. Three chemicals, three drugs. Chemicals.

22 Q. Three drugs, and the title being drugs used  
23 for lethal injection. Okay. Now, and the dates on  
24 those -- on that fax that you sent to me, what it  
25 appears to be?

26 A. I don't have glasses, so I can't read.  
27 1/24/2000.

28 Q. Okay. I would finally direct your attention  
29 to the page two of -- well, actually you can just go  
30 into attachment -- Attachment (A), first full page of  
31 that at the bottom, if you could read that starting  
32 with the words "on that."



1 A. Says on 12/6/99, phone call, you said you  
2 are familiar with the document which I was requesting  
3 and reported that it was not in wider circulation, but  
4 instead it was in the office of Warden Peabody or  
5 Warden Perkins, but he had been out on leave. And you  
6 asked for copies at the first opportunity that I could  
7 locate these files. Explained that once you got the  
8 copies, you would send them also to Caddo Parish  
9 District Attorney Kitty Estopinal and recently  
10 contacted the prison -- who had recently contacted the  
11 prison requesting same.

12 Q. Uh-huh. And if I could ask, do you have any  
13 independent memory of that phone conversation?

14 A. No, sir, I don't.

15 Q. Okay. And does this refresh your memory at  
16 all?

17 A. I don't. And I'm reading back up because  
18 I'm not sure what document that I said that I was  
19 familiar with that you were asking for. So I --

20 Q. In general, would it be fair to say that the  
21 request I had been making was for a detailed  
22 understanding of the process of lethal injection?

23 A. I -- if you say that's what you were asking  
24 for, I guess it was. I don't --

25 Q. Okay. Could you read, then, the first line  
26 of that letter in Attachment (A) again?

27 A. The first paragraph?

28 Q. Yes.

29 A. This fax is sent to memorialize exchanged  
30 communication between my office and Louisiana State  
31 Penitentiary since November 1999, regarding my request  
32 for detailed documentation regarding Louisiana lethal

1 injection procedure.

2 Q. Thank you. The -- this -- these documents  
3 refer to telephone conversations also?

4 A. That's correct.

5 Q. As well as written facts. And what the  
6 documents purport is that you had made some mention --  
7 or I had reported that you had made some mention about  
8 that there were documents in Warden Peabody's office?

9 A. If I did, I am just assuming that's where  
10 they would have been. I -- I have not personal  
11 knowledge of where records of any type are kept on the  
12 penitentiary. I mean, it might be regulations kept in  
13 Warden Cain's office, Peabody's office, Ranatza's.  
14 But as to any particular document, I could not say  
15 with any certainty where it would be. I can just  
16 speculate.

17 Q. I understand. Just as a next point, do you  
18 believe that this type of document is the one that you  
19 might have been thinking of that you thought was in  
20 Warden Peabody's office? I'm now referring to Exhibit  
21 119.

22 A. I would -- I don't -- I'm really not sure  
23 what document that you are alluding to, we were  
24 referring in that conversation. So it would be hard  
25 for me to say that. I would say that would probably  
26 not be it, though, because I didn't know that document  
27 even existed.

28 Q. All right.

29 A. But I don't know what document you are  
30 referring to.

31 Q. Okay.

32 A. I -- if I can go one step further, I can --

1 I can say with all certainty, though, that every  
2 document I know of exists on lethal injection we have  
3 provided to you.

4 Q. Thank you.

5 A. And I know that because somebody else found  
6 it and produced it, not because I knew it was there.

7 Q. I understand.

8 MR. CLEMENTS: No further questions.

9 CROSS-EXAMINATION

10 BY MR. FISH:

11 Q. Mr. Dodd, the -- when you say that every  
12 document has been provided that the Department of  
13 Corrections has on lethal injection, is that based on  
14 the fact that you instructed some people to search for  
15 the documents? A search was conducted?

16 A. That's correct.

17 Q. And to your knowledge, every document that  
18 pertains to lethal injection was -- was located? Do  
19 you know of any other documents?

20 A. I know of no others. I can truthfully say,  
21 though, that I instructed Ms. Rabalais, who works  
22 under me, and her staff to search not only our active  
23 records but our archives.

24 We store records all over in old buildings on the  
25 penitentiary. And we have searched very diligently  
26 for anything that we might have. If we found it, it  
27 was provided to Mr. Clements and his staff. We have  
28 nothing else that we know of.

29 Q. And switching focus now to another issue, on  
30 the issue of the John Doe depositions, the anonymous  
31 depositions of the people involved in the actual -- in  
32 the room where the execution takes place, is it your

1 goal to -- to identify who those individuals were in  
2 all the lethal injections that have taken place and  
3 provide those as witnesses for the depositions as John  
4 Does to Mr. Clements?

5 A. It was -- it was the department's position  
6 as late as this weekend that we had spoke with  
7 Mr. Clements and Ms. LeBoeuf and their organization,  
8 their attorneys, as to what they needed and how it  
9 would be handled and we -- they have provided that.  
10 As of this, I understand those rules might have  
11 changed a little bit.

12 It's the department's position that we do not want  
13 to provide names of anyone. But I was informed this  
14 morning of doing it as the same as the John Doe  
15 depositions, which were -- that information, message  
16 has not been conveyed back to Secretary Stalder and  
17 the department.

18 So position on that comes from Secretary Stalder,  
19 not from myself. And when I get back to Baton Rouge,  
20 I will explain that and inform everyone of the  
21 department's position.

22 Q. If that procedure -- if that is the  
23 procedure that is followed, rather than having the  
24 names submitted to the Court in camera, but rather as  
25 presenting them as John Does, presenting the body as  
26 John Does for the out-of-court depositions, would it  
27 be -- if we -- if that is the way we go with this, are  
28 you going to endeavor to find out who are the ones  
29 that participated inside the death house?

30 A. I don't know whether it would be myself.  
31 Someone would. Because I -- if I were asked today to  
32 provide those lists in camera, I could not do it

1 because I don't know who those individuals are myself.  
2 But through the channels, I am sure somebody will  
3 endeavor to find those names out.

4 MR. FISH: The State has no further  
5 questions, your Honor.

6 MR. CLEMENTS: Just one question, your  
7 Honor.

8 REDIRECT EXAMINATION

9 BY MR. CLEMENTS:

10 Q. Mr. Dodd, in addition to personnel who are  
11 in the death house precisely, there is one other group  
12 of people in that John Doe request which is for any  
13 other positions who are, as Warden Peabody said, on --

14 or who are available. And it's part of the motion, so  
15 you would be aware of that. But I just wanted to --

16 A. Right. And that -- that would be something  
17 -- and I will have Ms. Rabalais, if those records -- I  
18 don't know whether that was written. I don't know  
19 whether it was kept or not. I don't know from past  
20 executions. I don't know whether that was even  
21 something -- it might have to be memory from somebody  
22 rather than --

23 Q. Right. Whether it's memory or whether it's  
24 some written document --

25 A. We will attempt to.

26 Q. -- your intention is to seek out that  
27 information?

28 A. Yes, sir.

29 MR. CLEMENTS: Thank you.

30 MR. FISH: Your Honor, just as a -- this  
31 may be -- I may be stating the obvious, but if this  
32 witness does require to get others involved in

1 identifying these people that are going to be the John  
2 -- subject of the John Does, I assume that we're not  
3 going to have -- that both sides are not going to have  
4 any problem with the Rule of Sequestration if it  
5 involves people who are witnesses.

6 MR. CLEMENTS: No, your Honor.

7 THE COURT: So noted.

8 MR. CLEMENTS: We would appreciate  
9 having that be the case.

10 THE COURT: Noted for the record.

11 MR. CLEMENTS: And note also for the  
12 record that Mr. Dodd was placed in sort of a special  
13 category outside the sequestration so -- in the  
14 February hearing in order to allow him to facilitate  
15 this information-gathering.

16 THE COURT: The Court recalls, and the  
17 State is also adding that that's the State's  
18 understanding. And the Court recalls and is so noted.

19 MR. FISH: The State has no further  
20 questions, your Honor.

21 THE COURT: Anything else, Mr. Clements,  
22 of this witness?

23 MR. CLEMENTS: Not of this witness, your  
24 Honor. Thank you.

25 THE COURT: The witness may step down.  
26 Mr. Dodd is going to want to know if he can leave at  
27 this point, I'm certain.

28 THE WITNESS: Correct, your Honor.

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

30 THE COURT: And that's why he is pausing  
31 and looking to the Court.

32 MR. CLEMENTS: I understand.

1 THE COURT: The Court has no problem  
2 with him being excused at this time.

3 MR. CLEMENTS: No. No problem.

4 THE COURT: And he can stay or come  
5 back. And the Court understands, as we have just  
6 indicated, his circumstances are somewhat different  
7 from the other witnesses. Mr. Clements, as far as you  
8 are concerned for this portion, is Mr. Dodd free to  
9 leave, should he need to?

10 MR. CLEMENTS: Yes, your Honor.

11 THE WITNESS: Thank you.

12 THE COURT: Mr. Fish?

13 MR. FISH: The State has no requirement  
14 of Mr. Dodd staying, your Honor.

15 THE WITNESS: Thank you.

16 THE COURT: All right. Thank you, sir.  
17 You are free to go. If counsel are concerned about  
18 time with regard to our schedule, it is about 12  
19 o'clock. I am not asking counsel to recess at this  
20 time for lunch. It's -- we are not at that point,  
21 necessarily. But I'm just kind of telling you what  
22 time it is.

23 MR. CLEMENTS: Right.

24 THE COURT: The Court understands that  
25 we have been indulged because we have had to move some  
26 of our regular docket matters to another date. We've  
27 done that. We've had an opportunity to have one  
28 witness at this time, and the Court would be willing  
29 for us to go for some additional time should you wish  
30 with other witnesses now and recess later for lunch  
31 recess. Or if you find that this may be the proper  
32 juncture for such request, I'm just kind of putting

1 that out there so counsel will understand the Court's  
2 feeling and procedure regarding the recess.

3 MR. CLEMENTS: Right.

4 THE COURT: I'm not asking that you do  
5 that. The Court is willing to hear additional  
6 witnesses at this time if you wish. But if you need  
7 this time to confer or whatever else, then I'll -- you  
8 let me know and the State will let the Court know.

9 MR. CLEMENTS: Your Honor, we would  
10 prefer a recess at this time.

11 THE COURT: You would?

12 MR. CLEMENTS: Yes.

13 THE COURT: Okay. And as I said before,  
14 the Court will certainly try to accommodate counsel  
15 best I can given the gravity of the case as well as  
16 the nature of the proceedings. And by that, I mean  
17 just the volume that we know and anticipate day to  
18 day.

19 And just apprise the Court, and the Court will try  
20 to accommodate counsel the best I can. Given that,  
21 would an hour be enough time for you to do the eating  
22 and business things that you believe you may need to  
23 do over the lunch recess? Or are you requesting -- we  
24 normally would come back at 1:30, which would give us  
25 a little bit more time. And if you have some other  
26 request, the Court will certainly entertain that from  
27 either counsel or all counsel.

28 MR. CLEMENTS: 1:30, your Honor.

29 THE COURT: Is that agreeable with the  
30 State?

31 MR. FISH: Yes, your Honor.

32 THE COURT: All right. And at this time



1 given that, we are going to be in recess until 1:30.

2 (Lunch recess taken.)

3 THE COURT: The Court is ready. All  
4 counsel are present as well as Mr. Code. Mr. Clements?

5 MR. CLEMENTS: Counsel for Mr. Code is  
6 ready.

7 THE COURT: Mr. Fish or Ms. Estopinal?

8 MS. ESTOPINAL: State's ready, your  
9 Honor.

10 THE COURT: So noted. Counsel are ready  
11 to proceed. The Court is ready for you to call your  
12 next witness.

13 MR. CLEMENTS: We call warden -- Deputy  
14 Warden Sheryl Ranatza.

15 DEPUTY WARDEN SHERYL RANATZA,  
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. Would you please state your name again for  
23 the record.

24 A. Sheryl Ranatza.

25 Q. Okay. And you are deputy warden for  
26 operations at Angola?

27 A. That's correct.

28 Q. All right. Thank you. You testified back  
29 on February the 10th in this same hearing in front --  
30 in the case for Nathaniel Code?

31 A. That's correct.

32 Q. Thank you. In regards to document

1 production and requests for documents relating to the  
2 matter of lethal injection, we discussed several  
3 matters with you and with other witnesses. One item  
4 that came up was the fact that we discovered that a  
5 document was produced to us, to both sides, to the  
6 State, basically, and to Mr. Code after your  
7 testimony.

8 MR. CLEMENTS: And, your Honor, I would  
9 like to approach the witness to --

10 THE COURT: You may, Counsel.

11 MR. CLEMENTS: Thank you. Let the  
12 record reflect that I am showing Deputy Warden Ranatza  
13 two sets of documents, the first being one that is  
14 bound without page numbers on them.

15 Q. (By Mr. Clements) And I'd ask if that first  
16 set of documents looks familiar to you at all.

17 A. Yes. This looks like the documents that  
18 were produced after my testimony.

19 Q. Okay. And if I could ask, how was it you  
20 know that this -- these are the documents that were  
21 produced?

22 A. Because I recognize the first page of it.

23 Q. Okay. Do you know -- and just so that you  
24 can, again, for the record, do you have any reason to  
25 believe this would not be just a page identified? It  
26 is the same document, Exhibit 119, Petitioner's  
27 exhibit. Appear to be the same?

28 A. It appears to be the same.

29 Q. Okay. Could you tell us how this document  
30 was located to the best of your knowledge?

31 A. Yes. Actually, I located it. After -- when  
32 I got back to work and I -- I'd say I think it was

1 probably the day after my testimony here.

2 Q. Okay.

3 A. It was located in my secretary's office, the  
4 outer office to my office.

5 Q. I see. Okay. Is it accurate to say that  
6 that office that you now are located in is the same  
7 physical office that Deputy Warden Richard Peabody  
8 used to have?

9 A. That's correct.

10 Q. And is it also accurate that that outer  
11 office of your secretary is the office where his  
12 secretary used to be located?

13 A. That's correct.

14 Q. Okay. About how long after Warden Peabody  
15 went on leave did you -- were you able to move into  
16 that office arrangement?

17 A. I'm not sure. Before I occupied it, Warden  
18 Paul Perkins occupied it. So I think I have probably  
19 been in that office probably about a year.

20 Q. Okay. I'm sorry. You've been in there now  
21 about a year?

22 A. About a year.

23 Q. I see. And prior to that time, Warden Paul  
24 Perkins?

25 A. Right.

26 Q. Was there. And -- okay. So was it your  
27 secretary, was it you personally that came upon --

28 A. It was me personally.

29 Q. You personally. And could you describe, was  
30 it in a file drawer to a file cabinet?

31 A. No. Actually, it was on a bookshelf.

32 Q. Oh. It was on a bookshelf. Were there

1 other items on that bookshelf?

2 A. Yes.

3 Q. Okay. Were there any other items on that  
4 bookshelf which were related to the issue of lethal  
5 injection?

6 A. No.

7 Q. Okay. Were you -- in your position as  
8 deputy warden for operations, is that the same  
9 position that Deputy Peabody held when he was there?

10 A. No. He was deputy warden for security.

11 Q. For security. And Deputy Warden Perkins?

12 A. When Warden Peabody went on sick leave,  
13 Warden Perkins assumed deputy warden for security  
14 duties.

15 Q. I see. And in your February testimony, you  
16 explained that Ms. Rabalais basically headed up the  
17 search for the lethal injection documents?

18 A. That's correct.

19 Q. But if I could just step back real quick on  
20 the one final point. On the -- this document here,  
21 the Exhibit 119, do you know whether it was on the  
22 bookshelf when you moved into your --

23 A. I really don't know. I would assume that it  
24 was.

25 Q. Okay. Did you just happen to be looking  
26 through things and came across it?

27 A. Yeah. I was looking for -- I was doing a  
28 review of a penitentiary directive, needed to refer to  
29 a department regulation. The bookshelf where that was  
30 found is the bookshelf where all of our penitentiary  
31 policies, department regs and all of that is kept.

32 Q. Okay. But none of the others relate to

1 lethal injection procedures?

2 A. No.

3 Q. Okay. To get back to the other question I  
4 was on, you testified about Dora Rabalais basically  
5 heading up the search. But you also mentioned that  
6 you personally contacted the pharmacist Don Courts?

7 A. That's correct.

8 Q. And could you explain why you did that?

9 A. I did that after a hearing in Baton Rouge on  
10 the production for documents issue.

11 Q. Uh-huh.

12 A. And I think that it was you who asked about  
13 prescriptions. And it occurred to me that maybe he  
14 had not been contacted.

15 Q. I understand. And could you confirm whether  
16 you had been appointed to maintain the files of  
17 inmates who have been executed now?

18 A. No. I have not.

19 Q. You have not been appointed to do so?

20 A. No.

21 Q. Were you ever at any time appointed to be a  
22 custodian of files of persons that have been executed?

23 A. No.

24 Q. Okay.

25 MR. CLEMENTS: No further questions.

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

28 THE COURT: The witness may step down.

29 MR. FISH: Is the witness released to go  
30 at this time?

31 MR. CLEMENTS: We have no need for her.

32 MR. FISH: The State has none, your

1 Honor.

2 THE COURT: The witness is free to go.

3 THE WITNESS: Thank you.

4 MR. CLEMENTS: Mr. Code would call

5 Dr. Edmundo Gutierrez.

6 EDMUNDO A. GUTIERREZ, M.D.,

7 the witness hereinbefore named, having been first duly

8 sworn to testify the truth, the whole truth, and

9 nothing but the truth, was examined and testified

10 under oath as follows:

11 DIRECT EXAMINATION

12 BY MR. CLEMENTS:

13 Q. Good afternoon, Dr. Gutierrez.

14 A. Good afternoon.

15 Q. How are you doing?

16 A. Fine, thank you.

17 Q. Could you please state your full name for

18 the record.

19 A. Edmundo Gutierrez.

20 Q. Just as a point of clarification, do you --

21 is one of your names also Genaro?

22 A. No.

23 Q. No? Do you know a Dr. Genaro Gutierrez?

24 A. Si.

25 Q. Okay.

26 A. (Witness speaks in Spanish.) Ello

27 psiquiatra. He is psychiatrist. I'm sorry.

28 Q. He's a psychiatrist. That's fine. I could

29 keep up with you, but I don't think that would be fair

30 to the court reporter or anybody else. Okay. All

31 right. Dr. Gutierrez, could you tell me, where do you

32 work?

1 A. I'm working on forensic at Jackson,  
2 Louisiana.

3 Q. All right. And what is your occupation?  
4 A. Physician.

5 Q. Okay. And back in -- when did you receive  
6 your medical license?  
7 A. When?  
8 Q. Yes. In what year?  
9 A. In 1961.

10 Q. Okay. All righty. And where -- what  
11 medical school did you attend?  
12 A. That was the University Autonomous of  
13 Nicaragua in Leon.

14 Q. In Leon?  
15 A. Leon, Nicaragua.

16 Q. Okay. When did you begin working for the  
17 State of Louisiana Department of Corrections in a  
18 medical capacity?  
19 A. In 1991.

20 Q. 1991. Okay. And -- and what position did  
21 you hold at that time when you began your employment  
22 with the State of Louisiana?  
23 A. I was just a staff physician.

24 Q. Staff physician. And were you at a  
25 particular facility?  
26 A. In Angola.

27 Q. At Angola. And are you board certified in  
28 the medical specialty of anesthesiology?  
29 A. No. I am board certified in general surgery  
30 and pediatric surgery.

31 Q. I'm sorry. The second one?  
32 A. Pediatric surgery.

1 Q. Pediatric. Thank you. All right.

2 MR. CLEMENTS: I move to qualify Dr.

3 Gutierrez as an expert in general medicine.

4 THE COURT: Does the State have

5 questions on the witness's qualifications?

6 MS. ESTOPINAL: No questions, your

7 Honor.

8 THE COURT: Accepted as tendered. You

9 may proceed.

10 MR. CLEMENTS: Thank you.

11 Q. (By Mr. Clements) Okay. Are you currently

12 employed at the Louisiana State Penitentiary at

13 Angola?

14 A. No, I am not.

15 Q. And what year did you leave your employment

16 from Angola?

17 A. Year 2001.

18 Q. 2001. And could you from the time -- from

19 the beginning in 1991, until your departure in 2001,

20 could you explain what positions you held? You

21 mentioned first staff physician. And what else? When

22 did you move to a different -- if you did, move to a

23 different position?

24 A. Like in the '93. They appoint me as a

25 medical director.

26 Q. Okay. And how long did you hold that

27 position?

28 A. The -- '97.

29 Q. Thank you. 1997. And do you recall -- and

30 then what position did you hold between 1997 and

31 beyond?

32 A. Staff physician.



1 Q. Staff physician?

2 A. Yes.

3 Q. Okay. And what -- could you tell us if you

4 know the name of the medical director who was

5 appointed before you were medical director?

6 A. Dr. Perego.

7 Q. Dr. Perego? Was before or was it after?

8 A. Before, and for a short period of time,

9 after.

10 Q. Okay. Would you happen to know when

11 Dr. Perego became medical director before you?

12 A. No, I don't.

13 Q. Okay. What were some of your duties as

14 staff physician?

15 A. Well, just taking care of the medical needs

16 of the inmate population in Angola.

17 Q. Uh-huh. Okay. What were some of the

18 additional duties that you had as a medical director?

19 A. Well, I had a lot of court appearances for

20 the, you know, different cases of different claims.

21 Q. Were there any matters that you appeared for

22 -- were they all in relation to medical care for

23 inmates?

24 A. Yes.

25 Q. And medical conditions?

26 A. Right.

27 Q. All right.

28 A. And some others. I was practicing medical

29 director. Practicing physician as a medical director,

30 meaning that I deal the clinical care also.

31 Q. So you continued on some of the duties you

32 had as a staff physician?

1 A. That is right.

2 Q. While you were medical director?

3 A. Yes. Yes, sir.

4 Q. But it's your testimony that that's not the  
5 way for every medical director necessarily?

6 A. That's right.

7 Q. Okay. Do you know if Dr. Perego also did  
8 both things?

9 A. No, he didn't.

10 Q. He did not. He was -- when he was medical  
11 director, he was -- he did not practice medicine at  
12 that time?

13 A. Yes. That's right.

14 Q. Okay. Is there any hospital facility at  
15 Angola?

16 A. Well, they call it hospital, you know. But  
17 it's most as a clinic.

18 Q. Okay. What in your mind is the major  
19 difference between a clinic and a hospital?

20 A. Well, they do not have the facility to take  
21 care of difficult, you know, cases, surgical cases,  
22 major surgical cases.

23 Q. Okay.

24 A. Difficult medical problems, they are not  
25 equipped to do that.

26 Q. Okay. When those kinds of procedures are  
27 indicated for an inmate, how do they get treatment in  
28 general?

29 A. Well, we do have a communication -- easy  
30 communication with the Charity Hospitals, especially  
31 -- and CHNO.

32 Q. And then C -- and CHNO would be Charity

1 Hospital in New Orleans?

2 A. That's right.

3 Q. And they've come up with a new name for that,

4 I think. But I don't recall it.

5 A. LCHNO.

6 Q. LCHNO. And that stands for Louisiana

7 Charity Hospital at New Orleans or --

8 A. Yeah. Charity Hospital New Orleans.

9 Q. All right. Thank you. How many physicians

10 are staffing at the hospital at a normal time?

11 A. Oh, it varies. But usually it's around four

12 or five.

13 Q. Okay. Does that clinic or hospital have a

14 name?

15 A. They call it the -- somebody Barrow.

16 Q. If I were to say R.E. Barrow?

17 A. Yes. Right.

18 Q. All right. I would like to turn to the

19 subject of executions. Have you ever provided any

20 kind of support function for the prison on the day of

21 an execution?

22 A. Oh, well, I don't know if it's a support.

23 But, yes, I was present at execution in the sense that

24 I was assigned to declare dead, you know, that person.

25 Q. Okay. So you were assigned to declare

26 death?

27 A. Right.

28 Q. And that was as your position as a medical

29 director, you think? Or do you know?

30 A. Well, yes. Mostly.

31 Q. Okay.

32 A. There were physicians anyway in all these

1 executions.

2 Q. Okay. So two at each execution. In 1993,  
3 on March the 5th, Robert Wayne Sawyer was executed by  
4 lethal injection. Do you have a memory, generally, of  
5 that event?

6 A. No. I don't remember the names.

7 Q. All right.

8 A. But I do know that I was present in the --  
9 just a few of these executions.

10 MR. CLEMENTS: One moment, please. Your  
11 Honor, may I approach the witness, please?

12 THE COURT: You may, Counsel.

13 MR. CLEMENTS: May the record reflect  
14 that I am approaching the witness with a subset of  
15 Exhibit 101, which is a collection of documents  
16 related to various executions in the last 10 years.

17 Q. (By Mr. Clements) And I would direct the  
18 attention of the witness to page 269, in Volume I of  
19 the proces-verbal of the execution of Robert Wayne  
20 Sawyer, and ask if -- you to refresh your memory with  
21 this.

22 A. (Witness complies.) Yeah. Uh-huh.

23 Q. That this proces-verbal indicates that, in  
24 fact, you were one of the two physicians?

25 A. Yes. Yes, sir.

26 Q. Do you recall the name, the other name?

27 A. No, I don't. I don't recall the name of any  
28 of them or dates.

29 Q. I see. Okay. Do you recall who assigned  
30 you to attend that execution?

31 A. The warden.

32 Q. The warden. And by that you mean Warden

1 John Whitley at the time?

2 A. That's right.

3 Q. Okay. And do you recall how -- let me ask  
4 this. Let's see. No, scratch that. Do you recall at  
5 which lethal injections besides that in 1993, how many  
6 others you performed that function of pronouncing  
7 death, if you could?

8 A. I don't recall that. But just a few. You  
9 know, maybe two more.

10 Q. Two more. Okay. The next one would have  
11 been in 1995, in Thomas Ward. And I would just --  
12 Ward?

13 MR. CLEMENTS: Again, one more time  
14 approaching the witness, your Honor, please?

15 THE COURT: You may.

16 MR. CLEMENTS: Again, page 26 and 61,  
17 from Exhibit 101. Again, 19 -- this would be page 26,  
18 to ask the witness to look at.

19 A. (Witness complies.) Right. Right.

20 Q. (By Mr. Clements) And does this document  
21 indicate your presence at the May 16th, 1995, execution  
22 of Thomas Ward?

23 A. That's correct.

24 Q. All right. And -- and then, similarly, on  
25 page 61, the proces-verbal from March 1, 1996,  
26 execution of Antonio James, the record would so  
27 indicate?

28 A. Yes.

29 Q. Thank you. And it is your testimony that at  
30 each one of these occasions, there was also a second  
31 doctor present in the -- as an official witness?

32 A. Yes. I -- that's what usually happened, yes.

1 Q. Okay. Can you remember where you were  
2 located at the time of the execution, where you were  
3 standing or sitting?

4 A. Well, there is a special room where the  
5 witnesses sit. I was in there.

6 Q. So you were there as well as the other  
7 doctor, to your memory?

8 A. Yes.

9 Q. Okay. Do you recall what -- what do you  
10 consider that your duties were? You said pronounce  
11 death. But were there any other duties that you had  
12 officially that you can remember in --

13 A. Well, as medical director, I needed to sign  
14 the prescriptions for the medications for drugs.

15 Q. Okay. So in this case, when you are talking  
16 about signing prescriptions, are you indicating  
17 prescriptions for chemicals used in the lethal  
18 injection process?

19 A. That is right.

20 Q. Okay. Do you recall -- you do recall in  
21 each one of those cases, then, for those three  
22 executions that you signed the prescription forms?

23 A. I do not remember exactly. But at least two  
24 of them, yes.

25 Q. Okay. So two. Do you know which one that  
26 you are not positive about?

27 A. No. I am not positive.

28 Q. Okay. I'll come back to the issue of the  
29 prescriptions in a minute. Were you able from where  
30 you were located in the witness room -- were you able  
31 to see the lines running from where the inmate had the  
32 I.V. lines hooked up?

1 A. You mean, if I saw the fluids coming down in  
2 there?  
3 Q. Right.  
4 A. No. I just saw the I.V. line.  
5 Q. You saw the I.V. lines.  
6 A. I think so.  
7 Q. And where did the I.V. lines go, to your  
8 vision?  
9 A. Well, into one of the arms, vein, or the  
10 hand veins.  
11 Q. Would that have been the situation in each  
12 of the three executions, the same?  
13 A. Right.  
14 Q. Okay. Do you remember how many intravenous  
15 lines were used in each execution?  
16 A. I knew there was only one line and the  
17 piggyback.  
18 Q. One line and a piggyback?  
19 A. Yeah.  
20 Q. Okay. And when you use the phrase or the  
21 word "piggyback," what is the meaning that you have  
22 for that?  
23 A. That is a little line that merge with the  
24 main line and, you know, is attached to another bottle  
25 or syringe or whatever.  
26 Q. Right. Could you see -- or where did you  
27 see these lines going? Did you see the equipment that  
28 they were attached to on the other end?  
29 A. No.  
30 Q. And where do you assume those -- that  
31 equipment was?  
32 A. Well, was behind the wall.

