

LAWRENCE G. WASDEN
ATTORNEY GENERAL

STEVEN L. OLSEN, ISB # 3586
Chief of Civil Litigation

MICHAEL S. GILMORE, ISB # 1625
Deputy Attorneys General
Statehouse, Room 210
P.O. Box 83720
Boise, ID 83720-0010
Telephone: (208) 334-4130
Facsimile: (208) 854-8073
mike.gilmore@ag.idaho.gov

MARK A. KUBINSKI, ISB #5275
Lead Deputy Attorney General
Idaho Department of Correction
1299 N. Orchard Street, Suite 110
Boise, ID 83706
Telephone: (208) 658-2097
Facsimile: (208) 327-7485
mkubinsk@idoc.idaho.gov

Attorneys for IDOC Defendants

THOMAS C. PERRY, ISB #7203
Counsel to the Governor
Office of the Governor
P.O. Box 83720
Boise, ID 83720-0034
Telephone: (208) 334-2100
Facsimile: (208) 334-3454
tom.perry@gov.idaho.gov

Attorney for Governor Otter

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

THE ASSOCIATED PRESS, *et al.*,)
)
 Plaintiffs,)
)
 vs.)
)
 C.L. (BUTCH) OTTER, *et al.*,)
)
 Defendants.)

Case No. 1:12-cv-00255-EJL

DECLARATION OF JEFF ZMUDA

1. I, Jeff Zmuda, am over the age of eighteen (18) years and am competent to testify on the matters herein. I make this Declaration based upon my personal knowledge.

2. I am employed by the Idaho Department of Correction (“IDOC”) as the Deputy Chief of the Bureau of Prisons. I have been employed with the IDOC for approximately 24 years.

3. In my position as the Deputy Chief of the Bureau of Prisons, I work in conjunction with the Idaho Maximum Security Institution (“IMSI”) to manage, plan, prepare, coordinate and implement the IDOC execution procedures.

4. In my position as the Deputy Chief of the Bureau of Prisons I was tasked with overseeing the execution process and developing and implementing the IDOC Standard Operating Procedure regarding execution procedures, Standard Operating Procedure 135.02.01.001 (version 3.6) (“SOP 135”). Attached hereto as Exhibit 1 is a true and correct copy of SOP 135, which is a record of the IDOC maintained in the ordinary course of its regularly conducted business activities. I am also tasked with all the duties related to my position as a member of the Administrative Team as outlined in SOP 135. *See* Ex. 1, pp. 2-3. In addition to being responsible for the aforementioned duties with respect to the execution of Richard Leavitt, scheduled for June 12, 2012; I also had the same responsibilities for the execution of Paul Rhoades on November 18, 2011.

5. Following the execution of Paul Rhoades, I, along with other IDOC employees, was tasked with reviewing SOP 135 and making any necessary revisions to it. As part of the IDOC’s review of SOP 135, a decision was made not to modify the IDOC’s procedures relating to the time frame during which the official witnesses view the execution process.

6. As of the date of this Declaration, the execution of Richard Leavitt is fourteen (14) days away. In order to ensure that the execution is carried out in accordance with state and federal law, and in a dignified and professional manner, the Medical Team is actively training for the execution. Any deviation from SOP 135 with respect to witnesses being present earlier during the execution process would not only require a modification of SOP 135, but would also require a change in the already established training schedule and format.

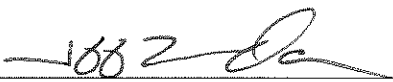
7. Among the duties of the Administrative Team is the recruitment, selection, and retention of the Medical Team members. Ex. 1, p. 10. Medical Team members can be comprised of a variety professional disciplines. *Id.*, p. 9.

8. As part of the debrief following the Rhoades execution, and in subsequent interviews with team members earlier this year, I had conversations with members of the Medical Team regarding the process and their experiences. Based on these conversations, it is my clear understanding that confidentiality and anonymity is of paramount concern to the Medical Team members. Because the Medical Team members are employed in their respective professions in the local community, there is a significant concern that any information leading to their identity could put them at risk professionally.

9. It is also my understanding that if official witnesses are allowed to view the execution process, beginning with the condemned offender entering the execution chamber and including the insertion of the IV catheters, it will greatly impair the IDOC's ability to recruit and retain Medical Team members, and will have a chilling effect on the Medical Team members' willingness to serve on the Medical Team.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED this 29th day of May, 2012.



JEFF ZMUDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of May, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Charles A. Brown
Attorney at Law
CharlesABrown@cableone.net

/s/ Michael S. Gilmore
MICHAEL S. GILMORE
Deputy Attorney General