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MICHAEL ANGELO MORALES

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICHAEL ANGELO MORALES, Plaintiff, vs. JEANNE WOODFORD, Secretary of the California Department of Corrections; EDDIE YLST, Warden, San Quentin State Prison, San Quentin, CA; and DOES 1-50, Defendants.	CASE NO. C 06 0219 (JF) (RS) C 06-926 (JF) (RS) AMENDED JOINT PRE-HEARING CONFERENCE STATEMENT **REDACTED PURSUANT TO COURT ORDER - PART I** HEARING DATE: Sept. 26, 2006 TIME: 9:00 a.m. COURTROOM: 3

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Pursuant to the Court's Order Scheduling Evidentiary Hearing and Pre-Hearing Conference dated August 11, 2006, and the Standing Order re Pretrial Preparation, the parties submit the following supplement to their joint pre-hearing conference statement:

FACTUAL BASIS OF THE ACTION

(1) Undisputed Facts (Although not disputed, defendants reserve the right to dispute the ~~admissibility~~ relevancy of all facts marked "*").

~~1. No Warden has approved and signed Operational Procedure 770, March 6, 2006.~~

2. Defendants concluded that the modifications to Operational Procedure 770, March 6, 2006, will allow a lethal injection execution to proceed more quickly and efficiently. The changes were not made from any concern about the effectiveness or constitutionality of the former procedure (Supp. Response to Interrogatory #6).

3. Defendant CDCR employs the people who execute inmates for the State of California. These people are execution team members. Typically there are up to 14 members on the team.

4. The teammates select replacement members to the team as needed by unanimous vote by the team, and thereafter solicit the new members to join the team.

5. There are no doctors on the execution team.

6. Currently, there are no Registered Nurses ("RN") on the execution team, and there are no requirements that an RN be on the team.

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7. Warden Arthur Calderon presided over four lethal injection executions. At one time, Calderon claimed he personally selected all the teammates that conducted executions when he was Warden.

8. Jeanne Woodford was Chief Deputy Warden at San Quentin in 1998 and was responsible for the day-to-day operations of San Quentin. Woodford became Warden in 1999. At one time, Warden Woodford claimed she personally assured herself that each member of the execution team had a high degree of skill, competence, professionalism, patience, and stability necessary to be on the team. Warden Woodford presided over four lethal injection executions. Woodford was the Secretary of CDCR during the scheduled execution of Michael Morales on February 21, 2006.

9.* Witness #5, a licensed peace officer employed as a guard at San Quentin State Prison, was terminated by defendant CDCR, then reinstated with a five-month suspension without pay for bringing illegal narcotics into San Quentin State Prison.

10. Thereafter, Witness #5 was approved by Wardens Calderon and Woodford for membership on the execution team, was selected by Warden Calderon to be the execution team leader after Witness #10 was removed from the team. Witness #5 has participated in 10 California executions, and was the team leader for the last eight California executions.

10a. Warden Ornoski testified that there are no rules or regulations that "require [the Warden] to evaluate the bona fides of the execution team members." Warden Ornoski did not "review any of their qualifications, or their experience, or their training." Other than observing a training session and ensuring that they had practice time, Ornoski

did nothing to satisfy himself "that the members of the execution team were properly trained or qualified to be on that team."

11. Warden Ornoski left it to Witness #5 to select the teammates. Warden Ornoski presided over the executions of Stanley Williams and Clarence Ray Allen, and the scheduled execution of Michael Morales on February 21, 2006.

12. Witness #5 did not review the personnel files of any team members before extending invitations to them to join the team. Witness #5 never periodically reviewed the personnel file of any execution team member while he was the execution team leader.

13.* In 1995, Witness #1 was diagnosed with psychiatric disorders, including clinical depression and Post-Traumatic Stress Disorder as a result of years of working in the prison system. Witness #1 was found to be mentally disabled and could not attend work at CDCR for several months. Witness #1 was treated for these psychiatric disorders from 1995 to 1998.

14.* In 1998, Witness #1 was arrested and convicted for driving a vehicle while intoxicated in Sacramento County. His blood alcohol level was 0.12 – 50 percent over the legal limit. This conviction was reported to defendant CDCR, and thereafter became part of Witness #1's disciplinary record at CDCR.

15.* Witness #1 was invited to join the execution team in 1997, and has participated in the executions of eight inmates between 1999 and 2006.

16.* In January 2006, Witness #1 again was diagnosed to be clinically depressed, and was prescribed 300 mg of daily anti-depressant medication. At the time, Witness #1 had been elevated to be the co-team leader of the execution team. Among other things, he

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was responsible to observe the mixing of the thiopental sodium for the execution of Clarence Ray Allen in January 2006. While clinically depressed and medicated, Witness #1 participated in Allen's execution in a learning position to take over as team leader.

17. Execution team members are not required, upon entry to the execution team, to undergo psychological testing.

18. The team leader gives all directions to the execution team during an execution; all team members are under his direction. According to Warden Woodford, it is important to have an execution team leader in charge who is able to give clear and concise direction as to what the team ought to be doing.

19.* In February 2006, Witness #1 became the sole team leader for the execution team, and for the execution of Michael Morales scheduled for February 21, 2006. On February 20-21, 2006, Witness #1 still was receiving treatment for clinical depression, and was taking his daily dose of 300 mg of prescribed anti-depressant medication as he led the execution team for 24 hours.

20.* Witness #13 is another execution team member who has been convicted of drunk driving charges. This conviction was reported to defendant CDCR and was known by team leader Witness #1. Neither defendant CDCR nor Witness #1 took any action to preclude Witness #13's subsequent participation in the executions of Donald Beardslee, Stanley Williams, Clarence Allen, and/or the scheduled Michael Morales execution as a result of this conviction.

20a. It is a rule that you cannot be working in the condemned area of the prison and be on the execution team. There are no exceptions to the rule.

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20b. Warden Woodford was willing to assign an officer to be a member of the execution team who was known by the inmate who was being executed.

21.* Witness #5, the team leader for the last eight California executions, regularly worked in the condemned inmate areas of the prison since 1978, including in the [redacted] Witness #5 worked "substantial" hours in all of these areas, [redacted]

22.* From about 1982 to 1987, Witness #5 worked [redacted] In that period of time, every condemned inmate that arrived at San Quentin State Prison [redacted], including plaintiff.

23.* Over the past several years, Witness #5 worked [redacted] where plaintiff is housed. [redacted] working per each watch.

24.* Since being the execution team leader, Witness #5 was disabled from work – requiring a number of medical appointments for a couple of years – as a result of injuries sustained in a physical altercation with an inmate.

25. The RNs and LVNs on the execution team sometimes work in the condemned prisoner area of San Quentin, and condemned inmates are treated by the RNs and LVNs where they work in the prison.

25a. Witness #5 testified that the only reason why the identities of execution team members should remain confidential is because "[i]t's a solemn process, it's a process that

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is carried out by the State, and it's not just open for common communication or coffee talk or coffee conversation." Witness #5 can think of no security issues with respect to the inmate, the execution team, or San Quentin personnel to support the confidentiality policy.

25b. Operational Procedure 770 requires that, "[d]uring the afternoon immediately preceding an execution by lethal injection, a member of the injection team shall proceed to the pharmacy to obtain the necessary agents (drugs) for the procedure."

25c. For the last eight California executions, Witness #5 claims he would retrieve the controlled substances for the execution from the prison pharmacy a week before a scheduled execution, not the afternoon before.

25d. Witness #5 states that "two people [are] required to go get the drugs." Either this procedure was in place when Witness #5 joined the execution team, or he initiated the procedure. Witness #5 always was involved in retrieving the drugs for the last eight executions. "[O]n a number of occasions," he secured the controlled substances along with Witness #1.

25e. Witness #5 testified that they dealt with a specific female pharmacist "more than 85 percent of the time" for the eight executions when he was team leader.

25f. Witness #1 always made arrangements to obtain thiopental sodium from pharmacist Rosa Nugyen at the San Quentin pharmacy.

25g. A pharmacist practicing in California is a person that holds a license issued by the State of California to dispense drugs which are classified by the federal government as controlled substances.

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25h. Thiopental sodium is classified by the federal government as a controlled substance. In the United States it is illegal to obtain thiopental sodium other than through a licensed pharmacist.

25i. The San Quentin pharmacy is required by federal law to keep a perpetual inventory log regarding its inventory of thiopental sodium. Whenever thiopental sodium is either dispensed or received, it is the policy and practice at the San Quentin pharmacy to record that in the inventory logs on the same day that the inventory transfer occurs.

25j. The San Quentin pharmacy controls thiopental sodium in a locked cabinet and it does periodic inventory inspections and counts which are required by federal law. The San Quentin pharmacy is required to perform these inventory counts for thiopental sodium on an annual basis.

25k. David Silacci is the Pharmacist in Charge ("P.I.C.") of the San Quentin pharmacy. He is a licensed pharmacist by the State of California, and has a doctorate degree in pharmacy. As part of Mr. Silacci's job as P.I.C. at San Quentin, he testified that he is "obviously concerned about drug diversion issues," and "it's my job to minimize or eliminate drug diversion at any time."

25l. If thiopental sodium is lost or stolen at the San Quentin pharmacy, Mr. Silacci as P.I.C., is required to report the incident to the federal Drug Enforcement Agency which in turn will conduct an investigation. Mr. Silacci also is required to report the incident to the Warden and the Chief Medical Officer at San Quentin for the prison to conduct its own internal investigation.

25m. As P.I.C., Mr. Silacci currently reviews the thiopental logs every month.

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25n. Fifteen 500mg vials of thiopental sodium were released by San Quentin pharmacist Rosa Nugyen to Witness #1 for "practice" on January 5, 2005. Nugyen recorded this in the San Quentin pharmacy "Controlled Substance Inventory Log" which is kept by the San Quentin pharmacy pursuant to federal law and San Quentin internal policy (Exhibit 76).

25o. Pharmacist Nugyen again released 25 500mg vials of thiopental sodium to Witness #1 for "practice" on November 16, 2005. Nugyen recorded this in the San Quentin pharmacy "Controlled Substance Inventory Log" which is kept by the San Quentin pharmacy pursuant to federal law and San Quentin internal policy (Exhibit 76).

26. The execution team uses regular saline or water in the syringes during training or practice sessions. The execution team does not practice mixing thiopental.

26a. The packaging material for each 500mg vial of Pentothal includes the following warning in two separate locations: "Warning: may be habit forming" (Exhibit 2).

26b. On January 14, 2005, pharmacist Rosa Nugyen released 25 500mg vials of thiopental sodium to "Witness #1 team" for the execution of "(D Beardsley) 1/19/05." Nugyen recorded this in the San Quentin pharmacy "Controlled Substance Inventory Log" which is kept by the San Quentin pharmacy pursuant to federal law and San Quentin internal policy (Exhibit 76).

26c. On November 23, 2005, pharmacist Rosa Nugyen released 25 500mg vials of thiopental sodium to Witness #1 for the execution of "Tookie Williams 12/13/05." Nugyen recorded this in the San Quentin pharmacy "Controlled Substance Inventory Log" which is

kept by the San Quentin pharmacy pursuant to federal law and San Quentin internal policy (Exhibit 76).