1 Q. Behind the wall?

2 A. Yes.

3 Q. Okay. Do you -- did you see any lines that  
4 were not intravenous lines, but, say, electrical lines  
5 that were used for monitoring equipment?

6 A. No.

7 Q. Okay. You do not recall that?

8 A. No.

9 Q. Okay. After -- the Robert Wayne Sawyer  
10 execution was the first lethal injection in the state  
11 of Louisiana. Do you recall what kind of -- if you  
12 attended any kind of a meeting or matter to discuss  
13 preparation for this execution?

14 A. No.

15 Q. Do you recall, or do you just -- or there  
16 was no meeting?

17 A. None.

18 Q. There wasn't?

19 A. There was none. Not with me, anyway.

20 Q. Not with you. Are you aware if any other  
21 doctor was ever asked to go to a meeting to prepare?

22 A. No, I am not.

23 Q. You are not aware. Okay. Were you -- after  
24 -- immediately after or within a day or two after the  
25 execution, were you asked to attend any kind of a  
26 meeting to discuss how things went, how the process --

27 A. No.

28 Q. Okay. Were you aware of any doctor that was  
29 asked to do so?

30 A. No.

31 Q. Okay. Would this be the same response to  
32 all three executions that you witnessed?



1 A. That's correct.

2 Q. No meetings involved by -- between yourself  
3 and any other person about that, what happened?

4 A. That's right.

5 Q. Or preparation. Okay.

6 A. Not with the doctors, anyway.

7 Q. Not with the doctors anyway. Okay. In -- I  
8 think we had mentioned that in 1993, Warden John  
9 Whitley was the chief warden of Angola?

10 A. Yes, sir.

11 Q. By the time of the 1995 lethal injection of  
12 Thomas Ward, there had been a change in who was  
13 warden. And who was that new warden?

14 A. Dr. -- I mean, Warden Cain.

15 Q. Warden Cain. Okay. Do you recall any  
16 differences to your view about how things were  
17 conducted just from the witness room between those  
18 two?

19 A. No.

20 Q. Okay. So did you -- you say you had no  
21 meeting. So I take it -- did you advise Warden  
22 Whitley at all as to any ideas about -- that you had  
23 about lethal injection?

24 A. No.

25 Q. No. And the same with Warden Cain, no  
26 advice?

27 A. That's right.

28 Q. Thank you. Did you meet with any other  
29 wardens or prison personnel?

30 A. No, sir.

31 Q. Thank you. Could you tell me if you have  
32 heard of the name of the person Dr. Vance Byers?

1 A. Yes. I knew him.

2 Q. Do you recall if he was also a medical  
3 director at some time at Angola?

4 A. I believe so.

5 Q. Okay. Do you think he may have been a -- he  
6 was a medical director before Dr. Perego was?

7 A. Yes.

8 Q. Do you know if there was anyone appointed  
9 director between Dr. Byers and Dr. Perego?

10 A. I hear of some other people. But I don't  
11 know what is the order of this person's being medical  
12 director.

13 Q. Okay. There may have been someone  
14 different?

15 A. Yes.

16 Q. But that was all before you were present at  
17 Angola?

18 A. That is right.

19 Q. Just to clarify, did you ever meet with  
20 Dr. Perego about any matters related to lethal  
21 injections?

22 A. No, sir.

23 Q. And the same with Dr. Byers?

24 A. That is right.

25 Q. Thank you. Were you contacted at all within  
26 the last six months by anyone from the Department of  
27 Corrections to see if -- whether you had any documents  
28 relating to lethal injection?

29 A. In the past six months?

30 Q. Yeah.

31 A. Well, not at any time, really.

32 Q. Never. Okay. If you had been contacted,

1 would you -- do you have any documents relating to  
2 lethal injection?

3 A. No. Just the general knowledge of the  
4 medications, that's all.

5 Q. Okay. And -- all right. Were you ever  
6 aware that besides yourself and the other doctor who  
7 was in the witness room, that there was a -- yet a  
8 third doctor somewhere nearby?

9 A. No. I'm not aware of that.

10 Q. At the time of the execution?

11 A. Yes, sir.

12 Q. Okay.

13 A. I was not aware of that.

14 Q. Okay. Okay. Dr. Gutierrez, are you  
15 familiar with the chemicals that are used in the  
16 Louisiana lethal injection process?

17 A. Somehow.

18 Q. Could you name them for me, if you can?

19 A. Well, they are pentathol, Pavulon, and  
20 potassium chloride. And they are being used in that  
21 order.

22 Q. Okay. Pentathol, Pavulon, and potassium  
23 chloride. Is another name --

24 A. I mean, the pancuronium. Pentathol,  
25 pancuronium, and potassium chloride.

26 Q. And is Pavulon a name -- another substitute  
27 name for pancuronium bromide?

28 A. Yes, sir, I think so.

29 Q. Okay. To your knowledge, Dr. Gutierrez,  
30 does the pancuronium bromide cause sedation or  
31 unconsciousness?

32 A. It is being used not in that sense. It's

1 being used to paralyze, paralysis of the muscles.

2 Q. Okay.

3 A. All the muscles.

4 Q. Okay. Would that include the heart muscle?

5 A. Yes, sir.

6 Q. Okay.

7 A. It produces arrhythmias and paralysis, you

8 know, in the doses. But they are -- not be used for

9 doses.

10 Q. All right. And what would you expect?

11 Hypothetically, what would you expect an animal or

12 person to look like if they had been given a large

13 dose of pancuronium bromide?

14 A. They look dead.

15 Q. Would you -- would another way to say that,

16 they would look relaxed?

17 A. Completely.

18 Q. Would you say that all of the voluntary

19 muscles in their body would be relaxed?

20 A. That is correct.

21 Q. Might they have a peaceful or serene look on

22 their face?

23 A. Yes.

24 Q. Would you have any way of knowing just from

25 looking at that person if they were awake or asleep?

26 A. Just by use of pancuronium, it would be

27 difficult to assess that situation. But in the

28 clinical way of using pancuronium, the person could

29 have the eyes open and the pupils will, you know,

30 react to the light and things like that. Of course,

31 they don't breathe and don't move. And the

32 electrocardiogram would show that the heart is having

1 the normal rhythm or a little alteration. But at the  
2 massive doses that are being given for the execution,  
3 I believe there is no clinical data on that because no  
4 one is going to use those doses.

5 As a matter of fact, these drugs are being used  
6 very carefully in a very controlled setting like in  
7 the O.R. with anesthesiologists and other persons  
8 around because of the problems that this drug causes  
9 in doses that are not of the regular, normal doses.

10 Q. Uh-huh.

11 A. Again, I assume that someone that receives 10  
12 times the normal doses, by all means, is already dead.

13 Q. I am going to explore in a little more  
14 detail about the steps involved in the Louisiana  
15 lethal injection process and ask you some questions  
16 related to that.

17 As the medical director, do you know if your  
18 department collected any information from the  
19 prisoner or from any other source regarding what drugs  
20 had already been given to the prisoner before the date  
21 of the execution, perhaps, what medications?

22 A. No.

23 Q. So your answer is they did not collect  
24 information of that sort?

25 A. No.

26 Q. Okay. At any time?

27 A. At any time.

28 Q. Did your department try to learn the medical  
29 history, including a blood chemistry analysis, of the  
30 prisoner before the execution?

31 A. No. I won't see the need for that, really.

32 Q. Okay. Assuming that a prisoner is already

1 receiving a prescribed medication on the day of the  
2 execution, did your department try to learn the  
3 chemical interactions between that first medication  
4 and any of the three lethal injection drugs?

5 A. No. Again, it will be a matter that, you  
6 know, bear no relation to the actual, you know,  
7 procedure that is going to take here -- take place.

8 Q. Okay. Does your department -- did your  
9 department try to collect any information from the  
10 prisoner or from any other source regarding the food  
11 or liquid that the prisoner had consumed before on the  
12 day of the execution?

13 A. No. The thing is, these drugs are going to  
14 be used intravenously and not given by mouth when this  
15 could be a matter of concern in an empty or in a full  
16 stomach. But I.V., that wouldn't matter at all.

17 Q. Did your department try to learn the body  
18 weight of the inmate on the day of the execution?

19 A. No. Again, you know, in massive doses, that  
20 would be of not importance. It is important to dosify  
21 these in a clinical setting, but not in this  
22 particular setting.

23 Q. So you say in a clinical setting, it would  
24 be important to?

25 A. Yes. Because one milligram more or less  
26 will make a difference. But, you know, you are going  
27 to use a hundred milligrams, you know, over the usual  
28 doses. That won't matter at all.

29 Q. I would like to ask you a couple of  
30 questions about the physical equipment that is used  
31 and what -- if you know anything about it or not in  
32 the execution. Before the prisoner is brought in to

1 the execution chamber, do you know what medical  
2 equipment is present in the execution chamber?

3 A. Not really.

4 Q. Okay. I would like to change attention to  
5 another area, and that is to ask you if you can  
6 describe for me, what is a central line?

7 A. Central line is usually I.V. line that are  
8 different in type of this kind that goes near the  
9 atrium of the heart, you know, in a vein of large  
10 caliber that is near the heart. Or this particular  
11 line can fit through the vein up to -- near or the  
12 heart itself.

13 Q. Okay. Can you explain how that is different  
14 from a peripheral I.V. line?

15 A. Well, again, in the clinical setting, these  
16 central lines are used because they give a lot of  
17 information. Usually, they have several lumens, and  
18 each one of them serve a purpose. They give  
19 tremendous information of the status of the  
20 functioning of the vital organs of the patient,  
21 especially the heart and the lung. And that can give  
22 it, you know, in any moment.

23 Q. Uh-huh.

24 A. Whereas, that is not possible with  
25 peripheral vein.

26 Q. Okay. Can you describe how a central line  
27 is put into a person, generally?

28 A. Yes. They use a local anesthesia. They use  
29 -- it is more the nick in the skin with a knife to  
30 introduce a very large needle through which the  
31 catheter is going to pass. Or at times, it is just  
32 what is called cylinder wire, and this wire is the

1 guide for the catheter thereafter.

2 Q. Okay. Is the wire -- is when the processes  
3 involving putting a catheter thread through the skin  
4 over the wire, is that called a percutaneous  
5 technique?

6 A. Right.

7 Q. Okay. Is it accurate to say that before the  
8 percutaneous technique was established, that the --  
9 the other procedure that was used was a cutdown  
10 procedure? Is that --

11 A. Well, again -- that's right. The central  
12 lines came after the cutdown because there was not too  
13 much need for all this information. The medicine was  
14 not that advanced at the time, you know. And there  
15 was no use for all these new informations that we can  
16 get at this time now through these catheters.

17 As far as receiving I.V. fluids, they are just  
18 about, you know, about the same. You can get the  
19 bigger catheter through a peripheral vein through a --  
20 by a cutdown and introduce a lot of fluid through  
21 there in a short period of time, as well as through  
22 the central line catheter.

23 Q. Okay. Would it be accurate to say that in  
24 most cases, the percutaneous technique is faster than  
25 a cutdown?

26 A. For someone that is expert in doing it, yes,  
27 it is.

28 Q. Would you say that it is easier than doing a  
29 cutdown?

30 A. No. It is not easier. Needs more expertise  
31 and more training in doing so. And another thing,  
32 central line has more unwanted side effects, some of



1 them -- or complications that some of them are lethal.

2 Q. Could you explain what some of those side

3 effects or lethal problems are?

4 A. Well, for one is pneumothorax, which is the

5 most common. And all that is even perforation of the

6 very thin wall of the atrium of the heart and the

7 right atrium. And, you know, with exsanguination of

8 the patient and death.

9 Q. And just to be precise, a pneumothorax is a

10 collapse of the lung?

11 A. That's right.

12 Q. And that might be caused more -- the central

13 line has that side effect?

14 A. That's right.

15 Q. The use of that. So that expertise would

16 be, as you say, very important?

17 A. That's right. That's correct.

18 Q. All right. Would you say that a

19 percutaneous technique is less invasive than a cutdown

20 procedure?

21 A. In good hands it could be. Even in good

22 hands, there are complications. But, yes, in good

23 hands, it is less.

24 Q. Less.

25 MR. CLEMENTS: Your Honor, may I

26 approach the witness, please?

27 THE COURT: You may.

28 Q. (By Mr. Clements) Dr. Gutierrez, I am going

29 to draw your attention to four pages of documents that

30 are somewhat out of order in this. But this is --

31 they are basically the Louisiana injection equipment

32 supplies inventory checklist.

1 A. Okay.

2 Q. And somewhat out of order, again, but pages  
3 4 through 7 in Petitioner's Exhibit 101. And ask if  
4 you would review these briefly for contents on that  
5 list.

6 A. (Witness complies.) Yeah. Okay.

7 Q. We have been talking for a few minutes about  
8 various -- two different types of procedures. Do you  
9 see any supplies or equipment on this inventory list  
10 that would be applicable to either one of those  
11 techniques about doing that?

12 A. Yes. This is oriented towards either  
13 intravenous cannulation, peripheral, or a cutdown.

14 Q. So a peripheral I.V. line, basically, in  
15 summary, or a cutdown procedure?

16 A. That's right.

17 Q. But is there any equipment that would be  
18 related to performing a -- the percutaneous technique?

19 A. No. Not there.

20 Q. Okay. Dr. Gutierrez, relating to those two  
21 techniques that we have discussed in the last few  
22 minutes, the cutdown and the percutaneous line, is --  
23 what kind of qualifications are necessary to perform  
24 those functions?

25 A. The central line, the -- it got to be  
26 somebody that is in training. Now is more common  
27 done. But usually is doing -- is being done by the,  
28 say, the second-, third-year resident in internal  
29 medicine or general surgery. But mostly is being  
30 done by anesthesiologist, by cardiologist, and  
31 surgeons.

32 Q. Okay. So is it something -- is it a

1 procedure that could be done by an emergency medical  
2 technician?

3 A. No.

4 Q. Or a paramedic?

5 A. No.

6 Q. Okay.

7 A. The thing is, this is being used in patients  
8 that are in critical condition.

9 Q. Right.

10 A. And the -- as I said, this is being used to  
11 monitor the established minute by minute of that  
12 particular patient in this terrible conditions.  
13 People with heart attack, people with severe injuries,  
14 multiple -- multi injuries, multiple organ failures.  
15 In that type of situation is when this is being used.

16 But for the regular, the feeding of I.V. fluids to  
17 the patient, peripheral veins are used instead of that  
18 in the regular patients. You know, even those that  
19 are going to surgeries, you know, they go by  
20 peripheral vein if the surgery is not a very major  
21 procedure. You know, like -- you know, cardiac  
22 surgery or things like that.

23 Q. Dr. Gutierrez, what if a situation arose  
24 where you -- where the inmate at a lethal injection,  
25 for one reason or another, a peripheral access could  
26 not be located on two sides and two locations, or even  
27 one, where would -- what --

28 A. I believe then the next thing to do is do a  
29 shutdown.

30 Q. And, again, do you -- are you aware -- were  
31 you asked to do such a shutdown in any of the three  
32 executions that you were present at?

1 A. No, sir.

2 Q. Were you prepared to do so if the occasion  
3 arose?

4 A. Well, I wouldn't mind it that -- if that was  
5 going to come to the physician, should I have done.  
6 The matter of cutdown versus central line is -- rather  
7 than invasion -- what I say invasion, that the cutdown  
8 is more in the sense that implies an incision of one  
9 to one and a half centimeters in the skin, but is a  
10 superficial thing.

11 The central line is more dangerous, can be done  
12 promptly for people that is expert in the matter. But  
13 that is a blind procedure and usually near organs that  
14 are important. And, again, the complications,  
15 therefore, could be lethal.

16 With the cutdown, there is no complications  
17 practically, you know, and is done under local  
18 anesthesia. And it is still being done.

19 Q. Dr. Gutierrez, do you know if there is a  
20 written lethal injection protocol in Louisiana?

21 A. They follow some protocol, yes, in Angola.

22 Q. Have you ever seen a document with the  
23 protocol explained in detail?

24 A. In detail, no. But the sequence and doses  
25 and that, yes. And, of course, as I said before, we  
26 have, you know, a general knowledge of these drugs.

27 Q. And do you have a memory of what the  
28 sequence and the dosages are independently at this  
29 time?

30 A. Yes, sir. They give the pentathol, 2 grams,  
31 I.V. They give Pavulon, that's the 40 milligrams,  
32 I.V. And the potassium chloride, 120 milligrams,

1 given I.V. also. And that's the sequence.

2 Q. Okay.

3 MR. CLEMENTS: Your Honor, I would like

4 to approach the witness again.

5 THE COURT: You may.

6 MR. CLEMENTS: Thank you.

7 Q. (By Mr. Clements) Dr. Gutierrez, I'm going

8 to show you again a portion of that same document that

9 you looked at earlier, the checklist, and ask if you

10 could review the first three items on that list and --

11 A. Sodium pentathol.

12 Q. Yes.

13 A. This is Pavulon and the potassium chloride.

14 Q. Right. Could you explain or recount what

15 the quantities are that are listed on this checklist?

16 A. There is per ampule. Sodium pentathol, 500

17 milligrams would be that.

18 Q. So -- and there are 500 milligrams of the

19 sodium pentathol. And how many of the ampules?

20 A. That will be four.

21 Q. And what number appears on this sheet here?

22 A. Eight.

23 Q. Eight. Okay. And on the Pavulon, the

24 second chemical, it is how much again?

25 A. Pavulon is 10 milligrams. And that is 15.

26 Q. So how many total milligrams?

27 A. I'm sorry. I don't know if this is the

28 actual doses that they, you know, introduce into the

29 line.

30 Q. Okay. So there may be a difference between

31 what is on this list and what is actually administered

32 to the inmate?

1 A. I would say so.

2 Q. Okay. And the final number then?

3 A. Yeah. Right. Like this is in ampules.

4 This is to play safe and have enough just in case

5 something happens.

6 Q. Okay. So the following, is it accurate to

7 say that the third line says that there were 15

8 ampules, with each having 10 milliequivalents?

9 A. Yeah. That is 150.

10 Q. So 150 milliequivalents.

11 A. And then each 120.

12 Q. Okay. So --

13 A. The clinical dosage of that is 20 of

14 potassium.

15 Q. Potassium is --

16 A. 40, you cannot use more than at any one

17 given time.

18 Q. Of the potassium?

19 A. Of the potassium.

20 Q. Would be 40. And here they have 150?

21 A. Right.

22 Q. So just to clarify your testimony a minute

23 ago or so, you had said that the pentathol, you had 2

24 grams. And here on this list, it basically is 4 grams

25 because it is eight times 500 milligrams?

26 A. That's right.

27 Q. So that's a -- twice as much an exact

28 amount. And then the second, you had -- testimony was

29 that there were 40 milligrams of Pavulon. And that

30 according to the checklist, there were -- there is 150

31 milligrams of Pavulon there, which is about two and a

32 half times as many. And the final one is similarly of

1 120 milliequivalents of potassium chloride, and -- but  
2 there is 150 milliequivalents potassium chloride on  
3 the supply list and -- which is just a little bit over  
4 one time. Do you have any -- you had said in your  
5 testimony that -- correct me if I am mistaken. But  
6 somehow that the larger number indicated an extra  
7 amount just to be safe, or something along those  
8 lines?

9 A. Yes, sir. It would in my end.

10 Q. And do you have any idea why the extra  
11 amount is not uniformly larger, like twice as much in  
12 each case?

13 A. No. The only thing is that, again, those  
14 doses are massive doses. And, you know, no one could  
15 survive any one of those doses in particular.

16 Q. Okay. Dr. Gutierrez, do you know whether or  
17 not the Federal Food and Drug Administration requires  
18 tracking or of the storage and -- or usage of  
19 controlled dangerous substances?

20 A. Yes, they do.

21 Q. Do you know which of the three lethal  
22 chemicals that we have been talking about are a  
23 controlled dangerous substance, if any?

24 A. Potassium is not one of them.

25 Q. Uh-huh.

26 A. And I believe the others, yes, they could be.

27 Q. Okay.

28 A. But that is not the usual type of drug that  
29 it is a controlled thing because it is not that  
30 pervasive, the use, in the clinical situation. They  
31 are going to leave it to hospitals, in particular in  
32 the emergency room or the O.R. That is not a drug

1 that doctors prescribe from their clinic every day.

2 Q. So is it -- would it be accurate to say that  
3 your experience with sodium in the clinical setting of  
4 the Angola hospital, slash, clinic, that sodium  
5 pentathol would not be a drug that you would commonly  
6 use?

7 A. In the 10 years I was there, I don't recall  
8 anyone using other than an execution.

9 Q. Not just yourself as a doctor, but any  
10 doctor outside from the lethal injections?

11 A. Yes. They wouldn't.

12 Q. Okay. And would that same be true for the  
13 pancuronium bromide?

14 A. That is true.

15 Q. Okay. But the potassium chloride is a  
16 different kind of chemical?

17 A. It is a different kind because very commonly  
18 people has problems with deficiency or overdosage of  
19 potassium deficiencies in the sense of people having  
20 diuretics. They lose a lot of potassium. So in the  
21 clinical setting, is frequently seen alterations in  
22 the potassium levels in the plasma in the body. And,  
23 therefore, is something that is being used every day  
24 in clinical settings.

25 Q. All right.

26 A. And that is everywhere in the clinic, the  
27 doctors, clinics, and everyone.

28 Q. Uh-huh. Do you know if there is -- how the  
29 tracking of the sodium pentathol is used in the  
30 Louisiana lethal injection process?

31 A. No, I don't.

32 Q. Okay. Do you know how the tracking of the



1 pancuronium bromide is done?

2 A. I don't either.

3 Q. Do you know which person at Angola might  
4 know the answer to that?

5 A. The pharmacist.

6 Q. The pharmacist. Okay. At the time when you  
7 were present in -- from 1993, do you recall who the  
8 pharmacist at that time was?

9 A. It's been for years and years Don Courts.

10 Q. Mr. Don Courts?

11 A. That's right.

12 Q. Thank you. So if anybody would know about  
13 the recording of documentation about drugs, he would  
14 be a likely person to know?

15 A. That is correct.

16 Q. Thank you. Did you ever have a conversation  
17 about the lethal injection process with Mr. Don Courts?

18 A. Briefly.

19 Q. Do you recall when that conversation took  
20 place?

21 A. At the time of the executions.

22 Q. At each one of them or --

23 A. Yeah.

24 Q. Do you recall the nature of your  
25 conversation?

26 A. Just refreshing of the doses of the  
27 medications.

28 Q. Do you -- you were reviewing the dosages,  
29 basically, with him?

30 A. That is right.

31 Q. Do you know where the dosage idea came from,  
32 how that particular quantity that you testified to?

1 A. No, I don't. But I assume they took that  
2 from the experience of some other states in the same  
3 particular situation.

4 Q. Did you ever hear of any specific? You say  
5 you assumed. But did you ever hear of any particular  
6 place?

7 A. No, sir.

8 Q. Okay. When you -- did you write the  
9 prescriptions? You say you wrote the prescriptions  
10 for these chemicals for the three -- first three  
11 executions?

12 A. Yes. That's correct.

13 Q. And do you recall to whom you wrote the  
14 prescription for? Was it for the inmate? For  
15 example, if it was an inmate, did you use the inmate's  
16 name or --

17 A. No. I believe it was for the pharmacy or  
18 just the penitentiary. I don't recall exactly. But,  
19 certainly, it was not for -- with the name of any  
20 particular person.

21 Q. I understand. And is that -- can you explain  
22 why that procedure existed?

23 A. No.

24 Q. It was no particular reason for it, you  
25 mean, or --

26 A. I don't think so.

27 Q. Was this something suggested to you, or was  
28 this an idea that you decided was the one to do?

29 A. No. It was something that was in place when  
30 I worked there, and that was the way they handled this.

31 Q. Okay. And, again, just to clarify for the  
32 record, the Robert Wayne Sawyer execution in 1993, was

1 the first Louisiana lethal injection. So when you say  
2 that it was just the procedure, then it was the  
3 procedure that had been set up somehow, somewhere  
4 independently of this because it was the first time  
5 here. So are you saying it was a procedure you assume  
6 came from another state or another place to write the  
7 name of --

8 A. I don't know exactly. I was not involved in  
9 corrections when I got to Louisiana. And I -- I know  
10 that that was going to be the first case.

11 Q. Right. Okay. Do you know what happens to  
12 prescriptions like the ones that you wrote? Do you  
13 have any idea where those pieces of paper would be  
14 today?

15 A. No. That was from me to the pharmacy. And  
16 from there, I don't know.

17 Q. Okay. So that the last time you ever saw  
18 anything like it was the pharmacy itself? You didn't  
19 have copies or anything of that nature?

20 A. No.

21 Q. Okay. Just to go back to an earlier  
22 subject, about how far away could you estimate your  
23 position when you were in the witness room?

24 A. Uh-huh.

25 Q. How far away from the inmate on the gurney  
26 were you, approximately?

27 A. Some 8 to 10 meters.

28 Q. Okay. And could you estimate how long --  
29 or let me ask you this. What did you observe in the  
30 execution of Robert Wayne Sawyer, if you can recall?  
31 Do you recall -- do you have -- do you know how or  
32 when the chemicals were first started? Do you know --

1 do you have any idea when that might have happened

2 from what you could see?

3 A. Yes.

4 Q. Could you explain what that -- how you know

5 that?

6 A. Well, I knew that the warden motioned,

7 looking towards that wall where the I.V.s, the

8 piggyback was coming. And the -- so I assume that's

9 the time they start.

10 Q. Okay. And do you -- did -- how -- you were

11 there partly to pronounce death. That was one of your

12 functions. How was it --

13 A. That was the only function.

14 Q. That was the only function. How was it that

15 you were signaled to come to pronounce death?

16 A. That's a -- that's a good question. I

17 believe after the finishing of the injection, they

18 wait something like five minutes. And then the --

19 again, the warden made a motion for us to go.

20 Q. Okay. Is that belief about five minutes

21 based on something you have read or heard, or do you

22 know?

23 A. No. That's about the estimate time that I

24 can use right now. No. No. I believe that this --

25 and after the time of the injections, five more

26 minutes is enough time for somebody to be totally dead

27 if there were no vital signs at all.

28 Q. Okay. Were you then given a signal,

29 perhaps, the warden looking over your direction,

30 maybe? Or do you remember -- to come in?

31 A. No. I don't remember. I think he called by

32 the microphone or something.

1 Q. I see. So perhaps you were actually spoken  
2 -- there was a way to hear his voice to invite you to  
3 come in at that time?

4 A. I am not sure of that, really.

5 Q. Sure.

6 A. But I believe that that was the way.

7 Q. Okay. Do you recall how much time it took  
8 you from the time that you started? You got up from  
9 your chair to go into there. How much time did it  
10 take you to get -- to be standing right next to where  
11 the inmate's body was?

12 A. Just seconds, you know, 15 seconds or so.

13 Q. Okay. Dr. Gutierrez, are you aware of any  
14 position of the American Medical Association  
15 concerning the involvement of medical doctors in  
16 executions, especially lethal injections?

17 A. The last time I hear about that was -- I  
18 understood that was left at the criteria -- criterion  
19 of the particular physician. And there was not any  
20 time of repercussions or any time -- type of  
21 restrictions from that from any of the medical boards.

22 Q. All right.

23 MR. CLEMENTS: No further questions at  
24 this time.

25 CROSS-EXAMINATION

26 BY MR. FISH:

27 Q. Dr. Gutierrez, my name is Howard Fish. I'm  
28 an assistant district attorney in the First Judicial  
29 District, and I am representing the State of  
30 Louisiana. I have a couple of questions for you now.

31 A. Okay.

32 Q. In the three executions that you were a

1 witness to, did anything unusual or out of the  
2 ordinary happen in any one of them in any of the three?

3 A. I believe one of them, when the -- the first  
4 chemical substance was being introduced or starting to  
5 introduce, he say something.

6 Q. I'm sorry. I didn't understand you.

7 A. The inmate, you know, say something when the  
8 -- was initiated, the injection.

9 Q. Okay. And anything else unusual in the  
10 three executions?

11 A. No.

12 Q. Could you understand what the inmate said?

13 A. Only thing, he made some kind of noise, you  
14 know, like woe or something.

15 Q. Okay. And did -- did in any of the three  
16 executions that you witnessed, was there any  
17 requirement to do the cutdown procedure that we have  
18 talked about, that you talked about on direct  
19 examination?

20 A. No. Not at all.

21 Q. And with -- in describing the way -- I would  
22 ask you to describe the way the prisoner looked during  
23 the process when he was being -- as he was being  
24 executed by the ingesting of the chemicals. How did  
25 he appear to react?

26 A. Well, I was impressed that all of them were  
27 very calm at the -- before the process and when they  
28 were strapped on the stretcher. And from there on,  
29 until we declared them dead, there was no expression  
30 at all of fear or anything in any of them that I could  
31 tell.

