

1 IN THE FIRST JUDICIAL DISTRICT COURT
2 IN AND FOR THE PARISH OF CADDO
3 STATE OF LOUISIANA
4
5

6 NATHANIEL R. CODE, JR.

7 VS.

NO. 138,860-A

8 BURL CAIN
9
10

11 APPEARANCES:

12 FOR THE STATE:

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14 MS. CATHERINE M. ESTOPINAL
Assistant District Attorneys

15 FOR THE PETITIONER:

16 MR. GARY CLEMENTS
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18 Capital Post-Conviction Project of Louisiana
19

20 PROCEEDINGS HAD in the above
21 entitled matter before Her Honor,
22 RAMONA L. EMANUEL, Judge
23 of the First Judicial District Court,
24 in and for the Parish of Caddo,
25 State of Louisiana,
26 held February 21st, 2006.
27

28 EVIDENTIARY HEARING
29
30

31 Reported by:

32 Joyce A. Wheeler, BA, RPR, CCR
Official Court Reporter

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1 Q. And what is your educational background?

2 A. I received a B.S. from LSU, and then my Ph.D.
3 in pharmacology from LSU Medical Center in 1984. I did
4 postdoctoral work at Johns Hopkins in Baltimore and then
5 briefly was at the National Institute on Drug Abuse for
6 the National Institutes of Health before returning to
7 Shreveport in 1985 to join the Department of
8 Pharmacology at the LSU Health Sciences Center.

9 Q. What is your current position at that
10 institution?

11 A. I am professor and head of the Department of
12 Pharmacology, Toxicology, and Neuroscience.

13 Q. And when you did your Ph.D. dissertation,
14 what was the subject matter of that?

15 A. It was on cocaine self-administration.

16 Q. And what is your specific area of
17 concentration in the field of pharmacology?

18 A. Neuropsychopharmacology.

19 Q. And what appointments have you had in your
20 professional life?

21 A. I am not sure what you are asking me.

22 Q. On page two of your CV -- so, actually, it
23 starts on page one. You've already talked about some of
24 this, I think.

25 A. That's just as I moved up through the ranks
26 in the Department of Pharmacology from assistant to
27 associate to full professor.

28 Q. Okay. And so you have been at the LSU Health
29 Sciences since when?

30 A. October, 1985.

31 Q. And when did you become head of the
32 Department of Pharmacology, Toxicology, and

1 Neuroscience?

2 A. August 15th, 2005.

3 Q. And what are your duties as head of that
4 department?

5 A. It is my job to run the department, make sure
6 everyone is doing their job, and basically head of the
7 department.

8 Q. And in your field of pharmacology, have you
9 -- since you received your doctorate in 1984, have you
10 undertaken to continue to be current and keep up with
11 the latest developments in your field?

12 A. Yes, I have.

13 Q. And to that end, have you yourself been
14 invited as a lecturer in the field of pharmacology?

15 A. Yes, I have.

16 Q. And is that -- those incidents and seminars
17 you have attended are on your CV at pages 35-38?

18 A. Yes.

19 Q. Also, you have presented papers at national
20 meetings, have you not?

21 A. Yes, I have.

22 Q. And there is 41 such papers noted on your CV
23 at pages 31-34?

24 A. Yes.

25 Q. And have you published in the field of
26 pharmacology?

27 A. Yes, I have.

28 Q. And those publications are noted on pages 13,
29 14, 15, 16, 17, 18, 19, 20, 21, including manuscripts?

30 A. Yes.

31 Q. And what is the general area that you have
32 published in? How would you describe it?

1 A. It is study in addiction.

2 Q. Okay. And --

3 MR. FISH: Your Honor, may I approach the
4 witness?

5 THE COURT: You may.

6 Q. (By Mr. Fish) Dr. Goeders, I'm handing you
7 an exhibit that I have marked as State's Exhibit No. 40.
8 I'm going to ask you if you can identify that.

9 A. Yes. That looks like a copy of my curriculum
10 vitae, my resume.

11 MR. FISH: Your Honor, Counsel has a copy
12 of this. And the State would move to introduce this
13 into evidence.

14 (State's Exhibit No. 40 offered.)

15 MR. CLEMENTS: Yes.

16 THE COURT: No objection?

17 MR. CLEMENTS: No objection to the
18 entrance.

19 THE COURT: The exhibit is admitted, and
20 duly noted.

21 (State's Exhibit No. 40 admitted.)

22 Q. (By Mr. Fish) Dr. Goeders, what is the field
23 of pharmacology?

24 A. It's the study of drugs and how they act in
25 the body.

26 MR. FISH: Your Honor, I'd like to tender
27 Dr. Goeders at this time for cross-examination as an
28 expert witness in the field of pharmacology.

29 THE COURT: Mr. Clements, do you have
30 questions as to his qualifications?

31 MR. CLEMENTS: Yes, I do, your Honor.

32 THE COURT: You may proceed, Counsel.

1 MR. CLEMENTS: Thank you.

2 EXPERT WITNESS QUALIFICATION EXAMINATION

3 BY MR. CLEMENTS:

4 Q. Dr. Goeders, are you familiar with the three
5 drugs that are used in the lethal injection protocol in
6 Louisiana?

7 A. Yes, I am.

8 Q. Could you tell me what they are?

9 A. The first one is thiopental, the second is
10 pancuronium, and the third is potassium.

11 Q. Would that be potassium chloride?

12 A. Yes.

13 Q. Okay. Dr. Goeders, your curriculum vitae has
14 reference to many research projects you have carried out
15 over the years of your work; is that not correct?

16 A. Yes, it does.

17 Q. And do you receive government and
18 governmental and private grants to perform this
19 research?

20 A. Yes, I do.

21 Q. Okay. I see that the word "rat" or "rodent"
22 appears often in your titles of your articles. And I
23 take it that your research is predicated on studies of
24 behavior of these laboratory animals under various
25 circumstances?

26 A. Yes, it is.

27 Q. Okay. Do you do research on human subjects?

28 A. I have, yes.

29 Q. Okay. Would you give a percentage of, I
30 guess, how much your work is working with animal
31 subjects?

32 A. Ninety-nine percent.

1 Q. Ninety-nine percent. Okay. And is the
2 reason that you use the study of laboratory animals
3 because the studies of these animals apply to all
4 animals, including humans?

5 A. Yes.

6 Q. Okay. And would you say that you would have
7 to have a well-defined proposal written out before some
8 agency will fund your research?

9 A. Absolutely.

10 Q. Okay. And do you have to meet certain
11 standards with these agencies to qualify for grant
12 funding?

13 A. Yes.

14 Q. Is one of these areas of your standards the
15 care and use of laboratory animals?

16 A. Yes.

17 Q. Okay.

18 MS. ESTOPINAL: Your Honor, I make an
19 objection on relevance as to Dr. Goeders' qualifications
20 as an expert.

21 MR. CLEMENTS: Well, your Honor, the
22 response is that Dr. Goeders has specifically told us
23 now that 99 percent of his work is predicated on the
24 study of animals. Previously in these series of
25 hearings, we intended to produce a witness who
26 specifically talked about his work with animals as a
27 veterinary anesthesiologist and his hands-on use of
28 three particular chemicals that he knew about that are
29 used in the lethal injection protocol as it applied to
30 animals and, therefore, what effects they may have on
31 human beings. But your Honor granted the objection of
32 the State to preclude that testimony in in-court form,

1 and instead it was put into a proffer form. The
2 objection that we -- the reason we are going down this
3 line is to see just what relevancy this has, especially
4 in concerns of comparing it to that of Dr. Glenn
5 Pettifer, whom this Court found unworthy to be able to
6 testify in the case. So that's why we are going down
7 the issue of the animal background.

8 MS. ESTOPINAL: Your Honor, this still
9 doesn't have anything to do with Dr. Goeders'
10 qualifications as expert in pharmacology, which is what
11 he is being tendered for at this time.

12 THE COURT: Mr. Clements, your concerns
13 are duly noted for the record as to relevance.
14 Overruled.

15 MR. CLEMENTS: Your Honor, I appreciate,
16 understand the ruling and would also just say that I
17 would prefer to seek at this time to ask that
18 Dr. Pettifer's proffer be admitted into testimony.

19 THE COURT: Actually, those questions
20 that you were asking thus far have been -- you have
21 asked and gotten answers. And I think that last
22 objection was just probably premature for whatever your
23 next question may have been.

