REPORTER'S REVISED TRANSCRIPT DUE TO GLOBALING ERROR

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

DONALD MOELLER, CIV 04-4200

Plaintiff,

-vs-

DOUGLAS WEBER, Warden, South Dakota State Penitentiary; DENNIS KAEMINGK, Acting Secretary in His Official Capacity as Secretary of Corrections; DOES 1-20, Unknown Employees or Agents of South Dakota Department of Corrections,

Defendants.

* *

Oral Sworn Deposition of DOUGLAS WEBER taken Monday, October 17, 2011, at the office of the Federal Public Defender, 200 West 10th Street, #200, Sioux Falls, South Dakota, beginning at 8:22 a.m., before Maxine J. Risty, RPR, 48390 266th Street, Brandon, South Dakota.

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APPEARANCES: MR. SCOTT W. BRADEN
-and-
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DOUGLAS WEBER,

Called as a witness, having been first duly sworn, testified as follows:

EXAMINATION

BY MR. BRADEN:

Q Warden Weber, would you please state your name and your business address for the record?

A Douglas Lee Weber, W-E-B-E-R, 1600 North Drive Avenue in Sioux Falls, South Dakota.

Q And what is your position, sir?

A I am the director of prison operations, chief warden for the State of South Dakota.

Q All right.

MR. SWEDLUND: Just -- I'd like to make a record real fast. Do you have a copy of the notice for the warden's deposition today?

MR. BRADEN: I don't have it with me.

MS. MOLAYEM: I do I think.

MR. SWEDLUND: Is there one?

MS. MOLAYEM: He didn't have to be served because he's a party of the case.

MR. SWEDLUND: Yeah, I understand that. So I think for purposes of your request for a 30(b)6 designee, the warden will serve that function; however, you're not going to get into questions about

1 how we acquired the drugs or where they came from.
2 MR. BRADEN: Well, let me just put it this way.
3 We'll ask the questions, you can assert privilege if
4 you want, and we'll go from there. I understand --
5 don't get me wrong. I'm not trying to be kind of flip
6 about it. I understand your objection but we'll just
7 go along and --
8 MR. SWEDLUND: Yeah, right. I just wanted to let
9 you know ahead of time that we're taking the position
10 that --
11 MR. BRADEN: Sure.
12 MR. SWEDLUND: -- the "where" is irrelevant
13 constitutionally. So long as the drugs themselves are
14 good -- and they are. And so you can treat him as the
15 designee and go from there.
16 The other thing I'd add is that, you know,
17 procedurally, at least according to the agreement that
18 we had with your office, these depositions weren't
19 supposed to occur until we had rulings on your motion
20 to compel. The idea of setting these depositions this
21 far out was that we would have that ruling before the
22 deposition occurred. That ruling hasn't happened yet
23 so -- we don't have that ruling, we don't have the
24 benefit of that, but we're here anyway, even though I
25 don't think it's really appropriate because we had an

1 agreement with your office that we wouldn't have to
2 appear until we had that ruling.
3 MS. MOLAYEM: And I just want to put on the
4 record that we just disagree with that
5 characterization that there was no agreement.
6 MR. SWEDLUND: Who's on the -- are you -- you're
7 lead counsel, right?
8 MR. BRADEN: Well, Deb Czuba --
9 MR. SWEDLUND: For purposes of the deposition
10 today?
11 MR. BRADEN: Right.
12 MR. SWEDLUND: Okay.
13 MR. BRADEN: Okay.
14 Q (By Mr. Braden) Warden Weber, have you been deposed
15 before?
16 A I have, sir.
17 Q Okay. And you understand that you're under oath,
18 correct?
19 A Yes, sir.
20 Q All right. And your testimony here today is similar
21 to testimony in court under oath and you're sworn to
22 tell the truth. This is just a more casual version of
23 that.
24 A I understand.
25 Q All right. And you understand that you will have to

1 answer out loud so Ms. Risty can write that down on
2 the record.
3 A I understand.
4 Q All right. And you understand that any question that
5 I might ask you, if you don't understand it or if I
6 ask a confusing question, if you'll just stop and ask
7 me to reask the question; otherwise, we'll assume you
8 understood the question and answer truthfully.
9 A I understand.
10 Q Okay. Did you bring any documents with you this
11 morning concerning this deposition?
12 A I did not, sir.
13 Q All right. Did you review any documents in
14 preparation for this deposition?
15 A I did.
16 Q And do you know what those were?
17 A I reviewed the affidavits that I had prepared prior to
18 this deposition and I've also looked at our ERM or
19 policy that governs executions.
20 Q All right. Did you have meetings or telephone calls
21 in preparation for this deposition?
22 A I have conferred with counsel on a couple different
23 occasions.
24 Q If you could just briefly tell me: What's your basic
25 education and background, sir, and your training?

A Education is high school. After high school I entered the U.S. Marine Corps where I served seven years. Left the service, returned to South Dakota. Young family, needed to go to work and found that the penitentiary was hiring. Applied and was hired as a correctional officer where I've been for 30 years.

Q What positions have you held with the Department of Corrections?

A Started out as a correctional officer when I was hired in 1981 and was promoted up through the ranks. I held the rank of sergeant, lieutenant, and captain. I supervised line staff or the shift workers. I for a while as a captain conducted internal investigations for the penitentiary. Then I was promoted to associate warden of custody -- or for custody, which supervised all the uniformed staff and provided for the security of the prisons. I did that for approximately five years.

And then in 1996 I was promoted to warden of the facility. Then Governor Bill Janklow and Secretary Jeff Bloomberg hired me. I did that -- done that now since for 15 years. During that 15-year time, I served a one-year stint as the interim cabinet level secretary for the department while my boss was deployed for a military deployment. So I worked for

1 Governor Rounds for one year as his cabinet secretary
2 for the department. Returned back to the prison,
3 assumed my role as director of prison operations,
4 adult prison operations, and chief warden for the
5 state. Like I said, I had my 15-year anniversary
6 doing that job in November -- or will have in
7 November.
8 Q One thing that you said earlier that it just kind of
9 confuses me a little bit, you say you're warden for
10 the South Dakota prisons. How many prisons are there
11 in South Dakota?
12 A Well, there are -- let me just run through them for
13 you.
14 Q All right.
15 A There's the maximum high-medium facility, which is
16 located in Sioux Falls, and there's also a low-medium
17 prison located in Springfield, South Dakota. And
18 Warden Dooley, D-O-O-L-E-Y, supervises that facility,
19 and I'm his boss. Then there's a women's prison in
20 Pierre, South Dakota. Warden Brenda Hyde supervises
21 that facility, and I'm her boss as well. And then
22 there are four minimum security units throughout the
23 state located in Rapid City, Yankton, Sioux Falls, and
24 Pierre. And then we have a handful of community
25 service centers where we have inmates who are residing

in county jails, and I supervise them. So essentially, I'm in charge of the adult correction system in the state as well as the warden for the Sioux Falls facility.

Q So basically as an outsider looking in or a layman, when you say that -- or when we say, well, you're the warden of the prison here in Sioux Falls, actually you're the warden basically of all the prisons in South Dakota in a sense; is that right?

A I supervise two other wardens in the state as well, yes, sir.

Q Okay. So your duties extend beyond Sioux Falls?

A They do.

Q All right. Have you had any medical training in your background?

A I was an EMT, emergency medical technician, for a number of years. The primary reason was, as a lieutenant, that was part of the job requirements. So I did go to EMT training and obtained my certification.

Q And when was that?

A That would have been back in the middle to late '80s.

Q All right. And is that certification something that you need to keep up or continue? I mean is it a continuing type license?

1 A It is but I have not.
2 Q Okay. Do you recall when the last time you were
3 certified was?
4 A No, sir.
5 Q Okay. Has it been in the last ten years?
6 A No, sir. It would have been in probably the '90, '91,
7 '92 era.
8 Q Have you had any training in pharmacology or drugs?
9 A No, sir, I have not.
10 Q Have you had any training in the effects or the
11 interactions of drugs?
12 A No, sir.
13 Q Do you have a number or a licensure number for the
14 Drug Enforcement Administration?
15 A We have applied or did apply in the past --
16 Q All right.
17 A -- with the DEA and did receive a number at that point
18 in time.
19 Q Is that an institutional number or is that an
20 individual?
21 A I'm not sure.
22 Q And when you say "we," do you mean the institution?
23 A Yes, sir.
24 Q Okay. To your recollection, is that -- the DEA issued
25 that licensing number?

1 A That's my understanding.
2 Q I'm going to hand you a copy which it says it's marked
3 on here Exhibit D, but I think that's because we used
4 it at another deposition. We probably might want to
5 just call this Exhibit A. We're going to call this
6 Exhibit A. And what is this, sir?
7 (Exhibit A marked for identification.)
8 A This looks like a proposed bill from the 2007 session.
9 It's titled death penalty by lethal injection revised.
10 Q Well, actually, I think it's -- just to be clear on
11 it, I believe it's the statute that's actually enacted
12 that you operate under now; is that right? I mean I
13 know it looks like it's in the editing process, but
14 this is the final copy that's been enacted, right?
15 A I would have to see the actual statute to compare them
16 side by side to tell you that. This has been an
17 edited version that I'm looking at.
18 MR. SWEDLUND: Why don't we get a copy of the
19 statute book. I mean I don't know what this document
20 is that you've just handed him that says search one
21 result 23A-27A-32. I don't know where it comes from
22 or if it's got the current version of the statute or
23 not.
24 MR. BRADEN: Well, let me -- and that's fine.
25 Q Let me ask this. What do you believe your statutory

1 role is under South Dakota Code 23A-27A-32, which is
2 basically the death penalty statute in South Dakota?
3 MR. SWEDLUND: Why don't we define the term. Why
4 don't we say the method of execution statute so we
5 don't have the --
6 Q Okay. The method of execution statute, what do you
7 see your role is under that?
8 A To carry out the execution of the condemned inmate.
9 Q All right. But that statute defines certain
10 responsibilities you have. What are those
11 responsibilities as you see them?
12 A To ensure that the execution is carried out in a
13 humane, safe manner; that it is in accordance with the
14 law and the current policies; that we have consulted
15 with counsel; that we have done what we can to ensure
16 that we are considering precedent that has been set by
17 appellate courts; and then to determine the drugs
18 necessary and to administer such in a humane and
19 controlled environment.
20 Q Where in the statute does it set out that the
21 execution is supposed to be carried out in a safe and
22 humane way?
23 A Well, I guess you were asking me how -- what I see as
24 my responsibility and how I govern or run myself, and
25 that's what I was responding to. The statute doesn't

1 address that specifically.
2 Q So the legislature here has not given you any
3 directive on that; is that right?
4 A I'm re-reading the statute right now -- or what you
5 have shown me. (Witness reviewing document.)
6 MR. SWEDLUND: Yeah, we haven't even determined
7 that this is the statute yet.
8 MR. BRADEN: Well, if we can just pause for a
9 minute. Let me go and see if they have a statute book
10 here.
11 MR. SWEDLUND: Yeah, why don't we do that and get
12 a copy of the statute.
13 (Discussion off the record.)
14 MR. BRADEN: Back on the record.
15 Q Here is the pocket part for the most recent
16 South Dakota Codified Laws. And this is 23A-27A-32 in
17 the pocket part and it was supplemented in 2011. So I
18 believe that that is the most current version of the
19 method of execution in this state, would you agree?
20 MR. SWEDLUND: And for the record, we're talking
21 again about the method of execution statute.
22 MR. BRADEN: Right, 23A-27A-32.
23 A (Witness reviewing document.)
24 Q Had you ever read that statute before?
25 A I have.

1 Q Does that statute specify to you what drugs you're
2 supposed to use in the lethal injection process -- or
3 what chemicals?
4 A It does not.
5 Q And you would agree, sir, that it doesn't give you any
6 directive on safe or humane or any of the manner in
7 how to carry out the execution?
8 A I agree with that statement, yes.
9 Q Under this statute, how do you determine what drugs
10 you are going to use in the lethal injection process?
11 A Advice of counsel.
12 Q Okay. Who do you consult?
13 A With the attorney general's office and I work with the
14 institutional lawyer.
15 Q Do you consult any pharmacists?
16 A I have not to this day.
17 Q All right. Do you consult any physicians?
18 A I have not to this day.
19 Q Do you know if the people that you consult with, the
20 lawyers of the prison or the attorney general's
21 office, do they consult with physicians or
22 pharmacists?
23 A I believe they have, yes.
24 Q Do you know who those are?
25 A No, I do not.

1 Q What is the drug pentobarbital?
2 A Pentobarbital, again, without consulting with any
3 pharmacist, I can just tell you that it's a powerful
4 depressant.
5 Q Do you currently have a supply of pentobarbital?
6 A I do.
7 Q Do you know when you got that?
8 MR. SWEDLUND: Object. Don't answer.
9 MR. BRADEN: I'm sorry, I didn't hear your
10 objection.
11 MR. SWEDLUND: I'm instructing him not to answer.
12 The objection is that we have a motion pending in
13 front of the court, and I understand you believe the
14 motion is not self-executing. However, again, under
15 the terms of the agreement these depositions were
16 supposed to be taken under, we were supposed to have
17 rulings on your motions to compel, which also cover
18 the same topic of the source of the drugs. Case law
19 is very clear that the means of acquisition of the
20 drugs is not constitutionally relevant. And we have
21 concerns about the safety and whether those sources
22 will be subject to harassment or not. So I'm
23 instructing the witness not to answer. If the court
24 rules against us, you can continue the deposition by
25 telephone, and he'll answer those questions. But we

1 can't unring the bell and we're not allowing that
2 information out.
3 Q (By Mr. Braden) Are you asserting a privilege,
4 warden?
5 MR. SWEDLUND: He doesn't have to assert a
6 privilege. He can assert a privilege or he can simply
7 say that your discovery exceeds the scope of
8 permissible bounds, that it's conducted in bad faith,
9 that it is being interposed for the purposes of
10 harassment or annoyance so...
11 Q Let me just read the rule to you, warden, and then you
12 tell me. The rule here says -- and this is the
13 Federal Rules of Civil Procedure dealing with
14 depositions, Rule 30, Rule 30(c)2 -- an objection at
15 the time of the examination -- which is where we're at
16 right now -- to the evidence to a party's conduct, to
17 the officer's qualifications, to the manner of taking
18 a deposition, or to any other aspect of the deposition
19 must be noted on the record -- which you're making
20 that objection now -- but the examination will still
21 proceed. The testimony is taken subject to any
22 objection. An objection must be stated concisely in a
23 nonargumentative and nonsuggestive manner. A person
24 may instruct a deponent not to answer only when
25 necessary to preserve a privilege, to enforce a

1 limitation ordered by the court -- which there are
2 none -- or to present a motion under Rule 30(d)3.
3 So I'm asking: Are you asserting a privilege?
4 MR. SWEDLUND: Counsel, I believe what you're
5 doing at this point is badgering the witness. You've
6 made your record. I have made my record. We are
7 simply not going to divulge that information to you.
8 You have sought to obtain it. In my opinion, you have
9 made misrepresentations to the court in the course of
10 trying to obtain the information of the source of our
11 drugs. If we can't trust you to be square with the
12 court and give the court straight information, I'm
13 sure we cannot trust you to not leak the source of our
14 drugs to parties who shouldn't have it.
15 MR. BRADEN: Well, I disagree with you, but my
16 question is to the warden. The warden has to assert a
17 privilege before he can refuse to answer.
18 Q So I'll ask you again, warden, are you asserting a
19 privilege?
20 MR. SWEDLUND: Mr. Braden, you've made your
21 record.
22 MR. BRADEN: Actually, I haven't made my record
23 --
24 MR. SWEDLUND: Move on.
25 MR. BRADEN: -- because he hasn't answered my