32 Q. Was there any manifestation of suffering?

1 A. No.

2 Q. Was there any manifestation of pain on the  
3 part of the person being executed?

4 A. No.

5 Q. Would it be accurate to characterize the way  
6 they died is they seemed to fall asleep? Would that  
7 be an accurate statement?

8 A. That would describe it perfectly well.

9 Q. The conduct of the prison personnel who were  
10 attending the person to be executed and those that  
11 were around the witnesses, how would you describe  
12 their behavior?

13 A. Very professional. And they were like  
14 concerned about what was going to take place.

15 Q. At any time during any of the three  
16 executions, did you ever see anything that could in  
17 any way be described as a carnival-like or  
18 disrespectful atmosphere?

19 A. Not at all.

20 Q. You talked about on direct in answer to  
21 Mr. Clements' questions concerning the fact that you  
22 were not concerned with the body weight of the person.  
23 You don't think it was an important consideration, the  
24 body weight of the person being executed, due to the  
25 massive dosages of chemicals that are being injected  
26 in any of them; is that correct?

27 A. That's correct.

28 Q. Would it be accurate to say that the doses  
29 were so large that there would be no question that the  
30 person would be executed, no matter what his body  
31 weight?

32 A. And that's what I was referring to.

1 Q. You also made reference to the use of --  
2 during Mr. Clements' questioning of some of the  
3 clinical use of these drugs in an operating room where  
4 you -- you indicated that it was very important to be  
5 careful of the amounts of these drugs that are given  
6 to somebody in a clinical atmosphere. And you  
7 indicated that it is not so important in an execution.  
8 Would that be because in a clinical atmosphere, you  
9 are trying to keep the person alive, as opposed to an  
10 execution?

11 A. That is right.

12 MR. FISH: I have no further questions,  
13 your Honor.

14 THE COURT: Mr. Clements?

15 MR. CLEMENTS: Yes. We have a couple of  
16 questions.

17 THE COURT: When you are ready.

18 MR. CLEMENTS: Thank you.

19 REDIRECT EXAMINATION

20 BY MR. CLEMENTS:

21 Q. I would like to draw your attention to the  
22 reference to the execution of Antonio James on March  
23 the 1st, 1996. That would have been the last one that  
24 you personally were an official witness. And ask if  
25 you recall the length of time it took to locate a --  
26 two veins.

27 A. No, I don't. Because at that time, we were  
28 separate from where the inmate was.

29 Q. Uh-huh.

30 A. When they called all the witnesses, the  
31 inmate already had the vein cannulized by the, you  
32 know, the catheter or whatever.



1 Q. So it is your memory that in each of the  
2 three lethal injections, that when you as a witness  
3 and others were brought into the observation room, the  
4 inmate was -- already had the intravenous lines  
5 attached?

6 A. That is correct.

7 Q. Do you recall the use -- when you came into  
8 that room with the other witnesses, do you recall  
9 whether the curtain -- do you recall a presence of a  
10 curtain in that inner room or not?

11 A. Yes. I believe there was that, you know,  
12 that obstruct our vision, you know, the ones that we  
13 were in that side room.

14 Q. Right.

15 A. Prior to going into the execution area.

16 Q. But when you were in the room itself and  
17 finally sitting in the 12 chairs or so that were  
18 there, do you recall whether -- seeing the curtain  
19 open or closed in that room?

20 A. No, I don't.

21 Q. Okay. You don't recall whether someone  
22 moved the curtain open or closed at any point in any  
23 of them?

24 A. No.

25 Q. I understand. Could you explain again --  
26 because I wasn't positive -- if you can recall of  
27 which three you say that one of the persons, one of  
28 the inmates made a noise or a sound, do you think?

29 A. Yes.

30 Q. Did I hear that?

31 A. I believe it was the second person. But I'm  
32 not sure.

1 Q. Right. That would have been Thomas Ward in  
2 1995, and Warden Cain would have been -- that would  
3 have been the first execution that he was present at.

4 Can you describe what that sound was like?

5 A. Well, just something like, woe, you know.

6 Something like that.

7 Q. Do you remember whether the inmate that was

8 being executed at that time was white or

9 African-American or Hispanic?

10 A. I think was white.

11 Q. Okay.

12 MR. CLEMENTS: No further questions.

13 MR. FISH: State has no further

14 questions, your Honor.

15 THE COURT: The witness may step down.

16 Is the witness free to go, Counsel?

17 MR. CLEMENTS: Yes.

18 THE COURT: State?

19 MR. FISH: Yes, your Honor.

20 THE WITNESS: Thank you.

21 THE COURT: All right. You are welcome.

22 The witness is free to go. Counsel, let's take about

23 a 15-minute recess. And, Mr. Bailiff, call me when we

24 are ready to proceed.

25 (Recess taken.)

26 THE COURT: The Court is ready.

27 MR. CLEMENTS: Okay. Your Honor, the --

28 appears to be no more witnesses available today.

29 THE COURT: At this time? Okay. And I

30 meant to ask as I was leaving out, Dr. Gutierrez, I

31 believe he may have been asking Mr. Fish, but I am

32 wondering if he was wondering about directions in the

1 courthouse, maybe to the clerk's office for subpoena  
2 or anything, concerns about that. Because some  
3 people, I think -- most people, their concerns have  
4 been addressed properly. And I was just going to say  
5 if I could help with anything, I left out without  
6 doing that. So I wanted to --

7 MR. CLEMENTS: I believe his departure  
8 was the only thing he needed.

9 THE COURT: He was concerned about at  
10 the time? Okay. Well, I am glad you cleared that up  
11 for me. Is there any special request for tomorrow?  
12 We probably have a similar docket tomorrow as we did  
13 today, which we would just be clearing, getting new  
14 dates.

15 The only concern I have is I do have somewhere I  
16 need to be at about 11 o'clock, and probably between  
17 11:00 and 1:30. So whenever we get started, I am  
18 going to have to recess at about 11:00, and then we'll  
19 come back at 1:30. So I just advise that you kind of  
20 line your witnesses up tomorrow with that in mind.

21 MR. CLEMENTS: I think we'll be fully  
22 prepared to fill the day.

23 THE COURT: Okay. Anything else I need  
24 to be concerned about?

25 MR. CLEMENTS: We're waiting to hear  
26 more from Mr. Dodd about the other matter of him doing  
27 more investigation about the John Does. But other  
28 than that, it will just require us to meet perhaps at  
29 the end of tomorrow to see where we are on that.

30 THE COURT: That's fine with the Court.  
31 Anything else from the State?

32 MR. FISH: Nothing from the State, your

1 Honor.

2 THE COURT: Okay. The Court commends  
3 you on your diligence thus far. And that being said  
4 and done, court's in recess for the rest of the day.

5 (Court recessed for the day.)

6 (Case continued to 3/18/03.)

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1 REPORTER'S CERTIFICATE

2

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 18th day of

15 May, 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

4

5

6 THE STATE OF LOUISIANA

7 VS. NO. 138,860-A

8 NATHANIEL R. CODE, JR.

9

10

11 APPEARANCES:

12 FOR THE STATE:

13 MS. CATHERINE M. ESTOPINAL

14 Assistant District Attorneys

15 FOR THE DEFENDANT:

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 March 18th, 2003.

27

28 SPECIAL HEARING, VOLUME II

29 (MARCH HEARINGS)

30

31 Reported by:

32 Official Court ReporterPR, CCR

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1 PROCEEDINGS

2 (Case continued from 3/17/03.)

3 THE COURT: The Court is ready. And  
4 just as a reminder, we'll probably go for about an  
5 hour, then we'll recess and pick up again about 1:30  
6 this afternoon. Are we ready to proceed?

7 MR. CLEMENTS: Counsel for Mr. Code is  
8 ready.

9 MR. FISH: Your Honor, the State is  
10 ready. Mr. Code is present with his lawyers  
11 Mr. Clements and Mr. Sweeney.

12 THE COURT: So noted. And the Court is  
13 ready for you to call your first witness.

14 MR. CLEMENTS: Just two matters of  
15 housekeeping for the Court and everyone.

16 THE COURT: All right.

17 MR. CLEMENTS: First of all, I would  
18 like to move to enter Exhibit 107. Yesterday, the  
19 10-page document was with Mr. Dodd, was made initial  
20 proffer at that time. But I didn't make a formal  
21 motion to move it into the record.

22 (Petitioner's Exhibit No. 107 offered.)

23 THE COURT: Any response by the State?

24 MR. FISH: No objection, your Honor.

25 THE COURT: Exhibit -- is that 107?

26 THE CLERK: Yes, your Honor.

27 MR. CLEMENTS: Yes.

28 THE COURT: All right. It's admitted.

29 (Petitioner's Exhibit No. 107 admitted.)

30 MR. CLEMENTS: Secondly, just as a very  
31 quick update on the issue of the subpoenas, we have a  
32 number of people here today. We believe we can



1 certainly keep ourselves quite occupied today. But  
2 the subpoenas were served at Angola, but the subset of  
3 subpoenas that went to people other than those who are  
4 Angola employees have yet to be served. We have  
5 notified these people individually as of last Thursday  
6 and Friday that they should anticipate receiving it.

7 Two guards from the Avoyelles correctional  
8 facility will be our first witnesses this morning  
9 because they arranged to come. But two doctors in  
10 particular, Dr. Richard Rathbone and Dr. Flynn, first  
11 name Thomas Flynn, both told me that they weren't  
12 going to move until they saw a piece of paper, the  
13 subpoena.

14 So to our knowledge, we were told this morning at  
15 the clerk's office that the Baton Rouge and Saint  
16 Francisville sheriffs hadn't even received the  
17 subpoenas that you signed last Wednesday. That's  
18 where we stand on those matters.

19 Otherwise, we are prepared to do -- oh, and there  
20 was another group of names that twice, both in  
21 February and last week, I had asked Mr. Dodd. He was  
22 telling me that there was a group of six people that  
23 were not -- that we had on our original subpoena list  
24 that did not -- were not directly involved in any  
25 fashion.

26 And on his word, I said, "Well, I will send you a  
27 statement to that effect. If you will sign that I  
28 will -- and fax it back to me, I will release those  
29 people from any further involvement in a subpoena or  
30 anything." And I have yet to receive that fax back  
31 even though I asked several times. So we haven't  
32 subpoenaed them because we thought we were going to

1 get around it. But they remain. These are primarily  
2 former guards at Louisiana State Penitentiary or  
3 possibly current guards but -- seemingly uninvolved,  
4 but we are still waiting to get a written  
5 confirmation.

6 THE COURT: All right. Are you asking  
7 the Court for some specific action regarding the two  
8 physicians? I recall the last time that when we had  
9 hearings, I think it was Dr. Flynn that may have had  
10 some scheduling problems.

11 MR. CLEMENTS: Right.

12 THE COURT: That he notified the Court  
13 of. But the concern is the timeliness of being able  
14 to serve subpoenas on people --

15 MR. CLEMENTS: Right. He --

16 THE COURT: -- outside of the city. And  
17 if you are asking for some particular action by the  
18 Court, you need to do so at the opportune time, which  
19 might be now, or you may determine may be later.

20 MR. CLEMENTS: Your Honor, we may  
21 reconsider and move to a deposition format to be  
22 conducted on a more local basis. His days are --  
23 Fridays is normally his day when he doesn't have  
24 anything scheduled. And that one didn't work out this  
25 week as far as this matter. But we will approach the  
26 Court a little later about this.

27 THE COURT: All right. So noted.

28 MR. CLEMENTS: Thank you.

29 MR. SWEENEY: Petitioner calls

30 Mr. Fulton Rabalais.

31 COLONEL FULTON 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. SWEENEY:

6 Q. Good morning, Mr. Rabalais.

7 A. Good morning.

8 Q. Could you please state your full name for  
9 the record, and spell your last name.

10 A. Fulton Rabalais. I'm a little hoarse.

11 Excuse me. Fulton Rabalais. R-A-B-A-L-A-I-S.

12 Q. Mr. Rabalais, where are you currently  
13 employed?

14 A. At the Avoyelles Correctional Center in  
15 Cottonport, Louisiana.

16 Q. And how long have you been employed at  
17 Avoyelles?

18 A. Almost nine years.

19 Q. Okay. And were you formerly employed at  
20 Angola?

21 A. Yes, sir, I was.

22 Q. At the time of the March 5th, 1993, execution  
23 of Robert Sawyer, were you employed at Angola?

24 A. Yes, I was.

25 Q. Do you remember who the warden of Angola was  
26 at that time?

27 A. What year was that, sir?

28 Q. 1993.

29 A. Warden Whitley, I believe. I am not sure.

30 Q. In 1993, what was your job title and rank at  
31 Angola?

32 A. I was a full-bird colonel.

1 Q. Okay. During your time at Angola, did you  
2 participate in any executions?

3 A. Yes, sir, I did.

4 Q. Could you approximate how many executions  
5 you participated in?

6 A. About five, maybe six. I'm not sure.

7 Q. How many lethal injections did you  
8 participate in?

9 A. One.

10 Q. And do you remember which one that was?

11 A. The first one they did.

12 Q. Okay. Mr. Robert Sawyer?

13 A. Sawyer, I believe it was.

14 Q. Okay. What were -- what was your role in  
15 Mr. Sawyer's execution?

16 A. I was part of the team that did the  
17 strap-down.

18 Q. And was that your role in the previous  
19 executions?

20 A. Yes, it was.

21 Q. As a member of the strap-down team, what  
22 were some of your duties?

23 A. We -- when it was time to -- for the inmate  
24 to come out of the cell, he was placed in restraints.  
25 And we escorted him to the table, and that at that  
26 point he was put on the table and strapped down. His  
27 arms and legs and body was strapped down.

28 Q. Okay. Do you remember which part of  
29 Mr. Sawyer's body you were responsible for strapping  
30 down?

31 A. No, sir. I really don't. Probably the arm.  
32 Probably the arm, I guess. Not sure.

1 Q. Okay. I want to talk a little about the  
2 time frame which you performed your specific duties --  
3 A. All right, sir.  
4 Q. -- as a strap-down. Mr. Sawyer's execution  
5 took place at midnight; is that correct?  
6 A. I believe so. They normally do.  
7 Q. At what time did you first see Mr. Sawyer on  
8 March 5th, 1993, the day he was executed?  
9 A. I'm not -- I don't know. May have been  
10 maybe an hour or half hour before.  
11 Q. So did you -- did you see him in a capacity  
12 that was separate from your duty as a strap-down team  
13 member?  
14 A. Only when we walked to the cell to get him  
15 out.  
16 Q. Okay. And if you can remember, how many  
17 members of the strap-down team were there in  
18 Mr. Sawyer's execution -- at Mr. Sawyer's execution?  
19 A. Probably five or six. But I'm not positive.  
20 Q. Okay. And was there a standard time at  
21 which you collected the inmate from the cell as it  
22 related to the midnight execution?  
23 A. Yes. Generally, you know, just a few  
24 minutes before the execution time.  
25 Q. Could you approximate the minutes?  
26 A. Probably be a few minutes before midnight.  
27 Q. Okay. So 11:55, is that --  
28 A. I guess that would be it.  
29 Q. Okay.  
30 A. Yes, sir.  
31 Q. And as far as the actual strapping in of  
32 Mr. Sawyer, how long did that process take?

1 A. Probably not more than a few minutes, couple  
2 of minutes.

3 Q. Okay. And if you could -- you know, if you  
4 could approximate for us, how many minutes did your  
5 entire, you know -- your participation take from  
6 initially getting the inmate in his cell and bringing  
7 him to the chamber and strapping him in?

8 A. Until he was strapped in?

9 Q. Yes.

10 A. If I had to guess, seven minutes, eight  
11 minutes.

12 Q. Okay.

13 A. Somewhere around there.

14 Q. And when you entered the chamber itself, do  
15 you remember who else was present at that time in the  
16 chamber?

17 A. The other members of the team. And,  
18 generally, the warden was there. But --

19 Q. Okay.

20 A. Yes, sir.

21 Q. And that would have been Warden Whitley for  
22 Mr. Sawyer?

23 A. As well as I can remember.

24 Q. Okay. And after your -- after you were  
25 completed strapping the inmate in, what did you do  
26 next?

27 A. We were told to leave the room, and we did.

28 Q. Okay. And do you remember which way you  
29 exited the room?

30 A. I believe we went back out the same way we  
31 came in.

32 Q. Okay. Did you remain to witness the

1 execution?

2 A. No.

3 Q. If you are aware, how soon after your role

4 was completed did the actual execution begin?

5 A. I was not in the room, sir.

6 Q. Okay. So you --

7 A. So I really don't know.

8 Q. Once your duty was completed, you left?

9 A. We stepped out of the room, yes, sir.

10 Q. Okay. Did you leave Camp F?

11 A. No, sir. We waited in the lobby.

12 Q. Okay. In an -- okay. You waited in the

13 lobby. Did you see any other members of what might be

14 called the execution team at all? Did you see any

15 members of the I.V. team or any other participants in

16 the process?

17 A. Just the members that worked with me. We

18 stepped out into the lobby.

19 Q. Okay. So just other members of the

20 strap-down team?

21 A. I don't remember anyone else.

22 Q. Okay. Before the actual execution date, did

23 the strap-down team conduct any walk-throughs or dry

24 runs?

25 A. Yes, we did.

26 Q. And when did those begin in relation to the

27 execution? Let's say Mr. Sawyer's execution.

28 A. Normally, if I can remember -- if I remember

29 right, approximately a week or so, a week and a half

30 before the actual date.

31 Q. And how many of the dry runs would you do in

32 that week?

1 A. Normally, if we went today, for example, we  
2 may do three or four trial runs. And then we may not  
3 go back until a couple days later and maybe do it  
4 again, if I remember correctly.

5 Q. Okay. So four to five through the week?

6 A. I would -- probably, yes, sir.

7 Q. Okay. Who was present at the dry runs  
8 besides yourself and other members of the strap-down  
9 team?

10 A. Generally, the warden would. As well as I  
11 can remember, he was there.

12 Q. Okay.

13 A. To see how --

14 Q. So Warden Whitley and --

15 A. Yes, sir.

16 Q. Okay. Were there any other security  
17 personnel or medical personnel that supervised the dry  
18 run?

19 A. Not that I can remember.

20 Q. And approximately how long did the dry runs  
21 -- how long did they take to conduct?

22 A. 10 minutes, 15 minutes. And then we'd --  
23 sometimes we would do it again, you know, as well as I  
24 can remember.

25 Q. So a simulation of what was going to take  
26 place the actual day?

27 A. Correct.

28 Q. To your knowledge, why are the strap-down --  
29 why are the run -- the runs through -- run through --  
30 I'm sorry -- the walk-throughs conducted?

31 A. Why?

32 Q. Yeah.



1 A. To make sure everybody was familiar with  
2 what we needed to do.

3 Q. And was the warden instructing you as you  
4 went through the dry run?

5 A. Yes. Pretty much, as well as I can  
6 remember. If he saw something that was -- that he  
7 didn't agree with or, you know, that he wanted  
8 changed, then certainly he would tell us at that  
9 point.

10 Q. Do you remember him making suggestions as  
11 they related to your duties?

12 A. No. Not specifically, no, sir.

13 Q. But to your understanding, that's what he  
14 was there for?

15 A. Sure. He is the boss. So --

16 Q. Okay. Mr. Rabalais, did you ever have  
17 occasion to read any documents that outlined your  
18 duties as a member of the strap-down team?

19 A. No. Not that I can remember.

20 Q. Can you recall how your duties were  
21 communicated to you?

22 A. Not -- no. Not really. We just got  
23 together as a group and probably -- I don't know. I  
24 can't -- I would be guessing, and I don't want to  
25 guess.

26 Q. Okay. Is it fair to say that it was just  
27 done by word of mouth, verbally communicated?

28 A. Probably so, yes, sir.

29 Q. Okay. When you were conducting the dry  
30 runs, did you take -- was it important to you and  
31 other members of the strap-down team how tightly you  
32 strapped the subject in?

1 A. I'm sure that was part of it, yes, sir.

2 Q. Do you remember discussing that at all?

3 A. No, I don't.

4 Q. Okay. Do you remember anyone advising you  
5 on that matter?

6 A. I'm sure -- no. I can't specifically say  
7 that I remember someone saying that. But that's  
8 pretty much the point of it.

9 Q. Okay.

10 MR. SWEENEY: Just one moment, your  
11 Honor. May I approach the witness, your Honor?

12 THE COURT: You may, Counsel.

13 MR. SWEENEY: I'm showing the witness  
14 what has been marked as Exhibit 101, and I am  
15 referring him to page 10.

16 Q. (By Mr. Sweeney) And I'm just going to ask  
17 you to review pages 10 through 13, briefly.

18 A. (Witness complies.) How far do you want me  
19 to read?

20 Q. Just through page 13. I think that's the  
21 last page.

22 A. This page?

23 Q. Yes.

24 A. (Witness complies.)

25 Q. Have you seen this document before,  
26 Mr. Rabalais?

27 A. I don't remember ever seeing that document,  
28 no, sir.

29 Q. I am going to refer you to paragraph three  
30 on page 13. Could you read the highlighted portion  
31 out loud?

32 A. "All of the arrangements for carrying out

1 the execution shall be completed by midnight. 11:45  
2 p.m. on the date preceding the execution, the warden  
3 shall order defendant to be brought to the execution  
4 room where defendant will be strapped to the execution  
5 table at which time the person designated by the  
6 warden will insert intravenous catheter."

7 Q. Okay. And is that -- does that reflect the  
8 way you -- does that reflect accurately the way you  
9 conducted your duties in Robert Sawyer's execution?

10 A. As well as I can remember, yes.

11 Q. Okay. Mr. Rabalais, did you ever meet  
12 before, immediately before the execution with other  
13 members of the strap-down team?

14 A. Yes, we did.

15 Q. Okay. And do you remember what the purpose  
16 of that meeting was?

17 A. I mean, we all met at a certain time to  
18 prepare to do what we were ordered to do. We didn't  
19 have a meeting, if you -- I mean, what do you mean by  
20 a meeting?

21 Q. Did you have --

22 A. If we sat down and discussed?

23 Q. Where you discussed perhaps your duties?

24 A. No, sir.

25 Q. Did you have a prayer meeting before?

26 A. No, sir. We just met. And everybody -- you  
27 know, made sure everybody was there.

28 Q. Okay. And then proceeded to --

29 A. Yes, sir.

30 Q. To fulfill your role as strap-down?

31 A. Correct.

32 Q. Did you ever meet after an execution, after

1 Robert Sawyer's execution to debrief how the execution  
2 went?

3 A. Not that I can remember, no, sir.

4 Q. I just have one more question, Mr. Rabalais.

5 Do you have any medical background at all?

6 A. No, sir.

7 MR. SWEENEY: That's all I have of this  
8 witness.

9 MR. FISH: Your Honor, the State has no  
10 questions of this witness.

11 THE COURT: The witness may step down.

12 THE WITNESS: Thank you, ma'am.

13 THE COURT: And as per counsel for  
14 Petitioner, is the witness free to go?

15 MR. CLEMENTS: Yes.

16 MR. SWEENEY: Yes, he is.

17 THE COURT: And the State?

18 MR. FISH: Yes, your Honor. That's  
19 agreeable with the State.

20 THE COURT: All right. The witness is  
21 free to go. Thank you.

22 THE WITNESS: Thank you, ma'am.

23 MR. SWEENEY: Petitioner calls  
24 Mr. Blaine Edwards.

25 BLAINE EDWARDS,  
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. SWEENEY:

32 Q. Morning, Mr. Edwards.

1 A. Good morning.

2 Q. Could you please state your full name for  
3 the record.

4 A. Blaine Edwards.

5 Q. And Mr. Edwards, where are you currently  
6 employed?

7 A. Louisiana Department of Corrections.

8 Q. Okay. And which facility?

9 A. Avoyelles Correctional Center.

10 Q. How long have you been employed there?

11 A. Nine -- eight and a half years.

12 Q. Okay. And were you formerly employed at  
13 Louisiana State Penitentiary at Angola?

14 A. I was.

15 Q. And how long were you employed at Angola?

16 A. Approximately 14 years.

17 Q. And at the time of the March 5th, 1993,  
18 execution of Robert Sawyer, were you employed at  
19 Angola Penitentiary?

20 A. Yes, I was.

21 Q. Do you remember who the warden of the  
22 facility was at that time?

23 A. John Whitley.

24 Q. And what was your job title and rank in  
25 1993?

26 A. My rank?

27 Q. Yes.

28 A. Corrections lieutenant.

29 Q. During your time at Angola, did you ever  
30 participate in any execution?

31 A. Yes, I did.

32 Q. Do you remember how many?

1 A. No.

2 Q. Do you remember how many lethal injections  
3 you participated in?

4 A. One.

5 Q. And that would have been Robert Sawyer's?

6 A. Yes, sir.

7 Q. What was your role in Robert Sawyer's  
8 execution?

9 A. I was in charge of perimeter security and  
10 on-grounds security at the time, which is called  
11 roving security. It's kind of like internal police  
12 force.

13 Q. Okay. Were you located at Camp F in that  
14 capacity, or were you located at another part of the  
15 facility?

16 A. I was the supervisor of all the gate -- the  
17 front gate officers and ferry gate officers. Those  
18 are the gates that enter the prison.

19 Q. Okay.

20 A. I was in charge of those officers as well as  
21 security officers who patrol the grounds of the  
22 facility. And we're kind of like an internal police  
23 force. And best to describe it, would be like the MPs  
24 on a military base.

25 Q. So you were actually not on -- at Camp F,  
26 the site of the lethal injection?

27 A. My position at the time of the executions  
28 was the front door of Camp F.

29 Q. Okay. Did you see Mr. Sawyer at all that  
30 day?

31 A. No, I did not.

32 Q. And this is just for clarification. Did you

1 serve as a member of the strap-down team at  
2 Mr. Sawyer's execution?

3 A. I did not.

4 Q. Mr. Edwards -- Mr. Edwards, did you ever see  
5 any documents that pertained to your specific duty  
6 that day?

7 A. No. No, sir.

8 Q. Okay. And did you -- how did you -- was  
9 there any special preparation that took place as it --  
10 they -- as it related to your duty as internal police?

11 A. The only thing that we would do is tighten  
12 security at the main perimeter gate.

13 Q. And what did that involve?

14 A. Just added extra security officers.

15 Q. Did you guys have meetings in the time --  
16 and preceding the execution?

17 A. None that I am aware of. The only thing,  
18 that we would just get our orders through the chain of  
19 command, and we would just carry out those orders.

20 Q. Okay. So there wasn't an identifiable group  
21 that had meetings and -- and fulfilled this role? You  
22 came separately as individuals you heard through the  
23 chain of command?

24 A. Right. At my level at -- I mean, I would  
25 just receive orders from my superiors. I am sure  
26 there were meetings going on, you know, with the  
27 uppers. But I am not aware of any.

28 Q. And who was your superior at that time?

29 A. Warden Whitley.

30 Q. So he communicated to you?

31 A. Right. Roving security worked for the  
32 warden.

1 Q. Okay. Did you know the doctors at Angola in  
2 1993?

3 A. The doctors?

4 Q. Yes.

5 A. Sure did. Been a while.

6 Q. Okay. Do you know whether any doctor was  
7 staying outside in front of Camp F at the time of  
8 Mr. Sawyer's execution?

9 A. No. I do not know that.

10 THE COURT: Did we -- did the court  
11 reporter pick that up?

12 THE COURT REPORTER: Yes, your Honor.

13 THE COURT: I'm sorry. I think I was  
14 rattling my paper. I apologize.

15 MR. SWEENEY: Just one moment, your  
16 Honor.

17 THE COURT: Certainly.

18 Q. (By Mr. Sweeney) Mr. Edwards, were you ever  
19 asked to prepare for the possibility that a doctor  
20 would need to be brought to Camp F?

21 A. No, sir.

22 Q. And given security clearance to enter Camp F,  
23 if need be?

24 A. Could you repeat the question?

25 Q. At the time of the execution, do you recall  
26 ever being apprised of the possibility that a doctor  
27 would need security clearance to enter Camp F?

28 A. No, sir. Not that I can remember.

29 MR. SWEENEY: That's all we have of this  
30 witness, your Honor.

31 MR. FISH: Your Honor, the State has no  
32 questions of this witness.



1 THE COURT: The witness may step down.

2 Counsel for Petitioner, is the witness free to go?

3 MR. SWEENEY: Yes. The witness is free  
4 to go.

5 THE COURT: The State as well?

6 MR. FISH: The State does not need this  
7 witness, your Honor.

8 THE COURT: All right. The witness is  
9 free to go.

10 MR. SWEENEY: Thank you, Mr. Edwards.

11 MR. CLEMENTS: Your Honor, in light of  
12 the hour and your schedule --

13 THE COURT: Yeah. We are at 11 o'clock,  
14 and that's -- that is what I told you on yesterday. I  
15 was just out of an abundance of caution didn't want to  
16 go any later than 11:15 or 11:30 or so. And this  
17 gives me an opportunity to -- my team is doing a  
18 ins-of-court presentation at 12:00, and I am going to  
19 meet them over at the federal courthouse. So you will  
20 have a little bit more time for your lunch recess.  
21 Let's come back and pick up where we left off, and  
22 we'll return at 1:30.

