

1 CASE NO. 138,860A
2 STATE OF LOUISIANA * FIRST JUDICIAL DISTRICT COURT
3 *
4 VS * PARISH OF CADDO
5 *
6 NATHANIEL R. CODE, JR * STATE OF LOUISIANA

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8 *****

9 SPECIAL HEARING

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12 A P P E A R A N C E S

13

14 MR. HOWARD FISH
15 Attorney

16 REPRESENTING THE STATE
17 MS. CATHERINE ESTOPINAL
18 Attorney
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20

21

22 MR. GARY CLEMENTS
23 Attorney

24 REPRESENTING THE PETITIONER
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27 REPRESENTING THE PETITIONER
28

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31 PROCEEDINGS HAD in the above-entitled matter on before
32 Her Honor, RAMONA EMANUEL, Judge of the First Judicial
33 District Court, in and for the Parish of Caddo, State of
34 Louisiana, September 16, 2003.

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39 Angela C. Robertson
40 Official Court Reporter

I N D E X

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PETITIONER'S WITNESSES DIRECT CROSS REDIRECT

RECROSS

~~Ivan R. Futrell.....15 53~~

~~Expert Qualification~~

~~Examination.....4 9~~

(the above witness was not related to lethal injection claim, only beginning with page 60)

Richard Peabody.....60

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MR. CLEMENTS: Your Honor, at this time I would like to request that we be given until two o'clock to prepare for the next witness. That would be Deputy Warden Peabody, he is here, but we need some time.

THE COURT: You need some time, certainly. Two o'clock is fine with the Court. The Court could use the time as well. Let's recess now and come back at 2:00.

(Luncheon recess)

THE COURT: All counsel are present, as well as, Mr. Code. Mr. Clements, are you ready?

MR. CLEMENTS: Yes, Your Honor. We would proceed in one moment. I would like to call Deputy Warden Richard Peabody to the stand please.

DEPUTY WARDEN RICHARD PEABODY,
having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CLEMENTS:

Q Warden Peabody, good afternoon. You testified at an earlier date, I believe it was February the 13th in this case, is that -- Nathaniel Code's post-conviction hearing?

A I did.

Q And at that time there was a document that had been provided by your office to the counsel for Mr. Code, basically -- kind of a thick document.

A It was, yes, sir.

Q Okay. And we discussed that at that time

1 to some extent, but we really didn't go through any
2 questions about any contents in that; is that your
3 memory?

4 A That seems to be what I remember.

5 Q Okay. That document is now Petitioner's
6 Exhibit 119, and just for clarification with the
7 Court, we -- because of concerns of the Department
8 of Corrections we have taken great pains to try to
9 make certain that the data that's inside that
10 document is not -- it's been put underseal because
11 it's some that's sensitive information. There's
12 sensitive information dealing with security issues.

13 Before I go into anything further, I'd
14 like to just ask are you familiar with the contents
15 of that document to some extent?

16 A I am.

17 Q You are. Okay. Is it accurate to say
18 that there are numerous references to security
19 matters in that document?

20 A There are.

21 Q Okay. And security matters related to
22 lethal injection, the whole document is like --
23 about lethal injections aspects?

24 A Correct, it is.

25 Q Okay. And there are some areas that
26 are -- many, that are -- perhaps the majority, about
27 security matters?

28 A Correct.

29 Q Okay. I think -- I just want to reiterate
30 that we, counsel for the Petitioner has absolutely
31 no intention of going into any subject matter that
32 appears to be dealing with security matters.

1 However, there's a separate group of
2 documents in here, and I would describe them at the
3 moment as documents that relate to specific
4 procedures for lethal injection that aren't strictly
5 security related. Would you agree that there are
6 any documents like that in here?

7 A I haven't reviewed those documents in a
8 number of years. But as I recall it's information
9 that I collected from other Department of
10 Corrections who also are performing lethal
11 injections or were considering using lethal
12 injection. And many of those documents were
13 obtained with the understanding that their contents
14 would be kept confidential.

15 Q Okay. Relating to the contents of
16 documents that -- for example, if -- I'm speaking
17 hypothetically at the moment, if there is a document
18 that has a recommended procedure for an execution in
19 another state, and that page of that document deals
20 with the chemicals, for example --

21 A Uh-huh.

22 Q -- and the administration of the chemicals
23 in the syringe, for example, and did not talk about
24 events that happened in time prior to that, do you
25 think that that material that, as far as the
26 contents of that document itself that relate to the
27 amount of chemicals, for example, is something that
28 you can testify to?

29 A I don't recall what each state provided,
30 but as far as the chemicals that I do recall, I
31 don't see any problem with that, that's common
32 knowledge.

1 Q Okay. What I would like to do, as a
2 precautionary measure, is that when I am going to
3 bring a document to you -- what I want to do is to
4 go through versus documents -- various pages in this
5 document. And I don't have an extra copy with me at
6 the moment, and I apologize for that, but if you
7 have a copy of it, I'll be happy to show it to
8 y'all, to the counsel for the State, and I will be
9 happy to show it to the witness and let the witness
10 give it a quick eyeball to see that there are no
11 quote, security related matters, close quote, that
12 would be sensitive that we shouldn't be going into.
13 Or if I ever ask a question where you think that the
14 answer to that is a security related issue,
15 obviously you feel very free to say, excuse me,
16 don't go there.

17 A I understand.

18 Q Thank you. All right. My able staff has
19 shown me to the -- let me correct myself, I have a
20 separate document now. For simplicity sake, just so
21 I don't have to walk back and forth so many times, I
22 will provide a copy of this. Ask you, first of all,
23 if you would please give it a quick review to see if
24 this appears to be the document we talked about.
25 This is Exhibit 119 which is under seal as far as
26 security matter?

27 THE COURT: I don't think Mr. Fish got
28 a chance to see it.

29 MR. CLEMENTS: I apologize.

30 MR. FISH: We're endeavoring to get
31 our copy, Ms. Estopinal went to get it.

32 THE COURT: So noted. Mr. Fish, do

1 you want us to wait until she brings it back?

2 MR. FISH: That's not necessary. I
3 just wanted to look at it. I know what we're
4 talking about. I was just trying to make sure
5 I was correct.

6 THE COURT: So noted.

7 MR. CLEMENTS: And I will take the
8 primary responsibility, but I will appreciate
9 any assistance of anybody else that has a
10 feeling that we're dealing with something that
11 is getting sensitive, to say hold it. Okay.
12 All right.

13 (Questions by Mr. Clements)

14 Q These documents, as you have them now in
15 front of you, or perhaps let me know when you're
16 ready for me to ask you a question.

17 A I believe this is the -- out of the
18 original binder that -- of the documents that I
19 collected, yes.

20 Q Okay. Great. And it wasn't bound --
21 plastic, fasten-bound document when you delivered it
22 to us? It was in a plastic binding at that point?

23 A Correct.

24 Q Not in that format, but the same pages.
25 Okay. There now appear, as there were not at that
26 time though, a bate stamped page reference on the
27 bottom right-hand corner of each page; is that
28 correct?

29 A That is correct.

30 Q Okay. That's for the housekeeping
31 purposes of keeping track of all of this paper. I'd
32 like to direct your attention to pages 2 and 3,

1 which is a specific document just to establish for
2 the record does this appear to be a memorandum?

3 A It does.

4 Q And there's been testimony already, and I
5 believe, by yourself and others, about a trip to
6 Texas to the Huntsville prison to be able to get
7 some ideas from other states, that being one of
8 them, as to how they do operations and does this
9 memo appear to reflect that?

10 A It does.

11 Q The moralization of that. Okay. In the
12 bottom of the first full paragraph, is there a
13 notation -- first of all, let me back up and ask,
14 does this -- this is a memorandum on Louisiana State
15 letterhead, Department of Corrections?

16 A It is.

17 Q Okay. And it's -- does it read to Larry
18 Smith Deputy Secretary from John P. Whitley, the
19 Warden?

20 A It does.

21 Q Okay. Dated April 22, 1991 regarding
22 lethal injection?

23 A Correct.

24 Q It talks about a recent tour that
25 Ms. Annette Viator, yourself, and Gordon Whitley
26 took to Texas to look around their physical layout
27 and equipment and so forth. And in it does it say
28 that, "I believe that we have developed a more
29 professional execution procedure," that's the 5th
30 line down?

31 A Yes, it says that.

32 Q I'm sorry?

1 A It says that.

2 Q All right. And with the following, "that
3 the emphasis in Texas appeared to be based on speed
4 with little regard for possible complication, such
5 as, separation of catheterization connections." And
6 then going down a little bit, "the most crucial
7 issue discussed with Warden Pursley was who actually
8 performs the I.V. catheterization and who pushes the
9 drugs. He advises that the identification of these
10 members are kept secret, but lead us to believe that
11 members of his medical staff were involved. When
12 questioned as to whether or not there were any
13 problems with using licensed personnel, he stated
14 that the licensing boards were not contacted because
15 he did not want to know their position on the
16 matter."

17 MS. ESTOPINAL: Your Honor, I would
18 objection and ask what's the relevance of what
19 they may be doing in Texas as far as licensing
20 boards. That's not within the purview of this
21 application for post-conviction relief and
22 doesn't seem to have anything to do with
23 whether lethal injection is cruel and unusual
24 punishment.

25 MR. CLEMENTS: My response to that,
26 Your Honor, is that -- and I will develop this
27 in further questions with the witness, but that
28 the purpose of these documents was a file, it
29 reflects the collection of materials done in an
30 effort to figure out how to set up a system in
31 Louisiana for lethal injection. And that there
32 were many factors that were considered. It's,

1 I think, undisputed to state that several
2 states were -- documents in here reflect
3 contact with several states, and a variety of
4 many ideas that were discussed into preparing
5 how to develop a procedure.

