

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THOMAS PAUL WEST, et)	
al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 2:11-cv-01409-NVW
)	
)	
JANICE K. BREWER, et)	
al.,)	
)	
Defendants.)	
_____)	

VIDEOTAPED DEPOSITION OF ROBERT PATTON
Phoenix, Arizona
October 5, 2011

Prepared by:

CINDY MAHONEY, RPR, RMR
Certified Court Reporter
Certificate No. 50680

1 THE VIDEOTAPED DEPOSITION OF ROBERT
2 PATTON commenced at 9:31 a.m. on October 5,
3 2011, at the Federal Public Defender's Office,
4 850 West Adams, Phoenix, Arizona, before Cindy
5 Mahoney, RPR, RMR, Arizona Certified Court
6 Reporter No. 50680.

7

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ALSO PRESENT:

8

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Jon Baugues, certified videographer

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09:31:49 1 THE VIDEOGRAPHER: We are on the
09:31:54 2 record. The time on the video monitor is 9:31
09:31:59 3 a.m. Here begins volume 1, video number 1 in
09:32:02 4 the deposition of Robert Patton in the matter
09:32:05 5 of West vs. Brewer, in the United States
09:32:08 6 District Court for the District of Arizona,
09:32:18 7 case number 211-cv-01409-NVW.

09:32:22 8 Today's date is October 5, 2011. Our
09:32:25 9 court reporter is Cindy Mahoney. My name is
09:32:27 10 Jon Baugues, certified videographer,
09:32:31 11 representing Coash & Coash. This video
09:32:35 12 deposition is taking place at 850 West Adams,
09:32:40 13 Number 201, Phoenix, Arizona 85007.

09:32:41 14 Counsel, please identify yourselves
09:32:46 15 and state whom you represent.

09:32:46 16 MR. SANDMAN: Cary Sandman for the
09:32:50 17 plaintiffs; with me at counsel table, Robin
09:32:54 18 Konrad and Flora Vigo --

09:32:55 19 MR. ZICK: Jeff Zick for the
09:32:57 20 defendants. Also present is Karyn Klausner,
09:32:58 21 general counsel to the Arizona Department of
09:33:00 22 Corrections.

09:33:00 23 THE VIDEOGRAPHER: Would the court
09:33:02 24 reporter please swear in the witness.

09:33:02 25 ROBERT PATTON,

09:33:02 1 the witness herein, being first duly sworn,
09:33:02 2 was examined and testified as follows:

09:33:02 3 EXAMINATION

09:33:12 4 Q BY MR. SANDMAN: Good morning, sir.

09:33:12 5 A Good morning.

09:33:14 6 Q State your name for the record.

09:33:14 7 A Robert Patton.

09:33:17 8 Q Mr. Patton, have you been deposed
09:33:18 9 before?

09:33:19 10 A One other time.

09:33:21 11 Q Okay. So some basic ground rules we
09:33:27 12 try to follow: One, let's try to talk one at
09:33:29 13 a time because the court reporter can't take
09:33:30 14 us down in the transcript if we're talking
09:33:32 15 over each other.

09:33:32 16 A Understood.

09:33:35 17 Q If you don't understand a question
09:33:38 18 that I've asked, you'll be sure to let me
09:33:39 19 know?

09:33:39 20 A Understood.

09:33:42 21 Q Okay. If you don't ask for a
09:33:44 22 clarification of a question, I'll assume you
09:33:45 23 understood it. Fair enough?

09:33:45 24 A Understood.

09:33:50 25 Q You feel well this morning and ready

09:33:51 1 to give your deposition?

09:33:52 2 A I do.

09:33:56 3 Q Have you done anything to prepare for
09:33:58 4 the deposition?

09:33:59 5 A I've -- not -- not really, other than
09:34:03 6 read the policy again. But no, nothing --
09:34:04 7 nothing further.

09:34:06 8 Q Okay. So you did one thing to
09:34:08 9 prepare for the deposition. You read a
09:34:09 10 policy?

09:34:09 11 A That's correct.

09:34:12 12 Q Which policy was that?

09:34:12 13 A 710.

09:34:13 14 Q That would be --

09:34:15 15 A Execution procedures.

09:34:19 16 Q That's director's order 710?

09:34:20 17 A That is correct.

09:34:22 18 Q Okay. And did you read the
09:34:23 19 attachment F?

09:34:25 20 A I have several times, yes, sir.

09:34:28 21 Q Okay. And -- but in preparation from
09:34:30 22 you -- for your deposition, you reviewed that
09:34:32 23 particular department order and the attachment
09:34:33 24 F?

09:34:33 25 A That is correct.

09:34:36 1 Q But you did nothing else to prepare?

09:34:39 2 A Other than I met with my counsel just
09:34:41 3 to go over the ground rules of a deposition,
09:34:41 4 sir.

09:34:43 5 Q Okay. But you didn't review any
09:34:44 6 other documents?

09:34:45 7 A Not that I'm aware of.

09:34:47 8 Q Okay. You didn't bring any documents
09:34:47 9 with you?

09:34:49 10 A No. Just my notebook.

09:35:13 11 MR. SANDMAN: What's the next number?
09:35:14 12 I think we're up to 84.

09:35:14 13 (The document was marked as Exhibit
09:35:14 14 Number 84 for identification as of October 5,
09:35:15 15 2011.)

09:35:17 16 Q BY MR. SANDMAN: Sir, I'm showing you
09:35:21 17 what we marked as Deposition Number 84 --
09:35:24 18 Exhibit Number 84.

09:35:26 19 If you could take a few moments and
09:35:54 20 look through that document. Let me -- if I
09:35:58 21 could, sir, if I could refer you to page 1 of
09:36:02 22 the document.

09:36:04 23 This is identified by its title as
09:36:06 24 plaintiffs' first request for production of
09:36:07 25 documents. Do you see that?

09:36:08 1 A I do.

09:36:09 2 Q Have you ever -- have you ever seen
09:36:10 3 this document?

09:36:10 4 A I have not.

09:36:23 5 Q I'd like to reference you to page 11
09:36:30 6 of the document.

09:36:30 7 A Okay.

09:36:35 8 Q And at the line 24, you see where it
09:36:36 9 indicates document request?

09:36:37 10 A I do.

09:36:41 11 Q And then identifies on that page
09:36:46 12 items 1 and 2 and on the following three pages
09:36:50 13 various requests for documents under 15
09:36:52 14 different categories. Do you see that?

09:36:54 15 A I do.

09:36:59 16 Q Have you ever been asked to gather
09:37:03 17 any documents for production in this
09:37:04 18 litigation?

09:37:06 19 A I've been told that they're gathering
09:37:09 20 documents for this. I have no documents on
09:37:11 21 file that -- that I had to produce.

09:37:14 22 Q Okay. My -- that wasn't my question.
09:37:17 23 And have you been asked to provide
09:37:20 24 documents for production in this litigation?

09:37:21 25 A No, I have not.

09:37:24 1 Q Okay. I'd like to reference your
09:37:30 2 attention to page 11 of Exhibit 84.

09:37:30 3 A Okay.

09:37:36 4 Q Item number 1. It asks for
09:37:38 5 production of any documents relating to
09:37:39 6 training of medical team members. Do you see
09:37:40 7 that?

09:37:42 8 A I do.

09:37:46 9 Q Do you have any such documents?

09:37:48 10 A I do not.

09:37:51 11 Q It also asks for documents for -- of
09:37:54 12 any special operate -- training of any
09:37:59 13 special -- special operations team members.

09:37:59 14 Do you have possession of any of
09:38:00 15 those?

09:38:01 16 A I do not have possession of those,
09:38:02 17 no, sir.

09:38:03 18 Q Okay. Then if I could ask you to
09:38:10 19 read through the various requests 1 through
09:38:13 20 15, maybe to -- we could run through this a
09:38:15 21 little quicker.

09:38:20 22 I'd like to know whether you have
09:38:25 23 documents that fall into any of these
09:39:02 24 categories we've requested.

09:39:11 25 A I finished reading it. No, I do not.

09:39:14 1 Q Could you tell me, sir, what is your
09:39:16 2 educational background post-high school?

09:39:17 3 A I have a bachelors of science degree
09:39:21 4 in correctional administrations and a master's
09:39:22 5 in public administration.

09:39:26 6 Q And where did you obtain those two
09:39:26 7 degrees?

09:39:26 8 A My bachelor's degree I got from
09:39:27 9 Wayland Baptist University. My master's
09:39:30 10 degree I got from Northern Arizona University.

09:39:32 11 Q And when did you obtain those
09:39:32 12 degrees?

09:39:34 13 A My bachelor's degree I got in 2004,
09:39:36 14 my master's in 2007.

09:39:40 15 Q Okay. And can you tell me something
09:39:43 16 about your work experience post-high school,
09:39:45 17 what your career background is?

09:39:48 18 A I went into the U.S. Navy after high
09:39:51 19 school, got out of the Navy, joined the
09:39:53 20 Department of Corrections in 1985, was a
09:39:56 21 correctional officer; promoted through the
09:39:58 22 ranks from correctional officer 1 to
09:40:00 23 correctional officer 2, sergeant, lieutenant,
09:40:03 24 captain, associate deputy warden, deputy
09:40:05 25 warden, deputy warden of operations up to a

09:40:06 1 warden.

09:40:07 2 I retired from the Department of
09:40:12 3 Corrections in 2005, went to Nebraska for a
09:40:14 4 year as director of corrections over Douglas
09:40:20 5 County, came back to Arizona; in 2006 went
09:40:21 6 back to work for the Department of
09:40:25 7 Corrections, worked as security operations
09:40:26 8 administrator for a couple of years until I
09:40:30 9 was promoted to division director of offender
09:40:32 10 operations in January of last year.

09:40:35 11 Q So it sounds like with the exception
09:40:39 12 of that one-year interruption, did you say it
09:40:41 13 was in 2005 to '06 --

09:40:42 14 A That's it.

09:40:44 15 Q -- that you have been with the
09:40:45 16 Arizona Department of Corrections --

09:40:45 17 A From --

09:40:46 18 Q -- from 1985?

09:40:49 19 A From '85 to 2005, 20 years, and then
09:40:52 20 a year off from the end of '05 until the end
09:40:53 21 of '06.

09:40:58 22 Q And what is your current title?

09:40:59 23 A Division director of offender
09:41:01 24 operations.

09:41:05 25 Q We talked a few minutes ago about

09:41:08 1 Departmental Order 710, or we made reference
09:41:10 2 to that departmental order?

09:41:11 3 A Correct.

09:41:12 4 Q Could you tell -- explain for the
09:41:16 5 record what is a departmental order within the
09:41:18 6 Arizona Department of Corrections parlance?

09:41:20 7 A A department order is the procedures
09:41:23 8 to be followed in any given circumstance.
09:41:26 9 Department orders are written and signed by
09:41:29 10 the director of our agency. He's the only one
09:41:32 11 authorized to sign a department order. And it
09:41:33 12 gives guidelines to staff to perform various
09:41:34 13 functions.

09:41:37 14 Q And there are a number of -- more
09:41:42 15 than several department orders currently in
09:41:42 16 effect; correct?

09:41:44 17 A There are several of them, yes, sir.

09:41:46 18 Q There are actually more than several,
09:41:47 19 are there not?

09:41:47 20 A I -- I --

09:41:49 21 MR. ZICK: Object to form.

09:41:50 22 Q BY MR. SANDMAN: Well, let me ask you
09:41:50 23 this.

09:41:51 24 Do -- do you know how many
09:41:52 25 departmental orders there are?

09:41:53 1 A No, I do not.

09:41:55 2 Q Are there departmental orders
09:41:59 3 regarding training of ADC personnel?

09:42:00 4 A There is a department order on
09:42:01 5 training, yes, sir.

09:42:02 6 Q Are there department orders on
09:42:04 7 background checks?

09:42:06 8 A I believe there is a department order
09:42:06 9 on black -- background checks.

09:42:10 10 Q Have you, in any of your positions
09:42:13 11 with the Department of Corrections, been
09:42:15 12 responsible for assuring that background
09:42:18 13 checks were done properly?

09:42:21 14 A I need you to clarify that question,
09:42:23 15 please, as far as ensuring they're done
09:42:24 16 properly.

09:42:26 17 Q Well, there's a department order
09:42:28 18 governing background checks?

09:42:29 19 A Correct.

09:42:34 20 Q Does the department order provide for
09:42:35 21 certain procedures to be followed with respect
09:42:37 22 to background checks?

09:42:39 23 A As a hiring authority, yes, sir.

09:42:40 24 Q And have you in any of your positions
09:42:44 25 with the Department of Corrections either had

09:42:48 1 to conduct a background check or to determine
09:42:50 2 whether the procedures for background checks
09:42:51 3 had been followed?

09:42:52 4 A No, sir.

09:42:56 5 Q Okay. So you've done -- you've done
09:42:56 6 neither?

09:42:57 7 A I have requested background checks.
09:42:59 8 I'm not over the background unit. So whether
09:43:01 9 they were followed, whether the people working
09:43:03 10 in background units are following procedures,
09:43:05 11 I'm not in that place to answer that question.

09:43:08 12 Q Do you know whether criminal history
09:43:11 13 checks are required as part of a background
09:43:12 14 check?

09:43:12 15 A They are.

09:43:13 16 MR. ZICK: Object to form.

09:43:15 17 Go ahead and answer, if you know.

09:43:16 18 Q BY MR. SANDMAN: And when I talk
09:43:18 19 about background checks, I'm talking about the
09:43:21 20 type of background check described in -- in
09:43:23 21 the departmental order that's governing
09:43:26 22 background checks. You understand that?

09:43:26 23 A Correct.

09:43:27 24 Q Okay.

09:43:30 25 A To -- to answer that question fully,

09:43:34 1 for all positions that are being hired into
09:43:36 2 corp require a background check. I'm not
09:43:38 3 aware of other positions that may require
09:43:39 4 criminal background check.

09:43:42 5 Q Do you know whether criminal history
09:43:43 6 checks are required for certain promotions
09:43:47 7 within the Department of Corrections?

09:43:49 8 A If it's into -- if they're going into
09:43:52 9 a corp position, it is required.

09:43:52 10 Q Okay.

09:43:54 11 A If it's a non-corp position, I
09:43:55 12 don't -- do not believe it's required.

09:43:58 13 Q Okay. And are you familiar at all
09:44:01 14 with the department order that currently
09:44:04 15 exists with -- with respect to training?

09:44:05 16 A I'm aware of the department order,
09:44:05 17 yes, sir.

09:44:10 18 Q And is training -- certain training
09:44:12 19 required at the inception of being hired with
09:44:14 20 the Department of Corrections?

09:44:15 21 A Depending on the position you're
09:44:16 22 going into.

09:44:19 23 Q And is continuing training required
09:44:22 24 as -- for most employment positions at the
09:44:23 25 Department of Corrections?

09:44:23 1 A Yes, sir, it is.

09:44:25 2 Q And is training required for certain
09:44:29 3 promotional reasons?

09:44:30 4 A Not that I'm aware of. There's no
09:44:33 5 position that requires you to have specific
09:44:34 6 training before you go into that position.

09:44:37 7 Q Are you aware of how the Department
09:44:39 8 of Corrections is required to document the
09:44:41 9 occurrence of a training and whether someone
09:44:46 10 has participated in a training?

09:44:47 11 A It's documented, but I could not
09:44:49 12 explain the process.

09:44:51 13 Q Have you attended trainings?

09:44:52 14 A Yes, I have.

09:44:54 15 Q Do you have to log into a training?

09:45:01 16 A Yes, you do.

09:45:04 17 Q Now, I think we've already discussed
09:45:08 18 that there is a Department Order 710 that
09:45:13 19 pertains to procedures for executing
09:45:13 20 prisoners; is that right?

09:45:14 21 A That's correct.

09:45:17 22 Q And do you know how long the
09:45:21 23 department has had a procedure or department
09:45:23 24 order regarding execution procedures?

09:45:23 25 A No, sir, I do not.

09:45:28 1 Q How long have you been -- when --
09:45:29 2 when -- when did you -- when was the first
09:45:34 3 time you ever became involved in -- in any
09:45:35 4 matter involving an execution procedure?

09:45:41 5 A When I became the division director.

09:45:47 6 Q I didn't write it down, and I'm
09:45:50 7 sorry, but tell me -- you already told me, but
09:45:52 8 can you tell us again when you became division
09:45:54 9 director?

09:45:55 10 A I believe my actual promotion date
09:45:59 11 was in November of '09, I believe.

09:46:09 12 Q I wrote it down this time so I won't
09:46:17 13 forget. Sorry.

09:46:17 14 (The document was marked as Exhibit
09:46:17 15 Number 85 for identification as of October 5,
09:46:18 16 2011.)

09:46:26 17 Q BY MR. SANDMAN: I have before you a
09:46:30 18 document that we've marked as Exhibit 85. If
09:46:34 19 you could take a few moments and just look at
09:46:36 20 that document before I ask you a question
09:47:11 21 about it.

09:47:13 22 A Okay.

09:47:15 23 Q Have you ever seen that document
09:47:15 24 before?

09:47:16 25 A Numerous times, sir.

09:47:20 1 Q Okay. And for the record, for
09:47:24 2 counsel's benefit, this is Department Order
09:47:29 3 710 with only attachment F. I have -- the
09:47:31 4 other attachments are not contained in the
09:47:31 5 document.

09:47:33 6 Did you recognize that, sir, that the
09:47:36 7 exhibit before you contains Department Order
09:47:37 8 710 and attachment F?

09:47:40 9 A I recognize it as a -- containing
09:47:43 10 Department Order 710. If you'll give me a
09:47:49 11 moment, I'll check the attachment. And I have
09:47:51 12 attachment F, pages 1 through 9 in front of
09:47:51 13 me, yes, sir.

09:47:52 14 Q Okay. Thank you.

09:47:55 15 Did you have any role in the drafting
09:47:59 16 of the exhibit that's before you?

09:48:00 17 A No, sir.

09:48:09 18 Q And the -- the document at page --
09:48:11 19 the first cover page of the document indicates
09:48:16 20 that it became effective September 15, 2009.
09:48:17 21 Do you see that?

09:48:18 22 A I do see that.

09:48:19 23 Q If it had been -- you said that you
09:48:22 24 are familiar with this document. Is -- has it
09:48:24 25 been your understanding that this document

09:48:26 1 became effective on September 15, 2009?

09:48:28 2 A That's the effective date on this
09:48:29 3 document. That is correct, sir.

09:48:32 4 Q And you have operated under this
09:48:32 5 document.

09:48:34 6 In other words, in your position as
09:48:36 7 division director, at least while this
09:48:41 8 document was in effect, you -- you allowed the
09:48:44 9 ex -- you -- you understood that the document
09:48:46 10 was effective September '09; is that right?

09:49:08 11 A That is correct.

09:49:08 12 (The document was marked as Exhibit
09:49:08 13 Number 86 for identification as of October 5,
09:49:09 14 2011.)

09:49:15 15 MR. SANDMAN: Do you want -- did I
09:49:17 16 give you both copies of those --

09:49:17 17 MS. VIGO: Yes.

09:49:18 18 MR. SANDMAN: -- or do you both want
09:49:20 19 copies of all of them?

09:49:23 20 MR. ZICK: No, we can just take one.

09:49:23 21 MS. VIGO: Yeah, we -- we're good.

09:49:30 22 MR. SANDMAN: Okay. I think that was
09:49:31 23 86; is that right?

09:49:31 24 THE COURT REPORTER: Yes.

09:49:31 25 Q BY MR. SANDMAN: Okay. Sir, you have

09:49:33 1 before you now a document we marked as Exhibit
09:49:39 2 86. Have you taken a few moments to
09:49:43 3 familiarize yourself with that document?

09:49:52 4 A Okay.

09:49:54 5 Q Have you seen this document before?

09:49:56 6 A It's Department Order 710.

09:49:59 7 Q And does this also contain attachment
09:50:00 8 F?

09:50:02 9 A The -- the packet in front of me does
09:50:04 10 contain attachment F, pages 1 through 9.

09:50:07 11 Q Okay. And the -- the cover page to
09:50:10 12 the exhibit or the first page indicates that
09:50:14 13 this document became effective May 12, 2011.
09:50:16 14 Do you see that?

09:50:16 15 A I do see that.

09:50:18 16 Q And have you seen this -- you have
09:50:20 17 seen this particular document with that
09:50:21 18 effective date?

09:50:22 19 A I have.

09:50:26 20 Q Did you have any role in either the
09:50:31 21 drafting or creation of Exhibit 86?

09:50:35 22 A I want to clarify that. Drafting of
09:50:36 23 the department order, no. The department
09:50:40 24 order's been in effect for numerous years.
09:50:43 25 Changes to the department order I -- I have

09:50:43 1 had roles in, yes.

09:50:45 2 Q Okay. Let me just back up then and
09:50:47 3 go back to Exhibit 85 for a moment because my
09:50:48 4 question may not have been clear.

09:50:51 5 Did you have any role whatsoever or
09:50:55 6 input into the content of Exhibit 85, which
09:50:57 7 was the department order effective September
09:50:59 8 '09?

09:51:01 9 A Any changes to the content I would
09:51:03 10 have had input into, correct, but not the
09:51:05 11 drafting of the actual department order.

09:51:08 12 Q And that would be the same answer for
09:51:13 13 Exhibit 86, which was effective May 12, 2011?

09:51:14 14 A That is correct.

09:51:27 15 Q I'd like you to look -- if you
09:51:30 16 put -- you could put Exhibit 86 aside for a
09:51:31 17 moment. I'd like to ask you some questions
09:51:36 18 about Exhibit 85.

09:51:46 19 And my first question relates to a
09:51:52 20 provision at page -- actually the third page
09:51:59 21 of the document under the heading of 710.02,
09:52:05 22 responsibilities?

09:52:10 23 A 710.02, responsibilities.

09:52:15 24 Q And I'll just read a portion of that
09:52:16 25 provision into the record. It says that the

09:52:21 1 division director for offender operation
09:52:23 2 provides for the planning and overall
09:52:27 3 direction of all pre-execution, execution, and
09:52:30 4 post-execution activities.

09:52:31 5 Do you see that? Did I read that
09:52:31 6 correctly?

09:52:32 7 A You did read that correctly.

09:52:36 8 Q Is that -- and you are the division
09:52:37 9 director of -- for offender operations;
09:52:38 10 correct?

09:52:39 11 A That is correct.

09:52:43 12 Q And you have been in that position
09:52:51 13 during the time that Mr. Landrigan, Mr. King,
09:52:54 14 Mr. Beaty, Mr. Bible, and Mr. West were
09:52:55 15 executed; is that right?

09:52:56 16 A That is correct.

09:53:01 17 Q And during the time when those
09:53:04 18 executions were being planned, you were in the
09:53:07 19 position of division director, and you had the
09:53:10 20 responsibility for the pre-execution,
09:53:12 21 execution, and post-execution activities; is
09:53:14 22 that right?

09:53:19 23 A For all of them with the exception of
09:53:23 24 the last one, Mr. West.

09:53:23 25 Q Okay.

09:53:25 1 A I was not present for West's
09:53:25 2 execution.

09:53:29 3 Q Okay. Other than not being there on
09:53:32 4 the -- present on the day of his execution,
09:53:38 5 did you continue to have all of the
09:53:42 6 responsibilities defined in the -- the
09:53:43 7 protocol and the --

09:53:44 8 A All of the pre-execution protocols,
09:53:46 9 yes, sir.

09:53:50 10 Q Okay. Who stood in for you on the
09:53:53 11 day of the execution of Mr. West?

09:53:53 12 THE WITNESS: Counsel?

09:53:56 13 MR. ZICK: Go ahead.

09:53:56 14 THE WITNESS: Division Director Laura
09:53:57 15 Krause.

09:54:01 16 Q BY MR. SANDMAN: Okay. And did you
09:54:03 17 have or do you have the same responsibilities
09:54:08 18 under Exhibit 86 which was the protocol -- and
09:54:10 19 let me withdraw that -- which is the
09:54:15 20 director's order effective May 2011?

09:54:16 21 A Yes, I do.

09:54:20 22 Q And as part of the responsibilities
09:54:30 23 that you have under director's order 710 and
09:54:38 24 85, Exhibit 85 and 86, or as part of your
09:54:39 25 responsibilities, do you have the

09:54:41 1 responsibility to make sure that other people
09:54:43 2 understand, thoroughly understand the
09:54:45 3 provisions of Department Order 710 and
09:54:47 4 attachment F?

09:54:49 5 MR. ZICK: Object to form.

09:54:52 6 Go ahead and answer, if you know.

09:54:53 7 THE WITNESS: I have responsibility
09:54:56 8 as division director to ensure staff
09:54:56 9 understand department orders, yes, sir.

09:54:58 10 Q BY MR. SANDMAN: Okay. And by staff
09:55:01 11 I think we mean the people, other people who
09:55:04 12 have execution and pre-execution
09:55:04 13 responsibilities.

09:55:05 14 That's the staff we're talking about;
09:55:06 15 correct?

09:55:08 16 A If you're referring to 710, yes, sir.

09:55:14 17 Q Okay. And since you have the
09:55:17 18 responsibility to make sure that other people
09:55:19 19 understand the departmental orders, would you
09:55:24 20 agree with me that it's necessary for you to
09:55:27 21 have a thorough understanding of Department
09:55:29 22 Order 710 and it's attachments?

09:55:31 23 A It's important for me to have a
09:55:32 24 thorough understanding of all department
09:55:33 25 orders, sir.

09:55:37 1 Q You -- the answer to my question was
09:55:39 2 yes; is that right?

09:55:41 3 A The question you asked me?

09:55:42 4 Q Yes.

09:55:43 5 A I would stipulate that, yes.

09:55:49 6 Q Okay. And is there anybody that you
09:55:50 7 can think of at the Department of Corrections
09:55:54 8 who has greater responsibility for either
09:55:56 9 understanding the department order or making
09:56:02 10 sure that other people, other staff who work
09:56:07 11 on pre-execution and execution process have a
09:56:10 12 -- a good understanding of -- of protocols --
09:56:11 13 does -- does anybody at the Department of
09:56:11 14 Corrections --

09:56:11 15 MR. ZICK: Objection.

09:56:12 16 MR. SANDMAN: Let me -- let me start
09:56:12 17 over.

09:56:14 18 MR. ZICK: Okay.

09:56:15 19 THE WITNESS: Please.

09:56:16 20 Q BY MR. SANDMAN: I think I know what
09:56:16 21 I wanted to ask, but it didn't -- didn't come
09:56:17 22 out that way.

09:56:19 23 Is there anyone within the Department
09:56:22 24 of Corrections -- Corrections -- who has -- is
09:56:25 25 expected to have superior knowledge than --

09:56:27 1 than you are required to have regarding the
09:56:30 2 operations and -- and these procedures in the
09:56:31 3 Department Order 710?

09:56:33 4 MR. ZICK: Object to form.

09:56:34 5 THE WITNESS: I will answer that the
09:56:36 6 director is the ultimate authority for
09:56:37 7 everything that occurs in the Department of
09:56:39 8 Corrections.

09:56:40 9 Q BY MR. SANDMAN: Is there anyone in
09:56:43 10 the department who is expected to have
09:56:46 11 superior knowledge of the content and the
09:56:48 12 provisions of department orders?

09:56:50 13 A I'd ask you to clarify superior
09:56:51 14 knowledge.

09:56:53 15 Q Who is expected to know and
09:56:55 16 understand the terms and procedures better
09:56:57 17 than you?

09:56:59 18 A No one to my knowledge would have
09:57:02 19 to -- have to know that.

09:57:07 20 Q And given that fact, do you -- can
09:57:08 21 you tell me why you have not been designated
09:57:10 22 as a trial witness in the litigation
09:57:13 23 proceedings in this case?

09:57:13 24 Do you know?

09:57:14 25 MR. ZICK: Object to form.

09:57:14 1 THE WITNESS: I could not answer
09:57:15 2 that.

09:57:20 3 Q BY MR. SANDMAN: Okay. Is there any
09:57:25 4 specific provision in either department order,
09:57:29 5 Exhibit 85 or 86, and its attachment that you
09:57:31 6 do not understand?

09:57:33 7 MR. ZICK: Object to form.

09:57:34 8 THE WITNESS: Not that I'm aware of.

09:57:38 9 Q BY MR. SANDMAN: If you had reviewed
09:57:40 10 the document -- and I think you've said you
09:57:42 11 reviewed it on many occasions -- and did not
09:57:44 12 understand a provision in it, would you have
09:57:46 13 sought clarification?

09:57:46 14 A Yes.

09:57:50 15 Q Can you give me an example when -- of
09:57:52 16 when you -- you did not seek clarification of
09:57:55 17 something you did not understand in -- in
09:57:55 18 either --

09:57:55 19 MR. ZICK: Object to form.

09:57:58 20 THE WITNESS: I won't go down that
09:57:58 21 road, no.

09:57:59 22 Q BY MR. SANDMAN: I'm sorry, I didn't
09:58:02 23 hear your answer.

09:58:03 24 A No.

09:58:12 25 Q Could you tell us what specific

09:58:15 1 duties and responsibilities you have under the
09:58:20 2 Exhibits 85 and 86?

09:58:22 3 A We could sit here and read 710. If
09:58:23 4 you want to do that, we can go and read the
09:58:24 5 policy because that's -- that's what I follow.
09:58:25 6 So everybody --

09:58:27 7 Q I -- I don't want to do -- I just
09:58:29 8 want to know without regard to --

09:58:29 9 A I -- I would not testify to
09:58:31 10 everything that I'm responsible for without
09:58:33 11 reading it straight out of the policy. No,
09:58:36 12 sir, I would not.

09:58:43 13 Q Do you know without looking at the
09:58:46 14 policy generally what your role is in respect
09:58:49 15 to the selection and retention of special
09:58:56 16 operations team members?