24 MR. CLEMENTS: Okay.

25 THE COURT: So my -- as to the objection
26 as to relevance, the Court overrules the objection.

27 MR. CLEMENTS: I understand. Excuse me,
28 your Honor.

29 THE COURT: And I am --

30 MR. CLEMENTS: I understand.

31 THE COURT: And I'm kind of punting back
32 to you. So if that's what your motion is, then the

1 Court needs to address that.

2 MR. CLEMENTS: I'll reserve that until
3 the point of qualification.

4 THE COURT: All right.

5 MR. CLEMENTS: Thank you, your Honor.

6 Q. (By Mr. Clements) All right. To come back
7 to it because we got away for a moment here,
8 Dr. Goeders, you, in fact, have to fill out a form
9 that's called an animal care and use protocol; is that
10 correct?

11 A. Yes, I do.

12 Q. Okay. And this animal care and use protocol
13 must be reviewed by the Institutional Animal Care and
14 Use Committee at LSU Health Sciences Center, Shreveport;
15 is that not correct?

16 A. Yes, it is.

17 Q. And in the animal care and use program at LSU
18 Health Sciences Center, Shreveport, is fully accredited
19 by the Association for the Assessment and Accreditation
20 of Laboratory Animal Care International, and has been
21 since 1985, has it not?

22 A. Yes.

23 Q. And you remember that you had mentioned that
24 you had been at LSUHSCS since 1985. So that the entire
25 time that you have been present at the -- that that
26 accreditation has been in effect; is that not correct?

27 A. To the best of my knowledge.

28 Q. Okay. And for the majority, the 99 percent
29 of your work that you have referred to so far, you
30 really wouldn't have been able to conduct it without the
31 use of laboratory animals?

32 A. Correct.

1 Q. Okay. And at this time, let me ask you this,
2 Dr. Goeders. Has any of your work with animals or
3 humans had anything to do with the chemicals, the three
4 chemicals used in the Louisiana lethal injection
5 protocol?

6 A. We have used one of them in the past. We
7 don't use it anymore.

8 Q. Can you tell us what that one is?

9 A. The thiopental.

10 Q. The thiopental?

11 MS. ESTOPINAL: Your Honor, I think once
12 again Mr. Clements is jumping over the State's direct
13 examination. This is supposed to be about Dr. Goeders'
14 qualifications as a pharmacologist. He is getting into
15 the merits of the issue. As far as Dr. Pettifer, the
16 veterinarian, it is my impression, your Honor, the State
17 had already agreed to allow the proffer into evidence
18 some time ago. So I don't see the point of this.

19 MR. CLEMENTS: Well, your Honor, I
20 believe there was a reversal of that position at a later
21 point, and at the same time that we were talking about
22 the FBI fingerprint expert, that both of them were
23 objected to, and they have not been allowed in.

24 So if the State is saying that they don't object to
25 Dr. Pettifer's proffer testimony being included into the
26 actual record of this case, then I am pleased to hear
27 that, and we can proceed with this matter.

28 MS. ESTOPINAL: Your Honor, Mr. Clements
29 can -- you know, my impression was that the proffer was
30 let in. But I think it irrelevant to this. The matter
31 right now is whether Dr. Goeders is an expert in
32 pharmacology. And all the other stuff is about the

1 merits, and Mr. Clements needs to wait until he has
2 Dr. Goeders on cross-examination.

3 THE COURT: Given the concerns raised by
4 defense, I will give the Petitioner some latitude with
5 the caveat that this is the question regarding the
6 qualifications of this witness to testify as an expert
7 in the field of pharmacology. I know you know that,
8 Mr. Clements, so I will give you an opportunity. I will
9 give you some latitude given what your underlying
10 concerns are and overrule any objections by the State at
11 this time.

12 MR. CLEMENTS: All right.

13 Q. (By Mr. Clements) Dr. Goeders, a couple of
14 questions. One, you had mentioned that in the past you
15 had done some experimentation with thiopental. Could
16 you tell us whether it was with humans or with animals?

17 A. Animals.

18 Q. Okay. And, again, just to clarify as far as
19 any other research you have conducted, you have not had
20 direct -- you have not done research involving -- with
21 either humans or animal subjects on the use of the two
22 other chemicals pancuronium and potassium chloride?

23 A. That's correct.

24 MR. CLEMENTS: At this time, we would
25 object to his qualification, even though as a
26 pharmacologist, to the specific areas of the lethal
27 injection chemicals as applied to human beings.

28 THE COURT: The State's response, if any,
29 to the --

30 MS. ESTOPINAL: Dr. Goeders was offered
31 as an expert in pharmacology. And whatever conditions
32 that Mr. Clements cares to put on it is not part of his

1 tender. He is an expert pharmacologist, the head of his
2 department at an eminent medical school. And he is
3 offered as an expert in pharmacology and toxicology and
4 neuroscience.

5 THE COURT: Well, specifically when he
6 was tendered, it was in the field of pharmacology.

7 Although he did say he previously -- he has been
8 qualified as an expert maybe in the fields of
9 pharmacology and toxicology and, if I am not mistaken,
10 neuro --

11 MS. ESTOPINAL: Neuroscience, your Honor.

12 THE COURT: Neuropsychopharmacology.

13 MS. ESTOPINAL: Yes.

14 THE COURT: So is he being tendered now
15 as an expert in the field of pharmacology only?

16 MS. ESTOPINAL: Frankly, your Honor, I'm
17 not sure what the difference is in the three fields.
18 But since he is head of the Department of Pharmacology,
19 Toxicology, and Neuroscience, we would like to tender
20 him as an expert in all those fields.

21 THE COURT: If the Court might ask, I
22 don't want counsel to object to the Court asking a
23 question.

24 MS. ESTOPINAL: No, your Honor.

25 THE COURT: Was it
26 neuropsychopharmacology? Because I tried to write it
27 down as it was being said. Is it neuroscience, or is it
28 neuro --

29 MS. ESTOPINAL: Your Honor, we certainly
30 don't object to you asking the witness.

31 THE COURT: Okay. I just want to know
32 what that area of expertise he is. What was the field?

1 In addition to pharmacology, toxicology, what is the
2 other, the third?

3 MS. ESTOPINAL: I think it's neuroscience
4 is the other one in the department's title. As far as
5 Dr. Goeders' expertise, pharmacology and --
6 pharmacology only. Pharmacology, your Honor. I am
7 sorry.

8 THE COURT: That's what I understood it
9 to be.

10 MS. ESTOPINAL: I'm sorry.

11 THE COURT: That's what I understood it
12 to be. But I wanted to make sure it was clear in the
13 Court's mind. Mr. Clements, is your motion -- what is
14 your motion again? What is your motion?

15 MR. CLEMENTS: Excuse me, your Honor.
16 The motion --

17 THE COURT: Or your objection.

18 MR. CLEMENTS: Our objection is to the
19 qualification of Dr. Goeders' expertise to be able to
20 speak to the three chemicals used in the Louisiana
21 lethal injection protocol because of his lack of
22 experience working with human beings on those subjects,
23 drugs.

24 THE COURT: The Court notes your
25 objection and overrules the Petitioner's objection. The
26 Court believes that the -- that Dr. Goeders meets the
27 threshold to be qualified as an expert in the field of
28 pharmacology, and the Court so accepts him. And the
29 State may proceed, noting Petitioner's objection.

30 MR. FISH: Thank you, your Honor.

31 DIRECT EXAMINATION

32 BY MR. FISH:

1 Q. Dr. Goeders, what is sodium pentothal?

2 A. It is a barbiturate.

3 Q. And what is it used for?

4 A. It is used to induce loss of consciousness.

5 Q. And for how long has this drug been used by
6 doctors?

7 A. I can't remember exactly. But I know at
8 least for 60 years, 60, 70 years.

9 Q. Have you studied the scientific literature in
10 the field of pharmacology concerning the effects of
11 sodium pentothal?

12 A. Yes, I have.

13 MR. FISH: Can I have one moment, your
14 Honor?

15 THE COURT: You may.

16 Q. (By Mr. Fish) What is the normal surgical
17 dose for sodium pentothal?

18 A. The normal surgical dose is in the range of
19 about 300 milligrams.

20 Q. And what is the purpose of using it in
21 surgery?

22 A. To induce a rapid loss of consciousness.

23 Q. And why would the physician want to do that?

24 A. Oftentimes for surgery that is of short
25 duration.

26 Q. And the surgical dose, what is the effect of
27 it, the loss of consciousness?

28 A. Yes. Rapid loss of consciousness.

29 Q. And when you say rapid, what are we talking
30 about?

31 A. Within seconds.

32 Q. And what is its approximate length of lasting

1 for the surgical dose, the unconsciousness?