26d. Pharmacist Rosa Nugyen released 25 500mg vials of thiopental sodium on January 5, 2006 to Witness #1 for the execution of "(Clarence Allen) 1/17/06." Nugyen recorded this in the San Quentin pharmacy "Controlled Substance Inventory Log" which is kept by the San Quentin pharmacy pursuant to federal law and San Quentin internal policy (Exhibit 76).

26e. Five grams of thiopental were required for each execution. The execution team never broke a vial of thiopental during preparation for an execution.

26f. While 5 grams of thiopental sodium were required for an execution, between January 4, 2005 and January 18, 2006, 12.5 grams of thiopental sodium were released to Witness #1 on three different occasions by the prison pharmacy for each scheduled execution (as 25 500mg vials). Another 20 grams of thiopental sodium were released to Witness #1 for practice.

26g. Between January 4, 2005 and January 18, 2006, no thiopental sodium was returned to the pharmacy by Witness #1, Witness #5, any other execution team member, or by anyone. This is confirmed by the Controlled Substance Inventory Log maintained by the San Quentin pharmacy pursuant to federal law and by San Quentin policy (Exhibit 76).

26h. On April 6, 2006, one 500mg vial of thiopental sodium was returned to the prison pharmacy, and is recorded as such in the Controlled Substance Inventory Log maintained by the San Quentin pharmacy pursuant to federal law and by San Quentin policy (Exhibit 76).

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26i. There were always unused drugs after every execution. Witness #5 claims that in each instance he returned them to the pharmacy. Witness #5 did not institute a policy for the execution team that two people were required to be present to return any unused drugs to the pharmacy.

26j. No thiopental sodium was dispensed by the San Quentin pharmacy or was returned to the San Quentin pharmacy between January 6, 2006 and April 5, 2006.

26k. Mr. Silacci testified that he has seen Witness #1 "with a bag, a brown bag, or something like this, taking something out of the pharmacy." Mr. Silacci further testified that he has never seen Witness #1 returning any thiopental sodium to the pharmacy.

26l. Mr. Silacci understands that the reason why Witness #1 requests thiopental sodium from the pharmacy is that it is used in San Quentin's execution protocol. There is no policy at San Quentin that allows Mr. Silacci to review the quantity of Witness #1's requests for thiopental sodium, or the reasons for the request.

26m. The execution team has "to get the drugs" from San Quentin pharmacy to conduct an execution. "[W]e get them from the pharmacy."

26n. The execution team leader calls the pharmacy to "make sure the proper inventory [of necessary drugs] is there at least two weeks prior to the execution."

26o. The execution team leader has "to physically go to the pharmacy" to get the drugs in order to conduct an execution.

26p. Witness #5 testified that upon arrival at the pharmacy, the execution team leader has to "locate the pharmacist, inform her that we're there to pick up the drugs. They'll take us back into a secured area of the pharmacy, get the drugs from the storage

area and give them to us. And usually we have a bag to carry them in, and then we exit and go to the chamber."

26q. David Silacci is employed by Drug Consultants, Inc. to work at San Quentin as the director of its pharmacy. Drug Consultants, Inc. was retained by the State of California to bring the practice of pharmacy at San Quentin up to an acceptable community standard of practice. Mr. Silacci is responsible to report to, among others, the receiver appointed to manage the standards of medical care provided at San Quentin.

27. Between January, 1996 and January 18, 2006, five grams of thiopental were required to be used in an execution under the protocol. ~~A single back up syringe of thiopental was prepared for each execution which contained 1.25 grams.~~

28. Starting with the Siripongs execution and for every execution thereafter, Witness #1 claims the procedure changed to using four syringes of sodium thiopental, each containing 1.25 grams of sodium thiopental.

29. Certain execution team members have testified that prior to the execution, the execution team trains two times a week leading up to the week before the scheduled execution. The team then comes off post and trains continuously, eight hours a day, a week before leading up to the execution. Witness #3 testified that the team goes through it "over, and over, and over," at least seven or eight times in the course of two hours because it is important that everybody is comfortable with their roles and what they are doing.

30. Execution practice sessions consist of meetings and dry runs through the procedure exactly as it is expected to proceed at an execution, except that the thiopental is not actually mixed into solution; the catheters are not inserted into anyone's veins; water is

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used in the syringes and IV bags; the IV lines empty the fluid into a bucket; the RN typically takes the position of the Warden; and team members simulate the position of the inmate.

30a. Witness #6 is a RN and participated in eight California lethal injection executions between 1998 and 2006.

30b. Witness #6 recalls that the execution team practices for an hour or two – "it depends" – during the three days before an execution. "If the warden want to come and see us, then – then we have to stay and wait. Otherwise, we practice and we go."

30c. Witness #6 added that "[w]e don't have training, really." "We get together a few days before and just practice." "We just get to the chamber and we back there. Then we go home." "An hour or two."

30d. Pursuant to the execution training attendance logs, the execution team has practiced only 72 times since 1997. Witness #3 was present for training only 34 times pursuant to the training logs.

31. There are no documents that are referred to at the training or generated during the training. No one takes down any notes while the training is going on.

32. For each execution, the lethal drugs are mixed by the ~~medical members of the execution team (~~RNs and LVNs. ~~), along with the person charged with administering the drugs and the team leader.~~

33. During the last eight California executions, there were no practice sessions where people practiced mixing Pentothal. Witness #1 has not been trained in mixing the drugs. Witness #1 was responsible to ensure that the drugs are mixed correctly.

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34. The first time Witness #4 mixed Pentothal was on the evening of a scheduled execution. Prior to mixing Pentothal for an execution, Witness #4 had never received any training in doing that. On each of the four occasions when Witness # 4 mixed the lethal drugs, he would mix the drugs with Witness #1. Witness #4 observed that when the Pentothal is mixed, it is a yellowish, brownish tan color.

34a. The packaging material for each 500mg vial of Pentothal provides: "Use reconstituted solution only if it is clear, free from precipitate and is not discolored."

34b. LVN Witnesses #3 and #4 claim in their depositions that they prepare the Pentothal by following the instructions.

35. The packaging material for each 500mg vial of Pentothal states that each 500mg of thiopental sodium is to be dissolved in 20 mL of sterile water. Accordingly, one gram of Pentothal is to be dissolved in 40 mL of sterile water.

36. The new Operational Procedure 770, March 6, 2006, provides that 5 Gm of Sodium Pentothal will be mixed thoroughly with the 250 mL bag of Sodium Chloride (saline).

36a. Under the new Operational Procedure 770, March 6, 2006, each one gram of Pentothal is to be dissolved in 50 mL of a solution of sodium chloride of unknown concentration, rather than in 40 mL of sterile water.

37. In the new Operational Procedure 770, March 6, 2006, the thiopental drip is set at a rate such that it will last 20 to 30 minutes for all the fluid to run out.

~~38. The drip rate for the IV saline bags is set by the team member who administers the drugs.~~

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39. The saline drips are supposed to be set so that the MTAs can tell from looking at the IV drip whether they have successfully placed the catheters.

39a. Witness #4 cannot conduct an inspection to see if the catheter is set properly without entering the execution chamber.

40. The packaging material for each 500mg vial of Pentothal provides: Store at controlled room temperature 15° to 30°C (59° to 86°F). See USP. Keep reconstituted solution in a cool place.

41. Under new Operational Procedure 770, March 6, 2006, an IV drip bag containing five grams of thiopental sodium is to be hung above the execution chamber with two other IV bags. The drugs are to be mixed sometime after 11:00 p.m. The IV bag is then placed at a distance of roughly six to nine inches from a lamp fixture consisting of an incandescent light bulb with red glass and a silver, cylindrical reflective metal sheath. On the night of a scheduled execution, this lamp is turned on at approximately 11:40 p.m.

42. While the execution team attempts to begin the execution fairly close to midnight, the execution sometimes does not start until a little later. The execution team did not begin to administer Pentothal until 12:22 a.m. during the execution of Stanley Williams, and until 12:18 a.m. in the executions of Donald Beardslee and Clarence Allen.

43. The anteroom is the location where the execution team administers the lethal drugs into the IV lines during an execution. The room would "comfortably accommodate" 16 or 17 people, "but certainly not any more than that." Hon. J. Fogel RT 3/30/06 at 185; see also 122. During an execution, ~~however, there are a few more than that;~~ "it's a bit more crowded" in the antechamber than 16 or 17 people. Dr. Calvo testified that there are "so

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many people . . . in the room that you didn't even know who they were and [why] they were there." Warden Ornoski reports that he would "shuffle from side to side a foot or two, but I mean, it's fairly crowded back there. There's not much room for me to maneuver." During Clarence Allen's execution, "it was even more crowded at that time, and I don't believe I could move from my spot much, if any."

43a. Witness #1 testified that the doctor is usually right at the window to the right side, viewing the inmate, during an execution.

43b. Dr. Calvo testified that "two or three people" would stand in between him and the window to the chamber.

44. During Stanley Williams' execution, Dr. St. Clair noted that "[s]ome big fellow from Sacramento" "was in [his] way." "[I]f I recall, I'm holding a clipboard, and he kind of hit me . . ." The same individual stood in front of Dr. St. Clair during the execution of Clarence Allen. "[O]ne of the problems with the big guy was not only was he [was] blocking -- he'd block this way, but he'd block the light that comes from that little room that helped to allow me to see what I'm doing."

45. During Stanley Williams's execution, a "rather large" CDCR official was standing in front of the antechamber window to the execution chamber. The large man did not take any part or role in the execution of Mr. Williams. Witness #4 was attaching the syringe of lethal drugs to be administered to Stanley Williams to the stopcock, and the large man "was standing in Witness #4's way." Witness #4 had to nudge him a couple of times because it was a territorial imperative. He was a large gentleman, and he was tending to take up more and more space. Dr. St. Clair stood behind this large person.

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46. It "was a packed house" during the Thompson lethal injection execution.

46a. Between twenty-nine and thirty-three people were to be present in the anteroom for the scheduled execution of Michael Morales.

47. The three phones in the anteroom of the execution chamber are dedicated to the clerk at the state Supreme Court, the Attorney General's office, and to the prison's operations center. There is no phone to the Governor's office.

47a. Currently, there is no execution team member, or any other person, assigned to monitor the telephones in the antechamber. The role was taken by non-team members for the executions of Stanley Williams and Clarence Allen.

47b. To execute an inmate, officers bring the inmate from a holding cell across the hall from the execution chamber, through the anteroom of the execution chamber, and into the chamber. Witness #1 believes that five peace officers walk the inmate into the chamber; Witness #4 thinks it's four; and Witness #9 thinks it's six.

48. The inmate is then restrained on the gurney with restraints on the wrist, shoulders, across the chest, over the waist and through the groin area. Some execution team members depart from the chamber before catheters are inserted into the inmate.

49. Catheters are regularly set in the inmates' arms by LVNs during executions. Witness #3, a LVN, has set catheters in seven of nine executions since he has been on the execution team. He has set the catheter in the inmate's right arm in, among others, the executions of Donald Beardslee, Stanley Williams, and Clarence Allen. Witness #3 only recalls setting the catheter in the inmate's left arm on one occasion.

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50. Witness #4, a LVN, set a catheter in Donald Beardslee's left arm for his execution, after initially blowing the inmate's vein.

50a. During Stanley Williams's execution, Witness #6, a RN, was responsible to set one catheter. The vein blew when she started the IV. She attempted again to start the IV and the vein blew again.