09:58:59 17 A I'm responsible for the appointment
09:59:01 18 and recommendation to the director of those
09:59:04 19 that are -- that are placed onto the team.

09:59:06 20 Q And are you familiar with the
09:59:08 21 procedure that is to be followed in the
09:59:11 22 selection in retention of special operations
09:59:11 23 team members?

09:59:13 24 A To be specific on the procedure,
09:59:15 25 I -- I won't testify to. If you'd like me to

09:59:17 1 read it, I will.

09:59:23 2 Q Okay. And are you aware of what your
09:59:28 3 role is, if any, under Exhibits 85 and 86 in
09:59:29 4 respect to the selection and retention of
09:59:31 5 medical team members?

09:59:32 6 A I am aware.

09:59:34 7 Q And are you able to describe what
09:59:36 8 those responsibilities are that you have under
09:59:38 9 the -- in that category?

09:59:42 10 A Again, it would be to make a
09:59:44 11 recommendation for the ultimate selection by
09:59:47 12 the director.

09:59:52 13 Q Now, am I understanding correctly
09:59:54 14 that -- that you -- you have the role of
09:59:57 15 making the final recommendation to the
10:00:01 16 director of those persons who are recommended
10:00:03 17 to be members of the special operations team
10:00:04 18 and the medical team?

10:00:04 19 A That is correct.

10:00:09 20 Q And all of us here know what these
10:00:11 21 terms mean, but -- but when we talk about the
10:00:15 22 special operations team, we're talking about
10:00:18 23 the team that's defined in Exhibits 85 and 86?

10:00:18 24 A That is correct.

10:00:20 25 Q And the same thing for the medical

10:00:22 1 team, that -- that's a term of art that's
10:00:25 2 defined in Exhibits 85 and 86 as well?

10:00:29 3 A That's correct.

10:00:35 4 Q When you are performing your role in
10:00:39 5 recommending members of the special operations
10:00:41 6 team and the medical team, do you document
10:00:42 7 your activities in that respect?

10:00:43 8 A No, I do not.

10:00:54 9 Q And could you tell me why you do not
10:00:56 10 document any of your activities that you
10:01:00 11 engage in in respect to following the
10:01:02 12 procedures for selecting and recommending
10:01:05 13 members of the special operations team and the
10:01:06 14 medical team?

10:01:08 15 A I contact the Florence warden, ask
10:01:15 16 him for recommendations for the team members.
10:01:15 17 He selects people, brings them to training. I
10:01:19 18 do talk to them before the training, after the
10:01:21 19 training, and make my determination based off
10:01:23 20 of that, those two interviews, whether the
10:01:25 21 person remains on the team or not. I have not
10:01:27 22 documented that.

10:01:29 23 Q And I take it that none of your
10:01:31 24 supervisors have asked you to document your
10:01:34 25 activities in respect to either the selection

10:01:36 1 or retention of members of the special
10:01:39 2 operations team or the medical team?

10:01:39 3 A Not -- no, sir.

10:01:40 4 Q Am I correct?

10:01:42 5 A That's correct. I have not
10:01:42 6 documented.

10:01:44 7 Q And -- and none of your supervisors
10:01:46 8 have asked you to?

10:01:49 9 A No one has asked me to.

10:01:55 10 Q Could you tell me if you have any
10:01:58 11 role in -- in respect to the training of the
10:02:02 12 special operations team under either 85 --
10:02:04 13 Exhibit 85 or 86?

10:02:05 14 A I schedule all trainings.

10:02:07 15 Q Okay. Other than scheduling, do you
10:02:09 16 have any other role in respect to training?

10:02:12 17 A I attend all trainings -- well, let
10:02:14 18 me back up. I've attended the majority of
10:02:17 19 trainings. One or two I've missed due to
10:02:21 20 other obligations. I observe the trainings
10:02:27 21 going on with special ops, ensuring that they
10:02:28 22 fulfilled their roles.

10:02:30 23 Q And in performing those activities,
10:02:33 24 Do you document your performance of those
10:02:34 25 responsibilities in any fashion?

10:02:37 1 A It's documented by a recorder. I do
10:02:39 2 not document it, but it is documented by a
10:02:39 3 recorder.

10:02:41 4 Q Okay. When you say it is, you mean
10:02:42 5 the actual training session?

10:02:44 6 A That's correct.

10:02:50 7 Q And do you re -- review the documents
10:02:54 8 prepared by the recorder to make sure they
10:02:55 9 conform to your understanding of what happened
10:02:57 10 at the training?

10:02:58 11 A No, sir, I have not.

10:03:02 12 Q Does anybody?

10:03:05 13 A I'm unaware of that, sir.

10:03:11 14 Q Do you know what the minimum
10:03:13 15 qualifications are for participation on the
10:03:15 16 special operations team --

10:03:15 17 A If you'll allow --

10:03:17 18 Q -- either Exhibits 85 or 86?

10:03:19 19 A If you'll allow me to go to the
10:03:21 20 policy, I'll read them to you, sir.

10:03:23 21 Q And would you have the same answer
10:03:25 22 for -- if I asked you what the minimum
10:03:28 23 qualifications were for the medical team
10:03:32 24 members, you would direct me to the Exhibits
10:03:35 25 85 and 86 for the answer; is that right?

10:03:37 1 A That is correct.

10:03:39 2 Q Are you aware, of your own personal
10:03:42 3 knowledge, what the minimum qualifications are
10:03:44 4 for medical team members?

10:03:45 5 A I could read it out of the policy,
10:03:46 6 sir.

10:03:47 7 Q Without -- without reading it from
10:03:48 8 the policy, are you aware of what the minimum
10:03:49 9 qualifications are?

10:03:51 10 A Sir, I -- this is a large policy. I
10:04:00 11 do not try to memorize it.

10:04:05 12 Q Would I be correct that you do not
10:04:08 13 document in any fashion whatsoever whether a
10:04:10 14 medical team member satisfies the minimum
10:04:14 15 qualifications under the Department Order 710
10:04:17 16 and attachment F?

10:04:19 17 A I would not stipulate that.

10:04:21 18 Q I'm sorry?

10:04:21 19 A I would not stipulate that.

10:04:24 20 Q Okay. Could you tell me, how do you
10:04:29 21 document or do you document in some fashion
10:04:33 22 whether or not a medical team member or a
10:04:35 23 special operations team member satisfies the
10:04:38 24 minimum qualifications set out in Exhibits 85
10:04:40 25 or 86?

10:04:44 1 A I can only stipulate that the medical
10:04:46 2 team leader was selected prior to me becoming
10:04:49 3 division director, so I cannot stipulate what
10:04:51 4 document -- what was documented on the medical
10:04:54 5 team leader as I have not seen the
10:04:55 6 documentation. So I will not stipulate it was
10:04:58 7 not done.

10:05:00 8 I can tell you documentation has been
10:05:04 9 done for the disciplinary background checks on
10:05:06 10 all employees that were -- that were reviewed
10:05:11 11 prior to being placed onto the team. I will
10:05:14 12 stipulate that that was done.

10:05:19 13 Q So with the exception of the medical
10:05:21 14 team leader -- so let's put him -- him aside
10:05:24 15 for a moment -- are you saying that you know
10:05:28 16 that with respect to the other members of the
10:05:35 17 special operations team and the medical team
10:05:38 18 that some of their -- there was some
10:05:39 19 documentation made with respect to whether
10:05:44 20 they satisfied minimum qualifications?

10:05:45 21 A If you'll tell me what documentation
10:05:47 22 that is, I can answer the question.

10:05:49 23 Q Well, that was going to be my next
10:05:49 24 question.

10:05:52 25 But for -- my first question is: Do

10:05:54 1 you know whether there's any documentation
10:06:00 2 whatsoever that demonstrates that the members
10:06:03 3 of the special operations team and the
10:06:07 4 non-leader medical team member satisfy minimum
10:06:10 5 qualifications that are set out in Exhibits 85
10:06:10 6 and 86?

10:06:12 7 A I have no documentation.

10:06:23 8 Q Can you think of any other Department
10:06:29 9 of Corrections position that requires a set of
10:06:35 10 qualifications as a contingency for the
10:06:37 11 personnel being put in that position where
10:06:39 12 there's not some documentation within the ADC
10:06:43 13 record with respect to whether or not that
10:06:45 14 person satisfies the qualifications for the
10:06:48 15 job?

10:06:51 16 A I would be guessing. No, sir, I --
10:06:52 17 I -- off the top of my head, I can't answer
10:06:54 18 that question.

10:06:57 19 Q It's your understanding, is it not,
10:07:01 20 that -- that there is, generally speaking,
10:07:05 21 documentation in the ADC file that
10:07:09 22 demonstrates that a person put into a position
10:07:11 23 meets the qualifications for that position;
10:07:12 24 correct?

10:07:15 25 MR. ZICK: Object to form.

10:07:19 1 THE WITNESS: I -- I'm still -- I --
10:07:20 2 I guess I'm not following what your question
10:07:22 3 is. If there are correctional officers or
10:07:23 4 documentation saying they can be a
10:07:25 5 correctional officer?

10:07:26 6 Q BY MR. SANDMAN: No, that's not --

10:07:26 7 A Your --

10:07:28 8 Q -- my question. Let me -- let me
10:07:28 9 take --

10:07:29 10 A There's thousands of positions in the
10:07:31 11 agency, so I guess I would need more
10:07:31 12 specifics.

10:07:33 13 Q Okay. That wasn't really my
10:07:35 14 question, and I'm glad you asked me to clarify
10:07:35 15 it.

10:07:38 16 My question goes to documentation
10:07:41 17 demonstrating that the qualifications for the
10:07:43 18 position have been satisfied. Do you
10:07:44 19 understand that?

10:07:45 20 A Such as a PDQ?

10:07:47 21 Q Right.

10:07:50 22 There are qualifications 1 through 10
10:07:53 23 for that position, hypothetical position. Do
10:07:54 24 you follow me?

10:07:55 25 A I do follow you. And again --

10:07:58 1 Q Is there -- does -- does the ADC file
10:08:00 2 typically contain some documentation that the
10:08:03 3 individual satisfies whatever the
10:08:05 4 qualifications are for that job?

10:08:07 5 A I would stipulate that I -- although
10:08:10 6 I've never seen it because I don't review
10:08:11 7 employee files, I would assume that there
10:08:12 8 would be something there.

10:08:29 9 Q Okay. What do you do, if anything,
10:08:34 10 to satisfy yourself that a member of the
10:08:37 11 special operations team or the medical team
10:08:40 12 has satisfied the Department of Corrections
10:08:45 13 training requirements before that team member
10:08:48 14 is allowed to participate in an execution?

10:08:50 15 A The department order stipulates that
10:08:52 16 they must participate in at least 10 training
10:08:55 17 practices prior to an execution. All of my
10:08:57 18 team members participated in more than 10
10:08:57 19 prior to an execution.

10:09:00 20 Q So your -- my question is: What do
10:09:02 21 you do to -- to -- to verify that that
10:09:04 22 training's been accomplished?

10:09:06 23 A Attending the training myself.

10:09:14 24 Q And do you document in any fashion,
10:09:17 25 for your own personal record, who has

10:09:20 1 satisfied or not satisfied --

10:09:20 2 A As --

10:09:20 3 Q -- the training requirements?

10:09:22 4 A As stipulated earlier, that's
10:09:23 5 documented by a recorder at the training.

10:09:25 6 Q And -- but -- and I think you told me
10:09:27 7 you did not -- you don't receive a copy of
10:09:28 8 those recording logs?

10:09:29 9 A No, I do not.

10:09:31 10 Q So I'm still trying to understand.

10:09:36 11 How do you satisfy yourself -- if you
10:09:39 12 don't look at the logs, how do you satisfy
10:09:41 13 yourself that -- that each member of the team
10:09:44 14 that's participating in an execution has
10:09:46 15 satisfied their particular training
10:09:47 16 requirement?

10:09:49 17 A It's -- we're not talking a
10:09:51 18 hundred-person team. I know every person
10:09:53 19 individually on the team, and I know they've
10:09:55 20 attended the 10 trainings.

10:09:56 21 Q Okay. So I think your answer is that
10:09:59 22 you rely on your own personal memory?

10:10:01 23 A I'm telling you I rely on my training
10:10:04 24 schedule to ensure everybody has their 10 --
10:10:09 25 10 -- 10 trainings.

10:10:12 1 Q I don't want to quibble with you on
10:10:14 2 this, but I think that what you're telling me
10:10:17 3 is that you rely on your memory of who
10:10:20 4 attended the trainings to satisfy yourself
10:10:22 5 that those members have attended sufficient
10:10:23 6 trainings?

10:10:24 7 A And I've answered that question.

10:10:24 8 MR. ZICK: Form.

10:10:25 9 Q BY MR. SANDMAN: Is that correct?

10:10:27 10 A I'm -- I'm not stipulating that. I'm
10:10:29 11 stipulating that the members attend the 10
10:10:32 12 required trainings prior to.

10:10:35 13 Q And how, again, do you -- can you be
10:10:37 14 certain that they've attended the required
10:10:37 15 number?

10:10:40 16 A As I've stated already for the fifth
10:10:43 17 time I believe now, I schedule the trainings,
10:10:46 18 numerous trainings prior to a scheduled
10:10:48 19 execution. And those that participate in the
10:10:53 20 execution attend those trainings.

10:11:07 21 Q I'd like you to look at Exhibit 85
10:11:22 22 again for a moment with me at the second page.

10:11:26 23 In the first paragraph you see where
10:11:27 24 it's entitled purpose?

10:11:28 25 A Yes, sir, I do.

10:11:30 1 Q And in the -- in the first paragraph,
10:11:35 2 the last sentence of the paragraph reads, this
10:11:38 3 department order outlines internal procedures
10:11:41 4 and does not create any legalable -- legal --
10:11:44 5 excuse me, legally enforceable rights or
10:11:45 6 obligations. Do you see that?

10:11:46 7 A I do.

10:11:51 8 Q Have you ever seen a department order
10:11:52 9 issued by the Department of Corrections that
10:12:02 10 contains that verbiage?

10:12:06 11 A I'd find it difficult to answer that.
10:12:09 12 I -- I don't recall seeing this before, but
10:12:11 13 I'm not saying it's in any other department
10:12:12 14 order. I -- I couldn't answer that.

10:12:13 15 Q And do you understand what that
10:12:16 16 provision that I just read to you means?

10:12:17 17 A Yes, sir.

10:12:21 18 Q What does it mean?

10:12:24 19 A In my interpretation of what this
10:12:26 20 means, the department order outlines the
10:12:28 21 internal procedures that we will follow
10:12:32 22 during -- during the execution and does not
10:12:35 23 create any enforceable rights or obligations
10:12:38 24 to any other party.

10:12:40 25 Q So it means what it says; is that

10:12:40 1 right?

10:12:42 2 A That's the way I interpret it.

10:12:56 3 Q Okay. And doesn't create -- there's
10:12:58 4 no legally enforceable obligation for you or
10:13:00 5 anyone else to perform this department order.

10:13:03 6 Is that what that's -- that means?

10:13:04 7 MR. ZICK: Object to form.

10:13:05 8 THE WITNESS: I'm under obligation to
10:13:08 9 follow every department order.

10:13:09 10 Q BY MR. SANDMAN: Without regard to
10:13:11 11 whether you have a legal obligation to do so?

10:13:13 12 A My -- my role is to follow every
10:13:15 13 department order signed by the director of
10:13:18 14 this agency.

10:13:27 15 Q Are you familiar with the -- the next
10:13:31 16 section of the Exhibit 85 under
10:13:33 17 responsibility? Are you familiar with the
10:13:34 18 provisions in there?

10:13:35 19 A Yes. I've read them.

10:13:41 20 Q And under responsibility, that
10:13:43 21 defines the responsibility of the Department
10:13:46 22 of Corrections; is that right?

10:13:48 23 A Yes.

10:13:51 24 Q Is there anything under the heading
10:13:55 25 of responsibility that addresses any

10:13:56 1 responsibility that the department may have to
10:14:00 2 the inmate that's going to be executed?

10:14:02 3 A No. It's all regarding the inmates
10:14:04 4 that are going to be executed.

10:14:06 5 Q Is there anything specifically in --
10:14:08 6 in the section of Exhibit 85 under the heading
10:14:12 7 responsibility that identifies the specific
10:14:14 8 responsibility to the inmate?

10:14:14 9 A I --

10:14:15 10 MR. ZICK: Object to form.

10:14:15 11 THE WITNESS: I -- I don't understand
10:14:18 12 your question. Is the word inmate used in
10:14:20 13 that sentence? No.

10:14:21 14 Q BY MR. SANDMAN: Well, not the
10:14:23 15 sentence, but the page --

10:14:29 16 A It all deals with the inmate.

10:14:36 17 Q Can you point to a particular example
10:14:39 18 of that in the responsibility section of
10:14:43 19 Exhibit 85?

10:14:44 20 A Faithful adherence to the letter and
10:14:46 21 intent of the law, which to me would mean
10:14:49 22 ensure that it's done professionally and
10:14:53 23 humanely as possible, which is always our
10:14:57 24 intent and our goal. Allows for stays of
10:14:59 25 executions, commutation, and other exigencies

10:15:01 1 up to the time that the sentence is imposed,
10:15:02 2 is absolutely about the condemned inmate. I
10:15:02 3 can go on.

10:15:07 4 So yes, it does speak to the inmate.

10:15:09 5 Q So you think implicit in the
10:15:10 6 responsibilities is the duty to ensure that
10:15:13 7 the inmate is treated in a humane fashion?

10:15:15 8 A Not only in the responsibilities but
10:15:18 9 as my -- as my role as division director, that
10:15:22 10 is my ultimate responsibility.

10:15:25 11 Q I want to ask you some questions
10:15:28 12 about each of the five executions that have
10:15:30 13 occurred during the past year.

10:15:31 14 A Okay.

10:15:34 15 Q The first one was concerning
10:15:37 16 Mr. Landrigan who was executed I believe
10:15:43 17 October 26 of 2010.

10:15:44 18 Do you know whether he was executed
10:15:48 19 in conformance with the requirements of the
10:15:51 20 Department Order 710 and exhibit -- attachment
10:15:53 21 F?

10:15:55 22 MR. ZICK: Object to form.

10:15:56 23 THE WITNESS: Yes. To my belief,
10:15:57 24 yes, he was.

10:15:59 25 Q BY MR. SANDMAN: To your knowledge,

10:16:02 1 were there any deviations from the
10:16:07 2 requirements in Department Order 710 and
10:16:08 3 attachment F in connection with
10:16:10 4 Mr. Landrigan's execution?

10:16:11 5 MR. ZICK: Object to form.

10:16:12 6 THE WITNESS: None that I'm aware of.

10:16:18 7 Q BY MR. SANDMAN: Same questions for
10:16:21 8 the execution of Mr. King who was executed
10:16:25 9 March 29, 2011.

10:16:26 10 To your knowledge, was Mr. King
10:16:29 11 executed in conformance with the requirements
10:16:32 12 of Department Order 710 and attachment F?

10:16:33 13 A To my knowledge, yes, sir.

10:16:33 14 MR. ZICK: Object to form.

10:16:34 15 Q BY MR. SANDMAN: And to your
10:16:38 16 knowledge were there any deviations from
10:16:40 17 Department Order 710 and attachment F in
10:16:42 18 connection with Mr. King's execution?

10:16:43 19 MR. ZICK: Object to form.

10:16:47 20 THE WITNESS: Not to my knowledge.

10:16:50 21 Q BY MR. SANDMAN: Mr. Beaty was the
10:16:53 22 next man executed on May 25, 2011; is that
10:16:54 23 correct?

10:16:55 24 A That is correct.

10:16:57 25 Q Was Mr. Beaty, to your knowledge,

10:16:59 1 executed in conformance with the requirements
10:17:02 2 in Department Order 710 and attachment F?

10:17:04 3 A To my knowledge.

10:17:04 4 MR. ZICK: Object to form.

10:17:06 5 Q BY MR. SANDMAN: Mr. Bible was
10:17:09 6 executed June 30, 2011; is that right?

10:17:11 7 A That's correct.

10:17:13 8 Q Was Mr. Bible executed in conformance
10:17:19 9 with the department order and attachment F in
10:17:20 10 effect at the time of his execution?

10:17:21 11 MR. ZICK: Object to form.

10:17:22 12 THE WITNESS: To my knowledge, yes,
10:17:22 13 sir.

10:17:26 14 Q BY MR. SANDMAN: To your knowledge,
10:17:29 15 were there any deviations from Department
10:17:32 16 Order 710 or attachment F in connection with
10:17:33 17 Mr. Bible's execution?

10:17:35 18 A Not to my knowledge.

10:17:40 19 Q Do you make it your business to -- to
10:17:45 20 try to determine whether each of those
10:17:49 21 executions was conducted in accordance with
10:17:53 22 the department order and attachment F?

10:17:55 23 A I can answer that question that the
10:17:59 24 majority of it, yes. There are some parts of
10:18:01 25 the execution I'm -- I'm not -- I'm not there

10:18:03 1 for parts of the execution so I -- I can't
10:18:03 2 testify to that.

10:18:07 3 Q Okay. And which would those be?

10:18:08 4 A For example, I'm not in the room when
10:18:12 5 the medical procedure is performed. I'm
10:18:15 6 there -- we bring the inmate in, we restrain
10:18:19 7 the inmate to the table. I then have other
10:18:21 8 duties to carry out. And when I come back in
10:18:24 9 the room, medical procedure is done, and I
10:18:28 10 spend the last few moments talking with them.
10:18:29 11 So anything dealing with the medical
10:18:31 12 procedures itself I could not testify to --

10:18:31 13 Q Okay.

10:18:33 14 A -- as I'm not present during that.

10:18:34 15 Q Understood.

10:18:36 16 Anything else that you would put into
10:18:37 17 that category?

10:18:39 18 A The actual occurrences inside the
10:18:42 19 chemical room during the execution, I'm not
10:18:44 20 back in the chemical room during the
10:18:46 21 execution. So I cannot testify to anything
10:18:49 22 regarding how the chemicals were pushed. I --
10:18:51 23 I'm not present during that time.

10:18:53 24 Q Anything else?

10:18:55 25 A Not that I'm aware of at this time.

10:18:59 1 Q Okay. And finally, with respect to
10:19:03 2 Mr. West's execution, you've already indicated
10:19:06 3 you were not there at all on the day he was
10:19:07 4 executed; correct?

10:19:09 5 A I had left that morning. I got a
10:19:12 6 phone call from my wife that my daughter went
10:19:15 7 into labor two months premature. I left that
10:19:16 8 morning about five.

10:19:20 9 Q Okay. At least while you were --
10:19:24 10 before you departed on that family matter,
10:19:27 11 were you satisfied when you left that up to
10:19:32 12 that point that Mr. West's execution had been
10:19:36 13 planned in accordance with the requirements of
10:19:39 14 Department Order 710 and attachment F in
10:19:40 15 effect at the time of his execution?

10:19:41 16 A Yes, I was.

10:19:43 17 Q Were you aware of any deviations that
10:19:45 18 had occurred up to that point in either the
10:19:48 19 department order or attachment F?

10:19:51 20 A Up until I left at 5 a.m., no, sir.
10:19:51 21 No, sir.

10:19:56 22 Q Now, you indicated you are not
10:19:58 23 present to observe the medical procedures?

10:19:58 24 A That is correct.

10:20:01 25 Q By that we mean the insertion of the

10:20:02 1 IV; correct?

10:20:02 2 A That is correct.

10:20:06 3 Q You're not -- I think you said maybe
10:20:08 4 you're never there or you're sometimes not
10:20:12 5 there to -- to witness the -- the actual
10:20:13 6 administration of the death chemicals; is that
10:20:13 7 right?

10:20:16 8 A I'm not back in the chemical protocol
10:20:16 9 room. That is correct.

10:20:21 10 Q Okay. But are you provided with logs
10:20:24 11 of -- of those procedures?

10:20:26 12 A Am I provided personally those logs?
10:20:28 13 No, sir. Those logs are gathered up at the
10:20:30 14 end of each execution.

10:20:33 15 Q Okay. You are not furnished a copy
10:20:38 16 of any log prepared that documents the
10:20:41 17 execution -- the actual execution procedure?

10:20:42 18 A No, sir, I do not maintain any logs
10:20:45 19 or records in my office. Everything's
10:20:47 20 maintained as the official book. I don't
10:20:49 21 maintain any of those myself.

10:20:51 22 Q And without regard to who maintains
10:20:54 23 the official document, I want to clarify for
10:20:56 24 the record that you are not furnished a copy
10:20:59 25 to look at; is that correct?

10:21:01 1 A I've not asked for a copy to look at.

10:21:03 2 Q You could look at a copy if you --

10:21:03 3 A Absolutely. If I -- if I requested
10:21:04 4 to look at one.

10:21:09 5 Q And my question is: Do you think it
10:21:11 6 might be useful to examine an execution log
10:21:15 7 that documents the execution procedure to try
10:21:19 8 to assess whether your special operations team
10:21:22 9 and medical teams have actually performed the
10:21:24 10 execution in conformance with the requirements
10:21:29 11 of Department Order 710 or attachment F?

10:21:29 12 MR. ZICK: Object to form.

10:21:31 13 THE WITNESS: I have read the logs,
10:21:32 14 absolutely. But I did not keep a copy of the
10:21:35 15 logs. Your question was: Did I maintain a
10:21:38 16 copy of the log. Yes, I read the logs after
10:21:39 17 each execution -- after each execution.

10:21:40 18 Q BY MR. SANDMAN: Okay. So that
10:21:42 19 brings me to the -- the question I really
10:21:44 20 wanted to ask you, which is even though you're
10:21:49 21 not present in the execution room or chamber,
10:21:51 22 you have had access to the execution logs?

10:21:52 23 A I have read the logs. That is
10:21:52 24 correct.

10:21:56 25 Q And as part of your responsibility as

10:21:57 1 division director, you would want to review
10:22:00 2 those logs to satisfy yourself that even
10:22:02 3 though you weren't there, the logs themselves
10:22:09 4 demonstrate that the Department Order 710 and
10:22:11 5 the attachment F have been followed?

10:22:13 6 MR. ZICK: Object to form.

10:22:13 7 THE WITNESS: I will -- I will answer
10:22:17 8 the question this way. I have two team
10:22:18 9 leaders inside of that building. Both of
10:22:21 10 those report directly to me: The Housing Unit
10:22:24 11 9 team leader and the special operations team
10:22:28 12 leader. They brief me at each step of the way
10:22:32 13 as to what has occurred in the times I
10:22:33 14 weren't -- was not in the room.

10:22:35 15 The Housing Unit 9 team leader is
10:22:37 16 present for the medical procedure, briefs me
10:22:40 17 when I get back into the room that the medical
10:22:43 18 procedure's been complete. Special operations
10:22:46 19 team leader briefs me when the chemicals are
10:22:47 20 ready. And at the end of the execution, we
10:22:49 21 debrief to talk about anything that may have
10:22:51 22 occurred back in the special operations room.

10:22:52 23 Q BY MR. SANDMAN: Okay. So -- so the
10:22:55 24 record is clear, you do not personally review
10:22:58 25 the logs to assess in that fashion whether the

10:23:01 1 Department Order 710 or attachment F has been
10:23:03 2 adhered to; is that correct?

10:23:03 3 MR. ZICK: Object to form.

10:23:05 4 Q BY MR. SANDMAN: You rely instead on
10:23:08 5 your verbal communication with the team
10:23:09 6 leaders. Is that -- is that what we should
10:23:10 7 understand?

10:23:11 8 MR. ZICK: Object to form.

10:23:12 9 THE WITNESS: No, that's not what you
10:23:15 10 understand. As I've already stated, I do read
10:23:19 11 the logs, but that is not my sole source of
10:23:21 12 information. I rely on what I'm briefed by
10:23:23 13 the people that are in the rooms when those
10:23:25 14 things occur. I look at the logs, but that is
10:23:28 15 not my sole source. That's my -- it's just
10:23:31 16 something I do review.

10:23:33 17 The -- I rely mainly on my briefing
10:23:36 18 by my team leaders who are present when these
10:23:36 19 things happen.

10:23:37 20 Q BY MR. SANDMAN: Do you review the
10:23:40 21 logs or have you reviewed the execution logs
10:23:43 22 for each of the five executions?

10:23:45 23 A I have not reviewed the -- I did not
10:23:49 24 review any logs for West because I was not
10:23:49 25 there.

10:23:51 1 Q Okay. You have reviewed the logs
10:23:53 2 prepared in connection with the other four
10:23:54 3 executions?

10:23:57 4 A I believe I've read all of them.
10:24:00 5 I -- I -- I can't testify that I read every
10:24:01 6 single log that was kept, but I believe I read
10:24:02 7 most of them.

10:24:04 8 Q And when you do review -- or when you
10:24:10 9 did review the four logs -- execution logs for
10:24:14 10 Mr. Landrigan, King, Beaty, and Bible, did you
10:24:19 11 have any mind or did you assess at all whether
10:24:22 12 the logs demonstrated to your satisfaction
10:24:25 13 that Department Order 710 and attachment F had
10:24:25 14 been followed?

10:24:27 15 A As I stated earlier, to my knowledge
10:24:29 16 they had been followed.

10:24:31 17 Q Well, that -- no, that wasn't really
10:24:32 18 my question.

10:24:33 19 A That's my answer.

10:24:37 20 Q My question was -- really goes to
10:24:40 21 your state of mind when you review the logs.

10:24:42 22 And the question simply was: When
10:24:45 23 you review them, do you engage in a mental
10:24:49 24 process where you attempt to assess from the
10:24:51 25 content of the log whether Department Order

10:24:56 1 710 or attachment F has been complied with?

10:24:58 2 A Based solely on the log? No.