2 A. Depends on the dose. Probably a few minutes
3 at those doses.

4 Q. Now, that was -- what was the surgical dose?

5 A. Around 300 milligrams.

6 Q. And what is -- what would happen if you gave
7 a patient one to two grams, gave a human being one to
8 two grams administered approximately over five minutes?

9 A. There would be a rapid loss of consciousness,
10 but the patient would not wake up until two to three
11 hours.

12 Q. And that's in a dose -- approximately, that's
13 one to two grams, that dosage?

14 A. Correct.

15 Q. And so how much more on a percentage basis is
16 the surgical dosage?

17 A. Maybe eight to ten times.

18 Q. Okay. So that's -- a doctor who performs
19 surgery on someone would not give them one to two grams
20 of sodium pentothal?

21 A. No.

22 Q. Now, you said that the purpose of the surgeon
23 of giving sodium pentothal to a human being is to render
24 them without consciousness; is that correct?

25 A. Correct.

26 Q. Does that have an effect on the individual's
27 ability to feel pain?

28 A. Yes, it would.

29 Q. And is that one of the reasons why doctors
30 would give sodium pentothal before surgery?

31 A. Yes.

32 Q. They are interested in preventing the patient

1 from having pain; is that correct?

2 A. Yes.

3 Q. And why does it take longer for the patient
4 to wake up when they are given one to two grams as
5 opposed to the surgical dose?

6 A. Because there is a change in the
7 pharmacokinetics of the drug.

8 Q. And what does that consist of?

9 A. With a very short or very small dose, the
10 drug duration of action is only about five minutes, as I
11 said before. With a large dose of one to two grams,
12 there becomes an equilibrium between the blood and the
13 brain so that the amount of drug in the brain remains
14 constant for a long period of time.

15 Q. And how long does it take the body to
16 metabolize that?

17 A. It metabolizes the thiopental at a rate of
18 about 15 percent per hour.

19 Q. Okay. During the -- if a patient were given
20 the one to -- if an individual was given the one to two
21 grams of sodium pentothal and they were injected with
22 the second or third drug, the second and third drug of
23 the lethal injection protocol, what -- that you have
24 already testified that you are aware of, correct, what
25 the second and third drugs are?

26 A. Yes.

27 Q. What are they?

28 A. The potassium chloride and the pancuronium.

29 Q. If they were injected with those drugs after
30 the administration of the one to two grams of sodium
31 pentothal, would they be able to feel any sensation as a
32 result of any of those drugs?

1 A. No.

2 Q. Why is that?

3 A. Because they would be deep under the
4 influence of the thiopental. It would be the loss of
5 consciousness.

6 Q. And the thiopental is the same as sodium
7 pentothal, is it not?

8 A. Yes, it is.

9 Q. Is that just the scientific name for it?

10 A. I don't know why there are two names.

11 Q. All right. But it is the same thing?

12 A. Yes.

13 Q. Okay. Now, Dr. Goeders, you have already
14 testified that you have studied the scientific
15 literature in the field of pharmacology concerning the
16 effect of sodium pentothal?

17 A. Yes.

18 MR. FISH: Your Honor, can I approach?

19 THE COURT: You may.

20 MR. FISH: I would like to show you what
21 I have marked for identification as State's Exhibit
22 No. 35. I believe Counsel has copies of these exhibits.

23 Q. (By Mr. Fish) Have you -- what is State's
24 No. 35?

25 A. This is a publication, an early publication
26 looking at the effects of thiopental in man, how long
27 the duration of action would be, how it is metabolized,
28 those sorts of things.

29 Q. Is this part of the result of your research
30 into the scientific literature in the preparation for
31 your testimony today?

32 A. Yes, it is.

1 Q. I'd like to show you State's Exhibit No. 36,
2 and ask if you can identify that.

3 A. Yes. This is another manuscript of a review
4 of the effects of thiopental.

5 Q. And this is a research that you reviewed and
6 is part of what you are relying on in your testimony
7 here today?

8 A. Yes, it is.

9 Q. I'm going to show you State's Exhibit No. 37,
10 and ask if you can identify that.

11 A. This is another manuscript reviewing the
12 pharmacology of thiopental.

13 Q. And what is that entitled?

14 A. "Thiopental: A Current Review of its
15 Pharmacology."

16 Q. Okay. I'd like to show you State's Exhibit
17 No. 38, and ask if you can identify this.

18 A. Yes. This is another manuscript. This one
19 addresses the role of adipose tissue or fat in the
20 distribution and storage of drugs.

21 Q. And show you State Exhibit No. 39, and ask if
22 you can identify that.

23 A. Yes. This is another manuscript on the
24 pharmacodynamics and pharmacokinetics of thiopental.

25 Q. Dr. Goeders, are all of these articles
26 articles that you reviewed and read and studied in
27 preparation for your testimony here today that you have
28 already testified to?

29 A. Yes, they are.

30 MR. FISH: Your Honor, at this time I
31 would like to file and introduce into evidence State's
32 Exhibits 35, 36, 37, 38, and 39.

1 (State's Exhibit Nos. 35-39 offered.)

2 MR. CLEMENTS: No objection.

3 THE COURT: The exhibits are admitted.

4 (State's Exhibit Nos. 35-39 admitted.)

5 THE COURT: The Court will give counsel a
6 few moments. The exhibits are admitted.

7 MR. CLEMENTS: I'm sorry?

8 THE COURT: They are admitted.

9 MR. CLEMENTS: Yes. Okay.

10 MR. FISH: Your Honor, the State would
11 tender Dr. Goeders at this time.

12 CROSS-EXAMINATION

13 BY MR. CLEMENTS:

14 Q. Dr. Goeders, just to reiterate, the opinions
15 that you have given this morning in response to the
16 State's questions are based on what you have read in
17 articles; is that correct?

18 A. Correct.

19 Q. And part of what you are relying on are these
20 articles and not independent research that you have
21 conducted yourself?

22 A. Correct.

23 Q. And you haven't published in this particular
24 area?

25 A. No, I have not.

26 Q. And you haven't conducted any experiments
27 using any of these drugs?

28 A. No, I haven't.

29 Q. And none of these articles talk about
30 pancuronium bromide or potassium chloride?

31 A. Correct.

32 Q. They only talk about one chemical, the first

1 chemical, sodium pentothal?

2 A. Correct.

3 Q. So none of these articles talk about the
4 interactions between these drugs or the effects on
5 either humans or animals?

6 A. Not these papers, no.

7 Q. Not these papers. Okay. Do you have a copy
8 of the articles handy?

9 A. Yes, I do.

10 Q. Okay. Right there. If I were to draw your
11 attention to a particular -- starting with Exhibit 36,
12 which is the second article chronologically, the article
13 by Dr. Kaufman, "Thiopental Sodium: A Comprehensive
14 Review."

15 A. Okay.

16 Q. On page 211, can you tell me -- can you read
17 the -- there is a section, a long paragraph, and then
18 another section entitled "History." Could you read the
19 last sentence before that history part, beginning with
20 "This fine record"? Could you read that out loud?

21 A. I'm sorry. I haven't found it.

22 Q. I'm sorry. On the first page of the article.

23 A. Okay.

24 Q. And just on the left-hand column about center
25 of the page. It is the last portion, the last third of
26 that first long paragraph.

27 A. Starting with "This fine record"?

28 Q. Yes, sir.

29 A. Okay. "This fine record was possible because
30 the agent was used mainly by those who were well trained
31 in anesthesia who also possessed a sound understanding
32 of the pharmacodynamics of the agent and were capable of

1 coping satisfactorily with the complications that
2 occasionally arose with its use."

3 Q. Okay. So this article is saying, does it
4 not, in that particular portion, that the -- it is very
5 important that -- it is not just a theoretical
6 application of these matters, but it is an actual how do
7 people -- how do human beings actually introduce this
8 drug into the systems of their patients, whether animal
9 or human; is that not correct?

10 A. Yes.

11 Q. So it's very important how -- that the people
12 have training to use these particular chemicals?

13 A. According to this review.

14 Q. According to this review. Are you disputing
15 that point?

16 A. No, I am not.

17 Q. Okay. And so your opinion, then, your
18 professional opinion as a pharmacologist is that a
19 person would have to have -- be experienced in
20 understanding the pharmacodynamics of sodium pentothal
21 to ensure that the intention of this drug is achieved
22 when it is injected?

23 A. Yes.

24 Q. Okay. If you would turn to page 215. The
25 page numbers are on the upper corners of the article.
26 It is about the sixth page of that printout. And you
27 will see on there in the right-hand column, it is the
28 enumeration of some of the disadvantages of using
29 thiopental sodium. And, number two, if you could read
30 that out loud.

