

**THE GOVERNOR'S COMMISSION ON
ADMINISTRATION OF LETHAL INJECTION**

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Office of the Florida Bar
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COMMISSION MEMBERS:

JOHN W. JENNINGS, CHAIRMAN
CAROLYN SNURKOWSKI
HARLEY LAPPIN
HONORABLE STAN MORRIS

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P R O C E E D I N G S

THE CHAIR: Back on the record. For the purposes of identifying ourselves, Bill Jennings.

MR. LAPPIN: Harley Lappin.

MS. SNURKOWSKI: Carolyn Snurkowski.

JUDGE MORRIS: Stan Morris.

THE CHAIR: Okay. If we could look at the document that's titled Preliminary Report with Findings and Recommendations. Okay? It says "Draft." If you could look at page one of that under Introduction.

MS. SNURKOWSKI: Okay. The only thing I would add to this is that I had in mind was that I think there was a caveat in number six of the - Section Six about what not to do. I think we need to put that in there.

THE CHAIR: That's true.

MS. SNURKOWSKI: You want a disc on that one. You want to put that one on yours, too?

THE CHAIR: Oh, when you do his, just give me -

MS. SNURKOWSKI: Okay. It's on here now. I have them on a disc. I can -

THE CHAIR: Oh, perfect. Okay. That's fine.

MR. LAPPIN: Her last sentence.

THE CHAIR: Her last sentence.

MR. LAPPIN: Of the first paragraph.

THE CHAIR: Okay. Thank you. Thank you.

MR. LAPPIN: Says, "And shall not extend." In the middle of it, "And shall not extend." Right here.

THE CHAIR: Oh, thank you. The last part of her sentence.

MR. LAPPIN: Yes.

THE CHAIR: Shall not extend. Perfect. Okay. All right. Include - we will include that sentence in there.

JUDGE MORRIS: Where are you at?

MR. LAPPIN: The last sentence of her first paragraph. Here it is.

THE CHAIR: Her first. So we're going to include that.

MR. LAPPIN: The paragraph - the introduction that they currently have reflects what it says we will do but not what it shouldn't do.

THE CHAIR: And I assume you want it to end at the second paragraph? Wouldn't that be the logical place to put that?

MS. SNURKOWSKI: Yes.

THE CHAIR: Anything else on the introduction paragraphs? (No response.) Okay. Anybody - anything on the commission meetings?

MS. SNURKOWSKI: Well, I think if we could add that he will attend? Do you want to do that?

On the last one where it says February 24th, 2004, the Commission conducted a workshop session concerning this report attended by. I think we ought to do that so that everybody understands who was crafting as opposed to who was -

MR. LAPPIN: She's talking about here.

THE CHAIR: Right here, this one.

MS. SNURKOWSKI: No. At the end.

MR. LAPPIN: Okay. I'm sorry. You moved past it.

MS. SNURKOWSKI: Yes.

THE CHAIR: Just so everybody knows where we are on number two, Commission's Meetings, past that, all the way over to February 24.

MS. SNURKOWSKI: Page three, on the top of page three.

MR. LAPPIN: And fill in the blank.

MS. SNURKOWSKI: Yeah.

THE CHAIR: Which was attended -

MS. SNURKOWSKI: Uh-huh.

THE CHAIR: How about paragraph one of Areas of Inquiry?

MR. LAPPIN: What is the intent of this section?

THE CHAIR: The intent is it is supposed to lay out where we were going. This is not - this is not

intended - this section is not intended to be a binding section. Okay?

MR. LAPPIN: Okay.

MS. SNURKOWSKI: I think the first paragraph is fine. I have some problems with after that, though.

THE CHAIR: How about paragraph two? Do you see a problem with paragraph two? The problem I have starts after that.

MS. SNURKOWSKI: Yeah. Let me - I think he kind of editorialized. I mean -

JUDGE MORRIS: I think you can neutralize it by what the Commission hoped to do. Just the Commission called several employees of the Department of Correction.

THE CHAIR: Okay. Get rid of "hope to build."

JUDGE MORRIS: Involved in the lethal injection process.

