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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

DAVID ZINK, et al.,)
)
Plaintiffs,)
) Cause No.
vs.) 2:12-CV-4209-NKL
)
GEORGE A. LOMBARDI, et al.,)
)
Defendants.)

DEPOSITION OF MATTHEW BRIESACHER
Taken on behalf of the Plaintiffs
March 21, 2014
(The proceedings began at 10:15 a.m.)

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Ms. Carlyle

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

DAVID ZINK, et al.,)
)
Plaintiffs,)
) Cause No.
vs.) 2:12-CV-4209-NKL
)
GEORGE A. LOMBARDI, et al.,)
)
Defendants.)

DEPOSITION OF WITNESS, MATTHEW BRIESACHER,
produced, sworn, and examined on the 21st day of March,
2014, between the hours of ten o'clock in the forenoon and
three o'clock in the afternoon of that day, at Husch
Blackwell, 235 East High Street, Jefferson City, Missouri,
before SHERYL A. PAUTLER, a Notary Public and Certified
Court Reporter within and for the State of Missouri, in a
certain cause now pending before the United States District
Court, Western District of Missouri, Central Division
wherein DAVID ZINK, et al., are the Plaintiffs, and GEORGE
A. LOMBARDI, et al., are the Defendants.

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25 314-644-2191

1 IT IS HEREBY STIPULATED AND AGREED, by and
2 between counsel for Plaintiffs and counsel for Defendants,
3 that the deposition of MATTHEW BRIESACHER may be taken in
4 shorthand by Sheryl A. Pautler, a notary public and
5 shorthand reporter, and afterwards transcribed into
6 typewriting; and the signature of the witness is expressly
7 reserved.

8 * * * * *

9 MATTHEW BRIESACHER,
10 of lawful age, being produced, sworn and examined on
11 behalf of the Plaintiffs, deposes and says:

12 [EXAMINATION]

13 QUESTIONS BY MS. CARLYLE:

14 **Q. Would you tell us your name, please.**

15 A. Matt Briesacher.

16 **Q. And have you had your deposition taken before?**

17 A. No.

18 **Q. But you've probably taken a few, true?**

19 A. I have.

20 **Q. Well, I'm still going to say to you what I say**
21 **to everybody whose deposition I'm in. Which is what I'm**
22 **trying to do is ask you questions that make sense. If you**
23 **don't understand the question, please tell me and I'll try**
24 **to ask it better. And if you don't do that, then I'm going**
25 **to assume that you understand it.**

1 **Okay. How are you employed, Mr. Briesacher?**

2 A. I'm the deputy general counsel for the
3 Missouri Department of Corrections.

4 **Q. And who's the general counsel?**

5 A. Rick Williams.

6 **Q. Okay. How long have you been the deputy
7 general counsel?**

8 A. About four weeks.

9 **Q. And before that, what were you?**

10 A. I was the general counsel for the Missouri
11 Department of Corrections.

12 **Q. Okay. Then let me just ask you, what's Rick
13 Williams' full name?**

14 A. It's Richard Williams.

15 **Q. And so you're now his deputy, but before -- up
16 until four weeks ago, you were the general counsel?**

17 A. Correct.

18 **Q. And how long were you the general counsel?**

19 A. Approximately a year.

20 **Q. And what did you do before then?**

21 A. I was an attorney for the Missouri Department
22 of Revenue.

23 **Q. And when did you start doing that?**

24 A. I was with the Department of Revenue for about
25 a year.

1 Q. Okay. So what year are we in now?

2 A. 2014. So in about March of about 2013, give
3 or take, I went from Revenue to the Department of
4 Corrections.

5 Q. Okay.

6 A. In 2012, January I think, I went -- is when I
7 started at the Missouri Department of Revenue.

8 Q. And before then?

9 A. I worked as legal counsel for the Missouri
10 Department of Corrections for three years.

11 Q. Okay. So you were legal counsel for the
12 Missouri Department of Corrections. What's the difference
13 between that and general counsel?

14 A. The -- as it was constituted when I was
15 general counsel, there are three attorneys who work
16 in-house for the Department of Corrections. The supervisor
17 is the general counsel and legal counsel is the two other
18 attorneys.

19 Q. Okay. So you started being the legal counsel
20 at the Department of Corrections in 2009 when?

21 A. I think that's either January -- I think it
22 was 2009 -- or 2010 maybe.

23 Q. Okay. And so before you were legal counsel
24 for the Department of Corrections, what did you do?

25 A. I worked at Missouri Attorney General's

1 Office.

2 Q. And how long did you do that?

3 A. About eight years. I started in 2002.

4 Q. Okay. And before 2002, what did you do?

5 A. I was in law school.

6 Q. Where did you go to law school?

7 A. Washington University in St. Louis.

8 Q. And you graduated in what year?

9 A. 2002.

10 Q. And where did you do your undergraduate work?

11 A. Eastern Illinois University.

12 Q. And when did you graduate there?

13 A. 1999.

14 Q. Okay. What's your date of birth?

15 A. 3/31/77.

16 Q. And your Social Security number?

17 A. I'm not going to answer that question.

18 Q. It's not privileged and I'd ask that you

19 answer it.

20 MR. HANSEN: We're going to move for that

21 portion to be confidential.

22 MS. CARLYLE: Sure. You can designate it as

23 confidential if you want to. But the local rules of the

24 Western District of Missouri require that when any

25 deposition is filed or -- publically that Social Security

1 numbers be redacted. That protects you.

2 MR. HANSEN: That's fine. We're also going to
3 mark this portion as confidential.

4 MS. CARLYLE: Okay. So what's being marked as
5 confidential -- because we've run into this problem before.

6 MR. HANSEN: Right. We're going to be very
7 clear this time.

8 MS. CARLYLE: Is the question what's your
9 Social Security number and the answer.

10 MR. HANSEN: That is correct.

11 **Q. (By Ms. Carlyle) Okay. What is the answer?**

12 A. I'm not answering the question.

13 MS. CARLYLE: Okay. I'm not really prepared
14 to call the judge about that question, but we'll deal with
15 that later.

16 MR. HANSEN: That's fine.

17 **Q. (By Ms. Carlyle) Have you ever been convicted**
18 **of a crime?**

19 A. No, I have not.

20 **Q. Have you ever been sued?**

21 A. Yes, I have.

22 **Q. Can you tell us what you've been sued for and**
23 **when?**

24 A. To my recollection, I've been sued four times.
25 One time was an action in replevin for my duties related to

1 being counsel with the Department of Corrections. One
2 action was for violations of the ADA in relation to my work
3 at the Department of Corrections. There's another action
4 for violation of the constitutional rights, again
5 associated with my role with the Department of Corrections.
6 And then this lawsuit.

7 **Q. Okay. I'm sorry. I got a little behind. The**
8 **first one was replevin?**

9 A. Yes.

10 **Q. And when was that?**

11 A. I don't recall. It was while I was legal
12 counsel.

13 **Q. And where was that filed at?**

14 A. I forget the county, but it was in Farmington.

15 **Q. St. Francois County?**

16 A. I believe that's right.

17 **Q. Maybe they say St. Francis. Who knows.**

18 **Okay. And were you sued in your official**
19 **capacity or individual or both?**

20 A. I think -- I think it was official capacity
21 only.

22 **Q. Okay. And what was that about, replevin?**

23 A. I was serving as the litigation coordinator
24 for the department. I reviewed some mail an offender
25 received and he was suing to get the mail returned to him.

1 Q. Okay. And what was the outcome?

2 A. It was dismissed in my favor.

3 Q. Okay. And then the second one -- second one
4 was the one I missed completely. What was the second one?

5 A. Allegations of -- it is a pro se action
6 against me. So there are numerous counts.

7 Q. Okay.

8 A. I don't know that I could state all of the
9 counts, but ADA seems to be the major thrust of the
10 plaintiff's concerns.

11 Q. Is that still pending?

12 A. Yes, it is.

13 Q. And where is it pending?

14 A. Eastern District of Missouri.

15 Q. Can you tell me the plaintiff's name?

16 A. The plaintiff is -- I forget how it's
17 captioned. Christopher Cross. And he's either as guardian
18 or next of friend for offender Eldon Flaherty.

19 Q. Okay. And who was the plaintiff in the
20 replevin case?

21 A. I don't recall.

22 Q. Do you have any -- can you give me -- you said
23 it was when you were legal counsel. Can we get a year
24 range for that one?

25 A. Sometime between 2010 and 2012.

1 Q. Okay. Then the third one you said was some
2 sort of constitutional rights?

3 A. Correct.

4 Q. Tell me a little more about that.

5 A. Reginald Clemmonds is suing me claiming I
6 violated his First Amendment rights.

7 Q. And where is that one pending?

8 A. I -- I don't know if any portion of the case
9 is still pending. I've been dismissed. I think it was
10 pending in the Eastern District.

11 Q. Eastern District of Missouri. Okay.

12 A. Federal court.

13 Q. Okay. And then the -- then this case is the
14 fourth?

15 A. Correct.

16 MS. CARLYLE: Okay. So let me show you what's
17 been marked as Exhibit 1 for the purposes of this
18 deposition. I spoke with the court reporter before this
19 deposition, we're going to refer to them as MB. So this
20 will be MB1. So we'll have a fighting chance of figuring
21 out what deposition they were exhibits to.

22 (Whereupon Exhibit No. 1 was marked for
23 identification.)

