COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION 1

RALPH BAZE,	:	
	:	
PLAINTIFF	:	
	:	
v.	:	CIVIL ACTION No. 04-CI-01094
	:	
JOHN REES,	:	
	:	
DEFENDANT.	:	

[Street Address]
[City, State]

April 19, 2005

The HEARING in this matter began/continued at [time a.m./p.m.] pursuant to notice.

BEFORE:
ROGER CRITTENDEN
FRANKLIN COUNTY CIRCUIT JUDGE

APPEARANCES:

On behalf of Plaintiff:

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BRIAN JUDY, ESQUIRE

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C O N T E N T S

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P R O C E E D I N G S

(##:## a.m./p.m.)

THE JUDGE: Yes.

SPEAKER: First, referring to Defendant Exhibit 1, which came in through Dr. Corey yesterday.

THE JUDGE: Okay.

SPEAKER: It was the matter where I objected that she was not qualified to testify as an expert on it, and my objection was both to the testimony and to the document itself.

THE JUDGE: Okay.

SPEAKER: If I recall correctly, you held that for a moment, and then asked -- let her answer a few questions and then sustained the objection. It’s my understanding at that point that that objection was referred to both her testimony on it and the document. There may be some misunderstanding on that to the extent it is, I would like to move right now to strike the document from the record.

THE JUDGE: Okay. Yes. Who is going to respond?

SPEAKER: The Judge would feel that she’s

qualified to do that. It's another from the American Academy of Forensic Science, that's what her specialty is. She was interpreting that. They have the opportunity to cross-examine her on that and if they want to provide that to any of their other witnesses to do discuss, they can certainly do that. Just as I'm sure Dr. Gersher (phonetic) would-- might comment on the article.

SPEAKER: She stated that she was not an expert in thiopental postmortem redistribution.

SPEAKER: She is an expert on forensic science, and that's what she was interpreting. The results of an autopsy and that's what that is, the results of an autopsy.

SPEAKER: Which deals completely with postmortem redistribution of the blood.

SPEAKER: It talks about postmortem redistribution, but we haven't had -- I understand the expert testimony, yes, but I don't understand about postmortem redistribution other than (inaudible) point previewed in this case. I understand the basis that, I think that -- I will have the Plaintiffs be introduced the (inaudible). I'm going to allow the Commonwealth to

introduce them if you want, all right.

SPEAKER: Okay, Your Honor.

SPEAKER: And there is this one second thing to clarify. I believe that I heard you state at the end of the day yesterday that Oklahoma carried out the first lethal injection, and I just wanted to clarify that it was just (inaudible) testimony with that Oklahoma had the first lethal injection protocol.

SPEAKER: Right.

SPEAKER: And that it was Texas in 1982 that carried out the first lethal injection.

SPEAKER: If I said they carried out the first, then I misspoke that. I understand Dr. (inaudible) or Professor (inaudible) testimony was that -- her testimony was that Oklahoma developed the first protocol.

SPEAKER: That’s all we have right now.

SPEAKER: All right.

SPEAKER: Thank you.

SPEAKER: Thank you.

(Discussion of the record.)

THE JUDGE: Mr. Shouse.

MR. SHOUSE: Yes, Judge, we are calling Warden

Glenn Haeberlin.

THE JUDGE: Okay. Warden Haeberlin, would you raise your hand, please.

Whereupon,

GLENN HAEBERLIN

was called as a witness and, having been first duly sworn, was examined and testified as follows:

THE JUDGE: Will you sit over here, please?

THE WITNESS: Sure.

DIRECT EXAMINATION

BY MS. BALLIET:

Q Good morning.

A Good morning.

Q Could you please state your name and spell your last name, and your first name also?

A Glenn, G-l-e-n-n, Haeberlin, H-a-e-b-e-r-l-i-n.

Q Okay. How are you currently employed?

A I'm the warden at the Kentucky State Penitentiary.

Q When did you become warden?

A September of 2002.

Q And what are your responsibilities as warden?

A Management of a maximum-security male facility, which houses approximately 900 inmates.

Q Have you ever been in charge of a lethal injection?

A In charge? No.

Q Who would be in charge of a lethal injection if you were out sick the day of an execution?

A One of my deputy wardens.

Q How many executions have been conducted while you have been warden?

A None.

Q And what are your duties in the event that there is a lethal injection execution?

A My duties would be to oversee the process and ultimately carry out the execution.

Q How many members are there on the execution team?

A Excluding myself and the deputies, thirteen.

Q And how many deputies are there?

A Three.

Q Does each of the members of the team have a specific duty?

A There are two people that are specifically responsible for starting IVs. There is a team commander and co-commander and the additional security personnel that are on there are basically there for security purposes. They perform, actually, multiple roles.

Q Do you directly supervise the execution team?

A Yes.

Q Is that from start to finish?

A Yes.

Q Do you directly supervise the IV team?

A Ultimately, yes.

Q Are you present and overseeing everything that they do throughout the execution?

A Am I specifically with them the entire time that they are in our facility? No, ma'am, I'm not.

Q Can you tell us what point you stop overseeing them directly?

A When it is concluded.

Q Well, do you remember when you took your deposition on October 19? I'm referring to page 10 of the deposition. I believe you said at your deposition that there was a point at which you stopped supervising the IV

team, and that then -- actually, that's on page 7, it says, "Up to a point and then the execution team is the one that is directly responsible for what occurred in a short time actually before the execution."

A That -- what I was actually referring to was that they are in direct supervision of the inmate. Obviously, I'm not there during the entire time that they are within the institution, okay.

Q Are you present with them in the control room?

A Not during the execution, no.

Q And so then wouldn't that mean that you are not directly supervising that part of it?

A Ma'am, I'm staying in the execution chamber with the inmate. I can't be in every room during an execution.

MS. BALLIET: Your Honor, I would like to ask permission to treat this witness as an adverse witness.

THE JUDGE: Go ahead.

MS. BALLIET: Is that -- I'm sorry, did you say, yes?

THE JUDGE: Yes, feel free.

MS. BALLIET: Thank you.

BY MS. BALLIET:

Q So at a certain point, isn’t it true that the team leader -- the IV team is really on it’s own inside the execution chamber?

A As well as the -- as well as the commander of the execution team itself. He is in there as well.

Q Is the commander the executioner?

A Could be.

Q Is the team -- is the IV team -- is their identity a secret?

A Yes.

Q How many members of the execution team are maintained with secret identities?

A All of them.

Q So that’s thirteen?

A Yes.

Q What is the task of the IV team?

A Their basic task is to, once the inmate has been strapped to the gurney, is to insert two catheters in the inmate to be executed.

Q Do they also strap the inmate to the gurney?

A They do not.

Q And what do the other execution team members do?

A They have a variety of functions, which generally relate to the security of the execution chamber itself, basically, stationed outside and to control entry and exit of people coming in and out of the building.

Q How are the team members selected?

A They basically through -- certain, in some cases written, and in some cases, words of mouth wish to volunteer for the team.

Q And who gives the final approval of each team member?

A It’s basically a joint decision between myself and the execution team leader.

Q How many of the current team members have prior lethal injection experience?

A One on the IV team, and probably somewhere on the neighborhood of ten on the regular team.

Q And could you describe that experience?

A Basically, in the execution of Eddie Harper, most of those folks were involved, including one of the IV team members. Obviously, we practiced once a month each -- or during a calendar year on varying dates, and they are involved in that capacity.

Q Well, how many of the team members have actual experience in an actual execution?

A Probably, ten.

Q What training have you received on how to conduct a lethal injection execution?

A Other than the training that we routinely perform once a month, none.

Q Have any of your deputy wardens received formal training in how to conduct a lethal injection execution?

A Specifically, no. They have been involved in witnessing the executions in other states, but none of lethal injection.

Q How many of your deputies have witnessed -- lethal injection executions in other states?

A None. I probably just said that.

Q Okay. What written training manuals do you have on lethal injection?

A In the protocol that we have, there are no training manuals.

Q When you were working at the prison when -- were you working at the prison when lethal injection became law -- an option?

A I'm sorry, would you repeat that?
Q Were you working at the prison when lethal injection passed the Kentucky legislature?
A I was.
Q And was that in 1998?
A I think it became effective March 31, 1998.
Q And you were deputy warden for programs at that time?
A I was.
Q And where you -- you did participate in instituting lethal injection?
A I did.
Q What other states did you look at?
A I know there was some visits that occurred to State of Indiana. I think there were some visits that occurred to State of Virginia, beyond that, I honestly don't recall. I never was a part of the forward team that went and observed those.
Q Were any medical people consulted?
A I -- specifically, I do not recall. May have been, I mean, as far as I was not necessarily involved in all of the meetings that Warden Parker was at the time as

far as with justice officials or corrections officials or -- I mean, I can't honestly answer to say whether or not specific medical people were contacted or not.

Q Did you go in person to visit other states to look at lethal injection procedures?

A I did not.

MS. BALLIET: And with permission, I would like to mark the main card, the 2002 Lethal Injection Protocol as Plaintiff's 8.

SPEAKER: Okay.

THE JUDGE: Fine.

(Plaintiff's Exhibit No. 8 was marked for identification.)

BY MS. BALLIET:

Q Just for clarification, it's my understanding that what -- the materials that we've received from Defendant, the Lethal Injection Protocol consists of basically three documents that we have been given. One, is the 1999-1998 protocol which has been marked as Plaintiff's 2, and are you familiar with the old 1999-1998 Protocol that was used with Eddie Harper?

A Yes.

Q And another part of it has been marked as Plaintiff's 1, and that is the revisions -- the most recent revisions of 2004. Plaintiff's 8 is kind of the guts of the protocol, and in order to understand -- would you agree that in order to understand the current protocol you would have to look at both Plaintiff's 8, which I have just handed you and the 2004 revision, which are Plaintiff's 1?

A I would probably agree that is.

Q Okay. And that getting on the same page, I would move into evidence Plaintiff's Exhibit 8, which is the 2002 --

SPEAKER: No, objection, as long as it is under seal, Judge.

THE JUDGE: Sure.

(Plaintiff's Exhibit No. 8 was received into evidence.)

BY MS. BALLIET:

Q Were any studies conducted as a basis for any of the 2002 changes -- oh, I'm sorry, the 2004 changes?

A Define studies.

Q Well, did you consult any medical personnel on

the changes?

A We did not.

Q Did you consult anyone outside the prison's personnel on the changes?

A We talked with several different states, Indiana being one, Tennessee being another, and to my knowledge, there was some contact with the Federal Bureau of Prisons regarding certain protocols what -- specifically I think, what drugs were those states using.

Q Does the Department of Corrections provide any training to the IV team on how to insert an IV?

A Other than the practices that we do on a monthly basis, no. However, the two people involved are -- that's what they do as a regular part of either duties that they have and order specific job assignments on a daily basis in corrections.

Q Well, let's take them one at a time. IV team member number 1, what would that person's background be?

A They are a -- basically, a practicing phlebotomist.

Q And IV team member 2?

A Is an emergency medical technician.

Q How long has the phlebotomist been a phlebotomist?

A Approximately, eight years.

Q And how long ago did the EMT work as an EMT?

A I think they have been certified for the last twenty years.

Q When did you get that information?

A In the last two years, one of them has been on the team about eighteen months and the other one has been on the team since 1997.

Q If you would look at page 60 of your deposition? At the time of your deposition, I believe, you did not know how long the EMT person had been an EMT, is that correct? It looks like it’s the last question.

A That’s what it says.

Q Okay. What investigation do you -- have you done to see if the IV team volunteers have the experience and training that they claim to have?