10:25:00 3 Q I -- that wasn't my question.

10:25:01 4 A Well, that's what you keep asking me.

10:25:02 5 Q My question was: Do you --

10:25:04 6 A Are you asking me for my state of

10:25:07 7 mind? Well, my state of mind is, you know,

10:25:11 8 have I talked to all my team members? Do I

10:25:12 9 believe we followed all the procedures? Have

10:25:14 10 we done this safely, humanely, and

10:25:17 11 professionally? And then I read the logs.

10:25:18 12 Do I look at the log and say this is

10:25:20 13 going to tell me whether it was done

10:25:24 14 correctly? No. The log gives me a piece of

10:25:27 15 the information, a piece of the picture of the

10:25:29 16 enormity of everything that we do.

10:25:33 17 I hope that answers your question.

10:25:37 18 Q It'll do.

10:25:49 19 A Okay.

10:25:55 20 MR. ZICK: Cary, can we take -- take

10:25:55 21 a --

10:25:56 22 MR. SANDMAN: Let's do that. I was

10:25:57 23 just checking my --

10:25:57 24 MR. ZICK: Five or ten?

10:25:58 25 MR. SANDMAN: -- my time. It's about

10:25:59 1 an hour --

10:25:59 2 THE WITNESS: Yeah.

10:26:00 3 MR. SANDMAN: -- so we'll take a
10:26:00 4 break.

10:26:00 5 MR. ZICK: Yeah.

10:26:01 6 THE VIDEOGRAPHER: We are off the
10:26:03 7 record. The time on the video monitor is
10:26:10 8 10:26 a.m.

10:26:10 9 (A recess was held, after which the
10:26:14 10 deposition resumed as follows:)

10:39:02 11 THE VIDEOGRAPHER: We are on the
10:39:05 12 record. The time on the video monitor is
10:39:08 13 10:39 a.m.

10:39:12 14 Q BY MR. SANDMAN: Mr. Patton, before
10:39:14 15 we -- or at the time we took our little
10:39:18 16 recess, I discovered that you -- you do have a
10:39:23 17 medical condition that -- that may require you
10:39:26 18 to take breaks from time to time during the
10:39:27 19 deposition; is that right?

10:39:30 20 A It's -- it's nothing. Well, yes, if
10:39:32 21 I need a break, I'll take it. It was just
10:39:34 22 time to check my blood sugar is all it was.

10:39:35 23 Q Okay. You want to make sure you
10:39:37 24 check -- you check your blood sugar when --
10:39:39 25 you have some diabetes, I guess, is the --

10:39:39 1 A Yes, I have diabetes.

10:39:43 2 Q Okay. I just want to make sure that
10:39:47 3 during any of the questioning that has taken
10:39:51 4 place thus far, was there anything about your
10:39:52 5 medical condition that you think interfered
10:39:54 6 with your ability to give answers?

10:39:58 7 A Absolutely not. I'm perfectly fine.

10:40:00 8 Q Okay. And just let us know whenever
10:40:03 9 you think you might want to have a break.
10:40:05 10 Even if it's in mid-question, I'm happy to
10:40:07 11 accommodate you in any way that you'd like.

10:40:08 12 A I -- I appreciate that, but I'm
10:40:09 13 absolutely fine.

10:40:15 14 Q Okay. We talked a little bit this
10:40:18 15 morning about some training logs. Do you
10:40:19 16 remember that?

10:40:19 17 A Yes, I do.

10:40:21 18 Q And you said that you did not
10:40:23 19 yourself personally maintain the -- the
10:40:25 20 documents, the training log documents?

10:40:25 21 A That is correct.

10:40:27 22 Q Can you tell us who does?

10:40:30 23 A Those documents are collected by the
10:40:35 24 Housing Unit 9 team leader and are stored at
10:40:38 25 the Florence complex until after the

10:40:40 1 execution. Then I believe they're given --
10:40:42 2 once the execution is complete, given to
10:40:44 3 general counsel, I believe.

10:40:46 4 Q And are those training logs available
10:40:48 5 for you to review whenever you'd like to?

10:40:50 6 A If -- if I requested to look at them,
10:40:52 7 yes, sir.

10:40:54 8 Q Yes.

10:41:01 9 And who actually makes the notations
10:41:04 10 on the training logs?

10:41:06 11 A The recorder that is present at the
10:41:06 12 time.

10:41:09 13 Q And is that a particular individual,
10:41:12 14 or is that some -- does that position vary
10:41:13 15 from time to -- training to training?

10:41:15 16 A It's been the same individual since
10:41:15 17 I've been involved.

10:41:17 18 Q Who is that?

10:41:18 19 THE WITNESS: Counsel?

10:41:19 20 MR. ZICK: Go ahead.

10:41:21 21 THE WITNESS: [REDACTED].

10:41:23 22 Q BY MR. SANDMAN: And does [REDACTED]
10:41:24 23 attend the trainings?

10:41:26 24 A Every training, sir.

10:41:28 25 Q And what is her position with the

10:41:29 1 department?

10:41:31 2 A At the time of the executions, she
10:41:34 3 was the [REDACTED] to the
10:41:37 4 warden of the Florence complex. She's
10:41:42 5 recently been promoted to [REDACTED].

10:41:45 6 Q We also talked a little bit this
10:41:53 7 morning about your role in providing input to
10:41:55 8 some amendments that may have been made to
10:42:01 9 either Exhibit 85 or 86.

10:42:04 10 Can you specifically identify any
10:42:07 11 put -- input that you may have had into any
10:42:12 12 amendments that are contained within Exhibit
10:42:14 13 85?

10:42:15 14 MR. ZICK: Object to form.

10:42:16 15 THE WITNESS: I -- sir, without
10:42:19 16 sitting here and reading through this, no,
10:42:20 17 sir, I could not.

10:42:20 18 Q BY MR. SANDMAN: Okay.

10:42:22 19 A I can tell you, for example, we went
10:42:24 20 through -- because the -- the department order
10:42:26 21 was so large, we took out redundant things
10:42:29 22 such as the director of the Arizona Department
10:42:31 23 of Corrections was all the way through this
10:42:33 24 thing. So we just reduced it down to where it
10:42:36 25 said the director. Everybody knows who the

10:42:39 1 director is. You don't have to say director
10:42:40 2 of Arizona Department of Corrections. So
10:42:42 3 we -- we did minor tweaks such as that.

10:42:45 4 Q Okay. And do you have any
10:42:48 5 documentation that you have kept related to
10:42:51 6 any input that you may have had to Exhibit 85?

10:42:55 7 A No, sir, I do not.

10:42:58 8 Q Did you ever have such documentation?

10:42:59 9 A No, sir, I did not.

10:43:02 10 Q Okay. And the same questions for
10:43:05 11 Exhibit 86.

10:43:08 12 Are you able to identify anything
10:43:11 13 in -- within that document?

10:43:13 14 A I would have to take the time to
10:43:15 15 compare 85 and 86 to see exactly what the
10:43:17 16 changes were and tell you whether I was
10:43:19 17 responsible for the tweaks or not.

10:43:22 18 Q Okay. You just -- and I'm not being
10:43:25 19 critical, but you can't remember specifically
10:43:28 20 what input you may have had into Exhibit 86
10:43:30 21 without actually going through each provision
10:43:31 22 in the document?

10:43:32 23 A Without -- without reading each
10:43:34 24 provision, sir, no. No, I could not answer
10:43:40 25 that.

10:43:42 1 Q If you could turn your attention to
10:43:58 2 Exhibit 85 at page -- I'm going to refer to
10:44:00 3 the page numbers at the bottom of the page.
10:44:04 4 This says 710, page 3 at the bottom right-hand
10:44:05 5 corner.

10:44:06 6 A Yes, sir.

10:44:16 7 Q And actually, if you turn back to
10:44:18 8 the -- the prior page, page 2 under the
10:44:26 9 section responsibilities, this is the section
10:44:29 10 710.02 that directs that you have
10:44:35 11 responsibility for selecting or recommending
10:44:37 12 the teams that participate in -- in the
10:44:39 13 execution; is that right?

10:44:41 14 A That is correct.

10:44:44 15 Q And then at the next page, page 3,
10:44:47 16 among the teams that you're responsible for
10:44:49 17 assembling is the Housing Unit 9 team?

10:44:49 18 A That is correct.

10:44:57 19 Q And what is the Housing Unit 9 team?

10:44:59 20 A They -- they perform the overall
10:45:02 21 coordination of the activities of the
10:45:03 22 restraint team.

10:45:05 23 Q Okay. And I'm looking at page 3
10:45:11 24 under section 1.1.24.

10:45:13 25 A 1.1.24, yes, sir.

10:45:15 1 Q And it says, the primary function of
10:45:16 2 the Housing Unit 9 team is the overall
10:45:21 3 coordination of activities of the pre,
10:45:24 4 post-execution restraint team and the special
10:45:26 5 operations team?

10:45:26 6 A That's correct.

10:45:30 7 Q Is the special operations team then
10:45:33 8 sort of part of Housing Unit 9 team, to your
10:45:34 9 understanding?

10:45:35 10 A Everybody is part of Housing Unit 9
10:45:37 11 team, sir.

10:45:39 12 Q Including the special operations
10:45:40 13 team?

10:45:41 14 A That's correct.

10:45:41 15 Q Okay.

10:45:43 16 A The team leader for -- for that
10:45:44 17 overall function is the housing -- is the
10:45:49 18 [REDACTED].

10:45:53 19 Q Then further down on that page 3, it
10:45:56 20 describes the special operations team, does it
10:45:59 21 not, in section 1.1.4?

10:46:01 22 A That is correct.

10:46:06 23 Q And indicates that the team members
10:46:08 24 and the team leader are selected by the
10:46:12 25 division director for offender operations with

10:46:14 1 the approval of the department director; is
10:46:14 2 that --

10:46:15 3 A That is correct.

10:46:19 4 Q And so you make the initial selection
10:46:22 5 and recommend those team members to the
10:46:23 6 director; correct?

10:46:33 7 A That is correct.

10:46:39 8 Q And section 1.1.4.4 indicates that
10:46:42 9 the primary function of a special operations
10:46:44 10 team is to implement the protocols associated
10:46:47 11 with the execution with its primary duty being
10:46:50 12 the administration of the chemicals; is that
10:46:51 13 right?

10:46:52 14 A That is what this states. That's
10:46:53 15 correct, sir.

10:46:54 16 Q And is that true that that's the
10:46:57 17 primary function, to your understanding, of
10:46:57 18 the special operations team?

10:47:00 19 A That is their primary function, yes,
10:47:00 20 sir.

10:47:12 21 Q I'd like you to turn to page 7 --
10:47:20 22 710, page 7 of Exhibit 85.

10:47:22 23 At the top of the page is the
10:47:28 24 beginning of a section 1.6. That's part of
10:47:33 25 710.03, subsection 1.6; is that correct?

10:47:34 1 A That is correct.

10:47:38 2 Q And that begins a description of some
10:47:42 3 other obligations that you have had under
10:47:44 4 Department Order 710?

10:47:45 5 A That is correct.

10:47:52 6 Q And if you could just read through
10:47:55 7 1.6 and its subsections, I want to have a --
10:47:58 8 I'll have some questions for you about those,
10:48:01 9 but I'd like you to just read through 1.6
10:48:03 10 through 1.6.3.

10:48:05 11 A Aloud or to myself?

10:48:08 12 Q No, no, just to yourself just --

10:48:08 13 A Okay.

10:48:20 14 Q -- so you can refresh your memory.

10:48:32 15 A I have read it.

10:48:42 16 Q Okay. Section 1.6 directs that you
10:48:45 17 establish an annual training schedule?

10:48:47 18 A Yes, it does.

10:48:51 19 Q And when do you do that?

10:48:53 20 A Annually.

10:48:58 21 Q And do you have any documentation of
10:49:02 22 your performance of that responsibility?

10:49:05 23 A I -- I'm asking the question of what
10:49:06 24 documentation are you asking for?

10:49:09 25 Q My question was: Do you create any

10:49:13 1 or have any documentation that demonstrates
10:49:15 2 that you establish an annual training schedule
10:49:16 3 every year?

10:49:20 4 A I place it on my calendar. Official
10:49:22 5 documentation, no. I have documentation of
10:49:25 6 when we -- when we did training, yes, sir.

10:49:29 7 Did I put out a memo saying here
10:49:32 8 are -- here are the days we're going to? I
10:49:32 9 did not.

10:49:35 10 Q Okay. So how is the -- the annual
10:49:38 11 training schedule established and
10:49:41 12 communicated?

10:49:44 13 A How is it communicated to who, sir?

10:49:47 14 Q Well, do you communicate -- once
10:49:50 15 you -- once you establish an annual training
10:49:52 16 schedule, do you communicate that schedule to
10:49:53 17 anyone?

10:49:55 18 A No. I inform the team at each
10:49:57 19 practice when the next practice will be.

10:50:07 20 Q Okay. And so I guess I'm still
10:50:07 21 trying to understand.

10:50:12 22 Do you actually prepare an annual
10:50:15 23 schedule, or do you impromptu just announce
10:50:18 24 when the trainings are going to be and --

10:50:19 25 A As I answered, sir, I place the

10:50:21 1 annual training on my calendar, and then I
10:50:23 2 announce it at each training to each staff
10:50:25 3 member when the next training will be held.

10:50:28 4 Q And what is the -- did you establish
10:50:33 5 an annual training schedule for the year 2011?

10:50:34 6 A Yes, sir, we did.

10:50:37 7 Q And is that schedule documented on
10:50:38 8 your calendar?

10:50:40 9 A It is documented. But due to the
10:50:42 10 numerous executions, we did not do all the
10:50:44 11 dates that were -- that we had put down
10:50:46 12 because we were doing executions at the same
10:50:50 13 time. So we went well above and beyond the
10:50:52 14 required training, believe me.

10:50:54 15 Q So you're saying that you had more
10:50:56 16 trainings than -- than you had established in
10:50:58 17 your annual training schedule?

10:50:59 18 A Much, much more than we had
10:50:59 19 scheduled.

10:51:02 20 Q And did you also establish an annual
10:51:07 21 training schedule in 2010?

10:51:10 22 A Yes. We -- we met our at least 10
10:51:12 23 required trainings but, again, much more
10:51:14 24 because we had an execution in 2010.

10:51:15 25 Q Okay. Do you have your calendars

10:51:17 1 where you documented?

10:51:18 2 A No, sir, I do not have my calendars.

10:51:21 3 Q Not -- I don't mean with you, but do
10:51:23 4 you -- do you have the calendars that you've
10:51:26 5 required to as containing the annual training
10:51:26 6 schedules for --

10:51:28 7 A No, sir. It's my desk calendar, and
10:51:31 8 I destroy it at the end of the year.

10:51:34 9 Q And the -- where is the schedule for
10:51:36 10 2011?

10:51:44 11 A It would be everything through --
10:51:48 12 what month are we on? September would be --
10:51:50 13 already be shredded. I shred my desk calendar
10:51:51 14 every month.

10:51:53 15 Q Okay. So you're in a -- you have a
10:51:54 16 clean slate now. You have a -- you have an
10:51:56 17 October calendar that --

10:51:57 18 A I have no more -- I -- I do not have
10:51:59 19 any more scheduled trainings this year, no,
10:52:01 20 sir, because we've more than met the
10:52:03 21 requirement for the year.

10:52:03 22 Q Okay.

10:52:04 23 A I did at first was -- we would have
10:52:06 24 probably executed -- or, executed -- would
10:52:11 25 have finished training in September anyways.

10:52:15 1 We're only required to do 10, and we do much
10:52:17 2 more than that. Each time we train, we train
10:52:20 3 two to three times each time. We don't walk
10:52:23 4 in there and do a five-minute training, then
10:52:25 5 leave. It's an entire day's worth of training
10:52:30 6 most days.

10:52:34 7 Q Now, the training we're talking about
10:52:39 8 here in 1 -- section 1.6.1, that would include
10:52:43 9 the -- the training for the special operations
10:52:44 10 team; is that right?

10:52:49 11 A That is the special operations team
10:52:52 12 and the restraint team.

10:53:00 13 Q Okay. And then in section 1.6.1.2 --

10:53:00 14 A Yes, sir.

10:53:03 15 Q -- it says that prior to any
10:53:06 16 scheduled execution, the Housing Unit 9 team
10:53:08 17 shall conduct a minimum of two training
10:53:11 18 sessions 48 hours prior to the scheduled
10:53:12 19 execution.

10:53:14 20 A That is correct.

10:53:22 21 Q And again, that reference to -- or
10:53:25 22 that requirement that I just read you would
10:53:26 23 include a requirement for the special
10:53:27 24 operations team?

10:53:29 25 A And the -- and the medical team.

10:53:30 1 Q Okay.

10:53:32 2 A Even if the execution's on a Tuesday,
10:53:35 3 we practice on a Sunday.

10:53:39 4 Q And that was going to be part of the
10:53:40 5 my next question.

10:53:44 6 That same subsection, 1.6.1.2, goes
10:53:46 7 on to say that the medical personnel shall
10:53:49 8 participate in these two sessions, referring
10:53:53 9 to the two training sessions 48 hours prior to
10:53:54 10 the execution.

10:53:56 11 A We -- we -- we practice 48 hours, 24
10:53:58 12 hours prior. So the two days prior to the
10:54:00 13 execution, we do training both days and
10:54:03 14 numerous sessions, not just two.

10:54:04 15 Q To include the medical personnel?

10:54:06 16 A To include the medical personnel.

10:54:09 17 Q And who are the medical personnel?

10:54:11 18 A We have a medical team leader and an
10:54:16 19 assistant to him.

10:54:23 20 Q And then the section 1.6.1.3 says,
10:54:25 21 all training sessions shall be documented and
10:54:29 22 submitted to the general counsel for archive.

10:54:29 23 A That is correct.

10:54:32 24 Q Your -- your understanding is that's
10:54:32 25 exactly what occurs?

10:54:34 1 A That -- it's my understanding that
10:54:34 2 that has occurred.

10:54:36 3 Q When it says that all training
10:54:38 4 sessions shall be documented, is it your
10:54:41 5 understanding that that means that there shall
10:54:42 6 be documentation of who attended each
10:54:44 7 training?

10:54:45 8 A No, that is not my understanding.

10:54:48 9 Q Okay. So when it says training
10:54:51 10 session shall be documented, is it your
10:54:53 11 understanding that it need not document
10:54:54 12 whatsoever who attended?

10:54:57 13 A I do not list my staff for privacy
10:55:02 14 reasons. They're protected under Arizona
10:55:03 15 revised statute for their identity to be --
10:55:06 16 and I do everything in my power to make sure
10:55:08 17 that their names are not brought forward.
10:55:08 18 It's the reason you see me turn to general
10:55:11 19 counsel when you ask questions about those.

10:55:11 20 Q Okay.

10:55:11 21 A And I strenuously object to having to
10:55:12 22 give those names.

10:55:14 23 Q Okay. And we won't be asking you for
10:55:15 24 those names here today.

10:55:17 25 A And so I do not list their names, no,

10:55:17 1 sir.

10:55:18 2 Q And certainly not without -- not --
10:55:21 3 not without the advice of your counsel.

10:55:25 4 So I need to understand then, since
10:55:27 5 you've drawn that important distinction,
10:55:31 6 should the training records document the
10:55:34 7 attendance of certain personnel who attend
10:55:35 8 those trainings --

10:55:35 9 A It doc --

10:55:35 10 Q -- to your understanding?

10:55:39 11 A It documents -- the special ops team
10:55:41 12 is there, the Housing Unit 9 team is there,
10:55:45 13 medical team is there, myself is there.

10:55:48 14 Correct. My name's public record.

10:55:51 15 Q Okay. My question really goes to not
10:55:53 16 necessarily what the records actually
10:55:55 17 document.

10:56:01 18 My question really goes to whether as
10:56:07 19 division director you understand that the
10:56:09 20 procedures in Department Order 710 require
10:56:13 21 that the records document the attendance of at
10:56:15 22 least the special operations team and the
10:56:16 23 medical team; is that correct?

10:56:18 24 A It -- it requires that we document
10:56:20 25 that the training was held. I do understand

10:56:21 1 that.

10:56:24 2 Q And not just that the training was
10:56:28 3 held, but that -- which of the special
10:56:30 4 operations team members and medical team
10:56:32 5 members attended should also be documented?

10:56:33 6 A I do not see that in there.

10:56:36 7 Q Okay. All right. So that's --
10:56:38 8 that's what I want to -- I want to understand.

10:56:39 9 When the -- when the regulate -- when
10:56:48 10 the procedure in 710, 1.6.1.3 says that the
10:56:50 11 division director for offender operations
10:56:53 12 shall document all training and testing
10:56:59 13 activities, it need not, to comply with that
10:57:03 14 subsection, document who, among the members of
10:57:05 15 the special operations team and medical team,
10:57:07 16 were present for a training?

10:57:09 17 A That is not my interpretation, no,
10:57:09 18 sir.

10:57:10 19 Q Okay. What is your interpretation?

10:57:12 20 A That I document that the training
10:57:12 21 occurred.

10:57:21 22 Q Okay. There's no requirement that
10:57:23 23 you document -- that you document in any
10:57:26 24 fashion which of the special operation team
10:57:28 25 members or medical team members attended a

10:57:29 1 training; correct?

10:57:30 2 A That is my interpretation.

10:57:49 3 Q Okay. I'd like you to -- to turn to
10:57:52 4 attachment F.

10:57:55 5 A In the same exhibit?

10:57:56 6 Q Yes.

10:57:57 7 A 85?

10:57:57 8 Q Yes.

10:58:01 9 A Okay.

10:58:04 10 Q I would like you to -- I would like
10:58:18 11 to reference your attention to page 1 of 9 of
10:58:18 12 attachment F.

10:58:20 13 You can see it says page 1 of 9 in
10:58:22 14 the upper left-hand corner?

10:58:22 15 A I do, sir.

10:58:25 16 Q And I would like you to take whatever
10:58:31 17 time you need to familiarize yourself with the
10:58:33 18 sections B and C of attachment F.

10:58:58 19 A Okay, sir. Give me a moment.

10:59:01 20 Q Why don't we -- does everybody agree
10:59:03 21 we can go off the record for a -- or do you
10:59:04 22 want to stay on?

10:59:05 23 MR. ZICK: No, go ahead. We can go
10:59:06 24 off the record.

10:59:06 25 THE VIDEOGRAPHER: We are off the

10:59:09 1 record. The time on the video monitor is

10:59:12 2 10:59 a.m.

10:59:12 3 (There followed a discussion off the
10:59:35 4 record.)

11:00:19 5 THE VIDEOGRAPHER: We are on the
11:00:23 6 record. The time on the video monitor is 11
11:00:24 7 a.m.

11:00:28 8 Q BY MR. SANDMAN: We had been
11:00:32 9 discussing a provision in Department Order
11:00:41 10 710, Exhibit 5 at section 1.6.3 that says the
11:00:42 11 division director for offender operations
11:00:45 12 shall document all training. Do you recall
11:00:45 13 that?

11:00:47 14 A I do recall that.

11:00:54 15 Q And documentation of training and the
11:00:56 16 requirement for document -- documentation of
11:00:59 17 training is not only required in the
11:01:03 18 director's Departmental Order 710, it is also
11:01:13 19 required in attachment F. Is that correct?

11:01:14 20 MR. ZICK: Is that a question?

11:01:14 21 THE WITNESS: I was going to -- is
11:01:17 22 that a question? I believe it's -- it's in
11:01:18 23 here in attachment F as well.

11:01:21 24 Q BY MR. SANDMAN: Okay. So the
11:01:22 25 documentation -- or the requirement for

11:01:29 1 documentation of training is repeated, finds
11:01:32 2 itself in the department order and in
11:01:34 3 attachment F in -- in multiple places in
11:01:35 4 attachment F; is that right?

11:01:37 5 A I would stipulate that. That is
11:01:38 6 correct.

11:01:48 7 Q Now, in attachment F, subsection B,
11:01:52 8 the title of that section is medical team
11:01:53 9 member selection and training; is that right?

11:01:54 10 A That is correct.

11:01:59 11 Q And under section B7 of attachment F,
11:02:02 12 it says that any documentation establishing
11:02:08 13 qualifications, including training of the team
11:02:09 14 members, shall be maintained. Do you see
11:02:10 15 that?

11:02:12 16 A I do see that.

11:02:17 17 Q Would you agree with me that that
11:02:22 18 subsection requires that there be some
11:02:24 19 documentation maintained that establishes that
11:02:29 20 each member of the medical team has had the
11:02:31 21 training that's required, and then that's to
11:02:32 22 be documented?

11:02:34 23 A I would stipulate that we have to
11:02:37 24 conduct the 48-hour prior training with the
11:02:40 25 medical team members but not list them by

11:02:42 1 names. I see nothing in there that requires
11:02:46 2 me to list them by names.

11:02:49 3 Q Could you tell us how you would
11:02:59 4 document that a particular team member has had
11:03:02 5 the training without writing that down
11:03:03 6 someplace?

11:03:05 7 A I can document that the team was
11:03:06 8 trained.

11:03:07 9 Q No, I know.

11:03:10 10 My question was: How do you document
11:03:16 11 that unless somebody writes down either a log
11:03:18 12 or something is -- is maintained that -- that
11:03:20 13 demonstrates that a person attended the
11:03:21 14 training at a particular date?

11:03:22 15 A I will stipulate that I do not
11:03:25 16 require that to be kept.

11:03:29 17 Q Would you stipulate that attachment
11:03:37 18 F, subsection B7 requires you to document when
11:03:39 19 a medical team member attends a particular
11:03:40 20 training?

11:03:42 21 A I would not stipulate that.

11:03:59 22 Q Have you discussed with anybody other
11:04:03 23 than your counsel the -- the meaning of the
11:04:07 24 paragraph B7 of attachment F or --

11:04:09 25 A I've not discussed the meaning of B7

11:04:12 1 with anyone, including my counsel.

11:04:15 2 Q And would it be fair to say that
11:04:16 3 you've unilaterally determined that you would
11:04:21 4 not document when a medical team member has
11:04:24 5 attended a training?

11:04:25 6 MR. ZICK: Object to form.

11:04:27 7 THE WITNESS: I'm not -- I -- I don't
11:04:28 8 understand your question.

11:04:29 9 Q BY MR. SANDMAN: Have you consciously
11:04:32 10 decided not to document when medical team
11:04:34 11 members have attended a training?

11:04:34 12 MR. ZICK: Object to form.

11:04:36 13 THE WITNESS: Consciously decided?
11:04:41 14 I -- I'm telling you it's in black and white.

11:04:42 15 Q BY MR. SANDMAN: You're telling me
11:04:44 16 that there's a provision within Department
11:04:47 17 Order 710 or it's attachment that instructs
11:04:50 18 you not to document when a medical team member
11:04:50 19 attends a training?

11:04:53 20 A I'm telling you there's nothing in
11:04:54 21 Department Order 710 or the attachment that
11:04:57 22 tells me I have to document them by name when
11:05:05 23 they attend training.

11:05:11 24 Q Is there anything in Department Order
11:05:15 25 710 or attachment F that requires you to

11:05:20 1 document that a medical team member has
11:05:23 2 satisfied their training requirements by an
11:05:27 3 identifier other than their name; for example,
11:05:30 4 by the identifier medical team leader or
11:05:32 5 medical team member?

11:05:34 6 A I do not know anywhere in the
11:05:39 7 department policy that requires me to do that.

11:05:45 8 Q Is it your understanding that Exhibit
11:05:50 9 86, which was the department order effective
11:05:57 10 May 2011 with its attachment F -- is it your
11:06:01 11 understanding that that document has identical
11:06:04 12 provisions regarding training -- training
11:06:06 13 requirements to those identified in Exhibit
11:06:08 14 85?

11:06:11 15 A I'm not aware of any changes to --

11:06:11 16 Q Okay.

11:06:13 17 A -- to attachment F between the two.

11:06:17 18 Q And I take it that you interpret
11:06:23 19 Exhibit 86 -- insofar as its training
11:06:25 20 requirements and the documentation necessary
11:06:26 21 to demonstrate those training requirements
11:06:29 22 were met, you interpret the -- Exhibit 86 the
11:06:31 23 same way you do Exhibit 85?

11:06:33 24 A I not only interpret it, but that's
11:06:34 25 the way it reads.

11:06:58 1 Q Paragraph C in attachment F -- it's
11:07:06 2 on the next page, that has the identical
11:07:07 3 verbiage for the special operations teams
11:07:11 4 regarding documentation that's to be
11:07:14 5 maintained that establishes training of team
11:07:14 6 members?

11:07:15 7 A That is correct.

11:07:22 8 Q And you likewise interpret section C7
11:07:27 9 to not require that you maintain any
11:07:29 10 documentation demonstrating that special
11:07:34 11 operations team members have had the training
11:07:36 12 required by Department Order 710?

11:07:37 13 A I do not stipulate that. I stipulate
11:07:39 14 that we have training records to document
11:07:43 15 special operations team receive their -- their
11:07:44 16 required training.

11:07:45 17 Q But not the medical team?

11:07:48 18 A And we do have that, the medical team
11:07:50 19 did. Everybody receives their required
11:07:52 20 training but not by name. I don't -- don't
11:07:54 21 have it listed by name, and that's what you've
11:07:54 22 been asking me the whole time.

11:07:56 23 Q No, I -- I also asked you if you --
11:07:58 24 if you identify them by an identifier such as
11:07:59 25 medical team leader, medical --

11:08:00 1 A No, sir, I do not.

11:08:02 2 Q You have to let me finish my
11:08:03 3 question.

11:08:04 4 A Go ahead.

11:08:07 5 Q I have not asked you specifically or
11:08:09 6 only whether you have documented them by their
11:08:12 7 real name, have I?