24 Q. (By Ms. Carlyle) I'll show you what we're
25 marking as MB1. Can you tell me what that is?

1 A. This is the current execution protocol for the
2 Missouri Department of Corrections.

3 **Q. Okay.**

4 MR. HANSEN: Just a second. I want to take a
5 look at it.

6 MS. CARLYLE: Sure.

7 **Q. (By Ms. Carlyle) Did you have any involvement**
8 **in drafting that document?**

9 A. Yes.

10 **Q. Tell me what you did.**

11 A. I drafted that document.

12 **Q. Okay. And was that the first execution**
13 **protocol that you drafted?**

14 A. No.

15 **Q. What other execution protocols have you**
16 **drafted?**

17 A. There were -- well, I don't -- when you say
18 drafted, I had input in modifying two previous protocols.

19 **Q. Okay. And would those have been two of the**
20 **previous propofol protocols?**

21 A. That is correct.

22 **Q. Okay. So to -- let's see here.**

23 A. I can give you this one back.

24 **Q. Okay. With respect to Paragraph B1 of this**
25 **protocol, how did you determine that 5 grams of**

1 **pentobarbital was the amount to put in there?**

2 A. I reviewed protocols from other states and
3 that amount seemed consistent. And based on my research,
4 it seemed to be a standard amount for this purpose.

5 **Q. Okay. Other than reviewing protocols from**
6 **other states, what research did you do?**

7 A. I did a case law review of those states and
8 whether or not their protocols had been accepted by the
9 courts. And in that research, I was able to review some
10 filings, exhibits to filings discussing this protocol -- or
11 this amount of pentobarbital.

12 **Q. Okay. Did you actually speak to anyone from**
13 **other states or did you just read documents?**

14 A. Regarding the amount of pentobarbital to use?

15 **Q. Well, actually let me broaden it a little.**
16 **Regarding the developing of this protocol, period.**

17 A. I made calls to other states and asked them
18 for copies of their protocols.

19 **Q. Okay. What states were those?**

20 A. I know I reached out to Ohio. I reached out
21 to Texas, Oklahoma. I don't recall if I called or was able
22 to find through other methods Kentucky, Washington. I may
23 have looked or talked to Arizona, Florida, Georgia,
24 Virginia to the best of my recollection.

25 **Q. And did all of those states have pentobarbital**

1 protocols?

2 A. No.

3 Q. Do you remember which ones did and which ones
4 didn't?

5 A. Not as we sit here.

6 Q. Okay. How did it happen that you were the --
7 were the drafter of this protocol?

8 A. By the nature of my position.

9 Q. Okay. Did someone instruct you to do that?

10 A. Yes.

11 Q. And who was that?

12 A. Director Lombardi.

13 MS. CARLYLE: Okay. This is actually going to
14 be -- let's make it Exhibit 3, even though we haven't had a
15 2 yet.

16 (Whereupon Exhibit No. 3 was marked for
17 identification.)

18 MR. HANSEN: This is MB3?

19 MS. CARLYLE: MB3.

20 MR. HANSEN: Can I see that, please?

21 MS. CARLYLE: Sure. And you have a copy there
22 too.

23 MR. HANSEN: I'll let you look at the actual
24 one. So it's on the record, what's the Bates stamp number
25 down at the bottom of that?

1 MS. CARLYLE: The Bates stamp number is Pages
2 2246 to 2249. That is the Bates stamped number from a disc
3 that I show was prepared on January 9, I think, and I
4 received it on January 10.

5 MR. HANSEN: Thank you.

6 Q. (By Ms. Carlyle) And can you tell us what
7 Exhibit MB3 is?

8 A. This is a draft that I prepared for an
9 execution protocol.

10 Q. Has it ever been enacted or designated as the
11 execution protocol?

12 A. No.

13 Q. What are the differences between Exhibit 3 and
14 Exhibit 1?

15 A. Paragraph A went from three -- or four -- in
16 the draft, it was four separate paragraphs. In the
17 October 18 protocol, it was combined to a single paragraph
18 and the language was changed. And it was formatted
19 differently.

20 Q. I need one of them. Okay.

21 A. It was formatted differently. Paragraph B1(a)
22 in the draft was removed.

23 Q. Okay. I'm sorry. Was removed -- I'm sorry.
24 Was removed -- well, let me ask this question: Does
25 Exhibit 3 predate Exhibit 1 in your drafting? Did you

1 **draft Exhibit 3 first?**

2 A. Yes.

3 **Q. Okay. So Exhibit 3 was a draft, then**
4 **Exhibit 1 was what was ultimately adopted?**

5 A. Correct.

6 **Q. Okay. Yeah. Now it makes sense to me. When**
7 **you say Exhibit B1(a) was removed, what else happened**
8 **between Exhibit 3 and Exhibit 1?**

9 A. Well, all of Paragraph B was renumbered. Do
10 you want me to identify the renumbering or is that
11 sufficient?

12 **Q. That's sufficient.**

13 A. Paragraph B1 -- well, because this was a
14 draft, the outlining wasn't perfect.

15 **Q. Okay.**

16 A. But on Page 2, the paragraph marked with a
17 small B was deleted. The paragraph marked with a large A
18 was deleted, the paragraph with a capital B was deleted,
19 the paragraph with the capital C was deleted.

20 **Q. And can you tell us, please, what that --**
21 **those paragraphs under little B were; generally what the**
22 **substance of them was? I mean I can be a little more**
23 **specific than that. Did they provide for an alternative**
24 **method of execution or an alternative drug setup?**

25 A. Yes.

1 Q. Okay. And what was the alternative?

2 A. It would have been to use the drug midazolam
3 in combination with the drug hydromorphone.

4 Q. Okay. When you were directed to draft -- were
5 you also directed to draft Exhibit 3?

6 A. It was part of the same project.

7 Q. It was part of the same project. Okay.
8 Were you directed to provide those two
9 alternatives?

10 A. No.

11 Q. Okay. So who decided that there would only be
12 one alternative?

13 A. I did.

14 Q. And then you -- I presume you made that
15 recommendation to the director?

16 A. Correct.

17 Q. Why did you decide that?

18 A. We were able to obtain pentobarbital.

19 Q. When did you draft Exhibit 3?

20 A. Other than saying that it was prior to
21 October 18 of 2013, I can say it was in that time frame. I
22 don't know that I could give you a specific date.

23 Q. I'm not sure what in that time frame means
24 though.

25 A. Prior to that.

1 Q. But I mean six months prior, a year prior?

2 A. No. It would have been probably -- when the
3 draft was actually created, probably after the governor's
4 announcement to return -- that the State of Missouri would
5 be returning to propofol and October 18, sometime in that
6 time frame. It may have been a few days before that
7 announcement, may have been a few days after.

8 Q. So you had this project before that
9 announcement?

10 A. Yes. I had the project to review the
11 protocol, yes.

12 Q. So I'm sorry. What was the project exactly?
13 What were you assigned to do?

14 A. I was assigned to make sure that the
15 department had an execution protocol that it could carry
16 out its statutory obligations.

17 Q. So was -- were you involved in a decision that
18 the propofol protocol probably wouldn't do that?

19 MR. HANSEN: Object to the form of the
20 question. It's vague and ambiguous.

21 MS. CARLYLE: It is vague and ambiguous. Let
22 me try saying it again.

23 Q. (By Ms. Carlyle) If I understood you -- if I
24 understand you, you said that your assignment was to make
25 sure that the department had a protocol that they would

1 carry out?

2 A. Correct.

3 Q. Was -- did you have any concern that the
4 protocol -- there was a protocol in effect at the time you
5 got the assignment?

6 A. I mean -- I'm sorry if I've mischaracterized
7 it. Just as part of my duties -- my assignment may be
8 misleading. Part of my duties as general counsel is to
9 make sure the department has an execution protocol so it
10 can carry out its statutory requirements. You keep using
11 it as I was given a directive. And I didn't mean to
12 mislead you.

13 Q. Okay. So what you're saying is that at all
14 times, that was part of your job?

15 A. It was part of my job.

16 Q. Is it still part of your job?

17 A. I still have some involvement in the execution
18 process. I don't know. It has not been clarified to me
19 what my role is regarding drafting protocols.

20 Q. So when did you decide that you needed to --
21 to draft Exhibit 3 -- I guess what I'm saying is, you might
22 have started on Exhibit 3 before the governor made his
23 announcement; is that correct?

24 A. That is correct.

25 Q. Did you know the governor was going to make

1 his announcement ahead of time and that's why you started
2 or did you start for another reason?

3 A. I started for another reason.

4 Q. And what was that?

5 A. Based on information that I was seeing and
6 hearing, I wasn't sure that propofol would have remained --
7 that we would have been able to get any more at that point.
8 So I began looking at alternatives for new chemicals, new
9 sources, that kind of thing.

10 Q. Okay. What was your involvement -- now, one
11 difference between both Exhibit 1 -- well, one difference
12 between Exhibit 1 and the protocols that were adopted prior
13 to it is that it includes the pharmacist as a member of the
14 execution team, correct?

15 A. Correct.

16 Q. The pharmacist wasn't included as a member --
17 there was no pharmacist included as a member of the
18 propofol protocol execution team, was there?

19 A. Not to my knowledge.

20 Q. If you're not sure, I can pull it up.

21 A. You asked if there was a pharmacist that was a
22 member of the execution team.

23 Q. Yes.

24 A. I'm not sure that I know all of the members of
25 the execution team while the propofol protocol was pending,

1 if you're asking me about the language of the protocol.