A I don’t think that I understand your question.

Q Well, I understand that people come and they want to volunteer to be part of an execution. They want to be part of killing someone legally. These are

volunteers, do you do any investigation into their backgrounds to see if they have the training and experience that they claim that they have?

A If it was someone specifically involved in the IV team, obviously, I would tend to look and see what their qualifications would be, and what their training or certifications are.

Q Would you have someone make phone calls, and get copies of their resumes and call the schools that they went to?

A If necessary.

Q Have you ever done that?

A Have not.

Q How long is the waiting list of --

A Yeah, let me -- let me -- let me rephrase that. The one -- the most recent, it was basically verified that they were qualified for the position that they occupied in this field that they had.

Q And would that be the phlebotomist or the EMT?

A Correct.

Q The phlebotomist?

A Yes.

Q That -- as for the EMT, no check has been made?
A No.
Q How long is the waiting list of volunteers wanting to become part of the execution?
SPEAKER: Objection --
THE WITNESS: Well, it’s just a --
BY MS. BALLIET:
Q I understand you are in the room with the condemned person when he dies from the lethal injection.
A That’s correct.
Q And I understand that your deputy warden of security of prison will be the only other person in the room with you?
A Besides me, yes.
Q And were you present at Harper’s execution?
A I was present, yes, and witnessed.
Q Where were you standing in relation to Harper?
A The Harper execution was conducted actually in the old execution chamber in the basement of 3 Cellhouse. I was positioned at the doorway outside in the hallway from where the, basically, directly adjacent to the execution chamber.

Q About how many feet were you from Harper?

A From here to that podium.

Q About --

A Ten feet, maybe.

Q Ten feet? And what did you see?

A At what point in time?

Q Did Harper change color?

A What I saw was, I had a regular earpiece and was aware of when the lethal injection began. What I observed was, it made Harper went to sleep probably within the first ten seconds after the plan to proceed was given. Within fifteen seconds, he was asleep and when I -- what I assumed to be, he was asleep. That’s what -- that was the way it appeared to me.

I saw him briefly lick his lips; I saw his big toe move. After that there was actually no movement whatsoever. It appeared to me that his breathing ceased. He changed color to the degree of, he had a slight purple (inaudible) to him and what appeared to me to be just a slight grayish appearance to the skin, and remained in that fashion until he was pronounced dead.

Q From where you were standing outside the room,

would you have been able to see if the IV was staying in?

A On one side, yes, perhaps on the other side, no. He was turned at a slight angle from the position where I was.

Q At your deposition, you said that the executioner -- in a little separate room, the executioner and the IV team could see pretty much everything, did you recall saying that?

A Yes.

Q What did you mean by pretty much? What is it the executioner and the IV team might not be able to see?

A Well, they were in a far better position to see than I was, and actually were a little bit -- in a little bit closer proximity. I mean, as far as being able to see the IVs and the see the lines and all that, they were certainly capable of doing that.

Q Would you agree the protocol doesn’t entrust the IV team on what they should be watching for during the execution?

A Well, if we wrote into this plan what everybody’s role and specific, “I’m going look at A, B, C, D, E, F,” we wouldn’t be able to (inaudible) it in this

room. I think that it's -- given the gravity of the situation that is occurring, those people know what to do. They know what to look for.

Q Are the drug injected into separate lines or all into one line?

A There -- our protocol, basically, says we start two lines. They will use one line, if there is a possibility that that line becomes unusable, then they will switch to the second line.

Q Does the IV line or the line run from the executioner to the inmate?

A Yes.

Q It doesn't -- do these lines have to go through a wall?

A They go through -- in the new facility, they go through an opening in the wall that's approximately 2 inches in diameter.

Q If the line started leaking, what would you do?

A I would, by radio, contact the execution team and the executioner, and advice them that they needed to switch to the second line.

Q What monitoring is done to ensure that the drug

for getting to the inmate in the proper amount?

A I don't know that I understand your question.

Q Well, with Eddie Harper, you would agree that you were trying to deliver 2 g of sodium thiopental?

A Correct.

Q What monitoring is done to ensure that 2 g of sodium thiopental actually got to Eddie Harper?

A Well, they are obviously looking at the syringe that are hanging, and when it's empty, and there are no observed leaks, or any other indication whether it be a swelling in the arm, or wherever the placement of the IV is, was a reasonable assurance that it got to where it went, to include the fact that he is gone to sleep.

Q And if -- what's the purpose of an EKG?

A Basically, to monitor his cardio electrical activity.

Q Are you aware of conscious paralysis?

A I have heard the term, yes.

Q When did you first hear the term?

A I have seen it on TV. Obviously, it was at the deposition at the penitentiary.

Q Was the deposition in October of 2004 the first

time you have heard of it?

A No.

Q When was the first time?

A It was probably -- actually, in the newspaper.

Q Are you aware that you said, no, that you were not aware of conscious paralysis, if you looked on page 44 of your deposition, you answered, no, that you -- this should to refresh your memory.

A I don’t know.

MR. CHEF: What’s the relevance of this? I object.

MS. BALLIET: Well, the relevance is that we believe that the --

THE JUDGE: Well, you can speak to me, since he objected to me; what is the relevance?

MS. BALLIET: The relevance is that we believe the inmate was conscious and aware of everything that was happening during the execution, and it’s important to know whether the prison includes anything in their protocol, whether they did, and whether that is still in use even now --

THE JUDGE: You can ask if there was anything in

the protocol that says they monitored those personally, and to what they have that they monitored.

MS. BALLIET: And Your Honor, also Warden Haeberlin has said that there are a lot of things they do that are not written in the protocol, so I --

A Well, I mean, you can ask if there is any monitoring that -- that's done.

MS. BALLIET: All right.

BY MS. BALLIET:

Q What steps were taken to prevent or discover whether Eddie Harper was consciously aware during his execution?

A I can't ensure that because I wasn't the person in charge, but I'm not aware of -- I honestly don't know what you would look for.

Q Did you see him shed any tears?

A I did not observe any tears.

Q Could he have -- from where you were standing, could he have shed a tear, and you wouldn't have seen it?

A Yes.

Q How is the injection rate monitored by the executioner?

A I don’t understand what you mean “monitored.” I mean, the executioner was actually the one -- I mean, he is the one that was actually pushing the lethal chemicals.

Q Right, and how did he --

A Well, I mean, it’s monitored to the degree that I’m standing in the execution chamber and I know when there’s usually an announcement that’s made that step 1 is complete, step 2 is complete, I mean, I have some understanding of how long it takes to push the chemicals.

Q Would you agree with what you said in the deposition that he does it by feel?

A That’s correct.

Q Does the executioner have to unscrew one syringe and screw in another before he can push the next drug?

A He does.

Q Do you recall how long it took to lethally inject Eddie Harper?

A 12 minutes-15 minutes, somewhere in that neighborhood.

Q At your deposition, on page 46, you said it took 15 minutes, would you agree with -- are you disagreeing with that now?

A I think maybe -- maybe what it was.

Q All right. Was that longer than the practice runs?

A Probably, a little bit longer in that the practice runs there is no resistance on the actual catheter itself.

Q If you can -- in an upcoming execution, if you can’t find a vein in the crook of the arm, where would you -- where would the IV team go next?

A Hand.

Q And where after that?

A Somewhere in the foot, or lower leg area.

Q Would they go to the ankle?

A Possibly, and -- and upon what they determine it would be the best possible site to do that.

Q And would they ever go to the neck?

A As a last resort, yes.

Q I believe you said they would go to the carotid arteries in your deposition?

A Carotid artery.

Q Do the drugs -- the drugs have to travel about five feet to the condemned prisoner?

A That's accurate.

Q And would you say there is a about a foot of IV lying inside the special room, and the remaining four feet outside the room?

A A foot, foot-and-a-half, maybe.

Q Inside the room?

A Inside the executioner's area, yes.

Q On both of the line? There are two lines?

A Yes.

Q Okay. How much of the IV lines can the IV team see and the executioner from inside the room? How much of those lines can they see that are extending outside the room?

A All of them.

Q Has the executioner had any medical training?

A To my knowledge, no.

Q Is the executioner always the same person?

A It is not.

Q And how is that executioner chosen?

A It is basically a decision between the commander of the execution team and the team members. It could be more than one.

Q And who makes the final call?

A Myself and the team leader.

Q I would like to talk about the 2004 changes, and it's already been marked as, I believe, Exhibit 1, so I will hand you a copy of it in case you need to refer to it.

MS. BALLIET: Do you need a copy?

BY MS. BALLIET:

Q All right, I believe these were revised in December of 2004 after the beginning of this litigation, would you agree to that?

A Yes.

Q How many times does this provision -- the new provision allow the IV team to stick the inmate with needles?

A I think the protocols specifically says that they would attempt to sight IVs for up to an hour.

Q And I believe Commissioner Rees said that he recommended that, would you agree that that came from Commissioner Rees?

A It was a -- basically a decision that was reached between he and myself, yes.

Q And who had been on the discussion leading up to that decision?

A Think Mr. Middendorf, and the deputy commissioner, and me.

Q Were any outside medical authorities consulted on that?

A To my knowledge, no.

Q If your team cannot get an IV inserted after one hour, what will you do?

A I will exit the execution chamber and contact our general counsel and advise that we were unsuccessful in starting an IV. I basically ask that a new date be set, and ultimately, that’s what would happen.

Q If the governor calls the execution off, what will you do to ensure that you won’t have the same problems at the rescheduled executions?

A Train some more, I guess.

Q What kind of training would you get?

A Practices consistent with what we do now.

Q If the governor says, “Go ahead with the execution, I don’t care that it’s been an hour,” what will you do?

SPEAKER: Objection, Judge, this is all speculation.

THE JUDGE: I'll sustain it.

BY MS. BALLIET:

Q On the 2004 changes, I see the thiopental has been changed from 2 to 3 g. Who recommended that change?

A That was a decision made between myself and Commissioner Rees.

Q And who was in on the discussions?

A Mr. Middendorf, and George, me and deputy commissioner.

Q Were any outside medical -- or medical authorities consulted on that?

A To my knowledge, they were not, and I guess one of the reasons why it changed was, was if 2 is good, 3 is better, and it did not actually increase the number of steps that the team would have to go through, or we would have to go through in order to complete the execution.

Q Looking at page 4, paragraph 16, well, no, wait -- let me just ask, I don't know if have that reference correct, but what new role has been given to you as warden regarding monitoring the inmate's consciousness?

A I don't remember that, but I understand your question. Are you looking at something in the protocol?

Q I believe so, but I'm -- after 60 seconds, is there a new rule that if he is not unconscious that you would --

A Yes.

Q And what is the new provision?

A Basically, the new provision is that you are -- I have to determine that that if he is not unconscious that a second round of sodium thiopental will be delivered.

Q Is that what happened at the Eddie Harper execution?

A No.

Q Because -- were there two infusions of sodium thiopental at that execution?

A There were two syringes totaling 2 g that Mr. Harper was given.

Q At the end of the 2004 changes, Plaintiff's 1, there is a document called Stabilization Procedure. I think it was the very last page. When would this procedure be put into effect?

A In the event -- let me look at this briefly, in event that there is a stay given during the time when the execution drugs have begun to be pushed.

Q Who are the medical staff onsite who will attempt to implement this procedure?

A There will be a medical doctor that is there.

Q Has that doctor been identified?

A I think that in the case of the Bowling execution it was going to be Dr. Hoss (phonetic).

Q What training do the medical staff have in using a defibrillator?

A The defibrillator that we have is -- it’s called an AED. It is an automated defibrillator.