11:08:12 8 A No, sir.

11:08:15 9 Q I have also asked you whether you're
11:08:18 10 required to document the attendance of team
11:08:20 11 members, be they special operations team or
11:08:23 12 medical team members, by their designation of
11:08:27 13 member 1, member 2, member 3 for medical --

11:08:28 14 A I do not document them that way
11:08:29 15 either, sir.

11:08:38 16 Q Okay. Is there any documentation
11:08:40 17 within the Department of Corrections, to your
11:08:43 18 knowledge, that establishes that the medical
11:08:50 19 team members have had required training?

11:08:50 20 A There is documentation that shows
11:08:55 21 that the medical team practiced as required,
11:08:58 22 but not by an identifier of medical team
11:09:01 23 leader, medical team member 1, et cetera, as
11:09:02 24 you have explained it.

11:09:03 25 Q Okay. So how -- how does the

11:09:05 1 documentation demonstrate that the medical
11:09:07 2 team members had their training?

11:09:09 3 A I would -- I'd have to look at the
11:09:14 4 actual documentation, sir.

11:09:26 5 Q This one's already marked.

11:09:29 6 A Thank you.

11:09:35 7 Q I've handed you what was previously
11:09:38 8 marked as Exhibit 59.

11:09:38 9 A Uh-huh.

11:09:42 10 Q What I'd like you to do is to take
11:09:44 11 some time to review those records, and why
11:09:47 12 don't we go off the record again?

11:09:47 13 A Okay.

11:09:47 14 THE VIDEOGRAPHER: We are off the
11:09:50 15 record. The time on the video monitor is
11:09:54 16 11:09 a.m.

11:09:54 17 (There followed a discussion off the
11:10:01 18 record.)

11:12:38 19 THE VIDEOGRAPHER: We are on the
11:12:42 20 record. The time on the video monitor is
11:12:45 21 11:12 a.m.

11:12:47 22 Q BY MR. SANDMAN: Sir, have you had a
11:12:50 23 chance to take a look at Exhibit 59?

11:12:52 24 A Yes, sir. I went -- went through the
11:12:53 25 documents.

11:12:57 1 Q Have you seen this document before
11:12:57 2 or --

11:13:00 3 A I've seen the notes. I -- I can't
11:13:04 4 say I've seen all the notes before, but I have
11:13:07 5 read a majority of the execution -- those that
11:13:09 6 are marked execution notes, I've read several
11:13:10 7 of those which list the different scenarios
11:13:15 8 that we ran.

11:13:18 9 Q Did you testify a few minutes ago
11:13:24 10 that there are training -- there is training
11:13:26 11 documentation that's maintained by the
11:13:26 12 department?

11:13:28 13 A This would be the training
11:13:29 14 documentation I was referring to, sir.

11:13:43 15 Q Okay. And did you observe in
11:13:48 16 reviewing the -- the documents or the pages in
11:13:50 17 Exhibit 59 that there's no documentation that
11:13:54 18 the medical team leader has ever attended a --
11:13:54 19 execution training?

11:13:56 20 A Those confidential documents which
11:14:01 21 are listed on the back were not kept with
11:14:05 22 my -- at my direction. So I did observe that
11:14:07 23 that's not on there. But it was not at my
11:14:10 24 direction that they even kept these, listing
11:14:12 25 the names of those in attendance.

11:14:13 1 MR. SANDMAN: Okay. Can you read
11:14:29 2 that answer back, please?

11:14:29 3 (The answer was read by the
11:14:29 4 reporter.)

11:14:34 5 Q BY MR. SANDMAN: So am I to
11:14:40 6 understand your testimony to suggest that
11:14:45 7 documents -- documentation of the medical team
11:14:49 8 leader's attendance at training sessions was
11:14:52 9 not documented at your -- at your direction?

11:14:54 10 A The name of the medical team leader,
11:14:57 11 yes, sir, is not documented, but it was not --
11:14:59 12 none of these names that are documented here
11:15:01 13 that you see -- and let me explain this.

11:15:03 14 If you'll go to even the second page,
11:15:05 15 it has a list of names. Some of them are
11:15:08 16 blacked out; some of them are there. This
11:15:13 17 form was not kept at my direction. The first
11:15:15 18 form that you see, the execution notes itself,
11:15:18 19 was kept at my direction.

11:15:22 20 Q Okay. So let's -- just so we're
11:15:27 21 clear, the record is clear, we're looking at
11:15:29 22 page 1 of Exhibit 59?

11:15:30 23 A Yes, sir.

11:15:34 24 Q It's entitled execution notes?

11:15:35 25 A That is correct, sir.

11:15:37 1 Q It has a number at the top right-hand
11:15:40 2 corner, 0214. Do you see that?

11:15:40 3 A Yes, I do.

11:15:42 4 Q And you're saying that these notes
11:15:44 5 are maintained at your direction?

11:15:45 6 A That shows the practice date and the
11:15:47 7 scenarios that we did, yes, sir.

11:15:55 8 Q Okay. And these are the -- and there
11:15:57 9 are ex -- other examples of execution notes
11:15:59 10 throughout Exhibit 59; is that right?

11:16:00 11 A That is correct, sir.

11:16:02 12 Q And would it be fair to say that all
11:16:03 13 those execution notes are prepared and
11:16:04 14 maintained at your direction?

11:16:08 15 A They are, yes, sir.

11:16:11 16 Q And let's take a look at the second
11:16:17 17 page of Exhibit 59.

11:16:21 18 Any of the information maintained on
11:16:23 19 this page maintained at your direction?

11:16:26 20 A No, sir, it's not. I don't object to
11:16:27 21 it being maintained, but I did not -- it was
11:16:33 22 not at my direction.

11:16:39 23 Q And would it be fair to say that you
11:16:42 24 don't require any documentation to be
11:16:46 25 maintained that would designate or show that

11:16:51 1 the medical team leader has attended a
11:16:52 2 training; correct?

11:16:53 3 A That is -- that is correct, sir.

11:16:59 4 Q Okay. And that question assumes that
11:17:02 5 you don't require that documentation to be
11:17:04 6 maintained either by designating the actual
11:17:07 7 name of that medical team leader or the term
11:17:08 8 medical team leader?

11:17:10 9 A That is correct, sir.

11:17:27 10 Q Have you given a direction to anyone
11:17:33 11 that the -- the medical team members'
11:17:35 12 attendance at a training not be documented?

11:17:36 13 A I have never given that direction,
11:17:39 14 no, sir.

11:17:49 15 Q Did you observe in reviewing Exhibit
11:17:56 16 59 that there's some reference to the medical
11:18:01 17 team member, not the leader, but the medical
11:18:06 18 team member attending some of the trainings?

11:18:07 19 A Yes, sir. He is in several of the
11:18:07 20 trainings.

11:18:21 21 Q Okay. But his attendance -- the
11:18:24 22 medical team member's attendance and the
11:18:26 23 record of his attendance was not -- is not
11:18:29 24 documented at your direction; is that right?

11:18:31 25 A The names that are listed there,

11:18:35 1 again, were not at my direction by name.

11:18:55 2 Q If I could ask you to return to
11:19:07 3 Exhibit 85, please.

11:19:09 4 A Okay.

11:19:17 5 Q Section -- we're on the same page,
11:19:19 6 page 7.

11:19:19 7 A Page 7?

11:19:21 8 Q We're -- we're still in section 1.6.

11:19:23 9 A Okay.

11:19:31 10 Q 1.6.1.2 provides that a minimum of
11:19:34 11 two training sessions 48 hours prior to a
11:19:35 12 scheduled execution.

11:19:37 13 A Yes, sir.

11:19:40 14 Q What is a training session?

11:19:42 15 A A training session -- we actually
11:19:44 16 hold several training sessions in one day as
11:19:47 17 you'll see from the different scenarios. We
11:19:50 18 bring the medical team together -- or excuse
11:19:53 19 me, we bring the special ops team together,
11:19:56 20 the restraint team together, Housing Unit 9
11:20:00 21 team leader together, and, depending if we're
11:20:02 22 going to do a full simulation, which means
11:20:04 23 bringing in outside team, or just an in --
11:20:07 24 what we call an inside team training, and then
11:20:11 25 we -- we walk through the execution.

11:20:13 1 At several of the different
11:20:14 2 execution -- at several of the different
11:20:16 3 trainings, I will come up with a different
11:20:21 4 scenario -- a fouled syringe, inmate's
11:20:22 5 uncooperative -- to test our staff's ability
11:20:28 6 to react to those situations. And we'll run
11:20:31 7 anywhere from two to six simulations a day.

11:20:34 8 Q Okay. So a training session is -- is
11:20:37 9 each separate rehearsal of an execution; is
11:20:37 10 that correct?

11:20:39 11 A That's correct.

11:20:39 12 Q Okay.

11:20:41 13 A You may have six training sessions in
11:20:41 14 one day.

11:20:43 15 Q Okay. So you could really -- you
11:20:45 16 could meet all of your -- your training
11:20:50 17 requirements for the year on the day prior to
11:20:50 18 the execution?

11:20:52 19 A No. Because you're required 48 hours
11:20:56 20 prior to.

11:20:58 21 Q Well, you can meet all your training
11:21:02 22 sessions for the year within 48 hours?

11:21:04 23 A Theoretically, yes, but you -- you
11:21:06 24 wouldn't have a well-prepared team if you
11:21:13 25 tried to do it all 48 hours prior to, no.

11:21:27 1 Q If you could turn to page 10. I'd
11:21:30 2 like to have you look at section 1.9.

11:21:32 3 A I'm sorry, I didn't hear that.

11:21:36 4 Q Page 10, I'd like you to look at
11:21:37 5 section 1.9 --

11:21:38 6 A Okay.

11:21:53 7 Q -- .1 through .7, 1.9.37.

11:22:09 8 A Okay.

11:22:11 9 Q Are you familiar with these sections
11:22:14 10 of Department Order 710?

11:22:15 11 A I am familiar with it.

11:22:20 12 Q Are they the same in Exhibit 86 which
11:22:22 13 is the May 2011 protocol?

11:22:28 14 A I believe some of that has changed.

11:22:31 15 Q Is that in respect to the requirement
11:22:35 16 for a psychological -- psychological exam for
11:22:37 17 the special operation team's -- team members?

11:22:39 18 A I believe that's one example, yes,
11:22:39 19 sir.

11:22:41 20 Q Any others that you can recall?

11:22:42 21 A That one caught my attention.

11:23:01 22 Q Okay. So section 1.9.1 provides that
11:23:06 23 certain individuals will review team rosters.

11:23:09 24 That would include the special
11:23:18 25 operations team, would it not?

11:23:19 1 A I'm sorry, you'll have to read
11:23:20 2 specifically where you're asking again.

11:23:22 3 Q I'm sorry, section 1.9.1.

11:23:22 4 A Uh-huh.

11:23:26 5 Q It says, ASPC-Eyman or
11:23:30 6 ASPC-Perryville and ASPC-Florence warden shall
11:23:32 7 review the current team rosters and recommend
11:23:35 8 retention and replacement of staff and
11:23:37 9 alternates to the division director for
11:23:38 10 offender operations.

11:23:40 11 A That's correct. It's the Florence
11:23:41 12 warden and myself.

11:23:45 13 Q And the recommend -- recommendations
11:23:50 14 for retention and replacement of team members,
11:23:51 15 that would include the special operations
11:23:51 16 team?

11:23:54 17 A That would be so.

11:23:55 18 Q How do you receive those
11:23:57 19 recommendations?

11:23:59 20 A I -- if a position becomes open on
11:24:03 21 the team, I call at the time -- the Florence
11:24:05 22 warden at the time who was also the Housing
11:24:08 23 Unit 9 team leader. We would discuss that we
11:24:11 24 have an opening on special operations trying
11:24:14 25 to stay within the local geographical area.

11:24:17 1 If he had a recommendation for a replacement,
11:24:21 2 he would then talk to staff that he was aware
11:24:26 3 of and call me back with the recommendation.

11:24:30 4 Q Okay. That's if you have an opening.

11:24:32 5 This section refers to
11:24:34 6 recommendations for retention and re --
11:24:36 7 retention and replacement?

11:24:38 8 A This -- the Housing Unit 9 team
11:24:41 9 leader and I review all team members at all
11:24:43 10 times. Anybody that we feel would need to be
11:24:46 11 removed from the team, which I have not had
11:24:47 12 one yet, that would be a recommendation from
11:24:50 13 Housing Unit 9 team leader or even the special
11:24:53 14 ops team leader. If they felt that someone
11:24:55 15 should not remain on the team, they could
11:24:56 16 bring that to me.

11:24:57 17 Q Is there any documentation of any
11:24:59 18 recommendations made to you regarding
11:25:03 19 retention of team members?

11:25:08 20 A No, sir.

11:25:10 21 Q That's all done verbally, not in
11:25:11 22 writing?

11:25:16 23 A That is correct.

11:25:18 24 Q Is it also true that any
11:25:25 25 recommendations that are made to you and which

11:25:28 1 in turn you refer to the director are also not
11:25:29 2 in writing?

11:25:33 3 A That is correct.

11:25:40 4 Q Then the next provision in 1.9.3
11:25:43 5 provides that in the selection and retention
11:25:46 6 of team members, the division director for
11:25:49 7 offender operations shall consider a number of
11:25:51 8 items that are listed below that; is that
11:25:51 9 right?

11:25:55 10 A That is correct.

11:25:58 11 Q And among other things, it requires
11:26:03 12 that you consider each team member's personnel
11:26:05 13 file?

11:26:06 14 A That is correct.

11:26:09 15 Q And again, when I refer to team
11:26:14 16 member, in this particular discussion I'm
11:26:16 17 referring to special operations team members;
11:26:17 18 is that fair?

11:26:21 19 A That is fair, sir.

11:26:25 20 Q So do you review each special
11:26:27 21 operation team member's personnel file?

11:26:29 22 A I have them reviewed, sir.

11:26:30 23 Q I'm sorry?

11:26:33 24 A I had them reviewed by Division
11:26:34 25 Director Krause.

11:26:37 1 Q Is that a subordinate to you?

11:26:39 2 A No. She's an equal to me. She's
11:26:41 3 over personnel.

11:26:46 4 And then would -- is it Ms. Cross?

11:26:47 5 A Laura Krause.

11:26:48 6 Q Krause, I'm sorry.

11:26:53 7 Would Ms. Krause report to you after
11:26:55 8 she reviewed personnel files of the special
11:26:56 9 operation team members?

11:26:58 10 A She would. She was looking for any
11:27:00 11 prior disciplinary history on any of the
11:27:02 12 employees that would disqualify them from
11:27:03 13 participating in this activity.

11:27:06 14 Q And would Ms. Krause document her
11:27:08 15 communications with you regarding --

11:27:08 16 A No.

11:27:10 17 Q Got to let my finish my question.

11:27:10 18 A I'm sorry. I'm sorry.

11:27:12 19 Q You know what I'm going to ask.

11:27:16 20 A Yes, sir. I'm sorry.

11:27:19 21 Q Would -- would Ms. Krause document
11:27:21 22 any of her communications with you regarding
11:27:27 23 her -- her review of the personnel files of
11:27:30 24 the proposed special operation team members?

11:27:32 25 A I will qualify it by saying I do not

11:27:35 1 recall her ever sending me an email stating,
11:27:40 2 you know, I checked Officer Smith's file, and
11:27:42 3 he's disciplinary free. I -- I don't recall
11:27:44 4 doing that. I -- I know most of the time she
11:27:46 5 picked up the phone and called me and said,
11:27:48 6 you know, you're looking at putting this
11:27:50 7 person on the team. I reviewed the file and
11:27:51 8 he's clear.

11:27:52 9 Q I'm sorry, I didn't hear the last
11:27:53 10 part of your answer.

11:27:55 11 A I've looked at Officer Joe Smith's
11:27:58 12 personal file, Robert. He's free of
11:27:59 13 disciplinary. He's clear to -- he's clear to
11:28:00 14 participate on the team. That -- that is the
11:28:03 15 majority of communications. I do not recall
11:28:06 16 receiving an email documenting the names.

11:28:18 17 Q Do you recall whether Ms. Krause ever
11:28:21 18 informed you that any of the special
11:28:24 19 operations team members had a disciplinary
11:28:24 20 record?

11:28:28 21 A She did not disqualify anybody that I
11:28:29 22 gave her.

11:28:33 23 MR. SANDMAN: Can you read back my
11:28:40 24 question, please?

11:28:40 25 (The question was read by the

11:28:40 1 reporter.)

11:28:45 2 THE WITNESS: And my answer is her
11:28:46 3 response on each one was they were clear --
11:28:48 4 cleared for the prior 12 months, which is
11:28:53 5 required by policy.

11:28:55 6 Q BY MR. SANDMAN: Do you recall
11:29:00 7 whether Ms. Krause ever informed you that any
11:29:02 8 proposed member of the special operations team
11:29:06 9 had a disciplinary -- disciplinary record at
11:29:07 10 any time?

11:29:09 11 A No, she would not have disclosed that
11:29:11 12 to me. The request was for the previous 12
11:29:16 13 months.

11:29:18 14 Q Your direction to Ms. Krause was that
11:29:21 15 she only report on the employee's disciplinary
11:29:23 16 record during the past 12 months?

11:29:24 17 A That is what is required by the
11:29:34 18 policy, yes, sir.

11:29:39 19 Q Can you tell me -- in section 1.9.3.1
11:29:43 20 the first sentence says, each proposed team
11:29:47 21 member's personnel file, particularly
11:29:49 22 disciplinary issues, shall be considered.

11:29:51 23 Can you tell me what that means?

11:29:53 24 A To review the personnel file and look
11:29:55 25 at particularly disciplinary issues, just as

11:29:55 1 it says.

11:29:58 2 Q Okay. It's not restricted to
11:30:00 3 reviewing the file for only the last 12
11:30:01 4 months, is it?

11:30:03 5 A I'm not saying that she did not
11:30:06 6 review it for others. But she reported to me
11:30:07 7 that they were clear for the last 12 months.
11:30:11 8 She did not express any concern over any team
11:30:14 9 member she reviewed.

11:30:29 10 Q Is there some reason why you elected
11:30:33 11 not to examine the personnel files?

11:30:34 12 A That is in division -- Division
11:30:36 13 Director Krause's area, and I asked her to
11:30:39 14 review them for me.

11:30:41 15 Q Okay. The Exhibit 85 also requires
11:30:43 16 your consideration of the medical and mental
11:30:46 17 health status of proposed special operation
11:30:46 18 team members?

11:30:54 19 A In this particular one, yes, sir.

11:31:02 20 Q How was that duty performed by you,
11:31:05 21 and how is it documented?

11:31:07 22 A Medical conditions, all the team
11:31:11 23 members are -- are full duty. Mental health
11:31:13 24 is -- members of special operations are sent
11:31:19 25 for a psychological fitness-for-duty test.

11:31:22 1 It's documented via a memo back from our
11:31:24 2 contracted psychiatrist to Division Director
11:31:25 3 Krause that they pass their psychological
11:31:26 4 evaluation.

11:31:28 5 Q Okay. So do you receive any
11:31:37 6 documentation that relates to the medical or
11:31:38 7 psych -- psychological condition of any
11:31:39 8 proposed special operations team member?

11:31:41 9 A As I stated, Ms. Krause receives a
11:31:43 10 memo from the psychologist stating that the
11:31:45 11 particular person has been cleared to
11:31:48 12 participate in the execution, yes, sir.

11:31:52 13 Q And your understanding would be that
11:31:54 14 Ms. Krause has whatever documentations that
11:31:57 15 has been assembled in regard to that?

11:31:58 16 A I -- yes, sir, it would be my
11:32:02 17 assumption. I also believe that was -- yes.
11:32:05 18 She has that documentation.

11:32:21 19 Q Section 1.9.3.5 requires that no
11:32:23 20 staff serving on any team shall be related by
11:32:26 21 blood or marriage or have any other legal
11:32:28 22 relationship with the inmate, their family, or
11:32:29 23 the crime victims; is that right?

11:32:30 24 A That is correct.

11:32:40 25 Q If a team member's spouse was working

11:32:43 1 in an area with the inmate, would that be of
11:32:46 2 concern to you?

11:32:47 3 A Can you clarify that question?

11:32:50 4 Q If a -- if a special operation team's
11:32:51 5 member had a spouse working at the Department
11:32:54 6 of Corrections who was working in proximity to
11:32:56 7 the inmate where the inmate -- in the inmate's
11:32:59 8 housing unit, would that be a concern?

11:33:00 9 A None at all.

11:33:01 10 Q Do you know of any instance where
11:33:02 11 that's happened?

11:33:04 12 A No, sir. Not saying it hasn't,
11:33:07 13 though.

11:33:12 14 Q Then section 1.9.3.7 says that the
11:33:15 15 selection process shall consist of a
11:33:18 16 preliminary screening by a panel followed by
11:33:22 17 an interview of each proposed team member
11:33:24 18 conducted prior to the final selection of team
11:33:25 19 members. Do you see that?

11:33:27 20 A I do see that.

11:33:29 21 Q How is the preliminary screening
11:33:32 22 conducted and documented?

11:33:34 23 A It is conducted by a -- excuse me, by
11:33:39 24 the Housing Unit 9 team leader and myself. As
11:33:42 25 I explained earlier, the Florence warden makes

11:33:46 1 initial recommendations to me. I take them to
11:33:49 2 the training. I talk to them prior to the
11:33:51 3 training, during the training, and after the
11:33:51 4 training.

11:33:54 5 And at the conclusion of that Housing
11:33:58 6 Unit 9 team leader and I meet and decide
11:33:59 7 whether this person -- we take this person's
11:34:01 8 name to the director or not.

11:34:05 9 Q So would you consider that screening
11:34:07 10 process and interview process to include your
11:34:11 11 interaction with proposed team member during
11:34:12 12 the rehearsals?

11:34:13 13 A That is correct.

11:34:25 14 Q Then turning now to the selection of
11:34:30 15 the medical team, in section 1.9.5, that
11:34:33 16 starts at the bottom of page 10 of Exhibit 85.

11:34:33 17 A Yes, sir.

11:34:35 18 Q It says, the division director for
11:34:38 19 offender operations shall commence
11:34:41 20 arrangements to ensure qualified medical
11:34:42 21 personnel make up the medical team.

11:34:43 22 A That is correct.

11:34:46 23 Q So that it's really your --
11:34:49 24 ultimately it's your responsibility to make
11:34:51 25 arrangements to ensure you have a qualified

11:34:56 1 medical team that you can then recommend to
11:34:57 2 the director for appointment; is that right?

11:34:58 3 A That is correct.

11:35:06 4 Q And you have to forgive me because I
11:35:07 5 ask too many questions over the course of a
11:35:08 6 day.

11:35:11 7 But do you document in any fashion
11:35:14 8 the arrangements that you make to ensure a
11:35:20 9 qualified medical team is -- is selected?

11:35:22 10 A And I -- I'll go back to how I
11:35:25 11 originally answered this. I'll start with the
11:35:28 12 medical team leader. I was not involved with
11:35:30 13 the selection of the medical team leader. He
11:35:32 14 was selected prior to my getting into the
11:35:32 15 position.

11:35:37 16 And the secondary person who is his
11:35:41 17 assistant was during a personal interview with
11:35:47 18 the Housing Unit 9 team leader and myself.

11:35:52 19 Q Okay. So the -- and just so the
11:35:58 20 record's clear, during the time of these five
11:36:03 21 executions that have taken place over the last
11:36:05 22 year, there have been two medical team
11:36:05 23 members?

11:36:07 24 A There's been a medical team leader
11:36:09 25 and his assistant. That is correct, sir.

11:36:13 1 Q Okay. And is that true that since
11:36:15 2 your appointment as division director there
11:36:17 3 have been two members of the medical team?

11:36:17 4 A That is correct, sir.

11:36:21 5 Q And have -- has the medical team been
11:36:23 6 comprised of the same two individuals since
11:36:26 7 you became division director?

11:36:28 8 A That is correct, sir.

11:36:33 9 Q Okay. And I think you said that
11:36:38 10 the -- you did conduct an interview, not with
11:36:39 11 the medical team leader, but with the other
11:36:41 12 medical team member?

11:36:42 13 A That is correct, sir.

11:36:45 14 Q And that interview occurred in the
11:36:48 15 presence of the Housing Unit 9 leader or --

11:36:53 16 A Housing Unit 9 team leader, yes, sir.

11:36:56 17 Q And was -- did that interview take
11:36:58 18 place in Florence?

11:36:59 19 A It took place in Florence at Housing
11:37:00 20 Unit 9, yes, sir.

11:37:01 21 Q And is there any documentation
11:37:05 22 regarding what transpired during that meeting?

11:37:10 23 A No, sir, there is not.

11:37:19 24 Q Now, on page 11 of Exhibit 85 and at
11:37:24 25 the top of the page, section 1.9.5.1, it

11:37:26 1 provides that the medical team shall consist
11:37:33 2 of volunteers whose primary duties include
11:37:35 3 administering IV as part of their employment;
11:37:35 4 is that right?

11:37:38 5 A That is what it states, sir.

11:37:41 6 Q And what does that mean?

11:37:43 7 A That would mean the medical team,
11:37:44 8 particularly medical team leader, must be
11:37:50 9 adept at administering IV lines as part of
11:37:55 10 their daily activities for their -- for their
11:37:57 11 current employment.

11:37:58 12 MR. SANDMAN: We have just a few
11:38:00 13 minutes left on the tape. This might be a
11:38:01 14 good time to --

11:38:02 15 MS. VIGO: Okay.

11:38:03 16 MR. SANDMAN: -- switch tapes and --

11:38:04 17 THE WITNESS: Yeah, let's do it.

11:38:06 18 MR. SANDMAN: -- take a break.

11:38:06 19 MS. VIGO: Take a quick restroom --
11:38:06 20 restroom break.

11:38:06 21 THE WITNESS: Yeah.

11:38:07 22 THE VIDEOGRAPHER: We are off the
11:38:09 23 record. The time on the video monitor is
11:38:12 24 11:38 a.m. This concludes disc 1.

11:38:12 25 (A recess was held, after which the

11:38:21 1 deposition resumed as follows:)

11:49:45 2 THE VIDEOGRAPHER: We are on the
11:49:49 3 record. The time on the video monitor is
11:49:51 4 11:49 a.m.

11:49:54 5 Q BY MR. SANDMAN: Okay. Mr. Patton,
11:50:00 6 we had left off during a discussion of Exhibit
11:50:05 7 85, section 1.9.5.1.

11:50:06 8 A Yes, sir.

11:50:09 9 Q And I think you were telling us that
11:50:15 10 the -- the medical team should consist of
11:50:20 11 persons whose primary duties include
11:50:22 12 administering IVs as part of their employment?

11:50:25 13 A That is correct, sir.

11:50:30 14 Q And could you tell us, how did you
11:50:34 15 satisfy yourself that the medical team member
11:50:38 16 who was not a leader, how did you satisfy
11:50:43 17 yourself that -- that he was qualified as
11:50:47 18 defined in paragraph 1.9.5.1?

11:50:50 19 A As explained to us by him, he had
11:50:55 20 several years medical training as a medical
11:50:58 21 corpsman.

11:51:00 22 Q And how long -- how long ago was
11:51:00 23 that?

11:51:03 24 A I -- I don't remember, sir.

11:51:06 25 Q Would it make any difference to you

11:51:08 1 in assessing his qualifications for the
11:51:11 2 medical team to know how long ago that he
11:51:15 3 served as a medical corpsman?

11:51:16 4 A I -- I don't recall how long he told
11:51:19 5 me it was, sir.

11:51:24 6 Q So are you telling us that it is not
11:51:29 7 a requirement that a medical team member have
11:51:30 8 current experience in administering IVs as
11:51:32 9 part of their employment?

11:51:33 10 A I understood it to -- to particularly
11:51:38 11 mean the medical team leader whose primary
11:51:39 12 responsibility is the medical procedure. The
11:51:41 13 medical -- the other medical team member was
11:51:45 14 there to assist him, sir.

11:51:49 15 Q Okay. But that's your understanding,
11:51:52 16 but that's not what the Department Order 710
11:51:54 17 says, is it?

11:51:54 18 A That --

11:51:55 19 MR. ZICK: Object to form.

11:51:55 20 THE WITNESS: That is correct, sir.

11:51:58 21 Q BY MR. SANDMAN: The -- would you
11:52:01 22 agree with me that Department Order 710
11:52:05 23 clearly states that the medical team shall
11:52:09 24 consist of personnel whose primary duties
11:52:10 25 include administering IV as part of their

11:52:11 1 employment?

11:52:13 2 A I will stipulate to that, sir.

11:52:14 3 Q And the clear import of that is the
11:52:16 4 team includes the entire team, not just the
11:52:17 5 leader; correct?

11:52:17 6 A I -- I --

11:52:18 7 MR. ZICK: Object to form.

11:52:19 8 THE WITNESS: I will stipulate that,
11:52:21 9 sir.

11:52:24 10 Q BY MR. SANDMAN: Should any member of
11:52:27 11 the medical team who is not qualified as
11:52:30 12 defined in the protocol or attachment F
11:52:34 13 participate in the execution of an inmate?

11:52:36 14 A It was my understanding from my
11:52:38 15 reading of the protocol at the time that the
11:52:41 16 medical team leader was the primary
11:52:44 17 responsibility to perform that function. He
11:52:46 18 was qualified. The medical team member is
11:52:48 19 simply there to assist him.

11:52:50 20 Q That wasn't my question.

11:52:52 21 A That's my answer, sir.

11:52:57 22 Q Should a medical team member who is
11:53:03 23 not the team leader who is not qualified to
11:53:07 24 participate in an execution in accordance with
11:53:10 25 Department Order 710 or attachment F be

11:53:20 1 allowed to participate in an execution?