31 A. "The necessary effective dose is difficult to
32 estimate because of differences in susceptibility of

1 individuals to barbiturates."

2 Q. Okay. Based on this particular section of
3 the reading, would it be accurate to say that if -- that
4 some people require a higher dosage of sodium pentothal
5 in order to achieve the level of unconsciousness that
6 you have testified to?

7 A. In this particular instance, it is for oral
8 surgery. And so this is talking about the effective
9 dose for oral surgery.

10 Q. Okay. So are you saying that the basis of
11 this article is not applicable to the Louisiana lethal
12 injection situation because it is not oral surgery?

13 A. I am saying that the comments they are making
14 about the disadvantages of thiopental are disadvantages
15 that relate to its use as an anesthetic for oral
16 surgery.

17 Q. I understand. But is it still not true that
18 the basic point they are making there is that different
19 people have different levels of susceptibility to sodium
20 thiopental, or are you qualified to testify to that
21 point?

22 MS. ESTOPINAL: I'm sorry. I don't
23 understand the question.

24 MR. CLEMENTS: Let me rephrase it. I am
25 sorry.

26 Q. (By Mr. Clements) My question is: Is it
27 true that sodium thiopental, that human beings have a
28 variance in their ability to tolerate it, so to speak,
29 or there is different amounts that are needed for
30 different people?

31 A. For surgical anesthesia, yes.

32 Q. For surgical anesthesia. And if I were to

1 tell you that in the Louisiana lethal injection
2 protocol, there are no considerations taken for
3 individual characteristics of the person receiving the
4 injection, you are saying that this -- I am wondering,
5 how does this make a difference there?

6 A. From my reading of the literature, when you
7 get to the doses that are proposed, the individual
8 differences really don't come into play.

9 Q. Okay. But at the same time, if a person --
10 that does not take away from the fact that lower
11 dosages, different people might not be rendered
12 unconscious or not remain unconscious as long as others
13 because of their individual characteristics; is that
14 correct?

15 A. That's correct.

16 Q. Thank you. If you would go down on that same
17 page to number six, and read that out.

18 A. "Three workers are necessary to the success
19 of the anesthesia: a trained anesthetist, a cooperative
20 surgeon, and a competent assistant."

21 Q. Okay. Understanding that we are talking
22 about a dental situation here, what do you feel about
23 the Louisiana lethal injection protocol, or do you know
24 of what the qualifications are of the persons who render
25 that?

26 A. I do not know.

27 Q. You do not. You are not aware of what the
28 qualifications are of the people who administer the
29 lethal injection chemicals?

30 A. No.

31 Q. And number seven.

32 A. Did you want me to read this?

1 Q. If you could read that. I'm sorry. Please.

2 A. "There are no completely reliable signs of
3 anesthesia."

4 Q. Okay. And what can you tell me about that
5 particular statement as far as your understanding of
6 sodium thiopental?

7 A. I don't know.

8 Q. You don't know. Okay. If you could go to
9 number nine.

10 A. Do you want me to read that?

11 Q. Yes, please.

12 A. "Venipuncture is sometimes difficult."

13 Q. Can you speak to any of the points that that
14 section is relating to?

15 A. Well, this appears to obviously mean
16 sometimes it is hard to insert the needle into a vein.

17 Q. Okay. And can you explain -- if you would go
18 to number eight and read that.

19 A. "Thiopental sodium is a barbiturate and does
20 not possess analgesic properties."

21 Q. Could you explain what the meaning of that
22 is?

23 A. It is not an analgesic. It doesn't treat
24 pain. It is used to induce unconsciousness.

25 Q. Okay. If you would go to page 219 of that
26 same article and look under the right-hand column, the
27 "General Preanesthetic Considerations" being the title.
28 And read out loud the first sentence.

29 A. Starting at "It is particularly"?

30 Q. Yes.

31 A. "It is particularly advisable to take a
32 history of each patient."

1 Q. Okay.

2 A. "It may -- "

3 Q. Go ahead, please. Continue.

4 A. I thought you had said the whole paragraph.
5 It was just this first sentence?

6 Q. Just the next one, the second one also.

7 A. "It may disclose a condition contraindicating
8 the use of thiopental sodium."

9 Q. Okay. Are you familiar with what this
10 portion of the article was discussing?

11 A. Yes.

12 Q. And could you tell us about that?

13 A. This is what considerations to take as far as
14 dosage and so forth for using thiopental as a general
15 preanesthetic for oral surgery.

16 Q. Okay. And what is important to take to
17 understand about the history of the person?

18 A. Well, it is important to know -- for example,
19 the first one is saying as little depression as possible
20 by premedication for the anesthetic agent because there
21 is respiratory and cardiac depression associated with
22 thiopental. So if you are treating a patient, you want
23 to make sure they are not taking anything else that's
24 going to enhance the effects of the thiopental.

25 Q. Would there on the obverse be situations of
26 drugs that might inhibit the effectiveness of the
27 thiopental in rendering unconsciousness?

28 A. That is a possibility. I haven't seen drugs
29 that will do that.

30 Q. Okay.

31 A. To any significant degree.

32 Q. If you would then go now to page 224, in the

1 lower right-hand corner of that article. And at the
2 "Comment" section, read that entire section beginning
3 with "Ausherman and Crawford."

4 A. "Ausherman and Crawford state that the ease
5 of administration of thiopental sodium can often be
6 considered a disadvantage since it frequently prompts
7 unskilled persons to attempt its use without considering
8 the necessary adequate research and study relative to
9 its administration.

10 "Thiopental sodium has been condemned as a
11 dangerous drug for anesthesia, but that danger is
12 actually a result of lack of knowledge of the
13 pharmacology of the drug or the result of lack of skill
14 in its administration.

15 "Everson's declaration that the 'safety of an
16 anesthetic is in direct proportion to the skill of the
17 anesthetist' cannot be overemphasized."

18 Q. Okay.

19 THE COURT: Excuse me. What page was
20 that?

21 MR. CLEMENTS: I'm sorry. That was page
22 224 of State Exhibit S-36, and going over into page 225.

23 THE COURT: Thank you.

24 Q. (By Mr. Clements) And, finally, at the top
25 right-hand corner on page 225, halfway down, with the
26 sentence beginning "the safety of thiopental."

27 A. Read to the end?

28 Q. Yes, please.

29 A. "The safety of thiopental sodium as a general
30 anesthetic is primarily dependent on the knowledge,
31 training, and skill of the anesthetist, and in competent
32 hands there are definite advantages to its use in oral

1 surgical procedures performed in the office."

2 Q. So it seems there is a fairly recurrent theme
3 here about competency of those who are administering
4 this drug as it is mentioned in this article?

5 A. In order to use it safely for oral surgery.

6 Q. In order to use it safely for oral surgery.
7 By that comment, are you restricting your opinion as to
8 what effect importance of having qualified persons
9 administer it in a lethal injection?

10 A. I'm just talking about the context in which
11 these statements were made in this paper.

12 Q. Okay. So you have no reason to disbelieve
13 that. Or, I should say, you have no reason to believe
14 that the persons involved in administering the lethal
15 chemicals in lethal injections, primarily the first one,
16 sodium pentothal, that they should have -- they should
17 be qualified to be able to properly administer this drug
18 to the person to achieve its desired effect?

19 A. Yes.

20 MR. CLEMENTS: Your Honor, I would like
21 to approach the witness, please.

22 THE COURT: You may, Counsel.

23 MR. CLEMENTS: Your Honor, I would like
24 the record to reflect that I am giving the witness a
25 copy of five pages. It is an excerpt of three of the
26 depositions that have gone forth in this case from John
27 Doe witnesses.

28 And, again, there is no identifying information
29 that is being revealed here. But it is simply to talk
30 about the actual issue that we have been just
31 discussing.

32 THE COURT: Duly noted.

1 Q. (By Mr. Clements) The first -- just to get
2 some extra background for the record. The first is an
3 excerpt from the deposition testimony of John Doe Number
4 One. Just so you understand, there are no names given
5 here because we have been working with the State to
6 conceal the identity of the persons working on the
7 lethal injection process.

8 But this person, I think, by their other testimony
9 found in the earliest part of the deposition identified
10 themselves as the leader of the intravenous injection
11 team for the first four lethal injections in Louisiana.

12 And I am the person asking the question, just
13 provide that to you for your ease of reading along. I
14 would like to read this first section and just go
15 through it.