1 question --
2 MR. SWEDLUND: You are asking him a legal
3 question, all right, so he's not going to make a legal
4 answer.
5 MR. BRADEN: Well, first off, the question is:
6 When did you get the drugs? But the -- it is not a
7 legal determination.
8 MR. SWEDLUND: Yes, it is.
9 MR. BRADEN: Before he can answer the --
10 MR. SWEDLUND: The existence of a privilege is a
11 legal question so...
12 MR. BRADEN: What privilege are you asserting?
13 MR. SWEDLUND: He does not need to assert a
14 privilege. He can also object for discovery that is
15 performed in bad faith or discovery that is designed
16 to annoy, harass, or oppress. That is what we are
17 asserting at this time. You've made your record.
18 Kindly move on.
19 MR. BRADEN: I disagree. First off, if you're
20 going to assert a privilege, you have to tell me what
21 the privilege is. What privilege are you asserting?
22 MR. SWEDLUND: I'm asserting the privilege not to
23 be harassed at this moment. You've made your record,
24 counsel.
25 MR. BRADEN: But that is not an evidentiary

1 privilege.
2 MR. SWEDLUND: You can argue that to the court
3 later. Move on. Do you want to sit here all day and
4 go back and forth over --
5 MR. BRADEN: I will. I'm perfectly willing to
6 sit here all day.
7 MR. SWEDLUND: Then go ahead. But if you want
8 him to give you a legal conclusion as to what
9 privilege he's asserting, I'm going to make an
10 objection that you're calling for a legal conclusion.
11 MR. BRADEN: And under the rule, unless you
12 assert a privilege, you have to answer the question.
13 MR. SWEDLUND: I disagree with your
14 interpretation of the rule. We can either sit here
15 and do this all day long, or you can move on.
16 MR. BRADEN: I believe under the rules if you
17 believe that this is in bad faith or somehow --
18 MR. SWEDLUND: Didn't I say that?
19 MR. BRADEN: You've got to make a motion to stop
20 the deposition. And until you do that, we're going to
21 continue with this.
22 MR. SWEDLUND: You can continue to do this and
23 I'm going to continue to tell him that -- I'm not
24 disclosing that information. We have a motion
25 pending, and this deposition is occurring even though

1 we had agreed as counsel that it wouldn't occur until
2 we had a ruling on your motion.
3 MR. BRADEN: The question of relevancy is not an
4 issue here at this point. Whether it's relevant or
5 not, you still have to answer the question. That's an
6 evidentiary objection to make at trial when we get
7 there.
8 MR. SWEDLUND: Scott, he's not going to answer
9 the question, all right? So do we want to keep
10 arguing, or do you just want to move on to the next
11 question?
12 MR. BRADEN: I want to make my record really
13 clear that --
14 MR. SWEDLUND: Please do.
15 MR. BRADEN: -- I have made every effort to get
16 him to answer the question when we go into contempt
17 proceedings.
18 MR. SWEDLUND: I've acknowledged that you've made
19 every effort.
20 MR. BRADEN: And you cannot stop a deposition on
21 the issue of irrelevance.
22 MR. SWEDLUND: I'm not stopping it. I'm simply
23 telling him that he's not going to inform you about
24 the source of our drugs. We'll tell you what drug we
25 have, we will provide you with the testing so that you

1 know that it's a good drug, but I'm sorry, we do not
2 trust the Federal Public Defender's Office of Arkansas
3 not to leak that information to parties who would then
4 harass the sources.
5 MR. BRADEN: Well, let me ask you, Mr. Swedlund.
6 Are you saying this deposition is being conducted in
7 bad faith?
8 MR. SWEDLUND: I'm saying the questioning that
9 you are asking is at this point being conducted in bad
10 faith, and that is designed to oppress, harass, and
11 annoy.
12 MR. BRADEN: Are you going to make a motion to
13 stop the deposition?
14 MR. SWEDLUND: No. I'm just going to simply ask
15 you to move on to the next question.
16 MR. BRADEN: Well, then unless you make a motion
17 to stop the deposition, he has to answer the question.
18 MR. SWEDLUND: That's your interpretation of the
19 rules. You can ask your next question. Or if you
20 want to stop it, that's up to you.
21 MR. BRADEN: Let me read the rule to make it
22 really clear.
23 MR. SWEDLUND: You don't need to read the rule to
24 me.
25 MR. BRADEN: I'm going to read the rule. Motion

1 to terminate or limit. At any time during a
2 deposition, the deponent or a party may move to
3 terminate or limit it on the ground it is being
4 conducted in bad faith or in a manner that
5 unreasonably annoys, embarrasses, or opposes the
6 deponent or party. The motion may be filed in the
7 court where the action is pending or the deposition is
8 being taken. If the objection -- if the objecting
9 deponent or party so demands, the deposition must be
10 suspended for the time necessary to obtain an order.
11 So unless you're going to stop the deposition and
12 make a motion to suspend this deposition with the
13 court on the basis that we're acting, as you have
14 accused us, of operating in bad faith or to annoy the
15 warden, then he has to answer the question.
16 Irrelevancy is not an improper objection.
17
18 MR. SWEDLUND: It's beyond relevancy, all right?
19 MR. BRADEN: Then what is it?
20 MR. SWEDLUND: It is my concern that your office
21 will oppress, harass, and annoy people; that you're
22 asking a question in bad faith at this point; and I
23 invite you to move on. You have made more than an
24 adequate record of your position at this time.
25 Q (By Mr. Braden) Warden, I've just got to ask you

again. What privilege are you asserting here not to answer the question?

MR. SWEDLUND: Objection. Calls for a legal conclusion.

Q But you still have to answer the question. What privilege are you asserting? What evidentiary privilege are you asserting?

A I'm going to follow the advice of counsel and not answer the question.

Q And what privilege are you asserting to do that, sir?

A Advice of counsel.

MS. MOLAYEM: Can I make a suggestion?

MR. SWEDLUND: I prefer if he did.

(Off-the-record discussion between Ms. Molayem and Mr. Braden.)

MR. BRADEN: We're on the record. We will move on, but on Wednesday if the warden has been designated as the 30(b)6 as Mr. Swedlund has told us this morning, then we can go into this at that point.

MR. SWEDLUND: Well, he's not going to appear twice this week. Now if he needs to come back at a later time to fill in any questions that the court indicates must be answered, then he can do that. But we're not going to have him deposed twice this week.

1 Q (By Mr. Braden) When did you get your supply of
2 pentobarbital, warden?
3 MR. SWEDLUND: Objection. Warden, don't answer.
4 MR. BRADEN: All right. Ma'am, court reporter,
5 would you certify that question, please.
6 Q Do you currently have in your possession sodium
7 thiopental?
8 A I do, sir.
9 Q And where did you obtain that drug?
10 MR. SWEDLUND: And just so the record is clear, I
11 will allow the answer to the question because it's
12 already a matter of public record, but that is not to
13 say that I'm waiving my objection as to source
14 information that is not already public record.
15 Q Where did you obtain that drug, sir?
16 A A pharmaceutical company out of Mumbai, India.
17 Q Did you make the arrangements to obtain that drug?
18 A I was -- I consulted with legal counsel to obtain that
19 drug.
20 Q Do you have other sodium thiopental in your possession
21 other than from the drugs from Mumbai, India?
22 A No.
23 Q Who did you consult with to obtain the drugs in
24 Mumbai, India?
25 MR. SWEDLUND: Hold on. Are you talking

1 internally or...
2 MR. BRADEN: Internally or externally.
3 MR. SWEDLUND: Well, as to -- I would object as
4 to internal because I believe that requests
5 attorney-client privileged documents and information.
6 External, except to the extent that we've identified
7 that it comes from Mumbai, India, I would instruct him
8 not to answer as to how we got those drugs.
9 Q Who under your supervision or control obtained the
10 drugs from Mumbai, India?
11 MR. SWEDLUND: I'm going to object. How we got
12 the drugs, again, is an area that we're not allowing
13 questions on today.
14 Q Are you asserting a privilege on that?
15 MR. SWEDLUND: Same argument.
16 MR. BRADEN: Well, I need to have this answered
17 by the warden.
18 Q Are you asserting a privilege on that?
19 A I'm again following the advice of counsel not to
20 answer the question.
21 Q So you're not going to answer that question?
22 A On the advice of counsel I am not.
23 MR. BRADEN: Ma'am, court reporter, would you
24 certify that question, please.
25 Q What litigation is pending, if any, that gives rise to

1 an attorney-client privilege on asserting the
2 attorney-client privilege in refusing to answer this
3 question? Is there any other litigation pending about
4 the obtaining of the drugs other than what we're here
5 today on?
6 A Not that I'm aware of.
7 Q What's the difference between sodium thiopental and
8 pentobarbital?
9 A I don't believe I'm qualified to answer that question.
10 Q Before you obtained the sodium thiopental from Mumbai,
11 India, had you obtained sodium thiopental from other
12 places inside the United States?
13 A We did.
14 Q I noticed from some of the discovery that we've had
15 that when you obtained sodium thiopental from Mumbai,
16 India, you bought I think 166 doses of that. Why so
17 much?
18 A My recollection is that they would only sell in
19 certain lot sizes. You couldn't buy a small amount,
20 for example. You had to buy the minimum amount they
21 would sell.
22 Q Are you planning to use that -- the sodium thiopental
23 from Mumbai in any execution at any time?
24 A At this point, I believe it's still a consideration,
25 yes.

1 Q Have you been in contact with the Drug Enforcement
2 Administration over that drug?
3 A I have not.
4 Q All right. Who has?
5 A Counsel is my understanding.
6 Q And what restrictions or limitations, if any, have
7 they put on the use of that drug?
8 A I'm not aware of any.
9 Q What do you know about Kayem Pharmaceuticals?
10 A Other than that's the company we purchase the drug
11 from, not anything additional.
12 Q Did you look to see if they had any licenses or
13 certificates or any qualification to sell drugs?
14 A I assume counsel in working the issue did.
15 Q Do they -- and when you say "counsel," which counsel
16 are you talking about?
17 A I'm talking about primarily the institutional lawyer,
18 my institutional lawyer.
19 Q Was that Doug Loen?
20 A It was.
21 Q Do you know what type of products Kayem
22 Pharmaceuticals sells?
23 A I do not.
24 Q What was your understanding of why the drugs from
25 Kayem Pharmaceuticals were held when they were

1 imported into the United States?
2 MR. SWEDLUND: I'm sorry, what was the question
3 again?
4 Q What is your understanding of the reasoning that the
5 DEA held or suspended the delivery of the Kayem
6 Pharmaceuticals when they were initially imported?
7 MR. SWEDLUND: I object. It assumes facts not in
8 evidence.
9 Q Warden, you still need to answer that question. What
10 is your understanding, if any, about that incident?
11 MR. SWEDLUND: What incident?
12 Q Well, let me show you something we're going to mark as
13 B, Exhibit B. We're not doing a very good job
14 marking. I'm just going to put a little "B" right at
15 the top here.
16 (Exhibit B marked for identification.)
17 Q And what is that, sir?
18 A I don't know. I'll have to take a moment and read it.
19 Q Okay.
20 A (Witness reviewing document.) I really don't know
21 what this document is implying or even the originator
22 or who it was sent to or anything about it.
23 Q Well, I mean you can look at the document and see --
24 do you dispute that this is from the Food and Drug
25 Administration?

A That's what it says, but it doesn't look very official. There's no signatures or anything that would indicate. It's not on letterhead. So I really don't have any idea.

Q And do you dispute that the importer here is the South Dakota State Penitentiary, which basically would be you; is that right?

A I don't dispute that.

Q All right. And is this the date that you -- at least generally in the time period when you obtained these drugs?

A Yeah, I believe that's within that time frame that I recall.

Q And didn't your institution use Phil Patterson as an importer in Omaha, Nebraska?

A I really don't know the name of the importer.

Q Well, for whatever it's worth, this document was given to us by your counsel, so we take it as being true since your representatives gave it to us.

A I have never seen this document before today.

Q Okay. All right. Thank you. I want to show you five photographs. If we can just call them C --

(Off-the-record discussion between Mr. Braden and Ms. Molayem.)

Q Anyway, I'm going to show you what's marked as

1 Exhibit C. Do you know what that is, sir? Excuse me,
2 I didn't mean to toss that at you.
3 (Exhibit C1 marked for identification.)
4 Q (By Mr. Braden) What does C appear to be?
5 MR. SWEDLUND: Object. There's absolutely no
6 foundation for these photographs, what they are, where
7 they came from, who took them, what they are of,
8 nothing. I mean these are just photographs.
9 Q Okay. The objection is noted, but what does C appear
10 to be to you?
11 A I have no idea, sir.
12 (Exhibit C2 marked for identification.)
13 MR. BRADEN: All right. And let's see here.
14 This would be D, right? Is that how you did it?
15 MS. MOLAYEM: C2.
16 MR. BRADEN: Okay.
17 Q If you look at --
18 A All right. I'm getting a little confused here. I
19 don't know where all these go.
20 Q Okay. Look at the ones I've handed you.
21 A Okay. I've looked at this one. I have no idea.
22 Q All right. Okay. I want you to look at C2. Do you
23 know what that is?
24 A No idea.
25 Q Okay. What does it appear to be?

A I have no idea, sir.
Q Okay. And you don't know -- do you disagree it looks like some sort of back alley?
A It looks like some sort of building. That's all I can say.
Q All right.
A Back alley. Who knows.
(Exhibit C3 marked for identification.)
Q And if you'd look at this, which we'll call C3, do you know what that is?
A I do not.
Q And what does it appear to be?
A I don't know. It could be an apartment building.
(Exhibit C4 marked for identification.)
Q Okay. And when you look at C4, do you know what that is?
A I have no idea.
Q What does it appear to be?
A It appears to be someone I've never seen before in maybe an office supply room or supply room.
Q Okay. Well, just to help you understand a little bit, this is photographs of Kayem Pharmaceuticals where you're obtaining the drugs.
MR. SWEDLUND: Objection. Foundation.
Q Do you -- what do these appear to be, the boxes and

stuff in the photograph?

A I have no way of knowing.

(Exhibit C5 marked for identification.)

Q Okay. And C5, do you know what that is?

A No. A gentleman at a chair in front of a computer screen.

Q All right. Do you know what Kayem Pharmaceuticals export is?

A I do not.

Q Did you know that their main export is kind of a secondary or generic Viagra?

A I did not.

Q Do these red boxes here, do you have any sense of what those are? The majority of the --

A No.

Q All right. Would you disagree that they look like they are boxes with kind of an alluringly posed female on them?

A I'm not going to speculate on that.

Q All right. Who had to approve in your operation the purchase of the drugs from Kayem?

MR. SWEDLUND: I'm going to object as well and -- well, approved the purchase, you can go ahead and answer that.

A It would have been the secretary of corrections.