2 **Q. Well, the protocol -- maybe I'm unclear. Are**
3 **there members of the execution team that are not listed in**
4 **the protocol?**

5 A. The protocol describes who may be a member of
6 the execution team.

7 **Q. Right.**

8 A. The protocol does not identify the members of
9 the execution team.

10 **Q. It identifies them by position however?**

11 A. Yes. I'm with you now.

12 **Q. So although it doesn't say the physician Dr. X**
13 **is a member of the execution team, the protocol describes**
14 **the functions of the people who are members of the**
15 **execution team?**

16 A. Correct.

17 **Q. It does not, for example, include a**
18 **manufacturer who sells chemicals to a pharmacist?**

19 A. Which protocol are you discussing?

20 **Q. Any of them.**

21 A. I believe the current protocol would cover the
22 supplier.

23 **Q. Do you recall this protocol which is Exhibit 1**
24 **which you have -- oh, I see. Including individuals. Yeah.**
25 **Okay.**

1 **So you believe that the person who -- the firm**
2 **that sells chemicals to the compounding pharmacist under**
3 **this protocol is a member of the execution team?**

4 A. I believe they are covered by the protocol,
5 yes.

6 MS. CARLYLE: Okay. But the -- well, let me
7 pull up that propofol protocol. It will be clearer if I
8 look at the right page and number.

9 THE WITNESS: Actually, while you're doing
10 that, do you mind if I step out and ask my attorney a
11 question?

12 MS. CARLYLE: Sure. You can step out and ask
13 your attorney a question.

14 (Whereupon there was a short break.)

15 **Q. (By Ms. Carlyle) Mr. Briesacher, what I'm**
16 **going to show you is a document which has been filed as**
17 **Exhibit 4 to Document 73 in this current lawsuit filed**
18 **April 10 of 2013. And it's a three-page document and I'm**
19 **going to show you Page 1.**

20 MR. HANSEN: So the record is clear, you're
21 actually showing him your laptop computer.

22 MS. CARLYLE: That's true.

23 MR. HANSEN: Which has the electronic document
24 that you have identified as Exhibit 4 attached to Document
25 72 -- doesn't that say?

1 MS. CARLYLE: I believe it says 73. But hang
2 on.

3 MR. HANSEN: Yes, that's right.

4 Q. (By Ms. Carlyle) I know that I've now made the
5 print smaller so you could see the whole page.

6 A. Okay.

7 Q. But let me ask you -- and I can make it bigger
8 if you want me to do that.

9 A. No. If you can be patient with me, I think I
10 can read it.

11 Q. Okay.

12 A. Okay.

13 Q. Okay. So first of all, I mean can we agree
14 that's the May 2012 protocol? Do you want to see the end?

15 A. I will trust your assertion.

16 MR. HANSEN: Well, let's scroll through it. I
17 believe that to be true, but let's scroll down. It says
18 it's three pages. Let's look at the date on the bottom.

19 A. Yes. It's May 15, 2012.

20 Q. (By Ms. Carlyle) Okay. And who are the
21 execution team members by function in that protocol? Can
22 you see that or do you want me to make it larger?

23 A. No. I can see that. By function, we're
24 talking about those described in Paragraph A?

25 Q. Right.

1 A. The team consists of contracted medical
2 personnel and department employees. A physician, nurse or
3 pharmacist prepares the chemicals used during the lethal
4 injection. A physician, nurse or emergency medical
5 technician inserts intravenous lines, monitors the prisoner
6 and supervises the injection of lethal chemicals by
7 non-medical members of the execution team and two
8 department employees inject the chemicals into the
9 prisoner.

10 **Q. Okay. Now, the execution team members in**
11 **Exhibit 1, Exhibit MB1, to those descriptions is added the**
12 **last sentence of Paragraph A, correct?**

13 A. I'm not sure I would completely agree with
14 that.

15 **Q. Okay. What do you disagree with?**

16 A. I don't think the first sentence on Exhibit 1
17 encompasses everyone that is described in Paragraph A of
18 the May protocol.

19 **Q. Okay.**

20 A. So I think the second sentence encompasses
21 that -- those -- some of those people, individuals.

22 **Q. But the second sentence in Exhibit A --**
23 **Paragraph A of Exhibit 1 also encompasses some people who**
24 **simply aren't included in the 2012 document, correct?**

25 A. It could, yes.

1 **Q. Specifically, it doesn't -- the 2012 document**
2 **makes no mention of anyone who prescribes drugs, does it?**

3 A. If you don't mind.

4 **Q. I don't mind at all.**

5 MR. HANSEN: To make it easier, it's actually
6 the same as Exhibit 3, correct?

7 THE WITNESS: That portion appears to be the
8 same.

9 MS. CARLYLE: You're right. Okay.

10 A. I'm not sure that a person who was writing a
11 prescription would not have been covered by the May 2012.

12 **Q. (By Ms. Carlyle) I'm not asking you that. I'm**
13 **asking whether there's any mention of anyone writing a**
14 **prescription?**

15 A. Direct mention?

16 **Q. Yes.**

17 A. No. There's no use of the word "prescription"
18 in Paragraph A.

19 **Q. Okay. There's no mention of anyone who**
20 **compounds chemicals, is there, in Paragraph A of the 2012**
21 **protocol and in your previous draft Exhibit 3?**

22 A. I think I would disagree with that.

23 **Q. There's a -- the word "compound" occurs in**
24 **that paragraph?**

25 MR. HANSEN: That wasn't your question.

1 MS. CARLYLE: Okay. Then I'm clarifying my
2 question.

3 Q. (By Ms. Carlyle) Does the word "compound"
4 appear in that paragraph?

5 A. In the May 2012 protocol, the word "compound"
6 it not located in Paragraph A.

7 Q. Okay. Is there any mention in Paragraph A of
8 the May 2012 protocol of anyone who supplies chemicals?

9 A. Let me make sure I understand your question.
10 Is the phrase "supplies chemicals" used in the May 2012
11 protocol?

12 Q. Well, that's my first question.

13 A. No, I don't recall seeing that language.

14 Q. Do you read the May 2012 chemical [sic] as
15 covering someone who supplied chemicals, but did not
16 prepare them for use in execution?

17 A. I believe that it might.

18 Q. Okay. Are you aware that prior to the
19 issuance of Exhibit 1, the Attorney General's Office made
20 no attempt to hide the identity of anyone who supplied
21 chemicals?

22 A. I have no knowledge of that.

23 Q. Okay. So you weren't consulted before the
24 identity of the suppliers of propofol were disclosed?

25 MR. HANSEN: I'm going to object to

1 attorney/client privilege of conversations that might have
2 existed between the client and the lawyers.

3 MS. CARLYLE: Okay. I'm not asking him for
4 any conversations. I'm asking was he aware -- okay.

5 Q. (By Ms. Carlyle) Were you aware that the
6 suppliers of propofol were disclosed?

7 A. Yes.

8 Q. Okay. Were you involved in the decision about
9 whether or not to disclose them?

10 A. No. And if I may clarify. In May 2012, I was
11 not working for the Department of Corrections.

12 Q. Absolutely. And I had forgotten that. So who
13 was the general counsel of the Department of Corrections in
14 2012?

15 A. It's my understanding that it was David
16 Hansen.

17 MS. CARLYLE: Okay. Mr. Hansen, we'll take
18 your deposition another day.

19 MR. HANSEN: Not my decision.

20 MS. CARLYLE: That's true.

21 Q. (By Ms. Carlyle) Okay. But in any event, you
22 drafted Exhibit 1. And in Exhibit 1, Paragraph A, you made
23 direct references to individuals who -- and I reading from
24 Exhibit 1 now -- prescribe, compound, prepare or otherwise
25 supply the chemicals for use in the lethal injection

1 procedure?

2 A. Correct.

3 Q. Were you directed to do that specifically by
4 anyone in the Department of Corrections?

5 A. No.

6 Q. Who under Missouri law decides who's going to
7 be on the execution team?

8 A. The director of the Missouri Department of
9 Corrections.

10 Q. Okay. I'm going to ask you some questions now
11 about a pharmacy which has been designated by the
12 department of -- by the counsel for the defendants in this
13 case as M6. Do you know what concern I'm talking about?

14 MR. HANSEN: Object to the form of the
15 question. It's vague and ambiguous when you say "concern."

16 MS. CARLYLE: I mean the business.

17 MR. HANSEN: Okay.

18 A. I'm familiar with M6.

19 Q. (By Ms. Carlyle) Okay. And M6 was the
20 pharmacy that supplied the execution drugs for Joseph
21 Franklin, Alan Nicklasson and Herbert Smulls execution,
22 correct?

23 A. Correct.

24 Q. Just making sure we're talking about the same
25 pharmacy here. Were you the person who located or

1 **recruited that source of the drugs?**

2 A. My hesitation is located or recruited implies
3 kind of two different things. So, yes, I participated in
4 that process.

5 **Q. Okay. Who else participated in that process?**

6 A. The division director David Dormire.

7 **Q. Well, did you provide the name to Mr. Dormire?**

8 A. Yes.

9 **Q. Where'd you get it?**

10 MR. HANSEN: Objection.

11 MS. CARLYLE: What's the objection?

12 MR. HANSEN: The objection is that information
13 is specifically the information that the Lombardi -- it
14 will lead to revealing the identity of a past member of the
15 execution team.