6 We are contending that we still don't have
7 a sufficiently clear understanding of what the
8 procedure is that exists here because of a lot
9 of contradictions and confusions in the
10 testimony that has been given so far.

11 Therefore, what exists in these documents help
12 to put, yet another piece in that puzzle. And
13 I am not intending to go through every page, or
14 even every page that has a reference to
15 chemicals on there, but I am going to say that
16 there are things in this document that are --
17 beyond this first cover letter that are going
18 to talk about specifics. And they are going to
19 talk about specifics that are different than
20 the ones here, and I would like to know --
21 essentially, my end goal is to know how does
22 this -- how did the process come to create the
23 system that exists here. Did -- who made the
24 decisions to decide to adopt or reject the
25 particulars in these different procedures and
26 different states and how did we get to where we
27 are today.

28 MS. ESTOPINAL: Your Honor, if I may
29 respond. Even that, although, may be the basis
30 for a interesting law review article, the focus
31 of the post-conviction relief is whether the
32 procedure used in Louisiana is cruel and

1 unusual punishment and not what every other
2 state uses, what other states may have
3 consulted, what other states may or may not do.
4 There is no requirement that there be a
5 consensus that every state that uses lethal
6 injection use the same procedure, the same
7 chemicals or anything of that nature. All that
8 is required is that the procedure that is used
9 here in Louisiana does not cause undue pain
10 and suffering, and that it is a humane form of
11 execution.

12 So the procedure that was gone through to
13 determine what Louisiana does is not relevant.
14 All that is relevant is if the procedure, as it
15 is used in Louisiana, conforms with the 8th
16 Amendment, prohibition against cruel and
17 unusual punishment. And I don't see that all
18 this historical research and public records
19 quest have anything to do with that issue.

20 We have had testimony from numerous people
21 who have witnessed the injections of the last
22 seven people who were executed in Louisiana and
23 there has not been not the first indication of
24 any undue pain and suffering. That is what the
25 focus of this is, not whether the Department of
26 Public Safety and Corrections did a sufficient
27 job of looking all over the place, and how many
28 states did they consult, and what does this
29 state do and what does that state do, but
30 rather what Louisiana does conforms with the
31 8th Amendment. And I think all this other
32 inquire is just so much puffing and it really

1 doesn't have anything to do with the issue at
2 hand. And I would like to make my objection to
3 that on the record and see if we can actually
4 focus on the issue that we are supposed to be
5 looking at today.

6 THE COURT: Anything else,
7 Mr. Clements?

8 MR. CLEMENTS: Yes, Your Honor. One
9 of the very serious foundations of our charge
10 that there is an unconstitutional process of
11 lethal injection in this state, and that there
12 is no proof that this unconstitutional -- that
13 this procedure has been in an unconstitutional
14 form in the seven prior executions.

15 And that is based on our expert testimony,
16 and or contention is -- is that no one here, in
17 this state, seems to have any idea of the true
18 medical nature of what's going on.

19 What I wish to establish through this
20 examination of Warden Peabody at this time is
21 to show that illinformed, or if at all, by
22 decisions by medical personnel in crafting a
23 decision to reject or accept other ideas from
24 other state -- ideas were sought out, there
25 must have been a reason. They were trying to
26 decide what to do.

27 Ours doesn't look like other peoples, other
28 states. Our system doesn't look like it, our
29 chemicals don't look like it, some it does,
30 some it doesn't. I would like to get a very
31 precise picture, and I can tell you, that we
32 are now in the seventh day of the testimony

1 taking outside of depositions in this climb
2 itself, and yet there is no clear picture of
3 how a medical decision was arrived at to decide
4 what the exact amount of chemicals were and
5 I'll have to contend that it's not even clear
6 completely exactly how many chemical, and which
7 they are, are administered to the inmates as of
8 this time.

9 And that, therefore, they can't tell me
10 what they're planning to doing either. But
11 really what I want to know is what is the
12 medical basis. And if the witness can say, I
13 don't know or there wasn't any consideration on
14 that we can go through this very quickly. And
15 that's very probable.

16 And if it's a repeated answer that it went
17 to something else, then I'll know that. But I
18 really am curious to know if the witness has
19 any ability to respond to the issue of what
20 is -- you know, what medical aspect went into
21 the deciding of the crafting. After they had
22 done the request for research, done the request
23 to go to visit other places, and then who made
24 those decision, what was their medical
25 expertise, and how did that come up with what
26 they did come up with here. It's -- to lay the
27 foundation -- to continue to lay the foundation
28 that we believe that there is no medical
29 understanding of what they're doing. It may
30 not be intended to cause torture and pain, but
31 we feel that this pain and torture is inflicted
32 nonetheless because of the structure of the

1 system.

2 THE COURT: The Court believes that
3 some of the concerns that the State has in
4 raising that objection are certainly valid.
5 The Court is going to overrule the objection,
6 at this time, and give Petitioner some latitude
7 with the understanding that we do need to stay
8 within the purview of what the true claims
9 really are as we put on evidence, and not just
10 elaborate on things that really don't go to the
11 real crux or the real issues. So with that in
12 mind, Mr. Clements, the Court will allow in
13 some latitude along those lines with those
14 limitations.

15 MR. CLEMENTS: Thank you. Your
16 Honor.

17 (Questions by Mr. Clements)

18 Q Warden Peabody, if you would turn to page
19 82 in your collection of papers there.

20 A Okay.

21 Q It is accurate to state that what appears
22 on that page is a letter addressed to you from the
23 Colorado Department of Corrections?

24 A I'm sorry. I didn't hear the rest of the
25 question.

26 Q I just said, is this a letter to you
27 addressed to you from the Colorado Department of
28 Corrections?

29 A Yes, it is.

30 Q And dated October 11, 1990. And it does
31 talk about the fact that they're enclosing a copy of
32 other matters. And we're not going to go into those

1 matters, but I just want to state for the record
2 that -- so this -- Colorado, you were in contact
3 with Colorado?

4 A I was.

5 Q Okay. If you would go on to page 92. I
6 think that's a cover sheet for separation. Page 93,
7 again, a letter to your attention -- to you from the
8 state of Idaho, Department of Corrections; is this
9 not correct?

10 A It is.

11 Q And attaching information relevant to
12 lethal injection?

13 A Yes.

14 Q Okay. It mentions the possibility -- a
15 visit, scheduling a visit. Do you have any personal
16 recollection if you or other -- if you know, if
17 other members of Louisiana State Penitentiary
18 visited them?

19 A The only other system that I visited was
20 Texas. Warden Whitley, and our attorney at the
21 time, Annette Viator, visited either one or two
22 additional states, and I couldn't swear to which
23 ones. I think one of them was either Colorado or
24 Idaho or Utah, I can't remember.

25 Q Thank you. All right. I would like you,
26 if you would, please turn to page 95. And I'm only
27 looking at paragraph four, which is in the middle.
28 Is it accurate to state that paragraph four has a
29 caption of medical?

30 A It does.

31 Q Thank you. Could you read the second
32 sentence in that paragraph?

1 A It says, "I-M-S-I medical personnel will
2 administer a tranquilizer to the inmate prior to the
3 scheduled execution."

4 Q All right. In general, did you receive --
5 you received these letters -- they were written to
6 you and the attachments were provided to you?

7 A They were.

8 Q Did you, as a matter of response, then
9 read all this material?

10 A I read it all at one time, yes.

11 Q Okay. Do you know if -- just to take a
12 quick example here, do you know if there is a policy
13 at Louisiana State Penitentiary whether an inmate is
14 given a tranquilizer prior to execution?

15 A There is no such policy.

16 Q There is no such policy. Okay. So is it
17 fair to state that the Idaho policy and the
18 Louisiana policy are not the same here?

19 A That's correct.

20 Q Can you explain how it is -- or tell us if
21 you can explain what -- how that came to be the
22 difference?

23 A I can't explain why Idaho does a certain
24 thing.

25 Q Okay.

26 A I can only tell you what our position on
27 the matter was.

28 Q Okay. And do you know if there was any --
29 were you involved in any discussions about medical
30 aspects of the execution -- the lethal injection
31 execution in Louisiana?

32 A To some degree, yes.

1 Q Do you recall any discussions about this
2 particular issue about tranquilization of inmates
3 prior to execution?

4 A Only in general terms.

5 Q Okay. Could you tell me what type of
6 persons or, if you could -- if you feel free to tell
7 the names of the persons that you were speaking of
8 that you had these discussions with?

9 A Over a period of time I probably had those
10 discussions with our pharmacist, probably our
11 medical director, and possibly nursing staff or EMT
12 staff.

13 Q Okay. So just to make sure I heard you,
14 it was pharmacy, medical director, possibly and EMT
15 staff?

16 A Correct.

17 Q Okay. If you would please turn to page
18 135 and from the letterhead -- header at the top of
19 that page, does it appear to be the same state of
20 Idaho?

21 A Idaho.

22 Q Okay. On that page I believe it is --
23 okay. I'm sorry, go to page 136. And beginning in
24 the body of the text there -- this is also still
25 continuing to be the state of Idaho memorandum; is
26 that correct?

27 A Correct.

28 Q On that page it begins to discuss various
29 measures for preparing and loading syringes in
30 certain order. And could you go to the first
31 section and the second part under that Sodium
32 Pentothal?