Q What other equipments -- well, what training did the staff having in operating that?

A Well, as a routine, we train even our correctional officers in how to use the AED. It’s a totally automated system where the implants are put on the chest, the machine is turned on. It goes through basically a determined -- in fact, the machine itself determines whether or not the patient has a sufficient rhythm in order for the machine to operate.

Q When you say “we,” are you including any medical personnel?

A They are trained as well.

Q Who -- then who -- the people who are doing the training of your staff in how to use the defibrillators, do the trainers have medical knowledge?

A I will be honest with you. Specifically, who from the department does the training, I’m not sure.

Q What other equipment besides the defibrillator would be on the crash cart?

A Well, the crash cart, basically, is a self contained -- it’s a case that basically has all of the necessary medical equipment to include drugs that would normally be given in a situation where that was warranted.

Q Have those drugs been identified and purchased?

A We brought a kit that is -- everything is self-contained therein to include the medications.

Q And what training do the staff have in using this equipment? The staff that would actually have to use it.

A You’ll have to ask Dr. Hoss that.

Q When are the drugs purchased for an execution?

A Within -- basically, within the 30-day window of

an execution.

Q If you are given less than 30 days, how would you handle purchasing the drugs?

A Same as we would otherwise. In Mr. Bowling's case, there was a shortened window based on when the governor signed the execution warrant and procured the drugs (inaudible).

Q Is there a doctor present at the prison during an execution?

A Yes.

Q What is the doctor's role?

A In this case, the doctor's role is obviously to pronounce the death after the execution has occurred and or -- in the meantime if there is a stoppage he would be involved in instituting the -- his (inaudible). You know, the other part of it is if there is a ambulance, that is from my understanding, is standing by with sufficient equipment and training those folks that would also respond in the event that the inmate would need to be revived.

Q At the time of your deposition in October before the latest changes, you answered that the doctor had no other role than to pronounce death. Would you agree that

this expanded role has come as part of the 2004 revision?

A It is, it has become as part of the 2004 revision, yes.

Q Do you -- are there any nurses involved?

A No, other than the possibility of -- if in -- a possible injection of, excuse me for a moment. Injection of a sedative beforehand, before the actual execution begins -- about an hour and a half out.

Q With permission, I would like to mark either copies of the actual chemicals that are used as Plaintiff's 9.

THE JUDGE: All right.

SPEAKER: No objection.

(Plaintiff's Exhibit No. 9 was marked for identification.)

SPEAKER: Could I have a move to admit it, Your Honor.

MS. BALLIET: I am moving it to admit this.

SPEAKER: All right.

SPEAKER: Sure.

MS. BALLIET: Yes, thank you.

SPEAKER: Okay.

BY MS. BALLIET:

Q All right. Are you familiar with these chemicals that are depicted here?

A I am. Wait a minute, let me look at the evidence.

Q Take your time.

A I --

Q Are these the chemicals that are used in lethal injection in Kentucky?

A They are.

Q Who mixes these drugs?

A It will be a member of the execution team.

Q Is it anyone with medical training?

A It's an -- it possibly could be if it's somebody that's on the IV team.

Q Do you recall that in your deposition you said, "No," that it was not anyone with medical training?

A I may have said that.

Q If you look on page 56 of your deposition --

SPEAKER: He agrees he may have said it.

THE WITNESS: That's right.

BY MS. BALLIET:

Q Is the mixing of the drugs rehearsed?

A It's not.

Q Is it supervised by anyone apart from the IV team?

A There is usually a witness there.

Q Supervision meaning someone looking at what they are doing, yes.

A Yes.

Q Is there someone there?

A Yes, there would be.

Q Have there been in the past?

A To my knowledge, the deputy commissioner for those executions witnessed that process.

Q And if he denied witnessing it, would you disagree with him?

A I would.

Q Did you see him do this?

A No, I did not.

Q All right. And apparently, you are saying that this is now changing, so who will witness the mixing of the chemicals?

A It's going to be somebody from the facility, and

in all likelihood, it is probably going to be me at this point in time.

Q Can you show us where this is written into the protocol, that you will be witnessing the mixing?

A It's not necessarily in the protocol, but as the warden, I have the ability to do what I feel is necessary to carry this out in a humane and professional fashion.

Q How far in advance are the drugs mixed?

A Approximately 12 hours.

Q And when are they placed in the syringes?

A At that time, they will be placed in the syringes. There is no actual mixing of the drugs. What maybe a misnomer about mixing is the sodium thiopental basically it comes in a powdered form. There is a 20mm bottle of sterile water that is also in the same box that the drug is in. The 20mm of sterile water is actually put into a syringe then it is injected into this bottle right here because it's in powdered form.

The basic -- the powder is then reconstituted into a liquid form. What you are looking for is that you have a clear liquid with no visible particulate. And then, that is drawn into a 60cc syringe in preparation for the

execution. The other two drugs involved are basically in liquid form, and are drawn directly out of the vial that they are in and to the appropriate dosage.

Q Where did you receive this knowledge?

A I can read.

Q Have you any medical training in mixing drugs?

A No, ma'am.

Q How large a syringe do you use?

A For what?

Q For the lethal injection.

A 60cc.

Q And what size needles?

A What size needles for what?

Q For the lethal injection, for pushing the lethal chemicals into the veins.

A You shove them down the catheters.

Q Yes.

A Which? The needle that goes into the condemned or the needle that goes into the lines.

Q I'm sorry, the size of needle that goes into the condemned.

A It could be anywhere from an 18 gauge to a 23

gauge.

Q And how do you decide?

A That's -- there is a pre-screening of the inmate basically to inspect what the integrity of his veins are, and his -- big veins, small veins basically is the IV team's determination as to what the appropriate gauge would be.

Q Do you have any machine that monitors the consciousness level of the inmate?

A There is an EKG machine that the -- that is attached to the inmate that monitors his cardio electrical activity.

Q Is there anything else?

A No, ma'am.

Q Is there a curtain that is drawn in front of the witnesses.

A There actually is two. One is a long curtain -- I'm sorry, there is a total of three curtains. There are three witness rooms, one for the designated witnesses that the inmate designates. The centre room is occupied by members of the media. Sheriff, county of conviction, if he chooses to attend. Their escort's, Department of Sheriff's

staff. And then a third witness room is occupied by representatives of the victim's family.

Q Are the curtains drawn in front of all these people during part of -- part of the lethal injection procedures?

A The curtains are closed, and remains closed until the IVs have been sighted, and we are prepared to proceed.

Q Are they closed again at any time?

A They are closed at the completion of injection of the chemicals, and it is -- at that point, there is a short timeframe that occurs where the doctor and the coroner enter the actual execution control room, look at the EKG tape. At that time, they determine if they want to see the body. The curtains are again closed if it's the position the coroner entered, do a -- basically a physical look at the inmate itself -- himself, and make a determination that the inmate is dead. At the completion of their inspection, the curtains are reopened, and that's -- the announcement is made that the inmate is -- or that the sentence has been carried out.

Q Why is the mixing of those chemicals, and the sighting of the IVs and everything up to the point where

the chemicals are actually put, why is all that done behind a curtain, or with the curtain over the witnesses' eyes?

A First and foremost is protection of the integrity of the members that participate in the team. You know, their identities need to remain secret, and that's the primary reason why it's done. There is enough pressure on the people that are involved in it, that -- there is secondary, there's enough pressure on them, and they don't need the additional pressure that also that their identities would then become known.

Q How long before the execution does the condemned get his last meal?

A Approximately three hours.

Q Pardon me. I only have about six more questions, but I would like for you to tell us what the drugs are that are used in a lethal injection?

A Sodium thiopental, pancuronium bromide and potassium chloride.

Q Can you tell us how much sodium thiopental will be used?

A 3 g.

Q And what is the purpose of that drug?

A Basically, it puts the inmate to sleep. Same thing is used in most surgeries in the United States.

Q And what is the second drug, Pavulon? What is the purpose of the Pavulon?

A Pavulon is the brand name, it's pancuronium bromide; it is basically a paralyzing agent.

Q And what's the purpose of that?

A Basically it paralyses the inmate that's on the gurney.

Q Why do you need the inmate to be paralyzed?

A Basically, the primary reason is, it suppresses the inmate's breathing.

Q Is that the only purpose?

A To my knowledge, yes.

Q And what is the purpose of the potassium chloride?

A Potassium chloride is, as I understand, it basically is -- it stops the inmate's heart.

Q Do you know what amount is used of the potassium chloride?

A 240 mEq.

Q And how about the Pavulon, how much of that?

A 50 mg.

Q Why not use two drugs instead of three?

A I think the reason we use three is because that is what has been proven successful in states around the country.

Q Why those particular three drugs?

SPEAKER: Objection; asked and answered.

BY MS. BALLIET:

Q Is potassium chloride a paralytic agent?

A To my knowledge, it's not.

Q Are you familiar with the Lethal Injection Protocol in New Jersey?

A I'm not.

Q Are you aware that they use other chemicals and that they do not use pancuronium bromide?

A I'm not.

Q You mentioned that you spoke with the Tennessee Corrections about lethal injection. Are you aware that they have only carried out one execution by lethal injection, which was about five years ago?

A To be honest, I don't know when they -- whether they have done one, or whether one was carried out.

Q Why did you tell Dr. Hylan to be off the grounds in the events of an execution?

A He doesn't need to be there. And part of the reason for that is that he is the attending physician of the inmates of my institution. I don't think there is -- removing him removes part of the perception that any perception that he is involved in any way. He has obviously, he has day-to-day duties that he has to complete with every other inmate in the institution.

MS. BALLIET: I have no further questions.

THE JUDGE: (inaudible) questioning now.

CROSS EXAMINATION

BY MR. MIDDDENDORF:

Q Good morning, Mr. Haeberlin.

A Good morning.

Q Just want to address a few things, you testified to Ms. Balliet that the drugs are mixed 12 hours before they are reconstituted. Did you feel that -- let me ask you. That's actually two hours before, is that correct? If I showed you the manual, would that refresh your recollection, if it was that?

A I think I have a copy of it.

SPEAKER: Judge, may I approach.

THE JUDGE: Yes.

SPEAKER: I'm actually showing him the un-redacted version. This number was given to the plaintiffs the time before.

THE JUDGE: All right.

BY MR. MIDDENDORF:

Q Can you read number six?

A Members of the IV team shall prepare two sets of execution chemicals in 60cc syringes. The syringes shall be properly labeled and stored in the dispensing tray. The syringes shall be guarded by a member of the execution team until they are administered to the condemned.

Q And what time does that -- happen?

A X minus two hours.

Q Okay. Did that refresh?

A Yes.

Q Okay. Just wanted to clear that one up.

A Honestly speaking, that's why we have this, because it is difficult to put -- bring back to memory everything that is in it.

Q How often would you say, moving up to the Bowling

execution, did you refer to that execution manual?

A Well, it is a matter of our practice. We reviewed the manual on a daily basis at 7:00 o'clock each morning. We would reconvene with the deputy wardens and review it again in the afternoon to make sure that the tasks that were -- that are basically outlined in this process are completed, and who is responsible in completing those tasks.

Q You testified that the two members of the IV team, one, a practicing phlebotomist for the last eight years, and one an EMT, who has been certified for over 20 years; have you ever been involved in the execution team process when a new IV team member wanted to get on that team?

A I don't know. Other than Dr. -- there was a retirement that occurred, and that was a reason why the -- a second person was added which was the phlebotomist.

Q In your experience at the Kentucky State Penitentiary, have you ever known a volunteer that wanted to be on the IV team? Have you ever known them to come on and they just -- they weren't able to perform the task?