1 Q Why did you have to get the approval of the secretary
2 of corrections? Was it because of the amount of money
3 that was at issue or because it was being imported?
4 Why -- I mean just kind of what was the reasoning for
5 that?
6 A That is my immediate supervisor and that's who's
7 directed -- I believe in statute even -- that I need
8 to consult with in the purchase of or consideration of
9 any drugs and/or their dosages --
10 Q Okay.
11 A -- to carry out an execution.
12 Q But you have the authority to purchase equipment and
13 supplies for the operation of the prison, is that
14 right, without having to go to the secretary of
15 corrections?
16 A Most of the time.
17 Q All right. Well, when do you have to go to the
18 secretary of corrections? You say "most of the time."
19 When did you have to seek his approval?
20 A For large expenditures, especially out-of-the-ordinary
21 expenditures. I think anything over a thousand
22 dollars I would consult with the secretary.
23 Q Is there a written rule or procedure about that?
24 A There probably is in the Bureau of Finance and
25 Management, but again, just from my experience and my

1 years on the job, it's wise to involve your boss in
2 decisions like that.
3 Q And who was the secretary of corrections at the time
4 you made this purchase?
5 A I believe it would have been Timothy Reisch at that
6 time.
7 Q Did you explain to Mr. Reisch anything you knew about
8 Kayem Pharmaceuticals at the time?
9 A No.
10 Q Did anybody that assisted you in purchasing these
11 drugs do any background check on Kayem
12 Pharmaceuticals?
13 A I have no idea.
14 Q All right. And just to make it clear if I didn't
15 already, the photographs we showed you in C3 are Kayem
16 Pharmaceuticals.
17 MR. SWEDLUND: I'm going to object. Lack of
18 foundation.
19 MR. BRADEN: Okay. Objection noted. But just so
20 you're aware.
21 Q Would you routinely buy drugs from an operation that
22 looks like the photographs in C1 and 2?
23 A I don't know what those photographs are of.
24 Q Okay. Would you buy drugs for your own family from a
25 facility that looks like that?

1 MR. SWEDLUND: Object. Badgering the witness.
2 Q Would you?
3 A I don't know if that's a facility, sir. I don't know
4 what that is.
5 Q Okay. Assuming -- let's assume for the sake of
6 argument here that it is Kayem, which it is. Would
7 you buy drugs for your own family from a place like
8 that?
9 MR. SWEDLUND: Object. Calls for speculation.
10 You're badgering the witness.
11 Q He's made the objection, but you need to answer the
12 question.
13 A I guess there was a lot -- there's a lot going on in
14 my thought process. I don't know if that's a back
15 alley view, if that's something you would see from the
16 street walking up to the front of the business. I
17 have no idea where this photograph was taken, when it
18 was taken.
19 Q Well, let's assume -- it's all true, but let's just
20 assume for the sake of argument that is the building
21 that you're holding, which I think is C?
22 A This is C what?
23 MS. MOLAYEM: For the record, that is C3.
24 Q C3. And that's the building. However, C1 and 2 are
25 the photographs of the entrance of the office facility

1 that's in that building for Kayem Pharmaceuticals.
2 MR. SWEDLUND: Objection, counsel. You're
3 testifying.
4 Q And so assuming that this is all true -- because it
5 is -- this is the entrance and this is the facility
6 that the Kayem Pharmaceuticals come from, would you
7 use this to buy drugs for your own family?
8 MR. SWEDLUND: Objection. Lack of foundation.
9 Calls for speculation.
10 A If I walked up to this building which is C...
11 MS. MOLAYEM: Three.
12 A Three, I could see myself purchasing drugs for myself.
13 The other photographs, again, I have no idea when
14 those were taken, what they were taken of, whether
15 they were even of the building, so you're asking me to
16 speculate and I won't speculate any further than what
17 I already have.
18 Q Well, I'm asking you to take this as true, because,
19 one, it is. But let's just assume for the sake of
20 this deposition, this C1 and 2 is the Kayem
21 Pharmaceuticals entrance and facility in this
22 building. Would you buy drugs from this place?
23 MR. SWEDLUND: Objection. Asked and answered.
24 Speculation. Lack of foundation. I further object
25 that it's irrelevant.

Q Well, would you -- let's go back to C3 where you say that you might buy drugs from there. But this is an apartment building. It's not an office. It's not a store. It's not a registered pharmacy or any sort of supplier such as what we might have here like Wal-Mart. Would you go to an apartment building and buy drugs for your family?

MR. SWEDLUND: Objection. Speculation. Foundation. Asked and answered. As far as I'm concerned at this point, you're badgering the witness.

Q Would you buy drugs from this?

A I've seen numerous businesses in this community and many others I visited where there are businesses on the ground floor and apartment or living arrangements on top. They exist in downtown Sioux Falls. So because you tell me that's an apartment building doesn't automatically mean I shouldn't visit the business on the ground floor.

Q It would give you some pause, though, wouldn't it?

A You're asking me to speculate or you're trying to put words in my mouth, and I'm not going to allow you to do that.

Q Well, I'm just asking you, wouldn't you pause for a minute?

MR. SWEDLUND: Asked and answered.

A I think about those decisions all the time. I choose my family's pharmacy with pause and consideration to ensure that I'm getting what I pay for and that it's a place I want to do business with.

Q At the time that you bought the drugs from Kayem Pharmaceuticals, were you aware that this is what this facility looked like?

A I have never seen those pictures before today.

Q Did you investigate what it looked like?

A I have never seen those pictures before today.

Q Did you do any background on, check or do any sort of investigation into Kayem to see what kind of business it was?

A I did not.

Q Did anybody in your supervision or control do that?

A I believe counsel did.

Q All right. And when you say "counsel," who would that be?

A The institution lawyer, Doug Loen, at the time.

Q When you received the drugs from Kayem Pharmaceuticals, why did you have them tested?

A Just to be safe rather than sorry. To ensure we got what we paid for, and they, in fact, were what we purchased.

Q What made you suspicious they may not be what you paid

1 for?
2 MR. SWEDLUND: I'm going to object. Assuming
3 facts not in evidence, and you're assuming he's
4 suspicious.
5 Q Well, are you suspicious --
6 A I wasn't suspicious. I was careful. I was prudent.
7 I wanted to ensure that there was no doubt that they
8 were what we purchased. And I believe that that's a
9 wise thing to do if you're going to be charged with
10 carrying out a safe and humane execution with no
11 problems. You're obligated to do that or I'm
12 obligated to do that as the leader of that
13 organization.
14 Q When you obtained drugs, sodium thiopental from other
15 facilities before Kayem Pharmaceuticals, did you have
16 those drugs tested?
17 A I don't recall if those were tested in 2007 or not.
18 Q So why would you have these drugs from Kayem
19 Pharmaceuticals tested if you didn't test other drugs?
20 A I didn't say I didn't test. I said I don't recall if
21 they were. I don't know for sure, sir.
22 Q Who would know?
23 A I imagine we could go back and check the record. My
24 lawyer -- again, Doug Loen -- may have a clearer
25 recollection than me.

1 Q You must buy a lot of drugs at the -- for all the
2 penitentiaries in the state.
3 A I don't buy any drugs for the penitentiary of the
4 state.
5 Q But somebody under your supervision and control
6 probably does, right?
7 A The Department of Health in South Dakota does. We're
8 rather unique in South Dakota how we purchase and
9 provide medical care for our inmates.
10 Q Do they routinely have drugs tested that they buy from
11 suppliers?
12 A I don't know what their procedures are.
13 Q How did you choose the laboratory in Oklahoma to have
14 these drugs tested?
15 A Advice of counsel as I recall.
16 Q Did anybody tell you that you should have the drugs
17 tested?
18 MR. SWEDLUND: Objection. Calls for
19 attorney-client privilege.
20 Q Did anybody tell you that you needed to have these
21 drugs tested?
22 MR. SWEDLUND: Objection. It's privileged.
23 Q Did the Drug Enforcement Administration tell you you
24 needed to have them tested?
25 A No.

1 Q Did the Food and Drug Administration tell you you
2 needed to have them tested?
3 A No.
4 Q Did they advise you it would be wise to do that?
5 A No.
6 Q Did you consult with the secretary about whether to
7 have them tested?
8 A Yes, I believe so.
9 Q And why did you consult with him about that?
10 A Because, again, he's my boss.
11 Q All right. Do you recall whether you had the Kayem
12 Pharmaceuticals drugs tested before or after the DEA
13 contacted you?
14 MR. SWEDLUND: Sorry, what was the question
15 again?
16 Q Do you recall whether you had the Kayem
17 Pharmaceuticals drugs tested for their efficacy before
18 or after the DEA contacted you about their
19 importation?
20 MR. SWEDLUND: I'm going to object. Assumes
21 facts not in evidence. I'm not sure what DEA contact
22 you're talking about.
23 MR. BRADEN: Well, they were tested --
24 Q Do you recall when they were tested?
25 A No, I don't. I know it was shortly after their

1 arrival.
2 Q Okay. And all that process was handled by Doug Loen;
3 is that right?
4 A Yes.
5 Q All right. Is it on his advice you had them tested?
6 MR. SWEDLUND: Counsel, you're asking
7 attorney-client privilege.
8 Q All right. How many times have you written or
9 produced or generated an execution protocol? And
10 basically I know that you refer to it as ERM A.12(B).
11 How many versions have there been basically?
12 A More than the one obviously. Probably three times.
13 Q When's the most recent protocol that you've prepared?
14 A Last week actually.
15 Q Okay. And that's the ERM A.12(B) which is dated
16 October 13, 2011; is that right?
17 A Yes, sir.
18 Q Okay. And let's mark this as D. And there's a copy
19 of it. And here's a copy for...
20 (Exhibit D marked for identification.)
21 Q Did you draft this yourself, sir?
22 A I was involved in that process with counsel.
23 Q What was your role in drafting it?
24 A My role would have been consulting, meeting with,
25 considering advice of counsel.

1 Q And when you say "counsel," who are you referring to?
2 A Attorney general's office and also our internal
3 counsel.
4 Q Okay.
5 A Department of Corrections internal counsel.
6 Q Did you have a number of meetings about this?
7 A We had several, yes, sir.
8 Q Okay. Who in the attorney general's office did you
9 work with on this?
10 A Paul that is sitting with us today, and Susan with us
11 today.
12 Q Okay. And anybody else?
13 A Sherri. Sherri Wald.
14 THE WITNESS: Right?
15 MR. SWEDLUND: (Nods head.)
16 Q All right. If you would look at this document, which
17 we've marked as D I think.
18 MR. BRADEN: Is that right?
19 MS. MOLAYEM: Uh-huh.
20 MR. BRADEN: Okay.
21 MR. SWEDLUND: We already have a D.
22 MS. MOLAYEM: That's B.
23 MR. SWEDLUND: This is D.
24 MR. BRADEN: That's the confusing document. This
25 is A that we marked that is from another deposition.

1 MR. SWEDLUND: We remarked it, is that what we
2 did?
3 MR. BRADEN: Yeah.
4 MR. SWEDLUND: I apologize. That's fine.
5 Q If you look at paragraph A3 in this protocol, it
6 mentions in here that two complete sets of substances
7 used to conduct an execution shall be kept in
8 separate, secure locations. How many locations are
9 drugs kept?
10 A Drugs in general?
11 Q Well, drugs that you're going to use --
12 A For the execution.
13 Q -- for the execution.
14 A There's two locations they can be kept --
15 Q Okay.
16 A -- at the facility.
17 Q All right. Are they actually kept in both those
18 locations?
19 A Not at the present time, no.
20 Q What are those two locations?
21 MR. SWEDLUND: Just a second. Simply say what
22 the locations are but not where the locations are.
23 A I'm not sure I'm clear, but would you restate the
24 question for me, please?
25 Q The protocol mentions separate locations --

1 MR. SWEDLUND: Just a second here. The
2 protocol -- you're referring to a different point in
3 time. This doesn't cover where they're stored from
4 day-to-day. This is in preparation for an execution
5 where they're stored.
6 MR. BRADEN: Well, let's make that clear.
7 MR. SWEDLUND: Yes.
8 Q Under A3 under ERM A.12(B), which is Exhibit D here --
9 MR. SWEDLUND: Which says on the scheduled date
10 of execution.
11 MR. BRADEN: Right.
12 Q On the date of the execution, where are the drugs
13 kept?
14 A One set would be kept outside of the walls of the
15 prison, and another set of drugs inside the walls of
16 the prison.
17 Q And why is that?
18 A Just so that we have two distinct sets of drugs in two
19 different locations in the highly unlikely event
20 something could happen to compromise one of the sets
21 of drugs.
22 Q And where outside the prison are they kept?
23 A On the prison grounds in a separate building.
24 Q Okay. But outside the walls of the actual
25 institution?

1 A Outside the secure perimeter.
2 Q Right. Okay. Where are they kept prior to an
3 execution, the drugs?
4 A Outside the walls of the prison. In a building
5 outside the walls of the prison.
6 Q And they're all kept in one location?
7 MR. SWEDLUND: Just a minute. Warden, just
8 identify the name of the place where they're kept.
9 But beyond that, don't identify where that place is.
10 THE WITNESS: Okay. The building that I'm
11 referring to?
12 MR. SWEDLUND: No, no, not the building.
13 MR. BRADEN: Yes.
14 MR. SWEDLUND: Simply the name. One of the
15 places is in the armory, but where the armory is we're
16 not going to tell you for obvious reasons.
17 MR. BRADEN: But are you asserting a privilege?
18 MR. SWEDLUND: Yeah.
19 MR. BRADEN: What privilege is that?
20 MR. SWEDLUND: The prison doesn't disclose where
21 its armory is. That's a security issue. Sorry.
22 MR. BRADEN: What evidentiary privilege are you
23 asserting?
24 MR. SWEDLUND: We don't need to go around --
25 MR. BRADEN: Well, you know, Paul, we do. The

rules are clear. There's rules of evidence about this and there's privileges --

MR. SWEDLUND: I understand. You've lectured me on the rules enough, okay? Now I'm telling you, as a matter of security, we're not going to tell you where our armory is located. You can understand that, right, that --

MR. BRADEN: No, I can't understand --

MR. SWEDLUND: -- it's not a matter of general knowledge?

MR. BRADEN: I can't understand you disregarding the rules of evidence here. And it's really clear: Unless you assert a privilege set out in the evidence code, you have to answer the question or else you have to seek a protective order.

MR. SWEDLUND: Counsel, we don't really need to have this argument again. I'm not telling you where the prison armory is.

MR. BRADEN: All right. Ma'am, court reporter, would you mark that question, please?

MR. SWEDLUND: Thank you.

Q How are those drugs stored prior to the execution in the armory? Are they just kept -- I mean are they kept in a cabinet or are they kept in a safe or how are they kept and stored?

1 MR. SWEDLUND: Go ahead.
2 A They're kept in locked metal containers that are
3 secured to the building.
4 Q Who has access to that?
5 A Very few people. Those folks who have access to the
6 armory can access the keys to the drug containers with
7 prior approval from me or my designee.
8 Q And who's your designee?
9 A It would be my deputy warden.
10 Q And who is that?
11 A Deputy Warden Daryl Slykhuis.
12 Q Do you have a key to the container or however --
13 whatever they're kept in?
14 A On me?
15 Q Well, not at this time. But you have the key that
16 controls that; is that right? I mean --
17 A I don't carry that key. It's not in my office, no.
18 Q All right. Do you know how they're kept? Are they
19 kept refrigerated or whatever? I mean are they just
20 in a cabinet or...
21 A They're kept in a climate-controlled room.
22 Q When you say "climate-controlled room," what do you
23 mean by that, air-conditioned?
24 A Air-conditioned and dehumidified.
25 Q Is it specially done, or is it just like a normal

1 office that just has an air conditioner in it?
2 A It's a normal office with an air conditioner; however,
3 we monitor the temperatures and the humidity levels.
4 Q And why do you do that?
5 A To ensure that we have proper temperatures and
6 humidity levels for storing that drug.
7 Q Okay. If you will look at paragraph A5 of Exhibit D.
8 A (Witness reviewing document.) Yeah.
9 Q You mention in here that this ambulance that's waiting
10 or standing by is equipped with supplies and equipment
11 needed to revive an individual who has been injected
12 with one or more of the substances. What supplies and
13 equipment are those?
14 A I don't know other than what would normally be on an
15 advanced ambulance service.
16 Q Who in your supervision or control makes arrangements
17 for this ambulance to be standing by?
18 A One of the staff who's assigned to carry out the
19 execution and take care of duties as assigned to
20 ensure the ambulance is standing by.
21 Q Do you know who that is?
22 A No, it could change. It could be a different person
23 every time.
24 Q Do they make arrangements with the ambulance staff to
25 have any special equipment to deal with these types of

1 chemicals or drugs?
2 A No. And I don't believe they would be qualified to do
3 so. They would just tell the ambulance crew what
4 might be expected of them.
5 Q Do you know what drugs or equipment would be needed to
6 revive somebody who's been poisoned with sodium
7 thiopental or pentobarbital or any of the drugs used
8 in the lethal injection?
9 A I do not.
10 MR. SWEDLUND: I'll object to the word
11 "poisoned."
12 Q Where does this ambulance stand by?
13 A Inside the prison. Inside the secure perimeter of the
14 prison within probably a hundred yards of the
15 execution area.
16 Q Do the ambulance staff or EMTs or whatever are on an
17 ambulance, do they wait in the ambulance?
18 A Paramedics. And, yes, they're with the ambulance.
19 Q Is there -- what communication does you or your team
20 have with the ambulance, do you know?
21 A One of my staff will be with the ambulance crew with a
22 two-way radio. They would have immediate contact with
23 the execution room.
24 Q How long would it take this -- the paramedics or the
25 ambulance staff to reach the person being executed?