23 (Lunch recess taken.)

24 THE COURT: Everyone got a chance to get  
25 some lunch. And I do appreciate everyone's  
26 indulgence. I got there in time, and we're finished,  
27 and I appreciate the time. The Court is ready to  
28 proceed. Is counsel -- are counsel for Petitioner  
29 ready?

30 MR. CLEMENTS: Counsel for Petitioner is  
31 ready.

32 MR. FISH: The State's ready, your

1 Honor. Mr. Code is present with Mr. Clements and Mr.  
2 Sweeney, his attorneys.

3 THE COURT: So noted. Any housekeeping  
4 matters before the next witness is called?

5 MR. CLEMENTS: Only to inform the Court  
6 that we have been unsuccessful in reaching Mr. Dodd so  
7 far.

8 THE COURT: All right. Just let me know  
9 at what point you wish the Court to give you any  
10 further assistance on that.

11 MR. CLEMENTS: All right. We'll try to  
12 go towards the end of the day and see if we have any  
13 more progress. But our office is continuing to try to  
14 contact him.

15 THE COURT: All right. Thank you. You  
16 may call your next witness.

17 MR. CLEMENTS: Yes. I would like to  
18 call Richard Heflin.

19 RICHARD PETE HEFLIN, M.D.,  
20 the witness hereinbefore named, having been first duly  
21 sworn to testify the truth, the whole truth, and  
22 nothing but the truth, was examined and testified  
23 under oath as follows:

24 DIRECT EXAMINATION

25 BY MR. CLEMENTS:

26 Q. Good afternoon, Dr. Heflin. Could you  
27 please state your full name for the record.

28 A. Richard Pete Heflin.

29 Q. Okay. Could you spell your last name.

30 A. H-E-F-L-I-N.

31 Q. Thank you. Where do you work, Dr. Heflin?

32 A. I work at the Louisiana State Penitentiary

1 at Angola, Louisiana.

2 Q. Thank you. And what is your occupation?

3 A. Physician.

4 Q. Okay. When did you receive your medical  
5 license?

6 A. 1981.

7 Q. Okay. And where did you graduate from  
8 medical school?

9 A. LSU in New Orleans.

10 Q. All right. And are you board certified in  
11 the medical specialty of anesthesiology?

12 A. No, I am not.

13 Q. And are you certified in any particular  
14 medical specialty?

15 A. Emergency medicine.

16 Q. Emergency medicine.

17 MR. CLEMENTS: I move to qualify Dr.  
18 Heflin as an expert in general medicine.

19 THE COURT: Do you have any questions on  
20 his qualifications?

21 MR. FISH: No questions, your Honor.

22 THE COURT: All right. You may proceed.

23 MR. CLEMENTS: All right.

24 Q. (By Mr. Clements) Dr. Heflin, how long have  
25 you been employed at Louisiana State Penitentiary?

26 A. I was employed from February '01, to the  
27 present.

28 Q. All right. And what was your medical  
29 position there? What staff position did you have?

30 A. I'm the assistant medical director.

31 Q. And what were your -- some of your duties as  
32 assistant medical director?

1 A. My duties are varied. They include -- I  
2 handle the emergency room. And also I am involved  
3 with the laboratory, the director of laboratory. I  
4 also supervise our nurse practitioners, and I do  
5 administrative duties when Dr. Tarver, our medical  
6 director, is absent.

7 Q. All right. And do you physically work at  
8 the R.E. Barrow Treatment Center at LSP?

9 A. Yes.

10 Q. Okay. I would like to turn now to the  
11 subject of executions. Have you ever provided any  
12 support functions for the prison on the day of an  
13 execution?

14 A. One time last year in the absence of the  
15 medical director, I signed the stock forms for some  
16 medications for Warden Cain.

17 Q. Just so I understand, could you -- is that  
18 stock forms?

19 A. Yes. What I -- one of my functions,  
20 whenever we have like procedures such as -- that will  
21 require sedation or whatever, we fill out  
22 prescriptions for the pharmacy so that one of the  
23 doctors signs them to make sure that every drug is  
24 accounted for, you know, in the penitentiary setting.  
25 So if some day they going to use some sedation for our  
26 scopings for sigmoidoscopies and they need Demerol and  
27 Vercet, we always sign to make sure that each vial is  
28 accounted for.

29 Q. Okay. Does that differ from a prescription?

30 A. Yes. These are just stock amounts. They  
31 are not a certain dose for a certain patient. They'll  
32 be -- such as Demerol that day, if they need 50

1 milligrams, then we sign for the 50 milligrams, that  
2 they may use on patients during the day. So they make  
3 sure that amount of Demerol is accounted for each and  
4 every day.

5 Q. I'll return in more detail to the  
6 prescriptions later. But for now, can you describe  
7 for which execution that you wrote the stock form?  
8 The time or the other prescription of it.

9 A. It was last year, I believe. It was Leslie  
10 Martin.

11 Q. Okay. And if I were to say that that had --  
12 that the execution of Leslie Dale Martin occurred on  
13 May 10, 2002, would that -- would you have any reason  
14 to dispute that date?

15 A. No.

16 Q. Okay. Did you perform any other medical  
17 service for a lethal injection execution at Angola?

18 A. No.

19 Q. Okay. Did you ever witness any lethal  
20 injection?

21 A. No.

22 Q. Okay. After the Leslie Martin execution,  
23 did any meeting occur to discuss how that most recent  
24 lethal injection was carried out?

25 A. Not to my knowledge.

26 Q. Okay. Who was the warden of Louisiana State  
27 Penitentiary at the time of the Martin execution?

28 A. Warden Burl Cain.

29 Q. Okay. So did you advise Warden Cain at all  
30 as to any aspect of the lethal injection protocol  
31 before the Martin execution?

32 A. No, I did not.

1 Q. Okay. Or afterwards?

2 A. No.

3 Q. Or did you provide any advice before or  
4 after to any other LSP personnel?

5 A. No, I did not.

6 Q. Okay. And I think you mentioned this. But  
7 just to clarify, Anthony Tarver was the medical  
8 director in 2002?

9 A. Yes.

10 Q. Okay. Did you meet with Medical Director  
11 Tarver about the medical -- any medical aspects of the  
12 execution before the Martin execution?

13 A. No, I did not.

14 Q. Okay. Looking a little more specifically at  
15 the stock form, did you -- how is it that you came  
16 about to write these out on that day?

17 A. They were -- they were already written out  
18 as vials of some medications that were written -- and  
19 to Warden Cain. And I signed them so that they -- the  
20 pharmacy would have, you know, note that they were  
21 taken out of the pharmacy.

22 Q. All right.

23 MR. CLEMENTS: Your Honor, I would like  
24 to approach the witness.

25 THE COURT: You may, Counsel.

26 MR. CLEMENTS: Thank you. Let the  
27 record reflect that I am showing the witness pages 973  
28 through 978 of the Petitioner's Exhibit, in globo, 101.

29 Q. (By Mr. Clements) And I ask the witness if  
30 he recognizes these documents here.

31 A. Yes, sir. I recognize this.

32 Q. All right. Now, if I understand your

1 testimony correctly, is it -- your signature does

2 appear on each of those six pages you just looked at?

3 A. Yes.

4 Q. But is it your testimony that the

5 handwriting above that signature is written by someone

6 else?

7 A. Yes.

8 Q. Okay. We have a sort of precautionary

9 measure that we are taking, Dr. Heflin, in these

10 proceedings. And we're not referring to certain

11 personnel by name directly, and, specifically, certain

12 emergency medical technicians. We're just calling

13 them emergency medical technicians. And maybe more

14 specifically, the head EMT at the time, just for

15 certain precautionary measures here that we are

16 taking.

17 So, could I ask, is it your memory -- do you know

18 who wrote that, that stock form out before you signed

19 it?

20 A. No, I don't.

21 Q. Okay. Do you know --

22 A. I thought it was written at the pharmacy. I

23 don't know. I mean, it was brought from the pharmacy.

24 Q. Okay. So the -- let me see if I understand.

25 So then you -- were you like called -- is the pharmacy

26 in the R.E. Barrow Treatment Center?

27 A. Yes.

28 Q. Okay. And so you were asked to come to the

29 pharmacy to sign these documents, or do you remember?

30 A. Actually, they brought them over from the

31 pharmacy to our office.

32 Q. Okay. And that would have been somebody

1 in -- would that have been Mr. Courts, perhaps?

2 A. It wasn't Mr. Courts. It was one of his  
3 assistants.

4 Q. Okay.

5 A. I don't remember exactly who it was. He has  
6 several assistants. So somebody else brought it over.  
7 It wasn't Mr. Courts.

8 Q. Okay. And when we are speaking of  
9 Mr. Courts, we are speaking of Donald Courts, the  
10 pharmacist. He is the head pharmacist at the --

11 A. Yes.

12 Q. Angola. Okay. So somebody from the  
13 pharmacy came over to you and presented you with these  
14 six pieces of paper and you signed your name on each  
15 one of those, those being the pages that you just  
16 looked at. And they would have already been  
17 hand-printed in?

18 A. Yes.

19 Q. The particulars on those?

20 A. Correct.

21 Q. Okay. Do you -- did that person explain how  
22 -- so everything was already written out. You didn't  
23 write it. Okay. Okay. Now, correct me if I am  
24 wrong. But are there only three chemicals used in the  
25 lethal injection procedure? Do you know?

26 A. I have never actually been involved in  
27 executions, so I don't know.

28 Q. You are not sure?

29 A. I haven't been there. You know, I would  
30 just be hearsay what is done.

31 Q. All right. Well, let me come back again  
32 because I don't want to -- I wasn't asking you to read



1 the contents of those portions of the stock form. If  
2 you could just look through here and see what we have  
3 written on there. What is the -- page 973 of 101  
4 reflect?  
5 A. Pentathol, 500 milligrams.  
6 Q. Okay. And what does this next notation  
7 mean?  
8 A. It says dispense four.  
9 Q. Okay. And what do you take that to mean?  
10 A. That's to dispense 500 milligrams of  
11 pentathol, times four doses, of 500 milligrams.  
12 Q. So for a total of 2000?  
13 A. Correct.  
14 Q. Now, don't worry. I had advance on the math  
15 on this.  
16 A. Yeah.  
17 Q. Okay. And the next page, 974. Does that  
18 appear to be the same?  
19 A. Pentathol 500 milligrams, dispense four.  
20 Q. Okay. So those two are pretty much  
21 identical?  
22 A. Uh-huh.  
23 Q. All right. And then we come to 975.  
24 A. Potassium chloride, 40 milliequivalents,  
25 dispense three.  
26 Q. So three doses of --  
27 A. 40 milliequivalents.  
28 Q. So 40 milliequivalents of potassium  
29 chloride?  
30 A. Uh-huh.  
31 Q. The next page, 976.  
32 A. Also potassium chloride, 40 milliequivalents

1 and dispense three.

2 Q. Okay. And then, finally, the last two on

3 page 977 to start with.

4 A. That's pancuronium bromide. And that's 10

5 milligrams per 5 ml, and that's dispense four.

6 Q. So would it be fair to say the quantity of

7 the pancuronium bromide on this particular document

8 refers to 10 milligrams, four doses of 10 milligrams

9 each?

10 A. Yes.

11 Q. 40 milligrams in total?

12 A. Yes.

13 Q. And then the final page, 978.

14 A. That's pancuronium bromide, 10 milligrams

15 per 5 ml, and that's dispense four.

16 Q. Okay. So again we are having 40 of the

17 pancuronium bromide. So we have -- would you agree

18 then we have three separate chemicals, but six stock

19 forms?

20 A. Yes.

21 Q. Okay. Do you know why it would have been

22 written like that? Do you have any idea?

23 A. That's what was requested from the pharmacy,

24 that amount. And that's the amount that we have to

25 sign for to make sure it's replaced in the pharmacy so

26 that we can account for it.

27 Q. Okay.

28 A. That was the amount ordered.

29 Q. All right.

30 A. By Warden Cain.

31 Q. Okay. All right. Hypothetically, if

32 someone were to say they were going to make two

1 separate sets of the same three chemicals, would this  
2 form kind of match that idea?

3 A. If they were going make two -- two equal  
4 doses of the three medications?

5 Q. Right.

6 A. Yes.

7 Q. Okay. So that -- okay. But were you  
8 involved in the actual preparation of any of these --  
9 the filling of these prescriptions or any of this?

10 A. No.

11 Q. Okay. But, again, we could say then that we  
12 have basically -- that you wrote a prescription for  
13 basically two separate sets of pentathol, potassium  
14 chloride, and pancuronium bromide?

15 A. Yes.

16 Q. All right. Would you know independently if  
17 that's the order in which they are administered at the  
18 execution?

19 A. I don't participate in executions.

20 Q. All right. Okay.

21 MR. CLEMENTS: One moment, please. Your  
22 Honor, may I reapproach the witness?

23 THE COURT: You may.

24 MR. CLEMENTS: I have a lot of paper  
25 this time. It's all from Exhibit 101.

26 Q. (By Mr. Clements) First of all, just  
27 keeping in mind the quantities, and you can refresh  
28 your memory any time you need to of those six stock  
29 forms that we looked at a moment ago.

30 I would like to ask you to compare -- first of  
31 all, I'm going to show the witness page 340 through  
32 344, and ask the witness if you could take a look at

1 that and describe for the Court what at least the  
2 beginning of it appears to describe, how it is titled.

3 A. It is titled Louisiana State Penitentiary  
4 Lethal Injection Procedures.

5 Q. Okay. And what is the main categories of  
6 the first section? If you could just read the title  
7 of that.

8 A. Obtaining Drugs and Equipment.

9 Q. Okay. And that's page 340. Coming to page  
10 341, if you could read the title of the second  
11 section?

12 A. Storage and Handling of Drugs.

13 Q. Okay. And then if you could just go to  
14 starting in this second paragraph underneath there, if  
15 you could read that out, and Part A.

16 A. "Two hours prior to the execution, the  
17 pharmacy director shall then prepare the syringes as  
18 follows, witnessed by the warden and/or medical  
19 director designee."

20 Q. Okay. And then (A)?

21 A. One set of labeled 60 cc syringes for the  
22 lethal injection. One, sodium pentathol, 2 grams.  
23 Number two, pancuronium bromide, 40 milligrams. And  
24 number three, potassium chloride, 120  
25 milliequivalents.

26 Q. Okay. If I could double-check again with  
27 what those other six documents -- does it appear that  
28 these -- the quantities indicated here match the  
29 quantities that you see listed that you saw a few  
30 minutes ago on those stock forms?

31 A. Yes, they do.

32 Q. Okay. Now, let me ask you, this entire

1 document here from 340 to 344, it is a similar -- laid  
2 out about different aspects. Okay. Do you -- have  
3 you ever seen this document before?

4 A. No.

5 Q. Okay. Have you ever seen any document that  
6 is similar in nature to this?

7 A. No, I have not.

8 Q. Okay. Any kind of a description of the  
9 lethal injection process as it's carried out?

10 A. I have not.

11 Q. Okay. Now, I would like to show you a third  
12 document that relates to similar matters. And this  
13 would be appearing on page 263. And if you could read  
14 the title of that?

15 A. Louisiana State Penitentiary Lethal  
16 Injection Equipment/Supplies Inventory Checklist.

17 Q. Okay. Now, could you read the first three  
18 items on that checklist, please.

19 A. Sodium pentathol, 500 milligrams, with  
20 dilutant. Pavulon, 10 milligram ampules. Potassium  
21 chloride, 10 milliequivalents, ampules.

22 Q. Are there also on each one of those three  
23 lines a quantity on the left-hand margin that  
24 indicates -- is there a number listed there?

25 A. There is.

26 Q. Does it appear to be a quantity?

27 A. It is 8, sodium pentathol; 15, Pavulon; and  
28 15, potassium chloride. So I would interpret it as 8  
29 of one, 15 of the second, 15 of the third.

30 Q. Okay. So if we start with the first  
31 chemical, sodium pentathol as listed here, and we have  
32 eight quantities or doses or something, eight units of

1 it, times the 500 milligrams, how does that compare  
2 with the stock forms that you first saw and that's  
3 also in this checklist?

4 A. That would be 4000 milligrams, which would  
5 be 2000 milligrams in two separate containers.

6 Q. Sets? Okay. So there is a match there?

7 A. Yes.

8 Q. Between the quantities of those three. And  
9 in those three places, there is a match as to the  
10 quantity of those things?

11 A. Yes.

12 Q. Okay. Moving to -- it's going to be a  
13 little out of order because the second one here is the  
14 Pavulon, whereas, it was the final stock form. But we  
15 can go back and forth to determine. But first of all,  
16 how many -- what quantities are we talking about on  
17 this checklist?

18 A. Pavulon, 10 milligrams, 15 ampules. So 150  
19 milligrams of Pavulon.

20 Q. So 150 milligrams of Pavulon. Do you  
21 recall, or would you like to refresh your memory, as  
22 to the total quantity of Pavulon indicated on your  
23 stock form?

24 A. Yes.

25 Q. Let's take a look. 977 to 978.

26 A. Okay. There's four.

27 Q. 977 is four times --

28 A. That's 40.

29 Q. Forty.

30 A. And 40.

31 Q. 40 and 40 is 80. So that's 80 milligrams to  
32 match the 150 milligrams on this checklist.

1 A. Well, this would be 150. So it doesn't  
2 completely match.

3 Q. No. So one is -- on the two forms that we  
4 saw before the stock form, we are talking 80  
5 milligrams. The Louisiana lethal injection protocol,  
6 80 milligrams of Pavulon or pancuronium bromide, and  
7 150 on this checklist. Before we go to the final  
8 chemical, I would like to just move ahead to page 266,  
9 and just to ask you if it appears that this is a  
10 continuous document here between 263 and 266.

11 A. Yes. It appears to be a supply list.

12 Q. And is there a date on anywhere on that set  
13 of four pages that would indicate when that was --  
14 when this checklist was used, what execution it might  
15 have been used for? If I might direct your attention  
16 to the last page, 267, on the bottom. Right here.

17 A. 5/10/02.

18 Q. Okay. And would 5/10/02 also match the date  
19 listed on your stock forms?

20 A. Yes. Yes, it does.

21 Q. All right. Okay. Now, going back to page  
22 263, to the final chemical, we're talking about the  
23 chemical potassium chloride. I know we have done a  
24 lot of different things. So if I could just jump back  
25 to page 975, and refresh your memory, that the  
26 potassium chloride is -- on the stock form is --

27 A. 40 milliequivalents, dispense three.

28 Q. So we're talking 120 milliequivalents,  
29 twice? Because also on page 976 --

30 A. Yes.

31 Q. So we have 120 and 120, or a total of 240  
32 milliequivalents; is that correct?

1 A. Yes. That's correct.

2 Q. What quantity appears on the -- page 263,  
3 for potassium chloride?

4 A. 15, potassium chloride, 10 milliequivalent  
5 ampules.

6 Q. How many total milliequivalents is that?

7 A. 150.

8 Q. 150. And is that the same as 240?

9 A. No, sir.

10 Q. No. Thank you. Can you have -- do you have  
11 any understanding or any reason, medical or not, why  
12 you would understand why there would be a discrepancy  
13 in those numbers?

14 A. I don't because I'm not sure of dosages that  
15 are used. So I don't know what it really means to  
16 have a discrepancy.

17 Q. Okay. So might I take from one of the  
18 things you just said that you are sure which are  
19 really used that -- would you consider any of this  
20 stated here, whether it be from the stock form,  
21 whether it be from your -- the protocol, or whether it  
22 be from this supply checklist, as an indication of how  
23 much drugs were actually used?

24 A. I could not tell from that because, like I  
25 said, there is a discrepancy. So I don't know which  
26 is the quantity that was used that day.

27 Q. And would it be possible that there -- would  
28 it be possible to say that at least the intention of  
29 documents of this nature -- or let's say the supply  
30 checklist. Let's narrow it down to the supply  
31 checklist which was the one with the 2000 milligrams,  
32 times two, of sodium pentathol, the 80 milligrams



1 total of pancuronium bromide, and the one hundred and  
2 -- am I getting that right? The supply checklist.  
3 I'm getting myself confused with all the numbers.  
4 Excuse me. Let's just go -- the description of the  
5 four-page supply checklist where there was a listing  
6 of a quantity on the left side, the name of the  
7 chemical, and then the amount of each dosage.

8 A. Uh-huh.

9 Q. One that -- oh, have you ever seen that  
10 supply checklist before?

11 A. No, I have not.

12 Q. Did it appear that there were initials on  
13 that supply checklist?

14 A. I saw initials on the first three drugs, and  
15 then I saw checkmarks for the remainder of the supply  
16 list.

17 Q. Right. And do you remember what abbreviated  
18 word was on the left-hand side of those initials? Or  
19 I can bring it back to you.

20 MR. CLEMENTS: Let me -- let me -- if I  
21 may approach again?

22 Q. (By Mr. Clements) Again, we are looking at  
23 page 263, the supply inventory checklist of drugs.

24 A. It has pharm, which I assume is --

25 Q. P-H-A-R-M, period?

26 A. Abbreviation for pharmacy.

27 Q. And that appears actually four different  
28 times; is that correct?

29 A. Correct.

30 Q. And that would be for the sodium pentathol,  
31 Pavulon, potassium chloride, and the following one for  
32 a Valium injection?

1 A. Yes.

2 Q. That's on those. As you indicated on this  
3 page and, in fact, throughout the remainder of the  
4 four pages, there are items, quantities, and  
5 descriptions of inventory items, mostly medical  
6 equipment it appears, and checklists, except for those  
7 with the drugs. And those drugs each have the side  
8 that says pharm. And then apparently what appears to  
9 be an initial, as opposed to a checkmark. Is that --  
10 is that accurate?

11 A. Yes, sir.

12 Q. Okay. Now, do you recognize those initials?

13 A. No.

14 Q. Okay. And you again have never -- have you  
15 seen this checklist before?

16 A. No, I have not.

17 Q. In either a blank form or a written-out form  
18 like this?

19 A. No, I have not.

20 Q. Okay. Would you suspect that one of the  
21 ways to describe that supply checklist, the quantities  
22 involved there, are the description of quantities that  
23 were checked out as opposed to quantities that were  
24 actually used?

25 A. Due to the fact that there's several  
26 different types of needles, I would assume it's a  
27 checklist rather than what was actually used.

28 Q. Okay. Is there, from your review of it --  
29 and I can bring it up again. But was there any  
30 indication of like before and after, checked out and  
31 returned, that kind of inventory type of process?

32 A. I didn't see that on the checklist.

1 Q. Okay. So to summarize again, we have three  
2 sets of documents, all of which appear to be -- all of  
3 which are generated or purport to be documents  
4 associated with the Department of Corrections of  
5 Louisiana. One being a stock form filled out by  
6 someone else, signed by you, with descriptions of  
7 chemical and amounts.

8 A second reference to the same in a document  
9 called Louisiana State Penitentiary Lethal Injection  
10 Procedures, and which on page 341, gives specific  
11 amounts of chemicals which actually match the -- the  
12 stock form that you did.

13 And then a final document, the supply inventory  
14 checklist, which has discrepancies. And I did have  
15 the advantage of doing the math. But would you have  
16 any reason to dispute the fact that the total quantity  
17 of the pancuronium bromide, then, was almost twice as  
18 much as what you had written out a stock form for?

19 A. No. I --

20 Q. I have a 187 percent increase. So --

21 A. I agree.

22 Q. And the second on the potassium chloride  
23 that, in fact, what you wrote on the stock form, what  
24 was actually checked out of the pharmacy, was actually  
25 37.5 percent less. It was 150 as opposed to 240.  
26 Someone else can check my math on that. But I will  
27 assert that that's what that was. And would you have  
28 any reason to dispute that?

29 A. No.

30 Q. Okay. Were you contacted within the last  
31 six months by any Department of Correction official to  
32 see whether you had any documents or files or anything

1 of any nature regarding the Louisiana lethal injection  
2 process?

3 A. No.

4 Q. Okay. If you had been contacted, what would  
5 have been your response?

6 A. I would have told them that as a physician  
7 at the Louisiana State Penitentiary, I do not  
8 participate in the lethal injection process.

9 Q. Okay. Is there a particular reason for  
10 that?

11 MS. ESTOPINAL: Your Honor, I'm going to  
12 ask the relevance of it. We are looking at whether  
13 the lethal injection is a violation of the Eighth  
14 Amendment, and not some other standards.

15 THE COURT: The Court will note the  
16 State's objection and understands the objection.  
17 However, the Court overrules the objection, will give  
18 Petitioner latitude in asking the question.

19 Q. (By Mr. Clements) Let me go a little more  
20 descriptively. Are you aware of any kind of a  
21 prohibition by the American Medical Association  
22 concerning physician involvement in executions by  
23 lethal injection?

24 A. Honestly, I am not sure of the policy.

25 Q. Okay.

26 A. I don't participate in -- so I have never  
27 really gone over the policy.

28 Q. So your lack of participation isn't  
29 necessarily related to that -- the existence or lack  
30 of it or whatever that policy might be?

31 A. No.

32 Q. Okay. And I would note that your tenure at

1 Louisiana State Penitentiary pretty much at this point  
2 has only covered the time on only one execution that  
3 has actually occurred, May 10th, 2002?

4 A. Yes. That's correct.

5 Q. The prior one being in the year 2000, with  
6 Feltus Taylor. Thank you. Are you aware that Mr.  
7 Martin had an execution date set for February the 8th,  
8 2002?

9 A. I don't remember the exact date. I know  
10 that it was a scheduled date and it was postponed.

11 Q. Right. And if I were to tell you that  
12 Mr. Martin at that time had received a stay from the  
13 United States Supreme Court literally 11th hour, a  
14 stay, would you have any reason to dispute that?

15 A. No.

16 Q. Okay. Were you asked, were you presented --  
17 you had described earlier how someone had brought the  
18 stock forms to you on May the 10th and -- well, let me  
19 ask you this. Do you recall independently in your  
20 memory, since you didn't actually fill out that date  
21 and the rest of that stock form, do you recall if  
22 that was done on the day of the execution?

23 A. I think it was done on the day.

24 Q. Okay.

25 A. No. I don't recall if it was the day before  
26 or the day. It was, you know, close to that time.

27 Q. Close to it. Okay. That process, though,  
28 of somebody bringing out a filled-out stock form to  
29 you written out to Warden Burl Cain, such and such a  
30 chemical, an amount, and so forth, were you presented  
31 similar documents, stock forms to be filled out on  
32 February the 8th or thereabouts?

1 A. No.

2 Q. Do you have any independent knowledge of  
3 whether Dr. Tarver, as medical director, was presented  
4 such documents?

5 A. I never discussed anything.

6 Q. Okay. Do you know what time is set by the  
7 legislature or -- strike that. At the time of the May  
8 execution last year, do you know what time, window of  
9 time, was set up by the legislature to carry out  
10 executions in Louisiana?

11 A. I don't quite understand the question.

12 Q. When can they be done during the day? Is  
13 there a specific -- do you know -- are you familiar  
14 with any of that part of the process about what time  
15 of day or night they can be carried out?

16 A. No.

17 Q. Okay.

18 MR. CLEMENTS: Your Honor, I'd like to  
19 approach the witness, please.

20 THE COURT: You may.

21 MR. CLEMENTS: I'm again showing the  
22 witness portion of Petitioner's Exhibit 101, and am  
23 going strictly -- straight to the page 457. But  
24 actually would say that there are certain groupings of  
25 documents in here, one of which is a document that  
26 begins on page 345.

27 Q. (By Mr. Clements) And ask if you would just  
28 describe what page 345 says.

29 THE COURT: And which document is that?

30 MR. CLEMENTS: I'm sorry. Page 345 in  
31 101, I believe.

32 THE COURT: Exhibit 101, page 345? I'm

1 sorry. I didn't mean to talk over counsel.

2 MR. CLEMENTS: No problem.

3 A. It is a page that says: "Started 1/9/02,  
4 5:10 p.m. Ended 4/27/02, regarding Leslie Martin, DOC  
5 No. 108304."

6 Q. Okay. And following page 345, and on to  
7 page 587 -- right. Okay. Is -- would you agree that  
8 this appears to be handwritten notes, Xeroxed, a  
9 collection of handwritten notes?

10 A. Yes. It appears to be handwritten notes  
11 with time -- and date and times of entries.

12 Q. Dated entries. A lot of specific dated  
13 information. Addressing your attention specifically  
14 to page 457, which on this document is page 120, of  
15 the log or collection of handwritten materials. If  
16 you could read the date on the top that's handwritten  
17 there?

18 A. 2/8/02.

19 Q. And then if you could come down to the line  
20 that I am indicating here and read that?

21 A. 6:12 p.m. Warden Cain, Secretary Stalder,  
22 Warden Bonnette. I think that's -- I can't read that.  
23 Mr. Crow? Brought news of a stay to Inmate Martin.