MS. SNURKOWSKI: Right. But that's what I'm saying. What are we trying - I think like Harley said, what are we trying to do here? Is this just - we've already said we called all these witnesses. So -

THE CHAIR: Well, you know -

MS. SNURKOWSKI: I mean, they are going to be able to read things. I mean, how - do we want - and that's

the other thing, too. How comprehensive a report is this supposed to be? Is the report - is the focus going to be on what every witness said and, you know, going through that, or is really the focus on what we think our findings are based on the materials and packets that are attached, and maybe references to those things and then our findings?

JUDGE MORRIS: Well, I'm having - I guess what I'm having a problem with is with the style Areas of Inquiry, what follows.

MS. SNURKOWSKI: Uh-huh.

THE CHAIR: Okay.

JUDGE MORRIS: Because what follows is not a focus on areas of inquiry. So it is misleading in that sense and that's what's got me - I got confused as I started reading it.

MS. SNURKOWSKI: I mean, I think that -

MR. LAPPIN: I took it as drawing some conclusions that -

MS. SNURKOWSKI: Right.

MR. LAPPIN: - that maybe we wouldn't all have drawn. I'm good with the first sentence.

MS. SNURKOWSKI: Right. Well, yeah, hope to build.

JUDGE MORRIS: See, I would do things like: In

summary the task force report offered adequate details.

MS. SNURKOWSKI: All right. Well, how about let's go sentence-by-sentence. That looks like what we are going to have to do.

So we say: The Commission hoped to build on this foundation by calling several employees of the Department of Corrections responsible for carrying out the lethal injection protocols during the execution of Angel Diaz.

We all agree on that. Okay?

MR. LAPPIN: The only question was "hoped".

MS. SNURKOWSKI: No, I was going to take out "hope."

MR. LAPPIN: The Commission built on this foundation by calling several employees.

MS. SNURKOWSKI: All right. Okay.

MR. LAPPIN: I mean, we didn't hope to do it. We did it.

MS. SNURKOWSKI: All right. As a matter of fact, you're right. It's past now so it is built. So the Commission built on this foundation. Okay.

THE CHAIR: By calling several witnesses. The rest is the same.

MS. SNURKOWSKI: By calling several -

THE CHAIR: Several employees.

MS. SNURKOWSKI: Calling employees. What do you mean called employees of the Department of Corrections.

JUDGE MORRIS: Here is one of the problems with that. There is a unstated link between employees of the Department and the execution of Diaz and the difficulty of the task. The difficulty doesn't necessarily follow.

We had people who were employed by the Department of Corrections - not necessarily employees - like the executioners. And the difficulty of the task is reflected in part because of the statutes that deal with confidentiality. It is a very different impression that you give.

And, I mean, I think that this was a difficult - there were inherent problems that caused difficulties and those problems were. But to say these were - we built that by calling employees and the employees were difficult, that's not a fair statement.

MR. LAPPIN: I agree.

THE CHAIR: You want to strike the words "this proved to be a difficult task"? Is that what -

JUDGE MORRIS: I think what I would do is: The Commission built on this foundation by calling several

individuals who were involved in the execution of Diaz.

Because that would encompass both the standard of both the employees of the Division of Corrections and those who were contract employees.

MR, LAPPIN: Contract.

THE CHAIR: Okay. Several individuals -

JUDGE MORRIS: Right.

MS. SNURKOWSKI: On the execution team?

JUDGE MORRIS: Right.

MR. LAPPIN: Participating on the execution team.

MS. SNURKOWSKI: Okay. Several employees.

THE CHAIR: Of the execution team. Team responsible for carrying out the lethal injection protocols - yes, okay - during the execution of Angel Diaz. Okay.

MS. SNURKOWSKI: Uh-huh. Well, okay, but I think you need to say: Of the Department of Corrections. Right?

THE CHAIR: No.

MS. SNURKOWSKI: Well, these are.

JUDGE MORRIS: Well, some of them are and some - some are employees and some are contract people. I mean -

MS. SNURKOWSKI: But I thought the point of that

was we took out employees and we had execution team.
So the execution team -

JUDGE MORRIS: That's fine if you don't say the
Department.

THE CHAIR: Okay.

MS. SNURKOWSKI: I think we need to say who they
are from. Okay.

THE CHAIR: Okay.