11:53:23 2 A I will stipulate that it was
11:53:27 3 probably -- he did not meet the qualifications
11:53:31 4 as stipulated to be a medical team member. I
11:53:39 5 will stipulate that. That is correct, sir.

11:53:45 6 Q My question was: If a medical team
11:53:49 7 member is not qualified as defined in
11:53:52 8 Department Order 710 and attachment F, should
11:53:56 9 he participate in an execution, yes or no?

11:53:57 10 MR. ZICK: Object to form.

11:53:58 11 THE WITNESS: I believe --

11:53:59 12 MR. ZICK: You can answer.

11:54:00 13 THE WITNESS: I -- I believe I've
11:54:02 14 answered that. I believe he is qualified to
11:54:08 15 participate in the execution.

11:54:12 16 Q BY MR. SANDMAN: And how is the
11:54:17 17 medical team -- let me -- let me strike that.

11:54:21 18 I'd like you to look at attachment F
11:54:24 19 of Exhibit 85.

11:54:33 20 A Uh-huh. Okay.

11:54:38 21 Q And we're going to look at page 1 of
11:54:47 22 9 again under subsection B.1. If you could
11:54:49 23 read that paragraph to yourself.

11:54:52 24 A I've read it, sir.

11:54:57 25 Q Would you agree with me that there's

11:55:01 1 some emphasis placed on the qualifications
11:55:04 2 necessary for a medical team member in
11:55:06 3 Department Order 710 and attachment F?

11:55:08 4 A I would stipulate that, sir.

11:55:09 5 Q Would you agree that that's a
11:55:13 6 critical core component of Department Order
11:55:15 7 710 and attachment F?

11:55:16 8 A I would --

11:55:16 9 MR. ZICK: Object to form.

11:55:17 10 THE WITNESS: I would stipulate that,
11:55:18 11 sir.

11:55:19 12 Q BY MR. SANDMAN: Would you agree with
11:55:24 13 me that -- that all core components of
11:55:25 14 Department Order 710 and attachment F should
11:55:27 15 be followed?

11:55:33 16 A I would stipulate that, sir.

11:55:38 17 Q Now, subsection B.1 in the second
11:55:40 18 sentence provides that all team members --
11:55:43 19 referring to the medical team -- shall have at
11:55:45 20 least one year of current and relevant
11:55:48 21 professional experience in their assigned
11:55:50 22 duties on the medical team. Do you see that?

11:55:51 23 A I do see that, sir.

11:55:55 24 Q And you would agree with me that the
11:55:56 25 medical team member, who is not the team

11:55:59 1 leader in this case, does not have current
11:56:01 2 professional experience in their assigned
11:56:02 3 duties?

11:56:13 4 A I would stipulate that, sir.

11:56:17 5 Q Did the director, to your knowledge,
11:56:22 6 approve or have knowledge that the medical
11:56:25 7 team member did not have current professional
11:56:27 8 experience at the time he participated in the
11:56:30 9 executions of Mr. Landrigan?

11:56:32 10 A I do not know if he had knowledge or
11:56:37 11 not, sir. I can't speak to the knowledge of
11:56:37 12 the director --

11:56:37 13 THE COURT REPORTER: Of director who?

11:56:38 14 THE WITNESS: Whether the director
11:56:39 15 had knowledge or not.

11:56:41 16 Q BY MR. SANDMAN: Did you have
11:56:42 17 knowledge?

11:56:45 18 A I did the interview with him, yes,
11:56:46 19 sir.

11:56:50 20 Q So it was under your ultimate
11:56:53 21 authority that this -- the medical team member
11:56:57 22 was allowed to participate in the executions
11:57:01 23 of Mr. Landrigan, Mr. King, Mr. Beaty,
11:57:03 24 Mr. Bible, and Mr. West?

11:57:06 25 MR. ZICK: Object to form.

11:57:07 1 THE WITNESS: I can testify to the
11:57:10 2 first four, yes, sir. I cannot testify to the
11:57:12 3 execution of inmate West as I was not present.

11:57:13 4 Q BY MR. SANDMAN: But you knew --
11:57:14 5 without regard to your presence, you knew that
11:57:18 6 the medical team member who was not qualified
11:57:21 7 by experience under the definition in the
11:57:22 8 protocol in attachment F was going to
11:57:24 9 participate in that execution?

11:57:25 10 A I will not stipulate by experience,
11:57:28 11 sir. I'll stipulate by his current
11:57:30 12 assignment. He had the experience required,
11:57:33 13 just not -- did not have the current
11:57:51 14 assignment.

11:57:55 15 Q Did you inform the director that the
11:57:57 16 medical team member didn't have current,
11:57:58 17 relevant professional experience?

11:58:00 18 A I did not recall if I did or not,
11:58:03 19 sir. And again, he had the relevant medical
11:58:06 20 experience, just did not have the one -- or
11:58:14 21 the current job assignment in medical.

11:58:34 22 Q Returning to section 1.9.5 of Exhibit
11:58:51 23 85, that's at page 11. Section 1.9.5.1
11:58:56 24 requires that the medical team, which is all
11:59:04 25 of the medical team, shall have as part of

11:59:06 1 their employment duties that include

11:59:08 2 administering an IV. Do you see that?

11:59:11 3 A I see where it says as part --

11:59:12 4 administering ID -- IV as part of their

11:59:13 5 employment, yes, sir, I do.

11:59:15 6 Q Okay. And in this case, at the time

11:59:17 7 you interviewed the medical team member, he

11:59:21 8 did not have any duties, let alone primary

11:59:23 9 duties, that involved the administration of an

11:59:26 10 IV as part of his employment; is that right?

11:59:27 11 A Of their current employment, yes,

11:59:27 12 sir.

11:59:42 13 Q Okay. Also the -- you didn't

11:59:43 14 document your interview with the -- the

11:59:45 15 medical team member where you reviewed his

11:59:47 16 qualifications for the position of medical

11:59:48 17 team member?

11:59:49 18 A No, sir.

11:59:50 19 Q And you didn't document -- there's

11:59:52 20 really no document anywhere within the

11:59:54 21 Department of Corrections, as far as you know,

11:59:56 22 that -- that, in fact, documents that the

12:00:00 23 member -- medical team member who's not the

12:00:03 24 team leader is qualified to be part of the

12:00:06 25 medical team?

12:00:09 1 A I could not answer that, sir. I
12:00:10 2 don't -- I -- I'm not aware of whether it's
12:00:13 3 documented in his personnel file or not.

12:00:15 4 Q Okay. You haven't maintained any
12:00:16 5 documentation?

12:00:17 6 A I do not maintain any documentation,
12:00:18 7 sir.

12:00:20 8 Q Okay. Then the next section --
12:00:24 9 subsection of the Department Order 710,
12:00:29 10 1.9.5.2 provides that medical team members
12:00:32 11 shall have a computerized criminal history
12:00:34 12 check. Do you see that?

12:00:36 13 A I do see that, sir.

12:00:39 14 Q How -- was that done in connection
12:00:43 15 with the -- either the medical team leader or
12:00:44 16 the medical team member?

12:00:46 17 A No, sir, it was not. That was an
12:00:50 18 oversight on my part.

12:00:53 19 Q When did you discover that was an
12:00:55 20 oversight?

12:00:57 21 A In preparation for this -- this
12:00:59 22 deposition. The way I had read this
12:01:03 23 originally regarding background checks, I read
12:01:05 24 it as an initial -- initial criminal
12:01:08 25 background check, and it required it prior to

12:01:10 1 every execution. I misread that part of the
12:01:13 2 policy, sir.

12:01:18 3 Q Did you -- even before selecting the
12:01:21 4 medical team member who is not the team
12:01:25 5 leader, before he was selected, did you
12:01:28 6 understand that a computerized criminal
12:01:31 7 history check was necessary?

12:01:33 8 A I did not, sir. Since all of our
12:01:37 9 staff are required, prior to coming to work in
12:01:39 10 a core position, are required to do a criminal
12:01:42 11 background. That's the way I interpreted the
12:01:43 12 policy at the time, and I incorrectly
12:01:45 13 interpreted it.

12:01:46 14 Q Are you saying that the -- in order
12:01:51 15 to become an employee as a corrections officer
12:01:54 16 at the Department of Corrections that a
12:01:57 17 computerized criminal background check is
12:01:57 18 necessary?

12:01:59 19 A It's required under POST standards
12:02:01 20 for anybody going into a correctional officer
12:02:04 21 retirement plan position must have a criminal
12:02:06 22 background done on them, yes, sir.

12:02:09 23 Q So if someone was hired 15 years
12:02:11 24 ago --

12:02:13 25 A I was hired 25 years -- or 28 years

12:02:14 1 ago mine was done, yes, sir.

12:02:18 2 Q But there isn't any requirement for
12:02:21 3 regular criminal history checks, is there?

12:02:23 4 A No, sir, there's not.

12:02:28 5 Q In any event, the director's order
12:02:31 6 requires that that criminal history check have
12:02:34 7 taken place, and -- and for whatever reason,
12:02:36 8 oversight, as you've indicated, it wasn't
12:02:37 9 done?

12:02:38 10 A That is correct, sir.

12:02:39 11 MR. ZICK: Object to form. You said
12:02:43 12 director's order. You meant department order?

12:02:46 13 MR. SANDMAN: Yes, I did. I'm sorry.

12:02:50 14 Q BY MR. SANDMAN: Section 1.9.5.2 also
12:02:53 15 requires a professional license check prior to
12:02:54 16 any execution.

12:02:55 17 Has that ever been done?

12:02:57 18 A I could not answer that, sir. I do
12:02:59 19 not know. The medical team leader was -- was
12:03:04 20 selected prior to my appointment.

12:03:08 21 Q The Department Order 710 subsection
12:03:11 22 we just read requires professional license
12:03:13 23 check prior to any execution, does it not?

12:03:14 24 A That -- that is correct, sir.

12:03:15 25 Q Has that ever been done?

12:03:21 1 A Not to my knowledge, sir.

12:03:26 2 Q Have you satisfied yourself that
12:03:28 3 either the medical team member or the medical
12:03:34 4 team leader carries a professional license?

12:03:35 5 A I am -- have satisfied myself that
12:03:53 6 the medical team leader has.

12:03:58 7 Q Do you know as you sit here today
12:04:03 8 whether either the medical team member or the
12:04:06 9 medical team leader has a criminal record?

12:04:08 10 A I could not answer that, sir. I do
12:04:10 11 not know.

12:04:51 12 Q If you could look at Exhibit 86 for a
12:05:00 13 moment.

12:05:03 14 I want to ask you a question about a
12:05:18 15 provision in 7 -- section 710.05. I think
12:05:20 16 that section starts at page 12.

12:05:20 17 A Yes, sir.

12:05:23 18 Q And I wanted to ask you a question
12:05:30 19 about a portion of that subsection on the
12:05:33 20 following page.

12:05:38 21 It's subsection 1.2.4. It's near the
12:05:42 22 bottom of page 13 of Exhibit 86.

12:05:43 23 A Yes.

12:05:46 24 Q There's a requirement in here that
12:05:49 25 the division director for the health services

12:05:53 1 evaluate the inmate for predetermined
12:05:57 2 appropriate venous access locations and
12:06:00 3 reports the result to the division director of
12:06:02 4 operations. Do you see that?

12:06:03 5 A I do see that.

12:06:06 6 Q Have you ever received such a report
12:06:08 7 from the division director for health services
12:06:10 8 in respect to any of the five executions that
12:06:11 9 have occurred in the last year?

12:06:13 10 A The division director for health
12:06:16 11 services informs me that the vein check has
12:06:18 12 been done. But to the extent of the results
12:06:26 13 of that, no, sir.

12:06:33 14 Q How is -- does the division director
12:06:35 15 communicate that information to you?

12:06:37 16 A Verbally.

12:06:43 17 Q And who is the division director for
12:06:45 18 health services?

12:06:46 19 A Division Director Michael Adu-tutu.
12:06:51 20 And please don't ask me to spell his name.

12:06:53 21 Q His name comes up in some documents
12:06:54 22 somewhere but --

12:06:54 23 A I -- I -- I --

12:06:57 24 Q -- I wouldn't know how to spell it
12:06:57 25 either.

12:06:59 1 A I can't even begin to guess how to
12:07:01 2 spell. It's Michael Adu-tutu.

12:07:04 3 Q Okay. Have you requested that the
12:07:07 4 division director for health services provide
12:07:18 5 you information with respect to appropriate
12:07:20 6 venous access locations?

12:07:21 7 A No, sir, I have not.

12:07:23 8 Q Would you agree with me that's one of
12:07:25 9 -- one of your responsibilities under this
12:07:27 10 department order is to obtain that
12:07:28 11 information?

12:07:29 12 A He -- again, he tells me that the
12:07:32 13 vein check has been done. And then when the
12:07:35 14 inmate is brought over, it's also done by the
12:07:38 15 medical team leader using the sonogram machine
12:07:41 16 that's located within the housing unit.

12:07:43 17 Q I under -- I understand that the
12:07:44 18 division director for health services tells
12:07:48 19 you that they have assessed venous access, but
12:07:50 20 he's also to report -- he's also supposed to
12:07:54 21 report to you predetermined appropriate venous
12:07:58 22 access locations; correct?

12:07:59 23 A That's what it says. That is
12:07:59 24 correct, sir.

12:08:02 25 Q And you, at least during -- for the

12:08:04 1 last five executions have not required him to
12:08:05 2 convey that information to you?

12:08:06 3 A No, sir, I have not.

12:08:11 4 MR. ZICK: Object to form.

12:08:37 5 Q BY MR. SANDMAN: Going back to
12:08:57 6 page -- excuse me, Exhibit 85, page 14.

12:09:02 7 I'm looking at section 710.06. It
12:09:03 8 starts near the bottom of the page.

12:09:03 9 A Uh-huh.

12:09:04 10 Q Do you see that?

12:09:05 11 A I do.

12:09:09 12 Q This describes some responsibilities
12:09:13 13 you have to take 21 days prior to an
12:09:14 14 execution; is that right?

12:09:15 15 A That is correct.

12:09:17 16 Q And one of those responsibilities
12:09:23 17 under section 1.1.2 is to take steps to
12:09:25 18 resolve outstanding equipment and inventory
12:09:25 19 issues?

12:09:26 20 A That is correct.

12:09:29 21 Q Would inventory issues include the
12:09:30 22 execution drugs?

12:09:31 23 A That is correct.

12:09:38 24 Q Were -- were -- was there a time
12:09:42 25 prior to Mr. Landrigan's execution when you

12:09:44 1 had to take steps to resolve outstanding
12:09:46 2 inventory issues regarding execution drugs?

12:09:48 3 A There was a time prior to Landrigan
12:09:51 4 that the agency had to take steps, yes, sir.

12:09:54 5 Q And did you -- could you tell us what
12:09:56 6 involvement, if any, you had in -- in those
12:10:01 7 steps that were taken to address execution
12:10:03 8 drugs issues before Mr. Landrigan's execution?

12:10:05 9 A Very limited involvement. That
12:10:09 10 project was assigned to then Deputy Director
12:10:12 11 Charles Flanagan by the director.

12:10:14 12 Q Okay. Could you tell me what -- what
12:10:17 13 your limited involvement was?

12:10:19 14 A My direct involvement? I received
12:10:23 15 copies of some emails. I can't tell you --
12:10:25 16 even speak to the content. I do remember
12:10:27 17 being copied on some emails.

12:10:29 18 My direct involvement was, when the
12:10:31 19 drugs arrived, Charles Flanagan phoned me,
12:10:34 20 asked me to get a team together to go pick the
12:10:37 21 drugs up. I contacted the Florence warden,
12:10:40 22 passed that information on, and he sent a team
12:10:43 23 to pick the drugs up. That was my direct
12:10:45 24 involvement. With the procurement, the
12:10:48 25 licensing, none of that I was involved in.

12:10:50 1 Q So you didn't -- you didn't
12:10:55 2 personally engage in any activity to acquire
12:10:57 3 the execution drugs for Mr. Landrigan's
12:10:58 4 execution?

12:11:01 5 A I would not call anything I did was
12:11:03 6 direct access to that, no, sir. That was --
12:11:05 7 that was Mr. Flanagan's responsibility.

12:11:06 8 Q Certainly -- and the -- and certainly
12:11:08 9 in the description you gave of your
12:11:10 10 activities, that would clearly indicate no
12:11:11 11 direct involvement?

12:11:11 12 A That -- that is my understanding,
12:11:13 13 yes, sir.

12:11:15 14 MR. SANDMAN: This might be a good
12:11:17 15 time to break for lunch.

12:11:17 16 MS. VIGO: Okay.

12:11:17 17 THE VIDEOGRAPHER: We are off the
12:11:20 18 record. The time on the video monitor is
12:11:28 19 12:11 p.m.

12:11:28 20 (A recess was held, after which the
12:11:35 21 deposition resumed as follows:)

13:23:46 22 THE VIDEOGRAPHER: We are on the
13:23:51 23 record. The time on the video monitor is 1:23
13:23:52 24 p.m.

13:23:55 25 Q BY MR. SANDMAN: Okay. Mr. Patton,

13:23:58 1 we've had a lunch recess. Do you feel well
13:23:59 2 and ready to go?

13:23:59 3 A Ready to go, sir.

13:24:05 4 Q Okay. We talked a little bit earlier
13:24:13 5 today about the -- the requirement that there
13:24:15 6 be licensure -- licensure checks for the
13:24:17 7 medical team. Do you remember that?

13:24:18 8 A Yes, sir, I do.

13:24:24 9 Q And to your personal knowledge, does
13:24:28 10 the medical team leader have a medical
13:24:29 11 license?

13:24:30 12 A As determined by me later, yes, sir.

13:24:32 13 Q Okay. And how did you determine
13:24:33 14 that?

13:24:36 15 A I went to the AMA website and found
13:24:37 16 him on the AMA website.

13:24:40 17 Q You -- you found him on the A --
13:24:41 18 AMA --

13:24:41 19 A On --

13:24:41 20 Q Excuse me.

13:24:43 21 A The licensing websites.

13:24:44 22 Q What website was that?

13:24:47 23 A I believe it was AMA or -- I -- I
13:24:49 24 don't recall exactly which website it was, but
13:24:51 25 I looked -- looked up his license.

13:24:53 1 Q And did -- did you document when you
13:24:54 2 did that?

13:24:54 3 A No, sir, I did not.

13:24:58 4 Q Do you remember when you did that?

13:25:04 5 A No, sir, I don't.

13:25:11 6 Q Was it within the last six months?

13:25:12 7 A Yes. Probably within the -- it's
13:25:15 8 been within the last six months.

13:25:51 9 Q I want to direct your attention to
13:25:54 10 Exhibit 85, excuse me, at page 21.

13:26:02 11 A Page 21. Yes, sir. I have page 21.

13:26:07 12 Q And under section -- I guess we're in
13:26:13 13 7 -- section 710.11, and I want to ask you
13:26:17 14 some questions about subsections 1.4 and 1.5.

13:26:18 15 Do you see those on page 21?

13:26:20 16 A I do.

13:26:24 17 Q Section 1.4 provides that no later
13:26:26 18 than seven days after the execution, the
13:26:28 19 division director for offender operations
13:26:32 20 shall meet with command staff and execution
13:26:36 21 team leaders to evaluate operations, identify
13:26:38 22 opportunities to revise and improve written
13:26:40 23 instruction, and then brief the director. Do
13:26:40 24 you see that?

13:26:42 25 A I do see that, sir.

13:26:47 1 Q And have you done -- engaged in that
13:26:51 2 activity after each and every of the five
13:26:53 3 executions that we've had the last year?

13:26:56 4 A I cannot answer to West's execution.
13:26:58 5 I can answer to the first four. We do that
13:27:01 6 immediately after every execution. We don't
13:27:03 7 wait seven days. We do it immediately
13:27:06 8 afterwards. And the director's involved in
13:27:07 9 those discussions.

13:27:09 10 Q And so you're saying that immediately
13:27:12 11 after an execution, there's a -- what kind of
13:27:15 12 -- there's a meeting?

13:27:17 13 A There's a debriefing, yes, sir.

13:27:22 14 Q And does that -- who attends that
13:27:23 15 debriefing?

13:27:26 16 A Myself, the Housing Unit 9 team
13:27:30 17 leader, the special operations team leader,
13:27:33 18 and the director.

13:27:36 19 Q And what about the command center
13:27:36 20 staff?

13:27:38 21 A There is a separate debriefing done
13:27:41 22 with all command center staff that talks about
13:27:42 23 the overall operations of the outside portions
13:27:43 24 of it.

13:27:44 25 Q And do you attend that also?

13:27:46 1 A I -- I lead that debriefing as well.

13:27:47 2 Q Does that occur immediately after the
13:27:48 3 execution?

13:27:49 4 A Immediately after the execution as
13:27:52 5 well, and the director's part of that as well.

13:27:55 6 Q Is there any documentation created
13:27:58 7 that documents the discussion that takes place
13:28:00 8 during those debriefings?

13:28:01 9 A I have not seen that documentation.
13:28:04 10 I'm not saying it doesn't occur, but I -- I do
13:28:07 11 not know if [REDACTED], who -- the name I
13:28:09 12 mentioned earlier, documents those discussions
13:28:12 13 or not.

13:28:24 14 Q And then section 1.5 provides that
13:28:28 15 the ASPC-Florence warden shall be responsible
13:28:30 16 to gather all documents pertaining to the
13:28:33 17 execution and forward to the general counsel
13:28:34 18 for archive. Do you see that?

13:28:36 19 A I do see at that, sir.

13:28:39 20 Q Do you provide any documentation at
13:28:42 21 all to the ASP-Florence warden?

13:28:44 22 A No, sir.

13:28:45 23 Q So whatever documentation he or she
13:28:48 24 may be providing to the general counsel, it's
13:28:50 25 not documentation that you provided to the --

13:28:51 1 to that warden?

13:29:04 2 A Not that I'm aware of, sir.

13:29:17 3 Q Okay. I want to turn your attention
13:29:31 4 now to attachment F of Exhibit 85, page 1 of
13:29:31 5 9.

13:29:33 6 A Yes, sir.

13:29:37 7 Q Paragraph A.3 on that page provides
13:29:40 8 that the division director for offender
13:29:43 9 operations shall ensure that all team members
13:29:44 10 understand and comply with the provisions
13:29:47 11 contained herein. Do you see that?

13:29:49 12 A I do see that, sir.

13:29:51 13 Q How do you go about fulfilling that
13:29:53 14 responsibility?

13:29:57 15 A Through our practices, and I make
13:29:58 16 sure they understand what their job
13:30:02 17 responsibilities are as far as the protocol.

13:30:04 18 THE COURT REPORTER: As far as the
13:30:04 19 what?

13:30:08 20 THE WITNESS: The protocol, ma'am.

13:30:11 21 Q BY MR. SANDMAN: And do you document
13:30:16 22 to any extent the fulfillment of your
13:30:17 23 responsibility under that subparagraph?

13:30:19 24 A It's documented in the execution
13:30:24 25 notes that you provided earlier in Exhibit 59.

13:30:26 1 For example, on the first one, April 23,
13:30:30 2 discuss requirements, selection process,
13:30:33 3 protocols discussed, practiced twice.

13:30:37 4 Q Okay. So whatever -- any
13:30:46 5 documentation that's generated to demonstrate
13:30:49 6 your fulfillment of duties under paragraph 83
13:30:51 7 is in Exhibit 59?

13:30:55 8 A Yes, sir.

13:31:17 9 Q Subsection B on that same page --

13:31:18 10 A Yes, sir.

13:31:20 11 Q -- deals with the medical team
13:31:21 12 members selection and training; is that right?

13:31:23 13 A That is correct, sir.

13:31:31 14 Q Have you verified what the current
13:31:33 15 and relevant professional experience of the
13:31:36 16 medical team leader is as you're required to
13:31:38 17 do in paragraph B.1?

13:31:40 18 A As I stated earlier, sir, the medical
13:31:41 19 team leader was selected prior to my taking
13:31:45 20 over. And I did not reverify that once I
13:31:46 21 became division director.

13:32:06 22 Q Okay. In section B2, the last
13:32:08 23 sentence requires licensing and criminal
13:32:12 24 history reviews to be conducted annually and
13:32:14 25 upon the issuance of a warrant of execution.

13:32:15 1 Do you see that?

13:32:16 2 A I do see that, sir.

13:32:18 3 Q And do I understand from your
13:32:22 4 testimony that you have not done that?

13:32:26 5 A You understood correctly, sir.

13:32:36 6 Q How do the -- the medical team
13:32:42 7 members train for an execution? Do you know?

13:32:45 8 A We walk through all the steps of the
13:32:48 9 execution. When it comes time for medical
13:32:51 10 team to perform the medical procedure, they
13:32:56 11 would -- we always use a volunteer to act the
13:32:57 12 part of the inmate.

13:32:59 13 They would go in and simulate what
13:33:04 14 they would normally do during an execution,
13:33:06 15 leave the room, and then the medical team
13:33:09 16 leader goes back in and assesses sedation at
13:33:10 17 the correct point in time.

13:33:12 18 Q Do they -- they don't engage in any
13:33:15 19 mixing of chemicals during the trainings; is
13:33:16 20 that correct?

13:33:16 21 A That is correct.

13:33:20 22 Q Do they engage in any labeling of
13:33:21 23 syringes during the training?

13:33:29 24 A Not that I'm aware of, sir.

13:33:32 25 Q Paragraph B5 provides that the

13:33:34 1 medical team shall be responsible for
13:33:37 2 inserting IV catheters. Do you see that?

13:33:38 3 A I do see that.

13:33:41 4 Q It's B4. Excuse me.

13:33:45 5 A Yes, I do see that.

13:33:47 6 Q They're also required to ensure that
13:33:49 7 the line is functioning properly throughout
13:33:52 8 the execution procedure; is that right?

13:33:52 9 A That is correct.

13:33:59 10 Q And in -- in the executions that you
13:34:04 11 have attended, the four of them, do you know
13:34:10 12 which IV line was used to administer the
13:34:11 13 chemicals to the inmate?

13:34:13 14 A I would have to assume at this point,
13:34:16 15 sir, since I was not inside the room when they
13:34:17 16 inserted the lines.

13:34:21 17 Q So you don't, of your own personal
13:34:25 18 knowledge -- you don't know where the IV was
13:34:28 19 inserted in -- into the inmate in connection
13:34:31 20 with any of the four executions that you
13:34:32 21 attended?

13:34:34 22 A I have not had direct observation of
13:34:36 23 that, sir. I can tell you what I've been
13:34:36 24 told.

13:34:38 25 Q Well, what is your understanding of

13:34:41 1 where the IVs have been inserted?

13:34:44 2 A I understand that there was one
13:34:47 3 inserted into the femoral -- femoral artery, I
13:34:50 4 believe is what it's called, and one into the
13:34:52 5 arm, I believe. But again, I can't testify to
13:34:55 6 that as I have not -- was not in the room when
13:34:55 7 they were done.

13:34:57 8 Q Okay. You don't have any personal
13:35:00 9 knowledge of -- of where the IVs have been
13:35:02 10 inserted during any of the four executions
13:35:04 11 that you attended?

13:35:05 12 A That's -- I -- I cannot testify as I
13:35:08 13 was not in there when they were done, sir.

13:35:15 14 Q Okay. And let me ask you to help us
13:35:17 15 understand a little bit better about, you
13:35:21 16 know, what you're doing during the execution
13:35:24 17 so we can get a better sense of, you know,
13:35:27 18 where you are and what you can see and what
13:35:28 19 you can't see. So --

13:35:28 20 A Yes, sir.

13:35:29 21 Q -- why don't we -- do you have a
13:35:31 22 memory of attending Mr. Landrigan's execution?

13:35:32 23 A Yes, sir, I do.

13:35:37 24 Q And could you sort of walk us through
13:35:43 25 the -- what you were doing, let's say, from

13:35:45 1 the time that the chemical -- the teams came
13:35:49 2 in to prepare the -- the -- the chemicals and
13:35:51 3 load the syringes through the time
13:35:54 4 Mr. Landrigan was executed and sort of walk --
13:35:56 5 walk us through what you were doing during
13:35:58 6 that time?

13:36:00 7 A Absolutely. We start the morning
13:36:04 8 with a briefing of all the outside teams.
13:36:06 9 Depending on the time of the execution --
13:36:08 10 whether the execution's going to be at 10
13:36:10 11 o'clock, 11 o'clock, 9 o'clock, depending on
13:36:13 12 what time the execution is set for, I hold a
13:36:16 13 briefing of all the outside teams three hours
13:36:20 14 prior, set our roadblocks, make sure the
13:36:23 15 outside is functioning properly.

13:36:25 16 I then go up to the command center at
13:36:28 17 the Florence complex itself, check to make
13:36:32 18 sure that -- because we also have to lock our
13:36:35 19 complex down, determine how that's going.
13:36:40 20 Approximately hour, hour and a half prior to
13:36:42 21 the execution, I -- I escort the director to
13:36:45 22 the different witness groups that are there to
13:36:49 23 observe the execution. I walk with them.

13:36:52 24 During that, about an hour prior to
13:36:55 25 the execution, we go down to Housing Unit 9.

13:36:58 1 I go and meet with the inmate, speak with him
13:37:01 2 for a few minutes. We then prepare him for
13:37:04 3 movement to the execution room itself.

13:37:06 4 Once he's restrained and moved in
13:37:09 5 there, he's restrained to the table at which
13:37:12 6 time I go and check all the restraints, talk
13:37:15 7 to the inmate again.

13:37:18 8 At that time I leave the room and
13:37:20 9 start seeing -- we have movements of witnesses
13:37:25 10 to take care of, media movement to take care
13:37:29 11 of, a million other things are going on. So
13:37:32 12 generally for the next hour or so, I'm pretty
13:37:35 13 tied up performing a million other different
13:37:36 14 functions.