24 Q. So that again, the time on that is 6:12 p.m.  
25 on February the 8th, 2002?

26 A. Yes.

27 Q. So at 6:00, after six o'clock, if I were to  
28 tell you that the -- at the time of this execution,  
29 that the time frame available to carry out executions  
30 was from 6:00 p.m. until midnight by statute, would  
31 you have any reason to disagree with that?

32 A. No.

1 Q. Okay. I would like again to direct your  
2 attention again to page 341, which is part of the  
3 lethal injection procedures. And ask if you could  
4 again read on page 341, the second paragraph, starting  
5 there.

6 A. "Two hours prior to the execution, the  
7 pharmacy director shall then prepare the syringes as  
8 follows, witnessed by the warden and/or medical  
9 director/designee."

10 Q. Okay. Thank you. Hypothetically, assuming  
11 that the execution time begins at six o'clock in the  
12 evening, and assuming that this protocol was followed  
13 two hours before that time, is it reasonable to assume  
14 that at approximately four o'clock on the afternoon of  
15 February the 8th, somebody came and brought a stock  
16 order from somebody else to fill out to get those same  
17 kind of chemicals ready for that execution?

18 A. Sometime that day.

19 MS. ESTOPINAL: Your Honor, I'd like to  
20 make an objection now based on the fact that this  
21 witness has already said that he doesn't have any  
22 personal knowledge of the February attempted execution  
23 date for Mr. Martin. And he's basically -- he is just  
24 feeding this witness a bunch of questions that --  
25 asking him to speculate about things he has no  
26 personal knowledge of.

27 THE COURT: Petitioner's response to the  
28 objection?

29 MR. CLEMENTS: Your Honor, I will direct  
30 -- I'll direct one specific question to documentation  
31 of this date and then move on to another subject.

32 THE COURT: So noted. The Court notes



1 the State's objection. It is overruled, and I will  
2 allow the one additional question. And the Court  
3 understands, Mr. Clements, that you will move on.

4 MR. CLEMENTS: Right.

5 Q. (By Mr. Clements) Dr. Heflin, did you ever  
6 -- have you ever seen or are you aware of any stock  
7 orders or any documentation which would have recorded  
8 the tracking of inventorying of this -- of these three  
9 chemicals on February the 8th, 2002?

10 A. No.

11 Q. Okay. Thank you. Just to refer back to the  
12 documents that you saw -- I'm going to go with the  
13 handwritten notations. Do you have any knowledge of  
14 what those documents were, in general, a description  
15 of what they were?

16 MR. FISH: Objection, your Honor. This  
17 witness has -- there is no basis for this witness to  
18 know that information. No foundation has been laid to  
19 the basis of his knowledge. He was -- as best I can  
20 determine, the first time he has ever laid eyes on  
21 those documents is when counsel showed them to him  
22 earlier this afternoon in his testimony.

23 THE COURT: Anything different?

24 MR. CLEMENTS: Just to clarify that  
25 point, then, your Honor.

26 THE COURT: Okay. I will allow it. I  
27 will allow it.

28 Q. (By Mr. Clements) If you know, are you  
29 aware of what the nature of those documents are?

30 A. No.

31 Q. Thank you. In any meetings that you're --  
32 you participated in at all, if any, did you advise any

1 Louisiana State Penitentiary officials that a medical  
2 doctor be made available in the event that a emergency  
3 medical technician would have trouble setting up I.V.  
4 lines at an execution?

5 A. No.

6 Q. Okay. Are you aware if anybody else gave  
7 any advice about such a matter?

8 A. I have never discussed it.

9 Q. All right. Do you have independent  
10 knowledge of how the Louisiana lethal injection  
11 process or protocol was designed?

12 A. No, I do not.

13 Q. Okay. Have you -- again, just to clarify,  
14 have you ever read any document describing it?

15 A. No.

16 Q. Okay. Are you otherwise familiar with the  
17 procedure in any kind of detail?

18 A. No.

19 Q. Okay. Are you aware of the process for  
20 tracking the quantity of controlled dangerous  
21 substance sodium pentathol at each stage of its  
22 storage and use?

23 A. I'm sorry. Can you repeat the question?

24 Q. I said: Are you aware of the process for  
25 tracking or inventorying the quantity of a controlled  
26 substance, specifically here, sodium pentathol, at  
27 each stage of its storage and use or disposal?

28 A. No. That, I assume, is from the pharmacy.  
29 I just signed that that was taken out of the pharmacy  
30 so that it could be tracked outside the pharmacy.  
31 Being in the penitentiary, they want to keep a very  
32 close count of all medicines. But as far as the --

1 inside the pharmacy, I don't know how it is tracked.

2 Q. So if detailed records exist, they would

3 most likely be at the pharmacy?

4 A. Yes.

5 Q. Thank you.

6 MR. CLEMENTS: I need a moment, your

7 Honor. Thank you.

8 Q. (By Mr. Clements) Dr. Heflin, are you

9 familiar with an organization called the Louisiana

10 Board of Medical Examiners?

11 A. Yes.

12 Q. Can you describe their function, generally?

13 A. That is the board that issues license for

14 doctors in the state of Louisiana.

15 Q. Does this board ever conduct disciplinary

16 action against Louisiana medical doctors?

17 A. Yes.

18 Q. Have you ever been disciplined by this

19 board?

20 A. Yes.

21 Q. Could you briefly describe what the nature

22 of the disciplinary action was taken for?

23 MR. FISH: Objection, your Honor.

24 Improper impeachment of the witness. The -- it's an

25 attempt to impeach the witness through prior acts that

26 are not -- not a conviction.

27 THE COURT: The Court understands the

28 objection. Does the -- does Petitioner have a

29 response to that?

30 MR. CLEMENTS: Your Honor, we were

31 attempting to go into the particulars of the --

32 according to the Article 613, the witness -- of the

1 Code of Evidence. The witness has admitted to the  
2 disciplinary action, and I was going to go into a  
3 brief detail as to the relevant factors there that  
4 have applicability to this hearing.

5 MR. FISH: Your Honor, that -- the State  
6 continues to urge its objection that this is improper  
7 impeachment as of an act that is not a conviction. If  
8 -- because he has admitted the disciplinary action  
9 before I made my objection --

10 THE COURT: Are you saying impeachment  
11 will come in if he had not admitted it?

12 MR. FISH: The -- certainly, your Honor,  
13 if he had denied it, then the -- it would be a --

14 THE COURT: A proper impeachment?

15 MR. FISH: Yes, your Honor.

16 THE COURT: Okay. The Court is going to  
17 take a brief recess. We will come back, and I will  
18 rule on that issue. And I will also give counsel both  
19 an opportunity to maybe additionally look at that  
20 point.

21 MR. CLEMENTS: Thank you.

22 THE COURT: The Court is going to take  
23 about a five- or ten-minute recess. Let's take about  
24 ten. And, Mr. Bailiff, when everybody is in place and  
25 the -- of course, the witness may step down. We will  
26 be in recess, and call me when everyone is back in  
27 place.

28 (Recess taken.)

29 THE COURT: All right. We're back on  
30 the record. The Court is ready to proceed. The State  
31 had an objection, and I think the defense responded.

32 MR. FISH: The State withdraws the

1 objection, your Honor.

2 THE COURT: So noted. Did y'all take  
3 that time to take a real recess? No one but me did  
4 that. Right? That's why I was trying to give y'all  
5 some time. It's been about an hour since we came back  
6 from lunch. I was trying to give y'all some time.  
7 You don't need one, so we won't take any more time.  
8 All right. We are ready for the witness.

9 The witness will retake the seat on the witness  
10 stand, and the Court reminds you that you remain under  
11 oath. Counsel may proceed.

12 Q. (By Mr. Clements) Dr. Heflin, I would like  
13 to just ask you to return to the subject that we were  
14 at before the break. And concerning the Louisiana  
15 State Board of Medical Examiners, did they issue a  
16 consent -- a consent order against you?

17 A. Yes.

18 Q. And do you recall approximately when that  
19 was?

20 A. Six, seven years ago.

21 Q. Okay. Could you tell us what the -- what  
22 penalty was imposed upon you at the time?

23 A. I was disciplined for writing a  
24 prescription without medical justification. Outside  
25 the emergency room, I wrote a prescription for a  
26 friend of a friend. And that person used the  
27 prescription for themselves. Since I wrote the  
28 prescription, that's writing without a medical  
29 justification. So I -- that's what my disciplinary  
30 thing was.

31 Q. What consequence came to you from there?  
32 What happened to you when the board disciplined you?

1 What exactly did they do?

2 A. I had three years of probation. And my  
3 DEA -- personal D -- DEA was revoked to where I could  
4 only write for prescriptions in-hospital.

5 Q. Okay. And if you could explain for the  
6 Court and -- when you say your personal DEA, are you  
7 referring to the Drug Enforcement Agency? And could  
8 you explain what that means?

9 A. Yes. It's called Drug Enforcement Agency.  
10 It is the narcotics license. If you write for a  
11 controlled substance, it is a -- another license that  
12 you use to put on the prescriptions.

13 Q. Could you explain again what the length of  
14 time of your probation was?

15 A. Three years.

16 Q. And could you also -- was that the period of  
17 time that your -- the prohibition on your DEA  
18 narcotics license? Or was it -- was it a different  
19 period of time?

20 A. No. It wasn't a different period of time.

21 Q. Okay. You had mentioned a minute ago about  
22 -- and if you could explain a little more carefully.  
23 I'm not sure I understood. About the restriction that  
24 you had as far as issuing prescriptions on controlled  
25 substances, what was that?

26 A. Yes. A discharge prescription, if I  
27 discharge a patient that needs a narcotic, then I have  
28 to use another physician's number or the hospital  
29 pharmacy. In-hospital, I'm not restricted.

30 Q. Okay.

31 A. And the board has written me, and I am up  
32 for complete reinstatement this month.

1 Q. I understand. But as of this moment, you  
2 have not completed that process of reinstatement on  
3 all of that?

4 A. Right.

5 Q. On May the 10th, 2002, what restrictions did  
6 -- were in place at that time?

7 A. As I said, I'm not restricted from writing  
8 prescriptions at the penitentiary hospital.

9 Q. Okay. And there was a -- what -- did you  
10 then use the -- a narcotics license or refer to a  
11 narcotics license of the -- if you could explain to me  
12 what basis -- what license was used in order to write  
13 the stock orders that were at issue here?

14 A. The board actually never has made that very  
15 clear. They allow me to write prescriptions in the  
16 hospital.

17 Q. Okay.

18 A. And they don't take a very monitoring stance  
19 on that. They are very -- so it is the pharmacy/  
20 hospital DEA.

21 Q. Okay. So just so I understand, institutions  
22 such as hospitals themselves have a separate licensing  
23 provision for narcotics distribution? Is that --

24 A. Correct.

25 Q. That's -- okay. And it is your  
26 understanding that the R.E. Barrow Treatment Center at  
27 Angola has such a --

28 A. Correct.

29 Q. Okay.

30 A. This is in accordance with the board. You  
31 know, they know where I am employed.

32 Q. Right. Outside of this hospital setting, is

1 it correct to say that you have a lifetime ban on  
2 prescribing medicines as your restriction is currently  
3 in place on prescribing controlled substances?

4 A. Until the board deals with it, yes.

5 Q. Okay.

6 A. Well, it is not a life -- well, I'm not  
7 quite understanding exactly what you mean.

8 Q. Okay.

9 A. I just have to -- I use the hospital DEA to  
10 write the prescriptions. I am not banned from writing  
11 any prescriptions.

12 Q. Okay. Thank you.

13 MR. CLEMENTS: No questions further at  
14 this moment.

15 MR. FISH: Your Honor, the State does  
16 not have any questions of this witness.

17 THE COURT: The witness may step down.

18 MS. ESTOPINAL: Your Honor, is  
19 Dr. Heflin free to go? May I ask if defense counsel  
20 would -- or Petitioner, rather.

21 THE COURT: Mr. Clements, do you expect  
22 to need Mr. -- I mean, Dr. Heflin?

23 MR. CLEMENTS: No. I have -- I expect  
24 no further need. Thank you.

25 THE COURT: Dr. Heflin is free to go.  
26 Thank you, sir.

27 MR. CLEMENTS: Mr. Code calls Don  
28 Courts.

29 THE COURT: And I need that spelling,  
30 'cause y'all probably have it written on something.

31 And I --

32 MS. ESTOPINAL: C-O-U-R-T-S, I believe,



1 your Honor.

2 MR. CLEMENTS: Oh, I'm sorry, yes.

3 DONALD M. COURTS,

4 the witness hereinbefore named, having been first duly

5 sworn to testify the truth, the whole truth, and

6 nothing but the truth, was examined and testified

7 under oath as follows:

8 DIRECT EXAMINATION

9 BY MR. CLEMENTS:

10 Q. Good afternoon, Mr. Courts. Could you

11 please state your full name for the record.

12 A. Donald Michael Courts.

13 Q. And could you spell your last name?

14 A. C-O-U-R-T-S.

15 Q. Thank you. Mr. Courts, before I go into

16 questions, I wanted to tell you that -- and there is

17 kind of a special condition that we are operating on

18 here that we are maintaining the confidentiality of

19 the names of emergency medical technicians and other

20 personnel that were most hands-on, direct, with the

21 execution procedures.

22 So if you find that I am asking a question that

23 might have an answer that relates to any of those

24 individuals, if you could just refer to them as EMT,

25 for example. That would -- we would appreciate that

26 for everybody's sake. Thank you.

27 Mr. Courts, could you tell us where you work?

28 A. I am the pharmacy director at the Louisiana

29 State Penitentiary at Angola, Louisiana.

30 Q. Okay. And how long have you been with the

31 pharmacy at Angola?

32 A. I think it will be 27 years on May the 14th.

1 Q. And how long have you been the director of  
2 the pharmacy?

3 A. Since May the 14th of '76.

4 Q. I understand. Thank you. When did you  
5 receive your degree in pharmacy?

6 A. May of 1964, from Northeast State University  
7 in Monroe, Louisiana.

8 Q. Do you have any other medical training?

9 A. No. That's plenty.

10 Q. I hear you. Could you describe what some of  
11 your duties are as a pharmacist?

12 A. Now?

13 Q. Yes. At --

14 A. Well, I oversee the entire operation at the  
15 Louisiana State Penitentiary. We have four registered  
16 pharmacists, four certified pharmacy technicians. We  
17 fill approximately 650 prescriptions a day. I'm  
18 responsible for the purchasing to make sure that we  
19 have the available pharmaceuticals that we need to  
20 adequately treat the patients at our institution.

21 I am on the formulary committee for Angola and  
22 have previously served on the formulary committee for  
23 the Department of Corrections.

24 Q. Could you describe briefly what the  
25 formulary committee is?

26 A. Yes, sir. The formulary committee decides  
27 which drugs will be available for the physicians to  
28 prescribe without having to go through any special  
29 requests to do so, and drugs that the pharmacy will  
30 normally keep in stock at all times.

31 Q. Does that formulary that is currently in use  
32 or in any particular time, does that include some

1 controlled substances?

2 A. Yes, sir, it does.

3 Q. Okay. Of different classes?

4 A. Yes, sir, it does.

5 Q. Okay. I would like to focus on the subject  
6 of executions by lethal injection. Have you ever  
7 provided any support functions for the prison on the  
8 day of an execution?

9 A. If I understand your question correctly,  
10 sir, the pharmacy, as I told you, fills about 650  
11 prescriptions a day. So on a day of an execution,  
12 three of the prescriptions would be for the drugs used  
13 in lethal injection.

14 Q. Okay. Could I ask you if you could define  
15 for me the term "stock order"?

16 A. Stock ordered?

17 Q. Yes, sir.

18 A. I don't know if I use that term. But we  
19 order stock. We stock these drugs. I don't know.

20 Q. Okay. Let me try this. I think perhaps a  
21 stock slip, are you familiar with what that  
22 terminology might refer related to any of this?

23 A. No, sir.

24 Q. Okay. Are you -- we will come back to that.  
25 Have you ever appeared as an official witness at a  
26 lethal injection?

27 A. No, sir.

28 Q. Okay. Did you ever fill any prescriptions  
29 related to lethal injections?

30 A. Yes, sir.

31 Q. Okay. Could you describe for which  
32 executions did you fill the prescriptions? There have

1 been seven since 1993.

2 A. I can tell you six out of seven. But I

3 can't tell you who was who.

4 Q. For sure? Okay.

5 A. I only know that on one execution, I was not

6 there. And one of my clinical pharmacists provided

7 that service.

8 Q. All right. I would like to review very

9 briefly just the years and the dates involved, and

10 perhaps to see if we can clarify which was which.

11 1993, March the 5th, was Robert Wayne Sawyer's

12 execution. That was the first. Would you -- do you

13 remember if that was the one where you were present or

14 not?

15 A. Yes. I do remember that the first one I was

16 present.

17 Q. Okay.

18 A. And the last one. But anything in between,

19 I couldn't tell you which one of them --

20 Q. I understand.

21 A. -- is the one I wasn't there.

22 Q. Okay. So for certain, the first and the

23 last, meaning Sawyer in 1993, Leslie Martin in 2002?

24 That would be by May the 10th.

25 A. I never was familiar with names.

26 Q. I understand. Okay. If I were to simply go

27 through the years that an execution took place, do you

28 think that might help at all, in your memory?

29 A. No, sir.

30 Q. Okay. Did you ever perform any other

31 medical service for a lethal injection execution?

32 A. No, sir.

1 Q. Okay. I would like to focus for a moment on  
2 the development and implementation of lethal injection  
3 in Louisiana. Were you involved in the 1991 federal  
4 district court evidentiary hearing in New Orleans, the  
5 Eastern District of Louisiana, concerning a legal  
6 challenge to the method of execution by electrocution  
7 in the case of Sawyer v. Whitley?

8 A. No, sir. I was not.

9 Q. Okay. Around that time of that hearing in  
10 1991, are you aware if the Louisiana Legislature  
11 replaced -- voted to replace electrocution with  
12 lethal injection?

13 A. Yes, sir.

14 Q. Okay. Do you know how that change  
15 technically came about?

16 A. No, sir.

17 Q. Okay. Are you aware that a committee was  
18 formed to research and investigate how other states  
19 carried out executions by lethal injections?

20 A. I don't know about a committee. I know that  
21 I made some phone calls.

22 Q. Okay. Could --

23 A. And --

24 Q. I am sorry.

25 A. That I think some of our staff went to Texas  
26 to visit those people. I was not on that trip.

27 Q. When you say some of your staff, are you  
28 referring to pharmacy staff?

29 A. No, sir. No, sir. The institution.

30 Q. Okay. I understand. Some of the Department  
31 of Corrections?

32 A. Yes, sir.

1 Q. I understand. Okay. If -- are you aware  
2 whether an emergency medical technician was one of the  
3 kinds of people that went?

4 A. Yes, sir.

5 Q. Okay. Would it be accurate to say the head  
6 EMT?

7 A. Yes, sir.

8 Q. Okay. Won't go into any more description  
9 than that. Do you know of any other states that DOC  
10 officials visited in person?

11 A. No, sir.

12 Q. Beyond Texas? No. Okay. After the DOC  
13 representatives visited Texas, do you know what were  
14 some of their principal concerns when researching and  
15 developing a draft for the Louisiana lethal injection  
16 protocol?

17 A. No, sir.

18 Q. Okay. Did any Department of Corrections  
19 staff person, either the EMT or someone else, ever  
20 discuss with you information about the amounts and  
21 types of chemicals to be used in a lethal injection?

22 A. Yes, sir.

23 Q. Okay. Was there more than one person that  
24 discussed that, or was it just one?

25 A. No, sir. It was just one.

26 Q. And this was that head EMT?

27 A. Yes, sir.

28 Q. Thank you. So just to clarify that, who was  
29 the medical director of Louisiana State Penitentiary  
30 in 1991, if you can remember?

31 A. I don't know. At one time, our medical  
32 director was Vance Byers. And I am not sure if

1 Dr. Byers was still the medical director at Angola or  
2 if he was working at headquarters for the Department  
3 of Corrections. But I don't know.

4 Q. Okay. Do you recall who the medical  
5 director after Dr. Byers was? If I gave you the name  
6 of Kenneth Perego, does that --

7 A. That's a possibility.

8 Q. Possibility?

9 A. I could most probably name you every medical  
10 director I've worked under. But I don't know the  
11 sequence.

12 Q. When?

13 A. The sequence of when they were there.

14 Q. Okay. All right. Could you describe the --  
15 get to this in a moment. If you know, did any medical  
16 director recommend any specific amounts or types of  
17 chemicals to be used in a lethal injection?

18 A. No, sir.

19 Q. So you are saying that --

20 A. I am saying yes, sir, I know that no one  
21 did.

22 Q. Thank you. And were you ever -- did you  
23 become familiar at all with the Texas lethal injection  
24 protocol?

25 A. Yes, sir.

26 Q. Okay. What aspects of that did you become  
27 familiar with?

28 A. I called, I think, five different states  
29 asking about the protocol they had for lethal  
30 injection. I think Texas was the last one I called.  
31 And after the pharmacy director that I was speaking to  
32 told me the protocols and we were getting ready to

1 hang up the phone, I said, "I have but just one  
2 question I need to ask you. Every other state I have  
3 spoken to is using 2 grams of sodium pentathol. Why  
4 are y'all using five?" And he started laughing and  
5 said, "Well, you see, when we did our very first  
6 execution, the only thing I had on hand was a 5-gram  
7 vial. And rather than do the paperwork on wasting 3  
8 grams, we just gave all five."

9 Q. Is it your testimony that this was a  
10 representative from the state of Texas that you had  
11 this conversation with?

12 A. Yes, sir.

13 Q. All right. Do -- was it your understanding  
14 that that amount of 5 grams was used each time  
15 continuing, or that they just did it that one time  
16 when they first did it?

17 A. No. I think that is the standard protocol  
18 that they use.

19 Q. Was this phone call -- do you recall whether  
20 this phone call -- these -- this phone call to Texas  
21 and the other phone calls, were they made before or  
22 after the time when others -- the EMT and others went  
23 to Texas themselves?

24 A. I don't recall.

25 Q. You don't recall. Okay. Would it have been  
26 within the same year, 12 months of time?

27 A. Yes, sir.

28 Q. Okay. And what was -- so was that aspect of  
29 using 5 grams replicated here in Louisiana's draft  
30 protocol?

31 A. No.

32 Q. Okay. What amount was?



1 A. 2 grams.

2 Q. 2 grams. And on what medical basis -- or  
3 who made that determination to use 2 grams, to your  
4 memory?

5 A. I think the determination was made between  
6 the EMT and myself.

7 Q. Were there -- do you have a memory of how --  
8 of the other chemicals that were used, the -- can you  
9 -- first of all, can you name the other two chemicals  
10 that were used besides --

11 A. Pancuronium bromide and potassium chloride.

12 Q. All right. Do you have any reason to  
13 believe that your -- the amounts used in Louisiana on  
14 those two chemicals are any different than those used  
15 in Texas?

16 A. I think they are most probably the same or  
17 very similar.

18 Q. All right. Was the head EMT present when  
19 you were having these phone conversations or  
20 conference call at all, maybe, or was it just you?

21 A. No, sir.

22 Q. You indicated some of your staff also called  
23 other places?

24 A. No.

25 Q. No? Just yourself?

26 A. Some of my staff didn't. I did.

27 Q. You did these calls. Do you recall which  
28 other states you had telephone conversations with  
29 about this?

30 A. Jesus, that's 11 years ago. Seems like for  
31 some reason, Colorado sticks out in my mind. But I  
32 don't -- I don't recall who the other states were.

1 Q. Uh-huh. Do you -- would you have any memory  
2 if Oklahoma was one of those states?  
3 A. I can't tell you, sir.  
4 Q. Thank you.  
5 A. I don't know.  
6 Q. All right. And did you then communicate  
7 your -- this information about the sodium pentathol  
8 amounts to the head EMT? You had a conversation with  
9 that person about it?  
10 A. Yes, sir. I'm sure I did. I don't recall.  
11 But I would -- I'm sure that would have been the  
12 logical thing to do.  
13 Q. And is it your testimony then that the  
14 decision pretty much to go with 2 grams or 2000  
15 milligrams of sodium pentathol was collectively  
16 decided by the two of you and no one else?  
17 A. Yes, sir.  
18 Q. All right. Did you have a particular  
19 medical basis for recommending that particular other  
20 dosage than the one that Texas used?  
21 A. It wasn't a medical decision. It was based  
22 on the other states had all used a similar dose. And  
23 it worked well, and they had not had any problems, and  
24 the objective was accomplished.  
25 Q. Okay.  
26 A. And Texas had not given a medical reason why  
27 they used 5 grams.  
28 Q. I understand. And it is your testimony that  
29 the only reason at all given you was that -- was  
30 because that was a singular -- single quantity  
31 available at one time?  
32 A. Yes, sir.

1 Q. And it was a -- began to be -- initiated a  
2 tradition, for lack of a better --

3 A. That's what he told me, yes, sir.

4 Q. Something like that. Okay. Okay. So did  
5 you or -- or you and the head EMT together create any  
6 document relating to any aspect of the lethal  
7 injection process?

8 A. No, sir.

9 Q. Okay. How were your decisions about the  
10 amounts of chemicals and types of chemicals conveyed  
11 to anyone else in the Department of Corrections?

12 A. Through the EMT.

13 Q. Okay. Do you know whether the EMT wrote  
14 anything down?

15 A. No, sir, I do not.

16 Q. Okay. Did you ever see a written Texas  
17 lethal injection protocol?

18 A. No, sir.

19 Q. Okay. Did you ever witness an actual  
20 execution in Texas by lethal injection?

21 A. No, sir, I did not.

22 Q. Okay. Did you ever see a final copy of a  
23 Louisiana lethal injection protocol with precise  
24 quantities of each chemical in order of delivery?

25 A. No, sir. I don't think so.

26 Q. Okay. Is it correct to say that the food  
27 and drug -- the Federal Food and Drug Administration  
28 requires the recording of an inventory of a storage  
29 and usage of controlled substances?

30 A. Yes, sir.

31 Q. All right. Okay. The first execution in  
32 1993, with Robert Wayne Sawyer, did you attend any

1 meeting to discuss how the process ought to be  
2 carried out the first time?

3 A. No, sir.

4 Q. All right. Do you know if anyone else  
5 convened such a meeting?

6 A. No, sir.

7 Q. Since the time of that first execution, did  
8 you ever advise any official, including a warden or  
9 other, about any suggested changes in the process?

10 A. No, sir.

11 Q. Who was the medical director or -- at  
12 Louisiana State Penitentiary in 2002?

13 A. Dr. Anthony Tarver.

14 Q. Did you meet with Dr. Tarver about any  
15 medical aspects of the execution on May the 10th,  
16 2002?

17 A. No, sir.

18 Q. I would like to focus now again on the issue  
19 of prescriptions that were filled specifically for the  
20 Martin execution. How did you come about to fill  
21 these prescriptions?

22 A. Sir, I told you, names don't mean anything  
23 to me.

24 Q. Okay.

25 A. I have -- I don't fill prescriptions for the  
26 individual that's being executed.

27 Q. Uh-huh. Well --

28 A. So I am not familiar with who is being  
29 executed.

30 Q. Okay. The -- my question then is this:  
31 Could you explain the basic process of how a  
32 prescription slip is presented to you? Say, for

1 example, on May the 10th, 2000 --

2 MR. CLEMENTS: Your Honor, let me  
3 approach the witness and maybe then we can help to  
4 focus on this.

5 THE COURT: You may.

6 MR. CLEMENTS: Thank you. I'm  
7 approaching the witness again with a copy of  
8 Petitioner's Exhibit 101, pages 973 through 978.

9 Q. (By Mr. Clements) And ask if you could take  
10 a moment and look at these.

11 A. (Witness complies.) All right.

12 Q. Okay. This -- on page 973, this is the  
13 first -- there is 974.

14 A. Okay.

15 Q. Very similar. They are both with the  
16 pentathol.

17 A. Okay.

18 Q. The next being two for potassium chloride on  
19 975 and 976. And the final two for pancuronium  
20 bromide on 977 and 978.

21 A. All right.

22 Q. Okay. Do those -- how would these  
23 particular pieces of paper -- do they -- would they  
24 come to you directly or do they come to somebody else  
25 on the staff, or does it make a difference?

26 A. It would originate with me. The  
27 prescription would be written by me. It would be  
28 taken by one of my staff to the medical director or  
29 the acting medical director in his stead, if he were  
30 not available, to be signed. Once they were signed  
31 they would be brought back to me, at which time I  
32 would get the medications and put them on my desk and

1 await the EMTs to come see me.

2 Q. Okay. Is it my understanding -- is it

3 correct, then, that the handwriting on the top

4 portions of these are -- is your handwriting?

5 A. It's either my handwriting or one of my

6 staff, sir.

7 Q. All right. So someone in the pharmacy

8 department?

9 A. Yes, sir.

10 Q. Initially fills these out. How does that

11 process start? I mean, who says, Okay, today is the

12 day? Or how does that -- who initiates the process to

13 write these out?

