

Towery v. Brewer
No. 2:12-cv-00245-NVW

**Exhibits to Emergency Motion for Court Order Directing the Arizona
Department of Corrections to Allow Counsel for Plaintiff to View IV
Insertion Procedure**

- EXHIBIT PP: Letter to Charles Ryan from Dale Baich, dated May 11, 2012
- EXHIBIT QQ: Letter to Dale Baich from Charles Ryan, dated May 14, 2012
- EXHIBIT RR: Email from Katherine Perez to Dale Baich [transmitting May 14, 2012, letter to Dale Baich from Charles Ryan] dated May 15, 2012
- EXHIBIT SS: Arizona Department of Corrections Continuous Correctional Log, Execution of Thomas West [*West v. Brewer*, No. 2:11-cv-01409-NVW, Trial Exhibit 23]

EXHIBIT PP

EXHIBIT PP

Office of the
FEDERAL PUBLIC DEFENDER
for the District of Arizona
Capital Habeas Unit
850 West Adams Street, Suite 201
Phoenix, Arizona 85007

JON M. SANDS
Federal Public Defender

direct 602.382.2816
800.758.7053
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e-mail dale_baich@fd.org

May 11, 2012

Charles Ryan, Director
Arizona Department of Corrections
1601 W. Jefferson
Phoenix, AZ 85007

Re: Death-Row Prisoner Samuel Lopez, No. 043833

Dear Director Ryan,

I am writing to request authorization for two attorneys to be in the execution room throughout the time that the execution team sets the lethal-injection IV lines in Samuel Lopez on Wednesday, May 16, 2012. The reason for my request is to permit the attorneys to witness the setting of IV lines in Mr. Lopez, who has consented to allowing us to view the process. We will select the two attorneys from among the counsel representing the plaintiffs in *Towery v. Brewer*, No. CV-12-245-PHX-NVW (D. Ariz.), filed Feb. 6, 2012. Of course, the attorneys will be bound by the protective order in place in *West v. Brewer*, No. 2:11-cv-01409-NVW.

Allowing attorneys and witnesses to observe the setting of IV lines is not unprecedented. In California, members of the press and public have a "First Amendment right to view executions from the moment the condemned is escorted into the execution chamber."¹ Similarly, in Ohio, witnesses observe the setting of the IV lines via closed-circuit television.²

¹*Cal. First Amendment Coal. v. Woodford*, 299 F.3d 868 (9th Cir. 2002).

²Ohio Execution Policy 01-COM-11, § IV.G.4 ("Immediately after the death warrant is read, the closed-circuit camera in the execution chamber shall be turned on so that witnesses in the witness rooms can view the subsequent activities in the execution chamber on the television screen in those rooms."); § IV.G.6 ("Once the prisoner is secured to the bed, the curtain shall be closed, prior to the insertion of the IV needles. The closed-circuit camera shall remain on to allow the witnesses to view

Charles Ryan
May 11, 2012
Page 2

If you are unable to comply with our request to be physically present with the IV Team and Mr. Lopez, then I request that the two attorneys be permitted to view and listen to this procedure through the video and audio equipment that is already in place in Housing Unit 9.³ Whether the attorneys are permitted to be physically present in the room with the IV Team, or are instead permitted to observe the procedure via video camera, I also request that you maintain a videotaped record (including audio) of the insertion of these lines.

Please advise me at your earliest convenience regarding my request. If you decline the request, I ask that you explain your reasons for doing so. If you have any questions, or if you would like to discuss this request further, please let me know.

Best regards,



Dale A. Baich, Supervisor
Capital Habeas Unit

cc: Kelley Henry
Dawn Northup (by email dnorthup@azcorrections.gov)
Jeffrey Zick (by email Jeffrey.Zick@azag.gov)

DAB/cls

the establishment of IV site(s).”).

Available at http://www.drc.ohio.gov/web/drc_policies/documents/01-COM-11.pdf (last visited May 11, 2012).

³See, e.g., Arizona Department of Corrections Department Order 710, Attachment D, § D.4.

EXHIBIT QQ

EXHIBIT QQ

Arizona Department of Corrections



JANICE K. BREWER
GOVERNOR

1601 WEST JEFFERSON
PHOENIX, ARIZONA 85007
(602) 542-5497
www.azcorrections.gov



CHARLES L. RYAN
DIRECTOR

May 14, 2012

Dale A. Baich
Capital Habeas Unit
Office of the Federal Public Defender
850 West Adams Street, Suite 201
Phoenix, AZ 85007

Mr. Baich:

In response to your letter dated May 11, 2012, I decline your request for two attorneys to be present in the execution room during placement of the IV lines into inmate Samuel Lopez. As you have noted in your letter, ADC Department Order 710, Attachment D, provides that a camera will be positioned on the inmate's face and a microphone affixed to the inmate's shirt so that the IV team or the Special Operations Team can monitor any verbal or non-verbal communication. Nothing in your letter suggests that Mr. Lopez cannot communicate with the IV or Special Operations Teams if he is experiencing pain. As reiterated in ADC Department Order 710, the Department faithfully adheres to all constitutional mandates to ensure that the execution is carried out in a professional and dignified manner.