13:37:38 15 Closer to the time of execution, I
13:37:41 16 then go back into the room, medical
13:37:44 17 procedure's been complete. It's generally the
13:37:46 18 restraint team leader and two restraint team
13:37:49 19 members are in there. I spend the last few
13:37:51 20 minutes talking with the inmate, making
13:37:53 21 sure -- if he has any questions, making sure
13:37:56 22 he's calm as can be, making sure he's
13:37:59 23 comfortable, you know.

13:38:00 24 Once that's complete and we're close
13:38:04 25 to time of execution, I pull the team members

13:38:06 1 out, Florence warden enters the room, and I
13:38:07 2 close the door.

13:38:12 3 Q Okay. Thank you for providing that
13:38:15 4 information to us.

13:38:17 5 Would -- would you say that you
13:38:20 6 performed those same activities for each of
13:38:22 7 the four executions that you attended?

13:38:25 8 A Yes. In -- in -- in very general
13:38:27 9 fashions, yes.

13:38:30 10 Q And from the answer you gave, I -- I
13:38:32 11 take it that among the things that you're
13:38:37 12 not -- not doing -- you're -- you're not
13:38:40 13 observing the chemicals being mixed and
13:38:41 14 inserted in the syringes?

13:38:44 15 A That is correct. That's done prior
13:38:46 16 to me getting down to the room.

13:38:49 17 Q Okay. And you're not observing the
13:38:51 18 medical procedure performed on the inmate, the
13:38:51 19 insertion of the IV?

13:38:59 20 A That is correct, sir.

13:39:14 21 Q Now, the attachment F procedures in
13:39:17 22 section B require that -- that two medical
13:39:19 23 team members be assigned the responsibility of
13:39:21 24 inserting IV catheters.

13:39:23 25 I think you've already testified to

13:39:24 1 that; is that right?

13:39:24 2 A That is correct.

13:39:31 3 Q And in subsection B5, it says that IV
13:39:35 4 team members and non-medically licensed team
13:39:38 5 members shall participate in a minimum of 10
13:39:39 6 execution rehearsals per year. Do you see
13:39:40 7 that?

13:39:42 8 A I do see that.

13:39:46 9 Q Do you read that as requiring the IV
13:39:52 10 team members to be licensed?

13:39:54 11 A If you have IV team members assigned
13:39:55 12 to the team, I guess that would be.

13:39:59 13 Q Okay. And in this case we've already
13:40:01 14 established at least one of the
13:40:04 15 team -- IV team members is not licensed; is
13:40:05 16 that correct?

13:40:06 17 A I don't consider him an IV team
13:40:08 18 member, sir, but --

13:40:11 19 Q So does that mean that the Arizona
13:40:14 20 Department of Corrections only has one IV team
13:40:15 21 member?

13:40:19 22 A The medical team leader is our
13:40:21 23 licensed person on the team.

13:40:23 24 Q How many IV -- how many IV team
13:40:24 25 members --

13:40:25 1 A We have -- we have the medical team
13:40:27 2 leader and a medic -- medical team assistant
13:40:31 3 to him is what's on the medical team, sir.

13:40:32 4 Q Okay. But you didn't let me finish
13:40:34 5 my question, which is --

13:40:35 6 A Okay.

13:40:37 7 Q How many IV team members do you have
13:40:39 8 on the medical team?

13:40:41 9 A I have two members on the medical
13:40:44 10 team, the medical team leader and then his
13:40:45 11 assistant.

13:40:48 12 I don't assign them by IV team
13:40:51 13 members or non-medical team members. I assign
13:40:53 14 them by the medical team leader and the
13:40:54 15 assistant to the medical team leader.

13:40:59 16 Q Okay. The paragraph B.1 of the
13:41:04 17 attachment F requires that two medical team
13:41:07 18 members will be assigned. It says the IV team
13:41:09 19 will be assigned responsibility for inserting
13:41:11 20 IV catheters. Do you see that?

13:41:12 21 A I do see that.

13:41:17 22 Q That is a requirement that there be
13:41:21 23 two members of the medical team B on the IV
13:41:21 24 team; is that right?

13:41:22 25 MR. ZICK: Object to form.

13:41:25 1 THE WITNESS: I can see how you would
13:41:27 2 interpret it that way, yes, sir.

13:41:28 3 Q BY MR. SANDMAN: And the IT -- IV
13:41:31 4 team members are to be licensed, are they not?
13:41:33 5 That's the -- you've already said that under
13:41:36 6 paragraph 5 that the IV team members are to be
13:41:37 7 licensed; correct?

13:41:38 8 MR. ZICK: Object to form.

13:41:39 9 THE WITNESS: I don't read that it
13:41:40 10 does say that they have to be licensed. I did
13:41:43 11 stipulate that it does say IV team members and
13:41:45 12 non-medically licensed team members.

13:41:46 13 Q BY MR. SANDMAN: But you don't -- so
13:41:51 14 you don't understand the requirements of
13:41:57 15 attachment F to be that the IV team members be
13:41:58 16 licensed; is that correct?

13:42:00 17 A As I've answered to you, sir, the
13:42:18 18 medical team leader is a licensed person.

13:42:24 19 Q Would you expect that members of the
13:42:29 20 medical team would have knowledge of the
13:42:31 21 chemicals that are used during an execution?

13:42:33 22 A The medical team leader, absolutely,
13:42:34 23 sir.

13:42:36 24 Q Would you expect that all the members
13:42:39 25 of the medical team would have knowledge of

13:42:40 1 the names of the chemicals that are used
13:42:41 2 during an execution?

13:42:43 3 A The medical team leader, absolutely,
13:42:45 4 sir.

13:42:49 5 Q What about the medical team member;
13:42:52 6 would you expect that the medical team member
13:42:55 7 who had a thorough understanding of the
13:43:01 8 Department Order 710 and attachment F would
13:43:04 9 have knowledge of the names of the chemicals
13:43:06 10 that are used during an execution?

13:43:08 11 A I would -- I would expect the medical
13:43:12 12 team leader to have that complete knowledge of
13:43:14 13 the names and the special operations team
13:43:16 14 leader, to have knowledge of the names because
13:43:19 15 that's who's responsible for mixing those
13:43:25 16 chemicals.

13:43:45 17 Q I want to ask you if you could turn
13:43:55 18 the page to subsection C of attachment F.

13:44:07 19 In paragraph 3 it provides that the
13:44:11 20 special operations team leader with the
13:44:14 21 approval of the division director for offender
13:44:17 22 operations will designate the team lead -- the
13:44:20 23 team member that will serve as the recorder.
13:44:23 24 Do you see that?

13:44:25 25 A I do.

13:44:27 1 Q When does that typically -- when does
13:44:30 2 that designation typically occur?

13:44:32 3 A The day before the execution, the
13:44:38 4 special operations team leader and the Housing
13:44:40 5 Unit 9 team leader bring to me the teams they
13:44:42 6 have selected for that particular execution
13:44:46 7 and their alternates. So it's the day prior
13:44:47 8 to.

13:44:49 9 Q And what do you understand the
13:44:51 10 recorder's obligations are?

13:44:52 11 A To document the occurrences occurring
13:44:57 12 in the chemical room.

13:45:01 13 Q And do they do that by their own
13:45:02 14 observation or are they told to -- what --
13:45:05 15 what to write down, or how is that supposed to
13:45:05 16 work?

13:45:07 17 A By their own observation of seeing
13:45:09 18 what's going on and hearing what is -- what is
13:45:10 19 occurring is -- is my understanding, sir. But
13:45:13 20 I have not been back in that room during a --
13:45:15 21 during the execution. That's not where I'm
13:45:15 22 stationed at.

13:45:17 23 Q Is there training for the recorders
13:45:20 24 that takes place during the training sessions?

13:45:22 25 A All -- all the members of the special

13:45:25 1 operation team are trained in every area of
13:45:27 2 special operations, whether it be syringe 1,
13:45:31 3 2, 3, 4, recorder. They -- they all switch
13:45:32 4 during every training session.

13:45:36 5 Q And how are the recorders trained to
13:45:39 6 perform their job at an execution?

13:45:42 7 A During practicum. They set there and
13:45:44 8 -- and as they're -- as we're practicing, they
13:45:46 9 -- they record what's going on.

13:45:48 10 Q Are they trained to write down what
13:45:51 11 they're observing, or are they trained to
13:45:54 12 write down what they're told to write down?

13:45:55 13 A That would probably be best answered
13:45:59 14 by the special operations team leader. I -- I
13:46:00 15 haven't had a discussion with him regarding
13:46:01 16 that.

13:46:06 17 Q Okay. Do you know, during the
13:46:11 18 trainings is there -- is that process
13:46:15 19 practiced during the trainings such that you
13:46:17 20 would know how to record --

13:46:18 21 A I -- I know that the recorders
13:46:20 22 are -- during the training session, the
13:46:23 23 recorders in the special operations room are
13:46:25 24 recording during the training sessions.

13:46:33 25 Q And are there training records or

13:46:37 1 records preserved from the -- those training
13:46:38 2 activities --

13:46:38 3 A I --

13:46:40 4 Q -- including the recorder's notes and
13:46:41 5 so on?

13:46:42 6 A I believe there would be, sir, but I
13:46:44 7 have not seen them.

13:46:45 8 Q You think there will be or there have
13:46:46 9 been?

13:46:47 10 A I believe there have been, but I -- I
13:46:49 11 can't directly testify to that as I have not
13:46:50 12 seen them.

13:47:00 13 Q Okay. In paragraph C.4 on the same
13:47:02 14 page, it says the special operations team
13:47:05 15 shall be responsible for monitoring the inmate
13:47:06 16 and the IV lines.

13:47:07 17 A Uh-huh.

13:47:12 18 Q Would you expect that members of the
13:47:16 19 special operation team who had a thorough
13:47:19 20 understanding of their job duties would
13:47:21 21 understand that they had the responsibility to
13:47:24 22 monitor the inmate during the execution?

13:47:24 23 A Yes.

13:47:24 24 MR. ZICK: Object to form.

13:47:27 25 THE WITNESS: I would expect that.

13:47:30 1 Q BY MR. SANDMAN: And you would expect
13:47:32 2 them to monitor the IV lines during an
13:47:33 3 execution as well?

13:47:35 4 A The IV lines are actually monitored
13:47:39 5 by the Florence warden who's inside the room
13:47:44 6 at the time.

13:47:48 7 Q So although paragraph C.4 requires
13:47:52 8 the special operations team to monitor the IV
13:47:54 9 lines, they don't perform that function. Is
13:47:54 10 that what you're telling me?

13:47:56 11 A The leader of the special
13:47:58 12 operation -- the person that is over the
13:47:59 13 special operations team leader who is the
13:48:03 14 Housing Unit 9 team leader observes it. So in
13:48:05 15 essence, yes, special operations team is
13:48:09 16 observing as the team leader is. He's over
13:48:12 17 special operations.

13:48:13 18 Q Okay. I think what you're telling
13:48:16 19 me, so that the record is clear --

13:48:16 20 A Yes, sir.

13:48:18 21 Q -- is that the special operations
13:48:22 22 team does not perform this function, that
13:48:25 23 the -- the function, rather, is performed by
13:48:27 24 the Housing Unit 9 team leader?

13:48:29 25 A In essence, then the special

13:48:32 1 operations team is doing this, sir, as he is
13:48:37 2 over the special operations team.

13:48:41 3 Q Is the Housing Unit 9 leader a
13:48:43 4 defined member of the special operations team?

13:48:45 5 A He is over everybody in Housing Unit
13:48:47 6 9.

13:48:50 7 Q Can you show me where in Department
13:48:53 8 Order 710 that the housing Unit 9 leader is an
13:48:55 9 appointed member of the special operations
13:48:55 10 team?

13:48:56 11 A I can tell you the Housing Unit 9
13:49:00 12 team leader is responsible for all operations
13:49:02 13 in Housing Unit 9 which would include special
13:49:02 14 operations.

13:49:04 15 Q Okay. And the fact is, we don't want
13:49:07 16 to -- I don't want to argue with you about it.

13:49:08 17 The Housing Unit 9 leader is not a
13:49:10 18 member of the special operations team?

13:49:12 19 A He's over the special operations
13:49:12 20 team.

13:49:14 21 Q He's not a member of it?

13:49:15 22 MR. ZICK: Object to form.

13:49:16 23 THE WITNESS: I -- I've already
13:49:17 24 answered that, sir. I -- I can't answer any
13:49:20 25 more -- any more clear than -- I'm not a

13:49:21 1 member of the special operations team either,
13:49:25 2 but I'm over the special operations team. So
13:49:27 3 that's -- best I can answer that question.

13:49:29 4 Q BY MR. SANDMAN: Do you know if any
13:49:32 5 of the members of the special operation
13:49:33 6 team -- can you tell me who -- how many
13:49:39 7 members there are of that team?

13:49:41 8 A If you'll give me a minute, I believe
13:49:50 9 there's -- and I don't want to guess. And
13:49:52 10 this is an old policy, so I'll just tell you
13:49:59 11 what it says in here since this is -- policy's
13:50:01 12 been superceded several times.

13:50:02 13 According to Department Order 710,
13:50:05 14 consists of seven trained team members and a
13:50:07 15 team leader.

13:50:09 16 Q And that's the special operations
13:50:10 17 team leader?

13:50:10 18 A That is correct.

13:50:13 19 Q Have any of those members you've just
13:50:16 20 identified been trained to monitor the IV
13:50:18 21 lines of the inmate?

13:50:19 22 MR. ZICK: Object to form.

13:50:19 23 THE WITNESS: As I've already
13:50:23 24 answered, sir, the Housing Unit 9 team leader
13:50:25 25 monitors the line who's over the special

13:50:26 1 operations team.

13:50:26 2 Q BY MR. SANDMAN: I -- I understand
13:50:28 3 that, sir. My question was different, and I
13:50:30 4 would like you to answer the question yes or
13:50:31 5 no.

13:50:33 6 Have any of the special operation
13:50:36 7 team members that you just identified been
13:50:38 8 trained to monitor the IV lines of the inmate?
13:50:40 9 Yes or no?

13:50:43 10 A And explain to me what training is to
13:50:45 11 monitor the line. Have they been trained to
13:50:47 12 look at the line? Sure. Everybody looks at
13:50:49 13 the line. Have they been trained specifically
13:50:51 14 anything else? I -- I'm not sure what your
13:50:55 15 question is. They're not in the room with the
13:50:58 16 inmate.

13:51:05 17 Q So you're saying that the members of
13:51:09 18 the special operation team have been trained
13:51:12 19 in how to monitor the IV lines of the inmate
13:51:14 20 during the execution?

13:51:15 21 A If -- if you're asking for specific
13:51:18 22 training, I can't answer that question.

13:51:21 23 Q Okay. Now, you said that this
13:51:25 24 particular -- did you -- did you say at an
13:51:27 25 earlier answer that this particular paragraph,

13:51:31 1 item C.4, has been changed several times?

13:51:33 2 A I said that this policy's been
13:51:35 3 changed -- or been revised several times, and
13:51:37 4 you keep referring to a policy that's been
13:51:41 5 superceded. So I can only answer to what you
13:51:42 6 have in front of me.

13:51:53 7 Q Let's take a look at Exhibit 86. And
13:51:57 8 if you could take a look at attachment F of
13:51:58 9 Exhibit 86 --

13:51:59 10 A Uh-huh.

13:52:09 11 Q -- at page 2 of 9, paragraph C.4.

13:52:11 12 A I see that.

13:52:13 13 Q It provides that the special
13:52:16 14 operations team shall be responsible for
13:52:18 15 monitoring the inmate and the IV lines;
13:52:19 16 correct?

13:52:20 17 A That's what it says, sir.

13:52:25 18 Q Has that requirement in attachment F
13:52:27 19 ever been modified, to your knowledge?

13:52:30 20 A Not to my knowledge, sir.

13:52:32 21 Q And --

13:52:34 22 A Or this particular -- are you asking
13:52:37 23 has C.4 been modified? Attachment F has been
13:52:40 24 modified but C.4, not to my knowledge.

13:52:44 25 Q Okay. Other than the exhibits you

13:52:51 1 have in front of you, 85 and 86, are there any
13:52:55 2 other department order -- versions of
13:52:57 3 Department Order 710 that you are aware of or
13:53:00 4 that you have seen during the time that you've
13:53:02 5 been division director that have been in
13:53:04 6 effect while you've been division director?

13:53:06 7 A I believe there's a newer one
13:53:07 8 than -- than this 86.

13:53:09 9 Q And when did that become effective?

13:53:10 10 A I believe in September.

13:53:14 11 Q And September -- what date in
13:53:14 12 September?

13:53:15 13 A I -- sir, I don't know.

13:53:17 14 Q Okay. And do you know what change or
13:53:20 15 changes were made in that Department Order 710
13:53:26 16 to make it different than the provisions in
13:53:28 17 Exhibit 86?

13:53:30 18 A Without it setting in front of me and
13:53:34 19 doing a side by side, sir, I cannot say.

13:53:37 20 Q Do you -- did you read the new
13:53:38 21 version of the Department Order 710?

13:53:39 22 A Yes, sir, I did.

13:53:43 23 Q Did -- during your review of it, did
13:53:45 24 -- was there any provision in it that struck
13:53:47 25 you as being a change or something new?

13:53:48 1 A I -- I can tell you one of the
13:53:54 2 changes was -- I'm not sure what page it'll be
13:54:00 3 on the new one. In the chemicals themselves,
13:54:06 4 the syringes have been reduced to two for the
13:54:07 5 pentobarbital.

13:54:11 6 Q So if we just -- the chemical chart
13:54:15 7 that's contained in attachment F has been
13:54:16 8 modified?

13:54:18 9 A Yes. To two syringes.

13:54:22 10 Q Instead of four syringes of sodium
13:54:23 11 pentothal, it's now two syringes of
13:54:26 12 pentobarbital?

13:54:26 13 A That is correct.

13:54:28 14 Q Okay. Are you aware of any other
13:54:31 15 change that was made in the September version
13:54:31 16 of --

13:54:32 17 A I believe that was the substantial
13:54:34 18 change in that one. But I -- I'm not saying
13:54:38 19 that that was the only change, but that is the
13:54:40 20 substantial change that I do remember from
13:54:45 21 that.

13:54:57 22 Q Let's go back to Exhibit 85 for a
13:55:02 23 moment on the same page, 2 of 9.

13:55:09 24 Subsection D provides that -- in
13:55:17 25 section D.1.II, upon receipt of the warrant of

13:55:19 1 the execution, the division director for
13:55:23 2 offender operations or designee shall ensure
13:55:26 3 the IV team members physically inspect the
13:55:29 4 inmate to predetermine appropriate venous
13:55:30 5 access locations. Do you see that?

13:55:33 6 A I also see where it also says, slash,
13:55:39 7 ASPC-Eyman medical staff under the same II.

13:55:40 8 Q I'm sorry?

13:55:42 9 A It says ensure IV team
13:55:46 10 members/ASPC-Eyman medical staff physically
13:55:49 11 inspect.

13:55:51 12 Q Okay. I -- you're looking at Exhibit
13:55:52 13 86.

13:55:52 14 A Oh, I'm sorry, sir.

13:55:54 15 Q That -- that's okay. Let's just stay
13:55:55 16 -- let -- let's stay there.

13:55:55 17 A I'm sorry.

13:55:56 18 Q You're there.

13:55:56 19 A Okay.

13:55:59 20 Q Let's stay there for -- for now.

13:56:03 21 And so just so the record is clear,
13:56:07 22 we're looking at Exhibit 86 under subsection
13:56:12 23 D, on page 2 of attachment F; is that right?

13:56:13 24 A That's correct, sir.

13:56:18 25 Q Okay. And the requirement within

13:56:22 1 that version of Department Order 710 and
13:56:25 2 attachment F is that -- that you or your
13:56:30 3 designee are -- are required to ensure upon
13:56:35 4 receipt of the warrant of execution that
13:56:40 5 either the IV team members or ASPC medical
13:56:42 6 staff physically inspect the inmate to
13:56:44 7 predetermine appropriate venous access?

13:56:46 8 A That is correct, sir.

13:56:53 9 Q How -- how do you ascertain that
13:56:55 10 that's been done upon the issuance of a
13:56:57 11 warrant of execution?

13:56:59 12 A As discussed previously in my
13:57:02 13 testimony, I'm notified by division director
13:57:04 14 Dr. Mike Adu-tutu.

13:57:07 15 Q Who tells you that he's looked at
13:57:10 16 venous access, but he doesn't report to you
13:57:13 17 any predetermination of appropriate venous
13:57:15 18 access locations?

13:57:15 19 A That's correct.

13:57:16 20 MR. ZICK: Object to form.

13:57:18 21 THE WITNESS: That is correct. That
13:57:20 22 is correct, sir.

13:57:22 23 Q BY MR. SANDMAN: Now, let's jump back
13:57:33 24 to Exhibit 85 in the same -- look at the same
13:57:35 25 provision in attachment F at page 2, paragraph

13:57:39 1 D.

13:57:41 2 This attachment F would have been in
13:57:50 3 effect during the executions of Mr. Landrigan,
13:58:00 4 Mr. King, and Mr. Beaty; is that right?

13:58:18 5 A I believe Landrigan and King. I
13:58:21 6 believe Beaty's the -- Exhibit 86 was in
13:58:26 7 effect for Beaty, I believe.

13:58:29 8 Q Mr. Beaty's execution was May 25,
13:58:30 9 2011?

13:58:34 10 A Yes. And Exhibit 86 was effective
13:58:40 11 May 12, prior to his execution, sir.

13:58:44 12 Q Okay. So then the -- the Exhibit 85
13:58:47 13 would have been in -- in effect for the first
13:58:50 14 two executions, Mr. King and Mr. Landrigan; is
13:58:50 15 that right?

13:58:52 16 A I believe so, sir, yes.

13:59:14 17 Q Do you know, is there a separate
13:59:22 18 effective date for the attachment F portion of
13:59:25 19 Exhibit 86? It appears on page 1 of 9.

13:59:27 20 A I -- I see -- I'm sorry, sir. Go
13:59:30 21 ahead.

13:59:36 22 Q It appears that the attachment F
13:59:38 23 portion of Exhibit 86 was actually not in
13:59:44 24 effect until June 10, 2011. Is that correct?

13:59:45 25 A I'm not -- I -- I can't answer that

13:59:47 1 question, sir. I know what you're referring
13:59:49 2 to where it says replacement page effective.
13:59:52 3 I'm not sure which page they're referring to
13:59:54 4 as I do not see that notated.

13:59:55 5 Q Okay. Well, let me ask you just to
13:59:57 6 look at -- and I'm sorry to have you bouncing
14:00:01 7 back from these -- between these two
14:00:01 8 documents.

14:00:10 9 But Exhibit 86 attachment F, page 1?

14:00:10 10 A Yes, sir.

14:00:13 11 Q You see at the bottom of the page of
14:00:14 12 each --

14:00:16 13 A I do see that, sir, June 10.

14:00:18 14 Q Wait, let me finish my question,
14:00:19 15 though, because otherwise it's -- otherwise
14:00:20 16 only you and I will know what we're talking
14:00:21 17 about.

14:00:22 18 A Okay, sorry.

14:00:24 19 Q Anyone reading this later won't.

14:00:26 20 Each of -- each page of attachment F
14:00:30 21 in Exhibit 86 is marked effective June 10,
14:00:31 22 2011; is that right?

14:00:33 23 A I do see that at the bottom, yes,
14:00:33 24 sir.

14:00:35 25 Q And so would you agree with me that

14:00:40 1 that attachment F to Exhibit 86 was -- was not
14:00:42 2 in effect during the first three executions?

14:00:43 3 A I would agree to that.

14:00:49 4 Q Okay. So now let's jump back to
14:00:56 5 Exhibit 85, page 2 of attachment F. We're
14:00:58 6 back in subsection B.

14:00:59 7 A Uh-huh.

14:01:00 8 Q At least during the first three
14:01:05 9 executions, it was your responsibility to
14:01:06 10 ensure that the IV team members physically
14:01:09 11 inspected the inmate to predetermine
14:01:11 12 appropriate venous access locations.

14:01:15 13 And that was to occur upon the
14:01:18 14 receipt of the warrant of execution; is that
14:01:18 15 right?

14:01:19 16 A That is what it says, yes, sir.

14:01:25 17 Q Okay. And did you fulfill that
14:01:28 18 responsibility under the terms of attachment
14:01:30 19 F?

14:01:33 20 A What I did was had -- as we do now,
14:01:36 21 we did at those as well -- we had
14:01:39 22 Dr. Adu-tutu's staff assess him there, and
14:01:42 23 then our medical team leader assessed him once
14:01:44 24 he was received over in Housing Unit 9.

14:01:47 25 Q Okay. So the -- the IV team members

14:01:50 1 did not physically inspect the inmate upon
14:01:53 2 receipt of the warrant of execution; correct?

14:01:56 3 A The Eyman medical staff did. None of
14:01:58 4 the medical team currently assigned to the
14:01:58 5 team did.

14:02:00 6 Q Okay. And, in fact, the IV team
14:02:03 7 members, contrary to the provisions of
14:02:05 8 attachment F, did not physically inspect the
14:02:10 9 inmate, according to your testimony, until the
14:02:11 10 day of the execution?

14:02:13 11 MR. ZICK: Object to form.

14:02:15 12 THE WITNESS: The medical team leader
14:02:18 13 inspected the inmate the -- the morning of the
14:02:21 14 -- of the execution.

14:02:23 15 Q BY MR. SANDMAN: And you know that
14:02:27 16 because -- how do you know that?

14:02:31 17 A I can only testify to the fact that I
14:02:35 18 bought him a very expensive sonogram machine,
14:02:38 19 and as part of the protocols in here is --
14:02:39 20 that's part of his responsibility.

14:02:40 21 Can I testify that he used the
14:02:43 22 machine and did all that? I cannot testify to
14:02:47 23 that, sir, as I'm not in the room.

14:03:04 24 Q If I could have you look at the next
14:03:06 25 page of attachment F.

14:03:06 1 A Yes, sir.

14:03:21 2 Q Page 3. Under paragraph -- paragraph
14:03:24 3 2 provides the medical team leader will assign
14:03:26 4 a medical team member to prepare each chemical
14:03:28 5 and corresponding syringe. Do you see that?

14:03:30 6 A I do see that.

14:03:34 7 Q Do -- do you know how that's being
14:03:37 8 done or how that was done during the first
14:03:37 9 five executions?

14:03:39 10 A As I testified to earlier, sir, I'm
14:03:41 11 not in there when the chemicals are mixed.

14:03:51 12 Q Okay. Now, the next paragraph,
14:03:54 13 paragraph 3 says the assigned medical team
14:03:56 14 member shall be responsible for preparing and
14:03:59 15 labeling the assigned sterile syringes. Do
14:03:59 16 you see that?

14:04:03 17 A I do see that, sir.

14:04:07 18 Q Would you expect that if this
14:04:10 19 provision requires the medical team members to
14:04:12 20 label the syringes that they would do that
14:04:15 21 rather than, for example, having a special
14:04:21 22 operations team member labeling the syringes?

14:04:29 23 A Our medical team leader is back in
14:04:33 24 the chemical room preparing -- can -- can you
14:04:36 25 give me just a second to read this again?

14:04:44 1 It would be hard for me to testify to
14:04:47 2 that, sir, since I'm not back there. I -- it
14:04:49 3 would only be speculation on my part.

14:04:54 4 Q Would you expect, as the division
14:04:57 5 director that's responsible for having team
14:05:00 6 members under -- thoroughly understand their
14:05:03 7 responsibilities under Department Order 710
14:05:08 8 and attachment F, would you expect that the
14:05:10 9 medical team would do what this says, which is
14:05:13 10 they would label the assigned sterile syringes
14:05:16 11 in a distinctive manner?

14:05:17 12 A It is my expectation that the
14:05:19 13 syringes would be labeled in a distinct
14:05:20 14 manner.

14:05:22 15 Q By whom?

14:05:24 16 A By either the medical team leader or
14:05:27 17 medical team member, or I wouldn't even care
14:05:30 18 if it was a special ops leader that was back
14:05:31 19 there as long as they're -- the three of them
14:05:33 20 are back there during the -- during the mixing
14:05:36 21 and labeling of syringes. Who puts the label
14:05:40 22 actually on the syringe, I -- I wouldn't -- as
14:05:42 23 long as the syringes are properly -- and the
14:05:47 24 medical team leader has verified it all.

14:05:49 25 Q Anybody -- it would be okay with you

14:05:53 1 if anybody in the chemical room labeled the
14:05:54 2 syringes. Is that what you're saying?

14:05:57 3 A I did not say that. I said a medical
14:05:59 4 team -- medical teamed member, medical team
14:06:02 5 leader, or a member of the special operations
14:06:04 6 team that was assisting the medical team
14:06:10 7 leader at the time.

14:06:15 8 Q And that is -- that provision remains
14:06:20 9 in force in attachment 86 --

14:06:20 10 MR. ZICK: Object to form.

14:06:21 11 Q BY MR. SANDMAN: -- that the assigned
14:06:23 12 medical team member shall be responsible for
14:06:26 13 preparing and labeling the syringes?

14:06:28 14 A If you would give me a moment to turn
14:06:44 15 to 86, please?

14:06:47 16 I will stipulate that it is the same.

14:06:50 17 Q And in fact, both versions of
14:06:53 18 attachment F, 85 and -- 85 and 86, require
14:06:56 19 that there be two labels affixed to each
14:06:59 20 syringe; is that right?

14:07:05 21 A It does say with two labels affixed
14:07:06 22 to each syringe.

14:07:09 23 Q Okay. Would you expect that -- that
14:07:12 24 that would be -- that requirement would be
14:07:13 25 met?