JUDGE MORRIS: And I think it is a correct
statement this task proved to be difficult, or it is a
difficult task, which was, you know, how do you say it?

MR. LAPPIN: Cumbersome due to the need for
confidentiality.

JUDGE MORRIS: Right. The difficulty of this task
was -

MS. SNURKOWSKI: Complicated by the fact that there
were statutory protections.

JUDGE MORRIS: Complicated by the statutes dealing
- complicated by the Florida Statutes giving protection
to certain members of team.

MR. LAPPIN: The identify.

JUDGE MORRIS: Right.

MS. SNURKOWSKI: Complicated by.

THE CHAIR: Do we want to say complicated by the

Department's interpretation of the -

JUDGE MORRIS: No, because I don't think the Department's interpretation is what caused it. I think it is pretty apparent the statutes. I mean, I think that's unfair to the Department. I think it should be that complicated by adherence to the statutory prohibition against disclosure of identity of the executioners.

THE CHAIR: Okay. I agree that the statute says executioners.

JUDGE MORRIS: Yes.

THE CHAIR: But the -

JUDGE MORRIS: You're saying that the difficulty -

THE CHAIR: But they went beyond that and said that

-

JUDGE MORRIS: That's a different difficulty. The second difficulty that I may not have reflected that. I'm sorry I didn't give it a complete thought. It should be a separate sentence in saying: Another complication, which will be focused on later, is that many of the medically-trained personnel were unwilling to identify themselves or to give sufficient background detail that would cause them to be identified because of their concern.

THE CHAIR: Okay.

JUDGE MORRIS: It's - I think that's true. Certain people still don't want to tell you who they were. But the primary medical people did not want to tell you who they were and they wouldn't tell you what their background was completely because they didn't want to be disclosed by that.

MS. SNURKOWSKI: Well, that's true. All of that is true but the point is they got legal advice.

JUDGE MORRIS: No question. But I'm saying that's a complicating factor in terms of access to information. That's all I'm saying. It's not a pejorative thing. It's just a fact.

MS. SNURKOWSKI: Okay. I think we need to do that because we said building this foundation by calling responsible carrying out the - I think we need then to say: This proved to be a difficult task in securing the information because -

THE CHAIR: Right.

JUDGE MORRIS: That's fine.

MS. SNURKOWSKI: As opposed to meaning couldn't get these people to come testify because they - some did.

THE CHAIR: This proved to be a difficult task which was complicated which complicated by statutory -

MS. SNURKOWSKI: No. In securing information because that's what we're talking about. They - they were - they showed up in some sense.

JUDGE MORRIS: Right. But there is no allegation they didn't.

THE CHAIR: Yeah.

JUDGE MORRIS: It's just that the task of gathering information. That's what you're talking about Carolyn?

MS. SNURKOWSKI: Uh-huh.

JUDGE MORRIS: So put the task of gathering information was complicated by, or made more difficult by -

THE CHAIR: Okay. The task of gathering information -

MR. LAPPIN: The witnesses desire to maintain a -

JUDGE MORRIS: - proved to be a difficult task -

MR. LAPPIN: - given the desire of the witness to maintain anonymity.

JUDGE MORRIS: And you can put: And the Florida Statutes guarantees anonymity to the executioners.

THE CHAIR: So due to the - well, we don't want to say "witness." We want to say: Desire of the executioners. Right?

JUDGE MORRIS: No. You want the primary medical

people. They are not the executioners. They are the primary medical people.

THE CHAIR: I see. But you want to make that separate things. You say statutorily, we're going to say that for the executioners and then we're going to say anonymity for the witnesses.

JUDGE MORRIS: Right.

THE CHAIR: Primary medical. Do we want the desire or just simply put the word: Due to the anonymity of the executioners pursuant to Florida Statutes.

JUDGE MORRIS: Sure. Could we back up just one second. I think it's probably important, two things in the introduction.

One is that all matters were conducted of public record in the - I don't know what you call it - the Sunshine.

MS. SNURKOWSKI: He said that.

THE CHAIR: I said that.

JUDGE MORRIS: You said that?

MS. SNURKOWSKI: Yes.