16 QUESTION: "Have you heard of sodium pentothal?"

17 ANSWER: "Yeah."

18 QUESTION: "What is sodium pentothal?"

19 ANSWER: "It's a barbiturate."

20 QUESTION: "Is it a long-acting or a short-acting
21 barbiturate?"

22 ANSWER: "I have no idea."

23 QUESTION: "Do you know that it is an
24 ultra-short-acting barbiturate?"

25 ANSWER: "No."

26 QUESTION: "Do you know how long it lasts for when
27 it's administered?"

28 ANSWER: "I read the literature that came with the
29 product when we got it in for the lethal injections.
30 That's been 12 years ago. I have no idea."

31 QUESTION: "Would you say that you read that
32 product information one time when it first came in 12

1 years ago, approximately?"

2 ANSWER: "No. I probably read it two or three
3 times."

4 QUESTION: "So to summarize, would you say that
5 it's correct that you have not had a lot of training
6 about the pharmacology of barbiturates or sodium
7 pentothal; is that right?"

8 ANSWER: "Read the literature and went over it with
9 the pharmacist and talked to our medical director about
10 it."

11 QUESTION: "Now, earlier on -- what do you recall
12 from those conversations?"

13 ANSWER: "Nothing."

14 MR. CLEMENTS: I would like to read from
15 all three excerpts, and then I will have a question for
16 the witness. The next excerpt --

17 MS. ESTOPINAL: Your Honor, if we could
18 perhaps allow the witness to read to himself, and we can
19 enter it into evidence and save Mr. Clements from having
20 to read it all.

21 MR. CLEMENTS: Okay. I have no objection
22 to that.

23 THE COURT: Are we directing the witness
24 to read something in particular?

25 MR. CLEMENTS: Yes, your Honor. I would
26 like to have the witness read the continuing three
27 pages, which are excerpts from the deposition testimony
28 of John Doe Number Two, the assistant to John Doe Number
29 One on the I.V. teams, and then the lead I.V. team
30 member in subsequent executions, and the final being the
31 assistant to John Doe Number Two in the last two
32 executions, which we call John Doe Number Four. And if

1 you would read there what is entitled pages three
2 through five on there.

3 A. (Witness complies.)

4 Q. Okay. Taking all three deposition
5 testimonies collectively, would you consider it a fair
6 statement to say that the persons that testified on
7 those pages have no real understanding of the
8 pharmacokinetics or the pharmacology of sodium
9 pentothal?

10 A. That's how it appears.

11 Q. And assuming that those people are the actual
12 hands-on individuals who carry out the executions in
13 this state, in other words, they are the ones
14 responsible for setting up the I.V. lines and
15 introducing this chemical into the inmate to be killed,
16 would you say that they do not show that they have the
17 qualifications with which to handle that particular
18 drug?

19 A. I don't know. They don't understand the
20 pharmacology. But I don't know if that means they are
21 unqualified.

22 Q. And going back, again, to the first page of
23 State's Exhibit 36 where you read to us that the record
24 on sodium thiopental was possible because the agent was
25 used mainly by those who are well trained in anesthesia,
26 who also possessed a sound understanding of the
27 pharmacodynamics of the agent, and were capable of
28 coping satisfactorily with the complications that
29 sometimes arise from its use, you still believe in that
30 particular statement, don't you?

31 A. That's when thiopental is used for a
32 different reason.

1 Q. The basic question, though, is that based on
2 your understanding of what you have seen from these
3 deposition transcripts here, these individuals would not
4 be capable of coping satisfactorily with complications
5 that might arise during the lethal injection execution?

6 A. Does not appear so.

7 Q. Does not appear so. Dr. Goeders, in
8 preparation for your testimony today, did you read any
9 of the research that has been conducted in California
10 recently concerning lethal injection?

11 A. I honestly don't recall. I did try to read
12 some of those types of cases. I don't believe I read
13 anything about California. But I do not remember for
14 certain.

15 Q. Okay. Dr. Goeders, do any of the five
16 articles that you -- that have been introduced by the
17 State here that you are relying upon, do any of them
18 discuss the risks of thiopental if the drug is
19 misdelivered or it is mixed to an incorrect dosage?

20 A. I don't recall seeing that.

21 Q. Okay. And just to clarify your earlier
22 testimony on direct examination, you said that at lower
23 dosages, say, for example, what the prosecutor gave as
24 approximately 300 milligram dosage or in that area for a
25 presurgical situation, the person would regain
26 consciousness to your understanding without any
27 additional action. They would regain consciousness.
28 They would wake up in approximately five minutes is what
29 I believe your testimony was; is that not right?

30 A. Approximately. I was just making a guess.

31 Q. Okay. Are there studies that show that sort
32 of detailed information?

1 A. Yes.

2 Q. But those aren't on one of the studies that
3 you have here today?

4 A. I believe they may be.

5 Q. Okay.

6 A. Can I call it to your attention?

7 Q. Yes, please. Which title of the article?

8 A. The "Thiopental: A Current Review of Its
9 Pharmacology."

10 Q. All right.

11 A. On page 350, under Section 1.2, "Onset and
12 Termination of Action."

13 Q. Right. And could you read the pertinent part
14 there that you are referring to?

15 A. "A single intravenous injection of thiopental
16 3.5 to 4.0 milligrams per kilogram produces a loss of
17 consciousness within 10 seconds and state of anesthesia
18 followed by sleep that lasts for approximately 3 to 5
19 minutes."

20 Q. Okay. And are you familiar with whether
21 sodium pentothal is used not only presurgically, but
22 throughout an operation, or are you familiar with that?
23 Do you have that knowledge?

24 A. I don't know if I have it in one of these
25 specific articles.

26 Q. Okay. But is it your understanding that how
27 it is used in a surgical setting it is only used in the
28 presurgical area or --

29 A. No. It can be used for longer surgeries.

30 Q. Are you familiar with how frequently that is
31 done as opposed to, say, the use of other anesthetic
32 agents?

1 A. No, I am not.

2 Q. Okay. So just to reiterate, the section you
3 had just read to us and commented on basically said that
4 within three to five minutes, a person would regain
5 consciousness if they had only received that much
6 smaller dosage, which they gave it as a 3.5 to 4, I
7 think, milligrams per kilogram. And let's say we had a
8 200-pound person. And do you know roughly what that
9 would equal as far as milligrams?

10 A. I was relying on a 70-kilogram individual,
11 which is normal size, and that would estimate to about
12 245 to 280 milligrams.

13 Q. Okay. So 245 to 280 milligrams would -- the
14 person would wake up maybe in three to five minutes,
15 based on the studies here?

16 A. Correct.

17 Q. Okay. And the reason for that, I believe
18 this article discusses a little bit more, is not only is
19 the thiopental quickly acting upon the brain, but at
20 that smaller concentration, it quickly leaves the brain
21 too; is that not correct?

22 A. Correct.

23 Q. Okay. So that it wears off because it cycles
24 through and cycles out, and then within a couple of
25 minutes there isn't enough thiopental in the brain to
26 keep it unconscious; is that accurate?

27 A. Within three to five minutes, according to
28 this.

29 Q. Within three to five minutes. Right. Right.
30 Are you familiar with the length of time a lethal
31 injection has taken in Louisiana?

32 A. Only generally.

1 Q. Okay. But your assumption about the
2 injection of the 2000-milligram dosage makes a very
3 specific assumption that the inmate is receiving all of
4 that 2000 milligrams into their system; is that not
5 correct?

6 A. Correct.

7 Q. But if that for whatever reason that person
8 was not receiving all of that chemical, then your
9 opinion about the person remaining unconscious until
10 after the other chemicals have taken effect wouldn't
11 stay the same, would it?

12 A. Not necessarily.

13 Q. And why -- where is -- explain what you mean
14 by that.

15 A. If the drug was leaking out of the bag that
16 it comes out of and not getting into the person at all,
17 then I could see them not receiving the full dose.
18 However, if it was being absorbed under the skin, it
19 could still be absorbed into the body and get into the
20 bloodstream. So even if it was not in a vein, for
21 whatever reason, it still would be absorbed through the
22 body and get into the bloodstream.

23 Q. But if it went through the skin and not
24 through into the vein, is it not true that the
25 absorption into the bloodstream and, therefore, to the
26 brain would be a much slower process?

27 A. It would be slow.

28 Q. So assuming that situation, the person would
29 not have such a rapid loss of consciousness?

30 A. Not within 10 seconds.

31 Q. Okay. Are you familiar with the layout of
32 the lethal injection setup as far as the person, the

1 inmate, is hooked up with the I.V.s in Louisiana?