1 A Under which now?

2 Q The roman numeral -- the italic, no. 2.

3 A Sodium Pentothal?

4 Q Yes, sir.

5 A In the second?

6 Q Right. And is it accurate to say that the
7 first part of that subparagraph there says, "Sodium
8 Pentothal 5 milligrams in 30 milliliters?"

9 A That's what it says, yes.

10 Q Okay. And prior to that, on the top
11 paragraph does it not say, "prepare and load the
12 syringes containing the drugs in the following
13 order?"

14 A It does.

15 Q Okay. So no. 2 is dealing with the Sodium
16 Pentothal syringe?

17 A Yes, it is.

18 Q It's 5 grams; is that's -- that's an
19 accurate statement of what this reads?

20 A That's what it says.

21 Q Okay. To your knowledge -- do you have
22 knowledge of the amount of Sodium Pentothal that's
23 used in Louisiana?

24 A I have no recollection, no.

25 Q Okay. If I were to assert to you that it
26 is a 2 gram dose in a syringe, repeated twice. The
27 testimony has been giving by numerous people that
28 the Sodium Pentothal comes in the form of a 2 gram
29 solution, would you have any reason to dispute that?

30 A No, I would not.

31 Q Okay. Do you know, personally, if you
32 know, why there's a discrepancy between those two

1 numbers. Do you remember ever having any
2 discussions with any medical staff or anything about
3 why --

4 A Regarding the specific amounts of
5 individual drugs, I have no knowledge as to what
6 drug quantities were used, or why they may have
7 differed from other states, no, I do not.

8 Q All right. So that will shorthand a lot
9 of the questions I might have in future, but if can,
10 do you know, who might have had access to this
11 information besides you at the Louisiana State
12 Penitentiary?

13 A The medical director, the pharmacy
14 director, and probably some of the other higher
15 level medical staff.

16 Q Okay. And as far as the medical matters
17 itself though, the groups that you mentioned also
18 before, the pharmacy, and medical director, and EMT.

19 A Uh-huh.

20 Q Would that have been potential people that
21 would have had access to looking at this possibly?

22 A Yes, correct.

23 Q Okay.

24 A Either looking directly at the information
25 or some of the information that came from these
26 documents.

27 Q Okay. So they may not have actually seen
28 this page?

29 A Correct.

30 Q But they would have talked about what --
31 they might have known some of the data that's here?

32 A Correct.

1 Q Somehow transmitted to them. And -- okay.
2 And just to finish up on that Sodium Pentothal, is
3 it accurate to say that this report shows that that
4 label, on the bottom of that same section there it
5 says, "label syring no. 1."

6 A That's what it says.

7 Q Okay. And just for reference, without
8 going into other details, the third and fourth items
9 there Pavulon, Potassium Chloride, on Pavulon is it
10 true in the middle it says "three syringes."

11 A It does.

12 Q And it says, at the bottom there, "label
13 syringes no. 2."

14 A Correct.

15 Q And, finally, in Potassium Chloride also,
16 "a total of three syringes labeled syringes,"
17 plural, "no. 3."

18 A I'm sorry. Could you say that again?

19 Q I'm sorry. The Potassium Chloride, which
20 is in the bottom intending portion there, it says
21 there -- in the middle it says, "there are a total
22 three syringes."

23 A Or two syringes depending upon the rest of
24 the paragraph there. It says --

25 Q I understand. And that is true for the
26 paragraph above that, two or three?

27 A Correct.

28 Q Multiple syringes nevertheless, not a
29 single syringe?

30 A Correct. Labeled no. 3.

31 Q And do you see, back on Sodium Pentothal,
32 any alternative possibilities there?

1 A No.

2 Q Okay.

3 THE COURT: I'm going to ask the
4 witness to pull the microphone closer, some of
5 the responses I'm not getting as clearly as I
6 believe I could. So I can hear better.

7 MR. CLEMENTS: Thank you.

8 (Questions by Mr. Clements)

9 Q Just to be very explicit about this, the
10 amounts in the Pavulon, in Idaho's memo here says,
11 "Pavulon 50" that's five, zero, "milligrams per 50"
12 that five, "0", "cc's, five" and then it says,
13 "five, 10cc ampules of 10 milligram each in each
14 syringe."

15 A That's what it says.

16 Q Okay. And then we'd already just said
17 it's three syringes, total investigation 100cc over
18 100 milligrams or two syringes. That's what one
19 injection is in this case for that chemical; is that
20 what that reads to you?

21 A If I'm reading it the same way you are,
22 yes.

23 Q Thank you. And then one extra made up as
24 a stand by labeled. And that's still for the
25 Pavulon labeled at no. 2, all of those?

26 A Correct.

27 Q Thanks. And the Potassium Chloride, five,
28 "0" or 50 milliequivalent per 50, that's five, "0"
29 cc's. 2.5, 10 cc ampules of 20 milliequivalent in
30 each syringe. And also here a total of three
31 syringes, total injection 50 cc's dot 100
32 milliequivalent or two syringes, one extra set made

1 up as standby. And from that point is it true that
2 the bottom paragraph discusses the fact that -- one
3 reason why they might be wanting to be having a
4 standby?

5 A Yes.

6 Q Okay. And that is in the event that one
7 of the syringes is dropped during the execution
8 procedure or a quote blowout occurs; that's what it
9 reads?

10 A That's what it says, yes.

11 Q Thanks. And then quickly to page 145, and
12 I will assert that it is still the state of Idaho,
13 Department of Corrections. And it's -- not many
14 words on this page, it's a bunch of lines and
15 it's -- is it true to say this looks like lines for
16 a list that could be filled in at some point?

17 A It does.

18 Q And it says "date, inventory" there's a
19 space and then "by" and a space. And the sentence
20 "Completed checklist to be maintained in
21 executioner's lethal injection file." Is that --
22 that's what it --

23 A That's what it says.

24 Q Okay. Thank you. Moving now to page 149.
25 This is now, according to the documentation, in the
26 state of Missouri. We have three documents that's
27 slightly off chronological order. I ask you to go
28 first to go to page 151. Is this not a letter from
29 the Department of Corrections and Human Resources of
30 Missouri State penitentiary dated October 1, 1990?

31 A It is.

32 Q Okay. And that's a letter to your

1 attention, and it's from the warden in Missouri?

2 A Yes, it is.

3 Q Bill Armontrop. And on page -- going back
4 to page 149 in our document, it's a letter, it
5 appears to be on Louisiana State Penitentiary
6 Department of Corrections letterhead dated October
7 11, 1990, to Warden Armontrop from yourself.

8 A It is.

9 Q And then on page -- the page one, five,
10 "O" the one in the middle there, is a -- looks like
11 another follow up back from Warden Armontrop to you
12 dated November 26th?

13 A It is.

14 Q And there are various matters discussed in
15 there about a method of execution as far as -- a
16 fairly brief letters; is that accurate?

17 A Yes, it is.

18 Q Okay. I'm going to ask you to go to page
19 172?

20 A 172?

21 Q Yeah.

22 A I have that.

23 Q Okay. I'll go there in a minute. Okay,
24 yeah. Going to 172, it's sort of a divider page
25 with Nevada on it. Going to 173, again, a letter
26 from the state of Nevada, Department of Prisons, to
27 your attention from the assistant director of
28 operations of the prison in Nevada; is that what
29 that appears to be?

30 A Yes, it is.

31 Q And also talking about the possibility of
32 a visit there.

1 A (No response.)

2 Q I'm sorry. Also talking about the
3 possibility of a visit to that facility --

4 A Yes, it does.

5 Q -- about this subject matter? Okay. I
6 can see part of the problem here, sorry about this
7 does that help? (adjusting microphone)

8 A Helps me.

9 Q I understand. Okay. I'm going to have to
10 ask you to go back again to the page 150, I
11 overlooked one item there?

12 A 150.

13 Q I'm sorry. Page 149.

14 A Okay.

15 Q There's only three pages, I'm going to hit
16 it the third time, page 151.

17 A Okay.

18 Q All right. Does it say on that letter
19 that -- excuse me, for a moment. Sorry. Again,
20 page 151, the October 1, 1990 letter there's a very
21 small third paragraph, could you read what that line
22 says?

23 A Says, "Several states do this injection by
24 hand, and there have been a few mishaps. I would
25 suggest you consider a machine if possible."

26 Q Okay. Now, is it your knowledge of
27 whether -- had Louisiana ever used a machine?

28 A No.

29 Q And -- so a decision process was made
30 somewhere -- a recommendation was made, try a
31 machine, this is where we think you might want to
32 go, we use one. But it was decided somewhere,

1 somehow, that that was not the way that Louisiana
2 would go; is that correct?

3 A That is correct.

4 Q Do you know how that decision came about?

5 A Who actually made the final decision, no.
6 I do know that it was discussed by myself with the
7 warden at the time and other individuals in the
8 administration and we did not opt to use a machine.

9 Q Okay.

10 A We saw no need.

11 Q So it was a decision after some collective
12 decision -- discussion was made, and then a decision
13 came about, specifics, not sure; is that accurate?
14 The warden made a decision finally, the head warden?

15 A Beg your pardon?

16 Q Did the head warden make a decision
17 finally on that, do you think?

18 A He did, not to persue that.

19 Q Okay. Do you know if he had any medical
20 basis for rejecting that? Do you suspect any?

21 MS. ESTOPINAL: Your Honor, I'm going
22 to ask that the foundation whether, you know,
23 Mr. Warden Peabody actually was told this
24 otherwise, if we could keep the speculation of
25 what might have, or what could have, or who
26 might have, to a minimum.