JUDGE MORRIS: And the second thing is - the second thing was that witnesses were not placed under oath because the Administrative Order did not empower the Commission to administer oaths. I think that's -

MS. SNURKOWSKI: That wasn't specific, no.

JUDGE MORRIS: Is it there?

MS. SNURKOWSKI: No, it wasn't. It just there was Sunshine and that's okay. During the meetings, numerous witnesses testified before the Commission.

JUDGE MORRIS: I would put they were not under oath because the Commission was not empowered to administer oaths by the Administrative Order of the Governor.

MS. SNURKOWSKI: Right. I guess we don't like footnotes for this because that's what I would put.

JUDGE MORRIS: Yes, I would. A footnote could be put there.

MS. SNURKOWSKI: I mean, it would take - because -

JUDGE MORRIS: Because that's what you would normally do.

MS. SNURKOWSKI: Yes.

THE CHAIR: Which - I'm sorry. Is it under Introduction?

MS. SNURKOWSKI: It's under, yes. No, meetings. Number Two, meetings.

THE CHAIR: Okay. Is this an introduction paragraph?

MS. SNURKOWSKI: Yes. It's on page one, it is the last paragraph. It would be the third sentence. One,

two, yes, third sentence. Numerous witnesses testified before the Commission. And then after "Commission" I would put the footnote there, explaining what we're talking about, that they were not sworn to because we had no authority to do that.

THE CHAIR: Well, why would we put this?

JUDGE MORRIS: Just not to create a mis-impression that somebody was testifying under oath. I think that's an important distinction.

THE CHAIR: How about this? Witnesses - since I have - the other concern I have is this: Witnesses were not sworn or subpoenaed.

JUDGE MORRIS: Yes, okay. That's fine.

MS. SNURKOWSKI: Okay.

JUDGE MORRIS: Because some people asked for that and couldn't get it. You're right, Bill.

MS. SNURKOWSKI: You should just say Commission's authority.

THE CHAIR: Or were not sworn in because the Commission lacked that authority.

MS. SNURKOWSKI: Okay. Well, let me ask you this. I mean, and I don't want to belabor it. But would we have done that if we had had the authority?

JUDGE MORRIS: If we were requested. There was one

person that requested that we do it so that they would
-

MS. SNURKOWSKI: Okay. Well, see, but the way this sounds it sounds like we would've made - sworn them, we would've done all that. I don't know if we would've done that or not.

JUDGE MORRIS: I don't know either but it came up.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: And all I'm saying is I think it ought to be clear to the reader that these people were not under oath.

MS. SNURKOWSKI: Right. And that's what we say. Witnesses were not sworn or subpoenaed based on the Commission's -

JUDGE MORRIS: Lack of authority.

MS. SNURKOWSKI: - lack of authority.

THE CHAIR: That's what I put. That's fine. Witnesses were not sworn or subpoenaed because the Commission lacked that authority.

MS. SNURKOWSKI: Okay.

JUDGE MORRIS: I'm sorry to get us off track but I thought -

MR. LAPPIN: So what are we doing for the rest of that paragraph. At times?

THE CHAIR: The medical - what was the statement, Judge, about the medical? We had the statutory -

JUDGE MORRIS: You had the statutory and then you had the medically-trained personnel who did not wish to divulge their identifies.

MR. LAPPIN: Wished to maintain anonymity.

JUDGE MORRIS: Yes. Wished to maintain their anonymity.

THE CHAIR: You want me to put the majority of the medically trained since we had Matthews testify?

JUDGE MORRIS: Yes, because clearly Matthews testified completely.

THE CHAIR: Wished to keep their identity -

MR. LAPPIN: Maintain their anonymity.

THE CHAIR: Wished to maintain - okay. That's being inserted -

MS. SNURKOWSKI: After "task."

THE CHAIR: - after the task. Correct. The task of gathering information proved to be difficult and then a period. And then we will - or after a comma - due to - that's fine. Okay.

And then it says: At times testimony of DOC personnel conflicted with those accounts published in a Task Force Report.

Do we draw conclusions in this area?

MS. SNURKOWSKI: I think that that's inappropriate for us to make statements like that. I mean, we're going to make findings based on what we've heard. Making a - talking about this seems to me that either you make a finding that there was some -

JUDGE MORRIS: Here is what I don't like. I don't like you pointing at the DOC personnel in particular.