50b. Witness #6 was frustrated and became upset; she was visibly upset to other execution team members.

50c. Unbeknownst to Witness #6 and Witness #3, Witness #6 then failed to properly set the catheter a third time. Witness #6 subsequently taped the catheter to Williams's arm, and began to exit the chamber.

50d. While Witness #3 and Witness #6 were exiting the chamber, it was said that "it wasn't flowing, the drip wasn't flowing." The RN couldn't believe that it wasn't running again. After Witness #6 exited the chamber – while the chamber door still was open – it was said a second time that "the left wasn't running."

50e. Warden Ornoski was standing in the center of the anteroom, looking at the door. The team leader was present at the chamber door.

50f. Witness #4 was under the impression that the team leader was responsible to monitor the IV drip as a result of all the training he went through for Williams, as well as other executions.

50g. The Warden then said, "Proceed," "after the comments were made that the left IV had failed." The execution proceeded without the IV line in the left arm properly set or operating.

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50h. The catheters are set in the inmates' arms by either a RN or LVN as part of the execution process.

51. Witness #3 and Witness #4, two LVNs, were assigned to set the catheters in Michael Morales during his scheduled February 21, 2006 execution.

51a. MTAs are not RNs at San Quentin. MTAs are LVNs who also are licensed peace officers. San Quentin has had a LVN training program where inmates were trained to be LVNs.

51b. The MTA Pocket Reference, Instructor's Guide, Scope of Practice for MTAs, published by CDCR provides: "Licensed Vocational Nurses (LVNs) are NOT independent practitioners. It is not within the scope of LVN practice to function independently. The LVN must practice under the direction of a licensed physician or Registered Nurse (RN) at all times. Such direction may be provided verbally, telephonically, or by written order."

52. There were no medically licensed individuals on the execution team for the scheduled execution of Michael Morales other than Witness #3 and Witness #4.

53. Witness #4 may have read 10 or 12 pages of Procedure 770, but only once and only after Beardslee's execution. Witness #3 never has read Procedure 770. Dr. Calvo, who was present for the executions of Keith Williams, Babbitt, Siripongs, Anderson, Rich, Massey, and Stanley Williams, and perhaps others, has not read Procedure 770.

54. The doctors present at executions do not have any supervisory responsibilities during the execution. The LVNs do not act under the direction of a physician during an execution. The setting of these catheters is performed in the execution chamber, not in a health care facility.

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55.* Witness #3 never has taken any course work or training to become an RN. He was trained to set catheters [redacted] over 14 years ago. [redacted] instructional training regarding setting catheters took place all within a minute. As an LVN at CDCR for the past 11 years, Witness #3 has received no medical training from CDCR.

56.* LVNs do not set catheters at San Quentin's Treatment and Triage Area ("TTA"); that is the responsibility of a registered nurse or physician. General anesthesia is not applied in the TTA.

57.* It is very infrequent that an IV line is placed in an inmate in the medical units at San Quentin other than in the TTA.

58.* Witness #3 is a LVN assigned to [redacted]

59.* Witness #4 is a LVN assigned to [redacted]

59a. A RN is assigned to work each shift in the TTA, and two RNs are assigned to work on two of the three shifts.

59b. Occasionally, an IV is set at the Outpatient Housing Unit, but only by a RN.

60.* Fourteen years ago, Witness #3 practiced setting catheters [redacted]. After demonstrating three successful venal punctures or IV starts, Witness #3 became certified by CMF to start IVs as a LVN. Witness #3 has no estimate regarding how long his CMF IV training or IV course lasted, and he does not know upon whom he set the catheters.

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61. An LVN who is training for an execution does not practice setting the catheter in the simulated inmate's arm; they tape the catheter to the outside of the simulated inmate's arm.

62. Procedure 770 requires that two catheters be properly set in the inmate and operating before an execution begins.

63. During the Massie execution, there was a difficulty with one of the IV lines.

63a. After the RNs or LVNs leave the execution chamber, the lights are turned down in the anteroom before the execution begins. The lights are turned very low. Under the anteroom's subdued lighting, the syringes containing the lethal drugs are present, taped to a cart.

63b. During the Allen execution, Dr. St. Clair, the doctor filling out the execution record, could not see where his entries were supposed to be without the aid of a small flashlight.

63c. If the thiopental sodium drip stops during an execution, there is no written procedure for what is to take place next.

64. For the executions of Keith Williams, Bonin, Siripongs, Thompson, Rich, Babbit, Massie, and Anderson, respirations were measured by Dr. Calvo who has observed and counted respirations for almost 40 years.

65. For the executions of Keith Williams, Bonin, Siripongs, Thompson, Rich, Babbit, Massie, and Anderson, Dr. Calvo measured respirations by watching the inmate for a full minute and counting the number of respirations.

66. When measuring respirations, Dr. Calvo started when he heard the instruction for each of the three drugs given.

67. When recording respirations, Dr. Calvo recorded rhythmic breathing movements at a certain rate.

68. When observing the execution of Manuel Babbit, Dr. Calvo noted shallow respirations after the administration of pancuronium that were at the same rate as previously noted, but were not deep breaths.

69. When observing Manuel Babbit, Dr. Calvo noted spasmodic, jerking movements of the upper abdomen and chest area one minute after the administration of the pancuronium which lasted a minute, after which all breathing stopped.

70. When observing the execution of Darrell Rich, Dr. Calvo noted that after respirations ceased, Mr. Rich had what Dr. Calvo characterized as agonal breathing movement which was not rhythmic one minute after the administration of the pancuronium, that lasted a minute at least but could have been two minutes, which he considered to be unusual.

71. The saline flush administered after the sodium thiopental flushes the remaining sodium thiopental in the tubing into the inmate.

72. For the executions of Keith Williams, Bonin, Siripongs, Thompson, Rich, Babbit, Massie, and Anderson, Dr. Calvo observed the administration of a saline flush before the administration of the pancuronium and before the administration of the potassium chloride, and after the administration of the potassium chloride.

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73. For the executions of Stanley Williams and Clarence Allen, Dr. St Clair measured breathing by counting breaths for 15 seconds and multiplying by four.

74. Inmates are evaluated prior to execution to determine if they have useable veins. They are not evaluated to determine if they have any condition or characteristic that may alter the effect of any of the drugs administered during the lethal injection process.

75. When the Warden orders the execution to commence, the execution team is required to first administer Pentothal to the inmate. To do so, an execution team member selects a syringe from the top of a cart where syringes containing Pentothal, pancuronium bromide, sodium chloride, and saline are placed.

76. When a syringe is selected, it is inserted into a stopcock on the outside wall of the execution chamber and the syringe's contents are plunged into the stopcock, which is attached to an IV line that flows from an IV bag of saline hung on top of the execution chamber to the stopcock and then through the execution chamber wall to a catheter set in the inmate's arm.

77. Witness #3, the LVN who has participated in seven of the last nine executions, believes that in each instance, he selected the syringe from the cart – including during the Stanley Williams and Clarence Allen executions – and passed it to another LVN for insertion into the stopcock, then the empty syringe was returned to him and he made the selection of the next syringe from the cart. Witness #3 has practiced this with the team "over, and over, and over."

77a. Witness #1 believes that after a syringe has been emptied, the same MTA removes the syringe, places it back on the cart and retrieves the next syringe.

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78. Witness #4, the other LVN who has been scheduled to participate in five executions and participated in the Beardslee, Stanley Williams, and Allen executions, believes that in the Williams and Allen executions, he selected the syringes off the cart for insertion into the stopcock, and then he returned the empty syringes to the cart before selecting the next syringe.

79. Infiltration is when the IV catheter delivers fluid into the tissue surrounding the vein. Witness #4 believes the arm will swell up, but not before 10 or 15 minutes.

80. Once an RN or LVN places the catheter, they leave the chamber and the chamber door is closed. The left IV – which will need to be used in the event the right IV fails – is not monitored by the execution team for infiltration during an execution.

81. Witness #1 claimed that one LVN or RN is positioned in a spot that they are able to see into the chamber area to the right arm where the primary IV is set.

81a. During the seven years on the execution team, and all of the executions Witness #7 participated in, Witness #7, a RN, never saw a RN "during an execution stationed at the window looking into the chamber" because they "[c]ouldn't get close."

81b. Witness #7 only saw diplomats, Wardens Caldron or Woodford, and visitors from Oregon stationed at the window of the chamber during an execution. Witness #7 never saw anyone from Texas stationed at the window of the chamber during an execution because she believes that "they know how to do it."

81c. Witness #6 is a RN who was on the execution team from 1996 through the execution of Clarence Allen in 2006.

81d. Witness #6 cannot see into the execution chamber during executions when

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she stands in the back of the room, nor does she look into the chamber when handing syringes to the executioner.

81e. After Witness #6 sets an IV in an execution, she "stand[s] back in the corner over there" by the door to the mixing room. She does this "[b]ecause it's packed with people, I have no room. I'm thin, so I lean a against the wall. It's a tiny room and packed with people, so I just get away from everybody. I stand by the corner." "I want to be by myself. Don't touch anybody."

81f. Witness #6 cannot see the inmate at that point "because everybody is higher. Everything is higher than me." "People are higher, taller than me." "They wider than me; they taller than me, so." "I'm right by the cart."

82. Witness #3, the LVN who has set catheters in seven of the last nine executions, cannot see the inmate above the waist from where he stands in the anteroom during an execution and cannot see the inmates' arms.

83. Witness #4 handled the syringes for both the executions of Stanley Williams and Clarence Allen. Witness #4 neither practiced nor was trained by CDCR on how to make a visual inspection of the IV lines during the executions.

84.* Witness #4 was trained as an LVN [redacted] to examine catheters to see whether infiltration was occurring. Catheter inspections were part of his regular routine. These IVs would be the same as used during the execution. In every instance, Witness #4 was taught to get as close as you can get to the patient; bedside; no farther than arms length; touching their arm if necessary. In all instances, Witness #4 would get much closer than in the case of an execution. Witness #4 can get no closer than

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eight feet from the inmate's catheter during the execution, and is in a separate room with "subdued lighting" looking through a window.

85. During Stanley Williams's execution, both an RN and Witness #3, a LVN, inspected a catheter setting while inside the chamber and concluded that it was set properly, when in fact it was not. Standing outside the execution chamber, Witness #4 could not tell whether the catheter was set properly – the only way he could tell whether or not it was successful was by the way the RN reacted to it. It was not based in any part on his observation of the IV or the catheter itself. Witness #4 was not sure whether it was set properly.

86.* Witness #3 was trained [redacted] to monitor the flow of an IV by having the IV bag and drip chamber above the person that you're starting an IV on, and then stand right next to it – within a foot. The IV drip bag and the drip chamber during an execution are located above the execution chamber, approximately nine to 10 feet off the ground, accessible only in the anteroom to the execution chamber. The catheter, the inmate, and IV tubing are located inside the execution chamber. The length of IV tubing is approximately 11 feet for each line inside the chamber, from the point at which the line goes through a hole in the chamber wall to the catheter placed at the inmate's elbow.

87.* Witness #5, the former execution team leader, never received any training in infiltration. Witness #5 was the person who trained the next team leader, Witness #1, on how to administer lethal drugs. The only other person to train Witness #1 in this regard was the RN [redacted]

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[redacted] This is the same RN who improperly set the catheter in Stanley Williams, failed to recognize it was not set properly, and then failed to advise Witness #5 of this failure until after the execution.