14 A. I do.

15 Q. You do?

16 A. Yes, sir.

17 Q. And are you called by someone else?

18 A. Yes, sir.

19 Q. And without necessarily naming, is that the

20 head EMT that calls you with that?

21 A. It will either be the head EMT or the

22 warden's office.

23 Q. Okay.

24 A. It has varied from time to time.

25 Q. I understand. In this particular -- most

26 recent, last May execution, do you recall whether it

27 was the head EMT or if it was someone else?

28 A. No, sir. And it is usually prior to the day

29 of. I mean, it is not -- normally, two or three weeks

30 before I will get a phone call and says on such and

31 such a date, there is going to be an execution. And

32 that's all the information I need.

1 Q. So you get the phone call sometime prior to  
2 the execution, perhaps a couple of weeks. You are  
3 then given a date?

4 A. Yes, sir.

5 Q. The date of the execution is set at that  
6 time?

7 A. Yes, sir.

8 Q. And you prepare papers between that moment  
9 and the time of that date?

10 A. I usually prepare it the day of.

11 Q. You prepare these slips or they are prepared  
12 that day?

13 A. Yes, sir.

14 Q. Of the execution?

15 A. Yes, sir.

16 Q. Fine. They are then transported from  
17 someone by your office to the --

18 A. Medical director or --

19 Q. The medical director or the designee?

20 A. Yes, sir.

21 Q. And then back. They are returned to you,  
22 and you prepare the chemicals as -- just for

23 clarification, the fact that the name written in is

24 Burl Cain, what significance does that have as far as

25 this? I'm just trying to understand. Is that a

26 process --

27 A. Warden Cain has the job of carrying out this  
28 execution by the Court.

29 Q. Uh-huh.

30 A. And so he is the one that receives the  
31 chemicals.

32 Q. Okay. Is there any other kind of a

1 circumstance or occasion when prescriptions are  
2 written out in that type of fashion where -- I mean,  
3 normally, like if I go to the pharmacy, I have a  
4 doctor write out a prescription that will have my name  
5 on it. I go give it them. The doctor gives -- the  
6 pharmacist fills it and gives it to me.

7 A. Yes.

8 Q. My name's on it.

9 A. Yes.

10 Q. Is that -- can you describe why this is a  
11 different type of situation?

12 A. Because the medical profession and the  
13 pharmacy profession is in the business of helping  
14 people's health, trying to make their health better.  
15 In this particular situation, the only situation I can  
16 think of, chemicals are used not to make the person  
17 healthier, but to end their life.

18 Q. So are you saying that in no other  
19 circumstance in your profession, you would write a --  
20 you would have a prescription prepared as such?

21 A. Not that I can think of, sir.

22 Q. Thank you. Do you know if that's something  
23 that was -- that process that you just described of  
24 using another name was something that was -- is used  
25 in other states or in Texas?

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

27 Q. Okay. Do you -- can you explain for me --  
28 is it correct there is three separate chemicals  
29 involved in this process?

30 A. Yes, sir.

31 Q. And yet we have six separate prescriptions?

32 A. Yes, sir.



1 Q. Can you explain why that is that there is  
2 not just three prescriptions?

3 A. Yes, sir, I can. There are six prescriptions  
4 because there are two complete sets of drugs drawn  
5 from the pharmacy inventory. One set is drawn from  
6 the pharmacy inventory, and it is totally prepared in  
7 the pharmacy.

8 The other set is given in the original containers,  
9 and they are to be used as backup in the event of an  
10 emergency. There has never been a backup set used.  
11 But it has always been available. And we never know  
12 what could possibly happen, if someone dropped a  
13 syringe and it broke, and we needed an emergency to  
14 take care of it.

15 Q. All right. So if I understand your  
16 testimony, you have one set. Let's say the primary  
17 set of three chemicals is absolutely totally prepared,  
18 ready to go. Is that --

19 A. That is correct, sir.

20 Q. Okay. Who actually prepares that? Is it  
21 yourself or someone else?

22 A. Well, either I prepare it or the EMT  
23 prepares it under my direct supervision because it is  
24 prepared at my desk.

25 Q. Okay. But the second set is not prepared as  
26 such?

27 A. No, sir.

28 Q. Okay. So when the -- I presume the EMT is  
29 there to pick them up. And after he has helped -- it  
30 is done under your supervision and takes these two  
31 sets away, what they are going out of that room where  
32 this -- where these chemicals were is one ready-to-go

1 set, one potential set?

2 A. Backup set. Yes, sir.

3 Q. Do you know how those sets are packaged in  
4 the sense of when they are finally ready to go and  
5 whatever preparation in your building has been  
6 accomplished, what -- how are they transported from  
7 that location to the death house? Do you know?

8 A. I have no idea where it's transported to. I  
9 can only tell you --

10 Q. Out the door?

11 A. It looks like a black suitcase or -- they  
12 walk out the door and --

13 Q. Okay.

14 A. -- that's the end of it for me.

15 Q. Black suitcase. Some container is carrying  
16 both of these sets of materials is your testimony?

17 A. Yes, sir. One set is in syringes.

18 Q. Okay. That's the prepared set?

19 A. Yes, sir. And the first drug is prepared  
20 first, and it is put in a syringe, and that syringe  
21 is clearly labeled No. 1. And then the second drug is  
22 prepared, and it is put in a syringe, and it is  
23 labeled No. 2. And the third drug is prepared, and it  
24 is labeled No. 3. And these are three different  
25 syringes, and these are all in a container, you know,  
26 some kind of closed box.

27 Q. And the other materials, the second set are  
28 enclosed in a separate --

29 A. Yes, sir.

30 Q. -- compartment, perhaps?

31 A. Well, the first set looks like a gun case,  
32 if you have ever seen one where it has got the soft

1 egg crate kind of stuff in it.

2 Q. Uh-huh.

3 A. So that -- and there are holes for the  
4 three syringes. And they are placed in there. Okay?

5 Q. Sort of like a foam -- I'm sorry.

6 A. Right. A foam, that's it. And then it is  
7 closed.

8 Q. Uh-huh.

9 A. And then I think that carrying case plus the  
10 other, the second set, is placed in a larger carrying  
11 case of some kind.

12 Q. All right. Did you -- do you recall ever  
13 seeing a second set of syringes?

14 A. No, sir. I don't think so. I don't ever  
15 remember --

16 Q. Okay.

17 A. -- seeing a second set of syringes.

18 Q. All right.

19 A. It may be, but I don't remember.

20 Q. Right. But you do have a clear memory of  
21 seeing three syringes, each one having a number on  
22 them, those being separately one, two, and three?

23 A. Yes, sir. That is correct.

24 Q. And you supervised -- either you supervised  
25 or personally prepared the contents, the liquid  
26 contents of those syringes?

27 A. Yes, sir. That is correct.

28 Q. Okay. And the contents of those syringes,  
29 is it fair to say that the amounts of what is going  
30 into that content, the liquid contents that are going  
31 into Syringe One, would, in fact, be exactly what was  
32 written on this prescription slip?

1 A. Yes, sir.

2 Q. Okay. So that if the prescription slip said

3 -- and we are taking a single one. For example,

4 sodium pentathol. Pardon me, on page 975. Scratch

5 that. 973. Pentathol, 500 milligrams, dispense

6 number four, meaning -- what would that -- that means

7 500 milligrams, times four?

8 A. Yes, sir.

9 Q. So that we are talking 2000 milligrams?

10 A. Yes, sir.

11 Q. 2000 milligrams are placed into --

12 A. Syringe No. 1.

13 Q. -- the syringe. And can you describe --

14 does pentathol normally store in a liquid form?

15 A. No, sir.

16 Q. Is it stored in a powder form?

17 A. Yes, sir, it is.

18 Q. And how -- if you could just briefly

19 describe how you mix it up. Or how do you do that?

20 A. The 500-milligram box comes with two vials

21 in it. One vial has the sodium pentathol powder. The

22 other vial has the sterile water. You extract an

23 amount of sterile water, inject it into the vial with

24 the powder, shake it up. When it is dissolved and has

25 become a solution, then you draw it up.

26 Q. Okay. And when you are drawing it up, you

27 are basically taking Syringe No. 1, is that correct,

28 and somehow connecting it to that vial that has the

29 dissolved solution in it?

30 A. Yes, sir.

31 Q. And drawing into the content -- into the

32 chamber of the syringe the contents of a liquid that

1 has 200 -- excuse me -- 2000 milligrams of sodium  
2 pentathol in there?  
3 A. It has got 500 milligrams, and you do it  
4 four times.  
5 Q. Four times. 500, four times. Great. Could  
6 you explain why it's not stored in a liquid form?  
7 A. Normally, the reason they don't store  
8 injectable drugs in a liquid form is because that the  
9 powder form would be stable for a much longer period  
10 of time than the liquid form.  
11 Q. Uh-huh. Do you know approximately how long  
12 it stays stable in a liquid form?  
13 A. No, sir, I don't. But just from experience  
14 with most injectable drugs that come in a powdered  
15 form, it is a minimum of 24 hours.  
16 Q. Okay. But after perhaps few days even, it  
17 might not be -- if you didn't use them within that  
18 period of time, would there be any effect on the  
19 quality of that drug?  
20 A. Yes, sir. I am sure it would.  
21 Q. Okay. Is -- is that -- is what we have just  
22 been discussing about powder and stability and all of  
23 that also true for the pancuronium bromide, or is it  
24 different?  
25 A. It comes in a liquid, sir.  
26 Q. Okay.  
27 A. It is already prepared.  
28 Q. Okay. And the potassium chloride?  
29 A. Same.  
30 Q. It comes in a liquid form?  
31 A. Yes.  
32 Q. Like the pancuronium?

1 A. Yes, sir.

2 Q. Thank you. How long does it take to put  
3 together the sodium pentathol from that powdery form  
4 to the final drawing in of four separate vials?

5 A. Five minutes maybe. I don't know for sure.  
6 I -- but most probably do all four, most probably  
7 about five minutes.

8 Q. Okay.

9 MR. CLEMENTS: Your Honor, I would like  
10 to approach the witness, please.

11 THE COURT: You may.

12 MR. CLEMENTS: I'm going to be  
13 approaching the witness with excerpts from Exhibit 101  
14 again.

15 Q. (By Mr. Clements) Just would like to  
16 refresh your memory again with reviewing these  
17 documents here on page 973 through 978. Again, we are  
18 talking about the prescriptions from May 10th, 2002.

19 A. Okay.

20 Q. All right. And I'll just keep these here  
21 because I'm going to go through three different sets  
22 of material here.

23 MR. CLEMENTS: Like the record to  
24 reflect that I am also going to be approaching the  
25 witness with another excerpt from the same Exhibit 101,  
26 and this time a document that is numbered pages 340  
27 through 344. And this is a five-page document.

28 Q. (By Mr. Clements) And if you could just  
29 read what the top of that is.

30 A. Confidential Louisiana State Penitentiary  
31 Lethal Injection Procedures.

32 Q. If you could just then also explain the --

1 read the first -- the title of the first section  
2 there, just the number one?  
3 A. One of my lenses fell out of my glasses.  
4 Obtaining Drugs and Equipment.  
5 Q. All right. And then turning to page 341,  
6 and section two is titled?  
7 A. Storage and Handling of Drugs.  
8 Q. All right. And on sub -- refer to the  
9 second paragraph in that same section.  
10 A. "Two hours prior to the execution, the  
11 pharmacy director shall then prepare the syringes as  
12 follows, witnessed by the warden and/or his -- the  
13 medical director/designee."  
14 Q. Okay. And then if you could read Section A  
15 under that.  
16 A. "One set of labeled 60 cc syringes for the  
17 lethal injection. Number one, sodium pentathol, 2  
18 grams. Number two, pancuronium bromide, 40 milligrams.  
19 Number three, potassium chloride, 120  
20 milliequivalents."  
21 Q. Okay. And -- I'm sorry. Could you just  
22 continue on with both (B) and (C), then.  
23 A. "A backup set of drugs and syringes. The  
24 backup set of drugs and syringes are a precautionary  
25 measure to be prepared and used only in the event one  
26 of the prepared syringes are dropped or otherwise  
27 becomes inoperative in handling during the injection  
28 procedure.  
29 "The prepared syringes and backup drugs and  
30 syringes are placed in separate plastic cases by the  
31 pharmacy director. Both cases are then delivered to  
32 receive by the senior members of the I.V. team and

1 placed into a locked briefcase for immediate transport  
2 to the execution chamber."

3 Q. All right. And does -- first of all, have  
4 you seen this document before?

5 A. Yes, sir. I saw it the day that we arrived  
6 here the last time.

7 Q. That being February in this same hearing?

8 A. Right.

9 Q. Okay. Of 2003. And prior to that February  
10 appearance here in the court in Shreveport, had you  
11 ever seen that document before?

12 A. No, sir, I had not.

13 Q. Have you ever seen a document like that  
14 before?

15 A. No, sir, I have not.

16 Q. Okay. Would you say that what you just read  
17 here describes and matches pretty much your prior  
18 testimony as to the preparation and handling of these  
19 two separate sets?

20 A. Yes, sir, I would.

21 Q. Okay. And specifically that when subsection  
22 2(C) says the prepared syringes and backup drugs and  
23 syringes that, in fact, we are talking about a  
24 prepared set of syringes for the first ready-to-go set?

25 A. Yes, sir.

26 Q. And the others basically aren't prepared?

27 A. That's correct.

28 Q. Even though that doesn't say there that the  
29 second set are not prepared?

30 A. That is correct.

31 Q. Thank you. Do -- now, here comes the part  
32 of comparison. I'm going to ask you if you would



1 either from your memory or just checking these two  
2 sets of documents, first that set of 973 through 978,  
3 regarding the sodium pentathol, do the amounts of the  
4 drugs that are listed in the Louisiana injection  
5 procedures on page 341, match the amount that are  
6 reported on or written out by hand on those  
7 prescription slips?

8 A. Okay. 2 grams of pentathol, 2 grams of  
9 pentathol. 120 milliequivalents of potassium  
10 chloride, 120 milliequivalents of potassium chloride.  
11 10 milligrams per 5 milliliter. Four -- 40  
12 milligrams, 40 milligrams. Yes, sir.

13 Q. Okay. So you would say they are a match  
14 between the amounts in these two separate sets of  
15 documents?

16 A. Yes, sir.

17 Q. Okay. I'm going to complicate it more by  
18 bringing that third set of documents related to the  
19 same matter.

20 A. All right.

21 Q. And that is again from Petitioner's Exhibit  
22 101, and this time I'm going to be referring to  
23 several pages of documents entitled -- number 263  
24 through 266. And ask the witness to direct his  
25 attention to that and ask if you have seen this  
26 document before.

27 A. No, sir.

28 Q. Have you ever seen any kind of document like  
29 this before?

30 A. No, sir. No, sir.

31 Q. Okay. Could you tell us what the title of  
32 this document is?

1 A. It says Louisiana State Penitentiary Lethal  
2 Injection Equipment/Supplies Inventory Checklist.

3 Q. Okay. And what appears in the first line of  
4 that?

5 A. Sodium pentathol, 500 milligrams, with  
6 diluent -- diluent.

7 Q. Dilutant?

8 A. Dilutant, diluent, whatever.

9 Q. Okay. And -- and then on the right-hand  
10 side, there is a -- is there a column that appears  
11 that goes down the page that corresponds with each  
12 item listed?

13 A. Yes. Yes, sir.

14 Q. Okay. For most of these items in the three  
15 pages, is it -- are there checkmarks, a line with a  
16 checkmark that could be for several of the items?

17 A. Yes, sir.

18 Q. But for the first four items, is there  
19 something else instead of a checkmark?

20 A. Looks like an initial.

21 Q. Okay.

22 A. Somebody's initials.

23 Q. And you have not -- having not seen it  
24 before, safe to assume that's not your initials?

25 A. Yes, sir.

26 Q. And what is the designation that -- the  
27 typed word that appears before?

28 A. Says P-H-A-R-M, which I would presume meant  
29 the pharmacist.

30 Q. Okay. But in this case, that person would  
31 have been you, not -- I mean, at the time of the May  
32 10th 2002 execution, that would have been -- it says

1 pharm. It might mean pharmacy or pharmacist. Is that  
2 a possibility?

3 A. I would think so

4 Q. Okay. If I could direct your attention  
5 again to page 266, which is the final page of this  
6 series of documents, do you see a date on that  
7 document?

8 A. Yes, sir, I do.

9 Q. And that date is?

10 A. 5/10/02.

11 Q. Okay. So -- and without actually reading  
12 out a name --

13 A. Yes, sir.

14 Q. Do you see a name of the head EMT?

15 A. Yes, sir.

16 Q. Okay. Now, and this document here. Could  
17 you look at -- going back now to the amounts of  
18 chemicals. Could you tell us what the total amount of  
19 chemicals in this inventory checklist is for the first  
20 item, sodium pentathol?

21 A. 8 sodium pentathol, 500 milligram, with  
22 diluent.

23 Q. And how much total sodium pentathol is that  
24 quantity?

25 A. 4 grams.

26 Q. 4 grams?

27 A. Yes, sir.

28 Q. 4000 milligrams, another way to say it?

29 A. Yes, sir.

30 Q. And if you split those into two subparts,  
31 you would have 2 grams --

32 A. And two.

1 Q. And two?

2 A. Yes, sir.

3 Q. Okay. And does that match what was written

4 on your prescription?

5 A. Yes, sir.

6 Q. Okay. Going to the next one, what is that?

7 A. Pavulon. Says 10 milligram ampule, 15

8 10-milligram ampules. Let's see. That would be

9 incorrect. Because if I remember correctly -- I would

10 have to look back and see.

11 Q. Let's take a look back. These are out of

12 order, somewhat. But 970 -- excuse me.

13 A. It's this way?

14 Q. Actually, it is the end of the very last

15 page. I kind of gave it out in a different order.

16 A. Oh.

17 Q. Page 977.

18 A. Okay. It should have been four and four,

19 which would have been eight.

20 Q. Eight times 10 milligrams?

21 A. Right.

22 Q. And that would be a total of?

23 A. 80.

24 Q. 80. And here, instead, we have how much?

25 A. It says 15.

26 Q. 15 times 10, or 150?

27 A. Right.

28 Q. And that is of the Pavulon or pancuronium

29 bromide?

30 A. Uh-huh.

31 Q. Can you -- do you have any -- you haven't

32 seen this document before, I understand.

1 A. No, sir.

2 Q. But do you have any idea how to explain the  
3 discrepancy here?

4 A. Sure. It is a typo. Somebody typed this  
5 up, typed 15 for the Pavulon 'cause -- instead of 8.  
6 Because the very next one, the potassium chloride, is  
7 15.

8 Q. I see.

9 A. So -- I mean --

10 Q. So you think it is a typographical error  
11 that the 15 -- and it might have been from up --

12 A. Well, I know it is a typo because the thing  
13 about it is, they wouldn't have got but 8 from the  
14 pharmacy. 'Cause I am the one that would have given  
15 it to them. So there is no way they would have gotten  
16 15. They would have got 8.

17 Q. Do you have any documentation to show that,  
18 an inventory from your pharmacy office that would  
19 indicate how much was checked out?

20 A. No, sir. That prescription that you have a  
21 copy of in here --

22 Q. In here?

23 A. -- is what says what we do.

24 Q. Okay.

25 A. And when we prepare it at the desk, every  
26 empty vial, every empty container that was used is  
27 left on my desk until the next day. That's to assure  
28 that all the proper dosages were used and the proper  
29 drugs were used.

30 And it is checked and it is double-checked and it  
31 is triple-checked and it is quadruple-checked. And so  
32 I can assure you that the amounts of drugs that are

1 used, it doesn't matter what their little piece of  
2 inventory paper here says, the correct amount of drugs  
3 are used each and every time.

4 Q. If we could proceed to the potassium  
5 chloride then.

6 A. All right, sir.

7 Q. Let's look at that. What does the supply  
8 inventory checklist on page 263 indicate as far as  
9 that drug quantity?

10 A. It says you should have had 150  
11 milliequivalents here. And that too is incorrect,  
12 because it should have been 240. Because we use 120  
13 active and 120 backup.

14 Q. All right. So the supply inventory  
15 checklist reflects a smaller amount for the potassium  
16 chloride; is that correct? And it indicates 150  
17 milliequivalents?

18 A. Right. That would be 75. Right. If you  
19 divide it in half, that would be 75.

20 Q. Two sets of 75?

21 A. Right.

22 Q. But instead, you were -- your prescription  
23 slips indicate two separate 120?

24 A. That's correct.

25 Q. So you have a deficiency of about 37 and a  
26 half percent, if I could work out it out with a  
27 calculator. But so there is a deficiency on the  
28 potassium chloride and an excess in the Pavulon.

29 Would that be correct to say, based on this paper?

30 A. On their paperwork, yes.

31 Q. So this paperwork is a third set of  
32 documentation that exists. But it doesn't match these

1 other documents?

2 A. Right.

3 Q. Okay. Thank you. Mr. Courts, you -- your  
4 office or yourself personally wrote out the top part  
5 of the prescriptions for the Leslie Martin execution  
6 on May the 10th, 2002, as indicated by your reviewing  
7 those six --

8 A. Yes, sir.

9 Q. -- prescription slips. Were you aware that  
10 Mr. Martin had an execution date set for February the  
11 8th, 2002?

12 A. No, sir.

13 Q. Okay. Mr. Courts, was there ever an  
14 occasion when a inmate had an execution date set and,  
15 to your memory, that the entire process of preparation  
16 for the syringes and chemicals was done but that a  
17 stay of execution occurred?

18 A. Yes, sir.

19 Q. Okay. Do you recall whether anything like  
20 that happened in the last 12 months?

21 A. Yes, sir. I think it did.

22 Q. Okay. If I were to tell you that the Leslie  
23 Martin received a stay of execution in February of  
24 2002, would you --

25 A. I would believe you. I would have no reason  
26 not to. Yes, sir.

27 Q. All right. And if I were to say, generally  
28 speaking, that that stay came at a fairly late stage  
29 in the process, after 6:00 p.m., would it have been  
30 likely that the syringes and all of this preparation  
31 work had been done prior to that?

32 A. Yes, sir.

1 Q. Okay. What happens to the drugs on a  
2 situation like that?

3 A. They are returned to the pharmacy the next  
4 morning, or if it is a weekend, then it is -- it comes  
5 back to the pharmacy the next day the pharmacy is  
6 open.

7 Q. Okay. That I believe was a Friday on that.  
8 But I'm not positive. But I think so. And so if it  
9 were, then it would have come back on Monday, perhaps?

10 A. Yes, sir.

11 Q. And what happens to those syringes,  
12 physically?

13 A. They are destroyed by the pharmacy staff.

14 Q. Okay. And what about that -- is that just  
15 the first set that's totally prepared?

16 A. Yes, sir.

17 Q. And the other stuff is still good to use  
18 whenever if it is, you know --

19 A. It is returned to stock.

20 Q. Returned to the stock. Okay.

21 A. Yes, sir.

22 Q. And how do you note that transaction? Where  
23 do you record that inventorially?

24 A. The second set, there is never -- the second  
25 set, when it is sent out, there is no kind of  
26 inventory other than the prescription that you have.  
27 And when it comes back, then you tear up the  
28 prescription.

29 Q. Okay. I'm sorry. If you could go over that  
30 again. If it's -- for --

31 A. You don't inventory drugs as you use them on  
32 a daily basis, sir.



1 Q. All right.

2 A. You simply -- you have a written order for  
3 something, and that says that you gave that out, and  
4 that's what you give out.

5 Q. Okay.

6 A. But you don't keep a running inventory.

7 Q. Okay. And you are saying, though, that when  
8 an unused substance is returned, let's say it's not  
9 something that was in the prepared-syringe form, but  
10 it was just something that you could put back on the  
11 shelf --

12 A. I think we put a note. I think normally we  
13 have a piece of paper that I know you have a copy of  
14 that says the procedure as it starts, and it goes  
15 through it. This syringe was mixed; this syringe was  
16 mixed; this syringe was mixed. These people met on  
17 this date. And then I think on the bottom of it, it  
18 would normally say these -- the second set of drugs  
19 was returned to the pharmacy.

20 Q. It may come as a surprise to you, Mr. Courts,  
21 but I am not -- I am not familiar with such a  
22 document.

23 A. Okay.

24 Q. Although this is exactly the kind of  
25 document that I have been seeking for over six months.  
26 Is such a document in the pharmacy files? Would such  
27 a document be -- for the 2002 executions, would that  
28 be still in your files today, likely?

29 A. Yes, sir. Should be.

30 Q. Would you have ever been given -- excuse me.

31 MR. CLEMENTS: Like to approach the  
32 witness, please.

1 THE COURT: You may, Counsel.

2 MR. CLEMENTS: One moment, please.

3 THE COURT: Excuse me. Mr. Bailiff? I  
4 need some water, please. Before we proceed, would the  
5 witness like some water? Is the witness okay?

6 THE WITNESS: Yes. I would love to have  
7 some. Thank you.

8 THE COURT: Mr. Bailiff, would you get  
9 both of us some water? Okay. Thank you. Let's just  
10 be at ease for a few moments and give the witness an  
11 opportunity to drink the water and counsel to confer.  
12 Let's just take a few moments.

13 (Off the record.)

14 THE COURT: The Court is ready whenever  
15 counsel is ready to proceed.

16 MR. CLEMENTS: Thank you. Oh, I'm  
17 sorry. We are ready, your Honor. Your Honor, I would  
18 like to approach the witness again.

19 THE COURT: You may, Counsel.

20 Q. (By Mr. Clements) As I am doing so, Mr.  
21 Courts, a minute ago you said that you were sure that  
22 I had a document that you described. Could you tell  
23 me why you thought that I had such a document?

24 A. Because the legal department at Angola  
25 called me and asked me did I have any documents that  
26 pertained to any of the executions. And I said, yes,  
27 I did. And I have the prescriptions and I have like a  
28 little notebook, one-page thing that records all the  
29 procedures and who was there and what was done.

30 Q. Okay.

31 A. And I sent it to them.

32 Q. Do you recall specifically who made that

1 request from the warden's office?

2 A. It wasn't the warden's office. It was the  
3 legal department.

4 Q. Oh, legal department. I stand corrected.

5 A. So it was either Dora Rabalais's people or  
6 -- I think that's who it was. I think it was Dora  
7 Rabalais's office.

8 Q. Thank you. All right. Let me ask you --

9 MR. CLEMENTS: I would like to approach  
10 the witness with another excerpt from Exhibit 101,  
11 Petitioner's Exhibit 101, on page 960.

12 Q. (By Mr. Clements) And ask if you could take  
13 a look at that.

14 A. Yes, sir.

15 Q. Do you -- does this -- could you explain,  
16 describe what this document appears to be?

17 A. Information that is requested on these  
18 lethal injections. And when I got the first one, it  
19 simply had the names and numbers. And I e-mailed  
20 Warden Ranatza back and said that doesn't mean  
21 anything to me. I have to have the dates.

22 Q. Okay.

23 A. And then she sent it back with the dates.

24 Q. All right. And is it -- would it be  
25 accurate to say that the date of this e-mail is  
26 December the 9th, 2002?

27 A. Yes, sir.

28 Q. Okay. 1:43 in the afternoon. And there is  
29 a handwritten notation on the bottom of that?

30 A. Yes, sir.

31 Q. Is that yours or hers or --

32 A. It's most probably hers.

1 Q. Uh-huh.

2 A. But I told her that the pharmacy did not  
3 have prescriptions beyond five years.

4 Q. All right. And that would be reflective,  
5 then, in the list. Instead of seven, there was six at  
6 the time. And there was a list of six names: Robert  
7 Sawyer, Thomas Ward, Antonio James, Dobie Gillis  
8 Williams, Feltus Taylor, and Leslie Martin.

9 The 1997 execution of John Ashley Brown was not  
10 listed there because no one could find any record  
11 anywhere on it as of December the 9th, apparently.  
12 But it was subsequently turned over.

13 Oh, I'm sorry. Are you familiar -- did you  
14 receive any communication other than a phone call or  
15 from the legal department or communication with Warden  
16 -- Deputy Warden Ranatza about this?

17 A. No, sir.

18 Q. Did you ever receive a copy of a -- of the  
19 initial request made by my office and others about  
20 what we were looking for as far as lethal injection  
21 materials?

22 A. I don't think so.

23 Q. Okay. Could I ask if you have ever seen a  
24 letter that looked like this?

25 MR. CLEMENTS: I'm showing the -- let  
26 the record reflect I am showing Petitioner's Exhibit  
27 104.

28 A. No.

29 Q. (By Mr. Clements) Okay. Mr. Courts, the  
30 document that -- you sent the copies of the  
31 prescriptions, and those are how we got that set of  
32 documents we have been looking at for so long here?