16 MS. CARLYLE: I'm asking him who it was. I'm
17 asking him how he figured out to call this pharmacy.

18 MR. HANSEN: And by determining who he
19 contacted, who he talked about it with, that is information
20 that would directly lead to determining the identity of a
21 former member of the execution team. And under the
22 Lombardi decision and under --

23 MS. CARLYLE: Well --

24 MR. HANSEN: Let me finish.

25 MS. CARLYLE: Sure. You finish and then I'll

1 finish.

2 MR. HANSEN: Under 546.720 and under the State
3 Secrets privilege, that information is protected.

4 MS. CARLYLE: Let me just make clear for the
5 record that the Lombardi decision does not protect
6 anything. The Lombardi decision held that the Court should
7 have granted a Writ of Mandamus because the case should
8 have been dismissed. The Lombardi decision says expressly
9 the privilege issues in this case are complex, but we do
10 not address them.

11 The district court in this case has already
12 held that there is no privilege and that the State Secrets
13 Act does not protect this information. That decision has
14 never been disturbed by any court. So it may or may not be
15 enforceable at this point. But that is the only decision
16 that has been made about privilege in this case.

17 That's not to say that you shouldn't go ahead
18 and assert the privilege. But let me also add that what is
19 privileged is the identity. I think when we get to the
20 point where we cannot ask this witness about the process
21 that led to the identification of M6 because it might
22 identify M6, then I think it's clear that there's been
23 improper inference with the discovery process.

24 MR. HANSEN: Well, that's exactly what our
25 concern is. Let me make clear for the record exactly --

1 maybe a little more clear what the objection is. Pursuant
2 to the Lombardi decisions, there are -- the Lombardi
3 decision, there are no claims in this case to which this
4 information to claims in this case is relevant. Because
5 Plaintiffs have not stated claims, even in their second
6 amended complaint, on which relief can be granted. So that
7 information, as the Lombardi court determined, is protected
8 from disclosure including in discovery.

9 Your question seeking information about that
10 would lead to the members of the Missouri execution team.
11 That information is not relevant based on your second
12 amended complaint. It's confidential, privileged and
13 protected from disclosure, again under the Lombardi
14 decision, under section 546.702 of the Missouri statutes
15 and under the State Secrets provision.

16 I know we're going to continue to get into
17 this -- some of these similar questions.

18 MS. CARLYLE: Let's see if we can get the
19 judge on the phone.

20 MR. HANSEN: I will have similar objections to
21 much of this information.

22 MS. CARLYLE: Okay. Let's see if you we can
23 get the judge on the phone. I'm frankly not asking him to
24 tell me who M6 is. I'm asking him what process he went
25 through to determine -- if I wanted a compounding

1 pharmacist, there's some ways I can do it. I don't know
2 how he did it. The only thing I can say is I think I'm
3 entitled whether or not he's supposed to identify M6, I'm
4 entitled to know for the purposes of this lawsuit how he
5 came up with a name.

6 MR. HANSEN: And we -- the attorneys in this
7 case have demonstrated by the sheer disclosure of a form of
8 a document, that you will take that information, you will
9 narrow down who that pharmacy was or is or attempt to and
10 determine what the range of possibilities --

11 MS. CARLYLE: Oh, no question about it. We're
12 going to use whatever information you give us.

13 MR. HANSEN: -- what the range of
14 possibilities are. So the information that is related --
15 that could reveal those identities is protected. And it's
16 our position that based on Lombardi and based on your
17 second amended complaint, there should be no disclosure of
18 that information in that lawsuit.

19 MS. CARLYLE: Of course the relevance issue in
20 discovery is far different than the relevance issue, you
21 know, in connection with evidentiary privileges as you
22 know. Moreover, there has been no ruling on the current
23 motion to dismiss the second amended complaint the Lombardi
24 court didn't purport to do that because it hadn't been
25 filed yet when the Lombardi court made its ruling.

1 So there is no ruling that there is no issue
2 in the second amended complaint to which this information
3 is not relevant because there has been no ruling on the
4 second amended complaint by anyone, including the Lombardi
5 court.

6 But let's see if we can get the judge on the
7 phone. We may end up just adjourning this deposition.
8 Because I'm not sure we're going to get very far if that's
9 the position you're going to take.

10 MR. HANSEN: I agree. And I frankly think
11 that we need to probably present that issue to the Court in
12 a fuller context than a conference call. But we can
13 proceed.

14 MS. CARLYLE: Let's see what we can do. I
15 guess what I would say again for the record is that in our
16 recent telephone conference with the judge, she encouraged
17 us to come to her when we had problems. And as I perceived
18 it at least, was concerned that plaintiffs had not been
19 proactive enough in doing that. So with that in mind, I'd
20 like to see what she has to say at this point.

21 MR. HANSEN: I understand and agree
22 completely. What I'm just saying is I don't think -- I
23 think this issue is significant enough and is going to be
24 repeated enough that it may take more than just an argument
25 over the phone. But I think that should be the first step.

1 MS. CARLYLE: We can go off.

2 (Whereupon there was a conference call with
3 Judge Philips.)

4 MS. CARLYLE: We're back on the record. Let
5 me attempt to summarize what we just did for the record.
6 And then of course, Mr. Hansen, you can correct my summary
7 if I have it wrong. During the time we were off the
8 record, we contacted Judge Philips and she stated in
9 response to the state's -- the defendant's objection to my
10 questioning Mr. Briesacher about the method by which he
11 located or identified the pharmacy M6, she ruled that that
12 issue was not relevant to the claims before the Court and
13 that I could therefore not ask those questions. Is that
14 fair?

15 MR. HANSEN: I think that's accurate.

16 MS. CARLYLE: Okay. So just for the record, I
17 want to say that while I understand that's the Court's
18 ruling, by not asking those questions again, I'm not
19 intending to say that I will never again attempt to bring
20 that up with the Court in attempt to raise that issue again
21 for other reasons and on other bases and in other context.
22 But for the purposes of this deposition, I will not ask
23 about that area.

24 Q. (By Ms. Carlyle) Let me just ask you, are you
25 willing to affirm or deny that the -- that M6 refers to the

1 **hypothecary shop in Tulsa, Oklahoma?**

2 MR. HANSEN: Objection to the question.

3 Again, the very same objection I made earlier.

4 **Q. (By Ms. Carlyle) Okay. But if I'm not**
5 **mistaken, before we started this objection process, you**
6 **indicated that you did provide the name of M6 to Mr.**
7 **Dormire; is that correct?**

8 A. Yes.

9 **Q. Okay. Did you provide Mr. Dormire with**
10 **information concerning the bidding process for supplying**
11 **the chemicals?**

12 A. Yes.

13 **Q. Mr. Dormire has indicated that he was told he**
14 **needed to make contact with three pharmacies in order to**
15 **obtain a bid. Did that information come from you?**

16 A. I don't believe I can answer that question. I
17 think it would be attorney/client communication.

18 **Q. Did Mr. Dormire tell you he planned to do that**
19 **by contacting the name you provided and calling two other**
20 **pharmacies at random from the phone book?**

21 MR. HANSEN: I'm going to object to the form
22 of the question in that it is a compound -- compound
23 question.

24 Answer to the degree you can unless it would
25 reveal an attorney/client communication or legal advice.

1 A. I do not recall if we discussed the -- his
2 actions before or after he took them.

3 **Q. (By Ms. Carlyle) Do you know whether pharmacy**
4 **M6 has provided execution drugs to other states?**

5 MR. HANSEN: I'm going to object to the form
6 of the question -- excuse me -- not the form of the
7 question. I'm going to object again for the same reason I
8 objected to the question about whether or not he spoke to
9 the pharmacy or who he spoke to. And I don't know, if I
10 can just refer to my initial objection, would that be
11 sufficient for you?

12 MS. CARLYLE: Yes.

13 **Q. (By Ms. Carlyle) Did you do any research or**
14 **make any inquiry concerning the reliability of M6?**

15 A. Yes.

16 **Q. Did you inspect M6, the pharmacy M6, before**
17 **obtaining --**

18 MR. HANSEN: Again, I'm going to object the
19 same -- my original objection.

20 MS. CARLYLE: You're objecting to the yes or
21 no question did you visit the place?

22 MR. HANSEN: Well, I'll withdraw the
23 objection. Just bear in mind that we have to be very
24 careful about --

25 MS. CARLYLE: I understand it.

1 MR. HANSEN: Just let me -- we have to be very
2 careful about what we allow to answer. Because certainly
3 if that answer would reveal the identity, it would be very
4 difficult to take it back. Although, under -- I do want to
5 make this on the record. I think you're aware of the
6 Protective Order 112. But it does give parties -- is it 10
7 or 14 days -- to designate as confidential things that
8 weren't designated at the time of the deposition. So there
9 may be things we would designate confidential after this
10 deposition.

11 MS. CARLYLE: Okay.

12 MR. HANSEN: We want to be very careful. So I
13 may err on the side of objecting prematurely. But go
14 ahead.

15 Q. (By Ms. Carlyle) So the question to which I
16 think the objection has been withdrawn is did you inspect
17 the pharmacy?

18 A. Did I go to visit the pharmacy?

19 Q. Yes.

20 A. No.

21 Q. To your knowledge, did anyone from DOC visit
22 the pharmacy before obtaining drugs from them?

23 A. Not -- not to my knowledge.

24 Q. Okay. Do you know Jake Jackson?

25 A. No.

1 **Q. Do you -- if I tell you he's the general**
2 **counsel of the hypothecary shop in Tulsa, Oklahoma do you**
3 **know him based on that description?**

4 MR. HANSEN: I'm going to object again for my
5 original objection. Because again, any questions about any
6 other pharmacies allow you to narrow the scope down. And
7 we're going to assert the original objection because it
8 will reveal potentially identities to current or former.