27 (Questions by Mr. Clements)

28 Q Warden Peabody, do you know whether Warden
29 Whitley had a medical reason or not?

30 A No, I don't know that.

31 Q Thank you. I'll ask you to proceed to
32 page 176. And say -- declare whether this is --

1 appears to be a letter addressed to you from the
2 state of New Jersey, Department of Corrections from
3 the Assistant Commissioner of the Division of Adult
4 Institutions?

5 A Yes, it does.

6 Q Thanks. And that's dated October 15,
7 1990?

8 A Yes, it is.

9 Q All right. And, again, talking about the
10 possibly of making arraignments to come and visit on
11 site in the last paragraph?

12 A It does.

13 Q Okay. If you would go to the next page.
14 I'm sorry if you would go back one -- to 176, the
15 paragraph right before what you just read. Does it
16 discuss an attachment to this?

17 A It discusses a copy of the regulations on
18 lethal injection on the New Jersey Administrative
19 Code.

20 Q Okay. So the New Jersey Administrative
21 Code is attached as it existed at that time. On
22 page 177, which is the next page -- is the first
23 page of that attachment.

24 A It is.

25 Q And the second category deals with
26 provisions of services withing 72 hours preceding
27 execution, going down just a little over halfway
28 down to the section that starts, no. 2, food; do you
29 see that?

30 A Yes, I do.

31 Q Can you read what that section one says?

32 A It says, "At least 24 hours in advance of

1 the scheduled execution the condemned may request
2 the food of his or her choice to be served at the
3 last regularly scheduled dinner. Not less than
4 eight hours prior to the execution, such request
5 shall be granted subject to reasonable availability
6 and the cost of food desired, and" --

7 Q That's fine. This subsection dealing with
8 no last dinner less than eight hours prior to the
9 execution, does such a policy exist in Louisiana or
10 last meal?

11 A No.

12 Q Has it ever?

13 A No.

14 Q Okay.

15 A Not to my knowledge.

16 Q Do you know if anyone took a -- anyone at
17 Louisiana State Penitentiary took a look at that
18 particular issue and said, well, there's an issue
19 that's different than ours, but we don't think it's
20 important?

21 A I know that all aspects of the events that
22 lead up to an execution were discussed over
23 different periods of time with all the individuals
24 in the administration. So I'm sure the last meal
25 has always been discussed. So, yes, it was
26 discussed.

27 Q Okay. Would that primarily be for
28 security aspect?

29 A Among other reasons, yes.

30 Q Okay. Would one of those reasons be a
31 medical reason?

32 A Possibly.

1 Q Okay. Do you know what possible medical
2 reason would be, if you know?

3 A I know.

4 Q Okay.

5 A Just whether or not there would be any
6 medical reason to have any concerns regarding the
7 last meal.

8 Q Thank you. Proceeding to page 181, in the
9 middle of that page we have section 10-A, 16-10.A
10 with the heading Operational Staff and Attendants at
11 an Execution. Is it accurate -- I'd like to be able
12 to just go through them and see if you agree that
13 this is what that reads, just for speed, "two
14 physicians in attendance?"

15 A Correct.

16 Q "One being the medical director in the
17 absence, an alternate."

18 A Correct.

19 Q "Second physician from a list of
20 volunteers from a correctional facilities other than
21 the New Jersey State Prison?"

22 A Yes.

23 Q Going down to, in the event of -- in the
24 event no facility physician volunteers or is
25 available, that they take an alternative measure to
26 get physicians in the community to perform this
27 service?

28 A Correct.

29 Q And then the next section "B" saying "one
30 registered nurse," the next one, "one certified
31 intervenous therapist," and finally "three persons
32 who are qualified to administer injections." Does

1 that reflect accurately what those -- that list says
2 right there?

3 A Yes, it is.

4 Q Thank you. To your knowledge, if you
5 know, does that list of people involved in an
6 execution, as far as medical aspects are concerned,
7 differ or is it alike to what Louisiana has?

8 A It differs.

9 Q And what are some of the key differences?

10 A The only requirement that I know by
11 statute is that the warden appoints, usually the
12 medical director or in his absence the assistant
13 medical director and the coroner to view the
14 executions. The only requirement I also recall by
15 statute is the person who starts the intervenous
16 lines has to be properly trained to do so.

17 Q All right. Nothing about nurses?

18 A No.

19 Q Okay. And certified intervenous
20 therapist?

21 A No.

22 Q Okay. And that nurse being a registered
23 nurse, nothing there. And, again, do you have any
24 knowledge of -- if this policy, in this state, in
25 New Jersey, was discussed as a model to follow or if
26 whether that was rejected in the policy -- in the
27 deciding how the lethal investigation in Louisiana
28 would be carried out?

29 A All the informations from all states were
30 considered. We didn't rely on a specific state, but
31 used a combination of items we felt would worked
32 best for us.

1 Q Okay. If you would proceed to page one,
2 eight, eight. We're looking at a -- again, now,
3 another letter on letterhead, this letterhead being
4 from the State of New Mexico, Corrections Department
5 dated October 4, 1990 to your attention and from the
6 warden of the Penitentiary of New Mexico; is that
7 correct?

8 A That is correct.

9 Q Okay. And is he -- is the warden there
10 Robert Tansy passing on information to you that he
11 thinks may be of assistance in your research?

12 A That's what it indicates, yes.

13 Q Okay. And does he say in paragraph two
14 that some of the areas that were necessary for
15 research were state statutes, medical examiners,
16 medical suppliers, facility medical personnel,
17 Attorney General's Office, and the Legal Services
18 Division.

19 A That's what he says, yes.

20 Q Thanks. Okay. If you would please turn
21 to page 189, the next page. Does -- on the top,
22 right-hand corner of this is a date repeated
23 February 26, 1990?

24 A Yes.

25 Q Okay. Going down to definitions on -- in
26 section 5, roman numeral 5, and subsection "B" as in
27 boy, it appears, "execution team?"

28 A Yes.

29 Q Okay. Could you read what that says?

30 A It says, "Two persons selected and
31 contracted by the warden of the Penitentiary of New
32 Mexico to administer continuous intervenous

1 injection of lethal quantity of an ultra-short
2 acting barbiturate in combination with a chemical
3 paralysis -- paralytic agent", and the rest is kind
4 of blurred, "to an inmate who has been sentenced to
5 death."

6 Q All right. First of all, does it appear
7 from the wording there that they have two persons
8 who are assigned to administer chemicals via
9 syringe?

10 A Yes, it does.

11 Q And, secondly, does it appear that instead
12 of three chemicals that are used here, there are two
13 in New Mexico?

14 A Yes, it does.

15 Q And does it give the names of any
16 chemicals?

17 A Other than -- no specific name other than
18 short acting barbiturate, which is a class of drugs.

19 Q Right. So an ultra short acting
20 barbiturate and a chemical paralytic agent, that's
21 as far as it gets, specifically?

22 A Yes.

23 Q Do you know if any medical decision was
24 made by anybody or a decision on a medical basis was
25 made by anybody, if you know, about the drugs or --
26 perhaps you may have answered that already?

27 A I don't quite understand the question.

28 Q The question -- I'll rephrase. Do you
29 know if there was a decision, conscience decision
30 made in the Louisiana State Penitentiary whether to
31 use three or two chemicals?

32 A Yes.

1 Q Okay. And do you know how that was --
2 obviously it was resolved with the choice of three
3 chemicals?

4 A Correct.

5 Q Do you know on what medical basis that
6 resolution was achieved?

7 A No, I --

8 Q Do you know who -- I'm sorry.

9 A I want to make sure I understand the
10 question. I don't know the medical rational, no. I
11 do know there was a medical decision, yes.

12 Q Okay. This is partly become -- because
13 what is your level of medical expertise, again, if
14 you could repeat?

15 A I'm not a doctor.]

16 Q You're not a doctor?

17 A No.

18 Q Okay. Do you believe that doctors -- some
19 doctors of some -- someone who had a medical license
20 had some part in the making of this decision?

21 A Yes.

22 Q All right.

23 A Some type of medical license, yes.

24 Q Some type of a medical license. By that
25 to you mean someone who is not an M.D.?

26 A I would say that our medical director was
27 involved at the time, as well as, as the other
28 individuals I've mentioned already.

29 Q Okay. And that would have been the
30 pharmacy director and the EMT personnel?

31 A Right.

32 Q All right. So just to be clear, it was

1 not necessarily, it might have been, but not
2 necessarily a decision based upon a decision of a
3 medical doctor alone?

4 A I'm sure it was his final decision.

5 Q All right. And that person being the
6 medical director of the prison?

7 A Correct.

8 Q All right.

9 A There was also -- in the beginning of this
10 process there was a headquarters doctor who helped
11 on this matter also at the time.

12 Q And when you say headquarters doctor,
13 you're talking about the Department of Corrections
14 Headquarters in Baton Rouge?

15 A Correct.

16 Q And there was a doctor associated with
17 that administrative office?

18 A Yes, for a period of time.

19 Q Could you tell us who that was?

20 A Dr. Vance Byers.

21 Q Dr. Vance Byers?

22 A Byers.

23 Q Okay. Do you know --

24 A What role he actually played in that I
25 can't say.

26 Q I understand.

27 A I know he was involved.

28 Q It's your recollection that he had some
29 sort of involvement?

30 A It's my belief that he was -- provided
31 information to the secretary on matters of this
32 nature.

1 Q Thank you. If you would please turn to
2 page 221.

3 A Okay.

4 Q All right. And, again, we have a cover
5 letter this time North Carolina, just to really
6 shorthand it, Department of Corrections --

7 A Correct.

8 Q -- to you, from their warden?

9 A Right.

10 Q And, October 5, 1990. All right. The
11 following page -- because it -- in that letter it
12 says a copy of their procedures is attached and
13 they -- there's following pages. Started at page
14 222 and -- on that page 222, there's a section
15 entitled -- the first section is called Lethal
16 Injection, Section "B", as in boy?