1 A. Yes, sir.

2 Q. On that. But as far as the handwritten  
3 other -- or the other small one, I think you said a  
4 one-page --

5 A. Yeah.

6 Q. -- summary. Would that be like a separate  
7 page for each time there was a lethal injection?

8 A. Yes, sir.

9 Q. Okay. And that was indicating all personnel  
10 involved in the handling of these substances?

11 A. Normally, it would say something about on  
12 such and such a date, at such and such a time, so and  
13 so, so and so, and so and so met in the pharmacy and  
14 prepared the following. And it would indicate the  
15 four 500 milligram vials of sodium pentathol, X number  
16 of vials of pancuronium bromide, X number of vials of  
17 potassium chloride. And it -- you know, it says the  
18 four of the sodium pentathol were placed in syringe  
19 marked No. 1, and then --

20 Q. Uh-huh. So fairly detailed?

21 A. Yes, sir. We tried to make a detailed log  
22 of what actually transpired on that given date.

23 Q. And it would also then reflect the return of  
24 any?

25 A. Yes, sir.

26 Q. Would such a document exist for occasions  
27 when a stay of execution was granted? And, for  
28 example, in February of last year when you had already  
29 set it up but nothing really got used.

30 A. It should.

31 Q. Your record -- you would have a record that  
32 would reflect that. Now, your notation here in -- on

1 the -- not your notation, but the notation of your  
2 conversation which you also testified to is that you  
3 kept those kind of records, at least as far as what we  
4 are seeing here, that prescription for five years, you  
5 were able to produce that. Does that same five-year  
6 window of time exist for these kind of other records  
7 you are talking about?

8 A. No, sir.

9 Q. Would you keep those indefinitely?

10 A. I don't know. It is possible.

11 Q. Okay. So is there something legally  
12 mandated, to your knowledge, about the five-year  
13 window of time?

14 A. Yes, sir. The federal government has a law  
15 that says that you have got to keep these  
16 prescriptions for two years. But Louisiana law  
17 supercedes that. It says prescriptions must be kept  
18 for five years.

19 Q. Okay. And would those -- those would be  
20 regulations dealing with controlled substances?

21 A. Yes, sir.

22 Q. Okay.

23 A. That --

24 Q. I am sorry. Or would it cover --

25 A. No, sir. That's all prescriptions.

26 Q. All prescriptions?

27 A. Yes, sir.

28 Q. I understand. So --

29 A. All prescriptions.

30 Q. So all three chemicals in this situation  
31 would be covered by that five-year understanding?

32 A. Yes, sir.

1 Q. Thank you. So theoretically, you still have  
2 -- would you have kept a copy? I hope you didn't send  
3 the original to the -- to whomever in the legal  
4 department that you were providing this material to.  
5 You still have a copy of the -- that other kind of  
6 paperwork?

7 A. Yes, sir.

8 Q. Should be there. Okay.

9 MR. CLEMENTS: No further questions at  
10 this time, your Honor.

11 THE COURT: Does the State have any  
12 questions?

13 MR. FISH: May I have a moment, your  
14 Honor?

15 THE COURT: Yes, you may.

16 MR. FISH: Your Honor, the State has no  
17 questions of Mr. Courts.

18 THE COURT: The witness may step down.  
19 The Court needs to know if Petitioner is ready to --  
20 for the -- that the witness is free to go.

21 MR. CLEMENTS: Yes, your Honor.

22 THE COURT: Okay. I didn't say that  
23 very well, but you know what I meant. Mr. Fish, the  
24 State?

25 MR. FISH: The State does not need  
26 Mr. Courts any further, your Honor, either.

27 THE COURT: The witness is free to go.

28 THE WITNESS: Thank you very much, your  
29 Honor.

30 THE COURT: You are welcome. It's about  
31 five after 4:00. Staff, are y'all okay? Someone need  
32 a few moments? Madam Court Reporter, you need a few

1 moments? It's okay if you do, 'cause I'll take them.

2 THE COURT REPORTER: Yes, ma'am.

3 THE COURT: Okay. I'll take a few  
4 minutes, maybe 10 or so minutes. Let's take a brief  
5 recess. Mr. Bailiff, let me know when everybody is  
6 ready.

7 (Recess taken.)

8 THE COURT: All right. The Court is  
9 ready. Where are we?

10 MR. CLEMENTS: Your Honor, we have  
11 Dr. Tarver in waiting, and he is the only remaining  
12 witness that is accounted for.

13 THE COURT: Okay.

14 MR. CLEMENTS: We have --

15 THE COURT: He was one of the gentlemen  
16 from the last time. So we want to try to reach him?

17 MS. ESTOPINAL: Yes, your Honor.

18 MR. CLEMENTS: He is. That's something  
19 to consider. He is. And I can -- based on past  
20 experience -- and I am fully prepared to proceed at  
21 the moment. But it will probably be an hour and a  
22 half to two hours. Would also alternatively suggest,  
23 you know, if we went in the morning, we could do that  
24 and then be finished up by noon. But those are just  
25 -- like I say, I am -- we are prepared.

26 THE COURT: Have y'all talked to each  
27 other about this or have a consensus?

28 MS. ESTOPINAL: Your Honor, if you are  
29 ready to proceed this afternoon, we don't have a  
30 problem with that. I don't believe Dr. Tarver has  
31 been consulted over his -- what his wishes were.

32 THE COURT: And I always try to take the



1 wishes of the witness because of convenience reasons.

2 MR. CLEMENTS: Sure.

3 THE COURT: Not that they may make the  
4 final determination. The Court will do that. But I  
5 will certainly give counsel an opportunity to speak  
6 with -- and it could be, you know, all counsel if you  
7 wish to speak with him and tell what it looks like we  
8 are looking at this evening.

9 The Court is certainly available this evening.  
10 But if it is determined that the witness would be okay  
11 in the morning, the Court would agree to do that. So  
12 why don't we take a few moments.

13 We are at ease for a few moments. And I'm going  
14 to be -- Mr. Bailiff, I'm not going to go upstairs.  
15 I'm going to just be back here, and whenever they are  
16 ready for me, just let me know.

17 (Recess taken.)

18 THE COURT: All right. The Court is  
19 ready.

20 MR. CLEMENTS: The Petitioner is ready  
21 and representing Mr. Code is present.

22 MR. FISH: The State is ready, your  
23 Honor.

24 THE COURT: All right. We are ready for  
25 the witness.

26 MR. CLEMENTS: Call Dr. Anthony Tarver.

27 A. ANTHONY TARVER, M.D.,  
28 the witness hereinbefore named, having been first duly  
29 sworn to testify the truth, the whole truth, and  
30 nothing but the truth, was examined and testified  
31 under oath as follows:

32 DIRECT EXAMINATION

1 BY MR. CLEMENTS:

2 Q. Good afternoon, Dr. Tarver.

3 A. Good afternoon.

4 Q. We meet at last. Could you please state

5 your full name for the record.

6 A. Angelo Anthony Tarver.

7 Q. All right. And where do you work?

8 A. Louisiana State Penitentiary.

9 Q. And what is your occupation?

10 A. I am the medical director and physician.

11 Q. And when did you receive your medical

12 license?

13 A. 1983.

14 Q. All right. And are you board certified in

15 the medical specialty of anesthesiology?

16 A. No, I am not.

17 MR. CLEMENTS: I move to qualify Dr.

18 Tarver as an expert in general medicine.

19 THE COURT: Does the State have

20 questions?

21 MR. FISH: No, your Honor.

22 THE COURT: Counsel may proceed.

23 MR. CLEMENTS: Thank you.

24 Q. (By Mr. Clements) How long have you been

25 employed at Louisiana State Penitentiary?

26 A. Since December of 1993.

27 Q. And what was your first position? Were you

28 medical director at that time?

29 A. No. Staff physician.

30 Q. Staff physician. And did you have any other

31 position besides staff physician before you became

32 medical director?

1 A. Clinical director and then assistant medical  
2 director.

3 Q. And when did you become clinical director?

4 A. 1994.

5 Q. And what are the -- some of the duties of  
6 the clinical director?

7 A. I was in charge of the doctors' clinic,  
8 scheduling, making sure the patients were seen in the  
9 clinic.

10 Q. Okay. And as assistant director, how did  
11 your duties differ there?

12 A. More administrative, but the same thing in  
13 the clinics.

14 Q. Okay. And -- okay. Did you continue when  
15 you were medical director to see patients?

16 A. I did for a while, yes.

17 Q. Okay. Is that the case today still?

18 A. Not very many. I mean, I do see some and  
19 have some specialty clinics. But not a routine  
20 schedule.

21 Q. I understand. Is there any hospital  
22 facility at Louisiana State Penitentiary?

23 A. Hospital, no.

24 Q. Is there a -- what kind of a -- how would  
25 you describe the -- any medical facility that is  
26 located there?

27 A. We have a treatment facility, a treatment  
28 center.

29 Q. And what is the biggest difference between  
30 that and a hospital in a general understanding?

31 A. Nothing really. But we used to call it a  
32 hospital when I first got there. And it got changed

1 to a treatment center because it is not accredited as  
2 a hospital. So we can't call it a hospital. But we  
3 still have inpatient wards with nursing care. We  
4 still have an emergency room 24 hours a day and  
5 clinics.

6 Q. And as far as handling of controlled  
7 substances, is there any restriction because of your  
8 status as a treatment center as opposed to a hospital?

9 A. Not that I am aware of, no.

10 Q. All right. I would like to turn now to the  
11 subject of executions by lethal injection. Have you  
12 ever provided any support functions for the prison on  
13 the day of an execution?

14 A. Support functions meaning what?

15 Q. In any capacity of -- well, first of all,  
16 have you ever been an official witness?

17 A. Yes.

18 Q. And could you tell us which lethal injection  
19 executions you were an official witness at?

20 A. I don't remember the names.

21 Q. If I were to tell you that in the year 1999,  
22 that Dobie Gillis Williams was executed on January  
23 6th, does that --

24 A. I was there.

25 Q. And in 2000, in the year 2000, Feltus  
26 Taylor?

27 A. I believe I was there.

28 Q. And on May the 10th, 2002, at Leslie Dale  
29 Martin?

30 A. I don't remember if I was there or not.

31 Q. Okay.

32 A. Les Martin?

1 Q. Les Martin. Yes.

2 A. Yes. Yes. I was there for Les Martin.

3 Q. All right. Did any other medical doctors  
4 accompany you at these executions?

5 A. Yes.

6 Q. Start with the 1991, Williams execution --  
7 '99. I'm sorry.

8 A. The only other physician that would have  
9 been there would have been the coroner. I don't  
10 remember -- it was -- I don't remember for sure who it  
11 was in '99. I think it was Dr. Rathbone.

12 Q. Okay.

13 A. He was also there for Dobie Gillis, I  
14 believe, Dobie's.

15 Q. And Feltus Taylor in 2000?

16 A. Yes. I believe he was there. He was there  
17 for two of them when I was there.

18 Q. And in the last, most recent, in Les Martin?

19 A. That was -- oh, what was his name? I don't  
20 -- I can't remember his name. He is a neurologist in  
21 Baton Rouge. I know who he is.

22 Q. If I were to -- I'm sorry. If I were to say  
23 the name of Thomas Flynn, would that sound accurate?

24 A. Yes, sir.

25 Q. Okay. As an official witness, what were  
26 your duties at the Martin execution?

27 A. At the execution, none but witness at any of  
28 them.

29 Q. All right. And where were you located  
30 physically during the time of the execution?

31 A. In the viewing room.

32 Q. All right. And that would have been the

1 same for the coroner who would accompany you or the  
2 other doctor?

3 A. Correct.

4 Q. All right. And other witnesses?

5 A. Yes, sir.

6 Q. Okay. Besides observing or being able to  
7 observe the room where the gurney is situated and the  
8 inmate is strapped down, did you do anything else as  
9 an official witness?

10 A. No. Not as a witness. But as a physician,  
11 I would confirm death.

12 Q. Okay. So one of your functions is also to  
13 confirm death at the end?

14 A. Correct.

15 Q. Were you able to see the intravenous lines  
16 running to any monitoring equipment? Not the --  
17 excuse me. Strike that. Electrical lines running  
18 from the inmate to monitoring equipment?

19 A. I could see it running from the inmate into  
20 a hole in the wall. I mean, I couldn't tell what it  
21 was connected to though.

22 Q. Do you have any knowledge -- have you ever  
23 been inside the room on the other side of that wall?

24 A. Just at the end to look at the monitor.

25 Q. Okay. And was that part of your function in  
26 pronouncing death?

27 A. Yes, sir.

28 Q. Okay. And what kind of equipment did you --  
29 were you looking at?

30 A. It's just a cardiac monitor and a celoscope,  
31 which is a cardiac monitor to show cardiac electrical  
32 activity.

1 Q. Okay. And was there more than one piece of  
2 monitoring equipment or just one, to your  
3 recollection?

4 A. I don't remember if there were more than  
5 one.

6 Q. Okay. And so did you go into that room and  
7 look at that equipment before you pronounced death?

8 A. Yes.

9 Q. Okay. So could you explain how it was that  
10 you were notified when to come back there?

11 A. We were called in by the warden.

12 Q. Okay.

13 A. To come in to examine the patient.

14 Q. Was it an invitation by words that he spoke?

15 A. Usually, one of the assistant wardens would  
16 get us out of the room.

17 Q. I see.

18 A. I think. I -- no. The warden would wave to  
19 us or else one of the assistant wardens would get us  
20 out.

21 Q. Okay. So perhaps there was a slight  
22 variation between different executions?

23 A. Right.

24 Q. But somehow you were notified by some member  
25 of the warden staff or the warden himself?

26 A. Correct.

27 Q. And how long did it take you to go from the  
28 chair that you were at into that room to look at that  
29 monitoring equipment?

30 A. Five or ten seconds.

31 Q. Okay.

32 A. But -- well, to look at the equipment?

1 Q. Yeah.

2 A. Or to get into the room?

3 Q. Well, to get in the room and then get into

4 that section to be able to look at that equipment.

5 A. To look at the equipment was the last thing

6 done before pronouncing death.

7 Q. Okay.

8 A. I mean, that wasn't -- I didn't go straight

9 to that room.

10 Q. Oh. What did you do first?

11 A. Well, I was always second. The coroner

12 always has to pronounce the patient dead. He would go

13 and examine the inmate, and then he would back up. I

14 would examine, look for -- listen for cardiac tones,

15 check pupil area response, breathing, things like

16 that. And then together we would go and look at the

17 monitor.

18 Q. I understand. Thank you. Do you recall the

19 execution of Dobie Gillis Williams on January the 8th,

20 1999?

21 A. Parts of it.

22 Q. Okay. Do you recall anything particular

23 about the intravenous access at that execution?

24 A. I don't remember. I know before the

25 execution we discussed it because he had severe

26 arthritis. But I don't remember that there was any

27 difficulty that I was aware of.

28 Q. Okay. Did -- do you recall in general

29 whether the intravenous access in the Williams

30 execution differed from the two subsequent executions

31 you witnessed in any way?

32 A. I don't recall. I really never looked to



1 see where the lines were.

2 Q. If I were to state that the emergency  
3 medical personnel were unable to locate a suitable  
4 vein on the right arm on Mr. Williams, would that  
5 refresh your memory?

6 A. I am afraid not.

7 Q. If I were to tell you that the Baton Rouge  
8 Morning Advocate reported after Mr. Williams'  
9 execution that Warden Burl Cain said that prison  
10 officials were unable to hook up an intravenous line  
11 in Williams' right arm and connected it to a vein in  
12 his neck instead, would that refresh your memory?

13 A. It does in the sense that I remember hearing  
14 that. But I can't tell you that that's what I saw  
15 with any certainty.

16 Q. All right. From the location that you were  
17 at in the observation room, if there were a line  
18 connected to a vein in his neck on the right side,  
19 would that have been something that you could have --  
20 or could have theoretically observed?

21 A. Yes. I would have seen it.

22 Q. From the observation room?

23 A. Yes.

24 Q. And what would it probably have looked like?

25 I mean, as far as just the physical aspect of it.

26 A. Just tape on his neck with I.V. tubing  
27 coming out, off of it.

28 Q. Okay. And what is the medical procedure  
29 necessary to connect an intravenous line into the neck  
30 of a person instead of at his arm?

31 A. You mean the technique?

32 Q. Yeah.

1 A. It is essentially the same except -- I mean,  
2 because the veins in the neck are superficial just  
3 like the ones in the arm. So it is a superficial  
4 cannulation of a vein. So the technique that's  
5 usually done by nonphysicians is the same.

6 Q. Did you -- how does that differ from a  
7 central line?

8 A. Central line is the deep venous system, not  
9 superficial. So a central line goes directly into the  
10 heart, the veins that go into the heart, as opposed to  
11 a superficial vein.

12 Q. And do you -- at this moment, do you have  
13 independent memory of whether the procedure with  
14 Mr. Williams was either that superficial or that deep?

15 A. I couldn't tell you from looking at it.  
16 There is no way to tell by looking at it. I would  
17 assume it would have been superficial because only  
18 physicians and medical personnel can perform central  
19 venous cannulation, only someone that's trained in  
20 that.

21 Q. And to your knowledge -- well, just to kind  
22 of clarify, certainly, were you asked to perform any  
23 medical function of that nature at Mr. Williams'  
24 execution?

25 A. No, I was not.

26 Q. Do you know if Dr. Rathbone was?

27 A. No, he wasn't. He was sitting in there with  
28 me.

29 Q. Okay. Do you know if any of your staff  
30 physicians at the treatment center were asked to do  
31 so?

32 A. I couldn't say for sure. I don't know who

1 starts the I.V. lines. So I don't know who else was  
2 in there doing it.

3 Q. If we were to assume that the standard  
4 process were involving emergency medical technicians  
5 or paramedics --

6 A. Okay.

7 Q. That would be someone different than a staff  
8 physician at the hospital?

9 A. Correct.

10 Q. Or treatment center?

11 A. Correct.

12 Q. Okay.

13 A. Paramedics -- especially EMTs and paramedics  
14 are not licensed or authorized to start central lines.

15 Q. Right. In your memory, Mr. Williams'  
16 execution, this would have been the first one that you  
17 personally observed as an official witness. Would it  
18 have been the first one that you observed in any way?

19 A. Yes.

20 Q. Do you remember whether -- when you as a  
21 group of witnesses came into the room, was  
22 Mr. Williams already strapped down, or was he even  
23 present in the room? Or how did that go about in your  
24 memory?

25 A. No. He wasn't strapped down or in the room  
26 yet.

27 Q. Okay. So when you took your seats as  
28 official witnesses, he wasn't there?

29 A. Right.

30 Q. Do you recall approximately what hour of the  
31 day or evening this was that you came in as witnesses?

32 A. I think it was around six o'clock in the

1 evening. But I don't remember exactly what time.

2 Q. Okay. Do you -- are you aware of whether an  
3 execution carried out at approximately six o'clock in  
4 the evening is -- was something new or different than  
5 prior lethal -- any executions in Louisiana?

6 A. My understanding -- well, yes. I think it  
7 was. In fact, that's why I remember that because I  
8 think they used to be around midnight. And I was glad  
9 I didn't have to come in at midnight.

10 Q. Okay. So when you came in and had a seat  
11 with the other witnesses, what was the first thing  
12 that you observed in -- on the other side of the glass  
13 wall?

14 A. The security officers come in with the  
15 inmate and the warden. And then the inmate usually  
16 goes to the microphone and -- for any last statements  
17 before they put him on the gurney.

18 Q. Okay. Were you and other witnesses able to  
19 observe him being strapped down on the gurney?

20 A. Yes.

21 Q. Were you able to observe the insertions of  
22 the intravenous lines?

23 A. No.

24 Q. And why was that?

25 A. The curtain is closed for that procedure.

26 Q. Okay. And approximately, your best guess,  
27 what amount of time transpired between the time that  
28 curtain was closed and the time it was opened up  
29 again?

30 A. I don't remember.

31 Q. Have you ever been informed that there may  
32 be a physician, a medical doctor that is asked to be

1 on standby status at the time of an execution to  
2 perform the procedures that we have discussed a few  
3 minutes ago?

4 A. No. I was never told that one is. In fact,  
5 I was asked if we had a policy for that after that  
6 execution.

7 Q. Could I ask who was -- who asked you that?

8 A. Secretary Stalder.

9 Q. Do you know why he asked you that?

10 A. No, I did not.

11 Q. To your understanding -- do you have  
12 knowledge one way or the other whether such a person  
13 was -- before that point had ever been in that, a  
14 doctor had ever been used in that capacity on standby?

15 A. I don't know except from asking medical  
16 directors that were there prior to me. That's the  
17 only way I would know.

18 Q. Did you ask any?

19 A. I asked Dr. Gutierrez when we were here  
20 before.

21 Q. I see. And do you -- were you told? Did he  
22 -- do you know if there were any?

23 A. No. I was told that he was never asked to  
24 do any venous cannulations. And as far as he knew, no  
25 one ever had before.

26 Q. I understand. Subsequent to the 1999  
27 execution of Dobie Gillis Williams and your  
28 conversation with Secretary Stalder, did you -- were  
29 any steps taken to arrange for such a doctor to be  
30 present?

31 A. Not that I am aware of. Not by me.

32 Q. But it is your memory that Secretary Stalder

1 personally spoke with you? Was it in person, you say,  
2 or on the telephone or --

3 A. No. It was in person. It was a discussion  
4 between he, myself, and Warden Cain.

5 Q. Okay. And this was something right after  
6 the execution?

7 A. Yes, sir.

8 Q. All right. Where did that discussion take  
9 place?

10 A. It was there. I don't remember if it was in  
11 the execution -- I don't think it would have been in  
12 Camp F. It would have probably been after the  
13 reporters, after they -- when Warden Cain gives his  
14 statement.

15 Q. Do you recall concerns or specific reasons  
16 why Secretary Stalder brought this issue up?

17 A. No. He didn't tell me.

18 Q. Okay. Did you get any impression from  
19 Warden Cain as to any concerns he had as to about  
20 this?

21 A. Not really. I mean, as I said, we had  
22 discussed potential for that before when the  
23 paramedics and I went and checked Dobie's veins and  
24 knew about his arthritis. And it was discussed then.  
25 But nothing was ever done or resolved with it. I  
26 assumed it was just a continuation of that discussion.

27 Q. Without naming names, would it be accurate  
28 to say that the paramedic involved -- and we are  
29 avoiding the use of references to specific -- any  
30 specific EMT or paramedic in the proceedings. But  
31 without naming any names, would this paramedic have  
32 been the head EMT, so to speak, or somebody else?

1 A. That went with me?

2 Q. That went with you to inspect --

3 A. It would have been.

4 Q. I'm sorry?

5 A. Yes, it would have been.

6 Q. It would have been. Okay. And

7 approximately how much time before the execution date

8 do you recall making that inspection?

9 A. Either the day before or two days before.

10 Q. And do you recall whether you did such a

11 inspection in the other two?

12 A. Yes, I did.

13 Q. And it was the same basic format, the head

14 EMT and yourself would go and --

15 A. On one of them, on Les Martin, I was seeing

16 on a regular basis anyway. So it -- I was by myself.

17 Q. Okay. Is there any particular medical

18 reason why you were seeing Mr. Martin so frequently?

19 A. Because he was moved from death row prior to

20 the date of his execution.

21 Q. Uh-huh.

22 A. And so I was visiting him as well as the

23 EMTs on a daily basis. They were seeing him on a

24 daily basis. I was going every two or three days to

25 make sure that he was getting medical care.

26 Q. Okay. And were you aware -- did it turn out

27 that there were any difficulties or problems with

28 Mr. Martin's medical condition during that time?

29 A. No. The only thing he asked me for was some

30 athlete's foot medicine.

31 Q. Okay. Are you familiar with the chemicals

32 that are used in the lethal injection process in

1 Louisiana?

2 A. Yes.

3 Q. Could you just briefly name what they are.

4 A. Pavulon. Well, the first one is pentathol.

5 Then Pavulon and potassium chloride.

6 Q. To your knowledge, does Pavulon or

7 pancuronium bromide cause sedation or unconsciousness?

8 A. Pavulon?

9 Q. Yes.

10 A. No. It is a paralyzing agent.

11 Q. Okay. What would you expect an animal or a

12 person to look like if they had been given a large

13 dose of Pavulon?

14 A. Muscle flaccid. Flaccid muscles.

15 Q. Would all the voluntary muscles in their

16 body be relaxed?

17 A. It should be if the dose is sufficient, yes.

18 Q. Might that have a peaceful or serene look on

19 their face?

20 A. You could say that, yes.

21 Q. Would you have any way of knowing just from

22 looking at them if they were awake or asleep?

23 A. No, you couldn't.

24 Q. If they were in severe pain or suffocating,

25 would there be any way for them to cry out or move or

26 tell you they were suffering?

27 A. None of those, no.

28 Q. After the inmate is injected with

29 pancuronium, is there any way for you to know if they

30 are awake or asleep?

31 A. No. Not by visual, no.

32 Q. Okay. Do you know who designed the



1 Louisiana lethal injection protocol?

2 A. I have no idea.

3 Q. I'm going to explore a few of the steps in

4 the -- in your role in the lethal injection process,

5 and not necessarily in a chronological order. As

6 medical director, do you know if your department

7 collects information from the inmate or from any other

8 source regarding what drugs have been given to the

9 inmate before the day of the execution?

10 A. I'm sorry. Could you re-question?

11 Q. It's a long question. Let me try to

12 rephrase it. Do you collect information about what

13 medication or drugs the inmate has been taking?

14 A. Yes.

15 Q. Okay. And is -- do you collect this

16 information specifically for understanding in

17 preparation for the execution itself?

18 A. Not routinely, no.

19 Q. Would you say that you collect information

20 about drugs during the week before the execution? Or

21 what period of time would you --

22 A. Yeah. Probably within the week just to look

23 up and see, make sure their medications -- what

24 medication they are getting.

25 Q. Does your department attempt to learn the

26 medical history, including a blood chemistry analysis

27 of the inmate before the execution?

28 A. Not routinely, no.

29 Q. Has it ever been done in the three

30 executions that you were --

31 A. Not specifically for the execution, no.

32 Q. Okay.

1 A. Well, I don't know if they have had labs  
2 prior to the execution for any other reason though.

3 Q. Okay. Assuming hypothetically that a  
4 condemned inmate is currently receiving a prescribed  
5 medication on the day of the execution, does your  
6 department attempt to learn the chemical interactions  
7 of these prior medications with any of the three  
8 lethal injection chemicals?

9 A. I don't personally. I depend on my  
10 pharmacist to let me know that.

11 Q. Does your department attempt to collect any  
12 information from the inmate or from other sources  
13 regarding the food or liquid that the inmate has  
14 consumed prior to the time of the execution?

15 A. No. We don't ask. You mean to ask him if  
16 he ate breakfast or not, or ate lunch?

17 Q. Right.

18 A. No. Not specifically, no.

19 Q. Or would you also try to find out what time  
20 of day they had their last meal?

21 A. I wouldn't specifically ask that. But it  
22 would usually be talked about around the execution  
23 room because the last meal is usually there.

24 Q. Okay.

25 MR. CLEMENTS: Your Honor, may I  
26 approach the witness, please?

27 THE COURT: You may.

28 MR. CLEMENTS: Let the record reflect  
29 that I am showing the witness a copy of page 263, from  
30 the Petitioner's Exhibit 101.

31 Q. (By Mr. Clements) And ask if you could read  
32 these items for me. If you could tell me this, this

1 fourth item there?

2 A. Fourth one, Valium injection, 10 milligrams.

3 Q. Okay. And on this -- could you tell me what

4 the purpose of the Valium is?

5 A. I have no idea. I don't -- no. I don't

6 know why it is there.

7 Q. Does it appear that -- well, if you could

8 just take a look at the title of this sheet here.

9 Does it reflect that it is a document entitled Lethal

10 Injection Equipment/Supplies Inventory Checklist?

11 A. Yes, it is.

12 Q. And the Valium injection that it discusses

13 is in a form and looks as though that's --

14 A. That is distributed by the pharmacist, yes.

15 Q. Okay. Do you happen to recognize those

16 initials at all?

17 A. No. I mean, I can guess who they are. But

18 I couldn't verify it.

19 Q. Sure. Because the Louisiana lethal

20 injection supply list includes a reference to a dosage

21 of Valium, does your department -- do you know if your

22 department offers the inmate a Valium or any other

23 sedative on the day prior to -- I mean, on the day of

24 the execution, but before?

25 A. No. As far as I know, we do not.

26 Q. Okay.

27 A. In fact, I make specifically sure that we do

28 not, that I do not give him any.

29 Q. I missed the very last part of what you

30 said. You make sure you specifically do not --

31 A. Do not give him any sedation.

32 Q. Can you tell me why that would be?

1 A. Because that's what I was told that the  
2 policy at Angola was the first time I attended one,  
3 that we do not, that we have the psychiatrist see  
4 them. We are not to give them any sedative. I think  
5 it is up to 24 hours prior to the execution.

6 Q. And it is your memory that you had that --  
7 you were given that information in an oral fashion,  
8 just word-of-mouth fashion?

9 A. Yes.

10 Q. And this was when you first -- say, in 1999,  
11 in that execution?

12 A. Right.

13 Q. The first one you attended?

14 A. Yes.

15 Q. Do you recall who passed that information to  
16 you?

17 A. That's what I was trying to remember. No, I  
18 I don't remember for sure. It may have been one of  
19 the psychiatrists or social workers. But I don't  
20 recall.