9 MS. CARLYLE: I'm just asking him if he knows
10 the general counsel of the hypothecary shop in Tulsa,
11 Oklahoma.

12 MR. HANSEN: And I've asserted the objection.

13 **Q. (By Ms. Carlyle) Okay. Did you make inquiry**
14 **as to any professional complaints filed against pharmacy**
15 **M6?**

16 A. Yes.

17 **Q. Were there any?**

18 A. I can't --

19 MR. HANSEN: Again, I'm going to object to
20 that question --

21 MS. CARLYLE: Okay.

22 MR. HANSEN: -- based on my original
23 objection.

24 **Q. (By Ms. Carlyle) Do you know whether pharmacy**
25 **M6 ever compounded pentobarbital before supplying it to the**

1 **Missouri Department of Corrections?**

2 A. Yes, I do know whether it compounded
3 pentobarbital prior to compounding it for the Missouri
4 Department of Corrections.

5 **Q. And did it?**

6 A. I can't answer that question.

7 MS. CARLYLE: Let me just state for the record
8 that if -- but for the judge's ruling, I would have asked
9 Mr. Briesacher to describe the history of his dealings with
10 M6, including how he initially contacted them and all of
11 his subsequent dealings with them. I can ask those
12 questions more specifically, but I'm assuming they'd be
13 subject to your current objection.

14 MR. HANSEN: That's correct. And that's
15 sufficient.

16 **Q. (By Ms. Carlyle) Okay. Let's turn to the --**
17 **to the person who prescribes -- who writes prescriptions**
18 **for the pentobarbital. Was that a person that you**
19 **identified?**

20 A. Yes.

21 **Q. And are you willing to tell us what steps you**
22 **took to identify that person?**

23 MR. HANSEN: I'm going to object based on my
24 original objection.

25 **Q. (By Ms. Carlyle) Did you investigate the**

1 license of that person?

2 A. Yes.

3 Q. How did you investigate it?

4 MR. HANSEN: Same objection.

5 Q. (By Ms. Carlyle) Let me show you what's
6 been -- let's take a look at Exhibit 4.

7 THE WITNESS: Do you mind if I take my jacket
8 off?

9 MS. CARLYLE: Not a bit.

10 MR. HANSEN: Off the record.

11 (Whereupon there was an off-the-record
12 discussion.)

13 (Whereupon Exhibit No. 4 was marked for
14 identification.)

15 Q. (By Ms. Carlyle) Mr. Briesacher, I've handed
16 you what's been marked as Exhibit 4. Do you want to trade
17 me. And I will state for the record that this is Discovery
18 Pages 2048, 2049, 2050 and 2051 which were included in the
19 disc provided on January 10, 2014.

20 Can you tell me what -- first of all, are
21 those the -- well, tell me what you have there.

22 A. The first page is a letter dated 11/27/2013 to
23 my attention. The second page is a summary of charges.
24 And the third and fourth page were -- sorry. The third
25 page is terms and conditions. And the fifth page is

1 e-mails between myself and another individual dated
2 November 27, 2013.

3 Q. And I understand based on previous objections,
4 that you're not willing to identify the person or business
5 to whom this is -- this is -- this correspondence pertains.
6 But I'll ask you, does it pertain to a laboratory?

7 A. Yes.

8 Q. And does it concern testing of chemicals for
9 lethal injection?

10 A. Yes.

11 Q. Were you the person who located or selected
12 this laboratory?

13 MR. HANSEN: Let's talk about this for a
14 second.

15 MS. CARLYLE: Off the record.

16 (Whereupon there was a short break.)

17 (Whereupon the reporter read back the previous
18 question.)

19 A. No.

20 Q. (By Ms. Carlyle) Who did?

21 A. M6.

22 Q. M6?

23 A. Yes.

24 Q. Is there a connection between this laboratory
25 and M6?

1 A. I don't know if there's a current relationship
2 between M6 and this laboratory.

3 **Q. At the time that that you were engaged in this**
4 **correspondence, was there?**

5 A. Yes.

6 **Q. Are you aware that Mr. Dormire paid M6 a**
7 **combined payment for the services of the pharmacy and the**
8 **laboratory services?**

9 A. Yes.

10 **Q. Can you tell me at the time you were**
11 **corresponding with the laboratory, what the connection was**
12 **between the two businesses?**

13 A. They had a contractual relationship.

14 **Q. Was laboratory testing performed on the drug**
15 **used to execute Michael Taylor?**

16 MR. HANSEN: We're going to object for the
17 same reasons as my initial objection.

18 MS. CARLYLE: Let me just be clear. You're
19 objecting to answering the question about whether or not
20 laboratory testing was performed?

21 MR. HANSEN: Yes.

22 MS. CARLYLE: Okay. I'm going to go ahead and
23 ask the rest of these questions so we'll be clear about
24 what I would ask.

25 MR. HANSEN: Sure.

1 **Q. (By Ms. Carlyle) Why have no laboratory**
2 **reports been provided on any testing for Michael Taylor?**

3 MR. HANSEN: Same objection.

4 **Q. (By Ms. Carlyle) Was that testing performed,**
5 **if there was any performed, by the same laboratory or a**
6 **different laboratory?**

7 MR. HANSEN: Same objection.

8 **Q. (By Ms. Carlyle) With how many laboratories**
9 **does the Department of Corrections have contracts to test**
10 **pentobarbital?**

11 MR. HANSEN: Same objection.

12 **Q. (By Ms. Carlyle) Do you believe that the**
13 **laboratory is a member of the execution team?**

14 MR. HANSEN: I'm going to object to the form
15 of the question and vagueness. I'm not sure what
16 execution, what time frame we're talking about.

17 **Q. (By Ms. Carlyle) Today, is the laboratory a**
18 **member of the execution team?**

19 MR. HANSEN: I will object to that question
20 based on my original objection.

21 MS. CARLYLE: Well, the judge says she won't
22 be back until 1:00. We probably do need to call her about
23 that.

24 Let me ask you to pull out Exhibit 5. Do you
25 want to mark that for us, please.

1 (Whereupon Exhibit No. 5 was marked for
2 identification.)

3 **Q. (By Ms. Carlyle) Can you tell us if you know**
4 **what that it, please?**

5 A. Yes. This is a bid record document.

6 **Q. Okay.**

7 MR. HANSEN: Could we identify the Bates
8 numbers?

9 MS. CARLYLE: Certainly. The Bates number on
10 this document is 1292, again from the disc that was
11 provided on January 10, 2014.

12 **Q. (By Ms. Carlyle) When does it reflect that**
13 **the -- well, when was it signed?**

14 A. The document is dated 10/21/13.

15 **Q. And this document refers to bidding for 10**
16 **grams of injectable pentobarbital, correct?**

17 A. Correct.

18 **Q. Are you aware of the existence of any other**
19 **bid records like this for injectable pentobarbital?**

20 A. No, I'm not aware of any other bid records.

21 **Q. Okay. So there is no similar bid record that**
22 **might have been created after October 21 of 2013 as far as**
23 **you know?**

24 A. As far as I know. I'm not aware of any bid
25 record created after this one.

1 Q. Again, but for the judge's ruling, I would now
2 ask you -- well, actually I think you answered this one.

3 Did you identify M7?

4 A. Did I?

5 Q. I mean did you find it, locate it, whatever?

6 A. Yes.

7 Q. Okay. And did you provide the name of M7 to
8 Mr. Dormire?

9 A. Correct.

10 Q. When did you do that?

11 A. I do not recall.

12 Q. Can you give me within a month or a year?

13 A. It would have been within -- I'm completely
14 blanking. What month is this?

15 Q. This is March.

16 A. It would have been February -- January or
17 February of this year.

18 Q. Okay. Did you provide him with that name
19 before the Oklahoma judgment in which M6 -- or which the
20 hypothecary shop in Tulsa, Oklahoma which I guess hasn't
21 been identified as M6, agreed not to supply drugs for
22 Missouri, did you provide the name before that?

23 MR. HANSEN: Objection based on my original
24 objection.

25 MS. CARLYLE: You're objecting to giving a

1 date when you provided the name of M7 to Mr. Dormire?

2 MR. HANSEN: All right. Go ahead.

3 A. I don't recall.

4 Q. (By Ms. Carlyle) You don't remember whether it
5 was before or after that judgment?

6 A. I don't know that I've ever seen that
7 judgment.

8 Q. Okay. Well, I can give you a date. Let me
9 just ask it this way because we don't really need a date.
10 At the time that you provided that name, were you aware
11 that a complaint had been filed against the hypothecary
12 shop?

13 A. Yes.

14 Q. So if the complaint was filed on February 11
15 of 2014, then the -- then you provided the name after that;
16 would that be fair?

17 A. I don't know that I can confirm or deny that.
18 I do not know.

19 Q. I understand that. I'm saying if I were to
20 represent to you that the complaint was filed on
21 February 11, what you're telling me is that it was after
22 that event that you provided the name?