A Probably within a minute.
Q Do you interview or assess the qualifications of the paramedics to deal with reviving somebody who is suffering from the use of these drugs?
A I do not.
Q Does anybody in your staff do that?
A Not to my knowledge.
Q Is this ambulance part of the Department of Corrections or is this an independent ambulance service or do you know?
A Independent.
Q Okay. If you look on D in paragraph B1, you mention in here that -- or the protocol states that the execution shall be carried out by an intravenous injection, shall be performed by persons trained to perform the venipuncture. What qualifications do you look at to assess whether they've been trained?
A Look at their qualifications, whether an EMT, a phlebotomist, paramedic, a nurse, either an LPN or RN.
Q How do you select these people?
A By looking at their qualifications.
Q Do they apply to be part of this team, or do you go and ask them to be part of the team?
A Both actually.
Q Okay. Do people apply that you reject?

A Not to this date.
Q Do they provide you with résumés?
A No.
Q Do you do any criminal background checks on them?
A I don't, no.
Q Does anybody in your supervision or control do that?
A Not in my supervision or control.
Q Do you know whether any of these people have ever had criminal background checks run on them?
A They have because of their positions.
Q Are they employees of the Department of Corrections?
MR. SWEDLUND: Well, don't answer that. That would allow them to identify who the executioners are, and the court has protected that.
Q Well, first off, are you asserting a privilege?
MR. SWEDLUND: Yes, the court order.
Q All right. I'm not asking you to name these people. I'm just asking: Are they employees of the Department of Corrections?
MR. SWEDLUND: Mr. Braden, it's a violation of state law to reveal the identities of the executioners. The information you're seeking would lead or could lead to the identification of who the executioners are. So I'm not going to have my client violating state law or violating the court's order.

1 You're asking for identifying information. So you can
2 have the question certified; that would be all right.
3 Q (By Mr. Braden) Are you asserting a privilege,
4 warden?
5 MR. SWEDLUND: He's --
6 MR. BRADEN: I have to make it clear for the
7 record. I mean this is all going to wind up in the
8 courthouse. I've got to make it clear. I'm not --
9 MR. SWEDLUND: He's following the advice of
10 counsel.
11 A Understand, sir, following the advice of counsel once
12 again.
13 Q And you understand I'm not asking for the name or the
14 identity of these people. I'm just asking if they're
15 employed by the Department of Corrections.
16 MR. SWEDLUND: You're asking for identifying
17 information.
18 A I understand the question.
19 MR. BRADEN: I'd ask the court reporter to
20 certify that question, please.
21 Q Do you or anybody in your supervision and control
22 obtain licenses or certificates that these people
23 might hold, or do you just take them at their word
24 that they're certified?
25 A We do.

1 Q Okay. That was a stupid question on my part.
2 A I'm sorry, that was a two-part question. I'll try to
3 go to the meat of the question.
4 Q Okay. And that was badly asked on my part. I'm
5 sorry.
6 A We do --
7 MR. SWEDLUND: And --
8 THE WITNESS: Sorry, Paul.
9 MR. SWEDLUND: This entire line of questioning
10 has occurred without any reference to time frame. Are
11 you talking about the Page execution? Are you talking
12 about how it would occur under the current protocol?
13 Q (By Mr. Braden) Let me make this clear. I'm just
14 talking about under this current protocol right now.
15 We'll get to the Page execution in a little bit.
16 Under this protocol right now, for some reason --
17 let's pretend there was going to be an execution
18 tomorrow and you were having to pick these people. Do
19 you take them at their word, or do you obtain copies
20 of their certificates or licenses or whatever?
21 A I would receive copies of and verify their licensure.
22 Q And do you do that, or does somebody under your
23 supervision and control do that?
24 A Somebody under my supervision and control would do
25 that and report to me.

1 Q And who would that be?
2 A Most likely it would be my counsel.
3 Q Okay. And that's Susan here?
4 A Susan here.
5 Q Okay. Under paragraph 3 of that same section B, it
6 mentions that the person that is going to insert an
7 intravenous needle needs to be certified or licensed
8 and then it lists a number of things here -- medical
9 doctor, nurse, a military corpsman. Are all those
10 different professions in there that are listed, are
11 they all the same?
12 A All the same? No.
13 Q In the sense that -- I mean is the military corpsman
14 equal to a doctor?
15 A No.
16 Q Okay. So there's a varying degree of training on
17 these; is that right?
18 A I would agree with that.
19 Q Okay. Out of these -- this list of different
20 professions here, which is the most likely one that
21 you would use, the Department of Corrections, do you
22 know?
23 A I would look at them all I guess. You know, if you
24 want me to speculate, which I think is where you're
25 asking me to go, I would consider any and all of

1 those. And that's why they're under my protocol.
2 Q Now under the statutes of South Dakota, a medical
3 doctor is not allowed to participate; is that right?
4 MR. SWEDLUND: Objection. Calls for speculation.
5 Legal conclusion. Medical conclusion.
6 Q Do you use a physician?
7 A We have not.
8 Q Have you ever used a physician?
9 A We have not.
10 Q Have you ever used a registered nurse?
11 A I believe you may be ticking these off again --
12 THE WITNESS: And correct me if I'm wrong, Paul.
13 A -- in terms of trying to narrow down the person who
14 may have participated in a previous execution by
15 getting to a point where you have decided or
16 determined which of these experts we utilized.
17 Q Have you ever used a registered nurse?
18 MR. SWEDLUND: I think the warden has made a good
19 point. That you're trying to get to the identity of
20 past executioners, and that would be a violation of
21 state law to provide information that would lead to
22 the identity of those people.
23 Q Well, warden, not to -- I just need for you to tell me
24 you're either going to answer or not going to answer.
25 Have you ever used a registered nurse?

A I'm not going to answer the question on advice of counsel, and I believe that you're trying to identify the executioner.

MR. BRADEN: And I'd ask the court reporter to certify that question, please.

Q Have you ever used a certified medical assistant?

A Same answer.

MR. BRADEN: And I'd ask the court reporter to certify that.

Q Have you ever used a licensed practical nurse?

A Same answer.

MR. BRADEN: And, again, I'd ask that that be certified.

Q Have you ever used a phlebotomist?

A Same answer.

Q Do you know what a phlebotomist is?

A I do.

Q All right. Have you ever used --

MR. BRADEN: And, again, I ask ma'am, court reporter to certify that question.

Q Have you ever used a paramedic?

A Same answer.

MR. BRADEN: Again, I'd ask that to be certified.

Q Have you ever used an emergency medical technician?

A Same answer.

1 MR. BRADEN: Again, I'd ask that to be certified.
2 Q Have you ever used a military corpsman?
3 A Same answer, sir.
4 Q All right. Again -- and I may have asked you this,
5 but just making it clear. Do you check these
6 persons -- I assume you use some of these. Do you
7 check their certifications or licenses before you
8 obtain their services?
9 A I previously answered that question, and the answer
10 is, yes, I do.
11 Q Okay.
12 A Or someone on my staff does.
13 Q And you obtain copies of their license?
14 A I believe they become part of a record, yes.
15 Q Do you solicit these people or do they volunteer?
16 A As I stated earlier, both.
17 Q In paragraph B4 of Exhibit D, the protocol mentions
18 here that these persons are selected by you and that
19 they have to demonstrate their proficiency through
20 relevant training. How do they do that? How do they
21 make this demonstration?
22 A By presenting their credentials.
23 Q Okay. And they do that to you; is that right?
24 A I become aware of it. They don't do that to me
25 personally. But again, someone on my staff would

1 certify them as qualified.
2 Q Okay. Now talking for just a little bit about the
3 Elijah Page execution. We know that one of the
4 executioners in that was a paramedic from documents
5 that's been provided to us by your counsel. Do you
6 disagree with that?
7 MR. SWEDLUND: Can you provide the documents?
8 I'd rather not assume. Facts not in evidence.
9 MR. BRADEN: Well, this is -- I'm looking at a
10 document that was provided to us from the attorney
11 general's office --
12 MR. SWEDLUND: Sure.
13 MR. BRADEN: -- about qualifications.
14 MR. SWEDLUND: Can I just see it? You've asked
15 us to verify that this person was a paramedic, and I
16 don't know that he or she was. Which individual are
17 you talking about: John or Jim?
18 MR. BRADEN: (No verbal response.)
19 MR. SWEDLUND: Are you talking about John or Jim?
20 MR. BRADEN: Well, let's start with John Doe.
21 MR. SWEDLUND: Is this an exact copy of the
22 document you received from us or is retyped?
23 MR. BRADEN: This is an exact copy of what we
24 received from you.
25 Well, let's mark that as Exhibit E.

(Exhibit E marked for identification.)

Q (By Mr. Braden) And let's just look for a minute here at -- do you know what this is?

A I've never seen this before.

Q Okay. Exhibit E?

MR. SWEDLUND: What is the marking in the upper right-hand corner, DEM --

MR. BRADEN: That's our internal filing number that we should have removed. It helps us keep track of our lots of documents we have in our office.

MR. SWEDLUND: Okay.

MR. BRADEN: So DEM000137 is my office's marking for tracking documents.

MR. SWEDLUND: So internal Bates number.

MR. BRADEN: Yeah. Other than that, this is an exact copy of the document presented to us by the attorney general's office.

Q (By Mr. Braden) In looking at this document, John Doe here is mentioned to have been a paramedic and be licensed. Who has those licenses now, do you know?

A I do not.

Q All right. Do you know who assessed John Doe? Was it Doug Loen?

A Doug Loen for sure and maybe others.

Q Did you interview John Doe?

A I am aware of who he is, and I have talked to him, yes, sir.

Q But did you interview him for his role that he took on in this execution?

A Maybe after his qualifications had been established and we -- interview as for the job, no. But visit with him about the job and about his qualifications, yes.

Q So in a sense, what happened is, Doug Loen or somebody else in your office kind of preliminarily assessed this guy, and I don't mean to sound flip, but then brought him to you and then you discussed what his role would be; is that right?

A I think that's fair, yes, sir.

Q Okay. And is that the same with Jim Doe?

A Yes.

Q All right. Did you or anybody on your staff determine his ability to insert or access intravenous -- access to the veins?

MR. SWEDLUND: Who are you talking about?

MR. BRADEN: Jim Doe.

MR. SWEDLUND: Jim Doe?

A I don't think -- Jim did not access the veins.

Q All right. Was Jim basically the pusher then? Is that --

A In layman's terms, I assume, yes, sir.
Q Right. Okay. And John Doe was the sticker under your protocol?
A Again, in layman's terms, yes.
Q Okay. Did Jim Doe have any special qualifications on pushing or administering drugs?
A Prior -- besides his experience and participating in, as this document states, twenty successful executions in several states, I'm not aware of any other.
Q All right. Did you assess any other background for this guy other than -- for Jim Doe other than knowing that he had been involved in other executions?
A I think experience primarily was the main consideration.
Q All right. And how do you know those executions were successful? I mean the list mentions twenty successful executions. How do you know they were successful?
A I actually verified more than one.
Q And which ones did you verify, do you know?
A Texas executions.
Q Okay. Were they mainly all Texas executions?
MR. SWEDLUND: Well, I'm going to object from here on out to the disclosure of where this person worked could lead to his identification so...

1 MR. BRADEN: Well, we'll ask the court reporter
2 to mark --
3 Q Let me just -- I assume you're not going to answer
4 that question; is that correct?
5 A That's correct.
6 MR. BRADEN: So I'm going to ask the court
7 reporter to mark that question, please, for us.
8 Q Do you know whether he was involved in other
9 executions besides in Texas?
10 A He was.
11 Q And do you know what those states were?
12 MR. SWEDLUND: No, I'm going to instruct him not
13 to answer.
14 A I'm not going to answer that question on advice of
15 counsel.
16 Q And just to make the record really clear, are you
17 asserting a privilege?
18 A On the advice of counsel not to answer that question.
19 MR. BRADEN: I'm going to ask the court reporter
20 to mark that question as well.
21 Q Other than these executions that he had been involved
22 in in the past, did he have any other qualifications
23 that recommended him to you as an executioner in this
24 proceeding?
25 A Nothing that I can recall.

Q Do you know what his training was other than these?
A Not that I recall.
Q Did anybody on your staff or under your control assess his background, his criminal background, or did you make any sort of background checks like that?
A As I already stated, my staff did not.
Q All right. Is Jim Doe a resident of South Dakota?
MR. SWEDLUND: Don't answer.
A I'm not going to answer the question on the advice of counsel.
Q All right. And I'll assume that -- well, just to make the record clear, I would ask you if you're asserting a privilege and I'd ask the court reporter to mark that question, please.
Do you know if John Doe, the first person up here, was he qualified to establish a central line? Well, first of all, do you know what a central line is?
A No, I do not.
Q Do you know if Jim -- or John Doe was qualified to establish a central line?
A I do not.
Q Do you know if anybody in your staff or under your control made that determination or assessed that?
A I do not.

1 Q Is John Doe a resident of South Dakota?
2 MR. SWEDLUND: Again...
3 A I refuse to answer the question on the advice of
4 counsel.
5 Q And again, I would ask you if you're asserting a
6 privilege and I'd ask the court reporter to mark that
7 question, please.
8 MR. BRADEN: Okay. If you don't mind, I need a
9 break for just a few minutes.
10 (Recess taken at 9:45 a.m. and reconvened at 9:52
11 a.m.)
12 Q (By Mr. Braden) We're back on the record here. And
13 as I'm sure you're aware, all the stuff about you
14 being under oath still applies, warden. And so let's
15 turn in Exhibit D, which is ERM A.12(B), and if you'll
16 turn to the second page there and look at section C.
17 This section lists a number of drugs and chemicals
18 here. Why did you choose sodium thiopental?
19 A It's a drug that's been used successfully in thirty
20 some states to carry out executions, and so we decided
21 to adopt a similar protocol.
22 Q Okay. Do you know what sodium thiopental does?
23 A Yeah, it's an anesthetic.
24 Q Okay. Do you know what an ultimate short-acting
25 barbiturate is?