The Department also has a compelling interest in maintaining the anonymity of all personnel who participate, or perform ancillary functions, in the execution, and to that end, the execution is not videotaped or recorded in any manner in accordance with A.R.S. § 13-757(C). Likewise, there are no closed-circuit televisions in place as your letter suggests.

The Department has accommodated requests for numerous legal visits with Mr. Lopez in the days leading to the execution as well as legal visitation with two attorneys between the hours of 6:00 a.m. to 7:00 a.m. on the morning of the execution. I believe the current execution process as outlined in Department Order 710 and its Attachments comports with constitutional mandates regarding Mr. Lopez's access to counsel, as well as your interest in ensuring the IV lines are properly set.

Regards,


Charles L. Ryan
Director

May 14, 2012

Page 2

cc: Kelley Henry, Federal Public Defender
Jeffrey Zick, Assistant Attorney General, Criminal Appeals/Capital Litigation
Dawn Northup, General Counsel
Robert Patton, Division Director, Prison Operations

EXHIBIT RR

EXHIBIT RR

From: PEREZ, KATHERINE
To: Dale_Baich@fd.org
Subject: Letter from Director Charles Ryan
Date: 05/15/2012 07:26 AM
Attachments: [DOC051412.pdf](#)

Mr. Baich:

Please see attached letter from Director Ryan. Thank you.

Kathy Perez
Legal Services
602-542-4805
kperez@azcorrections.gov

EXHIBIT SS

EXHIBIT SS

DFS' 26(a)(1) Disclosures & Responses to RFP's 01472
ARIZONA DEPARTMENT OF CORRECTIONS
CONTINUOUS CORRECTIONAL LOG

INSTITUTION/FACILITY JPC-FLORENCE		INSTITUTIONAL UNIT COMPLEX		PERIOD COVERED PAGE <u>7</u> OF <u>8</u>			
HOUSING UNIT/POST/ASSIGNMENT <u>Housing Unit #9</u>				HOUR <u>0700</u>	DATE <u>07/19/11</u>	HOUR <u>1004</u>	DATE <u>07/19/11</u>
STAFF MEMBER	MEMBER INITIALS	TIME ARRIVED	TIME DEPARTED	STAFF MEMBER	MEMBER INITIALS	TIME ARRIVED	TIME DEPARTED
		<u>0700</u>	<u>1120</u>				

EXHIBIT NO. 23
 SOTM 2
 9-19-11

TIME OF DAY	OCCURRENCE / ACTION TAKEN: Events, Activities, Disciplinary Violations, Maintenance Requirements, Safety/Health Hazards, Other Information Received, and Action Taken, Etc.
<u>0700</u>	<u>SPECIAL OPERATIONS TEAM ASSEMBLED FOR THE EXECUTION OF INMATE WEST, THOMAS PAUL AOC# 008781; ALL EQUIPMENT HAS BEEN CHECKED AND IS OPERATIONAL.</u>
<u>0828</u>	<u>MEDICAL TEAM INITIATED MIXING OF CHEM</u>
<u>0920</u>	<u>COMPLETED MIXING OF CHEMICALS.</u>
<u>0957⁰⁰</u>	<u>INMATE PLACED ON TABLE</u>
<u>1010⁰²</u>	<u>INMATE FULLY RESTRAINED</u>
<u>1001⁵²</u>	<u>BLOOD PRESSURE CUFF IN POSITION</u>
<u>1002¹⁴</u>	<u>PULSE OXYGEN; EKG LINES IN POSITION</u>
<u>1003²⁷</u>	<u>INITIAL BLOOD PRESSURE READING 146/82</u>
<u>1004⁰²</u>	<u>MEDICAL PROCEDURE INITIATED; MEDICAL TEAM LEADER REVIEWED THE PERTINENT INFORMATION RELATING TO THE ADMINISTRATION OF PENTOBARBITAL (ALL BARBITURATES) AS WELL AS PANICURONIUM AND POTASSIUM AND DETERMINED THEY SHOULD BE ADMINISTERED THROUGH A LARGE PERIPHERAL VEIN AT THE ELBOW OR CLOSER TO THE HEART. MEDICAL TEAM LEADER DETERMINED THERE IS SIGNIFICANT RISK FOR ADVERSE EFFECTS IF THE VEIN IS DEFECTIVE. A CENTRAL LINE WAS DEEMED NECESSARY.</u>
NIGHT COMMANDER'S COMMENTS: Notes or comments concerning entries above; comments deemed appropriate	