17 A Correct.

18 Q And you go down to one, and then under
19 that Subsection "D", as in dog, and you have,
20 "prepare I.V. medications as follows", is that
21 correct?

22 A It is correct.

23 Q And it talks about mixing up "eight
24 syringes of Pentothal at .5 grams," and then "eight
25 on standby unmixed", does that appear to be correct?

26 A That's what it says, yes.

27 Q And prepared two syringes Pavulon of 10
28 milligrams and 20 on standby?

29 A Correct.

30 Q And there -- they go on to other matters
31 beyond chemicals at that point; is that -- they talk
32 about equipment and so forth?

1 A Correct.

2 Q So is it -- it appeared to be that they're
3 talking about two chemicals Pentothal and Pavulon?

4 A It does.

5 Q And there's no other chemical involved?

6 A That's correct.

7 Q And the total being .5 times eight, being
8 4 grams of Pentothal with 4 more grams on standby
9 unmixed. Does that seem --

10 A If I'm reading it the same way you are,
11 that's correct.

12 Q Thank you. And the syringes of -- two
13 syringes of Pavulon for a total of 20 milligrams of
14 Pavulon and 20 on standby?

15 A Correct.

16 Q Okay. Now -- and again, just to really go
17 shorthand, Louisiana's is different, a decision was
18 made, and it was based on some medical information,
19 but you're not sure?

20 A I am sure of the fact that it was made
21 based upon the information of what each drug does to
22 the body, and the third drug performs a different
23 function than the first two.

24 Q Thank you. Ask you to turn to page 227
25 now. Again, we have a cover letter basically
26 showing that this is a set of documents dealing with
27 the state of Oklahoma. We have a cover letter again
28 dated October 23, 1990 to your attention. And
29 apparently from the director -- or at least the
30 letterhead says Gary Maynard Director of Oklahoma
31 Department of Corrections, and so forth it's not
32 clear whose -- if it's signed, I can't really tell?

1 A There's a signature here, but I don't know
2 whose it is.

3 Q I see. Following that, and again, it says
4 at the closing there, "policies and procedures", so
5 what follows are documents to that effect. Okay.
6 On page 246, if you would, please, go to that page?

7 A Okay.

8 Q At the top of that page it says, does it
9 not, "Recommended procedures for execution by lethal
10 drug injection materials, first category", and it
11 lists three drugs?

12 A Yes, it does.

13 Q Okay. And the first being "Thiopental
14 Sodium 5 milligrams at a 2 percent kit."

15 A Correct.

16 Q "Sterile 50cc syringe?"

17 A Correct.

18 Q "Potassium chloride", it says typed -- it
19 says "40 milliequivalent", and that 40 has a line
20 drawn through it and a 50 is handwritten in with a
21 handwriting date of September 4, 1990?

22 A Correct.

23 Q And "in a sterile 20cc syringe."

24 A Correct.

25 Q The final chemical being Pancuronium
26 Bromide injection and listing typed up 20 milligrams
27 in parenthesis, but then that 20 being crossed out
28 and being replaced underneath with a handwritten
29 number 50, five, zero.

30 A Correct.

31 Q Same dating and initialization by someone?

32 A Yes, it is.

1 Q I'd like, if you could, to read beginning
2 the first section on preparation of materials, under
3 preparation of Thiopental Sodium. If you would
4 please, starting with "aseptically" page 73.

5 A I'll try.

6 Q That's fine.

7 A "Aseptically remove one half the water,
8 125 millimeter from the container supplied with the
9 kit following of package directions, mix the 5
10 milligrams Thiopental Sodium powder supplied into
11 the remaining 125 millimeters sterile water. After
12 mixing aseptically remove and retain within a single
13 sterile syringe 50 millimeters of the prepared
14 solution. Add" --

15 Q Okay. If I could just interrupt for one
16 second, just to follow, on the second sentence where
17 it says, following of package direction mix the -- I
18 think you said 5 milligrams?

19 A Five grams, I'm sorry.

20 Q Five grams, thank you. If you would
21 continue with no. 2.

22 A "Add 40 milliequivalent of Potassium
23 Chloride until the remaining Thiopental Solution in
24 the bottle and connect to an intervenous line to
25 which is attached an 18 gauge needle. Expel the air
26 from the line so that it will be ready for
27 injection."

28 Q And the third one.

29 A "Draw up a sterile syringe 20 milligrams
30 of Pancuronium Bromide."

31 Q Okay. And in the body of these two last
32 paragraphs here, there are typed amounts, 40

1 milliequivalent on the Potassium Chloride, 20
2 milligrams on the Pancuronium, and above that though
3 in the initial listing, those typed quantities have
4 been changed; is that correct to say?

5 A That's correct.

6 Q But in the body of those paragraphs
7 following, they're not changed?

8 A That's correct.

9 Q Okay. If you would, proceed then just to
10 the first part of the next section. We're not going
11 to go through the whole thing, but just to
12 administration of lethal agents?

13 A "The prisoner is previously prepared with
14 a 16 gauge intercath to which is connected a
15 solution of either D5W or normal saline to maintain
16 patency. It is supplied with a piggyback
17 arraignment through which the drugs are to be
18 administered. The prisoner should be checked
19 immediately prior to the administration of any drugs
20 to be certain that the intracath is patent and there
21 is no infiltration of the intravenous solution."

22 Q I'm actually going to have to ask you to
23 read all five paragraphs, if you would, the second
24 paragraph, "At the beginning".

25 A "At begin of the execution the 50
26 milliliters of Thiopental Solution from the syringe
27 prepared above is administered by the push through
28 the piggyback arraignment. First having closed the"
29 -- I can't read it --

30 Q Line.

31 A "Line," something.

32 Q "Leading", possibly?

1 A "Leading from the D5W or saline so that
2 the Thiopental Sodium given -- being given is not
3 aloud to flow retrograde into the intervenous
4 solution connected to the intracath. No. 3, the
5 following -- following the injection of the
6 Thiopental Sodium into the system it is washed in by
7 the D5W or normal saline. This step is exceedingly
8 important. If the Thiopental Solution remains in
9 the intravenous line and Pancuronium Bromide is
10 injected a percipitate will form and possibly clog
11 the line."

12 Q Going now to page 247, paragraph four?

13 A Four, "20 milligrams of Pancuronium
14 Bromide is injected using the same procedure as
15 above and again, washing in the solution with D5W or
16 normal saline." No. 5, "The bottle containing the
17 prepared mixture of Potassium Chloride, and
18 Thiopental Solution is piggybacked into the
19 intervenous line. The D5W or normal saline is
20 disconnected and the KCL Thiopental is aloud it run
21 until it stops until it stops and/or death is
22 pronounced."

23 Q If I could -- I don't mean to be a picky
24 editor, but on that line, the last sentence it
25 had -- does is read, "the D5W or normal saline is
26 discontinued", instead of "disconnected."

27 A I'm sorry. Let me find it. It says,
28 "discontinued", you're correct.

29 Q Thank you. Okay. Now, proceeding to page
30 260, we're in the state of Oregon now. A letterhead
31 showing -- dated November the 13, 1990 to your
32 attention from the acting superintendent of the

1 Department of Corrections. And it's saying that
2 they're sending a copy of a previous rule, and so
3 forth. And they discuss Mr. Fred Leuchter and the
4 lethal injection machine equipment; is that
5 accurate?

6 A Yes, it is.

7 Q There's other things, but that's included.
8 Going to page 265.

9 A Yes.

10 Q Still on the Oregon document?

11 A I believe so.

12 Q All right. If you would go down to
13 Section 3, I'm sorry, Section -- the part that --
14 the first paragraph that starts out about a third of
15 the way down, where it says, "Three days prior to
16 the execution", and, there's a number 29 --
17 291-24-050 Subsection 1?

18 A Okay.

19 Q Does it discuss the fact that an inmate
20 will be given a physician examination by a
21 physician?

22 A Yes, it does.

23 Q Okay. And what does it further discuss,
24 what about that?

25 A Give me a second to read it, please.

26 Q Sure.

27 A It discusses the inmate's preference
28 should a stay of execution occur and -- with regard
29 to resuscitation.

30 Q Okay.

31 A And also examines the inmate for -- to see
32 if there is any problems, which may need to be

1 addressed regarding, I'm assuming the ability to
2 start I.V. lines.

3 Q Okay. And does is say there, physical
4 problems, parentheses collapsed veins, obesity,
5 et cetera?

6 A Correct.

7 Q And just to make a clarification of the
8 first part, does is say, "Resuscitation if a stay of
9 execution is received after the injection has been
10 started?"

11 A That is correct.

12 Q Thank you. Okay. And is it your
13 knowledge if there are any Louisiana state
14 procedures about either of those two, taking the
15 first one, about an issue of resuscitation, do you
16 know of any policy that exists concerning that issue
17 in Louisiana?

18 A Not in writing, no.

19 Q Not at this -- I'm sorry?

20 A Nothing in writing that I'm aware of.

21 Q Okay. And the second issue about having a
22 medical doctor do a physical examination as far as
23 the policy in this state?