A I don't think I could define it, no, other than what it seems to say.
Q Why in this section did you use choose pentobarbital?
A Again, it's another substance that's been successfully utilized in multiple states to carry out executions humanely.
Q In making your determination to use one of -- or of the other of these drugs, did you consult anybody?
A Absolutely.
Q And who did you consult?
A Counsel.
Q And I assume by counsel, you mean Susan and Paul; is that right?
A That's the two primaries, yes, sir.
Q Do you know what backgrounds they have in pharmacology?
A No, I do not.
Q Do you know if they have any background in pharmacology?
A I have no idea.
MR. SWEDLUND: I have a doctorate from Harvard, pharmacology.
MR. BRADEN: Pardon, sir?
MR. SWEDLUND: I have a doctorate from Harvard, pharmacology.

1 MR. BRADEN: Okay.
2 MS. MOLAYEM: Note for the record, he's smiling.
3 THE WITNESS: Well, I don't know if we're playing
4 for real here or not to be honest with you.
5 Q Is sodium thiopental and pentobarbital
6 interchangeable?
7 A I don't know.
8 MR. SWEDLUND: Objection. I don't know what you
9 mean by interchangeable.
10 Q Do they do exactly the same thing?
11 A They are both very powerful sedatives; I know that
12 much.
13 Q Okay. But in a chemical and medical sense, do you
14 know if they're interchangeable?
15 MR. SWEDLUND: Same objection.
16 A No. I don't know. I would have to -- and I would
17 assume and I'm not going to assume.
18 Q Okay. Why did you choose in this schedule pancuronium
19 bromide?
20 A It's a drug that's used in a lot of different states
21 as well that's been successfully used to carry out
22 humane executions.
23 Q Do you know what this drug does?
24 A It's a paralytic.
25 Q Do you know what it paralyzes?

A I believe it collapses primarily the diaphragm and ceases the condemned with the ability to not breathe any longer.

Q All right. Did you consult anybody in your selection of that drug?

A Yes.

Q And would that be counsel again?

A Again, yes, counsel.

Q Why did you choose -- well, the next question is: What is potassium chloride?

A I thought I answered that. Oh, I'm sorry, we're on to the next drug? Pancuronium bromide. Potassium chloride is a drug that will interrupt the electrical impulses to the heart, thus stopping the heart if there's a heartbeat present.

Q And why did you choose that drug in this protocol?

A Again, that drug has been used successfully in dozens of executions in thirty states or so.

Q Did you consult anybody in making your choice?

A Yes, counsel again.

Q Okay. Going back up to sodium thiopental, why did you -- in listing this, why did you and writing this protocol choose to administer 1.5 grams?

A Those were the doses recommended again with the states who had successfully executed inmates.

Q All right. Did you or your representatives consult other states in assessing this protocol or drafting this protocol?
A Yes.
Q Do you know what states they consulted?
A Texas for sure, and I believe counsel consulted with other states as well. And I can't tell you what those states were.
Q Did you or anybody on your staff consult physicians?
A I did not.
Q Did anybody on your staff consult a physician?
A I don't know the answer to that question.
Q All right. Did anybody in your staff consult -- you or anybody in your staff consult pharmacists about these drugs?
A I did not.
Q All right. Did anybody in your staff consult pharmacists?
A I don't know the answer to that question.
Q Do you have an in-house pharmacist at the Department of Corrections?
A We do not.
Q Do you know -- if you look at this schedule here and you can see it marked as No. 1 and No. 2 under C1, you're giving two doses of 1.5 grams of sodium

thiopental, which equals -- and I'm not real good in fractions, but that equals 3 grams. Do you know whether that's a lethal dose or not?

A I've certainly been told it is, and from firsthand experience, I believe it is.

Q Who told you it was a lethal dose?

A Again, the states that we have consulted with -- or the state that I have consulted, and legal counsel who have consulted with others as well.

Q Do you know whether pancuronium bromide is painful when it's administered?

A I do not.

Q Do you know whether potassium chloride is painful when it's administered?

A I do not have any firsthand information, no.

Q Why did you adopt under this protocol -- and you'll find it on page 3 of Exhibit D -- a one-drug lethal injection process?

A Again, other states have done this. And it's been litigated to my knowledge, and it's been determined to be a very safe and humane way to execute an inmate without causing them pain or duress.

Q And just to make it clear to me, on this protocol, basically what paragraph 2 and paragraph 3 on page 3 of Exhibit D are talking about are two different

one-drug protocols; is that right?
A Yes, that's right.
Q In other words, one using sodium thiopental and the other using pentobarbital; is that correct?
A Yes.
Q Who decides which one to use at the time of execution?
A The secretary of corrections and I will decide.
Q All right. Do you have a preference for one over the other?
A Do I personally?
Q Uh-huh.
A No.
Q This -- when you look at paragraph 2 on that page, it looks to me like that adds up to 5 grams of sodium thiopental. Do you know if that's a lethal dose?
A I've been told it is.
Q And who's told you that?
A The state of Texas for sure and counsel who's consulted with experts.
Q And if you look at paragraph 3, that adds up to 5 grams of pentobarbital. Do you know whether that's a lethal dose?
A I've been told it is.
Q And again, by the state of Texas and counsel; is that right?

A Texas not in this case, but counsel and whoever they've consulted with.

Q Okay. Can the condemned inmate choose which drug that he's -- that you're going to use, or is that something left solely to you and the secretary?

MR. SWEDLUND: I'm going to object. The protocol speaks for itself.

A Maybe I'm not -- have it available?

MR. SWEDLUND: Five on -- paragraph 5 at the top of page 4.

Q Let's talk about paragraph 5 for just a minute.

A Are you back on page 1?

Q We're on page 4 of D, paragraph 5.

MR. SWEDLUND: Right here (indicating).

A (Witness reviewing document.)

Q So do you -- under paragraph 5?

MR. SWEDLUND: Can you give him a moment to read it?

MR. BRADEN: Oh, sure.

A (Witness reviewing document.)

Q Have you had a chance to read it, warden?

A I've reread the paragraph.

Q Okay. Under this paragraph it says that you as the warden will give consideration to accommodate an inmate's method of preference. What preference

1 will -- well, let me -- I'm stumbling on this
2 question. I'm sorry. This mentions the three
3 different protocols that are used in this state -- the
4 three-drug, the two-drug, or the one-drug. Do you let
5 the inmate -- or would you let the inmate select the
6 drug or just the one-, two-, or three-drug protocol?
7 A Ultimately, the decision is mine and the secretary's.
8 Q Right.
9 A The inmate can certainly express his preference.
10 Q I mean I know this is a little bit in the future, but
11 are you going to interview the inmate about this, or
12 how is that determination going to be made?
13 A I will definitely talk to the inmate prior to the
14 execution.
15 Q If the inmate doesn't express any preference, which
16 drug would you use?
17 A I don't think I can speculate on that today. I would
18 wait until that time and then would have to make the
19 decision.
20 Q Well, what considerations do you take into account in
21 making that decision?
22 A Availability of the drugs.
23 Q So having the sodium thiopental and the pentobarbital,
24 each as being a one-drug method so to speak, the
25 actual use of that is going to be based more on supply

1 than anything else; is that right?
2 A Are you talking about the one-drug method now?
3 Q Yes, sir.
4 A Either or?
5 Q Yes, sir.
6 A I think that would be the primary consideration.
7 Q If you had both of them, which one would you choose?
8 If you had both drugs available to you -- which you do
9 right now.
10 A I don't know because I'd have to consult with my boss
11 as well. He would weigh in on that decision, too.
12 Q Okay. Does he have a background in pharmacology?
13 A Not to my knowledge.
14 Q All right. And we're talking about secretary of
15 corrections here just to make it clear.
16 A We are. Sorry.
17 Q And who would he consult?
18 A I don't know.
19 Q Who would you consult besides him?
20 A Probably counsel.
21 Q Something that I want to -- well, let's stay on page 4
22 of Exhibit D, and let's look at section D here if you
23 would. In paragraph 1 of section D, the protocol
24 discusses that the staff selected for the execution
25 shall drill weekly for six to weight weeks. How much

1 time do you normally have from the time an execution
2 date is set and when you carry that out? I mean how
3 much time did you have in the Elijah Page execution?
4 A I would expect months; probably five to six months.
5 Q Okay. Who monitors or supervises or prepares these
6 practice drills?
7 A There's several questions there: Who monitors, who
8 prepares, and who conducts.
9 Q Well, let me --
10 A Would you please ask them individually?
11 Q Yeah, let me -- who sets these up?
12 A I do.
13 Q Okay. And do you do that individually without the
14 assistance of anybody else?
15 A I'm not sure what you mean or where you're headed with
16 that question.
17 Q Well, I know you're obviously a very busy man.
18 A Right.
19 Q So do you take time out of your schedule to set these
20 drills up and get all the players together you
21 yourself, or do you have an assistant or somebody help
22 you do that?
23 A I understand. Usually what will happen is we'll have
24 a meeting -- my deputy warden and Susan -- and we
25 would determine the appropriate dates. And then

1 deputy warden and staff would then get all the folks
2 in the area that need to be there. And then I would
3 be there and I would -- I would be the one conducting
4 or in charge of the exercise.
5 Q Do you have any drills or rehearsals so to speak for
6 this anytime other than when there's an execution date
7 set?
8 A Drills rehearsed of the actual execution?
9 Q Yes.
10 A No.
11 Q So until an execution date is set, there's no
12 preparation for an execution by rehearsing it so to
13 speak?
14 A That's correct.
15 Q Who all participates in these drills or rehearsals?
16 A Myself, the senior staff, counsel, the tie-down team.
17 That's about it.
18 Q We've discussed Jim and John Doe earlier today. Are
19 they or who they -- are they involved in the -- were
20 they involved in the rehearsal for Elijah Page?
21 MR. SWEDLUND: You mind if I talk to my client
22 about that?
23 MR. BRADEN: Sure. We can take a break.
24 (Recess taken at 10:09 a.m. and reconvened at
25 10:15 a.m.)

Q Okay. Warden, before the break, I think I asked you if Jim and John Doe had participated in the practices or rehearsals you had for the Elijah Page execution.
A They did not.
Q Okay. Will -- whoever will be Jim or John Joe in the future, will they participate in any practice you might have for a future execution?
A I think going forward, yes. Yes, I would require that of them.
Q Okay. Are there -- when you have these trainings, you must -- I assume -- and I don't mean to put words in your mouth -- but I assume you must have a general meeting first before you begin the process, is that right, of all the staff that's involved?
A That's fair, yes.
Q Are there any handouts or any visual aids used in these meetings or trainings?
A No, other than maybe referring to the policy.
Q Are there any summaries of the policy or breakdowns of individual roles given to the different participants?
A No, we don't break the policy out per se and hand pieces of the policy to different people, but there are people with very unique roles. For example, the tie-down team.
Q Right.

A And those folks have very specific jobs. So there would be a handout I believe that would outline what they do and who on that team does what.

Q And do you know who has possession of those handouts now?

A I do not.

Q Okay. And your recollection is those were made for the Elijah Page execution and the rehearsal phase?

A I can't say today that I actually remember seeing those, but I believe -- it would make sense -- that there would be something like that available.

Q Do you know, if they existed, who would have prepared them?

A I'm sorry?

Q If they exist, do you know who would have prepared those checklists I guess for lack of a better term?

A Probably counsel, Doug Loen.

Q Okay. In the -- well, let me ask -- do you contemplate in these drills that you actually obtain I.V. access to a person as a practice in this, or is it more kind of a dress rehearsal all but that? Do you understand what I'm saying?

A If you're asking if we actually poke somebody --

Q Right.

A -- or access a vein, we do not.

Q Okay. How many times do you go through these rehearsals or practices?
A For the Elijah Page?
Q Well, let's do it two ways: For the Elijah Page and then what do you anticipate in the future?
A I think it's the same for both: Six to eight practice runs until I'm satisfied that the team is well rehearsed and know what their jobs are.
Q And how many people actually participate overall in this?
A I can give you a rough number. There are probably, on the day of the rehearsals themselves, probably a dozen staff or so there.
Q Are there any people there outside that are nonemployees of the Department of Corrections?
A No.
Q All right. Referring to paragraph 3 -- I'm sorry. Is attendance mandatory at these trainings?
A Yes. If you're going to participate, you need to be at the training.
Q Looking at paragraph 3, this discusses the preparation of the chemicals, and we're looking at page 4 of Exhibit D -- section D, paragraph 3.
A I'm with you.
Q Where are all of those chemicals mixed or prepared?

1 MR. SWEDLUND: Are you talking prospectively or
2 retroactively?
3 Q Where were they prepared for the Elijah Page
4 execution, and where would they be prepared in the
5 future?
6 MR. SWEDLUND: Start with Elijah Page.
7 A They were prepared in the chemical room where the
8 actual executioners are staged.
9 Q Okay. And how -- and I'm talking about Elijah Page --
10 how soon before his execution were they actually
11 prepared?
12 A I don't recall specifically.
13 Q And do you know who prepared them?
14 A It would have been the folks that were hired to come
15 in.
16 Q Okay. So this would be the John and Jim Doe that
17 we're talking about?
18 A Yes.
19 Q Okay. Do you know if any of those drugs need to be
20 refrigerated?
21 MR. SWEDLUND: Objection. What drugs?
22 Q Do you know if any of the chemicals used in the lethal
23 injection process need to be refrigerated after
24 they're prepared?
25 A My understanding: That there was refrigeration

1 required on -- I don't know specifically which drug
2 but on a drug or maybe more than one prior to the
3 mixing and possibly after.
4 Q Were they actually refrigerated?
5 A They were, yes. I know that.
6 Q Is there a refrigeration -- or refrigerator in the
7 chemical room?
8 A There may have been one brought in for the day of the
9 execution. I can't recall specifically.
10 Q Well, if they weren't stored there, where would they
11 have been refrigerated?
12 A In another area of the institution where there was
13 refrigeration available.
14 Q Would that be in the armory?
15 A In the Elijah Page execution drugs, no.
16 Q So those chemicals were stored someplace besides the
17 chemical room or the armory at some point?
18 MR. SWEDLUND: Again, which chemicals?
19 Q I'm sorry, I didn't hear.
20 MR. SWEDLUND: I'm sorry, which chemicals? I
21 don't know which chemicals you're talking about.
22 Q Any three of them. Any three that were required to be
23 refrigerated were refrigerated someplace besides the
24 armory or the chemical room; is that right?
25 A Yes.

1 Q Do you know who -- after they were mixed in the
2 chemical room, do you know who took them to that
3 refrigeration place in the Elijah Page execution?
4 A No.
5 Q Do you know in paragraph 3 here that we're discussing
6 what manufacturer's instructions are you referring to
7 here when you talk about the temperatures of
8 22 degrees Celsius, 71.6 degrees Fahrenheit?
9 MR. SWEDLUND: I'm going to object to the extent
10 it requires the identification of any manufacturer.
11 If you're talking about a type of document, then you
12 can go ahead and answer.
13 (Ms. Anderson exits the room.)
14 Q Well, let's make this clear. A manufacturer's
15 instruction is actually a type of document drug
16 companies produce to tell people -- doctors or
17 whoever -- how to deal with their drugs. So in this
18 paragraph, you refer to in your protocol that there
19 are certain temperatures. Do you know what drug
20 you're referring to here that needs this temperature
21 control?
22 A No, I can just tell you that we would comply with
23 whatever those recommendations were.
24 Q Okay. Do you know who told you that there needed to
25 be temperature control?

A No.
Q Do you recall whether the drugs that you bought from Kayem Pharmaceuticals had manufacturer's instructions?
A No, I don't believe I've looked at them.
Q So you don't know?
A I don't know.
Q Do you know whether there are manufacturer's instructions for the pentobarbital you have in your possession?
A There is.
Q Do you inspect those drugs once those drugs are obtained by your facility?
A I do not inspect them.
MR. SWEDLUND: Again, object. I don't know what you mean by inspect.
(Ms. Anderson enters the room.)
Q How is it that you know that there's -- sorry. Do you need to take a minute?
A No, no, I'm fine. Just a little raspy throat.
Q How is it that you are aware that there are manufacturer's instructions for the pentobarbital, but you don't know for sure whether there's any Kayem sodium thiopental?
A I wasn't involved in receiving and storing the sodium thiopental.