DFS' 26(a)(1) Disclosures & Responses to RFP's 01473
ARIZONA DEPARTMENT OF CORRECTIONS
CONTINUOUS CORRECTIONAL LOG

INSTITUTION/FACILITY ASPC-FLORENCE		INSTITUTIONAL UNIT COMPLEX		PERIOD COVERED PAGE <u>2</u> OF <u>3</u>			
HOUSING UNIT/POST/ASSIGNMENT <u>Housing Unit #9.</u>				HOUR <u>1100</u>	DATE <u>07/19/11</u>	HOUR <u>1107</u>	DATE <u>07/19/11</u>
STAFF MEMBER	MEMBER INITIALS	TIME ARRIVED	TIME DEPARTED	STAFF MEMBER	MEMBER INITIALS	TIME ARRIVED	TIME DEPARTED
		<u>0700</u>	<u>1128</u>				
TIME OF DAY	OCCURRENCE / ACTION TAKEN: Events, Activities, Disciplinary Violations, Maintenance, Requirements, Safety/Health Hazards, Other Information Received, and Action Taken, Etc.						STAFF INITIALS
<u>00402</u> (CONTD)	<u>AS A BACK UP METHOD TO ENSURE THE SAFEST ADMINISTRATION OF THE CHEMICALS; MEDICAL TEAM OBSERVED THAT THE INMATE HAS SMALL VEINS. INMATE AGREED THAT HE HAS SMALL VEINS, AND THAT HE SHOULD HAVE DONE PUSH UPS TO MAKE HIS VEINS STAND OUT.</u>						[REDACTED]
<u>101040</u>	<u>ATTEMPT TO PLACE IV IN LEFT ARM, FAILED DUE TO POOR VEINS. MEDICAL TEAM ABANDONED IV FOR LEFT ARM. RIGHT ARM DESIGNATED AS THE PRIMARY LINE.</u>						
<u>101102</u>	<u>PROCEDURE FOR CENTRAL LINE INITIATED AS A BACK UP TO THE MAIN LINE IN THE RIGHT ARM.</u>						
<u>101407</u>	<u>Blood Pressure 124/76</u>						
<u>102528</u>	<u>MEDICAL PROCEDURE COMPLETE.</u>						
<u>110020</u>	<u>READING OF THE WARRANT OF EXECUTION</u>						
<u>110151</u>	<u>COMMENCE PHASE I</u>						
<u>110504</u>	<u>PHASE I COMPLETE.</u>						
<u>110610</u>	<u>INMATE IS SEATED</u>						
<u>110624</u>	<u>Commence PHASE II</u>						
<u>110922</u>	<u>PHASE II COMPLETE.</u>						
SHIFT COMMANDER'S COMMENTS: Notes or comments concerning entries above; comments deemed appropriate.							

ARIZONA DEPARTMENT OF CORRECTIONS
CONTINUOUS CORRECTIONAL LOG

DES 26(a)(1) Disclosures & Responses to RFP's 01474

INSTITUTION/FACILITY SPC-FLORENCE		INSTITUTIONAL UNIT COMPLEX			PERIOD COVERED PAGE <u>3</u> OF <u>3</u>			
HOUSING UNIT/POST/ASSIGNMENT <i>Housing Unit #9.</i>					HOUSING UNIT	POST	ASSIGNMENT	
					1107	07/19/11	1128	07/19/11
STAFF MEMBER	MEMBER INITIALS	TIME ARRIVED	TIME DEPARTED	STAFF MEMBER	MEMBER INITIALS	TIME ARRIVED	TIME DEPARTED	
		0700	1128					
TIME OF DAY	OCCURRENCE / ACTION TAKEN: Events, Activities, Disciplinary Violations, Maintenance, Requirements, Safety/Health Hazards, Other Information Received, and Action Taken, Etc.						STAFF INITIALS	
1107 ³⁸	PHASE III COMMENCES.							
1108 ²⁸	PHASE III COMPLETE.							
1108 ⁵²	Commence 9B.							
1109 ⁰⁵	Complete 9B.							
1109 ³²	Commence 10B.							
1109 ⁴⁰	Complete 10B.							
1109 ⁴²	Commence 11B.							
1110 ¹⁰	Complete 11B.							
1110 ³²	TIME OF DEATH.							
1117 ¹⁰	MEDICAL TEAM ENTERING ROOM TO REMOVE TV lines.							
1119 ⁵⁸	MEDICAL ENTERS ROOM FOR PHOTOGRAPHY/POWER ENTRY ROOM.							
1128 ³⁹	BODY RELEASED TO CORONER.							
SHIFT COMMANDER'S COMMENTS: Notes or comments concerning entries above; comments deemed appropriate.								