23 A. No. What I'm saying is, I do not know that it
24 was before -- whether it was before or after that date.

25 Q. Okay. Was there someone in the Department of

1 **Corrections who directed you to find another pharmacy?**

2 A. No.

3 **Q. Were you referred to M7 by M6?**

4 MR. HANSEN: Object. I will object based on
5 my original objection to that question.

6 **Q. (By Ms. Carlyle) Did you perform research
7 concerning the reliability of M7?**

8 A. Yes.

9 **Q. Do you know whether M7 had ever supplied
10 execution drugs in other states?**

11 MR. HANSEN: Objection based on my original
12 objection.

13 **Q. (By Ms. Carlyle) Do you know whether M7 had
14 ever compounded pentobarbital before supplying it to MDOC?**

15 MR. HANSEN: Same objection.

16 MS. CARLYLE: He answered it for M6.

17 MR. HANSEN: I know he did.

18 MS. CARLYLE: I think you waived the objection
19 then.

20 MR. HANSEN: Go ahead and answer unless you --

21 MR. SPILLANE: Let the judge decide. I don't
22 know that he waived it.

23 MS. BORESI: It's with regard to a different
24 entity.

25 MS. CARLYLE: Well, that's true. It's exactly

1 the same question however.

2 Q. (By Ms. Carlyle) Did you make inquiry as to
3 whether any professional complaints had been filed against
4 M7?

5 A. Yes.

6 Q. And where there any?

7 MR. HANSEN: Objection based on the original
8 objection.

9 MS. CARLYLE: Again, I'll state for the record
10 but for the judge's earlier ruling, I would explore with
11 Mr. Briesacher the complete history of his dealings with
12 M7. And I would further state, which I didn't this
13 morning, that I believe this is relevant to our deliberate
14 indifference claim. But if you want to make the same
15 objection, that's fine.

16 MR. HANSEN: Same objection.

17 Q. (By Ms. Carlyle) Let's go back to Exhibit 5.
18 Did you perform the redactions on Exhibit 5?

19 A. I do not recall. I may have.

20 Q. Okay. Have you been involved in performing
21 redactions on discovery that's been supplied to the
22 plaintiffs in this case?

23 A. Yes, I have.

24 Q. Exhibit 5 reflects that in the case of two, I
25 guess, requests, the product was not available; is that

1 correct?

2 A. Yes, that's what the document states.

3 Q. Okay. Did you decide to redact the identity
4 of the people who said that the drug was not available?

5 A. Yes.

6 Q. Why did you do that?

7 A. I believe that information is confidential as
8 it could lead to the identity of the bidder that did
9 receive the award.

10 Q. Okay. Let me just ask you because I think I
11 kind of need to understand this to understand exactly what
12 you do now. You said up until -- first of all, before I
13 forget, are you separately represented today? Who's your
14 lawyer who's here?

15 MR. HANSEN: The Attorney General's Office
16 represents the Department of Corrections and he's --

17 MS. CARLYLE: Mr. Briesacher is a named party.

18 Q. (By Ms. Carlyle) What I'm asking you is are
19 you personally represented by the Attorney General's Office
20 today?

21 A. It's my understanding I'm not personally sued.
22 I'm sued in my official capacity --

23 Q. Right. I understand that.

24 A. -- which means it's the same as a suit against
25 the department. So I would be represented by the Attorney

1 General's Office.

2 Q. Okay. Let me also then ask you, you said your
3 job title had changed about a month ago.

4 A. Correct.

5 Q. Was the department you're in restructured in
6 some way?

7 A. Yes.

8 Q. So what's the current structure of it, just so
9 I understand who's who, if you don't mind?

10 A. Of the entire department or just the legal
11 department?

12 Q. Just the legal department. It would take you
13 a while probably to do the entire department.

14 A. I'm not sure I could do the entire department.
15 But just the legal department, I report to the general
16 counsel Mr. Williams.

17 Q. Okay.

18 A. And then two attorneys report to me.

19 Q. Okay.

20 A. And I guess there are other units that report
21 to the general counsel's office.

22 Q. There are other -- what's a unit in that
23 sense?

24 A. The Procedures and Forms Management Unit
25 reports to the general counsel and the Prison Rape

1 Elimination Act Unit -- Central Office Unit also reports to
2 that position.

3 Q. Okay. And so when you were general counsel,
4 did those two units report to you?

5 A. Correct.

6 Q. So until four weeks ago, what was the
7 structure of the legal department?

8 A. There was no deputy general counsel.

9 Q. Okay. Has your role in the execution process
10 changed as a result of your change in job title?

11 A. Yes.

12 Q. Okay. Then we'll divide it up into two here.
13 Let's talk first of all about up until four weeks ago. Did
14 you participate in simulation training for executions?

15 A. Yes.

16 Q. Okay. And what was your role in the
17 simulation trainings?

18 A. It would probably best be described as a
19 subject matter expert.

20 Q. As is?

21 A. Subject matter expert.

22 Q. What's a subject matter expert?

23 A. I was the one with the most knowledge of the
24 protocol.

25 Q. Do you have -- do you have knowledge of how to

1 insert intravenous lines and administer chemicals; is that
2 part of your knowledge base?

3 A. No. I have no specific training in inserting
4 intravenous lines or chemicals.

5 Q. So what did you do during the simulation
6 training?

7 A. I observed and participated in the training.
8 And if there were questions that needed to be answered
9 relating to department policy, I assisted in answering
10 those questions.

11 Q. How did you participate in the training? You
12 just said you observed or participated. I'm just asking
13 how you participated other than answering questions?

14 A. I guess -- I don't know a better way to
15 describe it.

16 Q. I guess -- maybe I'm just confused. Observed
17 is one thing and participated, to me, sort of sounds like
18 another. Maybe that's a distinction you don't make. But
19 other than answering questions, what did you do during the
20 training sessions, I guess is the question.

21 A. I was not the trainer.

22 Q. Okay.

23 A. So I guess when I say I participated, the
24 trainer was responsible for providing the training. So I
25 observed and participated in that I was receiving training

1 from the trainer.

2 Q. Okay. So you were receiving training is what
3 you're telling me?

4 A. Yeah, I guess so.

5 Q. What kind of training did you receive?

6 A. I received training on the process to conduct
7 an execution.

8 Q. Okay. And why did you think you needed
9 training on the process of conducting an execution?

10 A. I was involved in writing the protocols and
11 policies for conducting executions.

12 MS. CARLYLE: Okay. Let's take a look at
13 exhibit seven.

14 (Whereupon Exhibit No. 7 was marked for
15 identification.)

16 MS. CARLYLE: I'm tendering to Mr. Briesacher
17 Exhibit 7 which is Pages 1175, 1176, 1177 and 1178 of the
18 discovery provided on disc on January 10 of 2014.

19 MR. HANSEN: There's some pages behind it.
20 Were these with it? They're not marked.

21 MS. CARLYLE: I have four pages in the
22 exhibit.

23 THE WITNESS: I don't know where those came
24 from.

25 MR. HANSEN: They're not marked as exhibits.

1 MS. CARLYLE: Yes, they are.

2 MR. HANSEN: Well, some have labels and some
3 don't.

4 MS. CARLYLE: That's because she's labeling
5 them as I bring them up.

6 MR. HANSEN: Okay. Well, I'm asking where
7 they belong.

8 MS. CARLYLE: They belong to you because
9 they're part of the set of copies that were bound together.

10 **Q. (By Ms. Carlyle) Back to Exhibit 7. Can you**
11 **tell me please what Exhibit 7 is?**

12 A. The first page of the exhibit is a memo to me
13 from Dr. Greg Markway dated November 15, 2013. The second
14 page is a memo from Dr. Greg Markway to me dated
15 September 5, 2013. The third page is a memo from Dr. Greg
16 Markway to director George Lombardi dated 11/15/2013.

17 **Q. And does that reflect that there was a copy**
18 **provided to you?**

19 A. Yes, that is correct. It indicates there was
20 a copy provided to Matt Sturm and to myself and to the
21 file. And the fourth page is a memo from Dr. Greg Markway
22 to me dated 11/15/2013 with copies to Matt Sturm and the
23 file.

24 **Q. Just so we're clear -- frankly I didn't**
25 **realize that until this moment -- do Pages 1175 and 1178**

1 appear to be -- to have the same text on them? I realize
2 they have some different handwritten and stamped markings,
3 but I think they're the same thing, are they not?

4 A. Yes.

5 Q. And what's the general topic of these memos?

6 A. Offender Joseph Franklin.

7 Q. And what about Offender Joseph Franklin?

8 A. Appears to be reviews of his medical records.

9 Q. In fact, they're reviews of the -- and contain
10 recommendations concerning whether he's competent to be
11 executed, don't they?

12 A. Pursuant to Statute 552.010, correct.

13 Q. What's your role or what at that time was your
14 role in the determination as to whether a prisoner was
15 competent to be executed?

16 A. Providing legal advice and counsel if asked.

17 Q. Okay. Did you -- well, is the -- this review,
18 it looks like, was conducted by Dr. Markway; is that
19 correct?

20 A. That is correct.

21 Q. Is that -- is it a part of -- or at least is
22 it part of DOC policy that he performs that sort of review?

23 A. It is the practice. I don't know if it is the
24 policy.

25 Q. Okay. I'm not -- I'm not -- I mean I think I

1 understand the difference. And that was the information I
2 needed.

3 Let's take a look at -- I'm looking for 8.
4 And it may be that I ended up with yours.

5 MR. HANSEN: I've got my copy of 8.

6 MS. CARLYLE: Okay. Let's see what I've got.

7 MR. HANSEN: I don't have a yellow...

8 MS. CARLYLE: There isn't a yellow one yet
9 because she hasn't marked it.

10 MR. HANSEN: You're looking for an 8?

11 MS. CARLYLE: Yes. Do you have 8?

12 THE WITNESS: No.

13 MR. HANSEN: I just handed you one.

14 MS. CARLYLE: You did. Give me just a second
15 to reorganize here. If I do that, we'll save time later.
16 Do you have a 9?