A It's been probably in '90 -- probably, some time

in ’98, I recall one individual that just didn’t do a very good job and was -- actually they left the team. They didn’t remain on the team, they were part of the team during the time of the electrocution, but then dropped out for other reasons, in fact, they retired.

Q So being proficient as being able to find a vein certainly would point to whether they remain an IV team member?

A Absolutely.

Q You mentioned that the IV team also mixes or reconstitutes at least one of the chemicals, is that correct?

A That’s correct.

Q And why do you leave that task to the IV team members?

A They probably at least have some medical experience in being able to do that.

Q Let’s talk about how the drugs are stored. Are they secured in a secure location?

A They are secured in the institutional pharmacy, and they are both in locked containers that only I have the key to.

Q Okay. Glenn, let's move on to the labeling of the drugs once they are administered. When the executioner behind that mirror is sitting there, what is he looking at? He or she.

A He is looking at a tray that contains eight syringes. It's basically worked from left to right. There's two 60cc syringes that are plainly marked. Sodium thiopental in the appropriate dosage, there is 25cc syringe of saline.

Q What's the saline used for?

A Basically the saline is used to -- it is first -- after the first round of thiopental to basically make sure that all of the intended dosage gets into the inmate. Then there is -- then there is a -- the second one is the pancuronium bromide that is -- it is then pushed, then the saline, and then the potassium chloride.

Q So the only thing that the person pushing the drugs has to do is start on the left and go to the right, one at a time.

A Correct.

Q And you also give the ability to choose the size of the catheter to the IV team?

A Yes.

Q And why is that?

A Basically they have far more skills to determine what the appropriate size should be.

Q Who makes the alternative decision on what arm or what gets to (inaudible) that -- the drugs?

A Well, part of what -- during the process of when the inmate is being strapped in and the IVs or the catheters are been sighted in, I'll look for -- I just what's called blow bag, you see actually -- you see what actually come in to the end of the catheter and then there is part catheter that is removed that the actual IV line goes into.

What I look forward see there is a sufficient amount of blood in some cases, literally you see -- as the inmate's heart beats, you can see blood actually come back out of the catheter. I try to determine in my mind which IV site I feel was the best.

Q And during an execution process, you are in communication by what, earpiece with everybody else?

A Yes, radio earpiece.

Q And you can talk to the person behind the mirror?

A Yes.

Q And everybody else for that matter. Does every member of the team -- are they in communication? So if there is any problem, you can relay that quickly and so can anybody else on the team?

A Yes.

Q Once you give the order to proceed to push the drugs, what are you looking for when you know that the drugs are flowing?

A I'm observing whether the catheter site, I'm looking for a leakage there, or the possibility that the catheter comes out.

Q What would you do in that case?

A Call the control centre or the -- actually the execution chamber and say they needed to switch to another one if there is a problem.

Q What else are you looking for?

A In all honesty, if there was a blowout as far as the catheter coming out of the inserted. They would know it because of number one, they could see it; number two, they could certainly tell from the difference of the resistance of the syringe being pushed. Basically, we tell

them to go to the other line also.

Q Are you also looking for swelling at the IV sites?

A Yes.

Q Okay. If you notice swelling, what would you do in that situation?

A We would call them and say that there is a potential problem and switch to the other arm.

Q What else are you looking for once you start to proceed?

A Basically, looking for him to go to sleep.

Q Are you also looking at the lines during an execution?

A Yes.

Q What if you noticed any fluid on the gurney?

A I would try to determine if that was something that was spilled prior to, or there was an actual leak in the line itself.

Q Okay. And what would you do in that situation?

A If it was determined to be a leak in the line, then I would recommend them to switch to another -- the other site.

Q Let's talk about the training that you all do on a monthly basis. What is consisting of that training?

A What we do is, we have a member of the team -- excuse me, a member of the team basically plays the role of the condemned inmate. He is placed in the cell. He is basically removed from the cell. He goes into the execution chamber, plays the role of an inmate. He lays down on the gurney. He is strapped to the gurney and then the IV team sights two IVs into him.

Q During some of those trainings, do you ever have --

A I'm sorry, they insert two catheters, he is not connected to an IV or a saline drip or anything else.

Q Okay. During those trainings, do you ever tell one of the volunteers to struggle some?

A We practice a resistant inmate, yes.

Q Okay. And IVs are actually inserted during each one of those practices?

A Catheters.

Q Catheters, I apologize. Since 1998, would you say that you have been involved in some fashion on the execution team since that period of time, or have been

around for practices?

A Yes.

Q Since that time, have you ever -- or can you recall an occasion when the IV team has not been able to sight a catheter.

A Well, we are talking about probably a seven-year period here, but to my recollection, no.

Q So they have always been able to do one as far as your recollection?

A It's simply (inaudible).

Q Okay. You were present during the Harper execution, is that correct?

A I was.

Q Okay. How long in your opinion did it take for him to become unconscious?

A 15 to 20 seconds.

Q And you noticed no other movement after that?

A Other than -- I think that just about earlier that there was a --

(Tape interruption).

THE WITNESS: And one of his big toes may have been. Other than that there was absolutely no movement

whatsoever.

MR. MIDDENDORF: Could I have one second, Your Honor?

THE JUDGE: Yes.

MR. MIDDENDORF: Just a couple more questions.

BY MR. MIDDENDORF:

Q I know you've gone though this part a bit. How long would you say it takes to push the sodium thiopental?

A Probably no more than two minutes, two to three minutes.

Q Okay. Did you notice any movement after that two or three minutes?

A None whatsoever. After the first 20-25 seconds, there was absolutely no movement whatsoever from there until the point that he was quite dead.

Q I don't have any further questions.

THE JUDGE: Ms. Balliet?

MS. BALLIET: (inaudible2:00).

REDIRECT EXAMINATION

BY MS. BALLIET:

Q Warden Haeberlin, what happens if thiopental and pancuronium bromide come into contact with each other?

A I don't know the answer to that.

Q Have you ever --

A Are you talking about prior to entering the body or after entering the body?

Q Either way, assuming -- if for instance, something went wrong -- and the sodium thiopental and the pancuronium were injected too quickly one right after another and they mix, what -- are you aware that they would crystallize?

A I'm not aware of that.

Q And are you aware what would happen if the pancuronium came into the contact with the potassium chloride if the saline wasn't enough for it somehow? The first --

A -- I'm sorry.

Q -- and -- so you are not aware of that? What happens if the IV team chooses a catheter that's too big or too small?

A I am -- I mean, I don't know what you are specifically asking for.

Q If you know it, you can answer. If you don't know, then you can say you are not aware of it.

A Well, I'm not aware of it. That's -- I mean, that's part of the reason why the inmate is observed and the bed board inspected by the team for integrity of veins and a determination is -- from that is made as to what the appropriate size of catheter might be. The issue of -- that doesn't mean you can insert a small catheter into a large vein and it still won't be successful. It's just -- I want to say it would clearly ultimately take longer than (inaudible) of the body.

Q Are you aware what would happen if the chemical went into the muscle or the tissue rather than the veins?

A It would -- I guess, my indication is that's -- you know, there would probably be some swelling at the site because it's not actually going into the system of veins. It would be actually going somewhere under the saline or into the muscle and that's one of the reasons why we look for a swelling at the site.

Q Are you aware of what would happen if you got the first chemical in the body and then you had problems with the lines leaking at that point?

A We would switch to the second line.

Q What if both the lines were bad?

A At that point then we probably would have to stop and resite the second -- or an additional catheter.

Q Are you equipped to site a third catheter?

A Yes.

Q Well, one individual IV team member has left. Did that person leave because they dropped off voluntarily and retired or was that person asked to leave the team?

A Dropped off voluntarily.

Q Can you tell the difference between someone who is asleep and someone who is paralyzed?

A I don't know the answer to that. I mean, I -- am I a doctor and can stand and look at somebody and tell the difference? Probably not. Other than the experience that I had in the -- in the Harper case to say because of the times that were involved in the injection of the sodium thiopental, it was my observation that he was asleep. I mean, it -- it almost (inaudible5:43) to what you see on TV in surgery when you count back from 100, you get to about 98 and they are asleep. I mean, that's what I observed.

Q How do you know that he was unconscious rather than consciously paralyzed?

MR. MIDDENDORF: Objection, Judge. I think he is

just saying that --

THE JUDGE: Sustained.

BY MS. BALLIET:

Q You say that he appeared to be asleep after 15 to 20 seconds. Did -- you said that -- also that his legs -- -- he lifted his legs and his toe moved. When did those two events occur?

A Probably within the first five seconds of the -- well, sodium thiopental.

Q Were those both within the -- 20 -- 15 to 20 seconds?

A Way at the beginning.

Q What would happen if you tried to insert two IVs but you could only get one in?

A That would be a call that I would have to make based on the integrity of the first one to see whether or not we would proceed. It would be my preference and it would -- we're not on a timeframe and in a rush here while doing that. The goal is to get through -- my experience has been with the team that we have that we have always been able to get through.

Q Then what would happen if only one line started

to leak?

A Insert the second line.

Q Why did it take only three minutes between the injected Pavulon and the potassium chloride in Harper?

A Because that's how long it took to enter it into the body.

Q How long would it take to site a new IV line if both lines were leaking?

A Five to seven minutes.

THE JUDGE: You're finished?

MR. MIDDENDORF: No, Your Honor.

THE JUDGE: Thank you, Warden. You may go.

(Witness excused)

MR. MIDDENDORF: Judge, would there be an objection to a five-minute break?

THE JUDGE: No. We (inaudible) 10-minute recess (inaudible) 11:00. Thank you.

(Recess)

SPEAKER: -- Pershing.

THE JUDGE: Pershing?

SPEAKER: Pershing.

THE JUDGE: Deputy Warden Pershing?

SPEAKER: Would you raise your right hand please?

Whereupon,

RICHARD PERSHING

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BALLIET:

Q Good morning. Deputy Pershing, could you state your name and spell your name last name for the record, please?

A Richard Pershing, P-e-r-s-h-i-n-g.

Q Where are you currently employed?

A Kentucky State Penitentiary.

Q How long have you worked there?

A Getting 31 years this July.

Q And what is your current position there?

A Deputy Warden of Security.

Q And what are your duties in that regard?

A I am over the security of the uniformed staff, which is about 260 other employees that work in that station.

Q How long have you been in that position?

A Since July of last year.

Q Are you responsible for training?

A Partly, yes, ma'am. Partly my job is seeing that my staff are -- receive the proper training too.

Q Does any of that training involve lethal injections?

A As far as my staff goes, no.

Q And as far as anyone else?

A I -- myself. I am involved in training lethal injections as I'm part of the team.

Q And what are your responsibilities in a lethal injection execution?

A I am with the warden inside the chambers during the process of a lethal injection.

Q When you say inside the chambers, do you mean inside the room with the condemned inmate?

A Yes, ma'am.

Q Have you ever seen a lethal injection carried

out?

A No, ma'am.

Q Did you have any role within the prison during the execution of Edward Harper?

A Yes, ma'am.

Q And what was that role?

A I was CERT team commander then and I was responsible for security inside and outside of that station while the process was going on.

Q Did you say CERT team?

A CERT team, the Emergency Response Team.

Q And what kind of emergencies do they respond to?

A Anything the warden deemed necessary, whether it's escape, riot, any kind of disturbance.

Q So this was an armed team?

A Yeah.

Q A security team?

A Yes, ma'am. Every station in the system has a response team.

Q Okay. Did you have any role as part of the actual lethal injection of Edward Harper?

A No, ma'am.

Q Did you oversee mixing the chemicals?