14:07:14 1 A I would expect that if it's in the
14:07:17 2 protocol, yes, sir. I can't testify to the
14:07:20 3 extent that it's done.

14:07:26 4 Q Well, if it wasn't done -- if
14:07:27 5 something's not being done; for example, if
14:07:31 6 the medical team is not labeling the syringes
14:07:34 7 -- or if the medical team is not labeling the
14:07:36 8 syringes with two labels, would it be your
14:07:39 9 expectation that you would be informed of that
14:07:42 10 fact by either someone from the medical team
14:07:47 11 or the special operations team?

14:08:23 12 A I could stipulate to that.

14:08:27 13 Q If you could turn to the next page,
14:08:30 14 page 4 of attachment F on 80 --

14:08:31 15 A Which attachment?

14:08:33 16 Q Let's start with 85.

14:08:36 17 A Okay.

14:08:53 18 Q Now, I take it that within your role
14:08:56 19 in these executions that -- that you don't
14:09:02 20 personally do anything to supervise or verify
14:09:06 21 that the -- the syringes have been prepared
14:09:10 22 correctly and mounted on the gangway in the
14:09:11 23 way they're supposed to be.

14:09:12 24 You rely on the -- the special
14:09:14 25 operations team leader and medical leader to

14:09:16 1 make sure that's done correctly; is that fair?

14:09:18 2 A As I testified to earlier, sir, I'm
14:09:21 3 not in there when the syringes are set up.

14:09:27 4 Q Okay. And page 4 of Exhibit 85 in
14:09:31 5 paragraph 14, there's a provision that the
14:09:34 6 special operations team recorder is
14:09:38 7 responsible for completing the sequence of
14:09:39 8 chemicals form. Do you see that?

14:09:42 9 A I do see that, sir.

14:09:43 10 Q Do you -- would you expect that that
14:09:48 11 is -- that that requirement in attachment F be
14:09:52 12 fulfilled?

14:09:54 13 A I would stipulate that, yes, sir.

14:09:58 14 Q And I believe that that same
14:10:02 15 requirement is that same requirement contained
14:10:19 16 in -- in Exhibit 86?

14:10:22 17 I think if you look at page 4,
14:10:26 18 paragraph 14.

14:10:29 19 A Yes, it -- the difference is that it
14:10:32 20 does list the actual form number on -- on
14:10:42 21 Exhibit 86, which is 710-9.

14:10:44 22 Q Do you agree with me that it would be
14:10:49 23 important for the Department of Corrections to
14:10:54 24 document on the sequence of chemicals form the
14:10:57 25 amount of each chemical administered and

14:10:59 1 confirm that it was administered in the order
14:11:01 2 set forth in the chemical chart?

14:11:03 3 A I would, sir.

14:11:07 4 Q In fact, would you agree with me that
14:11:11 5 that -- it's important for the doc -- for the
14:11:15 6 department to document it in some fashion the
14:11:18 7 exact amount administered and the order in
14:11:23 8 which it was given as required in paragraph 14
14:11:28 9 of this section of the attachment F?

14:11:31 10 MR. ZICK: Object to form.

14:11:31 11 THE WITNESS: I believe I've answered
14:11:33 12 that already, sir.

14:11:40 13 Q BY MR. SANDMAN: Have you ever seen
14:11:41 14 this form?

14:11:46 15 A 710-9, I don't recall if I've seen
14:11:46 16 it.

14:11:49 17 Q Do you know whether the special
14:11:52 18 operations team recorder has ever completed a
14:11:54 19 sequence of chemicals form for any of the five
14:11:56 20 executions which have occurred in the last
14:11:57 21 year?

14:11:59 22 MR. ZICK: Object to form.

14:12:04 23 THE WITNESS: I believe the form's
14:12:06 24 been done, sir. I -- I can't testify to who's
14:12:08 25 done the form.

14:12:09 1 Q BY MR. SANDMAN: You cannot testify
14:12:09 2 it was done?

14:12:11 3 A I can't testify that it -- who
14:12:16 4 did -- who filled out the form. I -- I did
14:12:18 5 not personally do it. I did not see the
14:12:21 6 recorder do it. And I do not have the form in
14:12:22 7 front of me.

14:12:44 8 Q If I could have you look at page 5 of
14:12:52 9 Exhibit 85. This is page 5 of attachment F.
14:12:53 10 I'm sorry.

14:12:54 11 A Yes, sir.

14:13:05 12 Q Paragraph 4 on that page provides
14:13:10 13 that the inmate will be positioned to enable
14:13:12 14 the medical team and special operations team
14:13:16 15 leader to directly observe the inmate, the
14:13:19 16 inmate's arms, or other designated IV
14:13:21 17 location. Do you see that?

14:13:25 18 A I do see that, sir.

14:13:30 19 Q Would you agree with me that during
14:13:34 20 the first four executions that you attended
14:13:37 21 that the inmate was not positioned to enable
14:13:40 22 either the medical team or special operations
14:13:44 23 team leader to directly observe the designated
14:13:45 24 IV location?

14:13:47 25 MR. ZICK: Object to form.

14:13:48 1 THE WITNESS: I will testify as I did
14:13:50 2 earlier, sir. The Housing Unit 9 team leader
14:13:54 3 had that vision.

14:13:57 4 Q BY MR. SANDMAN: Did either you or
14:14:00 5 the director of the Department of Corrections
14:14:06 6 authorize the first four executions to proceed
14:14:10 7 without enabling the medical team and special
14:14:14 8 operations team leader to directly observe the
14:14:15 9 designated IV location?

14:14:18 10 MR. ZICK: Object to form.

14:14:19 11 THE WITNESS: I -- you'll need to
14:14:20 12 rephrase that question. I -- I don't have the
14:14:22 13 authority to call for an execution, sir.

14:14:22 14 Q BY MR. SANDMAN: I'm sorry?

14:14:25 15 A I do not have the authority to call
14:14:27 16 for or stop an execution. That's not my
14:14:27 17 responsibility.

14:14:29 18 Q Okay. Maybe I'll ask the court
14:14:49 19 reporter to read that back for you?

14:14:49 20 A Okay.

14:14:49 21 (The question was read by the
14:14:49 22 reporter.)

14:14:52 23 THE WITNESS: All I can answer is,
14:14:54 24 sir, I do not have the authority to authorize
14:14:57 25 an execution to proceed. That sole -- falls

14:14:58 1 solely on the director.

14:14:58 2 Q BY MR. SANDMAN: I'm sorry, you don't
14:15:00 3 have the authority to --

14:15:01 4 A Authorize an execution to proceed.
14:15:04 5 Your question is, did I authorize an execution
14:15:06 6 to proceed. That is not within my power.

14:15:07 7 Q Okay. Well, I'm -- I think you
14:15:11 8 misunderstood my question. But let me -- let
14:15:11 9 me try to rephrase it.

14:15:13 10 I'm not asking you whether you have
14:15:19 11 authority to authorize or, you know, disallow
14:15:21 12 an execution. Okay? That's not my question.
14:15:22 13 Do you understand that?

14:15:23 14 A I do understand that.

14:15:26 15 Q Okay. My question is: Did you
14:15:31 16 authorize the medical team and special
14:15:38 17 operations team leader to not directly observe
14:15:41 18 the inmate's designated IV location during an
14:15:42 19 execution?

14:15:45 20 A As I've stated prior, sir, the
14:15:46 21 Housing Unit 9 team leader who is over those
14:15:49 22 teams had direct observation of the IV site,
14:15:49 23 sir.

14:15:51 24 Q Okay. And I think the record is very
14:15:52 25 clear and I think you've made -- I agree

14:15:55 1 you've made the record clear as to who
14:15:56 2 observed the IV line.

14:15:59 3 I want to know whether you, as the
14:16:00 4 division director of operations, instructed
14:16:04 5 the medical team and special operations team
14:16:08 6 leader not to directly observe the location of
14:16:10 7 the inmate's IV location?

14:16:11 8 A Your question is, did I ever say to
14:16:14 9 the medical team leader or special operations
14:16:16 10 team leader you're not to observe the site.
14:16:18 11 And my answer is no, I never said that to the
14:16:20 12 medical team leader or the special operations
14:16:23 13 team leader directing them not to observe the
14:16:23 14 site.

14:16:24 15 Q Okay. And the reverse of that
14:16:27 16 question is: Did you ever instruct the
14:16:30 17 medical team or the special operations team
14:16:34 18 leader to directly observe the IV site of the
14:16:35 19 inmate during an execution?

14:16:36 20 A No, sir, I did not.

14:16:43 21 Q And to your knowledge, did the
14:16:46 22 director of the Department of Corrections give
14:16:48 23 any direction to the medical team or the
14:16:52 24 special operations team with respect to their
14:16:54 25 observation or non-observation of the

14:16:56 1 designated IV location of the inmate?

14:16:56 2 MR. ZICK: Object to form.

14:16:57 3 THE WITNESS: I have no direct
14:16:58 4 knowledge of that sir.

14:17:31 5 MR. SANDMAN: Time for a break or
14:17:32 6 should we --

14:17:32 7 MS. VIGO: 2:15, that's what I have.

14:17:34 8 MR. SANDMAN: It's been an hour. If
14:17:35 9 you want to take a break, we can.

14:17:35 10 THE WITNESS: That's good.

14:17:35 11 MS. VIGO: Yeah.

14:17:36 12 THE VIDEOGRAPHER: We are off the
14:17:39 13 record. The time on the video monitor is
14:17:42 14 2:17. This concludes disc 2.

14:17:42 15 (A recess was held, after which the
14:17:42 16 deposition resumed as follows:)

14:32:20 17 THE VIDEOGRAPHER: We are on the
14:32:24 18 record. The time on the video monitor is 2:32
14:32:28 19 p.m. This begins disc 3.

14:32:34 20 Q BY MR. SANDMAN: Director Patton --
14:32:37 21 or division director, I should say, do -- to
14:32:40 22 your knowledge, are special operation team
14:32:48 23 members trained in the labeling of syringes?

14:32:50 24 A I do not have that knowledge, sir.

14:32:57 25 Q And do you know whether special

14:33:00 1 operation team recorders are trained to record
14:33:04 2 deviations from the department order or
14:33:10 3 attachment F in the sequence of chemicals
14:33:12 4 form.

14:33:12 5 MR. ZICK: Object to form.

14:33:13 6 THE WITNESS: I do not have direct
14:33:15 7 knowledge of that, sir.

14:33:27 8 Q BY MR. SANDMAN: During any of the
14:33:30 9 five executions that have taken place during
14:33:34 10 the past few years -- past year, has anybody
14:33:38 11 reported to you that there's been a deviation
14:33:40 12 from the requirements of Department Order 710
14:33:43 13 or attachment F?

14:33:45 14 A During the four executions I was
14:33:48 15 present for, sir, no.

14:33:49 16 Q And during the one execution you were
14:33:52 17 not present for, did anyone report to you that
14:33:54 18 there was any deviation from Department Order
14:33:56 19 710 or attachment F?

14:33:57 20 A No, sir.

14:34:13 21 Q If I could ask you to turn to Exhibit
14:34:17 22 85, we're in attach -- we're still in
14:34:17 23 attachment F.

14:34:21 24 We're now at page 5, subsection G,
14:34:25 25 which I believe starts at the bottom of that

14:34:34 1 page, and subsection G then runs through
14:34:38 2 the -- about the top two-thirds of the next
14:34:41 3 page. If you could just take a moment to
14:34:45 4 refamiliarize yourself with a review of
14:34:55 5 section G.

14:35:24 6 A I have read that, sir.

14:35:26 7 Q And are you -- are you generally
14:35:31 8 familiar with the requirements set forth in --
14:35:33 9 in section G?

14:35:34 10 A I've -- I'm aware of what's written
14:35:37 11 in section G. I haven't observed it being
14:35:38 12 performed, sir.

14:35:43 13 Q And could you just verify for us in
14:35:52 14 Exhibit 86, attachment F, page 6 whether the
14:35:56 15 procedures in that section of Exhibit 86,
14:36:00 16 section G are the same as they are in Exhibit
14:36:05 17 85?

14:36:27 18 A It appears to be the same, sir.

14:36:34 19 Q Okay. The Exhibit 85, section G,
14:36:38 20 let's just focus on -- that'll be our point of
14:36:42 21 reference.

14:36:52 22 Do you know, sir, anything about the
14:36:55 23 executions that took place prior to your
14:36:57 24 becoming division director, executions that
14:36:59 25 took place at the Department of Corrections in

14:37:00 1 Arizona?

14:37:01 2 MR. ZICK: Object to form.

14:37:02 3 THE WITNESS: I'm aware that there
14:37:04 4 was executions prior to me being division
14:37:05 5 director, did not participate in those
14:37:06 6 executions, sir.

14:37:07 7 Q BY MR. SANDMAN: And I take it then
14:37:11 8 you don't have any personal knowledge of -- of
14:37:13 9 where the IVs were inserted into those inmates
14:37:17 10 that were executed by lethal injection in
14:37:21 11 Arizona prior to those five inmates that have
14:37:24 12 been executed this past year?

14:37:25 13 A That is correct. I have no knowledge
14:37:26 14 of that, sir.

14:37:31 15 Q And are you aware of any
14:37:33 16 representations that were made to the federal
14:37:36 17 district court in prior litigation over lethal
14:37:41 18 injection in Arizona concerning which sites
14:37:47 19 would be access for the execution drugs, which
14:37:48 20 IV sites?

14:37:50 21 A I have not read such a case study,
14:37:52 22 no, sir.

14:37:55 23 Q Is it your understanding from the
14:38:01 24 provisions in attachment F to both Exhibits 85
14:38:06 25 and 86, subsection G, that the peripheral

14:38:11 1 veins are to be the veins of choice for
14:38:13 2 inserting the execution drugs?

14:38:15 3 A It is my understanding, sir -- and
14:38:17 4 again, I have not been in the room when this
14:38:20 5 has occurred and as directed by the director
14:38:25 6 of this agency and as stating here, the med --
14:38:28 7 it's the medical team leader's call. And
14:38:29 8 that's all I can state, sir.

14:38:31 9 I -- I'm not in the room, so I don't
14:38:32 10 know what veins he's checked. I -- I can't
14:38:33 11 testify to that.

14:38:39 12 Q Okay. Do you know whether the
14:38:43 13 Department of Corrections has -- let me strike
14:38:44 14 that.

14:38:44 15 Do you -- do you know in -- in each
14:38:50 16 of the four executions that -- that -- that
14:38:52 17 took place where -- where you were present
14:38:55 18 during the time of execution, do you know
14:38:58 19 where the IV catheters were placed in those
14:38:59 20 four inmates?

14:39:00 21 A As I stated earlier --

14:39:01 22 Q You don't have any personal
14:39:02 23 knowledge?

14:39:03 24 A I have no personal knowledge.

14:39:06 25 Q Okay. Do you know whether the

14:39:07 1 Department of Corrections has documented
14:39:12 2 anyplace an opinion of the medical team leader
14:39:16 3 that it was not possible to reliably place two
14:39:17 4 peripheral lines in the inmate?

14:39:19 5 A I'm not aware of such documentation,
14:39:25 6 sir.

14:39:35 7 Q And on the next page of -- of Exhibit
14:39:46 8 85, page 6 at subparagraph 5 it says that the
14:39:49 9 IV catheter shall not be covered and shall
14:39:51 10 remain visible throughout the procedure. Do
14:39:52 11 you see that?

14:39:53 12 A That is correct, sir.

14:39:55 13 Q Do you -- do you know whether that
14:39:57 14 requirement has been honored during each of
14:39:59 15 the four executions -- the first four
14:39:59 16 executions?

14:40:01 17 A The first four executions we did
14:40:04 18 place a sheet over the inmate's groin area to
14:40:07 19 protect his dignity, sir.

14:40:12 20 Q Do you know, did you authorize that
14:40:16 21 this particular provision in paragraph 5 that
14:40:19 22 requires that the IV catheter not be covered,
14:40:20 23 did you authorize that it be covered?

14:40:25 24 A The director did, sir, to protect the
14:40:33 25 inmate's dignity.

14:40:35 1 I would also like to stress that it
14:40:37 2 did -- it did remain, as -- as it states
14:40:39 3 further in there, and shall remain visible
14:40:41 4 throughout the procedure. It was visible
14:40:43 5 throughout the procedure to the Housing Unit 9
14:40:54 6 team leader.

14:40:57 7 Q Now, on that same page in paragraph
14:41:10 8 8, this paragraph authorizes a medical team
14:41:13 9 member to utilize a per -- percutaneous
14:41:17 10 central line in the inmate's femoral vein if
14:41:19 11 in the opinion of -- of a qualified medical
14:41:21 12 team member such a line may reasonably be
14:41:22 13 placed; is that right?

14:41:25 14 A I do read that in here, sir.

14:41:30 15 Q And one of the conditions to
14:41:32 16 inserting the femoral line would be that the
14:41:36 17 medical team leaders have an opinion that it's
14:41:39 18 not possible to reliably place a peripheral
14:41:43 19 line in the inmate; is that correct?

14:41:44 20 MR. ZICK: Object to form.

14:41:46 21 THE WITNESS: I -- I'm sorry, sir, I
14:41:48 22 do not see where you're reading that from.

14:41:49 23 Q BY MR. SANDMAN: Okay. Well, the
14:41:50 24 paragraph begins with the language as follows:
14:41:54 25 Should it become necessary to use an alternate

14:41:58 1 means of establishing an IV line because in
14:41:59 2 the opinion of the medical team leader it is
14:42:02 3 not possible to reliably place a peripheral
14:42:06 4 line in the inmate, a medical team member may
14:42:08 5 utilize a percutaneous central line in the
14:42:12 6 inmate's femoral vein.

14:42:12 7 A Yes, sir.

14:42:12 8 Q Do you see that?

14:42:13 9 A Yes, sir, I do read that.

14:42:16 10 Q So do you understand this to -- to
14:42:20 11 mean that a femoral -- the placement of a
14:42:23 12 percutaneous central line is only appropriate
14:42:26 13 if the team -- if the medical team leader
14:42:28 14 concludes that it's not possible to reliably
14:42:34 15 place a peripheral line in the inmate?

14:42:34 16 MR. ZICK: Object to form.

14:42:36 17 THE WITNESS: Again, sir, the medical
14:42:38 18 team leader has the ultimate call on the
14:42:40 19 placement of the line. I have not been in
14:42:42 20 there, sir, to determine any other lines that
14:42:45 21 he tried to establish, may or may not have
14:42:48 22 tried to establish, or any discussions he may
14:42:50 23 or may not have had with the director of this
14:42:50 24 agency.

14:42:52 25 Q BY MR. SANDMAN: I -- I understand

14:42:54 1 that you don't have any direct knowledge about
14:42:56 2 any of this.

14:42:57 3 That's your testimony; correct?

14:42:59 4 A That is -- that is -- I am not in the
14:43:00 5 room when this occurs --

14:43:00 6 Q Okay.

14:43:00 7 A -- yes, sir.

14:43:02 8 Q But my question really isn't about
14:43:04 9 what you know about the procedure. My
14:43:06 10 question is whether you know and understand
14:43:12 11 the requirement in paragraph 8 of attachment F
14:43:15 12 in subsection G.

14:43:16 13 A I do understand what it says.

14:43:20 14 Q Okay. And it does say that before a
14:43:25 15 percutaneous central line can be placed, the
14:43:26 16 medical team leader first has to conclude that
14:43:29 17 it's not possible to reliably place a
14:43:30 18 peripheral line in the inmate; correct?

14:43:31 19 A That is what it says.

14:43:32 20 MR. ZICK: Object to form.

14:43:33 21 Q BY MR. SANDMAN: Okay. And my only
14:43:34 22 question is: Would you expect that that
14:43:36 23 requirement would be satisfied in each and
14:43:40 24 every case where a peripheral line cannot be
14:43:41 25 utilized?

14:43:43 1 MR. ZICK: Object to form.

14:43:43 2 THE WITNESS: It is my expectation
14:43:46 3 that the medical team leader with his
14:43:48 4 knowledge would know whether or not he --
14:43:53 5 where he should insert the -- the line, sir,
14:43:54 6 through his observation of the inmate.

14:43:55 7 Q BY MR. SANDMAN: Okay. To your
14:43:58 8 knowledge, has the Department of Corrections
14:44:01 9 required the medical team leader to document
14:44:05 10 in any fashion a conclusion that it was not
14:44:08 11 possible to reliably place a peripheral line
14:44:10 12 in any of the inmates?

14:44:11 13 A I believe I answered that question
14:44:13 14 two minutes ago and stated I'm not aware of
14:44:35 15 any such documentation, sir.

14:44:39 16 Q The same paragraph we're looking at,
14:44:43 17 paragraph 8, says that the medical team member
14:44:46 18 responsible for placing a percutaneous central
14:44:49 19 line in the inmate's femoral vein shall have
14:44:51 20 at least one year of regular and current
14:44:53 21 professional experience conducting that
14:44:54 22 procedure. Do you see that?

14:44:56 23 A I do see that, sir.

14:44:59 24 Q Have you personally conducted any
14:45:03 25 type of investigation to determine whether the

14:45:07 1 medical team members or the leader medical
14:45:09 2 team member have that sort of experience?

14:45:10 3 A No, sir, I have not.

14:45:12 4 Q Do you -- to your knowledge, has
14:45:13 5 anyone from the Department of Corrections
14:45:15 6 conducted that investigation?

14:45:16 7 A As I stated earlier, the medical team
14:45:20 8 leader was appointed prior to my appointment.
14:45:22 9 I'm -- I -- I'm not aware if they did or not,
14:45:23 10 sir.

14:45:29 11 Q Okay. Was -- would that be something
14:45:34 12 that you believe that you should determine?

14:45:38 13 As division director, do you think
14:45:41 14 you should determine whether the medical
14:45:43 15 leader -- team leader has that experience?

14:45:44 16 A I can tell you from my conversations
14:45:47 17 with the medical team leader and what his
14:45:51 18 current job is, what his current licensing is,
14:45:52 19 he has that experience.

14:45:56 20 Q Okay. And tell -- so tell me what
14:45:59 21 you base that conclusion on that he has that
14:46:00 22 experience.

14:46:02 23 A Conversations with the medical team
14:46:04 24 leader, personal conversations with him
14:46:07 25 regarding what he does for a living outside

14:46:07 1 of --

14:46:08 2 Q Okay. And tell me what the
14:46:09 3 information is that he told you that -- that
14:46:12 4 causes you to believe he has the experience?

14:46:14 5 A He is a licensed physician and said
14:46:16 6 he's done this procedure numerous times in the
14:46:20 7 past.

14:47:30 8 Q In page 8 of Exhibit 85 --

14:47:30 9 A Yes, sir.

14:47:37 10 Q Under subsection J, paragraph 3.

14:47:39 11 A Yes, sir.

14:47:41 12 Q It provides that the special
14:47:44 13 operations team recorder shall observe the
14:47:46 14 disposal of all chemicals that were not
14:47:49 15 administered and document in the sequence of
14:47:52 16 chemicals form the chemical name, syringe
14:47:57 17 number, amount disposed, date disposed, and
14:47:59 18 the time; correct?

14:47:59 19 A That is correct.

14:48:01 20 Q Do you know whether that's ever been
14:48:02 21 done in -- in connection with any of the five
14:48:08 22 executions that have occurred this past year?

14:48:10 23 A I have not actually looked at the
14:48:14 24 form itself, sir, so I would just have to
14:48:15 25 speculate.

14:48:20 1 Q Okay. And I take it then you're also
14:48:23 2 not aware of the -- whether the requirement in
14:48:25 3 the last sentence there in paragraph 3 is
14:48:27 4 complied with where it says that the special
14:48:29 5 operations team leader and the recorder will
14:48:33 6 each sign the sequence of chemicals form with
14:48:33 7 their identifiers.

14:48:36 8 You don't know whether that's been
14:48:37 9 complied with, do you?

14:48:39 10 MR. ZICK: Object to form.

14:48:40 11 THE WITNESS: Again, sir, I have not
14:48:42 12 seen the form so I don't -- I could not
14:48:49 13 testify whether both of them signed it or not.

14:50:24 14 Q BY MR. SANDMAN: Sir, I've handed you
14:50:33 15 what's previously been marked as Exhibit
14:50:41 16 8 -- excuse me, Exhibit 43, Exhibit 41, and
14:50:48 17 Exhibit 42. And I'd like to have you take a
14:50:51 18 look through those, if you would.

14:51:16 19 A All right, sir.

14:51:18 20 Q Have you ever reviewed these forms
14:51:19 21 previously?

14:51:22 22 A I do not recall reviewing these
14:51:23 23 specific forms, no, sir.

14:51:29 24 Q Okay. Do you know what the purpose
14:51:32 25 of any -- these three exhibits are?

14:51:36 1 A Exhibit 42 is our checklist for
14:51:43 2 Housing Unit 9 that we use for each execution.
14:51:46 3 The correctional journal, it looks like
14:51:48 4 probably the correctional journal that's kept
14:51:52 5 by the recorder in the chemical room, I
14:52:00 6 believe. And the chemical disposition form
14:52:02 7 that you asked me about earlier, sir.

14:52:06 8 Q Okay. And this is -- this chemical
14:52:09 9 disposition form in Exhibit 43 is not
14:52:12 10 recording the information that is required by
14:52:16 11 the attachment F in the protocol, is it?

14:52:17 12 MR. ZICK: Object to form.

14:52:17 13 Q BY MR. SANDMAN: Do you know whether
14:52:18 14 it does or not?

14:52:21 15 A I do not know, sir.

14:52:31 16 Q Okay. At whose direction is the
14:52:38 17 Exhibit 42 prepared? That's the special
14:52:41 18 operations checklist.

14:52:42 19 A I'm sorry, at whose direction is it
14:52:42 20 prepared?

14:52:43 21 Q Yes.

14:52:46 22 A It is part of our standard process
14:52:48 23 for every execution.

14:52:51 24 Q And, I mean, is there some provision
14:52:54 25 in Department Order 710 that requires this to

14:52:54 1 be prepared?

14:52:57 2 A I do not believe it's part of any --
14:53:00 3 anything in 710 that says this will be
14:53:00 4 prepared.

14:53:01 5 Q Okay. And do you know where -- where
14:53:03 6 the information that's contained in Exhibit 41
14:53:06 7 -- 42 comes from?

14:53:08 8 Who -- who is the recorder of the
14:53:08 9 information?

14:53:10 10 A That would be [REDACTED] that we
14:53:12 11 discussed earlier, sir.

14:53:16 12 Q And where does she in turn get --
14:53:22 13 receive the information that she puts in --
14:53:25 14 records on -- on Exhibit 42.

14:53:26 15 MR. ZICK: Object to form.

14:53:27 16 THE WITNESS: Either through personal
14:53:30 17 observation because she is in Housing Unit 9
14:53:37 18 or through radio traffic, sir.

14:53:42 19 Q BY MR. SANDMAN: So do you know where
14:53:44 20 [REDACTED] was during the execution of
14:53:45 21 Mr. Landrigan?

14:53:46 22 A She's at the recorder's table in
14:53:47 23 Housing Unit 9.

14:53:49 24 Q And where is that located?

14:53:52 25 A Do you have a map inside the housing

14:54:16 1 unit? I can show you, sir.

14:54:16 2 (The document was marked as Exhibit
14:54:16 3 Number 87 for identification as of October 5,
14:54:17 4 2011.)

14:54:22 5 MR. SANDMAN: What exhibit number is
14:54:24 6 that, please?

14:54:25 7 THE COURT REPORTER: 87.

14:54:25 8 MR. SANDMAN: 87.

14:54:25 9 THE WITNESS: That's --

14:54:27 10 Q BY MR. SANDMAN: We've handed you
14:54:29 11 what's marked as --

14:54:29 12 A That's a horrible drawing.

14:54:30 13 Q -- Exhibit 87.

14:54:33 14 A This is a horrible drawing, not even
14:54:35 15 close.

14:54:36 16 MR. ZICK: We'll stipulate that it's
14:54:38 17 not drawn to scale.

14:54:39 18 THE WITNESS: Yeah. Really not drawn
14:54:41 19 to scale.

14:54:44 20 MR. SANDMAN: Maybe we could have
14:54:44 21 this marked also.

14:54:44 22 MS. VIGO: Yeah.

14:54:45 23 THE WITNESS: It talks about --
14:54:47 24 because I'm not sure what each of these
14:54:48 25 area -- equipment room, injection room,

14:54:50 1 security area. I'm not visualizing what these
14:54:56 2 are meant to be. I'm guessing that would be
14:54:59 3 the --

14:55:01 4 MR. ZICK: Inmate is here. Chemical
14:55:02 5 room.

14:55:03 6 THE WITNESS: Gotcha.

14:55:04 7 Q BY MR. SANDMAN: Let me -- before you
14:55:08 8 -- let me stop you for a moment and hand you
14:55:13 9 what was previously marked as Exhibit 21.

14:55:17 10 A Okay.

14:55:21 11 Q And I think what was intended was for
14:55:24 12 Exhibit 87 to depict simply the -- what I'll
14:55:29 13 call the top portion of Exhibit 21 in -- in a
14:55:31 14 rough scale fashion.

14:55:34 15 A On -- on this drawing on Exhibit 87,
14:55:38 16 [REDACTED] would be -- this is a door that
14:55:42 17 leads out to the back waiting area. The
14:55:46 18 covered area, she is stationed right here at a
14:55:49 19 table right as you walk in the door on the
14:55:49 20 east wall.

14:55:53 21 Q Okay. So maybe you could just put in
14:55:57 22 her initials there, [REDACTED]?

14:55:59 23 A (Witness complied.)

14:56:14 24 Q May I see that for a moment? Okay.