Q If you have a drug that doesn't have manufacturer's instructions that tells you what to do, how would you go about reconstituting these drugs or storing them?
A I didn't say there wasn't drugs. I just said I wasn't aware of them -- or wasn't instructions for the drug.
Q Well -- but if there weren't, what would you do?
MR. SWEDLUND: Objection. Calls for speculation.
Q I need for you to answer that question.
A I would do my --
THE WITNESS: I'm sorry, Paul?
MR. SWEDLUND: Go ahead.
A I would do my darndest to ensure my staff got that information.
Q Okay. And who would you talk to or seek out to get that information?
A I would start with my counsel.
Q Would you use any drugs that don't have manufacturer's instructions?
A No, I don't think it would be prudent.
Q All right. Let's move down in that same document, Exhibit D, section D, paragraph 8.
A (Witness reviewing document.)
Q In this paragraph in the second sentence, you talk about the I.V. team possibly not being able to establish a peripheral line or basically an I.V. line,

and in that event, they will establish a central line. Who determines whether they can't establish a peripheral line?

A I think they would establish and then would communicate that.

Q Do you know what a peripheral line is?

A Yeah, it's a line that's accessed in an arm or maybe a lower leg.

Q Have you ever established a peripheral line before?

A Have I?

Q Yes, sir.

A I have not.

Q Did you have any training about that in your EMT training?

A When I took my EMT certification, that was not a requirement, no.

Q Okay. Do you know what a central line is?

A I've been told it's accessing a major vein in the body. Usually the jugular vein or something very substantial.

Q Do you know what a percutaneous method is?

A I do not.

Q Okay. Who told you about a central line?

A It would have been counsel who consulted with medical experts.

1 Q Do you know what medical experts they consulted?
2 A No.
3 Q Did they consult doctors?
4 A I don't know for sure.
5 Q Do you think they did?
6 A Well, yes, I do. But again, I don't know what his
7 degree is. Whether he's a doctor of pharmaceutical or
8 an MD, I don't know.
9 Q Have you ever consulted Dr. Dershwitz?
10 A Have I personally? No.
11 Q Has counsel?
12 A Yes, to my knowledge they have.
13 Q In the creation of this protocol?
14 A Yes, I believe that to be so.
15 MR. SWEDLUND: Object to the term "creation."
16 Q Well, the drafting or the preparation of this
17 protocol, has your counsel consulted Dr. Dershwitz?
18 A To my understanding, yes.
19 Q Do you know whether the establishment of a central
20 line is a one- or two-person job?
21 A I don't know that.
22 Q Are you aware that there are major problems that can
23 happen with the establishment of a central line if
24 it's not done correctly?
25 A Based on my training, I can imagine that it would be a

very serious ordeal if it wasn't done correctly.
Q All right. Are you aware it could cause a stroke if it's not done properly?
A I think anytime you access a vein or an artery that's a possibility.
Q Do you -- when you select the I.V. team members for an execution, do you assess whether they actually have the training to establish a central line?
A Specifically, I don't recall if that issue was discussed.
MR. SWEDLUND: Are you referring again in connection with Page or what? What time frame are you talking about?
A With Page I don't recall if that was discussed.
Q Okay.
A In the future I believe that would be important to determine.
Q Okay. Are you aware that a central line is basically a surgical emergency procedure?
MR. SWEDLUND: Object. Calls for speculation. Lacks foundation.
Q Do you have any knowledge of that, sir?
A Nobody's ever told me that, no.
Q Okay.
MR. SWEDLUND: Also assumes facts not in

1 evidence.
2 Q Do you know whether nondoctors can establish a central
3 line?
4 A I don't know that for sure.
5 Q Who would you consult about that?
6 A Counsel.
7 Q Do you know whether counsel consulted Dr. Dershwitz
8 about that?
9 A I believe they did.
10 Q Did Dr. Dershwitz see any drafts of the October 13,
11 2011 protocol?
12 A It's my understanding he did.
13 Q Did he make changes or recommendations?
14 A I don't recall.
15 Q Did you see any drafts or edits that he may have done?
16 A I'm aware of one very minor, but it escapes me right
17 now. But it wasn't anything that was very
18 significant.
19 Q Is Dr. Dershwitz consulted frequently by your counsel?
20 A For this purpose of this drafting this ERM?
21 MR. SWEDLUND: Objection.
22 Q Yes.
23 MR. SWEDLUND: Vague.
24 Q For the establishment or creation of ERM A.12(B) dated
25 October 13, 2011, was Dr. Dershwitz consulted

1 frequently by your counsel?
2 MR. SWEDLUND: Objection. Vague.
3 Q Was he consulted --
4 A He was consulted. I don't know if it was frequently
5 or infrequently. I don't know the definition of that
6 or your definition of that.
7 Q Was he consulted more than two times?
8 A Yes.
9 Q Was he consulted more than five times?
10 A I don't know.
11 Q Do you know if he was consulted more than ten times?
12 A I don't know.
13 Q Okay. All right. But we know it was more than two?
14 A Well, yes, I can definitely testify to that under
15 oath.
16 Q Okay. Were you involved in any of those
17 consultations?
18 A I have never talked to him like I stated earlier.
19 Q Have you ever met him?
20 A I have never met him.
21 Q Okay. Did Dr. Dershwitz consult in the creation of
22 the May 2011 protocol?
23 A I don't recall. I can't state for certain.
24 Q Do you think he did?
25 A I really don't want to guess.

Q Okay. All right. If you'll look on page 5 of the protocol, paragraph 9 at the top of the page, in the second sentence here you state in the protocol that if the inmate desires, and it won't interfere with the efficacy of the drugs basically, the inmate's head will be propped up on a cushion. What drug, if any, would be -- would -- well, let me... How would propping up somebody's head interfere with the efficacy of any drug, do you know?

A I'm not sure it would.

Q Did somebody tell you that it would?

A No.

Q All right. Why is that sentence in there?

A I think there might have been a concern that people who needed to or were witnessing the execution and those who needed to see the inmate's face and head, that just so there was never a problem in doing that. That the wedge or the pillow option would be available.

Q Okay. How would that interfere do you think propping somebody's head up?

A I don't know that it would.

Q Who would determine that?

A I would assume that the experts that were there to administer the drugs.

Q Would that be a pharmacologist?
A Not necessarily.
Q Would it be a physician?
A Not necessarily.
Q Why did you include this if you're not really sure what it does?
A Well, I'm just -- I think I told you what it does in terms of what I believe would be a use for it. So if the inmate's face and head were visible.
Q In paragraph 11 you discuss how if after an hour attempting to gain I.V. access it becomes difficult that the secretary will be contacted. He's present, isn't he?
A He is.
Q All right. And he was present in the Elijah Page execution?
A He was.
Q What role does the secretary have at the actual execution in those couple hours when the execution is being carried out in the Elijah Page execution and what role do you expect him to have in the future?
A The primary role for the secretary is to be the last point of contact with the governor's office, the chief justice of the South Dakota Supreme Court, and the attorney general's office to ensure there are no

last-minute stays of execution. Assuming there are none, he steps out as he did in the Page execution and states such and tells me to proceed with the execution.

Q Does he have any role in preparing or carrying out the execution other than -- I know you consulted about the choice of the drugs, but other than that, does he have any other role?

A No.

Q Is he present at any of the trainings?

A You know what? He may have been present in at least one of the training sessions that we did for the Elijah Page execution. I seem to remember that. But I could be mistaken, but I believe Secretary Reisch was there for at least one.

Q Have you ever asked or contacted the secretary -- and I guess on the Elijah Page execution would be the only one -- saying that there was problems but he didn't go to the governor?

A I'm sorry, I didn't understand the question.

Q Well, I guess -- let me back up here. His role is to go to the governor if you're having problems getting I.V. access; is that right?

A Go to the governor is not stating it correctly I don't believe.

1 Q Okay.
2 A He'll have the governor actually on the phone from the
3 execution room or from the chemical room.
4 Q Right.
5 A And he will check with the governor one last time at
6 the scheduled date and time of the execution to ask if
7 there is any planned stay. So you're asking me to
8 assume something here now based on the ERM, which I'm
9 willing to do, that if there's a problem establishing
10 the I.V. lines and I then would go to the secretary
11 and indicate such, then he would communicate that to
12 the governor.
13 Q Have you ever had a situation where you've gone to the
14 secretary but nothing's -- well, let me just strike
15 that. How does he signal to you to begin the
16 execution? Is it verbally or by hand signal or...
17 A He actually steps out of the room, opens a curtain so
18 that he and I have a face-to-face discussion in front
19 of the witnesses to the execution.
20 Q And when you say "curtain," you're referring to the
21 blinds that are mentioned --
22 A The blind that separates -- I'm sorry, we're talking
23 over one another. A blind that separates everybody
24 else from the actual execution room where Elijah Page,
25 myself, and Associate Warden Young were positioned

that night.
Q Obviously I've never attended an execution in South Dakota, but I've been witness to numerous executions. And I know there's a variety of people that have different roles in those last few minutes. And some are on one side of the glass and some are on the other side of the glass basically. How many people are in the actual execution room with you besides the inmate?
A One. One other.
Q And who's that?
A Associate Warden Darin Young.
Q And what's his role?
A Excuse me.
Q Sure.
A Darin was there that night as my direct assistant to ensure that all the witnesses got into the four distinct rooms on a timely manner, and once they were all there, step inside the room where I'm at and indicate such and then just be there available to me in the event I needed something from anyone else maybe in the course of the evening. He could get that information or get that for me and then return.
Q In the future will he carry out that same role?
A Somebody in a like position would. Darin's no longer

1 my employee.
2 Q Okay. But somebody in his equivalent position would
3 probably be there?
4 A I see that as happening, yes.
5 Q Will there be anybody else in the execution room
6 besides him -- that person and yourself and the
7 inmate?
8 A There's no plan as of today for that.
9 Q And during the Elijah Page execution, Jim Doe and John
10 Doe, were they both in the chemical room?
11 A Yes.
12 Q Okay. Was there anybody else in the chemical room?
13 A Secretary Reisch as we already established I believe.
14 Q But didn't you say he stepped out at some point?
15 A Stepped out to talk to me but then returned.
16 Q Oh, I see. Okay. And his -- you basically wait for
17 his okay so to speak to start the execution; is that
18 correct?
19 A There's an execution time that we've established when
20 the execution will take place. We'll reach that time,
21 and at that point in time, the secretary will make one
22 last check with those three agencies or entities that
23 I talked about, and then he will step out and instruct
24 me to proceed.
25 Q And you in your role as warden is the person or the

1 official that actually sets that time; is that right?
2 A After consulting with the secretary.
3 Q And what goes into your determination of whatever time
4 you pick for an execution?
5 A Well, I take a couple things into consideration.
6 Based on what I've been told, it's important
7 throughout the country who have done executions and
8 that is we want to remember we're still running a
9 prison at the same time we're doing the execution. So
10 I think it's wise to enter into the execution when all
11 the rest of the prison is locked down so there are no
12 other potential distractions that you may have to deal
13 with. So 10 p.m. was chosen for that reason in
14 South Dakota.
15 In addition to that, we wanted to make sure that
16 we didn't do it terribly late into the night or early
17 morning because I know that there are Supreme Court
18 justices both on a federal level and a state level
19 that also have a role, or at least are asked whether
20 or not they're planning on intervening. And I know
21 the governor's involved and a lot of other staff are
22 involved with the witnesses and folks that are there.
23 So I don't want to do it terribly late, but yet I
24 needed to do it late enough so the institution was in
25 a lockdown mode.

1 Q And do you anticipate that that probably will be your
2 plan in the future?
3 A It worked extremely well the first time.
4 Q All right. Well, let's go down to paragraph 7 on that
5 same page 5. I know that in this current protocol --
6 and I just can't point to it right offhand -- that you
7 list a number of ways that you check for consciousness
8 after three minutes. How do you come to those
9 determinations to use -- well, let's just -- how do
10 you check for consciousness of a person?
11 A The obvious is just looking for life signs or looking
12 for signs of consciousness -- blinking, eye movement,
13 any other movement of the body. You, know, chest
14 heaving, breathing or not. Just any signs of the
15 person being awake.
16 Q What training have you had in determining the
17 consciousness of an individual?
18 A Well, I rely back on my EMT training to determine
19 consciousness.
20 Q Do you have any other training other than that?
21 A No.
22 Q Is it possible that a person could be conscious but
23 yet not awake?
24 A I would assume so.
25 Q Is it possible a person could be conscious and not be

able to respond to your stimuli?
A I don't know.
Q Would you expect their eyes to be open or closed?
A My experience and what I've been told is their eyes will be closed.
Q You list in paragraph 8 actually a number of tests that you plan to do to determine consciousness. Did you do any of those in the Elijah Page execution?
A I did not.
Q How did you determine his consciousness or lack of consciousness there?
A He stopped breathing.
Q What physical stimulation do you plan or expect to use to assess consciousness?
A In future executions?
Q Yes, sir.
A My plan would be to bring in a current EMT or paramedic or somebody with that training today and they would establish and indicate to me in their opinion whether the person was unconscious.
Q So in a roundabout way -- and I'm not trying to put words in your mouth -- you're going to delegate that assessment to somebody with a little bit more training; is that fair?
A Yeah, I think that's fair.

1 Q Okay. What qualifications do you expect that person
2 to have?
3 A They should be, I think at a minimum as we indicated
4 earlier in the procedure, corpsman, paramedic, EMT,
5 somebody that's been trained to establish
6 consciousness.
7 Q And in the Elijah Page execution, none of this was
8 done; is that right?
9 A No.
10 Q So that assessment was made on your visual
11 observation; is that right?
12 A Yes. I observed him stop breathing and then I
13 observed his skin color actually change.
14 Q Well, just to make it a little bit more clear here, we
15 may be kind of talking about apples and oranges. What
16 I'm talking about is to determine whether somebody's
17 unconscious from the effects of the sodium
18 thiopental -- or actually Elijah Page -- before you
19 proceed with the other two chemicals. And I believe
20 your protocol at the time required a two-minute pause;
21 is that right?
22 A Yes, that sounds right.
23 Q Right. And you did make that two-minute pause, right?
24 A Yes.
25 Q And in that two-minute pause, did you make any

1 assessment of Elijah Page at that time?
2 A Other than to see that he had ceased breathing and
3 stopped breathing, no.
4 Q So did he stop breathing before the other two
5 chemicals were administered?
6 A Yes.
7 Q Well, I know you're not a doctor, but are you
8 basically saying he died from the result of the
9 administration of the sodium thiopental?
10 A That's my opinion, yes.
11 Q Okay. Do you know how many grams of sodium thiopental
12 he was administered?
13 A No, I can't say for certain.
14 Q But you followed the protocol?
15 A That would be my understanding that they followed the
16 protocol.
17 Q So that was the ERM of June 14, 2007 I believe?
18 A We would have complied with the policy.
19 Q Right. Okay.
20 A I've been told by numerous sources that that's a
21 lethal dose.
22 Q Right.
23 MR. BRADEN: Hang on just one second. Can we
24 pause?
25 (Pause.)