24 A There is a medical examination with regard
25 to those issues raised in that part of that
26 paragraph, yes. Whether it's performed by a
27 doctor or not, I don't know.

28 Q I understand. Now, proceeding to page
29 two, seven, six. A letterhead there showing from
30 the Department of -- Texas Department of Criminal
31 Justice.

32 A Yes.

1 Q Okay. So a cover letter here October 2,
2 1990 from Senior Warden, J.B. Pursley.

3 A Correct.

4 Q Acknowledging your request for
5 information. If you would now proceed to page
6 three, three, eight. Could you tell me if this
7 appears to be on Texas Department of Corrections
8 title at the top of the page, or if you've got there
9 yet, 338?

10 A It does appear to be from the Texas
11 Department of Correction, Warden Pursley.

12 Q Okay. And does it also state that it's an
13 interoffice communication --

14 A Yes, it does.

15 Q And that being from J.B. Pursley, Warden
16 to Artis B. Moseley, Jr. Assistant Director of
17 Security and Training?

18 A Yes.

19 Q Okay. Subject matter is listed as what?

20 A Subject matter is execution procedures.

21 Q And the date.

22 A March 27, 1985.

23 Q Would you please read the entire -- the
24 whole paragraph?

25 A It says "Dear Mr. Moseley, in reference to
26 Steve Martin's letter of March 19th, concerning
27 execution procedures I feel that giving a condemn
28 prisoner who has been sedated some type of lethal
29 substance poses medical concerns that are
30 unanswerable as we have no information and no
31 results of any research that has been done showing
32 the effect of a lethal substance being given to an

1 inmate who is in a sedated state. It could possibly
2 act as an antidote. I do feel that from an
3 administrative standpoint the warden and his
4 injection team should be given the liberty to
5 administer some type of tranquilizer or sedative to
6 any inmate who is in an extremely agitated state and
7 poses a problem to us in the -- in attempting to
8 insert the catheters into his veins due to him
9 struggling. Sincerely, J.B. Pursley."

10 Q Thank you. Do you have a personal
11 recollection of ever having reviewed that memo.

12 A I do.

13 Q Can you tell me what your memory of
14 this -- did you discuss the contents of this memo
15 with anyone else at the prison?

16 A I know I did, but our discussions,
17 generally, were based upon our past experience in
18 conducting electrocutions and problems with inmates
19 and we didn't have -- ever have the need to -- this
20 situation never arose.

21 Q So your answer is, this particular
22 situations -- do you mean by that, the situation of
23 an agitated inmate?

24 A Struggling inmate, correct.

25 Q Requiring some sort of a sedation on that
26 grounds?

27 A Correct.

28 Q Do you know whether any kind of a
29 tranquilizer was ever administered to an inmate
30 prior to their lethal injection?

31 A In anyone that I've ever been involved
32 with, to the best of my knowledge, none has.

1 Q Okay.

2 MR. CLEMENTS: Your Honor may a
3 approach the witness?

4 THE COURT: You may.

5 MR. CLEMENTS: Your Honor, I'm going
6 to show the witness exhibit -- Petitioner's
7 Exhibit 101, in globo. I'm going to direct him
8 to page 6 of that document entitled, on the
9 top, Louisiana State Penitentiary Lethal
10 Injection Equipment/Supplies Inventory
11 Checklist.

12 (Questions by Mr. Clements)

13 Q And ask the witness to look at that.

14 A I've seen this before, yes.

15 Q Okay. Is that a listing of supplies that
16 are used in lethal injections or available?

17 A They are a list of supplies that are
18 available, yes.

19 Q All right. Do you know the first being --
20 the first three are Sodium Pentothal, Pavulon, and
21 Potassium Chloride in the amounts that we have
22 already discussed at length in these proceeding;
23 what is the fourth item on that?

24 A Valium.

25 Q Valium, and what particularly does is say
26 on there?

27 A What does is say?

28 Q As far as the number and the quantity?

29 A It says two Valium injection
30 10 milligrams.

31 Q Okay. So and this is followed -- this is
32 a checklist and on the right-hand side across from

1 each one of these items is a marking?

2 A Correct.

3 Q To say -- well, to check it off, I guess?

4 A Correct.

5 Q And on this Valium injection, as well as,
6 the three preceding they have the word "pharm" which
7 we take to be an abbreviation for pharmacy or
8 pharmacist?

9 A Correct.

10 Q Okay. And so in this execution -- in this
11 list here, we're looking at the fact that Valium is
12 available?

13 A Correct.

14 Q Is there any indication on this blank
15 checklist whether Valium was -- this was not an
16 example of an actual execution checklist that was
17 used right, it's not filled out?

18 A It was not filled out, no.

19 Q Okay.

20 MR. CLEMENTS: One moment, Your
21 Honor.

22 (Questions by Mr. Clements)

23 Q I'll return to the question I've been
24 looking for, sorry. Following back though to the
25 issue of the document on page 338?

26 A Okay.

27 MR. CLEMENTS: Excuse me, may a
28 approach the witness again, Your Honor?

29 THE COURT: You may.

30 MR. CLEMENTS: Again, I'm approaching
31 the witness to show the witness Exhibit 101,
32 and this time page 263 through 266.

1 (Questions by Mr. Clements)

2 Q And that's dated 5-10-2002 and, again, we
3 see the same checklist; is that not correct?

4 A It is the same checklist.

5 Q But this time it's filled out?

6 A Yes, it is.

7 Q Okay. And that would have been -- if I
8 were to tell you that that was May the 10th, 19 --
9 excuse me, 2002 was the date of the execution of
10 Leslie Dale Martin, would have you have any reason
11 to dispute that?

12 A No, I would not.

13 Q And so it indicates at this point at least
14 when you look across from the line vallum injection,
15 there is a signature at least, that those chemicals
16 were made available?

17 A That's correct. I had forgotten that we
18 had done that when we changed to lethal injection.
19 They were made available at the execution site.

20 Q Okay. So this actually is a holdover in a
21 sense from the electrocution era in a sense.

22 A No, no, I may have not been clear. I had
23 forgotten that when we established the checklist for
24 lethal injection that we had included under the
25 pharmaceutical items the Valium also.

26 Q Okay.

27 A And I believe that was the result of the
28 information we gathered from other states. That
29 several of them indicated that they had a
30 tranquilizer available.

31 Q Okay. So is it your understanding -- are
32 you talking now about how other states did it as far

1 as lethal injection or something else?

2 A Lethal injection.

3 Q Lethal injection, some states have
4 tranquilizers available?

5 A It's also my understanding from experience
6 with electrocutions that other states also had
7 tranquilizers available for those procedures also,
8 if need be.

9 Q I understand. And is it your
10 recollection, again, and forgive me if I've asked
11 this and you've answered it, but is it your
12 recollection that the subject matter of 338 was
13 addressed by persons with medical expertise and they
14 then chose to still have these tranquilizers or --

15 A Correct.

16 Q -- Valium available?

17 A Right. It ended upon on the inventory --
18 the inventory was made up by the medical staff of
19 the supplies and equipment they needed or would be
20 needed.

21 Q It seems as though you do have a
22 particularize memory of this particular document; is
23 that -- am I right about that?

24 A I remember the document, yes. I don't
25 remember --

26 Q You remember --

27 A -- every item on it. I do remember the
28 document. I used to witness that process, the
29 inventory.

30 Q Okay. I would like to refer your
31 attention to page 375, letterhead from the state of
32 Utah.

1 A Okay.

2 Q All right. Again, I have a -- basically,
3 this is a cover letter introducing two documents
4 that -- addressed to you from the warden in Utah and
5 dated October 12, 1990 giving you attached
6 information?

7 A Is it.

8 Q Okay. If you would then go to page 395.

9 A 395?

10 Q 395, which is a continuation of the
11 attachments to that document -- that letter from
12 Utah?

13 A Okay.

14 Q Could you tell us what it says on the
15 top -- well, two hours; is this right? So I think
16 basically, we can say that we're talking about
17 procedures that would have happened before -- two
18 hours before an execution.

19 A Correct.

20 Q Going to Subsection A-2, what does it say
21 there?

22 A Under A-2?

23 Q Yes, sir.

24 A "A medical response team shall be on
25 standby to provide any medical attention which may
26 be needed during the time of the scheduled
27 execution."

28 Q Okay. Is that particular section there
29 reflective of a policy and practice that is
30 conducted in Louisiana during lethal injections?

31 A Yes.

32 Q Okay. And can you describe, in general,

1 without going into any security matters about what
2 that is?

3 A We have a medical response team, which is
4 basically EMT, and ambulance at the -- in the area
5 primarily. One reason is for any of the people that
6 are working the execution or any of the people
7 witnessing the execution. We have, on occasion, had
8 people passout, faint, and have other medical
9 problems prior to or during an execution.

10 Q All right. And --

11 A As well as, any other person that may need
12 treatment.

13 Q Okay. Would that include the inmate to be
14 executed?

15 A Correct.

16 Q All right. And are they located,
17 generally, like close by?

18 A Yes.

19 Q Okay. And when I say close by, I'm
20 referring to the execution sight?

21 A Yes.

22 Q Close by that area. Inside that building
23 or outside?

24 A Either immediately inside or immediately
25 outside the facility.

26 Q Thank you.

27 A Within 50 feet.

28 Q 50 feet. Okay. Going to Subsection 5
29 there, where it's reading "The USP Medical Director,
30 Designee/Designee and USB Medical Staff with skill
31 and intervenous injections I.V. setup cutdown
32 et cetera and shall be available at the execution

1 sight to provide medical assistance in the execution
2 chemical, if necessary."