A No, ma'am.

Q You were not involved in that at all?

A No, ma'am.

Q Did you witness the execution of Harper?

A No, ma'am.

Q Apart from security, did you play any role at all with that execution?

A No, ma'am.

MR. MIDDENDORF: Asked and answered several times. Your Honor, I object.

THE JUDGE: All right, let's move on. Go ahead.

BY MS. BALLIET:

Q Were you involved in the adoption of lethal injections?

A No, ma'am.

Q So you didn't -- you had no discussions with anybody regarding the institution of that execution procedure?

A No, ma'am.

Q Have you ever traveled to any other state for training on lethal injections?

A No, ma'am.

Q Have you ever reviewed any other state protocols on lethal injections?

A No, ma'am.

Q When was the first time you looked at Kentucky's Lethal Injection Protocol?

A Earliest when -- July of last year after I was promoted.

Q And why then?

A Because I now became a member of the team.

Q Do you recall what chemicals are used in Kentucky's Lethal Injection Protocol?

A Let me see. The first chemical is --

THE JUDGE: Let me ask the purpose of this. He says he is not -- has nothing to do with the IV team. He is -- as far as the security, is there as a reason that he needs to know the chemicals?

MS. BALLIET: Well, Your Honor, we're just trying to establish that really --

THE JUDGE: I mean, we've established what the chemicals are. I don't think there is any question about that.

MS. BALLIET: What I'm trying to establish is the lack of knowledge of the people who are involved in the execution as to the important details of what's involved in that.

MR. MIDDENDORF: What they're trying to establish is making people look bad.

THE JUDGE: I'm going to sustain the objection to this one. The question, I think, as far as what Warden Pershing is in charge of, that relates to the execution that he is in charge him, then you can ask that as it relates to what this suit is about. But just to bring everyone in from the institution to indicate that they don't -- they may or may not know everything that goes on is just not really relevant.

BY MS. BALLIET:

Q Are you aware of new revisions that have been made to the Protocol in December of 2004?

A Yes, ma'am.

Q Which of those revisions affect what you do?

A The crash cart that may be brought in if there is a stay after the process has started, that will come into chamber where we are at. So that was added.

Q Were you involved in deciding whether to allow the crash cart there?

A No, ma'am.

Q Have you seen a crash cart?

A No, ma'am.

Q Do you know what equipment is included on it?

A Well, the one thing I do know is there is a defibrillator on there to shock the individuals or bring them back if that part is needed.

Q What role would you play with regard to the crash carts?

A None. Unless the team -- the team itself outside the room would be the ones who would come in and do that.

Q Will you be with them?

A I would probably still be in the room unless I get in the way. And then I'll get out of the way.

Q So you said that you had a role with regard to the crash cart and I am not really understanding what your role is. Can you --

A Well, that was -- you had -- you asked me what I knew about what changes were made and that crash cart was

something that is changed. And it would be brought into the chamber if needed there in that critical part if there was a stay and I am already in the room, so I am part of that.

Q I see. But you're not responsible for bringing it into the room?

A No, ma'am.

Q All right. Were you involved at all in the change from 2 g to 3 g of sodium thiopental?

A No, ma'am.

Q What do you do when you're in the execution chamber with the condemned inmate?

A Okay, when the condemned inmate is brought in, then they're secured into the -- onto the gurney and then once all of that's completed and IVs are sited and we are ready to go. Then the warden will have reopened the curtains and turn on the PA system and then the warden will proceed with the beginning of the legal execution. He will ask the condemned, "Do you have any last statement?" He would give his statement if he chooses -- so chooses.

The warden will then proceed and after that point I will turn the PA system off. This process will continue

on and at the appointed time when they will bring the doctor in to check the condemned. At the end of the process, I'll shut the curtains back. Doctor will come in, then I'll -- after he leaves I'll open the curtains back up, turn the PA system back on. And then the warden will announce that the process has been completed, the date and time and so forth.

Q What knowledge do you have about anesthesia awareness?

A None.

Q If the vein could not be sited, if there was some problem that arose, what role would you play?

A If the vein is not sited within one hour, then the commissioner is notified. He would notify the governor's office and a decision will be made out to proceed from there.

Q Are there any other problems that could arise that if they did arise you would have a role to play?

MR. MIDDENDORF: Your Honor, I object to the breadth of that question. It calls for --

THE JUDGE: All right --

MR. MIDDENDORF: -- I should think.

THE JUDGE: (inaudible).

BY MS. BALLIET:

Q If the line started leaking, would you have a role that you would play?

A I will be watching the line. Me and the warden will both be watching that IV line to see if there is swelling, see if there is any leaking that is taking place.

Q And what would you do if that was happening?

A We would notify the IV team.

Q What options would be available at that point?

A They can switch to the second sited line. Q And who decides what options to do?

A That would be the (inaudible) the warden and the IV team.

Q Would the general counsel be involved in that?

A Only if the process were to be stopped and we would have to leave the chamber for some kind of consultation. I would say that would be after the -- our siting the line.

MS. BALLIET: I have no further questions.

THE JUDGE: Thank you. Mr. Middendorf?

MR. MIDDENDORF: Just real quickly, Your Honor.

CROSS-EXAMINATION

BY MR. MIDDENDORF:

Q You indicated that once the -- I guess the command to proceed came into place, tell us exactly what you are looking for during those few minutes right after that.

A I would be looking for the sited line that we are using, whether it's whichever one has been identified as the primary. And if there is any swelling in that area, if there is any leakings in that area. And --

Q Are you also watching the line?

A I am watching the IV so --

Q And if you saw any leakage in either of that or there is swelling you would notify the warden?

A I would notify the warden.

Q And is it an accurate statement to say that you all are in contact during that time, communication-wise?

A We have voice activated headset phones.

Q Okay, and you can also hear the executioners behind the mirror?

A Yes, sir.

Q So if they are having any problem that would be

communicated to you and the warden as well?

A Yes, sir.

MR. MIDDENDORF: That's all I have, sir. You can (inaudible).

MS. BALLIET: One moment, please.

REDIRECT EXAMINATION

BY MS. BALLIET:

Q Would you be able to see if the line was leaking from outside the room where you are?

A I am inside the room, ma'am.

Q Well, there are -- as I understand it, two rooms. From the -- you're not in the execution chamber itself?

A Yes. Me and the warden are in that with the condemned while the process is going on.

Q Okay, but then you're not in the control room?

A No, ma'am.

Q If there was leaking in the control room, you wouldn't be able --

A I'm not in the control room, I cannot see it.

Q That's right. Have you ever seen swelling from an improper IV line?

A No, ma'am.

Q So you -- thank you, I have no other questions.

MR. MIDDENDORF: No questions, Your Honor.

THE JUDGE: Thank you, Mr. Pershing.

SPEAKER: Dr. Steve Hiland.

Whereupon,

STEVE HILAND

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHOUSE:

Q Good morning, Doctor.

A Good morning.

Q Would you please state your name and spell your last name for the record?

A Steve Hiland, H-i-l-a-n-d.

Q Okay, H-i-l-a-n-d?

A Yes.

Q I believe you have to speak up a little bit --

A I’m sorry.

Q I’m deaf in my left year and so if you could just speak up a little I’ll appreciate it. Okay.

A Okay.

Q All right, how are you employed, Mr. Hiland?
A I'm a physician.
Q And where do you work?
A I work for the Department of Corrections at the Kentucky State Penitentiary.
Q Okay, at Eddyville?
A Yes.
Q All right. Who is your direct superior?
A Warden Haeberlin.
Q Okay. And who is your medical superior?
A Dr. Scott Haas.
Q Scott Haas? And what is his title?
A He is the medical director for the Department of Corrections.
Q Okay. Are you sometimes referred to as the medical director of the Penitentiary?
A Yes.
Q Is your -- what is your exact title?
A I am the medical authority for the Penitentiary.
Q Okay, but sometimes that's used interchangeably with "medical director"?
A Yes, it is.

Q Okay. I just wanted to -- that may come up a little bit. How long have you been licensed to practice medicine, Doctor?

A Since 1973.

Q Okay. Do you carry any board certifications?

A No, I don't.

Q Okay. And I may have already asked you this, but how long did you have been working at the Penitentiary?

A I have worked at the Kentucky State Penitentiary since 1992.

Q So 13 -- we're in our -- we're in your 13th year?

A Yes.

Q Okay. Do you have any training in anesthesiology at all?

A No.

Q Okay. You're probably aware, if you weren't aware as part of your duties you probably would become aware, but in December of last year, changes were made to Kentucky's Protocol for how to conduct an execution by lethal injection. Are you aware of that?

A Yes.

Q Okay. How did you become aware of those changes?

A I'm not really sure, perhaps the newspaper, perhaps the -- speaking with people at the Penitentiary. I can't give you a specific answer on that.

Q Okay. Did anyone from the Department of Corrections consult you on the efficacy of any changes to the Protocol?

A No. I'm not sure what you're talking about.

Q All right. Okay, that's fine. Have you ever talked to anyone within the Department about the Execution Protocol used here in Kentucky?

A Indirectly perhaps. I'm not really sure, really, of the question.

Q Okay. Has anyone ever asked you your opinion on any proposed changes to the Protocol?

A No.

Q Okay. Have you and Warden Haeberlin ever discussed anything at all about the Protocol, how it works, how it might not work?

A No.

Q All right. Have you and Dr. Haas ever had any discussions like that?

A No.

Q Okay. Has anybody within the Department of Corrections ever asked you to be responsible for ordering the drugs that might be used in a lethal injection?

A No.

Q Okay. That's what I'm getting at. Have you ever even seen the Protocol -- other than portions you were shown at your deposition, have you ever even seen the Protocol?

A No.

Q That's all I'm trying to hear about. You didn't see it at the deposition, you've never seen it?

A Right.

Q Okay. Can you tell me what drugs are used in a lethal injection here in Kentucky?

A Sodium thiopental --

Q Okay.

A -- pancuronium bromide, and potassium chloride.

Q All right, let me ask you a question about one of those. Is potassium chloride a paralytic?

A No.

Q What does potassium chloride do? What's its therapeutic use?

A Therapeutic use is to replace potassium lost through some means.

Q Okay. Would an overdose of potassium chloride cause death?

A Yes.

Q Okay. Would that drug be painful while it was being injected?

A It would depend on the concentration and how rapidly it was injected.

Q Okay, would it burn when injected?

A That is the feeling of pain that would be noticed if it were heavily concentrated or if it were pushed through quickly, yes.

Q Okay. Would it burn a lot?

A I don't know.

Q You don't know? Okay, just one second. Do you recall, on January 5th of this year I came down and deposed you?

A Yes.

Q Okay. I'd like to show you a part of that deposition, please. And you remember this -- some of these gentlemen were there?

A Yes.

MR. SHOUSE: Can I have a transcript of that deposition?

SPEAKER: I don't think -- (inaudible) together, how does that sound?

THE WITNESS: Okay.

BY MR. SHOUSE:

Q Okay. I'm Shouse and you're Hiland and -- okay. Do you see here where I ask you, "Would potassium chloride -- first of all, do you know what amount is used in the conduct of an execution?" and your response?

A "I do not, I'm not sure. It's a large amount."

Q And then I say, "Okay, do you -- what would be a large amount of potassium chloride feel like if it were injected into you while you were conscious?"

A "It would burn."

Q And then I say, "How severely?"

A "Quite."

Q Okay, so it would burn quite severely?

A Yes.

Q Okay. Excuse me, Doctor, I'm not feeling well today, so I'm -- okay, do you know why those three drugs

you just listed are used in the conduct of an execution by lethal injection here in Kentucky?