2 A. No.

3 Q. No. Okay. You mentioned two possibilities
4 of something that might contribute to imperfect
5 delivery, that being a leaking bag and that the
6 injection was not placed into the vein directly, but
7 instead went somewhere else into the skin, into the
8 tissue surrounding the vein; is that correct?

9 A. Yes.

10 Q. Those are two examples of where incomplete
11 delivery might occur?

12 A. Yes.

13 Q. Okay. In addition to that, are you familiar
14 with how far the tubing is in the lethal injection setup
15 in Louisiana?

16 A. No.

17 Q. If I were to tell you that more than one tube
18 is hooked together, is it not possible that the juncture
19 of these tubes, because they are in a distance setup, if
20 you assume hypothetically that the -- which is the case
21 here -- that the lethal injection team, to maintain
22 anonymity, stays in a separate room from where the
23 inmate is on the table and that an I.V. line or
24 collection of I.V. lines hooked together carry the drug
25 from that concealed-identity room into the gurney room
26 where the person is waiting, that one of the areas of
27 potential leakage might be at the place where these
28 lines are hooked together? It is possible?

29 A. Could be possible, yes, sir.

30 Q. All right. We really haven't gone into great
31 detail about the two other chemicals in the lethal
32 injection protocol in Louisiana. Pancuronium bromide,

1 can you tell me if you know what its effect is on humans
2 and lab animals if it is injected?

3 A. It is a muscle relaxant.

4 Q. Okay. And if a person or an animal receives
5 an injection of pancuronium bromide after they have
6 received an injection, hypothetically speaking, an
7 injection of sodium pentothal, but for whatever reason
8 that intended dose doesn't fully make it into the
9 inmate's body but the pancuronium still makes it even
10 at, say, a portion of its intended dosage, would the
11 possibility exist that the animal or the person could
12 wake up and not be able to show that?

13 A. If a person didn't receive the adequate
14 amount of thiopental, yes.

15 Q. Okay. And, again, the way -- the reason why
16 the person or the animal could not show the signs of
17 waking up is because of the pancuronium bromide?

18 A. Yes.

19 Q. Okay. What typical methods would be used by
20 someone injecting sodium pentothal, if you know, to
21 determine whether someone has woken up again or not or
22 what level of consciousness they have?

23 A. One method I know of is to check for a pain
24 reflex.

25 Q. Okay. And a pain reflex meaning that you
26 squeeze something maybe on the animal or the person to
27 see if they go ouch or have a reaction?

28 A. To see if there is a reaction.

29 Q. Okay. But that the pancuronium bromide --
30 how would that affect your ability to monitor the
31 reaction of the person to the pain stimuli?

32 A. You couldn't.

1 Q. You could not. Are you familiar with what an
2 injection of potassium chloride feels like to the
3 subject that's receiving that injection?

4 A. No.

5 Q. If I were to tell you that it has a very
6 strong burning sensation in the veins, would you have
7 any reason to dispute that?

8 A. No, I wouldn't.

9 Q. And, again, that if a person in a lethal
10 injection situation received an inadequate or incomplete
11 delivery of sodium pentothal, that they might indeed
12 regain consciousness and experience that painful
13 injection if they didn't receive it but couldn't show it
14 because of the pancuronium bromide?

15 A. That's possible.

16 Q. Okay. But because of pancuronium bromide,
17 there is really little way to know whether the person
18 has woken up or not?

19 A. If a person received the adequate doses of
20 pancuronium, there would be no way to know.

21 Q. No way to know.

22 MR. CLEMENTS: Just a moment, your Honor.

23 Q. (By Mr. Clements) Dr. Goeders, can you tell
24 us what is an acronym AAALAC stands for?

25 A. It is the Animal Care and Use Committee.

26 Q. Okay. And --

27 MR. CLEMENTS: Your Honor, may I approach
28 the witness, please?

29 THE COURT: You may, Counsel.

30 MR. CLEMENTS: I would like the record to
31 reflect that I am providing the witness with a copy that
32 documents -- it is 27 pages long with a title

1 "Association for Assessment and Accreditation of
2 Laboratory Animal Care," AAALAC International,
3 "Instructions for Completing the Program Description for
4 the Institutional Animal Care and Use Program."

5 Q. (By Mr. Clements) Dr. Goeders, are you
6 familiar with this? First of all, and you are familiar
7 with the organization?

8 A. Yes.

9 Q. And are you familiar with the basic -- can
10 you describe to me what this collection of papers is
11 about?

12 A. It is a guideline to assist us when we design
13 our experiments to make sure they fall under the
14 guidelines.

15 Q. Okay. And I think we talked about this a
16 little bit earlier when we were qualifying you. These
17 are not recommendations that you can lightly disregard;
18 is that correct?

19 A. That's correct.

20 Q. It is a fairly -- the government has a fairly
21 major role in keeping an eye on how animals, especially
22 in the laboratory, are used?

23 A. Correct.

24 Q. And so, I mean, the whole point of that being
25 partly just to show that they are being maintained in a
26 humane manner; is that correct?

27 A. Correct.

28 Q. Okay. If you would turn to page 21 of this
29 collection of papers here. And tell us what you see on
30 Section Five there.

31 A. Euthanasia?

32 Q. Yes. If you would read out loud what

1 those -- just the first five, A and E.

2 A. "Described methods used for each species,
3 described training and experience of personnel carrying
4 out euthanasia procedures."

5 Q. Okay. And earlier than that, just in the
6 first title section, it refers to a report of the AVMA.
7 And do you know what the AVMA is?

8 A. No.

9 Q. If I were to say the American Veterinary
10 Medical Association, would you have any reason to
11 dispute that?

12 A. That would be my guess.

13 Q. Okay. And do you -- you use laboratory
14 animals in your research. Are you qualified to
15 euthanize animals?

16 A. Yes.

17 Q. You are. And how did you gain your
18 experience to do that?

19 A. I was trained by someone that already knew
20 how.

21 Q. Okay. And so you are familiar with the
22 various restrictions on how euthanasia can be carried
23 out then, I take it?

24 A. Yes.

25 MR. CLEMENTS: Your Honor, may I again
26 approach the witness?

27 THE COURT: You may.

28 MR. CLEMENTS: Your Honor, I'd like the
29 record to reflect that I am providing the witness with a
30 copy of a set of pages that are printed from a website
31 of the AAALAC yesterday talking about reference
32 resources. And I'd specifically ask the witness to

1 refer to the third page on that, which is No. 19.

2 Q. (By Mr. Clements) Okay. And could you read
3 out what the reference on No. 19 is, please.

4 A. "Report of the AVMA Panel on Euthanasia."

5 Q. Okay. And the date on that?

6 A. March 1st, 2001.

7 Q. Okay. All right.

8 MR. CLEMENTS: Your Honor, I would like
9 to again approach the witness. I am in a little bit of
10 a trick here because I didn't make actual copies. This
11 was already an exhibit. But I would like the record to
12 reflect that I'm going to be showing the witness a copy
13 of what has already been entered into evidence as
14 Exhibit 176 in this evidentiary hearing, the "2000
15 Report of the AVMA Panel on Euthanasia."

16 THE COURT: You may.

17 Q. (By Mr. Clements) And ask you: Have you
18 ever seen this before?

19 A. No.

20 Q. Okay.

21 THE COURT: Does the State have that?

22 MS. ESTOPINAL: Your Honor, I don't
23 believe we have a copy of this.

24 MR. CLEMENTS: I'm sorry. I don't have
25 it. I apologize.

26 THE COURT: Let me ask this question. I
27 need to take about a 10-minute recess at this point
28 anyway.

29 MR. CLEMENTS: Okay. Great.

30 THE COURT: I'm going to give you a
31 chance to review that and you may also be able to make
32 copies. If you need a few minutes more than 10, then

1 that's fine.

2 MR. CLEMENTS: Thank you.

3 (Recess taken.)

4 THE COURT: The witness has retaken the
5 stand. Mr. Clements, are you ready to proceed?

6 MR. CLEMENTS: Yes, your Honor.

7 THE COURT: You may do so.

8 Q. (By Mr. Clements) Again, you have a copy of
9 this?

10 A. No, sir.

11 MR. CLEMENTS: Your Honor, I'd like to
12 approach the witness and show him a copy of Exhibit 176.

13 THE COURT: You may.

14 MR. CLEMENTS: Thank you.

15 Q. (By Mr. Clements) Again, this is entitled
16 the "2000 Report of the AVMA Panel on Euthanasia." Just
17 a couple of questions. If you would turn to page 680,
18 about halfway through the document.