3 A Yes, sir.

4 Q Is that reflective of the policy at
5 Louisiana State Penitentiary?

6 A Yes, it is.

7 Q So is it your testimony then that there is
8 a -- there are medical staff with the skills to do a
9 cutdown procedure?

10 A Yes.

11 Q And what level of medical expertise is
12 your understanding is that -- required there?

13 A M.D.

14 Q Okay. So it's your testimony there is a
15 medical doctor on standby?

16 A Yes.

17 Q I believe that's reflective of your
18 previous testimony; is that right? You said the
19 same -- you told us that already back in February?

20 A I believe I did, yes.

21 Q Yeah.

22 THE COURT: Excuse Mr. Clements,
23 before you ask you next question, let's take a
24 recess for about 15 minutes come back at about
25 5 until 4:00.

26 *(Recess taken)*

27 THE COURT: The witness may retake the
28 stand. We're ready.

29 MR. CLEMENTS: Thank you.

30 **DIRECT EXAMINATION (CONTINUED)**

31 BY MR. CLEMENTS:

32 Q Warden Peabody, if you would please turn

1 to page four, one, six, 416.

2 A Okay.

3 Q Does this appear to be a letter from the
4 state of Washington, Department of Corrections to
5 your attention from their superintendent?

6 A Yes, it is.

7 Q October 10, 1990, could you read the
8 second paragraph on that letter to you?

9 A "The state of Washington is currently in
10 the process of revising all of its related policies,
11 and as a result have only limited draft copies
12 available. All of our policies and execution
13 procedures have been designed utilizing the State of
14 Texas as a model. As you might -- the state's of
15 Texas and Missouri have conducted numerous
16 executions and remain the best and tested source of
17 information. The state of Washington has not
18 conducted an execution since 1964 which was by
19 hanging at the time."

20 Q Thank you. Okay. Moving on now to page
21 418.

22 A Okay.

23 Q Now, we're in Wyoming. A letter -- cover
24 letter from the Warden Duane Shillinger as it states
25 on 419, a letter to you, October 2, 1990 and could
26 you read the -- is this basically a request again
27 for lethal injection information and a response to
28 that?

29 A Correct.

30 Q Okay. Could you read the third paragraph
31 there in that, beginning with the word "also"?

32 A "Also note that Wyoming's injection

1 procedure is cloned from the Texas injection
2 procedure in September 1990. Visited Warden Jack
3 Pursley at Huntsville, Texas and participated in an
4 execution seminar. So I am confident that Wyoming's
5 policy based upon proven Texas procedures will be
6 reliable."

7 Q All right. And does this not also reflect
8 that there is an enclosure and attachment to this,
9 in the last word on the next page?

10 A I'm sorry, it indicates that there is an
11 enclosure, yes.

12 Q All right. So -- now, going to some of
13 that enclosure, page 443, please?

14 A Okay.

15 Q If you would go -- on the top of that
16 appears the phrase, "State of Wyoming Board of
17 Charities and Reform Wyoming State Penitentiary"?

18 A Correct.

19 Q And then if you go down to Item 7 on the
20 page about -- a little over halfway down.

21 A Yes.

22 Q If you could read everything up in seven
23 up 'til eight?

24 A Seven, "The warden or his designee will
25 ensure that the following chemicals and solution are
26 brought to the execution area not less than one hour
27 prior to the scheduled execution: A, saline
28 solution; B, sodium Pentothal, 2 to 5 grams; C, it's
29 Pavulon, they have it scratched out, 100 milligrams,
30 handwritten in is pancratium bromide; D, Potassium
31 Chloride 100 milliequivalents, note the Texas
32 Department of Corrections has confirmed the

1 reliability of the above mentioned chemicals."

2 Q All right. Thank you. And finally,
3 coming to page 480.

4 A Okay.

5 Q This is a continuation of documents from
6 the state of Wyoming, does it appear?

7 A It is.

8 Q And could you tell us what the subject
9 matter on the top, right-hand corner states?

10 A "Critique of training process for
11 execution and/or actual execution."

12 Q And that's dated September 1990?

13 A It is.

14 Q Okay. If you go down to the board policy
15 and read under that?

16 A "It is the policy of the Wyoming State
17 Penitentiary to critique and evaluate all aspects
18 and segments of training exercises designed to
19 prepare for the execution and to critique and
20 evaluate all processes related to the execution as
21 the execution is completed."

22 Q If you would continue with procedure.

23 A "Procedure one, the Wyoming State
24 Penitentiary Training Department will observe and
25 evaluate training sessions related to the execution;
26 two, participants in the execution will submit
27 personal evaluations; three, law enforcement
28 agencies participating in the execution will be
29 asked to submit evaluations; four, all other
30 nonpenitentiary and nonlaw enforcement participants
31 will be asked to submit evaluations; five, the
32 attached evaluation forms will be distributed for

1 critique and evaluation purposes."

2 Q Okay. And going now to page 481, the next
3 page. Does this appear to be that evaluation form
4 that says it's attached?

5 A Yes, it does.

6 Q Okay. And the general topic -- the
7 general sections, does it say "Topic of evaluation,
8 positive elements, negative elements," and then in
9 final bottom area, "General evaluation review rate 1
10 low and 5 high" and there's a scale from 1 to 5?

11 A Correct.

12 Q And if I could, I'll just read through
13 these quickly and see if you -- if this is what
14 you're understanding. The first one says,
15 "Personnel understanding of task; two, processes
16 used by the personnel to complete the task; three,
17 ability of personnel to react quickly with
18 appropriate decisions; four, ability to implement
19 secondary options; five, unit level of cooperation
20 and team unity; six, personnel alignment with
21 policy, procedure, and objectives; seven,
22 professional interaction with other employees and
23 nonprison personnel; eight, quality of communication
24 between unit teams; nine, management of stress and
25 pressure; ten, appearance of material and mechanical
26 resources; eleven, dependability of material and
27 mechanical resources; and twelve, other." And then
28 "summary comment" signed by -- signature line on two
29 lines of -- appear to be two different
30 evaluations -- is that an accurate reflection of the
31 contents?

32 A Yes, it is.

1 Q Do you know, from your personal knowledge,
2 whether any kind of a procedure exists like this at
3 Louisiana State Penitentiary?

4 A I'm not aware of any, no.

5 Q Okay. So it's your testimony that there
6 is no written procedure?

7 A To the best of my knowledge, no.

8 Q Do you know if there's any equivalent
9 process that isn't formalized into a written
10 procedure as far as follow up or evaluation of a --

11 A It's discussed informally, I believe. And
12 I would have to read the most current directive.
13 There may be provisions for stress debriefing being
14 available to employees after participation. I'm
15 sure there is.

16 Q The most -- this is a recently policy
17 directive, you said.

18 A Beg your pardon?

19 Q This -- is you made mention of something
20 relating to stress just now?

21 A I believe it's a current -- a reason.
22 I'm -- I -- it occurred during a period of time, I
23 believe, while I was off.

24 Q I understand. Have you seen a -- to your
25 memory, has a copy of that memorandum been in any
26 document that you've seen in relation to this
27 hearing so far?

28 A Not that I'm aware of, no.

29 Q Okay. Is it something that's related to
30 execution procedure alone or is it something of a
31 broader procedure?

32 A It's a much broader procedure that has to

1 do with the department making up -- and I forget the
2 correct title at this point, but it's sort of a --
3 an initial contact available to employees and
4 families for different situations to see if they're
5 in need of assistance.

6 Q Okay. And is your recollection of it that
7 this is about stress-related issues?

8 A Right.

9 MS. ESTOPINAL: Your Honor, I'm going
10 to objection to going into this any further. I
11 think we've dealt with this before. And the
12 focus of this hearing is not in anyway the
13 effect the execution may have on prison
14 personnel and/or their families, so I think
15 it's irrelevant.

16 MR. CLEMENTS: Response. Your Honor,
17 again, as we stated before. The stress on the
18 personnel is one factor of importance effecting
19 the quality of the intended procedure to carry
20 out, separate from our investigation and
21 critique of the actual procedure itself. Their
22 There intention may be to carry out procedure
23 A, B, C, if the person has a problem that is
24 actually one of the person's that's on the team
25 carrying out the process is subject to a
26 certain level of stress that may effect the
27 performance and ability to carry out A, B, and
28 C as they even intended it to be. And we're
29 still saying that A, B, C might have a problem
30 inherent in it that they don't even know about,
31 but aside from that they may not even be doing
32 what they're hoping to do.

1 And we think the stress, therefore, is not
2 an irrelevant consideration, but I have no
3 further questions on the matter.

4 THE COURT: So noted.

5 MR. CLEMENTS: Okay. Concerning the
6 issue of that question on stress is there -- is
7 it permissible for me to redirect that question
8 to --

9 THE COURT: Just that question, you
10 said you had just that question, no others?

11 MR. CLEMENTS: Yeah.

12 THE COURT: Is that what you're
13 saying, Mr. Clements?

14 MR. CLEMENTS: Yeah.

15 THE COURT: Court will allow that,
16 then you can move on.

17 (Questions by Mr. Clements)

18 Q Warden Peabody, do you remember the
19 question that I asked last to you?

20 A If we have a formal policy with -- as part
21 of our execution procedure regarding evaluations.

22 Q Okay. And then we want on to stress --

23 A Right.

24 Q And you talked about a general policy to
25 stress, but nothing -- it was not specific to
26 matters in dealing with lethal injection?