87a. During an execution, pursuant to Operational Procedure 770, three drugs are suppose to be administered to the inmate: Potassium Chloride; Pancuronium Bromide; and Sodium Pentathol. After participating in ten executions and acting as the team leader in eight, "Pentathol" is the only drug used during an execution that Witness #5 "can think of . . ."

87b. Witness #5 "can't recall" whether there is "more than one syringe of Pentothal" that is used in an execution. If there are three drugs that are used in an execution, the team leader similarly does not recall "how many syringes of Drug No. 2" there are, or "how many syringes of Drug No. 3 are on the cart." Witness #5 does not "have an answer" for how long it takes "to inject a single syringe during an execution."

87c. Witness #5 only "knows where the Pentothal [is located] based on the medical staff's ability to load it in the proper syringe and secure it to the top of the cart." He thinks that "the name of the chemical is written on top of the shadow of the syringes." When the execution team leader looks down on the cart and sees the syringes, "[t]o the best of [his] recollection, all the chemicals are clear, are a clear substance." Witness #4, a LVN who mixes the drugs, thinks Pentothal is "sort of a tan" color, a "[y]ellowish, brownish tan . . ." and pancuronium bromide is "kind of a milky-ish, grayish color."

87d. Pursuant to the execution training attendance logs, Witness #5 was present for only nine training sessions since the Thomas Thompson execution, and did not appear at any training sessions after February 1, 2000.

87e. Witness #5 cannot testify "with any certainty that at every single execution we had two medical doctors" present. There "may have been one or two that we only had one doctor."

87f. Witness #5 claims that defendants had a doctor that attended five executions and he was aware of San Quentin's cut-down procedure. Witness #5 has "no idea" of the doctor's name and claims he's now dead. Witness #5 does not know of any doctors who attended executions at San Quentin who are familiar with the cut-down procedure since the other doctor died.

87g. Witness #5 never discussed the cut-down procedure with any other doctors other than the doctor who attended five executions, whose name he can't recall, and who has died. Witness #5 never assigned any other team member to discuss the cut-down procedure with any doctor.

87h. Witness #5 testified that "the amounts of drugs used for an execution "changed somewhere within the last two years."

87i. Witness #5 testified that the amount of Pentothal used during the last two executions "changed during the last two executions."

87j. Witness #5 claims that he does not recall the amount of Pentothal that was contained in a vial that was used in the Allen execution.

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87k. Witness #5 testified that he "could not give [] an accurate answer" as to "how much Pentothal was administered to Allen in his execution."

87l. Witness #5 testified that he "could not give [] a definite answer" how much Pentothal was administered to Stanley Williams during his execution. Witness #5 does not "recall" what "the operational procedure state[s] in that regard, if anything."

87m. Witness #5 testified that he doesn't "have any recollection" as "to the amounts" of how much of Drug 2 was administered to Clarence Allen during his execution.

87n. Witness #5 testified that he has "no recollection" as to how much of Drug 3 was administered to Clarence Allen during his execution.

87o. Witness #5, "as team leader," was overseeing the preparation of the drugs used in the Allen execution.

87p. Witness #5 testified that he does not know what diluent is.

87q. During the Allen execution, Witness #5 believes there was a minimum of five syringes on top of the cart at the time the execution commenced, and he can't give an estimate of the maximum number of syringes that may have been on the cart.

87r. No one on the execution team advised Witness #5 that they had been trained in mixing Pentothal at the time they came onto the execution team.

87s. Witness #5 testified that he never asked any of the medical staff whether they had been trained in mixing Pentothal at the time that they came onto the team.

87t. Witness #5 testified that he does not know whether the package insert for Pentothal contains "instructions on how to mix a 5 gram dose."

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87u. Witness #5 testified that he does not know "the volume of the solution that is contained in a Pentothal syringe during an execution."

87v. Witness #5 testified that he cannot recall that he ever knew "what the concentration of Pentothal was in a syringe."

87w. Witness #5 claims that "the team routinely prepare a backup dose of sodium pentothal."

87x. Witness #5 has never received any training with respect to syringe back pressure during the administration of lethal chemicals.

87y. Witness #5 does not know the drip rate for the IV bag; he has never known it; and he does not know "if that drip rate is set forth in the operational procedure" and does not know whether he ever knew this information.

87z. Witness #5 testified that there is no policy, written or unwritten, that disciplinary action taken against an execution team member be brought to the attention of the team leader.

87aa. With respect to the LVNs on the execution team, Witness #5 testified: "I personally do not have the knowledge of . . . the quality of their work . . ."

87bb. Witness #5 testified that Warden Ornoski selected Witness #1 to be the next execution team leader, and Ornoski never consulted with Witness #5 on the mater.

88.* Witness #5 and Witness #1 are friends. Since Witness #5 [redacted] communicates with Witness #1 by e-mail and telephone. They discuss what is going on at San Quentin, [redacted]. Witness #1 told Witness #5 that he had his deposition taken in this case, and they discussed his

deposition before Witness #5 appeared for his deposition. Witness #1 and Witness #5 discuss family issues. Witness #1 recently has called Witness #5 from the airport to discuss a very personal family crises which Witness #5 is unable to share. Witness #5 communicated about the scheduled execution of Michael Morales by e-mail with Witness #1 on three occasions. Witness #5 does not have access to those e-mails.

89.* Witness #5 obtained copies of the depositions of Witness #3 and Witness #4 before he appeared for his deposition. When he obtained these deposition transcripts, they were both in the possession of Witness #3.

90. Witness #1 never has had training on how to feel for a clogged IV when pushing on a syringe nor about instances where IVs can become clogged after they've started dripping.

91. The execution team does not practice removing bubbles in an IV line during training. There is no procedure that goes into effect should someone note a bubble in the IV line during an execution.

92. No member of the execution team monitors the inmate's anesthetic depth during an execution.

93.* Anesthesiologist #2 ("A2") was requested by Darc Keller, Assistant Secretary, Office of Health Care Policy for defendant CDCR, to participate in the scheduled execution of Michael Morales pursuant to the February 14, 2006 order of the Hon. Jeremy Fogel.

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94.* A2 was advised by Keller that they needed a "backup" anesthesiologist to be present for the execution. A2 "asked, 'What would that entail?,'" and Keller advised, "That would entail nothing."

95.* A2 inquired, "What do you mean by 'nothing'?," and Keller advised that he "would simply be there to observe. You would have no responsibilities."

96.* A2 "wasn't to go through training" because he "had no responsibilities."

97.* A2 agreed to be present as a backup after confirming his understanding that he would not be in the chamber, that he would have no responsibilities other than to be present.

98.* A2 never had any understanding that he was ever to give any professional opinion.

99.* A2 had no understanding that "if there was a problem with the primary anesthesiologist, [his] role would escalate to something else."

100.* On the Saturday before the scheduled execution of Michael Morales, A2 attended an execution rehearsal at San Quentin. A2 never was given a copy of execution Protocol 770 to read; he didn't know there was such a thing. A2 was not given any pharmaceuticals to review that were kept at San Quentin, any former execution logs, or medical devices, and he brought no medical equipment to the prison.

101.* A2 did not provide any advice on how to prepare Pentothal, how to set a catheter, how to operate the IV system, how to use the stopcocks, how they could do an execution better or the amount of Pentothal that should be used.

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102.* A2 never has induced general anesthesia from a remote location, nor seen anyone do it.

103.* A2 provided no advice regarding the methods of using the syringes or comment on the location of the IV bags.

104.* At the rehearsal, A2 was in the anteroom of the execution chamber, and was told to stand in the corner, and he did. As you walk into the anteroom, circle all the way around to the end of the circle, and A2's location was in the far right-hand corner. A2 could not see into the chamber from where he was standing. He stayed there for an hour, and never relocated himself.

105.* A2 does not recall what transpired during the rehearsal because he wasn't paying that close attention. A2's observations of the rehearsal were limited because he chose not to pay much attention.

106.* It was A2's assessment, based upon his conversations with Darc Keller of CDCR, that CDCR was requesting his presence merely as a "warm body." A2 had no plans to do anything but stand there. The only instruction A2 had was to stand there, given by the warden. That's the only order he ever received.

107.* At the rehearsal on February 18, 2006, A2 was handed a headset, and was told to tell Dr. Singler that he was signaling the patient was unconscious. That was the first time A2 learned that he was going to be asked to perform this role. This was not consistent with A2's role as he understood it, and he refused to perform the role.

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108.* Thereafter, the warden approved A2's request to be allowed, during the execution, to stand in the small room off the anteroom where the lethal drugs are mixed – an area where it would be impossible for A2 to see into the execution chamber.

109.* When A2 left San Quentin on February 18, 2006, it was his understanding that, in attending the execution of Michael Morales scheduled for February 21, 2006, he would have to do nothing other than show up at the prison and stand in that little room.

110.* Darc Keller, Assistant Secretary, Office of Health Care Policy for defendant CDCR, used CDCR funds to pay A2 his normal anesthesiology fee for these services.

111.* On February 20, 2006, A2 arrived with Dr. Singler at San Quentin at 8:00 p.m., and within the first one minute, before he sat down, Bruce Slavin from CDCR said, "we have a problem." Slavin proceeded to show A2 the first document A2 ever saw in writing of a court order describing the expectation of Dr. Singler and A2.

112.* After reading two pages of the February 19, 2006 order from the Ninth Circuit in this case, A2 immediately stated: "I can't participate -- I can't proceed." Dr. Singler concurred.

113.* A2 absolutely never gave anyone any reason to believe after 8:15 p.m. on Monday night, that he was going to be present during the execution.

114.* A2 left San Quentin around midnight or 1:00 a.m. CDCR did not advise Michael Morales that it was not proceeding with the scheduled 12:01 a.m. execution until after 2:36 a.m. Neither CDCR nor the Attorney General ever advised Michael Morales's counsel that CDCR was not proceeding with the scheduled 12:01 a.m. execution until after 2:45 a.m., when counsel was advised by Lt. Vernell Crittendon of CDCR.

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115.* In response to the Court's February 14, 2006 order, a meeting lasting approximately an hour to an hour and a half took place in Sacramento for CDCR to review its lethal-injection protocol.

116.* The meeting was called by the Governor's legal affairs director, Andrea Hoch, and was attended by Robert Singler, M.D., Dane Gillette, Andrea Hoch, Steven Ornoski, Bruce Slavin, Dan Maguire, Tami Bogert, Peter Szkrenyi, Dave Runnels, and Darc Keller.

117.* All present had read a copy of this Court's February 14, 2006 order, and appeared to be familiar with this Court's respectful suggestion to CDCR that it review its lethal-injection protocol.

117a. Warden Ornoski read Judge Fogel's orders and saw "that he had some concerns" and was "steering us in the direction to modify our process," but the Warden does not "think the Court actually gets to set our policy."

117b. Warden Ornoski recalls that at this meeting, Andrea Hoch, the Governor's counsel, was "quite frankly, she was the -- the most prolific speaker as far as questions, she wanted to know just about everything . . ."

117c. At the meeting, Warden Ornoski recalls that Mr. Gillette provided an opinion to the attendees of the meeting that the claims raised by Michael Morales "were pretty meritless."