19 A. Okay.

20 Q. And at the bottom of the left-hand column,
21 there is a three-line sentence. If you could read that
22 out loud.

23 A. "A combination of pentobarbital with a
24 neuromuscular blocking agent is not an acceptable
25 euthanasia agent."

26 Q. Okay. Do you understand why that would be
27 the case, why the AVMA would have that position?

28 A. I don't know exactly why because I haven't
29 read the report. But my guess would be if an inadequate
30 dose of pentobarbital was used then a neuromuscular
31 blocker would not be appropriate.

32 Q. Okay. And that would be because the

1 neuromuscular blocker would mask potential pain if
2 insufficient anesthesia had been delivered to the
3 animal?

4 A. That's a possibility, yes.

5 Q. Okay. And this is a fairly clear-cut
6 prohibition about using muscular blocking --
7 neuromuscular blocking agents in the euthanasia
8 procedure for mammals; is that correct?

9 A. Yes.

10 Q. And would you agree that this would apply to
11 the euthanasia of all animals, including humans?

12 A. I don't know.

13 Q. Okay. Specifically to humans, do you have an
14 opinion about that?

15 A. Well, I don't know. Because this was the
16 Veterinary Medical Association, so I don't know if they
17 were considering humans in this report.

18 Q. Okay. But isn't it true that the risk to the
19 animals would be the same to the risk to humans, and
20 that's why you do research on the animals to see whether
21 they are applicable to humans? The same risks here,
22 again, of not being able to assess whether the patient
23 has received the adequate anesthesia?

24 A. That seems like a reasonable assumption.

25 Q. Thank you.

26 MR. CLEMENTS: No further questions.

27 MR. FISH: Can I have a moment, your
28 Honor?

29 THE COURT: You may.

30 MR. FISH: The State has no redirect,
31 your Honor.

32 THE COURT: The witness may step down.

1 Are there exhibits that need to be returned to counsel
2 from this witness, or does the witness just have his
3 materials? Give you a moment to confer on that. Is the
4 witness free to go?

5 MR. FISH: Yes, your Honor.

6 MS. KOLINCHAK: Yes, your Honor.

7 THE COURT: So ordered.

8 MS. KOLINCHAK: Your Honor, we have some
9 exhibits that we need to introduce, and I'm going to go
10 in numerical order for ease of reference. The first six
11 are related to the testimony back in 2004 of Dr. Woods
12 and Dr. Semone. That was when they used the large chart
13 that they wrote on, and we had agreed to take pictures
14 of that and introduce small copies into the record. And
15 so that's what I am doing at this time.

16 The first is Petitioner's Exhibit 208, and this is
17 the PTSD scales that were drawn by Dr. George Woods
18 during his testimony. The second is Petitioner's
19 Exhibit 209, which is the drawing of the brain,
20 left-side view, by Dr. George Woods during his
21 testimony. The third is Petitioner's Exhibit 210, that
22 is a two-page exhibit, and that is a written list of
23 Nathaniel Code's symptoms that Dr. Woods again testified
24 to.

25 The next one is Petitioner's Exhibit 211. This is
26 a one-page exhibit, and it is a history of the
27 psychological evaluations of Nathaniel Code as testified
28 to by Dr. George Woods. And the next is Petitioner's
29 Exhibit 212. And this is -- I guess the best way to
30 describe it is the treatment history that Dr. Woods
31 mapped out during his testimony. The next of these
32 exhibits and the final one is Petitioner's Exhibit 213.

1 This again is a drawing of the brain, left-side view,
2 that was done by Dr. Tony Semone during his testimony
3 and referred to during his testimony.

4 (Petitioner's Exhibit Nos. 208-213 offered.)

5 MS. ESTOPINAL: No objection, your Honor.

6 THE COURT: The exhibits are admitted.

7 (Petitioner's Exhibit Nos. 208-213 admitted.)

8 MS. KOLINCHAK: The next exhibits relate
9 to today's testimony. The first is Petitioner's Exhibit
10 No. 214. That is entitled the "Association for
11 Assessment and Accreditation of Laboratory Animal Care
12 Instructions for Completing the Program Description for
13 the Institutional Animal Care and Use Program." That
14 one is a 27-page exhibit.

15 (Petitioner's Exhibit No. 214 offered.)

16 MS. ESTOPINAL: No objection.

17 THE COURT: Admitted.

18 (Petitioner's Exhibit No. 214 admitted.)

19 MS. KOLINCHAK: Petitioner's Exhibit 215,
20 which at the top says printed from www.AAALAC.org, and
21 it is the AAALAC's reference resources. And, again,
22 that was used during the testimony of Dr. Goeders.

23 MS. ESTOPINAL: No objection.

24 MS. KOLINCHAK: Finally, Petitioner's
25 Exhibit 216, which is for ease of reference the excerpts
26 from the John Doe testimony that were referenced during
27 Dr. Goeders' testimony.

28 (Petitioner's Exhibit Nos. 215, 216 offered.)

29 MS. ESTOPINAL: No objection, your Honor.

30 THE COURT: Duly noted and admitted.

31 (Petitioner's Exhibit Nos. 215, 216 admitted.)

32 MR. CLEMENTS: Your Honor, just one other

1 point. I am not certain if this is necessary or not.
2 But we have had -- there were six confidential
3 depositions taken. And I am not -- I just want to --
4 out of an abundance of caution, I just want to make sure
5 that they are placed into the record, as has been agreed
6 previously, I believe, to be all under seal. Perhaps
7 the only exception being DOC Secretary Richard Stalder,
8 who decided to allow himself to be identified. But I
9 don't know for practical purposes if -- I have copies of
10 their depositions here if need be to be introduced into
11 the record. Or how that will work, but --

12 THE COURT: Well, I guess procedurally, I
13 am concerned that in order for me to see them, I have to
14 have copies.

15 MS. ESTOPINAL: Right.

16 THE COURT: And then we file the others
17 into the record under seal. I'd be happy to do it that
18 way. I think that may be the easiest way and the
19 clearest way. But I understand the necessity that we
20 have to do it precisely so that there are no problems
21 with the confidentiality required.

22 MS. ESTOPINAL: Your Honor, I have copies
23 of those depositions also. And, I mean, this has gone
24 on for so long, I'm not sure if they have been admitted
25 under seal or admitted at all. But if so, they would
26 have been under seal. I'll be happy to consult with the
27 clerk later and make sure if she doesn't have those,
28 then I will make sure that they are filed under seal.
29 I assume counsel will agree.

30 MR. CLEMENTS: Yes.

31 THE COURT: If they have not been so
32 introduced under seal, the Court is ordering that that

1 be done.

2 MS. ESTOPINAL: Yes, ma'am.

3 THE COURT: And once they are filed, they
4 are placed under seal. But with the understanding, of
5 course, if I get them and I don't have copies from you,
6 then I can open them to review them.

7 MR. CLEMENTS: Sure.

8 THE COURT: But then they will be
9 resealed to be put back into the record.

10 MR. CLEMENTS: Absolutely.

11 THE COURT: But if you have copies, you
12 can provide the Court with them. Whichever way we do it
13 is fine with the Court.

14 MS. ESTOPINAL: Your Honor, I will check
15 on that and make sure that everything that the Court
16 will need will be available in evidence for your review
17 and for review of courts down the road.

18 THE COURT: Duly noted. And, again, for
19 clarification of the record and for the Court's
20 understanding, who is the individual who may have
21 initially, I guess, confidential depositions were to be
22 taken but determined that such confidentiality or
23 anonymity was not required?

24 MR. CLEMENTS: That would be Department
25 of Corrections Secretary Richard Stalder.

26 THE COURT: And is that one of the six?

27 MS. ESTOPINAL: No, your Honor. He was
28 an additional, yes, ma'am.

29 MR. CLEMENTS: He would have been seven.

30 THE COURT: All right. Duly noted with
31 regard to that individual.

32 MS. ESTOPINAL: Your Honor, the State

1 would rest at this time. We have no additional
2 testimony anticipated, and we would ask that Mr. Code be
3 returned to Angola as soon as possible.

4 THE COURT: Before the State rests, let
5 me confer with counsel in the jury room for a few
6 moments because we need to look at some things requiring
7 scheduling.

8 MR. CLEMENTS: Right.

9 MS. ESTOPINAL: Yes, ma'am.

10 THE COURT: And as we previously
11 discussed these, and at some point we need to make some
12 matters of record for purposes of what we need to do in
13 coming up to the Court making its ruling. So we will be
14 at ease and in recess for a few moments and meet in the
15 room in the back.