1 Q So is it a requirement under this protocol that an EMT
2 be present now, or is that something you plan to do in
3 the future?
4 A That's something I plan to do in the future to
5 determine consciousness.
6 Q So that's not set out in this protocol right yet?
7 A No.
8 MR. SWEDLUND: Sorry, what was the question
9 again?
10 A Yeah, want to make that clear, too. Go ahead.
11 Q Yeah. The question is -- or actually the warden said
12 that he most likely in the future will have an EMT
13 present to help him make the assessment of
14 consciousness before the lethal drugs are given after
15 in that three-minute window and --
16 MR. SWEDLUND: Except that the thiopental itself
17 is lethal, but I understand what you mean. The other
18 two.
19 MR. BRADEN: Right. But that EMT presence is not
20 in the protocol currently.
21 MR. SWEDLUND: Well, it is under paragraph 8.
22 MR. BRADEN: All right. Paragraph 8 on page...
23 MR. SWEDLUND: Five.
24 MR. BRADEN: Oh, I was on the wrong page. Sorry.
25 Q (By Mr. Braden) But is -- do you plan to have this

1 EMT in the execution chamber with you?
2 A You know, maybe just right outside the door, but
3 certainly right there at my beck and call.
4 Q Why in the protocol do you use the term "if possible"?
5 What would prevent that?
6 A I don't see anything from preventing that.
7 Q Do you know why you use the term "if possible"? I
8 mean...
9 A Counsel language.
10 Q Okay. If it's not possible for whatever reason, would
11 you stop the execution?
12 A Look, my goal here is to provide for a humane
13 execution, and I'm going to do everything in my power
14 to ensure that happens. And I will have an EMT or
15 other certified person that are available to determine
16 and tell me whether or not the individual in their
17 opinion has been rendered unconscious.
18 Q Well, basically you're just saying that if you don't
19 have an EMT there, if it's not possible, you're not
20 going to go forward with the execution?
21 A That's -- that's the way I'm going to conduct it, yes.
22 Q Okay. Thank you, sir. If you look at page 6,
23 paragraph 9, at the very top of the page you talk
24 about in your protocol that you will continuously
25 monitor the I.V. and infusion sites. How do you do

1 that or how are you planning to do that?
2 A The Elijah Page execution, I can go back to that. I
3 personally observed after the lines had been inserted
4 and the saline solution was flowing that there was a
5 good flow and that the vein had been accessed by just
6 the sheer volume of liquid that was being put into the
7 inmate. Also, if the I.V. is inserted incorrectly,
8 there's usually some weeping around the insertion site
9 or maybe even some swelling in that area. So I would
10 look for obvious signs.
11 Q Well, this may be a little repetitive, but I'm just
12 following my list here. What would indicate something
13 was wrong? I think you kind of answered that, but in
14 a little bit more detail, what would you be looking
15 for?
16 A I'd be watching the I.V. site primarily looking for
17 signs of swelling or signs of leakage from where the
18 needle had accessed the vein; whether it's bleeding or
19 clear fluid or any leakage whatsoever.
20 Q The I.V. team that you refer to in this paragraph are
21 not actually in the execution chamber, are they?
22 A No, they're in the chemical room.
23 Q Okay.
24 A Well, let me just make sure it's perfectly clear.
25 They're in the room during the insertion and

1 determining whether or not they have a good I.V. line
2 sort of accessing both rooms at that point in time.
3 But then just prior to the execution actually taking
4 place, then they're back in the chemical room and
5 that's where they stay.
6 Q And so they observe through the window then?
7 A Yes, sir.
8 Q All right. Do you know, sir, whether sodium
9 thiopental or pentobarbital, both, either -- how long
10 each one of them -- do they take -- let me start over.
11 I stumbled all over that one. Does the sodium
12 thiopental and pentobarbital take the same amount of
13 time to take affect on a human body?
14 A I've been told it's very similar.
15 Q Okay. And who told you that?
16 A Counsel.
17 Q Do you know what the timing of that is?
18 A No. Within minutes, though.
19 Q Okay. Why did you choose three minutes as a time to
20 make this assessment as opposed to five or two like
21 you had in your previous protocol?
22 A Counsel recommendation after consulting with the
23 experts.
24 Q Okay. Dr. Dershwitz?
25 A Yes.

1 MR. SWEDLUND: I'm going to correct that. I
2 don't know that Dr. Dershwitz was involved in earlier
3 iterations of the protocol. When it was changed,
4 before I arrived there, I don't know who they
5 consulted with so -- but certainly, medical personnel
6 were consulted as well as the case law that is pretty
7 clear that three minutes is an appropriate time period
8 to wait.
9 A Would you mind reasking the original question so that
10 I have it right in my head?
11 Q Let me see if I can think of -- well, the original
12 question I think was: Does sodium thiopental and
13 pentobarbital take effect in the same amount of time?
14 And my recollection was you think it does and you've
15 been told by counsel that you think it takes a similar
16 amount of time.
17 A That's right.
18 Q And then I followed up with: Did counsel consult
19 Dr. Dershwitz about that? I believe that's a summary
20 of the question.
21 A So are we talking about -- are we going back to Elijah
22 Page again, or are we going back to today's --
23 Q Well, today.
24 MR. SWEDLUND: Actually, what you were talking
25 about was the switch from two minutes to three

1 minutes.
2 MR. BRADEN: Oh, Paul, you're totally right. I
3 totally got that mixed up.
4 MR. SWEDLUND: Yeah.
5 MR. BRADEN: Yeah.
6 MR. SWEDLUND: And that occurred I can tell you
7 before I got there, and I don't know who was consulted
8 at that point in time about it. But we --
9 MR. BRADEN: I --
10 THE WITNESS: I'm on the same page now, too.
11 MR. BRADEN: I got totally lost on that one.
12 THE WITNESS: That's all right. I'm on the same
13 page now.
14 MR. SWEDLUND: Suffice it to say that since that
15 time, since I've been involved, we have verified that
16 three minutes is an appropriate time frame so far as
17 we've been told.
18 Q Okay. And I guess just to make it clear, on page 9 of
19 this protocol, that's your signature, right?
20 A Yes.
21 Q And so you approved all this?
22 A Yes.
23 Q And I know that you said that you've done this with
24 consultation of counsel, but basically this is your
25 protocol that you approved individually, right?

A Yes, sir.
Q Okay. Did you write any of this protocol without consulting somebody?
A No, I think it would have been a collaboration from the very beginning, from the very first one that was established, until it's been revised to today's form. It was always under consultation with counsel, the current boss, and maybe even others in general meetings.
Q How often do you review with an eye towards amending so to speak the ERM?
A Every year at a minimum and sooner than that if the situation warrants.
Q Okay. After the Elijah Page execution, did you have any debriefing meetings so to speak?
A Sure.
Q Do you know how many?
A No.
Q Were any minutes or notes taken of those meetings?
A No, I don't believe so.
Q Were there any handouts or --
A No.
Q Okay. Do you know who attended these meetings?
A The team members. The secretary on at least one occasion, Secretary Reisch.

1 Q Were there any changes made to the ERM as a result of
2 the Elijah Page execution?
3 A I don't believe so, sir.
4 Q All right. Warden, I think we're getting pretty close
5 to the end, but if we could take a five-minute break
6 and regroup for a minute if you don't mind.
7 A Absolutely.
8 (Recess taken at 10:58 a.m. and reconvened at
9 11:06 a.m.)
10 Q (By Mr. Braden) Warden, we talked some about the
11 Elijah Page execution off and on through this this
12 morning. I want to ask some questions specifically
13 about that. Who supplied the drugs, the chemicals in
14 the Elijah Page execution?
15 MR. SWEDLUND: We're not going to answer.
16 Instruct you not to answer on the advice of counsel.
17 Q Are you asserting a privilege?
18 A I'm not going to answer on advice of counsel.
19 Q Was the supplier --
20 MR. BRADEN: Again, I'd ask the court reporter to
21 mark that question.
22 Q Was the supplier a United States manufacturer?
23 A Yes.
24 Q Who obtained those drugs at that time? I mean I'm
25 sure you didn't call whoever the supplier was. Who in

1 your supervision or control obtained those drugs?
2 MR. SWEDLUND: You can go ahead.
3 A It would have been me and my staff obviously.
4 Q Well, who on your staff?
5 A It would have been counsel. And then I'm the one by
6 statute allowed to receive these drugs from any
7 supplier without a prescription from a physician.
8 Q And that would have been Doug Loen?
9 A Yes.
10 Q Once -- and during the Elijah Page execution,
11 obviously you had a protocol which -- that was dated
12 June 14, 2007 and that protocol was created by you
13 about a month before the execution; is that right?
14 A That's probably a correct time frame. I don't recall
15 specifically but...
16 Q How many practices or rehearsals did you have under
17 that protocol before the Elijah Page execution?
18 A I think we did at least a half a dozen; maybe a few
19 more.
20 Q When you -- during the actual execution, which was on
21 July 11, 2007 I believe, once you determined that
22 Mr. Page was unconscious -- even though I know you
23 mentioned earlier that you think he actually already
24 died by that time -- but once you made that assessment
25 under the protocol, that two-minute protocol, how did

1 you signal the execution team to begin with the other
2 drugs? Do you just tell them, or do you give them a
3 hand signal? Or how do you let them know that the
4 second part of the process should begin?
5 A

8 Q Does that,
9
10 A I don't know .
11 Q Okay. And is that the method you'll probably use in
12 the future?
13 A That's the plan today.
14 Q Okay. During the Elijah Page execution, did you have
15 the protocol with you, or did you just know it from
16 memory?
17 A From rehearsal and memory.
18 Q Was there anybody in that process whose responsibility
19 it was to ensure that you didn't forget a step or make
20 sure you followed the protocol to the letter?
21 A My deputy warden was there as well in the chemical
22 room, which was following protocol I'm sure to ensure
23 that all the steps were adhered to.
24 Q And who was the deputy warden at that time?
25 A Daryl Slykhuis.

1 Q Once the Elijah Page execution was completed, what did
2 you do or how did you dispose of the drugs that
3 weren't used in that execution?
4 A I don't recall.
5 Q Whose responsibility would it have been to dispose of
6 them?
7 A Ultimately, the responsibility rests on my shoulders,
8 and I'm sure it would have been a combination of me
9 and counsel to ensure that they were disposed of. And
10 I just don't recall specifically when and how that
11 happened.
12 Q Now you stated that in the Elijah Page execution the
13 sodium thiopental was administered first; is that
14 right?
15 A That's right.
16 Q And then there was a two-minute pause and you made
17 this assessment which you believe, as I say, Mr. Page
18 was dead, and then the second portion began; is that
19 right?
20 A That's correct.
21 Q And let's mark this I believe Exhibit F.
22 (Exhibit F marked for identification.)
23 Q This is Exhibit F and this is a newspaper article
24 actually printing a release from the prison setting
25 out the timeline here. And if you'll notice on this,

1 the lethal injection began at 10:02, and then your
2 official record notes that the execution was completed
3 by 10:04. Well, that is two minutes. How do you
4 explain this discrepancy?
5 A I can't explain -- go ahead, Paul.
6 MR. SWEDLUND: First of all, I object as to
7 hearsay; second of all, lack of foundation; third,
8 assumes facts not in evidence. That there is a
9 discrepancy because I see two minutes between here
10 and -- 10:02 and 10:04 and I'm not sure what
11 discrepancy you're talking about exactly.
12 Q Well, let's go -- this timeline here that's on this,
13 do you dispute that this is the official timeline of
14 the Department of Corrections?
15 MR. SWEDLUND: Well...
16 MR. BRADEN: I'm asking the warden.
17 A No, I don't think I can say that. I would prefer to
18 see the DOC official timeline, not some news
19 organization's timeline.
20 Q Well, I would prefer to see it, too, but it hasn't
21 been presented to me.
22 A So, no, I cannot say this is -- would match up with
23 the DOC timeline.
24 Q Okay. How do you -- well, under the protocol, under
25 the June 14, 2007 protocol, I believe that there is a

1 two-minute pause before you begin the lethal chemicals
2 or the pancuronium bromide and the potassium chloride,
3 and then there is a pause before you announce somebody
4 or pronounce somebody to be dead. So this notes that
5 at 10:04 the lethal injections were completed. Would
6 that be the potassium chloride and the pancuronium
7 bromide?
8 A I don't know what this KELOLAND reporter is reporting.
9 Q Okay. Do you dispute that there's a discrepancy in
10 the two minutes between when the execution began and
11 it seemed to be completed?
12 A I can tell you that I would have complied with the
13 protocol that was in place at the time of the
14 execution.
15 Q Okay. So you don't think this is accurate?
16 A You know, one can read that a couple different ways.
17 I can tell you that I would have complied with the ERM
18 as it was written on the day of the execution.
19 Q Now you have mentioned several times that in choosing
20 these drugs in the current protocol and even in the
21 past protocol that you've done that after consulting
22 with counsel; is that correct?
23 A Yeah, it's one of the things I did.
24 Q What back -- or how have you made a determination or
25 assessed counsel's background in pharmacology? Do

1 they have any background in that?
2 MR. SWEDLUND: I'm a doctor remember.
3 MR. BRADEN: Oh, right.
4 A They have access to and have consulted with experts.
5 I also went on to explain that I consulted with other
6 states, specifically with Texas and Montana, and
7 talked to wardens who have carried out executions.
8 I'm aware of appellate court discussions throughout
9 the country that have determined that lethal injection
10 and the way it is administered currently is a safe and
11 humane way to carry out executions, and with all that
12 considered, determined that would be appropriate for
13 South Dakota as well.
14 Q Do you know if when you make a determination about the
15 chemicals and you consult counsel, that counsel has to
16 consult somebody else?
17 A I think that's a fair assumption, absolutely.
18 Q Do you know if that was Dr. Dershwitz?
19 A For what are you talking about now?
20 Q For the --
21 A Elijah Page --
22 (Discussion off the record.)
23 Q Do you know if whichever counsel you consulted for the
24 choice -- and actually, we're talking more about the
25 protocol than the actual executions because you chose

1 in the June 14, 2007 protocol those three chemicals.
2 You did that with a consultation of counsel. Do you
3 know who counsel consulted?
4 A I do not.
5 Q Okay. In the October 13, 2011 protocol, you've listed
6 a number of drugs in there to be used that you've
7 chosen with your discretion under the statute. After
8 consulting with counsel, do you know if counsel
9 consulted anybody to assist you in making those
10 choices?
11 A Yeah, I've been told they've consulted with
12 Dr. Dershwitz.
13 Q Okay. Do you have any knowledge of counsel's personal
14 expertise in pharmacology or in choosing drugs?
15 A I know they're trained lawyers. I don't know beyond
16 that much of their training.
17 Q So basically the information that they're providing
18 you is coming from other consultations other than just
19 themselves?
20 A Their experts that they're consulting, yes.
21 Q Okay. Who keeps you aware of the status of lethal
22 injection chemicals? I'm sure -- let me preface this
23 question a little bit. I'm sure you're aware that
24 there's a growing controversy in the United States
25 about the shortage -- not the country -- but the

1 shortage of various drugs. Somebody must keep you
2 posted on that. Who does that?
3 A Counsel. We talk about it periodically.
4 Q Have you -- in creating the October 13, 2011 protocol,
5 did you consider any other drugs in that protocol but
6 yet reject them?
7 A No.
8 Q So the only drugs that were considered were the drugs
9 that actually were enumerated in that protocol; is
10 that right?
11 A Yes.
12 Q Have you or any member of your family ever been
13 threatened because of your role in the execution
14 process?
15 A I have been on one occasion.
16 Q And could you tell me about that a little bit?
17 A It was an inmate threat from a distance, from afar,
18 shouting an obscenity and referring to me as a
19 murderer, something like that.
20 Q Has any of your family been threatened because of
21 your --
22 A Not to my knowledge.
23 Q All right. Do you know if anybody on your staff that
24 works with you on this, have they been threatened by
25 anybody?