117d. Based upon the discussion with Andrea Hoch, the Governor's Legal Affairs Secretary, Dr. Singler, the opinions of Dane Gillette and Bruce Slavin, and based upon his observation of the Texas model, Warden Ornoski would reduce the amount of sodium

Pentothal used during an execution to one or one and a half grams, "and then starting the rest of the concoctions."

117e. Warden Ornoski personally witnessed the State of Texas perform a lethal injection execution, "and from [his] personal observation it was fairly quick. Significantly quicker than California's."

118.* At the conclusion of the meeting, no one was assigned any tasks or responsibilities to take any further action in this regard. Warden Ornoski knows of no other actions taken by CDCR with respect to the Court's suggestion. Warden Ornoski left that meeting with the belief that the issue would be resolved at the hearing by this Court and that CDCR would be told by the Court what its new procedure was going to be.

118a. At the time of the scheduled execution of Michael Morales, Thomas Rosko, M.D. was the chief psychiatrist at San Quentin and provided psychiatric care to inmates and supervised the psychologists and mental health treatment personnel at the institution.

118b. Dr. Rosko was medically responsible to care for the mental health of Michael Morales, but made Warden Ornoski aware that he "was positively inclined" to make a medical determination about whether Mr. Morales was unconscious or not during his scheduled execution to allow the execution of Michael Morales to take place on February 21, 2006.

118c. Dr. Rosko testified that to adequately assess an inmate's anesthetic depth, he would need to "do that being in there with the patient. You couldn't do that from another room outside because it's a clinical evaluation. So I guess it's fair to say, as this was being

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discussed, it kind of included the idea that, if I were to do it, I would have to actually be in there next to the inmate."

118d. Dr. St. Clair agrees with Dr. Rosko on this assessment.

118e. Dr. Rosko would not use Thiopental to maintain unconsciousness during surgery because "thiopental is generally not strong enough to do surgery and also because it has a relatively short duration time of action."

119.* Warden Ornoski requested that Dr. Thomas Rosko, the San Quentin Chief Psychiatrist and a former anesthesiologist, assist in revising Operational Procedure 770.

120.* Dr. Rosko's task was to devise the procedures to employ for the continuous infusion of sodium thiopental. At that time, Dr. Rosko believed that the initial bolus dose would be 5000 milligrams of sodium thiopental.

120a. Dr. Rosko testified that it is good and standard medical practice to be in the same room as a patient.

120b. Dr. Rosko testified that one checks for consciousness for changes in vital signs both clinically by the use of one's senses and also via monitoring devices through the use of a machine, a cardiogram, a blood pressure cuff, or an oximeter.

120c. Clinical observations include movement, breathing, skin color, whether eyes are open or closed, and pupil size.

120d. Thiopental is used as an induction agent to induce unconsciousness and other drugs are typically used to maintain unconsciousness.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICHAEL ANGELO MORALES, Plaintiff, vs. JEANNE WOODFORD, Secretary of the California Department of Corrections; EDDIE YLST, Warden, San Quentin State Prison, San Quentin, CA; and DOES 1-50, Defendants.	CASE NO. C 06 0219 (JF) (RS) C 06-926 (JF) (RS) AMENDED JOINT PRE-HEARING CONFERENCE STATEMENT **REDACTED PURSUANT TO COURT ORDER - PART II** HEARING DATE: Sept. 26, 2006 TIME: 9:00 a.m. COURTROOM: 3

120e. In order to determine an appropriate clinical dose of thiopental, one must consider the circumstances including the person's age, medical condition, weight, and other drugs they are on.

120f. If someone presents themselves with an elevated heart rate, say from anxiety, Dr. Rosko testified that he has administered premeditation before administering thiopental.

120g. Witness #1 described the execution process to Dr. Rosko in a general way; who would be there and what they would do. They also discussed the role of the person monitoring in response to the court's order.

120h. Dr. Rosko met with the Warden, Witness #1, and Dr. St. Clair and walked over to the chamber. The discussion was along the way. There was no discussion about Dr. Rosko having to order any measures if he observed that Mr. Morales was in distress during the execution procedure.

121. No state other than California uses a bolus dose of sodium thiopental that is less than 2 grams.

122. Texas uses 3 grams of sodium thiopental during an execution.

123.* Dr. Rosko performed 15 minutes of research on the Internet to determine the concentration of sodium thiopental to be in the infusion, and the drip rate.

124.* During Dr. Rosko's Internet search, he did not have access to a Medline account that would allow him to review entire articles in certain journals.

125. Inmates Allen, Anderson, Massie, and Siripongs received a second dose of potassium chloride during their executions.

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125a. The doctor's log which lists, among other things, the number of doses of potassium chloride given to the inmate, is missing for the Thompson execution, and defendants cannot explain why.

126. Warden Calderon has described the execution teammates' responsibilities as "awesome" and very stressful. He says that the teammates become very apprehensive during an execution. Witness #1 states that it is a very intense process; it is the most stressful thing that a person in the Department of Corrections is asked to do. Witness #4, a LVN, states that he is as tense as he ever is. It is a surrealistic experience. It does not seem real when it's happening. It seems dreamlike. Witness #3 states that it is stressful because there is no other place in the world that an LVN is asked to start an IV for that purpose. Warden Steven Ornoski was practically beside himself during the Stanley Williams execution. Wardens Brown and Ornoski have refrained from viewing any part of the condemned inmate save his feet during the last three California executions.

127. The identity of the execution team leader is known to personnel at San Quentin from all aspects of the institution: maintenance, medical, and custody. For Witnesses #1 and #5, their existence on the execution team and as execution team leader was not a secret at the institution. It becomes a known fact.

128. Operational Procedure 770 prohibits team members from asking anything that would require an oral response during an execution.

129. Witness #1 invited Witness #9 to join the execution team. At the time, Witness #9 knew that Witness #1 and Witness #5 were on the execution team because "[t]hings get around." Warden Jill Brown then interviewed Witness #9 for five minutes.

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Witness #9 does not remember Brown asking him any questions regarding his mental, psychological, employment, drug, alcohol, criminal, or disciplinary history. Brown then confirmed his appointment on the team.

130. Witness #9 joined the execution team before the execution of Donald Beardslee "to succeed Witness No. 1" as the team leader. His "selection was to be co-leader or next in line" in the event Witness #1 left the execution team.

131. For the Beardslee, Stanley Williams, and Allen executions, Witness #9 was the recorder and was stationed at a desk outside the anteroom of the death chamber approximately four feet from the death watch cell between midnight and 2:00 a.m., and he "couldn't see what was going on" during the executions.

132. Witness #1 taught Witness #9 what information needs to be recorded - "you write down everything the inmate does." Upon completion of his recorder responsibilities after an execution, Witness #9 would give all of his recorded information to Denise Dull on the evening of the execution.

133. Witness #9 writes down everything he sees based upon his own personal observations, except "the time of each push to the time of the pronouncement of death . . ." He obtained that information from either Witness #1 or Maurice Lyons for the Beardslee execution, and from Witness #20, a maintenance supervisor, for the Stanley Williams and Clarence Allen executions.

134. Witness #9 gives Witness #20 a list of the times he wants recorded during the execution, and Witness #20 records the times on a piece of paper while watching the execution from the anteroom, based upon the times on the clock. Witness #9 then records

these times in the log book and destroys the written list provided by Witness #20. Witness #20 also has other jobs during the execution.

135. Witness #9 has no recollection of ever revising the Stanley Williams execution log entries after the execution. All of the entries on the log, Exhibit 14, between 0019 hours and 0035 hours were provided to him by Witness #20.

136. During execution team training sessions, Witness #9 would "practice the roles that are performed by execution team members that take the inmate from the deathwatch cell into the chamber." He practiced no other team member roles.

137. Witness #9 testified that "because the team leader administers the lethal drugs," he received training as to how to administer lethal drugs. Witness #1 and Witness #5 are the only people that provided such training to Witness #9. Witness #1 described it as "limited training."

137a. Witness #5 testified that there was only one time during practice that Witness #9 worked with the syringes. On that occasion, Witness#9 was not doing so with "the view to become the team leader at some point." Witness #5 observed that Witness #9 was working with the syringes "probably [for] personal experience."

137b. Witness #5 never provided training to Witness #9 "on how to administer lethal drugs."

138. Witness #9 recalls that "[t]here isn't really much training into it" and it is "more a self-taught event." He was taught not to push the syringe too hard because he might blow the inmates vein "or the IV tubing." Witness #9 has received no "training with respect to back pressure in administering lethal chemicals." He was given no advice

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whether the push could be too slow, but was told that at least some minimal pressure on the syringe is required.

139. When Witness #9 practiced pushing a full set of the five lethal injection syringes before the Beardslee execution, the entire process took about seven to ten minutes to empty all of the syringes.

140. Witness #1 and Witness #5 never provided Witness #9 any "instruction or training as to whether there's any difference in the sensation or the feeling of the push [of the syringe] when that open IV line is actually connected to a catheter" (i.e., 18 gauge) or "when that open IV line is connected to a catheter that's inserted into a human."

141. On only one occasion has Witness #9 observed the execution team mix the lethal chemicals. This occasion was before the execution of Clarence Allen. He watched this from the antechamber of the execution chamber through a window into the mixing room. He is "not really sure" how it is done.

142. This observation session was only to show Witness #9 the location where the chemicals were mixed. Witness #9 has no educational background in pharmacology, and never has seen drugs mixed on any other occasion.

143. The drugs were mixed between 6:00 p.m. and 8:00 p.m. on the night of the Allen execution. Witness #9 "can't be sure" where the syringes were stored after they were filled with the lethal drugs. The syringes being used were "the big syringe that we use for the push."

144. Witness #9 believes one drug used during an execution is sodium Pentothal, but he does not recall the other two. He is unsure whether sodium Pentothal is administered

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before or after the other two drugs. He does not know how much sodium Pentothal is contained in the syringe.

145. Witness #9 believes Witness #1 showed him Exhibit 67, and that it is kept "somewhere in the mixing room" in plastic covering.

146. Witness #9 believes "there has to be instructions for mixing" the drugs, but he doesn't know where the instructions would be kept.

147. In the practice sessions for Michael Morales's execution, Witness #9 believes the execution team practiced with one syringe emulating sodium Pentothal, and one backup syringe emulating sodium Pentothal. The syringes were filled with water, not sodium Pentothal. It is the same set up that was used in every practice session that Witness #9 has participated in since joining the execution team.

148. There have been no execution team training sessions since before the scheduled execution of Michael Morales. Witness #9 has neither added nor deleted any personnel from the execution team.

149. Witness #9 is not familiar with how anesthesia works, and has had no formal medical training. Witness #9 believes that sodium Pentothal "take[s] the nervous system out." He does not know how many grams of sodium Pentothal are used in an execution in California.

150. Witness #9 does not know why potassium chloride is used in the protocol.

151. Witness #9 would not know how to make a determination whether a person is regaining consciousness after being administered sodium Pentothal. He does not know what infiltration is. Witness #9 has received no formal medical training.

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152. Witness #9 claims he never missed an execution team training session while he was a member of the execution team. During those practice sessions, the team would "run through two drills", and it would take "approximately an hour for the two drills."

153. No one has told Witness #9 "what the doctor's responsibilities are supposed to be during an execution"; it's never discussed during practice.

154. Witness #9 has "no idea" who the doctor is that would be present if a California execution was scheduled for tomorrow.