16 (Recess taken.)

17 THE COURT: We have had an opportunity to
18 confer in the jury room, the Court and all counsel. We
19 previously discussed scheduling of post-hearing briefs
20 by the Petitioner and by the State and setting a date in
21 the future for an argument and hearing prior to the case
22 officially being submitted to the Court for ruling and,
23 certainly, given the gravity of these proceedings, the
24 issues, as well as the length of time that we have been
25 having hearings, I believe, since at least February of
26 2003, and just the different attending issues of
27 including counsel, et cetera. We believe that what we
28 have discussed would give us ample time to prepare what
29 we need to prepare in order for the Court to make its
30 ruling. And rather than the case being considered as
31 submitted at this point, we are going to try to work
32 pretty much with that schedule. And I'm going to defer

1 both to the Petitioner and then to the State regarding
2 what you believe you need to do and would ask the Court
3 to consider prior to us being finished with this matter
4 on today.

5 MS. KOLINCHAK: Thank you, Judge. Before
6 submitting and just to state for the record, first of
7 all, when this case originally -- or when the hearings
8 originally began, I was not on the case and came in, I
9 guess, about midway through the hearings would be fair
10 to say. And so I would certainly like the
11 opportunity -- I reviewed the transcripts that were
12 relevant to the hearings that were ongoing. But some of
13 the issues had been concluded, and I have not reviewed
14 those and would like the opportunity to do that as well
15 as the transcripts from what has been concluded today.

16 We have received transcripts of all the other prior
17 proceedings, but we have not received, obviously,
18 today's. It still needs to be done, and we would like
19 the opportunity to review those. Given the length of
20 time and the volume of them as well as the fact that
21 while we are pretty much up and running in our office in
22 New Orleans, we are still having some difficulties with
23 communication, et cetera.

24 Mr. Clements is still in Shreveport, and I am in
25 New Orleans. So given all of that, we think that three
26 months would be a reasonable time within which to
27 complete our briefing on the issues.

28 THE COURT: And we put that date about
29 May 22nd, 2006, thereabouts.

30 MS. KOLINCHAK: Yeah. May the 22nd.

31 THE COURT: The State may make any
32 statements you wish or indicate the date that may be

1 requested.

2 MS. ESTOPINAL: Thank you, your Honor.
3 Yes. As we discussed, the State would also like three
4 months to prepare its reply brief on the -- for the
5 post-hearing brief, and that would be August 22nd. And
6 also as was discussed, in the event that defense counsel
7 needs additional time due to a scheduled capital trial,
8 the State would get a commensurate continuance so that
9 we would have three months to complete our reply brief.

10 Other than that, your Honor, I don't think we have
11 anything additional to put on the record except for the
12 State's request that defendant be remanded back to
13 Angola this afternoon.

14 THE COURT: Duly noted. And I will say
15 for the record that I do intend to confer with the
16 Supreme Court as to what our proposed scheduling of
17 briefs and rulings would be and to get any feedback from
18 them in case they have some concerns about our time
19 frame. So I will do that and apprise counsel once I
20 hear something at a later date.

21 Also there is still some issues, I think,
22 procedurally, some evidentiary things counsel need to be
23 clear for preservation of the record as we move forward.
24 I think also you have indicated that you pretty much
25 have all the transcripts you need except for today's and
26 maybe any others that the court reporter has been
27 working with you on getting.

28 So all of that needs to be done in due course, and
29 we will endeavor to move these matters along as
30 efficiently and as quickly as practicable. And with
31 that, I think that takes care of all our concerns at
32 this juncture that the case is not actually submitted to

1 the Court at this time. But based on the schedule that
2 we have indicated, we will come back for an argument and
3 hearing date after briefs have been filed for oral
4 argument and then the Court's ruling thereafter. And
5 with that, any other requests by Petitioner at this
6 time?

7 MS. KOLINCHAK: No, your Honor.

8 THE COURT: Anything else by the State
9 other than remanding Mr. Code?

10 MS. ESTOPINAL: No, your Honor.

11 THE COURT: All right. At this time the
12 Court remands Mr. Code for the Department of
13 Corrections. So ordered. He is to be returned to
14 Angola forthwith. And, again, the Court appreciates all
15 counsel's diligence in these matters. Thank you very
16 much.

17 MR. FISH: Thank you, your Honor.

18 MS. ESTOPINAL: Thank you, your Honor.

19 (END OF PROCEEDINGS.)
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Excerpt of deposition from John Doe #1:

Page 8:

4 Q. I have a list of all of the seven lethal
5 injections that have been conducted in Louisiana, and
6 I'd like to ask you which ones you participated in.
7 In 1993 Robert Sawyer?

8 A. Yes.

9 Q. 1995 Thomas Ward?

10 A. Yes.

11 Q. 1996 Antonio James?

12 A. Yes.

13 Q. 1997 John Brown?

14 A. Yes.

15 Q. Any more after that?

16 A. No.

Pages 17-21:

2 Q. Now I'd like to ask you some questions
3 about another drug. Have you ever heard of
4 pancuronium bromide, which is also called Pavulon?

5 A. Yes.

6 Q. Could you describe how that drug works.

7 A. It's a paraplegic -- I forgot the name.

8 It's used for paralyzing people.

9 Q. Is there -- could you give a definition
10 based on its effect on muscles. Can you describe
11 what that would be.

12 A. It stops them totally. All smooth
13 muscles. Everything but the heart.

14 Q. Everything but the heart.

15 A. The brain functions normally; the heart
16 functions normally.

17 Q. Is it accurate to say -- to describe it
18 this way; that it also paralyzes all the voluntary
19 muscles in the body?

20 A. Yes.

21 Q. To your knowledge, does pancuronium cause
22 sedation or unconsciousness?

23 A. Yes.

24 Q. What would you expect an animal or a person
25 to look like if they had been given a large dose of

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1 pancuronium?

2 A. They'll immediately become unconscious and
3 they'll stop breathing.

4 Q. Would all the voluntary muscles in their
5 body be relaxed?

6 A. Yes.

7 Q. Might they have a peaceful or serene look
8 on their face?

9 A. Oh, yeah.

10 Q. Would you have any way of knowing, just
11 from looking at them, if they were awake or asleep?

12 A. Probably not. Other than you'd have to --
13 I mean, if you were trained, you'd observe they
14 weren't breathing.

15 Q. If they were in severe pain or suffocating,
16 would there be any way for them to cry out or move or
17 tell you they were suffering?

18 A. I was told -- in my initial training, I
19 did -- and used it in ICU when we did clinicals. We
20 did internships and clinicals at hospitals and used
21 it in ICU, and I was told then in my training that

22 the people could still hear you.

23 It was used in hospitals for people on

24 ventilators.

25 Q. I understand. But when you just said --

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1 let me try to clarify if I understand what you said,
2 is that from what you said from your ICU training and
3 so forth, that you heard -- you recall that you were
4 instructed that people who received a dosage of
5 pancuronium bromide could still hear. Is that what
6 you said?

7 A. That's what the reports were, yes.

8 Q. I understand.

9 A. Patient never told me that.

10 Q. I understand that. My question, though, to
11 repeat originally was, if the patient were in severe
12 pain or suffocating, would there be any way for them
13 to cry out --

14 A. No.

15 Q. -- or move or tell you they were suffering?

16 A. No.

17 Q. After the inmate is injected with
18 pancuronium, is there any way for you to know if they
19 are awake or asleep?

20 A. No, because he's already got the sodium
21 pentothal. That's not the first drug he gets.

22 That's the second one.

23 Q. But on the basis of the pancuronium, for
24 certain at that point, is there any way of telling
25 whether the patient is still awake or -- excuse me --

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1 remains asleep or has regained consciousness in any
2 way?

3 A. No, other than observing him and watching
4 the monitor.

5 Q. Observing -- what would you be observing to
6 note whether they regained consciousness if they had
7 already received the pancuronium?

8 A. Him and the monitors.

9 Q. If you could explain --

10 A. Mostly him.

11 Q. What do you mean by him? Explain what you
12 mean.

13 A. His head is right here and you're standing
14 within less than three feet from him. And you'd
15 watch him for movement, eye movement, head movement,
16 anything. Any body movement at all.

17 Q. Was your prior testimony that if they
18 received the large dose of pancuronium, all their
19 voluntary muscles would be relaxed and that they
20 would not be able to make those movements?

21 A. I didn't say I ever saw any movements. You

22 said if I was observing, that's what I would look

23 for.

24 Q. That's what you would look for, would be

25 movement?

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- 1 A. Right, movement.