A I don't know why those three particularly were picked, no.

Q Okay, do you know why saline is injected between each of the three drugs?

A I do not.

Q Okay. Is that something you think you would know as a doctor?

A Yes.

Q Okay. Now, are you aware of something called conscious paralysis or anesthesia awareness?

A Yes.

Q Okay, what is that?

A That would be where you would be paralyzed but still conscious or awake.

Q Okay, sort of trapped in your body?

A Yes.

Q Now, are you aware -- okay, what is sodium thiopental, just to back up a minute?

A It is an anesthetic agent used to render you unconscious.

Q Okay, are you aware of any ways to monitor to determine whether or not a patient who has been administered sodium thiopental is in fact in a state of anesthesia?

A You would lose your -- what's called "corneal reflex" when you're in a state of anesthesia.

Q Okay. How would you test for that?

A You would test the cornea in the eye, see if the muscle responds in the eye.

Q Okay. So that would be simply (inaudible) -- can you tell me how would -- how would you go about doing that?

A I wouldn't do that.

Q Okay, why not?

A Anesthesia --

Q I can't hear -- I mean --

A I'm sorry, I would not do that. An anesthesiologist would do that. I've been instructed that's what they do.

Q Okay, but let me ask, how would one conduct this test?

A By touching the eye.

Q Okay, raising the eyelid --

A Yes.

Q -- and touching the eye?

A Yes.

Q And what would you expect to see?

A You wouldn't expect to see any reflex in the iris of the eye.

Q Okay. What is pancuronium bromide, alternatively, Pavulon? What does that do that to the body?

A It's a paralytic agent; it's a neuromuscular blocking agent.

Q Okay. So if you're the under the effect of that, will this reflex that you just described, raising the eyelid and touching the eye, will that work if you've paralyzed by Pavulon?

A I wouldn't think so, no.

Q Okay, all right. Can you then -- well, any other way you could monitor for consciousness that you can think of? I know you're not an anesthesiologist.

A No.

Q Okay. Now, let me ask you this, could an inmate be revived after receiving an injection of sodium

thiopental?

A Yes.

Q Okay. And where would you be during the conduct of any execution by lethal injection conducted on the grounds of the Kentucky State Penitentiary?

A I will not be on the grounds of Kentucky State Penitentiary.

Q How do you come to know that so definitely?

A I've been instructed by the warden not to be there.

Q Do you know why the warden instructed you not to be there?

A I do not.

Q Were you on the grounds when Mr. Eddie Lee Harper was executed in 1999?

A Yes, I was.

Q Did anyone instruct you to be or not be there at that time?

A Yes.

Q Okay. What role did you play in the conduct of Mr. Harper's execution?

A None.

Q None?
A None.
Q Okay, did you pronounce death?
A No.
Q You did not?
A No.
Q Did you have occasion to look at an EKG monitor during the course of Mr. Harper's execution?
A Yes.
Q Okay, tell us about that a little bit.
A I'm sorry, what do you want to know?
Q Tell us how you came to watch this monitor, and what happened?
A The coroner asked me to go with him to observe the monitor.
Q Okay, and then what happened?
A We watched the monitor for a while, and then the coroner said that the patient was dead.
Q Okay, and then what happened?
A I left.
Q Okay, that's all you did?
A Yes.

Q Did you agree with him that Mr. Harper was dead?
A Yes.
Q All right. But you are on the premises when Mr. Harper was executed?
A Yes.
Q And you have now been instructed to be absent should any future executions take place?
A Yes.
Q Okay. So if I told you, and I know you haven't seen -- seen the current protocol, you know, if I didn't show it to you at the deposition, you didn't see it, but if I told you that there is something called the stabilization procedure, so they have -- if the execution should be called off after one or more of the drugs that's already been injected into the inmate then -- and there was a process for attending to revive the inmate, you will have nothing to do with that.
A Correct.
Q Okay. Now, I just want to show you some things that -- this has already been introduced into evidence, Judge. It's the pre-execution medical actions check list, several actions taken after receiving execution order

revived on December 14th of last year.

A Okay.

SPEAKER: May I approach the witness?

MR. MIDDENDORF: Judge, we object to irrelevance. Why are you going back again to 1999? He has testified that he is not involved in the new execution procedures.

MR. SHOUSE: And that's all -- the foundation I'm trying to relate, Judge.

SPEAKER: Okay.

MR. SHOUSE: Doctor, could you just briefly glance through that -- familiarize yourself with the contents of it?

SPEAKER: You mean you're laying foundation that he is not involved in this?

SPEAKER: Well, unless you're going to ask his medical opinion on some of the language in there, he has the license to --

SPEAKER: Don't they have their own expert to do this. I mean, they are bringing in two doctors, is my understanding.

SPEAKER: Yes.

MR. SHOUSE: Why are we going through this

multiple times?

SPEAKER: Because he had won a license division in this Commonwealth, and two, a long term employee of the Department of Corrections.

SPEAKER: Boy, it looks -- what's -- what you are referring?

BY MR. SHOUSE:

Q Okay, would you take a look at number 1 there? Could you read that please?

A Notified Department of Corrections, medical director and nurse service administrator have received a government's death warrant immediately.

Q Okay, who is the nurse service administrator at the penitentiary right now?

A John Wood.

Q Okay. And we have already talked about -- Dr. Haas (phonetic) is the medical director, right?

A Correct.

Q Okay, number 2. I'm just going to start to move this along real quick --

THE JUDGE: Dr. Haas is the medical director for Corrections?

SPEAKER: Yes, sir.

BY MR. SHOUSE:

Q Number 2 says, "Begin a special section of the condemned's medical records for all medical actions." Is that correct?

A Yes.

Q Does that give you as a physician, as a practicing physician within the Department of Corrections, any direction at all on what this special section should contain?

A No.

Q Okay. We will skip number 3 because that deals with a nurse. We'll skip number 4 because that talks about psychologists. Take a look at number 6, please. Does number 6 in this check list read Department of Corrections medical director or his designee reviews an initial nursing documentation in number 3 daily?

A Yes, excuse me, yes.

Q Okay, and we've already talked about this, but you -- you did not anticipate being the designee of a medical director, is that correct?

A That's correct.

Q Okay. But as a practicing physician within the Department of Corrections, does number 6 give you any direction at all on what you're to do there other than just the initial -- a nurse's notes?

A No.

Q Okay. And please turn to number 8. You're on number 8?

A Yeah.

Q Okay, I'm sorry. Does number 8 read, "Physical examination is completed by the DOC medical director or his designee no later than seven days prior to the execution."

A Yes.

Q Okay. Is there more than one kind of physical examination a doctor can conduct?

A I really don't think so.

Q You wouldn't think so?

A No.

Q If I came to you and told you I was having chest pain, would you conduct a physical examination?

A Yes.

Q If I came to you with a obviously broken leg, would you conduct a physical examination?

A Correct.

Q Would those be the same physical examination for each complaint?

A There are some things that will be the same, yes.

Q But there are some things that would be different?

A We are talking about a general medical examination.

Q Okay.

A Okay?

Q Okay. So do you interpret number 8 to mean -- you're just trying to find out the patient's general physical health?

A Yes.

Q "How are you feeling?" No more directions than that?

A No.

MR. MIDDENDORF: Judge, objection, what -- how is it relevant?

SPEAKER: Go ahead.

MR. SHOUSE: You know, their claim is that it's very unusual at the time that the injection is done. What

relevance is somebody doing a physical seven days before, and he has testified that he's not even involved in that judgment.

SPEAKER: First of all, I want to broaden what Mr. Middendorf said there because that -- that is not our sole claim. What he said is a claim, but our claim is also that this protocol is an ad hoc conglomeration of things pulled together by people who are not physicians, that has no medical relevance, but suggesting at all, and if they're relying on this to somehow bootstrap themselves into a medical procedure. Doctor -- Dr. Haas, excuse me, I'm --

MR. SHOUSE: I mean, it depends on how you define everything. In protocol, probably state law could not be worked on by physicians.

MR. MIDDENDORF: Probably not, Judge, what I'm getting at is that --

MR. SHOUSE: Secondly, it's credited as an execution procedure or a medical procedure, now, there's a little bit of both.

SPEAKER: Yes, sir.

SPEAKER: But now I'm failing to question the relevance of asking Dr. Hiland all these questions when you

are bringing an expert testified. And Dr. Hiland's not going either.

MR. SHOUSE: Mr. Middendorf said in his opening yesterday that we were asking to hold the state in conducting execution to a higher standard than a hospital would be held to. But that's not true, Judge. A hospital would certainly give some direction to their doctors in carrying out a procedure. Dr. Hiland is the person perfectly placed. He and Dr. Haas are the two gentlemen most perfectly placed to talk about this checklist. They are one, physicians; two, they are long term DOC physicians. They are in a position to say what Dr. Hiland --

SPEAKER: Excuse me.

THE JUDGE: -- it's not the person, it's going to be the physician that is reviewing the checklist.

MR. SHOUSE: No, sir. I'm only asking him, in his medical opinion if he determines any guidance given by the numbers on the -- by the items on this checklist.

THE JUDGE: How much further do you have on?

SPEAKER: We're almost finished.

THE JUDGE: All right. Go ahead.

BY MR. SHOUSE:

Q Would you take a look at number 12, please, doctor? Does that read DOC medical director or his designee personally observes and evaluates, he condemns medical condition weekly?

A Yes.

Q In your opinion, does that give you any guidance on what the doctor should be looking for though?

A I have no guidance, no.

Q No guidance? All right thank you. And you have no idea who would be responsible for the items on that checklist?

A No, I do not.

Q Okay, now I would like to show you a slightly different checklist, and just talk to you about three items on it. It's just -- I think, also has been admitted. What's the title of this checklist?

MR. MIDDENDORF: Judge, we object to this. Officer, this is -- this is a (inaudible) procedure, we have nothing to do with that. There is no relevance as to -- he's involved in that and asking on that matter.

MR. SHOUSE: The title of this checklist is "The

execution, lethal injection." I want to ask his medical opinion about three or four items on this list.

SPEAKER: I would -- I would hope that there is no --

THE JUDGE: By medical opinion, what do you mean, is whether it's efficient or not efficient, or --

MR. SHOUSE: Or appropriate.

SPEAKER: Judge --

SPEAKER: I'm -- Judge.

SPEAKER: Yes, sir.

BY MR. SHOUSE:

Q Can I ask you this, doctor? Do you think that -- you think that it is -- do you think finding an IV side on someone, if that one side is picked for the whole process?

A I don't think your question is clear.

Q Okay, then, I will change that a little bit. If I told you that you were to examine a patient and place an IV, and I told you that you had to place the IV in this quarter, it had to go first in the arm, but not in the arm, the hands, and the ankles and the (inaudible) 40.10. If I told you that that was the way it had to be, would you think that was medically appropriate, or do you think you

could do -- you should be allowed to use your own discretion to determine the appropriate spot?

A Actually, allowed to use my own discretion.

Q Okay, thank you. Just one second. Do you have the list, doctor?

A Yes.

Q It's to examine the patient, do you think you should be allowed to use your own discretion, conduct a general examination, or do you think someone should take every step that you take --

A Actually, it's my own discretion.

Q Your own discretion. Okay. Let me ask you this. Would you ever sight an IV in the carotid artery?

A No.

Q Okay, why not?

A It's artery.

Q Okay, could that kill the patient?

A Not likely, no.

Q Not likely?

A Well, you would have -- you would know what you have done, and you would stop. If you put a cannula on someone's artery and left it he would bleed to death, but

you would have -- you'd be aware this is going on and stop it.