155. Witness #9 "couldn't say where the doctor is suppose to be located" in the antechamber during an execution.

156. The entire execution team remains at the execution chamber area after an execution. Witness #9 has observed that the team takes the inmate out of the chamber, "do postmortem on him," and he testified that they videotape the events. Witness #9 prepares the "evidence sheet" for the "incident package" at that time. Photographs of the inmate also are taken by Witness #1, #5, or #33. Witness #1 and Witness #5 are trained in "post-mortem", while Witness #9 is not.

157. Defendants have never produced to plaintiff for inspection the videotapes and advise that Witness #9's testimony is inaccurate as to the existence of same, or the evidence sheets, incident packages, or postmortem reports from any execution.

158. Witness #9 never has read Operational Procedure 770.

159. If Witness #1 did not appear for the scheduled execution of Michael Morales on February 21, 2006, Witness #9 would have acted as the team leader.

160. Witness #9 currently works overtime in the [redacted] as the shift Lieutenant. Witness #9 was assigned to work in the [redacted] of the prison for at least four years.

161. On the night of the scheduled execution of Michael Morales, Mr. Morales was housed in the death cell four feet from where Witness #9 was posted. Mr. Morales greeted Witness #9 by name, and asked him how he was doing. Witness #9 wore no name tag.

162. For the Beardslee, Williams, and Allen execution team practice sessions, Witness #9 recalls that team leader Witness #5 "was present about half the time."

163. Witness #9 has only seen CDCR doctors attend training sessions one time for each execution, and on the eve on an execution.

164. Witness #9 never has seen anyone adjust the setting of the mechanism on the IV line that is located under the IV bag in any practice sessions other than the session "during Mr. Morales, with the doctors there."

165. Witness #9 has "no idea" how the execution protocol has changed, but he has heard rumors that it has. He never has discussed the execution process with Warden Ayers. No one has discussed with Witness #9 changing the execution procedure to use a sodium Pentothal IV drip.

166. There are no Lieutenants other than Witness #9 on the execution team. There are no Captains, Associate Wardens, or Chief Deputy Wardens on the execution team.

167. Witness #9 has never reviewed the personnel or supervisory files for any execution team members.

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168. Defendants have not produced the supervisory files to plaintiff for inspection and review of any execution team member.

169. Witness #9 plans to retire from CDCR "very soon."

170. Witness #7 is a RN and participated in seven California lethal injection executions between 1996 and 2003. She is not a licensed nurse anesthetist. There never has been a licensed nurse anesthetist on the execution team. To become a licensed nurse anesthetist, a RN must undertake additional training and testing to become certified.

171. During Witness #7's tenure as an execution team member, she worked with two other RNs on the execution team, and two LVNs.

172. While Witness #7 was on the execution team, there never was more than one other RN on the team. One RN performed one or two executions with Witness #7 in or around 1996, then she left the execution team [redacted]. She was replaced on the execution team by Witness #6, a RN who remained on the execution team through the execution of Clarence Allen in 2006.

173. While Witness #7 was on the execution team, there never was more than one LVN on the team.

174. Witness #3 telephoned Witness #7 on the eve of her deposition to discuss her upcoming deposition. Witness #3 learned of Witness #7's scheduled deposition from [redacted]. Witness #7's son knows that his mother was on the execution team, and knew it when she joined the execution team in 1996. Witness #7's son knows that Witness #3 is on the execution team. Witness #7's [redacted]. He has worked

in East Block where plaintiff is housed [redacted], and he currently works there.

175. Witness #7 never trained an execution team member on how to administer lethal drugs.

176. In all of the training sessions that Witness #7 attended during the seven years on the execution team, Witness #7 only saw one RN, i.e., Witness #6, provide training to an execution team member on how to administer lethal drugs. This occurred on two occasions.

177. For each instance, the training session lasted for less than one minute. Each training session was provided to a different execution team leader, and the second session occurred years after the first.

178. Witness #7 never observed a RN other than Witness #6 provide training to an execution team member as to how to administer lethal drugs.

179. Witness #7 never observed a LVN provide training to an execution team member as to how to administer lethal drugs.

180. The only training that Witness #7 saw Witness #6 give was how fast to push the plunger. The training was "not to push it that fast, or not to go too slow."

181. Witness #7 never practiced mixing sodium Pentothal.

182. In all of the practice sessions for all of the executions that Witness #7 participated in, she never saw anyone on the execution team practice mixing sodium Pentothal.

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183. In all of the practice sessions for all of the executions that Witness #7 participated in, she never practiced setting an IV on anyone.

184. When Witness #7 was trained to set catheters in 1958, she practiced setting them on other people.

185. In all of the executions Witness #7 participated in, her only responsibilities were to mix the drugs, set a catheter, and select the syringes from the cart and hand them to the person administering the lethal chemicals. Witness #7 selected syringes from the cart during the seven executions she participated in about half the time. If Witness #7 was not selecting syringes from the cart, she was doing nothing during that portion of the execution procedure.

186. Witness #7 could not see into the execution chamber while the lethal chemicals were being administered during any execution she participated in.

187. In every execution that Witness #7 participated in with Witness #6, after the syringes were handed to the person who was to administer the lethal chemicals, Witness #6 was operating the stopcock to turn off the saline IV flow coming from the IV bags.

188. The anteroom of the execution chamber was so crowded with people that Witness #7 would "use [her] elbows a little to get your room," and when handing syringes to the executioner she would "have to kind of reach around people."

189. During all of the executions that Witness #7 participated in, she could not see the executioner put the syringes "in the stopcock or plunge the chemicals" because "of the crowds in the room."

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190. Witness #7 never saw a RN or LVN either hang an IV bag or connect the IV bag to IV tubing during an execution.

191. In all of the training sessions that Witness #7 attended during the seven years on the execution team, and all of the executions Witness #7 participated in, Witness #7 does not know how the IV line is turned on, or who turns it on.

192. There is a switch in the IV tubing line below the IV bag that can regulate the flow of saline from the IV bag. In all of the training sessions that Witness #7 attended during the seven years on the execution team, and all of the executions Witness #7 participated in, Witness #7 never saw a team member set the regulator. Witness #7 has never seen a RN or a LVN be assigned the task of setting the regulator for the IV saline drip line, or practice doing so.

193. In all of the training sessions that Witness #7 attended during the seven years on the execution team, and all of the executions Witness #7 participated in, Witness #7 has never heard any discussions or seen any training as to how the drip setting on the IV line should be set.

194. Witness #7 never has received training on how to mix sodium Pentothal either before or after joining the execution team. Witness #7 never mixed sodium Pentothal for an execution.

195. Witness #7 testified that Witness #6 always mixed the sodium Pentothal for all the executions that she participated in. Witness #6 "would just take over." "She liked to do it, and she always said she didn't need any help."

196. One inmate received two syringes of potassium chloride because after "a reasonable time" "he didn't die", and the team "waited and waited."

197. In this instance, Warden Woodford directed a second dose to be given to the inmate by "just nodding her head" to Witness #7. There never was a previously established "line of communication established between [Witness #7] and Warden Woodford" for this purpose.

198. Witness #7 knew that when Warden Woodford "nodded her head to [Witness #7], that she wanted [Witness #7] to hand another syringe of potassium chloride" to the executioner "[b]ecause [Witness#7] had it in [her] hand ready."

199. Witness #1 claims he does not know who gave the order to administer the second dose of potassium when one was given, but he was present in the anteroom for the Clarence Allen execution that required second doses of potassium chloride.

200. Witness #3 thought that the team leader ordered the second dose of potassium during the Allen execution.

201. Witness #5 claims he never ordered the administration of a second dose of potassium.

202. Witness #7 doesn't know why they have a team leader, but believes it's important because "somebody has to take charge."

203. Witness #6 participated in at least seven executions up through the Clarence Allen execution when she retired.

204. When Witness #6 was asked, "And how did you go about training to be on the execution team?," Witness #6 testified, "Training? We don't have training really."

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205. Witness #6 testified that execution team members would practice an hour or two per day for three days before an execution.

206. Witness #6's recalls the execution chamber antechamber during an execution as "a tiny room and packed with people . . . ."

207. Witness #6 testified that she mixed the thiopental into solution for every execution for which she was on the execution team, up through and including the Allen execution.

208. Witness #6 doesn't remember the amount (milligrams) of thiopental that was contained in the thiopental kit or kits that she used to prepare the syringes of thiopental. She never mixed more than one bottle of thiopental for any execution.

209. Witness #6 recalls that "[m]ost of the time," or "always," the thiopental came packaged in a single large bottle. "Sometimes the concentration is different too. Sometimes the big vial. Sometimes more vial is different. So -- but like I say, so we -- it depend."

210. Witness #6 has not received or given any training on how to mix thiopental. She learned to mix thiopental "at the chamber." "Nobody taught me." Instead, she used the package insert and the formula (Ex. 67) as guides.

211. In order to mix the thiopental with the diluent, "[s]ometimes you have to -- have to use the syringe; sometimes it comes [in bottles] that you can hook together and shape (sic - shake), so it depends the pharmaceutical, yeah."

212. After Witness #6 draws up the syringe or syringes, there would be some solution left in the thiopental bottle.

213. Witness #6 does not recall ever mixing four syringes of thiopental that contained 1.25 grams each.

214. Witness #6 mixed the sodium thiopental solution according to the formula kept in the drug cart. The formula is from the state. When Witness #6 mixes sodium pentothal, "the most important is the milligram of it. So it's not the cc that counts." "[F]or example 50 milligrams you can even make it in 20 CCs or 50 CCs, it depend how you mix them."

215. When shown the method for mixing sodium thiopental recorded in Operational Procedure 770 and asked if this was the formula she followed, Witness #6 responded, "No. Mine is much higher concentration than this."

216. Witness #6 testified that the execution team keeps one backup bottle of thiopental in the refrigerator, unmixed.

217. Witness #6 would take the diluent that's provided by the manufacturer, mix it up in the vial, and draw out the 25 cc's with the needle. "Whatever the package come with, we put everything in that. If we need 25 cc's, we draw out 25 cc's. Or whatever milligram required, that's what we do."

218. Witness #6 mixes the thiopental to be clear, not yellow or brown.

219. Witness #6 has set a catheter in every execution she has participated in. Either Witness #7 or Witness #3 also set catheters with Witness #6 on these occasions.

220. Witness #6 has handed the syringes to the person administering the lethal chemicals on two or three occasions. She never watches the inmate while doing this.

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221. Witness #6 has observed that the person administering the lethal chemicals faces the plate of stopcocks while pushing the syringes. The person handing the syringes to the person administering the lethal chemicals watches that person and the syringes so they know when to remove the syringe from the stopcock and install the next syringe.

222. Witness #6 has no training in anesthesiology or the pharmacology of thiopental. She doesn't know the pH of thiopental, the highest recommended concentration of thiopental, or how many milligrams of thiopental come in a vial.

223. Witness #6 has not done any research on thiopental because "[o]ther medication, yes daily I have to use I need to know so I can teach my patients, but this I don't need to know. I don't ever use it so I don't need to know it."

224. Witness #6 does not how many grams of thiopental are used during an execution. The formula is written on a piece of paper by the State that is kept in cart in the execution chamber.

225. When the execution team practices, the syringes are not drawn "according to the volume that you are going to inject" during an execution. Witness #6 testified that "[w]e just draw the syringes and pretending." "Just whatever volume we pretend to play with and we do." If the formula says 25 cc's, they might decide for a practice session to do 50 cc's.