27 A It has to do with critical incidents
28 stress debriefings, and it's -- the executions are
29 only mentioned as one area where the department
30 makes staff available for that person -- purpose if
31 the employee so chooses.

32 Q And can you approximate just how many

1 areas are covered in that memo besides --

2 A Everything else.

3 Q Everything else?

4 A Right.

5 Q So is there anything that really isn't
6 covered in it as far as activity --

7 A There are certain types of incidents that
8 mandate it. And there are others where it's
9 offered.

10 Q Okay. Is it mandated with lethal
11 injection?

12 A No, not to my knowledge.

13 Q Thank you.

14 MR. CLEMENTS: No further questions.

15 MR. FISH: No questions, Your Honor.

16 THE COURT: The witness may step
17 down.

18 MR. CLEMENTS: Your Honor, at this
19 time we have no further witnesses this week to
20 present. And we would submit that we have a
21 separate matter that involves a deposition.

22 MS. ESTOPINAL: Your Honor, in
23 relation to the deposition, the State wanted to
24 put something on the record for the Court's
25 consideration. Regarding the sealing of the
26 depositions and of the exhibits used this
27 afternoon, Exhibit 119, Volumes 1 and 2, that
28 they be placed under seal to protect the
29 identity of persons involved in the execution.

30 And that has been our policy previously and
31 since then Louisiana Legislature has passed an
32 Amendment to Title 15 and Title 44 insuring the

1 protection of that identity. And our concern
2 is to make sure that the identities of
3 those involved in the execution process not be
4 disseminate in anyway and that the depositions
5 be kept underseal for reference by the Court's
6 involved in the matters only. I just wanted to
7 place that on the record. I don't believe
8 that's going to be a problem with defense
9 counsel because they've been very cooperative
10 on that issue, but I just wanted to make it a
11 matter of record.

12 THE COURT: Are you asking the Court
13 to order that or are you --

14 MS. ESTOPINAL: Yes, Your Honor.

15 THE COURT: All right. Then that's an
16 order that the depositions -- do I need to is
17 there some particular way to say the
18 depositions are referenced?

19 MS. ESTOPINAL: Just all the
20 depositions.

21 THE COURT: All the deposition. And
22 then, also, I think the Exhibit No. 119.

23 MS. ESTOPINAL: Yes, Your Honor.

24 THE COURT: It's ordered by the Court
25 that those be --

26 MR. CLEMENTS: Your Honor, if I may.

27 THE COURT: Yes, go ahead, Mr.
28 Clements, we've already agreed to, and 119 is
29 underseal.

30 MR. CLEMENTS: Correct. But the
31 depositions -- if we didn't -- I mean, the
32 reason we did the depositions, they're all done

1 in a John Doe format.

2 MS. ESTOPINAL: Not all.

3 MR. CLEMENTS: One wasn't. If we want
4 to put that one underseal that's fine, but that
5 witness decided he didn't want to be.

6 MS. ESTOPINAL: Your Honor, if I may.
7 Our concern is that part of -- some of the
8 information in the depositions, even though
9 they're John Doe's, could lead to the
10 identification of that personnel. And that is
11 prohibited under the -- under Act 283, the 2003
12 Regular Session, which I'm passing a copy up
13 for the Court.

14 And that is our concern, that persons who
15 may have access to that deposition could use
16 that information to determine which personnel
17 have been or might be involved in executions.
18 And that is the State's concern to protect
19 their identity and also to abide by the new
20 acts of the legislature on that issue.

21 MR. CLEMENTS: If I may, Your Honor.

22 THE COURT: You may respond.

23 MR. CLEMENTS: My basic point is
24 this, that again, we -- it's our contention
25 that the John Doe format has provided the
26 adequate required and statutorily -- the new
27 statute that requires a level of
28 confidentiality, and we would request that
29 before the Court make any decision on this
30 matter that we submit all the deposition
31 transcripts to, Your Honor, for in camera
32 inspection in order to make a finding

1 underseal, if necessary, to determine whether
2 that confidentially is breached -- it's our
3 contention it is not.

4 And we would like to have that -- these
5 matters reviewed to your attention, Your Honor,
6 in an in camera inspection for that purpose
7 before sealing these.

8 The record in this case, we've been very
9 careful, and I think everybody agrees we have
10 been very careful. The whole point, though, is
11 that we put that shield over 119 because it has
12 things in it. We sidestepped all of that stuff
13 today, very careful, I stayed away from
14 security related matters. There was never an
15 objection or a comment, or excuse me, could you
16 please make sure you don't go down that road
17 there. Nothing like that happened.

18 We've been a couple of hours with this
19 witness on the stand and nobody said there was
20 anything sensitive raised today. And I think
21 that that means that everything that is even in
22 that document there wasn't sensitive, you know,
23 enough to preclude it being raised in open
24 court. And it just seems -- we feel that that
25 same level of sensitivity has been extended, if
26 not in a much greater extend, to the
27 depositions. And we would like to have that
28 from in camera inspection if the Court so
29 chooses it's going to consider it.

30 THE COURT: Let me do it this way. As
31 far as 119, I believe you're saying that you've
32 stipulated or agreed that that would be

1 underseal, correct?

2 MS. ESTOPINAL: Yes, Your Honor.

3 THE COURT: Okay. So there's no
4 further request of the Court to order anything
5 with regard to that.

6 MR. CLEMENTS: Right.

7 THE COURT: The Court does not believe
8 it needs to conduct an in camera inspection
9 regarding the depositions. And out of an
10 abundance of caution in the spirit of which I
11 believe the depositions probably were -- at
12 least by the State, and in consideration of the
13 legislation just -- the State just directed the
14 Court's attention to, the Court is ordering
15 that those depositions be placed underseal, and
16 should you wish, you have an opportunity to
17 take it up for review. So the Court is
18 ordering those depositions to be placed
19 underseal.

20 MR. CLEMENTS: Your Honor, if I may
21 ask a question about your ruling?

22 THE COURT: Yes.

23 MR. CLEMENTS: The contents of that --
24 and this may be something that we don't have a
25 disagreement about, but I just want to clarify
26 it for the record. Primary concern to us is
27 that our expert witness, Dr. Mark Heath and
28 other medical experts that we've had, that we
29 my have in the future, if something develops
30 that we need to have a review from a medical
31 basis that at least, as far as Dr. Mark Heath,
32 our current medical expert on the issue, that

1 he be aloud to have complete access. And I
2 don't know if there's any objection to that.

3 MS. ESTOPINAL: Your Honor, the
4 State's concern is to keep this information
5 from public dissemination, not to limit the
6 access of expert witness who may need to --

7 THE COURT: For either the State or
8 defense who may need to review the contents?

9 MR. CLEMENTS: Fine.

10 MS. ESTOPINAL: That's correct, Your
11 Honor.

12 MR. CLEMENTS: Thank you.

13 THE COURT: Okay. I think we're all
14 on the same pages as far as that's concerned.

15 MR. CLEMENTS: Okay. Just for
16 clarification.

17 THE COURT: And should it become an
18 issue later --

19 MR. CLEMENTS: We'll let you know.

20 THE COURT: -- and you have some
21 concerns about it, then just bring it to my
22 attention again, and we'll address it again at
23 that time.

24 MR. CLEMENTS: Thank you.

25 THE COURT: All right. Are we
26 prepared to look at calenders either -- it can
27 be off the record or however you want to do,
28 and maybe assess how many more days we think
29 we're going to need and when we might want
30 them. I can't remember setting any tentative
31 dates, and I did look at my calender, it could
32 be that I just missed.

1 MR. CLEMENTS: No, we have not.

2 THE COURT: Do you have any thoughts
3 on that, do you want to go off the record and
4 come upstairs to the Court's chambers on that
5 and see where we --

6 MS. ESTOPINAL: I think that would be
7 good, Your Honor.

8 THE COURT: Okay. Is there any other
9 matter other than the Court remanding Mr. Code
10 for transport back to Angola, is there any
11 other request or concerns --

12 MS. ESTOPINAL: The State has none,
13 Your Honor.

14 THE COURT: -- by State or
15 Petitioner.

16 MR. FISH: I forget to move that, Your
17 Honor. The State so moves.

18 THE COURT: I wrote a note to remind
19 myself to be sure that I do it on the record.
20 Mr. Clements, was there anything else other
21 than --

22 MR. CLEMENTS: One housekeeping
23 matter, we're trying to verify whether we
24 entered Mr. Ivan Futrell's curriculum vitae
25 into the record today.

26 No, it hasn't happened. We'd like to move
27 that -- I believe it was Exhibit 148, if I'm
28 not mistaken, 148 we move to enter that into
29 the record.

30 THE COURT: Any objection by the
31 State?

32 MS. ESTOPINAL: No, objection.

1 THE COURT: So ordered. It is
2 admitted.

3 *(Petitioner's Exhibit No. 148 was*
4 *admitted.)*

5 THE COURT: Okay. That being done, at
6 this time the Court orders that Mr. Code be
7 remanded for transport back to Angola as soon
8 as practical. That's it. I'll meet counsel
9 upstairs. Thank you.

10 *(Proceedings concluded at this*
11 *time.)*

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STATE OF LOUISIANA)
PARISH OF CADDO)

C E R T I F I C A T E

I, Angela C. Robertson, Official Court Reporter
in and for the Parish of Caddo, State of Louisiana, do
hereby certify that the above and foregoing transcription
is a true and correct record of the proceedings had on
September 17, 2003, all to the best of my knowledge and
ability.

Subscribed and sworn to this on October 14, 2003.

Angela C. Robertson
Official Court Reporter
First Judicial District Court

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