Q Right, but it could kill the patient?

A Of course.

Q Okay. Now, that's the artery, but there are veins in the neck as well, right?

A Yes.

Q And you could sight an IV on those veins?

A Yes.

Q But that would only be under the direct supervision of a physician, is that correct?

A I don't know that. I -- I can do it, I know.

Q Okay, we'll just consult. Okay, we'll turn back to the deposition on page 37.

A This is --

Q I'm asking you essentially the same question I just asked about sighting the IV in a vein in the neck, right?

A Right.

Q Right. And did you say, "Yes, I have done it many times." Is that correct?

A Yes.

Q And then I say, "Okay, but it will be more difficult for a nurse." And you say, "Nurses normally don't do that at all," and I say, "Okay, phlebotomist?"

A Phlebotomist would be more likely than the nurse to do.

Q And I say --

A I didn't hear that.

Q Phlebotomist could be more likely than the --

A Could be more --

Q Okay. And then I say, "But still," and you say --

A "But would probably be under a supervision of a physician."

Q And then I say, "Okay, that's all the questions I have," correct?

A Right.

Q Okay. We talked about the drugs they use. In your opinion, which one of these drugs causes the death of the condemned inmate?

A I think that any of the three can.

Q Okay. How long do you think it would take the thiopental to kill the inmate?

A Not very long, perhaps three minutes.

Q Okay, can potassium chloride do it by itself?

A Yes.

Q How about --

A I think it would.

Q Okay, I'm just -- right, this is all based on the medical opinion. How about the sodium thiopental and the potassium chloride, just those two?

A I think so.

Q Okay. I know you stated you don't have any anesthesiology training, but do you know why thiopental is used in conjunction with other anesthetics in surgery? Do you have any knowledge of that?

A It's to render you unconscious.

Q Okay, and then what?

A That are --

Q I mean another -- another anesthetic kicks in at that point?

A It would depend -- it would depend on the level of anesthesiology that was required within the procedure within that.

Q Okay, but it's -- it's a short acting anesthetic?

A Yes.

Q Does that add to render the patient unconscious?

A It's -- it's the same anesthetic you have when you have a tooth removed and all surgeons and all surgeons will ask -- would like some (inaudible).

Q Okay, thanks. That's all the questions I have.

A Thank you.

SPEAKER: All right.

CROSS EXAMINATION

BY MR. MIDDENDORF:

Q Good morning, doctor.

A Good morning.

Q Doctor, you wouldn't consider an execution a medical procedure, would you?

A No, I would not.

Q Okay. Is sodium thiopental a commonly used drug in hospitals across this country?

A Yes, it is.

Q Okay, is -- what -- a drug that would act as a paralytic agent like pancuronium bromide, is that also a commonly used drug across hospitals?

A Yes, it is.

Q Okay. What about potassium chloride, is that a commonly used drug in hospitals across this country?

A Yes, it is.

Q But in your opinion, if an individual who is given 3 g of sodium thiopental, would you agree that that individual would be unconscious for a significant period of time?

A Yes, I would.

Q Now, is it -- would it be a true statement if a phlebotomist, often trained medical resident, because those are the individuals that have the most experience in finding an IV line?

A Yes.

Q Or finding an IV -- I'm sorry.

A Yes.

Q In fact, many hospitals also have IV technicians or phlebotomist technicians on their staff. Is that a fair statement?

A Correct.

Q What is infiltration?

A Infiltration -- and before I can refer him to IV line will be aware the veins have been ruptured where the

needle has come out, and the contents of the IV line filtrate are established later move into tissues around the site.

Q Okay. And you are familiar with the drugs we use as you have testified, is that correct, in an execution?

A Yes.

Q And it's a fairly large volume of drugs, is that correct?

A Yes, it would be.

Q Would you be able to know there's a slowing, that the IV was not inserted into a vein?

A Yes.

MR. SHOUSE: Couple more questions. You said that you noticed the EKG were --

REDIRECT EXAMINATION

BY MR. SHOUSE:

Q Only on that EKG would you be able to notice, doctor, would an average person notice the slowing?

A Yes, it would be obvious.

Q All right. You said during the Harper execution you went into, I guess, the room with the executioner where you were able to see the EKG, is that correct?

A No, it's not correct. I looked into the -- a remote room where -- where the monitor was with the coroner.

Q Okay, I guess, it's a little different than it was back with the Harper execution. You were able to see the heart monitor?

A Yes.

Q And you said that the coroner down there pronounced death?

A Yes.

Q Do you recall how long the two of you watched that part in the monitor before the official announcement of the death took place?

A Quite some time, several minutes.

Q Okay, would you guess, over two minutes, over three minutes?

A Yes.

Q What's the more accurate one? Do you think it took at least --

A I'm not really sure. It seemed like it was maybe 8 to 9 -- 10 minutes, something like that.

Q That you -- once you saw the blood line or --

A Yes.

Q How long would you say, it took you -- I guess it took the coroner to pronounce death?

A Eight or nine minutes.

Q So --

A I'm not totally sure of the one several years ago.

Q Okay.

A It's been quite a long time.

Q It took a while before that we ended -- Mr. Harper was pronounced dead, is it not?

A Right.

Q Okay, no further questions, doctor.

MR. SHOUSE: Doctor, would you call outside an IV line of medical procedure?

THE WITNESS: Yes.

BY MR. MIDDENDORF:

Q Okay. You said 3 g of sodium thiopental would render the inmate unconscious, that's if it got into him, right?

A Of course.

Q Okay. Do you know if thiopental -- sodium

thiopental is commonly used as the only anesthetic during surgery?

A Could be -- it depends on the kind of surgery, the level of anesthesia you require.

Q How long has it been since you have worked in a hospital, doctor?

A Twenty-five years.

Q Twenty-five years?

A Uh-huh.

Q So it's been 25 years since you have had any direct contact with thiopental being used in surgeries in hospitals?

A Yes.

Q Okay, that's all I have got here.

THE JUDGE: You can go.

SPEAKER: No, Your Honor.

THE JUDGE: Thank you, doctor, you can sit down.

MR. SHOUSE: What on -- situation are we in in terms of --

SPEAKER: We can be finished by 1:00 o'clock, Judge.

SPEAKER: I'm trying --

THE JUDGE: How long -- how long does the motion --

SPEAKER: Very short.

THE JUDGE: Okay.

MR. SHOUSE: And of course we object to her testimony because she has said in deposition she has absolutely nothing to do with it.

SPEAKER: I was wondering what to say --

Whereupon,

SUSAN HILAND

was called as a witness, and having been first duly sworn, was examined and testified as follows:

BY MR. SHOUSE:

Q Good morning, ma'am. Will you please state your name and spell your last name for the record?

A Susan Hiland, H-i-l-a-n-d.

Q And are you related to Dr. Hiland?

A I'm his wife.

Q Okay. How are you employed ma'am?

A I'm currently a nurse practitioner at Kentucky State Penitentiary.

Q Okay. Can you just tell the Court the difference

between a nurse practitioner and an RN?

A A nurse practitioner basically goes longer to school and is qualified to see patients, treat patients, (inaudible) nursing, similar to what a physician does.

Q Okay. How many IVs you think you've started in your career?

A Probably between 15 and 20.

Q 15 to 20?

A Uh-huh.

Q Okay. How do you handle in your -- first of all, how long have you been at the penitentiary?

A Since 2003, two years.

Q Okay. Within the -- within your practice in the penitentiary, how do you normally handle not being able to find a vein, what would you do?

A Well, generally, (inaudible) we try to stay very calm. If you don't get the vein after a third time you go get someone else, another nurse in the --

Q Okay. Now, let me ask you this. When you are injecting drugs, you will have to send it through an IV line into the patient, okay? There are different rates at which different drugs should be injected, is that correct?

A That's correct.

Q Okay. Drug x has a different rate of injection than drug b, okay?

A Right.

Q And how do you know what the rate is? You can't walk around with all that in your head.

A Now, there are -- there are handbooks that we use to tell how fast you can push something into an IV.

Q Okay, so if you were injecting something you were unfamiliar with, what would you do?

A I would look it up.

Q Look it up?

A Uh-huh.

Q And it will tell you what the rate is?

A Right.

Q And then what would you do to make sure you knew what you were doing is the right rate?

A Usually it's -- for me, they change over a mm or a (inaudible).

Q Do you use your wrist watch?

A Yes.

Q Okay. Are you aware of what your

responsibilities are in conducting an execution at the state penitentiary?

A I don't have any responsibility or familiarity.

Q Okay, so to the best of your knowledge, on any checklist in which it says, "A nurse shall do something," will that be you?

A No.

Q Okay. If -- if you were asked to do the things on checklist though, conduct a physical, go and examine an inmate before an execution, would you do those things?

A I would, if I was instructed to do so.

Q Okay, okay. Then now I would like to show a checklist.

MR. MIDDENDORF: Objection Judge.

MR. SHOUSE: Judge, now she --

MR. MIDDENDORF: She just said that --

THE JUDGE: -- she says she would --

MR. SHOUSE: Instructing she would do it.

MR. MIDDENDORF: Once again Judge, we are getting into the difference between a medical treatment and an execution.

MR. SHOUSE: No, judge --

MR. MIDDENDORF: You know, well --

THE JUDGE: -- it concerns to the prior result.

MR. SHOUSE: Judge, this is the ultimate relevance. She would -- said she would do it, if she were asked to do it, and it's on this checklist.

MR. MIDDENDORF: There is no relevance as to --

MR. SHOUSE: What would you do if ordered to do something, judge. This is straight off of these checklists, it's -- nurse --

THE JUDGE: What she would do in order to --

MR. MIDDENDORF: Yes.

THE JUDGE: But she is, I think, by definition so far, she was not -- you know, going to participate.

BY MR. SHOUSE:

Q That's what at least -- has anyone told you that you will never have anything to do with an execution at the penitentiary?

A I was told that when I got hired.

Q You were told that when you got hired?

A Yes.

Q Okay, fair enough then.

MR. MIDDENDORF: You are absolutely right.

BY MR. SHOUSE:

Q Okay, you were told that you would have nothing to do with an execution?

A Exactly.

MR. MIDDENDORF: Then we're done, aren't we, Judge?

THE JUDGE: We're almost -- just --

MR. MIDDENDORF: I mean, they were told -- here's my question. Could we call every employee, nurse, up here to ask this same question?

MR. SHOUSE: No.

MR. MIDDENDORF: No, it's not relevant to this matter.

SPEAKER: Come on, let's go through within (inaudible).

BY MR. SHOUSE:

Q If you were asked to give an injection of valium to an inmate prior to an execution, would you do that?

A Yes.

Q Okay. Does the patient's body weight have anything do with how much valium that should be given?

A No, I think there's a routine though. I don't

believe that it mentions anything, specifications of weight.

Q What is that routine dose?

A I think it's 2 mg.

Q I have no further questions.

THE JUDGE: All right. You have any, Mr. Middendorf?

MR. MIDDENDORF: No questions.

THE JUDGE: All right, thank you. Ms. Hiland, you are (inaudible).

SPEAKER: Who are the other two witnesses and what are the travel arrangements, and --

SPEAKER: There's -- there's only one, and it's Scott Haas, medical director who worked here in Frankfurt. Where he lives, I don't know. We are done with Eddie for the day.

SPEAKER: All right. Now, how long will you shift base, Dr. Haas?

THE JUDGE: Well --

SPEAKER: Quite a while?

MR. HAAS: Not as long as you might suspect, Judge.

SPEAKER: Can we take a two-minute recess to --

SPEAKER: Please.

SPEAKER: Thank you.