17 MR. HANSEN: There's 9 right here.

18 MS. CARLYLE: There should be another set of
19 those.

20 MR. HANSEN: I've got ones that were not
21 marked with exhibit stickers. All I've got is 1, 5, 6, 8
22 and 9.

23 MS. CARLYLE: Somehow my 8 and 9, I think,
24 migrated.

25 (Whereupon Exhibit No. 8 was marked for

1 identification.)

2 MS. CARLYLE: So this is 8. You can use
3 whichever one you want.

4 MR. HANSEN: Look at the original one.

5 MS. CARLYLE: If you've marked that one up --
6 I need to see one.

7 Q. (By Ms. Carlyle) Okay. I've handed you what's
8 been marked as Exhibit 8. I will tell you that it is
9 Discovery No. 2797. It was provided in discovery on
10 March 20, 2013 [sic]. And I'd ask you what that is?

11 A. It is a memorandum from Dave Dormire to Lenny
12 Lenger dated March 20, 2014.

13 Q. And is it a request for payment for contracted
14 providers assisting in the execution of Jeff Ferguson?

15 A. Yes.

16 Q. And does it list three providers and three
17 different amounts of money?

18 A. Yes.

19 Q. Are you able to tell me by function which
20 amount goes with what function? That is, I'm not asking
21 you whether you're paying John Smith, but I'm asking is one
22 the pharmacy, is one --

23 A. If I can use the M designations, would that be
24 responsive?

25 Q. Sure.

1 A. I believe the first one -- provider listed is
2 M6.

3 Q. M6?

4 A. The pharmacy.

5 Q. Okay. But is the pharmacy for Jeffrey
6 Ferguson?

7 A. Oh, sorry. I got the dates wrong. M7. Thank
8 you for correcting me.

9 Q. Sure.

10 A. I believe the second provider listed is for M3
11 and the third provider listed was for M2.

12 Q. Okay. So none of those providers are
13 laboratories, are they? M2 is the nurse, correct?

14 A. You're correct on -- no. None of those
15 providers are laboratories.

16 Q. Okay. Do you know whether the sum to be paid
17 to M7 includes the sum for laboratory testing?

18 MR. HANSEN: Objection based on my original
19 objection.

20 MS. CARLYLE: I actually don't have a whole
21 lot more. Let me go through that, and then if we have
22 questions for the judge, we'll ask her all at once. If
23 that's okay. Because I'd like to ask her about that.

24 Q. (By Ms. Carlyle) Let me take you back,
25 Mr. Briesacher, to the night of the execution of Alan

1 Nicklasson and ask you where were you located during the
2 period -- during the warrant period for Mr. Nicklasson? By
3 warrant period, I mean the period from 12:01 on the day
4 that he was scheduled to be executed until he was executed,
5 which I believe was 20 hours later.

6 A. When I was at the institution, I would have
7 been in a conference room in the administration building.

8 Q. Okay. When were you at the institution within
9 that period?

10 A. I don't think I could give you exact times.

11 Q. General times.

12 A. I believe there was a standdown during that
13 period. So any time that we were not on a standdown, I
14 would have been in the conference room or the vicinity
15 thereof.

16 Q. And when there wasn't a standdown, were you in
17 direct communication with Attorney General Koster?

18 A. Not the entire time.

19 Q. Okay. When did you last talk to Mr. Koster
20 before the execution?

21 MR. HANSEN: Objection, form of the question,
22 lack of foundation. Go ahead.

23 A. Well, immediately -- I shouldn't say just
24 immediately. But prior to the execution, I established
25 direct contact with the Attorney General's Office.

1 Q. (By Ms. Carlyle) Okay. Were you talking to
2 Mr. Koster or someone else?

3 A. I don't recall.

4 Q. Okay. Were you the person who was responsible
5 for telling Mr. Lombardi that there were no legal
6 impediments to the execution? Not -- okay. Were you
7 responsible for communicating to Mr. Lombardi that there
8 were no legal impediments to the execution?

9 A. I was responsible for relaying the message
10 that we received from the Attorney General's Office prior
11 to execution.

12 Q. Okay. At the time Mr. Nicklasson was
13 executed, were you aware that there was a motion for Stay
14 of Execution pending before the 8th Circuit?

15 A. I do not recall.

16 Q. Did you tell Mr. Lombardi that there was a
17 Stay motion pending before the 8th Circuit?

18 A. I do not recall.

19 Q. Let me ask you similarly for -- did you
20 perform a similar function during the warrant period for
21 Joseph Franklin?

22 A. Yes.

23 Q. And were you then the person who was
24 responsible for relaying the message from the Attorney
25 General's Office to Mr. Lombardi?

1 A. Yes.

2 Q. And in both cases, Mr. Nicklasson and
3 Mr. Franklin did you do that personally? Did you talk to
4 Mr. Lombardi personally or did you relay that through some
5 third person?

6 A. Personally.

7 Q. Was Mr. Lombardi at the institution?

8 A. Yes.

9 Q. And was the same -- was the same process
10 followed for Mr. Smulls?

11 A. Same process?

12 Q. In that you were at the institution, you were
13 the person responsible for communicating to Mr. Lombardi
14 and you did so personally?

15 A. Yes.

16 Q. Okay. And with respect to Mr. Franklin, were
17 you aware at the time you made that communication, that
18 there was a Stay motion pending in the district court?

19 A. I do not recall.

20 Q. And did you tell Mr. Lombardi that?

21 MR. HANSEN: I'm going to object to what he
22 told his client.

23 MS. CARLYLE: I -- I guess my response to that
24 objection is in that the protocol requires that he be
25 notified -- that Mr. Lombardi be notified by the -- make a

1 determination, I don't think this is really an
2 attorney/client function. Plus he's answered the question
3 that he doesn't recall three times. I think you've clearly
4 waived that one.

5 MR. HANSEN: It is attorney/client potentially
6 privileged communication. But go ahead. I'll withdraw the
7 objection.

8 You can answer the question same way you did
9 previously.

10 MS. CARLYLE: Unless he recalls.

11 A. Well, I guess since I don't recall if I knew
12 the information, I don't know that I can answer the
13 question you've just asked.

14 Q. (By Ms. Carlyle) Okay. And with respect to
15 Mr. Smulls, were you aware at the time you communicated
16 with Mr. Lombardi, that there was a motion for Stay of
17 Execution pending in the United States Supreme Court?

18 A. I don't recall if there was a motion pending
19 or not. So I don't recall if I...

20 Q. Well, there certainly was. The question is,
21 did you know it?

22 A. I don't recall if I knew it or not.

23 Q. Okay. And do you recall whether you
24 communicated about that to Mr. Lombardi?

25 A. If I don't recall if I knew it, I can't recall

1 whether I communicated it to him.

2 MS. CARLYLE: Okay. I know we're being
3 cautious here. And that's what I'm doing. I don't want to
4 be in a position where later on someone says, oh, but you
5 never asked him if he communicated that to Mr. Lombardi.

6 MR. HANSEN: I understand.

7 **Q. (By Ms. Carlyle) Okay. Do you have any**
8 **knowledge about the process of disposing of unused**
9 **pentobarbital after executions?**

10 A. Yes.

11 **Q. And what's that knowledge?**

12 A. I know for the executions we have conducted
13 how the disposal or lack of disposal has occurred.

14 **Q. Well, tell me about what happened to the**
15 **unused pentobarbital on Mr. Franklin's execution.**

16 A. It was disposed of.

17 **Q. By whom?**

18 A. I would have to look at the document.

19 (Whereupon Exhibit No. 9 was marked for
20 identification.)

21 **Q. (By Ms. Carlyle) Have a look at Exhibit 9.**

22 A. Yes.

23 **Q. Can you tell us what Exhibit 9 is?**

24 A. It is a chemical log dated -- well, for the
25 execution of Joseph Franklin on November 20, 2013.

1 Q. Does that tell you what you need to know about
2 how the chemicals were disposed of?

3 A. No.

4 Q. What document would you need to look at in
5 order to know that?

6 A. The -- either the chemical inventory sheet or
7 there's another record of -- there are two forms regarding
8 inventory that we've produced. And I don't remember the
9 titles of the two of them.

10 Q. I guess what you're telling me is that in the
11 materials that have been produced are the documents you
12 need?

13 A. Yes.

14 MR. HANSEN: Are you asking who did it or how
15 it was done? Just to kind of move it along.

16 MS. CARLYLE: I asked who did it. He said
17 he'd have to look. But let's move along. Let's go off the
18 record for a minute.

19 (Whereupon there was a short break.)

20 Q. (By Ms. Carlyle) So first let me ask this
21 question: Do M2 and M3 dispose of the unused drugs?

22 MR. HANSEN: I think you might want -- need to
23 ask the question more specifically. Because there have
24 been -- I don't think it's been the same in each instance.
25 So I don't know if you want to clarify the question.

1 **Q. (By Ms. Carlyle) Did M2 and M3 dispose of the**
2 **drugs in Mr. Franklin's case?**

3 A. No.

4 **Q. I understand that you don't know the name of**
5 **the person who disposed of it, but can you explain the**
6 **process by which they were disposed and the sort of person**
7 **by job description who would have disposed of it?**

8 A. I know it was a department staff member. It
9 was -- it was one of two or three people who were in the
10 business office or the administration. My understanding of
11 the process was that they took a bucket, filled it bleach
12 and a small amount of water, injected the two leftover
13 syringes into that, mixed it up and threw it out.