226. Witness #6 knows of no procedure in place if the execution team cannot set an IV catheter.

227. Witness #6 doesn't remember the number of syringes that are prepared for an execution because "we don't do it every day. Once in a while."

228. Witness #6 remembers that she set the right IV for the Tookie Williams execution: "Mr. Williams I remember … Williams I have a problem so it's in my head."

229. After Witness #6 had trouble starting the IV during the Williams execution, the execution team was "very supportive again. They say quote unquote shit does happen, so."

230. When asked what happens if pancuronium is injected into a conscious person, Witness #6 testified, "I don't study. I just do the job. I don't want to know about it."

231. Witness #6 testified that the LVN that hands the syringes to the person pushing the syringes of the lethal chemicals then just stands there. There is no training or practice for this LVN to do anything else. "[W]e just stand there. It's our job to start the IV, mix the solution, make sure they have what they need. And after that, we are nobody; we behind. . . . [E]xcept the MTA helping to get him what exactly he need to push."

231a. Witness #6 can only see the back of the person pushing the syringes of the lethal chemicals. People stand between her and the person pushing the syringes.

231b. According to Witness #6, the RN who attended and participated in eight executions, the person administering the drugs is not standing with his shoulder to the chamber because it would not be the proper position to push drugs. The person is actually facing the panel holding the stopcock mechanism, which allows that person to administer the drugs.

231c. According to Witness #6, the RN who attended and participated in eight executions, the LVN that hands the syringe to the person administering lethal chemicals, "stands right here next to him" looking "straightforward at the lure lock" i.e., the stopcock

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panel. The LVN is watching the lure lock to enable him to know when the syringe is empty, so he can remove it and place a new syringe in the lure lock. "So it just makes sure continuously done. When he sees almost finished or if I was there, it's almost finished I prepare to give the new one."

232. Witness #6 regularly worked the 6:00 a.m. to 2:00 p.m. shift at San Quentin, either in the [redacted].

233. The team leader and the warden decide when training should occur for an execution. Witness #6 testified that if she had a question about what should or shouldn't be done, if somebody had difficulty with a member of the team, or if somebody had a question about performance of another team leader, she would consult the team leader. Witness #6 recalls the wardens being present once for training for each execution. They are not a "regular presence in the training."

234. Witness #6 provided care for condemned inmates [redacted]. She is not aware of any rule prohibiting her from doing so while she is a member of the execution team.

235. Witness #7 testified that the syringes of different drugs had different amounts of solution in them: "Sodium pentothal was 25 cc's, and it was followed by the 20 cc's of saline to flush it through. The Pavulon was 50 cc's, and there were two syringes of that that were given, plus the 20 cc's of saline, and then the last drug given was the potassium chloride, which was 50 cc's containing thiopental had 25 cc's in it."

236. When asked if she had read Operational Procedure 770, Witness #7 said "I don't know what you're talking about."

237. No member of the execution team has training in anesthesiology.

238. Witness #3 believes it is not his responsibility, and has not been trained to check the other team member's IV placement to make sure that the catheter has been successfully inserted.

239. Witnesses #6, #1, and #3 do not know what effect pancuronium would have if injected into a conscious person.

240. Witness #4 thinks that potassium causes death before it causes pain.

241. No former team leaders have had medical training.

242. The saline IV drip chambers are set at a rate equivalent to TKO ("to keep open") during the execution.

243. No changes were made to Operational Procedure 770 as a result of consultations with Dr. Dershwitz.

244. Drs. St. Clair and Calvo do not have training in anesthesiology.

245. A procedure for notifying the team leader and Warden if one or both of the IVs was not set properly should have been in place for the Allen execution, but wasn't.

245a. Witness #5 testified that up until the execution of Stanley "Tookie" Williams, there was no obligation for an execution team member to report a failed IV to anyone in the execution team.

245b. A reporting procedure was created after the Stanley Williams execution, but it is not in writing.

245c. The reporting procedure was not part of the operational procedure at the time Witness #5 retired at San Quentin.

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245d. The reporting procedure was not part of the operational procedure at the time of the subsequent execution of Clarence Allen.

246. Exhibit 67 is the "formula" that Witnesses #6 and #7 used to guide their preparation of the chemicals for each execution in which they participated. Exhibit 67 is a typewritten reproduction of a handwritten document that Witness #7 found in the execution chamber. Witness #7 does not know who prepared the original document.

247. Witness #3 testified that he recalls setting the left arm catheter for the execution of Thomas Thompson, and the right arm catheter in the last three California executions. He testified that "it's possible" that he set left arm catheters in other executions. Witness #3 did not participate in the executions of M. Babbitt or J. Siripongs.

248. Former San Quentin Warden Daniel Vasquez testified that he adopted the three-drug cocktail for lethal injection executions in California "because Texas used it."

249. Warden Vasquez did not "disagree with any of the provisions of the Texas protocol."

250. He did not "feel it was necessary to modify . . . any of those provisions to make the procedure work better than it did in Texas."

251. Warden Vasquez's recollection is that he adopted the Pentothal "in the same dosage that Texas used it."

252. Warden Vasquez testified that his "recollection as to the amount of sodium Pentothal that was being used in Texas" "was 5 grams."

253. When shown a document that listed the second step in an execution as "inject[ing] into main line 2 gm 'push'" (Ex. 107 at 5), Vasquez testified, "I don't know

how that got in there. You know what? I – all I knew was 5 gram – use of 5 grams." He further stated, "The only discussion I recall was 5 grams."

254. Exhibit 121 was obtained "from Texas in the process of devising 770." The exhibit, labeled "Contents of Syringes," provides for the preparation of only one syringe of Pentothal solution, containing 2.0 grams of sodium Pentothal (Ex. 112.). The Pentothal was to be prepared as "four 500 mgm vials dissolved in the least amount of diluent possible to attain complete, clear suspension."

255. Exhibit 107 is "the initial draft of the procedure" for California. The procedure provides for the preparation of only one syringe of Pentothal solution, containing 2.0 grams of sodium Pentothal (Ex. 107, p. 2). The Pentothal was to be prepared as "four 500 mgm vials dissolved in the least amount of diluent possible to attain complete, clear suspension."

256. Exhibit 110 is labeled Resource Supplement G-4. Warden Vasquez testified that Resource Supplement G-4 "was the supplement to the lethal injection procedure that was going to describe the drugs that were being used." This supplement provides for the preparation of only one syringe of Pentothal solution, containing 2.0 grams of sodium Pentothal (Ex. 110). The Pentothal was to be prepared as "four 500 mgm vials dissolved in the least amount of diluent possible to attain complete, clear solution." *Id.*

257. Exhibit 111 is another copy of the same document. It includes, however, a handwritten alteration of the amount of sodium Pentothal from 2.0 grams to 5.0 grams. Ex. 111. Warden Vasquez testified that he did not recall having ever seen the document before, and that he had "no idea" whose handwriting changed the amount.

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258. Exhibit 109 is another version of the same Resource Supplement G-4. It provides for the preparation of one syringe of Pentothal, containing 5.0 grams of sodium Pentothal.

259. Warden Vasquez testified that his intention regarding the information he received in Texas was to "[b]ring it back to California and consult with the Attorney General's Office in California for consideration of changing the method of execution. There was no "discussion about what the medically appropriate doses are for [the lethal] chemicals" when Vasquez returned to California. Warden Vasquez does not recall "consult[ing] with any doctors independently about [the] procedure." While Warden Vasquez believes "there were some medical staff" involved in the drafting process for the original O.P. 770, he does not recall their positions, race, gender, or other physical attributes.

260. Warden Vasquez testified that "three, four feet, something like that" of IV line were utilized in the Texas lethal injection procedure.

261. Warden Vasquez testified that the Texas lethal injection team "use[d] medical staff to do the push." It was his "understanding of the process as how it should be employed."

262. Warden Vasquez's notes reflect that Texas' lethal injection procedure utilized a "0.9 % sodium chloride 50 mil packet – drip for K.V.O (keep the vein open) [at] approx. 15 drips per minute." Ex. 103 at 6. Vasquez testified that "[t]hat would have been the intent" "of the procedure that [he] employed in California as well."

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263. Warden Vasquez testified that "[m]aking a execution seem humane and dignified is up to the people that carry it out. You can't legislate it or write it down. You have to practice it."

264. Warden Vasquez testified that he believed that the lethal drugs should be "mix[ed] with as little saline solution as possible . . . as little to make suspension possible for each drug." Ex. 103 at 5.

265. Warden Vasquez testified in this litigation that he did not "recommend any changes to the Texas protocol before [he] adopted it as California's lethal injection protocol," "specific changes that [he] thought needed to be made from the Texas protocol" other than to accommodate "the physical plant differences between Huntsville Prison and San Quentin."

265a. Vasquez previously testified that he opposed the use of lethal injection inCalifornia after visiting Texas. Vasquez Depo., 10/12/93, at 28. "[He] felt that [lethal injection] would create problems for the staff as . . . [he] was informed in Texas that it caused problems for staff there that had to carry out," and that "some of the staff [in Texas] went out on emotional stress because of the touching and everything that they had to do with the condemned inmate." Id.

265b. Vasquez previously testified regarding Texas' protocol that, "In one case they took 45 minutes to find a usable vein on a condemned inmate that was going to be put to death. And finally, even with the inmate's help, they found a vein, and it was in his scrotum and there was only one vein they could use, and they used that one vein to induce

the poison or overdose medicine. And I remember that stuck out in my mind." Vasquez Depo., 10/12/93, at 26.

265c. Warden Vasquez's opposition to the use of lethal injection in California was only withdrawn after "[t]he development of some training that [he] developed with the help of a staff psychologist that we used and employed on staff and other witnesses." Id. at 29. He testified that "it's a pre-stress type of training approach as opposed to post-stress. It trains people about pre-stress." Id.

265d. The psychologist was removed from the execution team by Warden Ornoski.

265e. When he approved lethal injection as a method of execution for California, Warden Vasquez believed that, "unconsciousness occurs in a matter of seconds. That's my experience, personal experience, personal observation and personal experience." Vasquez Depo., 10/12/93, at 31.

266. Witness #1 testified that the person administering the drugs needs to have knowledge about how that's taking place because the person administering the drugs has a very important role in the execution, and ultimately they're responsible if something doesn't go right, so it behooves them to understand the entire process on how it goes so that they're aware of the proper procedures.

267. The person administering the drugs is suppose to use a very slow and steady pressure.

268. Witness #1 states that the main way of training is by judging the speed for the push of the drugs. That is the way they do it "almost exclusively."

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269. Witness #1 states that the new training method that is going to be employed is to measure the rate of the push against the saline drip and if the drip slows down, then the push is too hard, and it will be adjusted.

270. Witness #1 testified that the only document used that provides directions on mixing the Pentothal is on the box that drug comes in, depicted in Exhibit 2.

271. Witness #1, the team leader for the Morales execution and who assisted in drafting Operational Procedure 770, March 6, 2006, believes that Pentothal is the drug used most often by an anesthesiologists for putting a person to sleep during surgical procedures.

272. None of the persons who have administered the lethal chemicals in California executions, or Witness #5, Witness #1 or Witness #9, are familiar with or trained or educated in anesthetic depth.