21 Q. Could you -- did you ask why that was a  
22 policy?

23 A. I did. And what I remember was that the  
24 inmate needed to be alert for the execution.

25 Q. It was your understanding that that was a  
26 medical reason that they -- that was being given to  
27 you?

28 A. It -- I'm trying to recall exactly. It was  
29 a medical. But from what I remember -- and I don't  
30 know if this was my interpretation or if this is what  
31 I was told for sure. But to make sure that there was  
32 -- it wasn't a legal issue to sedate them before the

1 execution.

2 Q. Oh.

3 A. And I really don't remember who told me  
4 that. I remember it was around the time that  
5 discussion was about mental competence for executions  
6 though.

7 Q. Okay. Did you ever see a written document  
8 either discussing either that point, that legal or  
9 medical point, or any other aspect of the detailed  
10 discussion of the lethal injection process in  
11 Louisiana?

12 A. Any documents about the lethal injection  
13 process?

14 Q. As it's carried out in Louisiana.

15 A. Not until the last time I was here in  
16 Shreveport.

17 Q. And by that you mean your appearance to  
18 testify back in February of 2003, just a month ago?

19 A. Correct.

20 Q. And that was the first time you saw any  
21 document of any nature relating to lethal injection  
22 process?

23 A. Right.

24 Q. Thank you. How was it that you saw that, or  
25 what was the circumstance that you saw that document?

26 A. Because I -- I was aware that I had been  
27 told there was a policy at Angola for lethal  
28 injections. But that it was in the administration  
29 warden's or deputy warden's care. And when we were  
30 called to testify -- when I was called to testify  
31 about lethal injections, I asked to read it.

32 Q. Okay. But prior to that time and that time

1 including the three different lethal injections that  
2 you were an official witness, you had not seen any  
3 such document?

4 A. No, I had not.

5 Q. Does your department attempt to learn the  
6 body weight of the inmate on the day of the execution?

7 A. No. We don't weigh them.

8 Q. Okay. I would like to turn your attention  
9 now to another area concerning the process of starting  
10 the intravenous lines at the gurney. Before the  
11 inmate is even brought in, do you personally know what  
12 medical equipment is present in the execution chamber  
13 or the alcove room that is not visible to the witness?

14 A. The specific, no. I -- I am aware that  
15 there is a locked cart in there with supplies to start  
16 I.V.s. But to tell you what the list is, no, I don't  
17 know.

18 Q. Okay.

19 MR. CLEMENTS: Your Honor, may I  
20 approach the witness, please?

21 THE COURT: You may.

22 MR. CLEMENTS: Let the record reflect  
23 that I am showing the witness again the page 263  
24 through 266, of the in globo Petitioner's Exhibit  
25 No. 101.

26 Q. And ask if this appears to be -- well, what  
27 does this appear to be on all the pages?

28 A. The first page on 263, besides the first  
29 four listed, which are medications, are I.V.,  
30 intravenous supplies. Syringes, needles, catheters,  
31 saline. You want me to read each one?

32 Q. No. Just as a summary.

1 A. Just what it is? It's supplies for --  
2 almost a crash cart supplies with different I.V.  
3 supplies, scalpels, stethoscope, tapes, surgical kits,  
4 gloves, et cetera.

5 Q. And is there a date on the final page of  
6 that?

7 A. May 10th of -- it looks like '02.

8 Q. Okay. And we won't go into the names.

9 A. Right.

10 Q. Are all of the items here on this checklist,  
11 do they appear with a checkmark on the right-hand  
12 column, across from the items?

13 A. Yes.

14 Q. Okay. So you would assume that then this is  
15 an inventory of what is in that crash cart?

16 A. Correct.

17 Q. Okay. If you could just describe again what  
18 a crash cart is?

19 A. It is a cabinet with emergency medications.  
20 And that's what's usually in an emergency room or in a  
21 ward or somewhere where you would need emergency  
22 medications and supplies.

23 Q. Okay. Having reviewed that list just now,  
24 do you recall whether it includes any equipment to  
25 start a central line?

26 A. Yes, it did.

27 Q. Could you --

28 MR. CLEMENTS: I'm showing the witness  
29 the same exhibit, pages 263 --

30 Q. (By Mr. Clements) Could you point out which  
31 items would have been --

32 A. Well, I -- I think I will correct myself.

1 No, it does not. The angiocatheter is usually -- is a  
2 brand name. And that's usually used for central  
3 lines. But these are too short, and I didn't look at  
4 the length of them when I said that.

5 Q. Okay.

6 A. So, no, those are not for central lines.

7 Q. All right. What would they be used for  
8 instead?

9 A. Peripheral I.V. lines.

10 Q. Peripheral I.V. lines. And just for a brief  
11 definition, a peripheral I.V. line means an I.V. line  
12 attached to --

13 A. Superficial. It's superficial venous  
14 cannulation.

15 Q. All right.

16 A. Same as called peripheral.

17 Q. Arms and legs, perhaps, or is it limited to  
18 that?

19 A. No. It is not limited to just arms and  
20 legs.

21 Q. Okay. Can you tell me what you -- that  
22 there were listed on that list some scalpels also?

23 A. Yes.

24 Q. Could you describe what you would think that  
25 those scalpels might potentially be used for?

26 A. I would assume for a cutdown since I saw a  
27 cutdown tray, I think, listed also.

28 Q. Uh-huh. And could you describe exactly what  
29 a cutdown is?

30 A. It is a surgical procedure where the skin is  
31 lanced or cut. And then the vein is found visually  
32 instead of percutaneously, which is blind. The vein



1 is visualized and then cannulated with the I.V.  
2 catheter.

3 Q. Okay. I would like to -- let's see. Can  
4 you tell me a little bit about your training, if any,  
5 and experience with putting in central lines?

6 A. Extensive training. I am a board certified  
7 surgeon. So I have put in quite a few central lines.

8 Q. Okay. Is it true that nowadays almost all  
9 central lines are put in using the percutaneous  
10 technique where the catheter is threaded through the  
11 skin over a wire?

12 A. Yes.

13 Q. Is it true also that before the percutaneous  
14 technique was invented a couple of decades ago that  
15 people used to do what is called a cutdown to  
16 establish the central I.V. access?

17 A. No. Cutdown is not a central line, central  
18 catheter.

19 Q. Okay. Could you explain how a cutdown --

20 A. A cutdown is usually done at the ankles or  
21 the wrist, which are superficial veins. And when you  
22 talk about deep veins or central veins, you are  
23 usually talking about that feed directly to the  
24 inferior or superior vena cava, which attaches to the  
25 heart. So you are talking about inguinal or groin  
26 cannulations or feet and neck cannulations.

27 Q. Okay. So is it true that in most cases that  
28 the percutaneous technique is faster than a cutdown?

29 A. Yes. Usually.

30 Q. And easier than a cutdown?

31 A. Not always, no.

32 Q. Perhaps less invasive than a cutdown?

1 A. Less invasive, yes.

2 Q. Would you agree that for the most part, the  
3 preference is to use the percutaneous technique?

4 A. Preference for starting an I.V., yes.

5 Q. Okay. And you have already indicated that  
6 your review of the supply checklist indicated presence  
7 of materials for a cutdown but not for the  
8 percutaneous technique? Or --

9 A. No. The angiocatheters are the percutaneous  
10 catheters. Those are the angiocaths. Those are  
11 actually the needle and the catheter itself. That's  
12 the name of them, the brand name.

13 Q. But you had indicated they were too short in  
14 this supply --

15 A. For central catheters. Not for cutdowns.

16 Q. I understand.

17 A. Yes. They can be used for cutdowns or  
18 percutaneous superficial cannulation but not for  
19 central venous catheters, no.

20 Q. Okay. And as we have talked about,  
21 sometimes a central line is put into the neck or a  
22 chest; is that right?

23 A. Correct.

24 Q. And can you tell me what kind of  
25 complications could happen when putting in a central  
26 line in the chest or the neck?

27 A. You get complications from different  
28 locations, depending on where you put it. They have  
29 different complications. Most -- and it depends on  
30 the training of the physician putting them in on which  
31 one is performed, which one they are more comfortable.  
32 The internal jugular cannulation is usually the one --

1 is the one in the neck. And that's a deep vein.  
2 Complications could be inadvertently cannulating the  
3 carotid artery, which is right next to the vein. And  
4 that's usually the biggest complication. It is rare  
5 to collapse a lung, which is another complication, by  
6 putting it in the neck.

7 Subclavian technique is usually used by surgeons  
8 and emergency room physicians. The biggest  
9 complication for those is pneumothorax or puncturing a  
10 lung. And then the femoral central venous catheters  
11 usually are a last resort and for emergencies. And  
12 they have very few complications, usually just hitting  
13 the artery, which is right next to the vein, is the  
14 biggest complication.

15 Q. And, hypothetically, if an artery were  
16 connected, hit, instead of a vein, what would be the  
17 effect about the delivery of the medication -- the  
18 lethal injection chemicals?

19 A. Well, hopefully, it wouldn't stay there. I  
20 mean, it's usually pretty obvious if you hit an  
21 artery, you take the catheter out and reinsert it. If  
22 it is left in an artery, then there are side effects  
23 because the medication is going to the periphery  
24 instead of to the heart.

25 So it would go to the fingers before it got to the  
26 heart. So you would have sensations and you would  
27 feel it in your fingertips and toes, usually a burning  
28 sensation.

29 Q. Uh-huh. And that's just because of the  
30 direction of the circulation of the body?

31 A. Correct.

32 Q. Going to the periphery first and then to

1 heart?

2 A. Right.

3 Q. You had mentioned a moment ago that if one  
4 did hit an artery, it would be fairly obvious. What  
5 would be the most powerful sign that would be obvious  
6 about that?

7 A. It's a pulsatile flow. I mean, initially  
8 when you put it in, you -- the needle usually bounces  
9 back out by itself because the pulse is stronger. And  
10 then the blood is usually redder. It is more of a red  
11 than a maroon, a bright red. And then if you still  
12 hook it up to the I.V. line and hook the fluid up, the  
13 blood backs up into the tubing and you see it  
14 pulsating, where it doesn't do that on the venous side  
15 because there is no pressure.

16 Q. Right. And if all of those things you just  
17 described occurred as far as a -- an artery being hit  
18 instead of a vein, how much -- what could be done to  
19 repair -- would there be a bleeding resulting from  
20 that that would be a problem?

21 A. You just hold pressure and it stops by  
22 itself, usually in about two or three minutes with  
23 direct pressure.

24 Q. Okay. And then you think you could proceed  
25 with trying to find a vein instead?

26 A. Correct.

27 Q. Do any of the prison doctors supervise or  
28 direct the EMTs in the placements of the intravenous  
29 lines and the securing of the catheters during an  
30 execution?

31 A. Not that I am aware of.

32 Q. Okay. Do you know -- okay. Excuse me.

1 Does the American Medical Association Code of Ethics  
2 prohibit physicians from actually participating in  
3 executions?

4 A. The American Medical Association? Yes, they  
5 do.

6 Q. Okay. What is the Society of Correctional  
7 Physicians?

8 A. What is it?

9 Q. Yeah.

10 A. It is a group of prison physicians that  
11 formed a group society. That's about all I know about  
12 it.

13 Q. Are you a member of that organization?

14 A. I just joined within the last two months.

15 Q. Okay. Do you know that the Society of  
16 Correctional Physicians Code of Ethics likewise  
17 prohibit their members from actually participating in  
18 executions?

19 A. No, I do not.

20 Q. Okay. At any time did you ever suggest any  
21 changes be made in the lethal -- the Louisiana lethal  
22 injection process?

23 A. No.

24 Q. Does the Food and Drug Administration  
25 require the tracking of the inventory and storage and  
26 use of controlled substances?

27 A. I don't know.

28 Q. Do you know which, if any, of the lethal  
29 chemicals are controlled substances?

30 A. No. Not without looking. I would think it  
31 was -- probably be pentathol though, based on their  
32 properties. But I don't know without looking it up.

1 Q. All right.

2 MR. CLEMENTS: Your Honor, I'd like to  
3 approach the witness, please.

4 THE COURT: You may.

5 MR. CLEMENTS: First of all, I'm going  
6 to be referring to a variety of documents from  
7 Petitioner's Exhibit, in globo, No. 101, specifically  
8 pages 9 -- starting with pages 967, and following up  
9 till 972.

10 Q. (By Mr. Clements) If I could ask you to  
11 direct your attention to page 967, first of all, and  
12 ask if you recognize this document.

13 A. Yes.

14 Q. Okay. Could you describe for the Court what  
15 it is?

16 A. It is a copy of a prescription for  
17 pentathol.

18 Q. Okay. And do you know what the -- can you  
19 read the date on that?

20 A. June the 6th, but I can't see what year.

21 Q. If I were to inform you that the execution  
22 of Feltus Taylor occurred on June the 6th of the year  
23 2000 -- it's perhaps on some other pages. There is  
24 one page on page 970, appears to have a tiny bit more  
25 detail.

26 A. It looks like 00, yes.

27 Q. Would those appear to be prescription slips  
28 with your signature on them?

29 A. Yes.

30 Q. Okay. And they are for how many different  
31 chemicals?

32 A. Three.

1 Q. All right. Could you -- I would like to  
2 direct your attention to the same exhibit, but on  
3 pages 340 through 344, and ask if you would take a  
4 look at this document. And just read out loud the  
5 title of that from 340.

6 A. The title says Confidential Louisiana State  
7 Penitentiary Lethal Injection Procedures.

8 Q. Okay. Before going into any detail, does  
9 this appear to be the document that you were shown  
10 last month when you came up?

11 A. Yes, it does.

12 Q. Okay. All right. And, again, that is the  
13 first time you had ever seen a document of this  
14 nature? Is that --

15 A. Correct.

16 Q. Okay. If you can just read the key  
17 groupings, the title of the number one there?

18 A. Obtaining Drugs and Equipment.

19 Q. And then to the next page, page 341?

20 A. Storage and Handling of Drugs.

21 Q. Okay. On -- if you could read the first two  
22 paragraphs there. And actually then onto the first  
23 subparagraph (A).

24 A. "Six to eight hours prior to the execution,  
25 the medical director shall prescribe the drugs to the  
26 warden for use as directed by state law. Two hours  
27 prior to the execution, the pharmacy director shall  
28 then prepare the syringes as follows, witnessed by the  
29 warden and/or medical director/designee."

30 (A) says, "One set of labeled 60 cc syringes for  
31 the lethal injection. Number one, sodium pentathol,  
32 2.0 grams. Number two, pancuronium bromide, 40.0

1 milligrams. Number three, potassium chloride at 120.0  
2 milliequivalents."

3 Q. And if you could also -- again continue with  
4 (B) and (C) then.

5 A. (B) says, "A backup set of drugs and  
6 syringes," comma, the backup set of drugs -- not  
7 comma, excuse me. Parentheses.

8 "The backup set of drugs and syringes are a  
9 precautionary measure to be prepared and used only in  
10 the event one of the prepared syringes are dropped or  
11 otherwise becomes inoperative in handling during the  
12 injection procedure.

13 "(C), the prepared syringes and backup drugs and  
14 syringes are placed in separate plastic cases by the  
15 pharmacy director. Both cases are then delivered  
16 to/received by the senior members of the I.V. team and  
17 placed into a locked briefcase for immediate transport  
18 to the execution chamber."

19 Q. All right. Concerning the quantities in  
20 subparagraph (A), the 2 grams for sodium pentathol, 40  
21 milligrams for pancuronium bromide, and 120  
22 milliequivalents for potassium chloride, could you  
23 review that, those quantities with the quantities  
24 indicated in your prescriptions that you signed in  
25 2000.

26 A. They are the same total quantity.

27 Q. The total quantities are the same? You have  
28 six. You have the ability to break out into two  
29 parts?

30 A. Correct.

31 Q. By the way it has been split into two sets?

32 A. Yes.



1 Q. Okay. I would like to direct your attention  
2 now to page 6 from the Petitioner's Exhibit 101, and  
3 direct your attention to the top three rows of  
4 information here. And ask you, do those reflect the  
5 same chemicals?

6 A. Yes.

7 Q. Could you now compare the quantities, for  
8 example, for the first one, the sodium pentathol, what  
9 does the checklist indicate?

10 A. Well, I assume -- assuming that the number  
11 prior to the medicine is the quantity, it says 8 for  
12 sodium pentathol; 15, Pavulon; and 15, potassium  
13 chloride.

14 Q. Okay. Now, focussing on the sodium  
15 pentathol first, the 8 refers to -- does it say 500  
16 milligrams?

17 A. Yes.

18 Q. Okay. So if you have 8 times 500  
19 milligrams, what is the total amount?

20 A. 4 grams.

21 Q. And is that the same as reflected in your  
22 prescriptions?

23 A. Yes.

24 Q. Going to the next of Pavulon, or which is  
25 also known as pancuronium bromide, the total amount is  
26 -- what does it show?

27 A. It says 15.

28 Q. And 15 times 10 milligrams?

29 A. 150 milligrams.

30 Q. And does that match the amounts in your  
31 prescription and this protocol?

32 A. No.

1 Q. And what is the difference?

2 A. What was it, 40? Well, I would assume it

3 would be 10 instead of 15.

4 Q. Okay. So it would be -- okay. But you have

5 15 times 10, for a total of 150 milligrams? And your

6 prescriptions, on the other hand, as well as the

7 lethal injection procedures call for a total of --

8 A. Of 40.

9 Q. 40. And then that would be 40 plus --

10 A. So you would assume it would be 8.

11 Q. So you would assume 8 instead of the number

12 15?

13 A. Correct.

14 Q. But 15 is what appears?

15 A. Correct.

16 Q. And, similarly, for potassium chloride. We

17 have 15 as a quantity; is that correct?

18 A. Yes. If that's what that is.

19 Q. If that's what that refers to?

20 A. Right.

21 Q. And the actual ampule amount of each

22 individual ampule is 10 milliequivalents?

23 A. 10 milliequivalents.

24 Q. So you would have a total of 150

25 milliequivalents?

26 A. Correct.

27 Q. And how does that compare with the number

28 that you prescribed?

29 A. More than -- well, actually less than

30 necessary. Because you need two quantities of 120

31 milliequivalents. And this is 150 total.

32 Q. All right. Thank you. Do you have any

1 understanding of why those figures don't match?

2 A. No, I don't.

3 Q. Do you have any understanding of why those  
4 figures, even when they don't match, they don't match  
5 consistently or in proportion? One is higher and one  
6 is lower by a different factor, by a different amount.

7 A. I -- if indeed -- I mean, I don't see where  
8 it says that's quantity. If that is the quantity, no,  
9 I can't explain it.

10 Q. Okay. That's assuming that those numbers on  
11 the far left side refer to the quantity of each type  
12 of one.

13 A. Okay.

14 Q. Assuming that. Okay.

15 MR. CLEMENTS: I'm sorry, your Honor.

16 Just one moment.

17 Q. (By Mr. Clements) Dr. Tarver, are you  
18 familiar with the organization called the Louisiana  
19 Board of Medical Examiners?

20 A. Yes.

21 Q. What is their function?

22 A. The primary function is to regulate medical  
23 licensure of physicians.

24 Q. All right. Does this board ever conduct  
25 disciplinary actions against Louisiana medical  
26 doctors?

27 A. Yes.

28 Q. Have you been disciplined by this board?

29 A. Yes.

30 MR. FISH: Objection, your Honor. It's  
31 improper impeachment of the witness by an attempt to  
32 impeach the witness with no -- the improper -- there

1 is no conviction, conviction of a crime, your Honor.  
2 It's an attempt to impeach the witness by an extrinsic  
3 attack on credibility without laying a proper  
4 foundation.

5 THE COURT: Petitioner's response, if  
6 any?

7 MR. CLEMENTS: Your Honor, I believe  
8 that the questions in the direct examination here, I  
9 am not referring to -- I'm not trying to introduce  
10 extrinsic material. I'm asking questions, which the  
11 witness has responded to. I haven't, you know, given  
12 a specific time frame. But he did say, yes, that he  
13 had been. And my intention was to go in the same  
14 direction as the prior witness in this type of a  
15 matter where the objection was withdrawn from the  
16 State.

17 MR. FISH: Your Honor -- I'm sorry.

18 MR. CLEMENTS: And it would go no  
19 farther than it was in the prior.

20 MR. FISH: Your Honor, the witness  
21 hasn't answered the question unless I missed  
22 something.

23 THE COURT: The Court is not going to  
24 tolerate the outburst of someone speaking out, not  
25 that I am trying to embarrass anyone. We have to be  
26 careful that we speak when we are spoken to. And I'm  
27 not directing that at you, Mr. Fish.

28 MR. FISH: Yes, your Honor.

29 THE COURT: But I thought I heard the  
30 witness answer the question. And I intended to handle  
31 it, I guess, the same way in which the previous  
32 witness to whom the State had objected to similar

1 testimony. And what I can do if the State does not  
2 wish to withdraw the objection -- and I'm not asking  
3 that you do that. And I will note it for the record.  
4 It is overruled. But I will allow the Petitioner  
5 latitude to ask questions along that line.

6 MR. CLEMENTS: Thank you, your Honor.  
7 Do you recall approximately when you were disciplined  
8 by the board?

9 A. 1993.

10 Q. Okay. Do you -- can you tell the Court what  
11 the extent of your discipline was, what restrictions  
12 you might have had placed on you?

13 A. Just license was on probation.

14 Q. Okay. Did you have any restrictions placed  
15 on your ability to prescribe medications?

16 A. At that time, yes.

17 Q. At that time?

18 A. Yes.

19 Q. Okay. What is the status of all of that  
20 now?

21 A. It is resolved.

22 Q. Okay. So do you have -- continue to have  
23 any restrictions of that nature?

24 A. No, I do not.

25 Q. Could you tell us when that was resolved?

26 A. Either in 1998 or '99. I don't remember  
27 what year.

28 Q. All right.

29 MR. CLEMENTS: Thank you. Petitioner  
30 has no further questions at this moment.

31 CROSS-EXAMINATION

32 BY MR. FISH:

1 Q. Dr. Tarver, my name is Howard Fish. I'm an  
2 assistant district attorney in the First Judicial  
3 District. I have a few questions for you.

4 A. Sure.

5 Q. You testified on direct examination that --  
6 when Mr. Clements asked you about the not -- that you  
7 don't specifically check what medicines the prisoner  
8 who is going to be executed is taking specifically in  
9 reference to the upcoming execution. Is the reason in  
10 any way related to the fact of the level of dosages  
11 that are in the drugs that they are -- that the  
12 prisoner, the person to be executed is given?

13 A. The -- that I don't check the medication?

14 Q. Yes.

15 A. I mean, I don't know a reason to check  
16 specifically what medications they are on, yes,  
17 because of the dosage of the medicine that's given.  
18 I'm not worried about side effects.

19 Q. Is there a similar -- is your response  
20 similar towards the question of body weight as to what  
21 the prisoner's weight is who is to be executed? Is  
22 your response to Mr. Clements -- was that y'all don't  
23 concern yourselves with checking that. Is that also  
24 attributable to the size of the dosage of the  
25 chemicals in the lethal injection shot?

26 A. Yes. I'm assuming. I mean, I -- I'm  
27 getting the feeling that the questions are related to  
28 whether the medications are going to have side effects  
29 to current medications or be inadequate based on body  
30 weight. And, no, I'm not worried about either of  
31 those issues.

32 Q. And the question that Mr. Clements asked you

1 about checking what they have eaten or drank before  
2 the execution, is the lack of concern as to what --  
3 when that took place, what they ate, what they drank,  
4 and how close it was to the execution, is that driven  
5 by the fact that the medicine is given to the prisoner  
6 intravenously as opposed to orally?

7 A. Yes.

8 Q. In your experience as medical director at  
9 the Angola State Penitentiary, has there ever been a  
10 need to perform a cutdown I.V. at an execution?

11 A. Not to my knowledge.

12 Q. In the executions that you have witnessed --  
13 witnessed, would it be accurate to characterize the  
14 way the patient -- I mean, excuse me -- the prisoner  
15 is executed is that he goes -- the appearance of what  
16 happens to him is that he goes to sleep? Is that an  
17 accurate description?

18 A. Yes.

19 Q. Of the three executions -- and I believe it  
20 is three, is it not, that you have witnessed?

21 A. Correct.

22 Q. The three that you have witnessed, did you  
23 ever see any evidence of pain on the part of the  
24 prisoner?

25 A. No.

26 Q. When you were a witness to the three  
27 executions, did you have an occasion to observe the  
28 behavior of the other Louisiana State Penitentiary  
29 personnel who were involved in the execution  
30 procedure?

31 A. Not in the execution itself, no. Just the  
32 security officers that escort him in.

1 Q. That's what I am referring to. You did have  
2 an opportunity to observe their behavior?

3 A. Yes.

4 Q. And how would you characterize their  
5 behavior in this setting?

6 A. Professional. Solemn.

7 Q. In any of the three executions that you have  
8 witnessed, did you see anything by any state officer  
9 that was inconsistent with professional or solemn  
10 behavior?

11 A. No.

12 MR. FISH: Have a moment, your Honor?

13 THE COURT: You may.

14 MR. FISH: Your Honor, the State has no  
15 further questions of Dr. Tarver.

16 THE COURT: Mr. Clements?

17 MR. CLEMENTS: One moment, please. No  
18 further questions.

19 THE COURT: The witness may step down.

20 And the Court assumes that this witness is free to go,  
21 Mr. Clements?

22 MR. CLEMENTS: He most certainly is.

23 THE COURT: Mr. Fish?

24 MR. FISH: Yes, your Honor. The State  
25 has no need of Dr. Tarver. Thank you.

26 THE COURT: Thank you. The witness is  
27 free to go. And the Court appreciates all counsel's  
28 diligence in us getting this witness in on today. It  
29 is about five minutes to 6:00.

30 Is there any housekeeping or anything else we  
31 need to address on the record at this time? Or how do  
32 you wish to proceed? Do we think we will be back



1 tomorrow?

2 MS. ESTOPINAL: Your Honor, Mr. Clements  
3 had indicated they did not have any witnesses for  
4 tomorrow. But we do need to meet with the Court to  
5 talk about some other scheduling issues in the  
6 morning, perhaps, whenever your Honor is available.

7 THE COURT: Okay. You would agree with  
8 that?

9 MR. CLEMENTS: Yes. I would agree.

10 MS. ESTOPINAL: Your Honor, in that  
11 vein, if we are sure that we're not going to be taking  
12 any more testimony tomorrow, then perhaps the prisoner  
13 can be taken back to Angela as soon as possible.

14 THE COURT: Okay. So we have made that  
15 decision? We know Petitioner has no witnesses that  
16 will be called on tomorrow?

17 MR. CLEMENTS: We have none that we  
18 could work with. And we have had total lack of  
19 success reaching Mr. Dodd to supplement our list.

20 THE COURT: I understand. And so noted.  
21 And the -- Mr. Code is ordered remanded and taken back  
22 to Angola. Let's see. I could be available probably  
23 about 9:15 in the morning. And that will give us  
24 about 15, maybe 30 minutes at the most to visit. And  
25 if we need more time than that, certainly we can --  
26 the Court will accommodate you.

27 MR. CLEMENTS: That should be  
28 sufficient.

29 MS. ESTOPINAL: That's agreeable, your  
30 Honor.

31 THE COURT: All right. I'll meet with  
32 counsel in my chambers. I'll try to be here promptly

1 at 9:15 or so. Is there anything else?

2 MS. ESTOPINAL: I don't think so.

3 THE COURT: Okay. I hope I have not  
4 forgotten anything. But I believe there -- Madam  
5 Clerk, would you step up here for just a moment? I  
6 need to ask you a question before we recess for the  
7 day.

8 (Off the record.)

9 THE COURT: So given all of what we just  
10 discussed, at this time, we'll show this evidentiary  
11 hearing continued. I guess say continued in part. It  
12 is continued until further notice by the Court and by  
13 agreement of counsel. Yes?

14 MR. CLEMENTS: One point of order just  
15 to clarify for the remanding of Mr. Code. Would that  
16 be by Caddo Parish officials, or would that be by  
17 calling the prison and asking them to come up and  
18 transport him back? Or do we know?

19 THE COURT: I believe they come up here.  
20 That's why I said he is remanded and to be taken to  
21 Angola.

22 MR. CLEMENTS: Okay. Thank you.

23 THE COURT: I have no reason to think  
24 that it will be done any other way.

25 MR. CLEMENTS: Fine. I just wanted to  
26 clarify.

27 THE COURT: All right. I think that's  
28 covering everything. And if not and for some reason  
29 we need to do something else, we will do so at the  
30 appropriate time. All right. Everyone have a good  
31 evening.

32 MR. CLEMENTS: Thank you, your Honor.

1 THE COURT: Thank you. Court is in  
2 recess for the rest of the day.

3 (END OF PROCEEDINGS.)

4 (END OF MARCH HEARINGS.)

5 (Court recessed for the day.)

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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 22nd day of  
May, 2003.

\_\_\_\_\_  
Official Court Reporter R, CCR