14 **Q. Let me -- let me ask you, so what happened to**
15 **the chemicals that were used in the execution of Mr.**
16 **Nicklason?**

17 A. It's my understanding that a very similar
18 process was used.

19 **Q. And Mr. Smulls?**

20 A. The unused chemicals were placed in a sealed
21 container.

22 **Q. Let me refer you to Exhibit 1, Paragraph D2.**

23 A. Exhibit 1 D2.

24 **Q. Right. Just read that to us, please?**

25 A. Medical personnel shall monitor the prisoner

1 during the execution.

2 Q. I'm sorry. F1.

3 A. Medical personnel shall properly dispose of
4 unused chemicals.

5 Q. Okay. Does the -- do you believe that the
6 process you've described with respect to Mr. Franklin and
7 Mr. Nicklasson complies with that?

8 A. Yes.

9 Q. So the person who disposed -- the people who
10 dispose of the chemicals, according to the account you've
11 given, are medical personnel?

12 A. No.

13 Q. Okay. Then since the protocol says that
14 medical personnel dispose of the accused -- of the unused
15 chemicals, why is it that you think that the process that's
16 used complies with that?

17 A. I think the medical personnel placed it and
18 identified what needed to be disposed and provided
19 direction to the individuals who did it.

20 Q. So do you think at the time that the disposal
21 occurred, the medical personnel were there?

22 A. Not present, but they had given direction to
23 the individuals who were to dispose of it.

24 Q. Were you there when they gave those
25 directions?

1 A. No, I was not.

2 Q. So you believe they gave those directions, but
3 you don't have any personal knowledge of it?

4 A. That is correct.

5 Q. Let me ask you this: If M3 testified, as he
6 did, that he simply left the chemicals on the table and
7 left the room, would that comply with the protocol?

8 A. M3 is --

9 Q. M3 is the doctor.

10 A. Correct.

11 Q. He's medical personnel, isn't he?

12 A. I don't know that that would be in violation
13 of the protocol.

14 Q. No. I -- well, okay. Can you tell me whether
15 prisoners in the holding cell at Bonne Terre -- can we
16 agree on what the holding cell is? Let me describe it a
17 little more fully just so we're clear. The last place in
18 which the prisoner is placed before he's taken to the
19 execution center -- chamber.

20 A. I believe I understand what you're talking
21 about.

22 Q. And that is in fact called the holding cell,
23 is it not, in the descriptions of how a prisoner is held?

24 A. I believe so, yes.

25 Q. Okay. Is a prisoner who's in the holding cell

1 **allowed to have confidential visits with lawyers?**

2 A. Yes.

3 **Q. What about confidential visits with clergy?**

4 A. Yes. I guess to an extent.

5 **Q. What do you mean by to an extent?**

6 A. Consistent with the safety and security needs
7 of the institution, we try and accommodate confidential
8 visits to the best of our ability.

9 **Q. And do you know how in practice how that works
10 with respect to prisoners in the holding cell and their
11 attorneys and clergy?**

12 A. It is dependent upon the prisoner.

13 **Q. What are the options for how it could work?**

14 A. It would be dependent upon the prisoner.

15 **Q. I understand that. But what's the range of
16 options that dependent upon the prisoner that the prison
17 could use; do you know?**

18 A. I don't know the full range.

19 **Q. Do you know any of them?**

20 A. Yeah, I know some.

21 **Q. Okay. Well, tell me the ones you know.**

22 A. I know that -- well, at what point are we
23 talking about?

24 **Q. When they're in the holding cell, at any time
25 when they're in the holding cell.**

1 A. At any time it changes. So for example, the
2 closer it gets to the time of execution -- and I'm not
3 certain which time that is -- then the ability for visits
4 is cut off. And I think it's restricted before it's cut
5 off. So as we get closer to the anticipated time of
6 execution, those change.

7 If you're talking about Offenders Franklin or
8 Nicklasson, they were in the holding cell, my understanding
9 is, longer than for instance Offender Smulls and Offender
10 Taylor. So I think in those cases, I'm aware that there
11 was some other meetings that were allowed under various
12 circumstances.

13 **Q. Okay. But once -- let's just talk about the**
14 **timetable for Mr. Smulls and Mr. Taylor. Once they were in**
15 **the holding cell, were they able to have confidential**
16 **visits with anyone?**

17 A. Yes.

18 **Q. Okay. And how did that work?**

19 A. I'm not sure that they actually did. I know
20 that they were able to. I know there were confidential
21 communications with their legal counsel throughout the
22 period that they were in their holding cell.

23 **Q. So while they were in the holding cell, it was**
24 **possible for them to communicate with their legal counsel**
25 **and their legal counsel to communicate with them without**

1 anyone listening?

2 A. Yes.

3 Q. And was that also true for clergy? Again, I
4 don't know that either of them requested that. But if they
5 had, would that be accommodated also?

6 A. I believe -- I would have to look at the logs.
7 But, yes, there would have been an opportunity for them to
8 communicate with clergy, just as with their counsel, in a
9 confidential telephone call.

10 Q. Okay. What about a confidential visit?

11 A. I guess you're going to have to be more
12 specific on what you mean by confidential.

13 Q. I mean a visit in which no one is listening.

14 A. Yes. I guess again, I would have to -- I am
15 not in a position to make that call about when that is and
16 is not allowed.

17 Q. Okay.

18 A. I was not privy to the safety and security
19 issues regarding those two offenders. I'm speaking
20 generally. I just wanted that to be on the record.

21 MS. CARLYLE: Absolutely. I think that's all
22 I have except for the things I'd like to ask the judge
23 about. I'll remind you what they were so you won't be
24 surprised.

25 MR. HANSEN: One was about the lab.

1 MS. CARLYLE: Yeah. And the question
2 specifically was -- the series of questions specifically
3 were, was laboratory testing performed on the drug used to
4 execute Michael Taylor and why have no laboratory reports
5 been provided? Was it performed by the same laboratory or
6 different laboratory that tested the drugs for Mr.
7 Nicklasson, Smulls and Franklin? And are there any other
8 laboratories under contract to test pentobarbital for the
9 department of corrections?

10 Then the only other one was whether the
11 payment on Exhibit 8 that's requested for Mr. Ferguson
12 that's for M7 includes a payment to a laboratory. So are
13 we clear what we're going to ask her about?

14 MR. HANSEN: Yes.

15 MS. CARLYLE: Let's go off.

16 (Whereupon there was a conference call with
17 Judge Philips.)

18 MS. CARLYLE: Since going off the record, the
19 parties have had a telephone conference with Judge Philips
20 with respect to the questions which were earlier objected
21 to, specifically was laboratory testing performed on the
22 drug used to execute Michael Taylor; why have no laboratory
23 reports been provided; was the testing, if there was any
24 performed, by the same laboratory or a different laboratory
25 than tested the drug used on Mr. Smulls, Mr. Franklin and

1 Mr. Nicklasson; are there any other laboratories under
2 contract to test pentobarbital; and did the payment for
3 Mr. Ferguson's drugs to the pharmacy include a payment for
4 the laboratory.

5 The Court declined to rule on those questions
6 pending further consideration and briefing. So they stand
7 at this point as being asked and not answered. They are
8 not withdrawn and we anticipate a later resolution of that
9 decision.

10 With that, I have no further questions for
11 this witness and would tender him for cross-examination.

12 MR. HANSEN: No questions. We will waive
13 presentment but sign.

14 (Whereupon signature was reserved.)

15 (Off the record at 2:44 p.m.)

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CERTIFICATE OF REPORTER

I, Sheryl A. Pautler, Certified Shorthand Reporter, Notary Public within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Notary Public within and for
the State of Missouri

1 MIDWEST LITIGATION SERVICES

2 March 31, 2014

3 Mr. David Hansen
Missouri Attorney General's Office
4 207 West High Street
Jefferson City, Missouri 65102

5
IN RE: DAVID ZINK, et al. vs. GEORGE A. LOMBARDI,
6 et al.

7 Dear Mr. Hansen:

8 Please find enclosed your copies of the deposition of
MATTHEW BRIESACHER taken on March 21, 2014 in the
9 above-referenced case. Also enclosed is the original
signature page and errata sheets.

10
Please have the witness read your copy of the
11 transcript, indicate any changes and/or corrections
12 desired on the errata sheets, and sign the signature
13 page before a notary public.

14
15 Please return the errata sheets and notarized
16 signature page to Ms. Elizabeth Unger Carlyle for filing
17 prior to trial date.

18
19 Sincerely,

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22 Ms. Sheryl Pautler

23
24 Enclosures

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ERRATA SHEET

Witness Name: MATTHEW BRIESACHER

Case Name: DAVID ZINK, et al. vs. GEORGE A. LOMBARDI,
et al.

Date Taken: MARCH 21, 2014

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Page #_____ Line #_____

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Reason for change: _____

Witness Signature: _____

1 STATE OF _____)

2

3 COUNTY OF _____)

4

5 I, MATTHEW BRIESACHER, do hereby certify:

6 That I have read the foregoing deposition;

7 That I have made such changes in form

8 and/or substance to the within deposition as might

9 be necessary to render the same true and correct;

10 That having made such changes thereon, I

11 hereby subscribe my name to the deposition.

12 I declare under penalty of perjury that the

13 foregoing is true and correct.

14 Executed this ____ day of _____,

15 20____, at _____.

16

17

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MATTHEW BRIESACHER

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NOTARY PUBLIC

24 My Commission Expires:

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