273. In all the executions, no one has checked to see if the inmate is unconscious.

274. A few days prior to the Court's March 30, 2006 tour of the execution chamber, Witness #1 added the upper plate with the IV lines running through it. He came up with the design in consultation with a maintenance person at San Quentin.

275. Witness #1 has seen instances in an execution setting where an IV has started but the drip does not flow. It is not uncommon for IVs not to work the first time in executions and in personal life settings.

276. Witness #1 believes that under the new protocol, if an IV stops running after pancuronium bromide, then they will continue with the last drug in the other arm.

278. There is no contingency procedure in place under the new Operational Procedure 770 if the thiopental drip stops before they administer pancuronium bromide.

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279. Under the new Operational Procedure 770, the execution team cannot use the left arm IV line as a backup drug delivery mechanism because it will be used for a thiopental drip.

283. Dr. Dershwitz was consulted by CDCR in revising the execution protocol.

284. Defendants have not produced any documents regarding the substance of their consultations with Dr. Dershwitz, or disclosed the substance of that consultation.

285. Witness #1 testified that he was given instruction by Warden Ornoski to come up with a draft protocol using 2 grams of Pentothal and a continuous drip of Pentothal.

286. Witness #1 testified that Denise Dull then informed him that the initial dose of Pentothal was to be reduced from 2 grams to 1.5 grams.

287. Witness #1 testified that Warden Ornoski did not portray the idea to come up with a continuous drip of thiopental as his own idea, but that he had received the idea from others.

288. Witness #1 testified he drafted Operational Procedure 770, March 6, 2006, after receiving direction from Ornoski to have 2 grams of an initial dose of Pentothal, a continuous drip of Pentothal, and a particular dose of pancuronium bromide and potassium chloride; consultation with Dr. Rosko; instruction from Ms. Dull to reduce the initial dose to 1.5 grams; and, with Ms. Dull assisting in drafting sections that did not pertain to the actual execution process.

289. Witness #1 was comfortable with the old protocol, and believes the new one "will help ease the mind of the judge and anything that he may be concerned about. At least that was our goal."

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290. Witness #1 has been on the execution team since 1997, or before the Thomas Thompson execution. He was the recorder for that execution and through the Stephen Anderson execution. He was present in the anteroom of the execution chamber only for the Beardslee, Williams, and Allen executions. For the three executions where he was present in the anteroom, Witness #1 says he was in the back, by the three telephones.

291. From examining the doctor's logs for the Siripongs execution, Witness #1 testified that four syringes of Pentothal were used during that execution because it took four minutes to inject the Pentothal.

292. Witness #1 testified that up through the Thompson execution in July, 1998, two syringes of Pentothal were used during an execution. Thereafter, Witness #1 states that four syringes of Pentothal were required because the Pentothal packaging changed from a higher concentration to a lower concentration of Pentothal, thereby requiring more syringes to retain the same Pentothal concentration.

293. Witness #7 testified that Exhibit 67 contains the protocol for preparing the syringes for an execution and this protocol was used the entire time she was on the execution team, from the Keith Williams execution in May 1996 through the Stephen Anderson execution in January 2002. Exhibit 67 states that one syringe of Pentothal was to be prepared for each execution.

294. Witness #1 testified that there has always been a backup syringe of Pentothal made for an execution. The reason for a backup syringe is in case one drops and breaks.

295. Exhibit 67 states: "Do not mix" the backup syringe of Pentothal.

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296. Operational Procedure 770 states that there is to be one unopened backup of thiopental.

297. Witness #6, who has mixed the Pentothal in eight California executions, testified that the one backup vial of Pentothal is in the "refrigerator that we don't use, that's the backup" and "we don't mix."

298. The manufacturer's inserts concerning thiopental are not contained in the individual boxes retrieved from the pharmacy. The only manufacturer instructions given to team members are those on the outside of the individual boxes, contained in Exhibit 2. Witness #1 testified that he has never reviewed the packaging inserts for any of the lethal injection chemicals. The pancuronium bromide and potassium chloride do not come in their boxes from the pharmacy, but come in individual vials in a bag.

299. Witness #1, who was the recorder from the Thompson execution through the Anderson execution, claims he obtained the times of administration of drugs for the handwritten logs from the doctor's logs provided after the execution, or the Operations Center records.

300. Defendants have failed to produce any Operations Center records for any execution.

301. Witness #1 testified there is an observer MTA or RN at the window in addition to the one passing syringes, when that position is filled.

302. When asked to describe where Witness #4 was positioned during the previous executions he attended, Witness #1 testified that he was at the window observing the inmate's right arm.

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303. Neither Dr. St. Clair nor Dr. Calvo have observed a LVN or RN at the window observing an inmate.

304. Neither of the nurses recall any medical personnel assigned to view the inmate during an execution. When the nurses were stationed at the window area, they were facing the person administering the chemicals and handing him the syringes. They did not and could not observe the inmate.

305. When asked to describe his position during an execution, Witness #4 identified a location on the photograph marked as Exhibit 5 as behind the round cylinder that contains a red valve on top of it, and to the left of it.

307. Witness #4 never asked the unidentified big man that was standing in front of the window "to get out of [his] way."

308. Witness #4 doesn't know who the big man is. He testified that "[t]hey're officials from Sacramento, I guess. I don't really know what their function is, and they're there. They wear suits. They come in. They stand there. They leave."

309. With respect to the development of new Operational Procedure 770, no execution team rehearsal of the new protocol was performed.

310. A meeting took place with Witness #1, Witness #3 (a LVN), and a maintenance person. It was not a training session, but a test to see if they could set up certain devices for the new protocol. This meeting occurred after O.P. 770 was revised.

311. During this meeting, the individuals did not set up the syringes and administer the drugs while the IV drip was running. They mixed the IV drip bag and ensured that the

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new small IV bag with the thiopental could be hung on the IV rack and that the mechanics of the IV connection route had been established.

312. In the event that an execution team member was required to gain access to the inmate after an execution is commenced, it would take the team at least 5 seconds to open the execution chamber door, and additional time for an execution team member to get to and enter the chamber after the door is opened in order to reach the gurney, depending upon where they were located in the anteroom at the time, and the number of people in their line of access.

313. Under Operational Procedure 770, there is no procedure in place if there is a problem in both IV lines. The execution team has not discussed what to do if one line fails under new Operational Procedure 770, March 6, 2006.

314. There is no procedure in place if the medical people observe something wrong with the IV drip because Witness #1 testified that "those are the what-ifs that can go a thousand long." Witness #1 believes there is a policy that if an observation of a malfunction occurs, the team leader and warden should be notified and "there would be a discussion at that point."

315. Witness #1 believes a good IV is when the catheter is in place and the drip is running. Witness #1 believes there is an execution protocol policy that the determination of a good IV should be made before the chamber door is shut.

316. Denise Dull is the Legal Affairs Coordinator for San Quentin, and has been since before the first California lethal injection execution. Dull was presented by defendants for a deposition in response to plaintiff's Rule 30(b)(6) deposition notice.

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317. Dull testified that defendants did not search for "e-mail communications between CDCR (including Witness #1) and any current or former members of the lethal injection team (including Witness #5)" in response to plaintiff's discovery requests, outside of certain efforts to retrieve e-mail communications between Witness #1 and Denise Dull.

318. Dull testified that there is no current execution team leader.

319. After an execution, Dull claims that "[t]he doctor's log is given to the recorder who's a team member." The recorder, who prepares a separate handwritten log, "is supposed to put down the times that the doctor has recorded when the different injections take place and certainly when the flat line is called." Dull claims that a day or two after the execution, the recorder gives both logs to Dull.

320. To put together a list of current and former lethal injection execution team members, Dull testified that she "went from memory and then also asked a few of the present team members, showed them the list that I came up with and asked, 'Can you think of anybody else?' and they were able to."

321. Denise Dull, who has attended all lethal injection executions in California as well as "probably a couple dozen" practice sessions, testified that she does not " believe there's anyone at the night of an execution who, at some point, says, 'This inmate is unconscious.'"

322. Dull testified that there are no documents that pertain to any deviation from Operational Procedure 770.

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323. Denise Dull, who has attended all lethal injection executions in California as well as "probably a couple dozen" practice sessions, testified that she does not "know if there's anyone" who determines when to deviate from Operational Procedure 770.

324. Dull testified that "there are a lot of individuals who are not team members present" in the anteroom during executions. "[M]any of them [are] from CDCR from Sacramento."

325. In response to plaintiff's discovery requests, Dull testified that CDCR did not contact anyone in Sacramento nor any health-care managers. Their initial search for documents was confined to Denise Dull's office and the warden's safe. Dull testified that CDCR did not make any inquiries of the state archives, where files related to executed inmates are kept. She further testified that CDCR did not review any section of their database of lawsuits that have been previously filed by inmates.

326. Dull testified that "Exhibit 106, is a description of the various substances used in the syringes by the Department of Corrections in Texas at that time [the time of Warden Vasquez's visit] to conduct lethal injections."

327. For institutional protocols, Dull testified that "[c]hange usually isn't on the spot." "Change, for the most part, is brought about due to litigation."

328. When O.P. 770 "was originally being drafted," Dull testified that CDCR "just used the same [drug] amounts that Texas used."

329. Dull testified that CDCR did not request documents from Warden Ornoski related to his 2005 visit to Texas' execution chamber that were subject to plaintiff's discovery request.

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330. Dull testified that CDCR did not request any documents from any San Quentin warden (present or former) in response to plaintiff's requests.

331. Dull testified that CDCR did not make any efforts to obtain employment records related to execution team members; background checks conducted on team members; records pertaining to the mixing of lethal drugs or preparation of syringes or catheters; records concerning the pharmacy and/or complaints against it; records concerning searches for usable veins; or memoranda by team leaders.

332. Dull testified that CDCR did not make any search for documents related to a change in the number of syringes used for execution; documents pertaining to problems during executions; or documents related to unnecessary deaths at San Quentin.

333. Dull testified that CDCR made no search for communications by CDCR pertaining to orders by the Court.

334. Dull testified that CDCR made no search for documents pertaining to CDCR meetings with government officials; documents pertaining to CDCR communications with Dr. Singler; or documents generated by Dr. Rosko.

335. Dull testified that Exhibit 115 "is a document that Texas used just as an inventory checklist that -- [CDCR] got it directly from the Texas protocol."

336. Dull testified that CDCR always has an execution team leader. "Except for today."

337. Dull testified that a psychologist and a LVN were involved in the drafting of the original Operational Procedure 770.

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338. Denise Dull testified that she did not change Exhibit 111 from 2 grams of Pentothal to 5 grams.

339. Dull was told only one line was functioning for the Stanley Williams execution.

340. Warden Ornoski testified that he believes a "successful execution" is simply one where "the inmate ends up dead at the end of the process." When further queried whether he considered a "successful execution" to mean anything other than the fact that the inmate ends up dead at the end of the process, Warden Ornoski testified: "I'm thinking not."

(2) Disputed Factual Issues (All Facts are Disputed by Defendant, Unless Marked "Disputed by Plaintiff") Defendants' objections are primarily to the form of the statements rather than the contents unless otherwise noted.

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1. The team leader administers the fatal dosages of drugs to the inmate during the execution. **Defendants have never revealed the identity of the team member responsible for delivering the drugs.**

DATED: September 28, 2006 MCBREEN & SENIOR

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