14:56:20 25 So [REDACTED] would be in the

14:56:27 1 security area. Would she have -- could she --
14:56:30 2 could she hear the -- what was going on in the
14:56:33 3 equipment room during the injection of the
14:56:33 4 chemicals?

14:56:34 5 A Yes, she can.

14:56:38 6 Q And is that because there's a -- the
14:56:41 7 audio equipment brings the sound into the
14:56:42 8 security area?

14:56:42 9 A Please understand that the entire
14:56:45 10 room is about the quarter size of this room.

14:56:57 11 Q Okay. So is there a -- a door up
14:56:59 12 here between the equipment and the security --

14:56:59 13 A Yes, there is a door there.

14:57:02 14 Q And is that door kept open when
14:57:04 15 [REDACTED] would have been in there?

14:57:05 16 A The majority of times I've seen that
14:57:07 17 door, it's open.

14:57:24 18 Q Okay. If you could look at page --
14:57:48 19 Exhibit 42 at page 4 down -- near the top or
14:57:51 20 the middle of the page where it says phase 1?

14:57:54 21 A Yes, sir, I see that.

14:57:56 22 Q Phase 1 is the injection of the first
14:57:57 23 chemicals; is that right?

14:57:59 24 A That's what it states, yes, sir.

14:58:02 25 Q And this would have been -- this

14:58:04 1 exhibit relates to Mr. Landrigan's execution;
14:58:05 2 is that right?

14:58:07 3 A I'm sorry, sir, I -- yes, in October.
14:58:08 4 Yes, sir, it does.

14:58:11 5 Q And the first injection would have
14:58:15 6 been sodium thiopental; is that correct?

14:58:17 7 A That is what it states on here, yes,
14:58:17 8 sir.

14:58:20 9 Q And [REDACTED] has recorded that
14:58:24 10 during phase 1, first injection that eight
14:58:29 11 syringes filled with 1.25 grams each of sodium
14:58:32 12 pentothal were given to Mr. Landrigan; is that
14:58:33 13 right?

14:58:35 14 A She has documented that on this form.
14:58:37 15 That is correct, sir.

14:58:38 16 Q And would you agree with me that
14:58:41 17 that's twice the dose that's to be given to
14:58:44 18 Mr. Landrigan during the first phase of the
14:58:45 19 injection process?

14:59:00 20 MR. ZICK: Object to form.

14:59:08 21 THE WITNESS: That would be the
14:59:12 22 entire -- can I have just a moment just to
14:59:17 23 look at the -- give me just one second,
14:59:18 24 please.

14:59:19 25 Q BY MR. SANDMAN: Maybe we could

14:59:27 1 together look at Exhibit 85 in attachment F at
14:59:29 2 page 3 for the chemical charts.

14:59:33 3 A Yeah, that's what I'm looking for.
14:59:41 4 Yes, it appears that what's documented here
14:59:46 5 was an error.

14:59:49 6 Q Well, let me ask you this.

14:59:52 7 According to the chemical chart in
14:59:59 8 attachment F of Exhibit 85, Mr. Landrigan was
15:00:02 9 to be administered five grams of sodium
15:00:06 10 pentothal in phase 1; is that right?

15:00:11 11 A In phase 1?

15:00:13 12 Q The -- the initial injection of the
15:00:19 13 first chemical, he was to receive four
15:00:20 14 syringes?

15:00:23 15 A Four syringes of 1.25 grams per
15:00:24 16 syringe.

15:00:25 17 Q And that would be five grams?

15:00:27 18 A That would be five total grams.

15:00:28 19 Q Okay. And so Mr. Landrigan was
15:00:32 20 supposed to receive five grams of sodium
15:00:34 21 pentothal in phase 1.

15:00:36 22 That's the -- that's the initial
15:00:37 23 injection of -- of the initial chemical; is
15:00:38 24 that right?

15:00:39 25 A That is what the chemical chart

15:00:40 1 states, yes, sir.

15:00:43 2 Q Okay. And [REDACTED] recorded that
15:00:45 3 Mr. Landrigan was given eight syringes filled
15:00:49 4 with 1.25 grams?

15:00:51 5 A That is what this states, yes, sir.

15:00:55 6 Q And is there any way for us to
15:00:57 7 determine now how much was administered? Do
15:01:00 8 you know?

15:01:03 9 A The special ops team leader and the
15:01:04 10 medical team leader would be able to testify
15:01:08 11 to that, sir. I would not be able to testify
15:01:12 12 as I was not back there.

15:01:18 13 Q Take a look at Exhibit 43.

15:01:31 14 Do you know, by the way, who signs
15:01:31 15 this form?

15:01:34 16 A No, sir. It's blacked out, and I
15:01:40 17 have not viewed the signature on this form.

15:01:48 18 Q Exhibit 43 reports the total dosage
15:01:51 19 of thiopental that was given to Mr. Landrigan,
15:01:54 20 does it not?

15:01:54 21 A It does.

15:01:58 22 Q And it identifies the total as 5,000
15:02:00 23 milligrams or five grams; is that right?

15:02:08 24 A It says 500 milligram vial, 30 units
15:02:14 25 prepped, 10 units used, 5,000 milligrams is

15:02:16 1 what I'm reading on the form, sir.

15:02:18 2 Q Okay. Do you know how to interpret
15:02:18 3 this form?

15:02:19 4 A No, sir, I do not.

15:02:27 5 Q Okay. Would it be fair to say that
15:02:34 6 you have not reviewed any of the logs or
15:02:41 7 summaries containing an explanation of the
15:02:43 8 quantities of drugs that were actually
15:02:46 9 administered to any of the five inmates that
15:02:48 10 were executed during the last year?

15:02:49 11 A It would be safe to say, sir, I was
15:02:53 12 not involved in mixing of the chemicals nor
15:02:54 13 reviewing this chemical disposition form.

15:02:56 14 Q And have you -- and you also have not
15:02:58 15 reviewed the various logs and compared them
15:03:01 16 and -- to determine whether there's any
15:03:05 17 consistency between the reporting of the
15:03:06 18 amounts that were administered to the amounts
15:03:09 19 of chemicals that were administered to the
15:03:10 20 inmates; correct?

15:03:11 21 MR. ZICK: Object to form.

15:03:12 22 THE WITNESS: It would be fair to
15:03:13 23 say, sir, that I was not involved with this,
15:03:15 24 nor have I reviewed this form.

15:03:15 25 Q BY MR. SANDMAN: Okay.

15:03:19 1 A You are correct.

15:03:21 2 Q And have you reviewed the logs for
15:03:24 3 any of the other four executions, either
15:03:29 4 [REDACTED] log or the recorder's log or
15:03:37 5 the -- the document that's called chemical
15:03:39 6 disposition form?

15:03:40 7 A As previously stated, I have not
15:03:43 8 reviewed this form, this chemical disposition
15:03:46 9 form, Exhibit 43 prior on any execution.

15:03:48 10 Q Okay.

15:03:50 11 A And as I've testified to before, yes,
15:03:53 12 I have looked at various journals both in
15:03:55 13 training and after execution. I cannot
15:04:00 14 testify that I've reviewed all of them.

15:04:27 15 MR. SANDMAN: Can we go off the
15:04:30 16 record for a moment?

15:04:30 17 MS. KLAUSNER: Sure.

15:04:31 18 THE VIDEOGRAPHER: We are off the
15:04:34 19 record. The time on the video monitor is 3:04
15:04:35 20 p.m.

15:04:35 21 (A recess was held, after which the
15:04:35 22 deposition resumed as follows:)

15:05:45 23 THE VIDEOGRAPHER: We are on the
15:05:49 24 record. The time on the video monitor is 3:05
15:05:52 25 p.m.

15:05:54 1 Q BY MR. SANDMAN: Sir, can you --
15:05:57 2 can -- can you recall which of the execution
15:05:59 3 logs that you may have reviewed out of the
15:06:01 4 five executions we've had the last five years?

15:06:01 5 A No, sir, I --

15:06:04 6 Q I mean last year, excuse me.

15:06:06 7 A No, sir, I can't. I -- I know I've
15:06:07 8 looked at logs. I can't tell you exactly
15:06:09 9 which one of the executions, whether it was
15:06:12 10 one, two, three, or four of them.

15:06:13 11 I've looked at them as they're
15:06:17 12 filling them out. I stand by [REDACTED] as
15:06:20 13 she's filling some of this out. But no, sir,
15:06:23 14 I cannot testify to which ones.

15:06:26 15 Q And in -- to -- to the extent that
15:06:31 16 you -- you did look at any of the execution
15:06:34 17 logs, did you observe any -- any -- did you
15:06:37 18 have any questions or concerns about any
15:06:40 19 inconsistencies between and among the various
15:06:41 20 logs when you looked at them?

15:06:43 21 A I do not recall expressing any
15:07:40 22 concern regarding the logs.

15:07:40 23 (The document was marked as Exhibit
15:07:40 24 Number 88 for identification as of October 5,
15:07:41 25 2011.)

15:07:47 1 MR. SANDMAN: What number are we at?

15:07:49 2 THE COURT REPORTER: 88.

15:07:56 3 Q BY MR. SANDMAN: Sir, 88 -- what's
15:08:00 4 been marked as Deposition Exhibit 88 --

15:08:00 5 A Uh-huh.

15:08:06 6 Q -- consists of two pages.

15:08:07 7 Have you ever seen these documents
15:08:08 8 before?

15:08:10 9 A Yes, sir, I have.

15:08:13 10 Q Let's just start with page 1. What
15:08:14 11 is that?

15:08:17 12 A This is a form created by -- I
15:08:21 13 believe by the Eyman complex. The initials
15:08:26 14 ADR, ADR would be for Al Ramos who was the
15:08:29 15 deputy warden at the time of the Browning
15:08:33 16 Unit, which has our condemned row on it. And
15:08:35 17 it looks like it is documentation for things
15:08:39 18 they did at the 35-day mark.

15:08:42 19 Q And then does this -- does someone
15:08:44 20 maintain a log like this that then runs
15:08:49 21 through the -- the -- the execution itself?

15:08:51 22 A You would have to ask Al Ramos if he
15:08:54 23 does or the next page is signed by, and I
15:08:58 24 recognize the initials as Ernie Trujillo.

15:09:00 25 Q Could I have it?

15:09:02 1 This first page of Exhibit 88 deals
15:09:05 2 with inmate Beaty; is that right?

15:09:07 3 A That's the name that's at the top,
15:09:07 4 yes, sir.

15:09:09 5 Q Then the next page someone wrote on
15:09:12 6 the upper right-hand part of the checklist
15:09:12 7 Bible?

15:09:13 8 A That is correct.

15:09:15 9 Q So each of the -- looks like each of
15:09:17 10 these pages deals with a different inmate;
15:09:17 11 correct?

15:09:18 12 A That is correct.

15:09:22 13 Q And you said that the -- the second
15:09:26 14 page of the exhibit is initialed by a
15:09:26 15 different person?

15:09:27 16 A That is -- only from personal
15:09:28 17 knowledge, that's the initials of Ernie
15:09:32 18 Trujillo who is the warden at Eyman complex.
15:09:34 19 I know his initials.

15:09:39 20 Q And forgive me, the person that
15:09:40 21 signed page 1?

15:09:43 22 A Is Al Ramos who's the deputy warden
15:09:45 23 of the Browning Unit.

15:09:48 24 Q Okay. So are different wardens or
15:09:50 25 different -- and different facilities

15:09:52 1 maintaining their own checklists prior to each
15:09:53 2 ex -- execution?

15:09:55 3 A These -- each one of these are
15:09:58 4 looking at it coming straight out of the
15:10:00 5 policy, and it -- and it appears that they
15:10:03 6 were documenting that they had done the
15:10:04 7 things -- they did the things that were
15:10:07 8 required for them to do out of the policy at
15:10:11 9 the 35-day mark. This is not a
15:10:12 10 policy-required form.

15:10:16 11 Q Okay. Have you seen the forms like
15:10:17 12 this for the -- the five executions we've been
15:10:19 13 discussing?

15:10:21 14 A I have my own personal forms that
15:10:22 15 I -- I track as well, yes.

15:10:25 16 Q Okay. And what are -- what are the
15:10:28 17 forms that you use to personally track things
15:10:32 18 that are supposed to be done?

15:10:34 19 A A similar checklist to see if the 35
15:10:38 20 days, have these things been done. Nothing
15:10:44 21 official documents, but things that I want to
15:10:46 22 ensure that are done as we go along with the
15:10:46 23 execution.

15:10:49 24 Q And how do you document your
15:10:51 25 checklist; do you do it manually or

15:10:51 1 electronically?

15:10:54 2 A Mine is man -- I do mine manually.

15:10:57 3 Q And where are those documents or
15:11:03 4 checklists that you create manually?

15:11:05 5 A I would have to speculate that either
15:11:09 6 they're in my home office or my home -- or in
15:11:13 7 the office itself.

15:11:14 8 MR. SANDMAN: I'm advised that
15:11:21 9 these -- this exhibit is confidential. Do we
15:11:22 10 all agree on that?

15:11:23 11 MR. ZICK: Yeah.

15:11:23 12 MR. SANDMAN: If I've been told
15:11:24 13 that --

15:11:24 14 MS. VIGO: Yeah.

15:11:25 15 MR. SANDMAN: -- it's probably
15:11:26 16 correct.

15:11:29 17 THE WITNESS: But looking at these,
15:11:31 18 these are right out of the policy so --

15:11:31 19 Q BY MR. SANDMAN: Okay. Now, the
15:11:32 20 document -- do you have the -- the checklist
15:11:35 21 that you created for the -- for each of the
15:11:38 22 five executions?

15:11:40 23 A I -- I'd have to check. I -- I can't
15:11:41 24 say for sure I do.

15:11:43 25 Q And if you have them, you'll give

15:11:45 1 them to your counsel --

15:11:45 2 A Yes.

15:11:47 3 Q -- and they'll get them to us?

15:11:48 4 A Yes. If I still have them.

15:11:49 5 Q Okay. Do you have any other

15:11:51 6 documents? I'm not -- I know you don't know

15:11:51 7 if you have the checklist.

15:11:53 8 Are there any other documents that

15:11:57 9 you -- that you have concerning any of these

15:11:57 10 five executions?

15:12:00 11 A As I stated from the beginning, I

15:12:38 12 keep no official documents of the execution.

15:12:41 13 Q I want to just go back briefly to the

15:12:43 14 acquisition of the drugs that were used in

15:12:44 15 Mr. Landrigan's execution.

15:13:01 16 A Yes, sir.

15:13:01 17 (The document was marked as Exhibit

15:13:01 18 Number 89 for identification as of October 5,

15:13:02 19 2011.)

15:13:06 20 Q BY MR. SANDMAN: This will be Exhibit

15:13:08 21 89?

15:13:09 22 A Uh-huh.

15:13:17 23 Q Have you seen the emails that are

15:13:22 24 shown on Exhibit 89?

15:13:24 25 A I'm not familiar with the email, no,

15:13:27 1 sir. I'm not saying I have not seen it, but I
15:13:28 2 do not recall seeing it. I don't know if this
15:13:29 3 is to me or not.

15:13:32 4 Q And you don't remember if you've ever
15:13:33 5 seen it?

15:13:35 6 A No, sir. I know I was copied on some
15:13:39 7 emails regarding the -- obtaining the
15:13:40 8 chemicals, but I don't remember if this is one
15:13:46 9 of them or not, sir.

15:13:49 10 Q Did anyone ever tell you that
15:13:51 11 there -- that there was a gray market in the
15:13:54 12 pharmaceutical industry that Department of
15:13:56 13 Corrections ought to be concerned about in
15:13:58 14 terms of where they acquire their chemicals?

15:14:00 15 A I'm not familiar with the term gray
15:14:05 16 market, sir.

15:14:06 17 MR. SANDMAN: Let's just take a short
15:14:08 18 break. I may be just about done so --

15:14:09 19 MR. ZICK: Okay.

15:14:10 20 THE VIDEOGRAPHER: We are off the
15:14:13 21 record. The time on the video monitor is 3:14
15:14:15 22 p.m.

15:14:15 23 (A recess was held, after which the
15:14:15 24 deposition resumed as follows:)

15:23:49 25 THE VIDEOGRAPHER: We are on the

15:23:53 1 record. The time on the video monitor is 3:23
15:23:55 2 p.m.

15:24:00 3 Q BY MR. SANDMAN: Mr. Patton, I want
15:24:04 4 to go back to a comment that you made about a
15:24:09 5 checklist that you -- a form of checklist that
15:24:14 6 you maintain before each execution. Do you
15:24:15 7 remember we discussed that --

15:24:16 8 A Yes, sir, I do.

15:24:18 9 Q -- earlier?

15:24:21 10 And where do -- when you're creating
15:24:28 11 a checklist prior to each of these executions,
15:24:32 12 where to -- where do you store that document?

15:24:34 13 A While I'm working on it, I keep what
15:24:36 14 I -- in this notebook. I keep the policy
15:24:40 15 and -- and the checklist as I go along in this
15:24:40 16 notebook.

15:24:42 17 Q And then what do you do with the
15:24:45 18 documents when -- after the inmate is
15:24:45 19 executed?

15:24:47 20 A As I stated earlier, they're either
15:24:50 21 in my home file cabinet or a file cabinet at
15:24:52 22 work, but I'll verify once I get back.

15:24:53 23 Q Okay. And --

15:24:54 24 A I believe I still have them.

15:24:56 25 Q -- do you keep any other type of

15:24:58 1 notes or other documents that pertain to a
15:25:00 2 particular execution?

15:25:03 3 A No, sir. Not that I'm aware of, no,
15:25:03 4 sir.

15:25:06 5 Q Okay. And do you have an assistant
15:25:11 6 that works with you that -- that helps you in
15:25:13 7 meeting your obligations under the Department
15:25:16 8 Order 710?

15:25:23 9 A My executive assistant helps not a
15:25:27 10 lot on executions only due to personal
15:25:27 11 beliefs.

15:25:30 12 Q I mean, do you know whether she would
15:25:31 13 maintain any records or documents pertaining
15:25:33 14 to any of these executions?

15:25:34 15 A Oh, she would not read -- maintain
15:25:35 16 any records or documents, no, sir.

15:25:36 17 Q Okay.

15:25:38 18 A All those are kept at Florence.

15:25:39 19 Q And --

15:25:40 20 A And she does not participate in
15:25:41 21 executions.

15:25:46 22 Q And do you have a home office where
15:25:48 23 you sometimes keep documents?

15:25:51 24 A I -- I do. After 30 years I have
15:25:53 25 file cabinet at home that I keep work records

15:25:54 1 in. I believe the documents you're
15:25:59 2 referencing are probably in a file cabinet in
15:26:00 3 my office.

15:26:01 4 Q At your official office not your home
15:26:02 5 office?

15:26:02 6 A Yes.

15:26:03 7 Q Okay. But you -- will you look
15:26:05 8 at -- you will look in your home office to see
15:26:08 9 if you have any records regarding any of these
15:26:08 10 executions?

15:26:10 11 A I will verify again, but I can tell
15:26:12 12 you that I do not have any -- other than the
15:26:14 13 checklist, I have no -- and the checklists are
15:26:18 14 not -- let me stress this again -- an official
15:26:19 15 form of any time -- any type.

15:26:19 16 Q Okay.

15:26:20 17 A It's just something I created for
15:26:20 18 myself.

15:26:23 19 Q And that's why -- another thing I
15:26:24 20 wanted to just quickly follow up with you on
15:26:26 21 because you made a reference that you don't
15:26:28 22 have official documents.

15:26:31 23 At least, you know, we're interested
15:26:34 24 in anything official or unofficial.

15:26:35 25 A I understand.

15:26:35 1 Q Okay.

15:26:36 2 A Understood.

15:26:39 3 Q So if you have anything -- any
15:26:43 4 documents that are official or unofficial that
15:26:47 5 are related to the five executions or
15:26:52 6 trainings related to executions, people
15:26:54 7 selected, we would like you to -- to provide
15:26:56 8 those to your counsel. Would you do that?

15:26:57 9 A Absolutely.

15:27:09 10 Q Okay. You mentioned that you were
15:27:15 11 not able to stay and be at the execution of
15:27:17 12 Mr. West because you had an urgent family
15:27:19 13 matter to attend to?

15:27:19 14 A That is correct.

15:27:23 15 Q And I assume you informed the
15:27:25 16 director that you would need to leave?

15:27:30 17 A I emailed the director as I left the
15:27:32 18 motel room that morning.

15:27:32 19 Q Okay.

15:27:34 20 A And he acknowledged within five or
15:27:36 21 ten minutes sending me -- sending me his
15:27:37 22 prayers and wishes.

15:27:42 23 Q Okay. And there was a substitute
15:27:44 24 then designated to perform your function the
15:27:46 25 remainder of that day?

15:27:46 1 A That is correct.

15:27:49 2 Q And did that person -- I think you've
15:27:51 3 already identified who that was in --

15:27:51 4 A I did.

15:27:52 5 Q -- to the record.

15:27:55 6 What -- what training did that person
15:28:00 7 have to -- in order to be able to fulfill your
15:28:00 8 role that day?

15:28:02 9 A She also attended all the trainings.

15:28:05 10 Q All the special operation team
15:28:06 11 trainings?

15:28:07 12 A She mirrored me for the last year.
15:28:08 13 Everything I did, she did.

15:28:10 14 Q Okay. And that was done specifically
15:28:13 15 so that if you were not present or could not
15:28:15 16 be present that she would be able to stand in
15:28:16 17 for you?

15:28:17 18 A That is correct.

15:28:27 19 Q One final thing I just wanted to ask
15:28:32 20 you about that's in the attachment F. You can
15:28:35 21 look at Exhibit 85.

15:28:36 22 A Okay. 85, sir?

15:28:37 23 Q Yeah.

15:28:39 24 A Okay.

15:28:48 25 Q In section L, which would be -- I

15:28:50 1 guess it's page 9.

15:28:52 2 A Yes, sir.

15:29:01 3 Q This is the debriefing provision in
15:29:02 4 attachment F; is that right?

15:29:04 5 A Debriefing policy review, yes, sir.

15:29:07 6 Q I think you said that you did
15:29:09 7 participate in a debriefing immediately upon
15:29:11 8 completion of the execution?

15:29:13 9 A After -- after every practice and
15:29:13 10 every execution, yes, sir.

15:29:16 11 Q And you did that in this case except
15:29:18 12 for Mr. West; right?

15:29:21 13 A Except for Mr. West, sir.

15:29:24 14 Q And this section says that the
15:29:26 15 division director for offender operations
15:29:30 16 shall ensure that each team member is also
15:29:32 17 contacted at a later date for follow-up and
15:29:33 18 comment?

15:29:36 19 A That's -- we do. At our next
15:29:37 20 training session we go through everything that
15:29:40 21 we went through at the last execution, see if
15:29:42 22 anybody has any further comments, suggestions,
15:29:46 23 and I also talk individually to each team
15:29:48 24 member just to make sure they're okay. It's
15:29:49 25 tough duty.

15:29:50 1 Q At -- at the next training you do
15:29:51 2 that?

15:29:51 3 A Yes, sir.

15:29:53 4 Q Has there been any training since Mr.
15:29:54 5 West's execution?

15:29:56 6 A No, sir, there is not.

15:29:58 7 Q So is it fair to say there was no
15:30:02 8 follow-up since Mr. West's execution to ensure
15:30:05 9 that team members -- with -- with team
15:30:06 10 members?

15:30:07 11 A There has not been a training since
15:30:18 12 the last execution, sir.

15:30:21 13 Q Okay. Then paragraph 2 of section L
15:30:25 14 says, the procedures shall be reviewed during
15:30:27 15 each execution rehearsal and after each
15:30:30 16 execution by the medical team members and
15:30:31 17 special operations team members.

15:30:31 18 A That --

15:30:32 19 Q Do you see that?

15:30:34 20 A That is correct, sir.

15:30:39 21 Q Has that been done after each
15:30:42 22 execution?

15:30:45 23 A At the debriefing, yes, sir.

15:30:48 24 Q And to your knowledge, are there any
15:30:55 25 documents or is there any documentation of the

15:30:57 1 debriefings that you've described?

15:30:59 2 A As I testified to earlier, sir, I --
15:31:02 3 I -- I am not aware if [REDACTED] documents
15:31:05 4 the debriefing or not.

15:31:09 5 Q And in paragraph 3 it says that the
15:31:11 6 procedures outlined herein shall be
15:31:13 7 independently reviewed by the department's
15:31:16 8 quality assurance committee at the -- at the
15:31:19 9 issuance of a warrant of execution and after
15:31:23 10 every execution and annually.

15:31:25 11 Do you know who was on the department
15:31:26 12 quality assurance committee?

15:31:30 13 A That would be Director Ryan, myself,
15:31:33 14 the Florence warden, and the special
15:31:36 15 operations team leader.

15:31:37 16 Q So has the quality assurance
15:31:43 17 committee conducted the reviews that are
15:31:45 18 required by paragraph L.3?

15:31:46 19 A Yes, sir.

15:31:49 20 Q Is there any documentation of those
15:31:51 21 quality assurance committee reviews?

15:31:54 22 A Not that I'm aware of, sir.

15:32:25 23 Q You testified earlier today that
15:32:29 24 during the four executions that you attended
15:32:34 25 that you had met with the inmates at various

15:32:38 1 times during the day of the execution; is that
15:32:39 2 correct?

15:32:39 3 A That is correct.

15:32:44 4 Q And do you recall the nature of those
15:32:47 5 conversations which -- with each of those four
15:32:49 6 inmates that occurred on the day of their
15:32:50 7 execution?

15:32:54 8 A General conversations. I go in that
15:32:57 9 morning, make sure -- let me back up just a
15:33:00 10 little bit. The night before when we move the
15:33:02 11 inmate over, I go to the cell front, explain
15:33:05 12 the process to the inmate that we're going to
15:33:08 13 be moving him over to Housing Unit 9.

15:33:09 14 We move him to Housing Unit 9. I
15:33:11 15 explain to him the procedures that are going
15:33:13 16 to go on through the night. I explain to him
15:33:16 17 that he's eligible to receive a mild sedative,
15:33:19 18 what procedure he needs to request a mild
15:33:21 19 sedative to help him sleep that night if he
15:33:23 20 cares to do so, and I also run through the
15:33:25 21 process for the next day so there will be no
15:33:27 22 surprises for him.

15:33:31 23 The next morning when I go down to
15:33:33 24 the housing unit, he's -- he's being prepared
15:33:36 25 for -- to move to the table. I go in there,

15:33:38 1 check to see how he's doing, if he has any
15:33:40 2 questions, and whatever he wants to talk
15:33:40 3 about.

15:33:45 4 I can tell you inmate Bible wanted to
15:33:47 5 talk about his last meal, how much he enjoyed
15:33:51 6 it. Inmate King wanted to talk about seeing
15:33:55 7 angels. Beaty really didn't care to talk a
15:33:57 8 whole lot, but we sat there and listened to
15:33:59 9 him. Just depends. It's all up to the
15:34:02 10 inmate. There's no set structure to it,
15:34:04 11 whatever makes them most comfortable to talk
15:34:04 12 about.

15:34:06 13 Q And is anybody with you during these
15:34:07 14 visits?

15:34:08 15 A Yes, there's someone always with us.
15:34:12 16 We're never alone with the inmate. My teams
15:34:15 17 throughout the night are teamed up. When we
15:34:18 18 have him in the room, the restraint team
15:34:21 19 leader's with him the entire time. I'm in and
15:34:21 20 out the room, and at least two other restraint
15:34:22 21 team members are with him as well.

15:34:24 22 And again, it's -- it's whatever we
15:34:28 23 can do to make him as comfortable as possible.
15:34:30 24 Our -- our goal is professional and humane,
15:34:34 25 and I feel discussion with an inmate, whatever

15:34:38 1 he wants to talk about in his last moments of
15:34:39 2 life is very important.

15:34:43 3 And it's been pointed out to me.
15:34:46 4 Dale Baich stopped me on the yard to thank me
15:34:49 5 for the way we treat his clients each and
15:34:51 6 every time. They've always commented on how
15:34:54 7 professional, how humane we've treated them
15:34:54 8 throughout this process. And that's extremely
15:34:59 9 important to me.

15:35:00 10 MR. SANDMAN: That's all I have.
15:35:01 11 Thank very much.

15:35:03 12 THE WITNESS: Thank you, sir.

15:35:04 13 MR. ZICK: We'll read and sign.

15:35:06 14 THE VIDEOGRAPHER: We are off the
15:35:10 15 record. The time on the video monitor is 3:35
15:35:12 16 p.m. This concludes disc 3, and this
15:35:28 17 concludes the deposition.

15:35:28 18 (The deposition concluded at
15:35:28 19 3:35 p.m.)

15:35:28 20

15:35:28 21

15:35:28 22 _____
ROBERT PATTON

15:35:28 23

15:35:28 24

15:35:28 25

1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA)

3 Be it known that the foregoing deposition
4 was taken by me pursuant to stipulation of counsel;
5 that I was then and there a Certified Court Reporter
6 in the State of Arizona, and by virtue thereof
7 authorized to administer an oath; that the witness
8 before testifying was duly sworn by me to testify to
9 the whole truth; pursuant to request, notification
10 was provided that the deposition is available for
11 review and signature; that the questions propounded
12 by counsel and the answers of the witness thereto
13 were taken down by me in shorthand and thereafter
14 transcribed into typewriting under my direction;
15 that the foregoing pages are a full, true, and
16 accurate transcript of all the proceedings had upon
17 the taking of said deposition, all done to the best
18 of my skill and ability.

19 I FURTHER CERTIFY that I am in no way
20 related to nor employed by any parties hereto; nor
21 am I in any way interested in the outcome thereof.

22 Dated at Phoenix, Arizona, this _____ day of
23 _____, 2011.

24 _____
25 CINDY MAHONEY, RMR, No. 50680