A Not that I'm aware of.
Q Now I want to ask you a series of questions that I know -- wait a minute. Oh, I know what I want to ask you. This is -- I'm cleaning up all my loose ends so just bear with me.
A I'm a patient man usually.
Q So I want to mark this as Exhibit G, and if you'll take a look at this.
(Exhibit G marked for identification.)
Q Do you know what this is, sir?
A If you give me a chance to read it, I might.
Q Oh, sure.
A (Witness reviewing document.) This looks like the form that would have been completed on the importation, declaration from U.S. Customs for the sodium thiopental that we purchased from India.
Q Did you prepare this form or your secretary so to speak or...
MR. SWEDLUND: Hold on a minute. You know, once again, counsel, I know you're frustrated, but I'm going to advise the witness to not identify who prepared the form so...
Q Well, are you asserting a privilege, warden?
A I am on the advice of counsel refusing to answer the question.

1 MR. BRADEN: Ask the court reporter to certify
2 that question.
3 Q Did you prepare the form?
4 MR. SWEDLUND: Again, same advice.
5 Q What privilege are you asserting in not answering this
6 question?
7 A I'm going to comply with counsel's advice.
8 Q So you don't -- you're not asserting privilege, you're
9 just -- you're just refusing to answer on the advice
10 of counsel, right?
11 A Yeah, I guess.
12 MR. SWEDLUND: That seeks a legal conclusion.
13 Q Do you know who Phil Patterson is?
14 MR. SWEDLUND: You can go ahead.
15 A No, I don't believe I do.
16 Q Did you have any dealings with Phil Patterson?
17 A No.
18 MR. SWEDLUND: Again, go ahead.
19 THE WITNESS: Sorry.
20 Q Is that your signature at the bottom left-hand corner?
21 A It is.
22 Q And did you sign that on March 25, 2011?
23 A I would have, yes.
24 Q Now I want to ask you some questions that I -- after
25 we've gone round and round a little bit this morning,

1 but I want to make my record really clear so I'm going
2 to ask you a series of questions I'm sure counsel's
3 going to object to, but I just -- so bear with me,
4 please.
5 A Understand.
6 Q On the pentobarbital that you have in your possession,
7 did you obtain it from the United States?
8 MR. SWEDLUND: He doesn't know where it came
9 from, but I will represent to you that, yes, it came
10 from a domestic source.
11 Q Well, counsel just made a statement. Would you
12 disagree with him on what he just stated for the
13 record?
14 A No, I won't disagree.
15 Q Okay. And is that pentobarbital in your possession,
16 in your facility's possession?
17 A It is.
18 Q And how long has it been in your possession?
19 MR. SWEDLUND: Don't answer that. Same advice,
20 advice of counsel. It might aid you in determining
21 the source so...
22 Q Well, are you asserting a privilege?
23 A I'm going to comply with counsel's direction.
24 Q And just to make the record clear, what privilege are
25 you asserting, sir?

A Advice of counsel.

MR. BRADEN: And I'd ask the court reporter to certify that.

Q How much pentobarbital do you have in your possession?

A I believe we have a total of 200 -- I believe 200 grams.

Q Do you know how much that cost?

MR. SWEDLUND: Don't. Again, that can aid you in determining the source and advising him not to answer.

Q Well, I assume, warden, what you would say -- and stop me if I'm wrong -- that you're not going to answer that on the advice of counsel. Then I'm going to ask you: Are you asserting a privilege and which one? And you're going say: On the advice of counsel. Is that correct, sir?

A That's correct, sir.

MR. BRADEN: Okay. And I'd ask the court reporter to mark that, please.

Q Have you received pentobarbital from any other prison facility in the United States?

MR. SWEDLUND: You can go ahead and answer.

A No, sir.

Q Have you given pentobarbital or sodium thiopental to any other prison in the United States?

MR. SWEDLUND: Go ahead.

A No, sir.
Q Has any other prison sought chemicals from you in the lethal injection process but you've refused to provide them?
A No, sir.
Q How did you receive the pentobarbital when you -- did it come by mail, did somebody go pick it up from someplace or...
MR. SWEDLUND: Again, I'm going to object. Advice of counsel. Question certified.
Q And I'll go through the same litany and I -- that what, you know, privilege are you going to assert? Would you agree that that's probably the answers you would give me --
A Yes, sir.
Q -- if we went through that whole thing?
A Yes.
MR. BRADEN: And I'd ask the court reporter to certify that.
Q Why did you buy 200 grams of pentobarbital?
MR. SWEDLUND: Go ahead.
A To ensure we had an adequate supply for possible future executions.
Q Aren't there only three people in your death row?
A That's right.

1 Q Are you expecting more?
2 A I can't speculate on that.
3 Q Do you have pancuronium bromide in your possession
4 today?
5 A I do not.
6 Q Do you have potassium chloride in your possession
7 today?
8 A I do not.
9 Q And when I say "your possession," you understand the
10 facility's?
11 A I understand, sir. I understand, sir.
12 Q All right. Are you seeking to obtain those drugs?
13 A Not today.
14 Q And at what time will you seek to acquire those drugs?
15 A To be fair, to assume after an execution date has been
16 established.
17 Q And who will acquire those drugs for you?
18 A Myself and counsel.
19 Q Okay. Is it possible that if you only use the
20 one-drug protocol, you won't need those drugs?
21 A It's possible.
22 Q All right. Now you told us earlier that you most
23 likely would not use a drug that you have in your
24 possession that didn't have a manufacturer's
25 instruction; is that true?

1 A Yes.
2 Q All right. Are you aware that the Kayem
3 Pharmaceuticals' sodium thiopental doesn't come with
4 manufacturer's instructions?
5 MR. SWEDLUND: I'm going to object to the
6 question as vague.
7 Q You need to answer that, sir. Are you aware that they
8 don't have manufacturer's instructions?
9 A No, I'm not aware of that.
10 MR. SWEDLUND: And also assumes facts not in
11 evidence.
12 Q Do you understand that Kayem Pharmaceuticals is
13 basically a middleman? Do you know who manufactured
14 the sodium thiopental that your agency purchased from
15 Kayem Pharmaceuticals?
16 A No, I don't.
17 Q Okay. Did anybody on your staff or under your control
18 investigate who actually manufactured the sodium
19 thiopental?
20 A I don't know.
21 Q I think I'm out of steam. Warden -- well, first off,
22 I appreciate your patience. Your counsel has the
23 opportunity now to cross-examine you or ask you other
24 questions if they want to.
25 EXAMINATION

1 BY MR. SWEDLUND:
2 Q I'll just ask you a couple questions, warden. Though
3 the method of execution statute does not use the words
4 "humane" or "safe," do you feel that the statute in
5 some way guides you to perform a humane and safe
6 execution?
7 A All things considered, yes, it does.
8 Q How so?
9 A I think it's well-established. First of all, the
10 Eighth Amendment guarantees the right to protection
11 against cruel and unusual punishment. And this
12 business of executions has been litigated for a long,
13 long time. I think it's been pretty well-established
14 across the country in multiple appellate courts and
15 the supreme court that lethal injection is the
16 preferred method certainly and probably the most
17 humane method of carrying out an execution. And I
18 intend to comply with all of those decisions,
19 requirements, recommendations, procedures that I
20 possibly can to ensure that South Dakota carries out
21 its second, if it comes to this, lethal injection
22 under the most humane means possible and as the courts
23 have determined.
24 Q One further question. Are you aware or do you have
25 knowledge of whether the drugs pancuronium bromide and

1 potassium chloride would cause pain in the absence of
2 the administration of an anesthetic?
3 A You know, not being trained as a pharmaceutical
4 person, I don't have any direct information. However,
5 I have read and I have heard that they can cause
6 pain -- and I've read, as a matter of fact,
7 excruciating pain -- if the person has not been
8 rendered unconscious before administering those drugs.
9 MR. SWEDLUND: Nothing further.
10 EXAMINATION
11 BY MR. BRADEN:
12 Q Okay. Well, now I have a couple questions.
13 A You really weren't out of stickies.
14 Q And I just got my steam back. Under the statute,
15 under Section 32, 23A-27A-32, the method of execution
16 is totally in your discretion; is that right?
17 A Which statute?
18 MR. SWEDLUND: Right here.
19 A Okay. Assuming it's a lethal injection.
20 Q Right.
21 A Yes, sir.
22 Q Okay. So the method and process of how to go about
23 that is completely your discretionary action; is that
24 right?
25 A I want to make sure we're still talking about lethal

1 injections and we're not talking about hangings or --
2 Q No. I'm not trying to trick you. I just --
3 A I want to be clear, though.
4 Q Right. Right.
5 A Yes.
6 Q And that is totally in the discretion of your
7 successor should somebody become warden in the future?
8 A Yes, sir.
9 Q And they can change that in any way they want, right?
10 MR. SWEDLUND: You're leaving out the secretary.
11 A Of course, my boss is involved like I've stated
12 earlier.
13 Q Right. But you are the person that is delegated to,
14 by the legislature, to draft the process. The
15 secretary basically has a veto power in a sense; is
16 that right?
17 A Well, he or she approves what my recommendations are.
18 I think mine are a recommendation, too.
19 Q What is your understanding under the Eighth Amendment?
20 What would be an unconstitutional execution?
21 A Boy, I don't know. That's tough for me to say. It's
22 not for me to determine. I rely heavily on the
23 decisions that have already been rendered, and I guess
24 that's what I would...
25 Q What does the Eighth Amendment mean to you?

A Protection against cruel and unusual punishment, that portion.
Q Okay. Well, what would be cruel?
A I don't know. I really don't care to speculate on that. I mean one can use your imagination I guess and imagine all sorts of cruel scenarios.
Q Do you know what an intercardiac injection is?
A I can probably define it just by the language you've used, but I've never actually looked at its definition in a medical journal, no.
Q Would you use that in the lethal injection process?
A I don't believe so, no.
Q Why would you not use that?
A Well, it sounds like you're going directly into the heart.
Q Right. I think that's right. I mean I'm not a doctor either, but that's my understanding of it. Is that a process that you would reject?
A Yeah, I believe I would.
Q Okay. Would you use a cutdown? Well, let me stop. Do you know what a cutdown is?
A I'm not sure. I think it's a drastic way to access a vein or artery.
Q Basically, just to be clear -- and I'm not trying to trick you, sir -- it's basically where a surgeon or

1 somebody actually cuts open the limb and then produces
2 the vein. Instead of trying to puncture it, they pull
3 it out so to speak. And it's a legitimate medical
4 procedure but highly risky even in a surgery. Is that
5 something that you would use?
6 A Based on what you described, it sounds like something
7 that would require a physician or a surgeon to do, and
8 that person would not be there; so, no.
9 Q Right. Do you think that those methods would be
10 painful?
11 A Without proper anesthetic, probably.
12 Q I know you say that the secretary -- you consult the
13 secretary and the secretary approves your protocols
14 and your methods, but you're the person actually
15 delegated under the statute to create these; is that
16 right?
17 A Statute also talks about the secretary's approval or
18 --
19 Q But you're the named party, right?
20 A Yeah, absolutely.
21 MR. BRADEN: Okay. I'm out of steam. Do you
22 have any more questions, Paul?
23 MR. SWEDLUND: No further questions.
24 MR. BRADEN: I didn't even think about this, but
25 I suppose here -- you have the right -- and you had

your deposition taken before.

THE WITNESS: Yes, sir.

MR. BRADEN: You have the right to read over the deposition and make any corrections that Ms. Risty may have -- errors she may have made in transcribing your deposition, or you can waive that right and just let her prepare that. But you need to tell her and us on the record whether you want to review the transcript for any possible errors or waive that right. And you can talk to your counsel,

THE WITNESS: What do you recommend, Paul?

MR. SWEDLUND: I would say under the circumstances, why don't you review it first.

THE WITNESS: Okay. That's what we'll do then.

MR. SWEDLUND: You can't change your answers. You can't go from night and day, but if there's something -- an error in transcription --

MR. BRADEN: If she accidentally put a yes or misspelled the word or whatever, you can change that.

THE WITNESS: Right. Right.

MR. BRADEN: Okay? Okay. I think we're done.

(Deposition concluded at 11:36 a.m.)

REPORTER'S REVISED TRANSCRIPT DUE TO GLOBALING ERROR

C E R T I F I C A T E

STATE OF SOUTH DAKOTA)
: ss
COUNTY OF MINNEHAHA)

I, MAXINE J. RISTY, Registered Professional Reporter and Notary Public, hereby certify that the deponent aforenamed was first duly sworn prior to the taking of this deposition; that as of the time I affix my signature to this transcript, it contains a true and correct record of the proceedings so had; and that the witness did not waive the reading and signing of the deposition.

I further certify that I am not related by consanguinity or affinity within the fourth degree to any party, his attorney, or an employee of any of them; that I am not financially interested in this action; and that I am not the attorney or employee of any party.

To all of which I have affixed by signature this day of , 2011.

MAXINE J. RISTY, RPR
48390 266th Street
Brandon, South Dakota 57005
(605) 757-7144

REPORTER'S REVISED TRANSCRIPT DUE TO GLOBALING ERROR

CORRECTION SHEET

Pursuant to the Rules of Civil Procedure, I have read the foregoing pages 1-130, inclusive, and have noted any and all changes in form or substance desired in my testimony, and have signed below on the _____ day of _____, 2011.

PAGE & LINE	CHANGE IN ANSWER	REASON FOR CHANGE

_____

MR. DOUGLAS WEBER

REPORTER'S REVISED TRANSCRIPT DUE TO GLOBALING ERROR

1

2 EXPLANATION OF CHANGE TO ORIGINAL TRANSCRIPT

3 STATE OF SOUTH DAKOTA)
: ss
4 COUNTY OF MINNEHAHA)

5

6 I, MAXINE J. RISTY, Registered Professional
7 Reporter and Notary Public, have corrected a globaling
8 error that occurred in the original transcript. The word
9 "prison" was inadvertently globaled/changed to the number
10 "11."

11

12

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ORIGINAL

CORRECTION SHEET

Pursuant to the Rules of Civil Procedure, I have read the foregoing pages 1-130, inclusive, and have noted any and all changes in form or substance desired in my testimony, and have signed below on the 3 day of November, 2011.

PAGE & LINE	CHANGE IN ANSWER	REASON FOR CHANGE
Page 15, Line 8	Change from "I agree with that statement, yes." to "I agree with that statement, yes, in that the statute does not use the terms 'safe' or 'humane,' but I disagree insofar as the statute does provide the directive concerning the manner of execution, which is lethal injection. Lethal injection is widely regarded as the most humane manner of execution, and the SDDOC's protocols, modeled on U.S. Supreme Court authority, are tailored to Eighth Amendment requirements for the humane performance of an execution by lethal injection."	I did not understand the entire question at the time it was asked. Specifically, I disagree with the question's premise that the statute does not provide directive in the manner of execution. The manner of execution is, in fact prescribed by the statute as lethal injection. I understand the statute to require that it be done in a safe and humane manner even though those words are not used in the statute because every execution must be performed in accordance with constitutional standards.
throughout	throughout the transcript the numeral "11" appears in places where I believe the proper word should be "penitentiary"	transcription error
Page 85, Line 17	Change from "No, I don't think it would be prudent" to "No, I don't think it would be prudent, unless reliable, scientific information regarding the proper administration of the drug were available from another source."	I think the question is too broad. As warden, I will ensure that drugs are used safely. Sources other than manufacturer's instructions may convince me a drug can be used safely. For example, I cannot categorically say that I would withhold a drug needed to save an inmate's life simply because the manufacturer's instructions were not available.

Douglas L. Weber

Douglas L. Weber