(Recess)

Whereupon,

SCOTT HAAS

was called as a witness, and having been first duly sworn, was examined and testified as follows:

THE JUDGE: Go ahead, Mr. Shouse.

DIRECT EXAMINATION

BY MR. SHOUSE:

Q Could you state your name, spell your last name for the record, please?

A Scott Haas, H-a-a-s.

Q Right, and how are you employed, doctor?

A I'm the medical director for the Department of Corrections.

Q Okay, is it fair to say that you are in charge of everything medical for DOC?

A Yes.

Q Okay. How long have you been the Medical Director, Department of Corrections?

A Since June 25, 2004. It's a little less than a year, yes.

Q Okay. Where did you go to medical school, doctor?

A University of Louisville School of Medicine.

Q What kind of medicine do you practice?

A At this point it's administrative medicine, historically I practice general, adult and forensic psychiatry, and some general medicine.

Q You -- you are primarily a psychiatrist, is that correct?

A Correct.

Q Okay. Are you Board certified in anything?

A Yes, I am.

Q And what would that be?

A General and Forensic Psychiatry.

Q Okay, so you are a Board certified psychiatrist?

A Yes.

Q Right. What problems can occur when starting an IV, inserting an IV, in your medical experience?

A You can have difficulty locating the vein --

Q Uh-huh.

A -- if you are trying to insert an IV into -- you may locate the vein, starting -- starting the IV and miss the vein.

Q Uh-huh.

A You may go through the vein, sometimes you can get the IV needle inserted into the vein properly, but then the vein just doesn't tolerate the IV being in there what they call a blown vein, is what it's -- it just means that it is a little bit -- in the vein.

Q Okay, is it generally more difficult to start an IV in people that are overweight?

A Yes.

Q It's generally more difficult to start an IV in someone who is drug abusive?

A Yes.

Q And if they are still a drug abuser, would you ever sight an IV in the carotid artery?

A No.

Q Okay. Can you tell me what drugs are used in a lethal injection in the Commonwealth of Kentucky?

A Lethal drugs used are sodium thiopental, pancuronium bromide and potassium chloride.

Q Do you have any knowledge of why these three drugs are used in Kentucky?

A Excuse me?

Q Do you have any knowledge of why these three drugs are used in Kentucky?

A No, I don't. If you ask me how they were chosen, no, I don't know specifically why those drugs were chosen. I'll be acting in general knowledge that other states use a similar combination of drugs in their lethal injections.

Q Okay, do you know why those three drugs, and not two drugs?

A No, I do not.

Q Okay. Can you tell me what does sodium thiopental is used for in therapeutic setting?

A It is for induction of hypnosis or sedative state, put them onto sleep.

Q Okay, and how long does the dose usually last?

A It depends on the amount of drug used.

Q Okay, depends on the amount of drug used. But in a therapeutic setting how long does it usually last?

A It depends on the amount of drug given and how long it will last.

Q Okay, do you remember when I deposed you on November 4th of last year?

A Yes.

Q Okay. Do you remember telling me then that the dose lasted five minutes or less?

A No, I do not.

Q Okay, okay. Then I asked you this, "Could an inmate be revived after administration of the sodium thiopental, but before the Pavulon is injected?"

A Yes.

Q Okay. Who is generally responsible for mixing drugs prior to an injection in a hospital setting?

A In a hospital, generally the pharmacist --

Q Okay.

A -- mix those medications.

Q Okay. Have you ever been asked at any moment in the Department of Corrections to render an opinion about any part of the lethal injection protocol used in Kentucky?

A Yes.

Q Okay. What were you asked?

A I was asked general information about the drugs that are utilized in the execution of protocol.

Q Okay, and what -- what is your opinion about that?

A I don't have an opinion about the drugs that were used, probably that's about clinical information on how the drugs work the way they actually do when given --

Q Okay.

(Tape interruption).

Q -- asked about?

A I believe that I was asked at one point by Campbell. There was a discussion about the amount of sodium thiopental to be used --

Q Uh-huh.

A -- after the initial stage of the execution.

Q Okay. Have you ever seen the --? You maybe aware that wasn't changes made to the protocol on December the 14th of this past year. Weren't you aware of that?

A Yes.

Q Okay. Have you ever seen the current protocol, the one that post-dates those changes?

A No, I did not.

Q Okay. Do you -- are you aware of any responsibilities you may have under the current protocol in

existence in Kentucky laws?

A I've not reviewed the current protocol. I assume, any responsibility would be similar to the previously known. The differences in the new protocol I'm not -- I'm not aware.

Q Okay. What do you perceive your role to be in regard to an execution by legal injection in Kentucky?

A Specifically, I don't have a role.

Q Okay.

A As the General Administrator, as the Medical Director for the department, a part of my responsibility would be to make sure that any other clinical staff performs their responsibilities.

Q Okay. Now, I would like to show you part of that protocol, please.

A All right.

Q Okay. What's the title of this check list, Doctor?

A "Pre-execution Medical Action Checklist."

Q And -- I'm sorry, what else?

A "Action taken after receiving an execution order."

Q Okay. And what's the date on that?

A December 14, 2004.

Q Okay. And number one, it's listed that, "The Department of Corrections, Medical Director and the Nurse Service Administrator are to be notified immediately upon receipt of the Governor's Death Warrant." Is that right?

A That is correct.

Q Okay. Now, number two, "Begin a special section of condemned's medical record for all medical actions." In your medical opinion, does that give you any direction on what's to be placed in that special medical section?

A No.

Q Okay. How about number 3? "A nurse visits and checks on the condemned at each shift, seven days a week, using the special medical sections to record contacts and observations." Does that the give the nurse any direction on what she -- he or she is to be looking for?

A No.

Q Okay. If you could turn the page, please. Now, I'd like to ask a question about this thing. You're a board certified psychiatrist. Is that correct?

A Yes.

Q Did you anticipate -- look at number 4, it says, "Psychologist" -- and I know -- I understand the difference between psychologist and psychiatrist -- which says, "Psychologists personally observes and evaluates the condemned five days a week, Monday through Friday. Do you anticipate, or is it probable that you would be the psychologist referred to in number 4?

A No.

Q Okay. You're the Medical Director. How would you -- what steps would be taken to determine what psychologists would -- would carry out before that?

THE JUDGE: I don't mean to interrupt, but it seems like striking 45, I don't know.

SPEAKER: I think that probably means we've no hope, Judge.

THE JUDGE: Okay. Or is that right?

SPEAKER: I think probably yes, sir.

THE JUDGE: Oh, it might help you. It is -- certainly it's not coming from the Court, it's coming from the church.

SPEAKER: It is 10 minutes past 6:00 o'clock.

THE JUDGE: What?

SPEAKER: (inaudible).

BY MR. SHOUSE:

Q So do you anticipate being a psychologist named at number 4?

A No, I do not.

Q Okay. Why not?

A I'm not a psychologist.

Q Okay. Do you have any idea how that psychologist might be retained?

A There're a number of options available to the warden.

Q Okay. What are those options?

A There is a psychologist currently assigned to The Kentucky State Penitentiary.

Q Okay.

A And there could be a contract for that. They'd bid for that to obtain a contact. One psychologist reccomends and outside the Department of Corrections to perform this function. And a psychologist who is assigned to another institution could be brought in to perform these duties.

Q Okay. Would you participate in that decision

making process?

A It is very likely.

Q Okay. And if it's a board certified psychiatrist, does number 4 give the psychologist who would be retained, any direction since this observes and evaluates? Do you think that it gives that psychologist any direction at all?

A A few.

Q What you're supposed to be evaluating?

A No.

Q Okay. We'll skip number 5. Okay, number 6 here. This directly relates to you. "The Department of Corrections, Medical Director or his designee would use an initial nursing documentation, a number 3 daily." Is that anything more than an instruction, just to initial whatever the nurse has written down?

SPEAKER: Object to the form of the questions. It reviews (inaudible).

THE JUDGE: Well --

BY MR. SHOUSE:

Q Okay. Is that anything more to be looked at and initial -- the nurse's notes?

A Yes. It is to review and initial.

Q Okay. What're you reviewing it for?

A It (inaudible).

Q Okay. Now, number 7 here -- and I suspect that what -- forget what I suspect, number 4 says psychologist, is that correct?

A Yes.

Q Could you please read number 7?

A "Psychiatrist reviews nursing and doctor's documentation, weekly."

Q Okay. So do you think that there's going to be -- Okay, do you think you could be the psychiatrist referred to in number 7?

A I won't be.

Q Why not?

A Because I don't perform in a clinical capacity, at this point. I perform only administrative functions at this point.

Q Okay. How long have you been employed at the Department of Corrections?

A Since 1993.

Q Okay. About 12, you are in the -- you are in

your 12th year.

A Yes.

Q Okay. So based on your -- and in those 12 years how many parties, procedures, protocols, DOC documents, do you think you've looked at?

A Numerous.

Q Okay. So do you interpret -- we're on number 7 here, do you interpret that so far we were talking about a minimum of 4 different people being involved? One, a psychiatrist, not you, because you're not clinical anymore. Two, a psychologist, not you, because you're not a psychologist. Three, a nurse or a nurse service administrator, not you, because you are neither of those things. And four, The Medical Director of Department of Corrections, that is you.

A Although it says, "The Department of Corrections Medical Director," as I've noted in my deposition, I think the intent of what I've read in the protocol during my deposition, it's actually currently health authority of the institution.

Q Okay. So you think with that Department of Corrections, Medical Director, means Dr. Hiland?

A Well, with the Department of Corrections, Medical Director or his designee --

Q Uh-huh.

A You know life without the designee would be difficult with the HQ Who would have been -- best people to make the decision as to what gauge is used, of the catheter?

A Whoever is inserting the IV line is just providing --

Q Okay. Just -- just briefly, are you familiar what kind of sodium thiopental comes from the manufacturer? Why is it in the powder form, another -- there's another fluid to reconstitute it, are you familiar with that?

A Yes.

Q How difficult is it to -- to mix those together or to reconstitute sodium thiopental?

A Not difficult at all. An (inaudible) to mixing (inaudible), you take the liquid you inject it into the vial of the powder and shake it up until the powder dissolves and -- and you're done. Instructions are on the packaging.

Q That's all the questions I've got. Thank you

Judge.

RE-REDIRECT EXAMINATION

BY MR. SHOUSE:

Q And you said different drugs are pushed at different rates?

A Yes.

Q Okay. And is the rate of injection -- is that in anyway dependant on the size of the catheter being used?

A Yes. (inaudible).

Q And why is that?

A Because smaller catheters doesn't allow much fluid to go through it quickly as the larger.

Q Right. So if you use too small a catheter, then it just might not get into the proper vein?

A Correct.

Q Thank you.

SPEAKER: Nothing further from me.

SPEAKER: Thank you.

SPEAKER: I don't think there is (inaudible) for evidence (inaudible).

SPEAKER: Let's ask about this. That's all we have for the day.

SPEAKER: Yes, sir.

SPEAKER: All right. What do you anticipate for tomorrow?

SPEAKER: Mr. Middendorf and I've had a discussion about that. We have two witnesses in the morning, one (inaudible) longer, I'll tell the court (inaudible) right from the schedule (inaudible)

SPEAKER: Okay.

SPEAKER: If you plan in the afternoon --.

THE JUDGE: Then I'll be (inaudible) at the afternoon (inaudible). We'll start at 9:30, to a (inaudible) I'll be here at 9:30.

SPEAKER: Yes, sir.

THE JUDGE: All right. Okay.

SPEAKER: Nothing from our side. Thank you.

THE JUDGE: All right. Thank you.