THE CHAIR: Okay.

JUDGE MORRIS: I think what the statement should be there is that the Commission received conflicting testimony and opinions.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: Or conflicting accounts and opinions. I don't know how to say this.

MS. SNURKOWSKI: How about based on the amount of testimony presented there were conflicting accounts of what transpired.

JUDGE MORRIS: But that's not based on the amount of testimony. You could have two people -

THE CHAIR: No. That's giving an opinion. Some of these guys weren't forthcoming but we don't know -

JUDGE MORRIS: That's true. But I -

MS. SNURKOWSKI: Some people - that's my point. I

don't - right. I absolutely agree that that is so, but the point is, is that important for the resolution of what we're trying to get at or with what?

JUDGE MORRIS: It's important for the credibility of what we're suggesting. We have to make it clear that there was conflicting testimony, some of which couldn't be resolved. And the Commission -

MS. SNURKOWSKI: But that's saying you're going to say that. Because -

JUDGE MORRIS: That's all I'm saying.

MS. SNURKOWSKI: Okay.

JUDGE MORRIS: What I'm saying, instead of saying DOC employees didn't - weren't consistent with their reports -

MS. SNURKOWSKI: No, I -

THE CHAIR: Yes, we're -

JUDGE MORRIS: - I think that's a criticism that's not necessarily fair. It sweeps with too broad a brush.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: And I would say it's just that - I think what we're trying to say is the testimony given before the Commission was in conflict.

MS. SNURKOWSKI: Okay. So at times the testimony

conflicted with those accounts. Right?

MR. LAPPIN: Testimony and personal accounts conflicted with testimony - written -

THE CHAIR: Testimony received from witnesses -

JUDGE MORRIS: Yeah, from witnesses.

THE CHAIR: - witnesses which conflicted with which written reports reviewed by the Commission. Correct? That's what the conflict was?

JUDGE MORRIS: Well, the conflict was with written reports received by the Commission and amongst the witnesses.

THE CHAIR: That's true. Amongst the witnesses, yes.

JUDGE MORRIS: So you want to get rid of: The task force reported a particular?

MS. SNURKOWSKI: Yeah.

THE CHAIR: You have autopsy reports; you have toxicology reports.

MS. SNURKOWSKI: Left the next line anyway. It says: In addition this testimony appeared to conflict with the evidence garnered from the autopsy and toxicological reports.

JUDGE MORRIS: don't think you need that.

MS. SNURKOWSKI: No.

THE CHAIR: Which conflicted with written reports.

JUDGE MORRIS: I would - when you get finished read it to me, Bill, so I can hear it all.

THE CHAIR: Do you want written reports? It seems to me that it is redundant to put "which the Commission received." I don't think that's necessary. Just written reports and testimony -

MR. LAPPIN: Testimony, other testimony.

JUDGE MORRIS: Carolyn suggests you put testimony.

MS. SNURKOWSKI: Put "other testimony" first.

THE CHAIR: Before "written reports"?

MS. SNURKOWSKI: Uh-huh.

THE CHAIR: "Other testimony and written reports." Okay. And we're going to get rid of that next sentence. Okay.

MS. SNURKOWSKI: I just don't think we ought to make the conclusion about resolving something so take out the next line.

JUDGE MORRIS: I mean, I think we have to make it clear the testimony was in conflict and the Commission make recommendations based on our resolution where we could resolve conflicts.

MS. SNURKOWSKI: Because - yeah, maybe later on we may have that in here.

JUDGE MORRIS: This is not the area.

THE CHAIR: I took out the next two sentences.

JUDGE MORRIS: Good.

MR. LAPPIN: And in a way I think that the next paragraph could be conveyed more concisely to just say that -

THE CHAIR: Well, what I think what we're going to do - my thought was on that one - was except for maybe the first sentence was to put in the doctor's, and maybe just substitute Doctor Varlotta's paragraph for that.

MS. SNURKOWSKI: Right, yes.

THE CHAIR: I think we will put the first sentence to indicate why we're talking about it. Unless he did it, I just -

MS. SNURKOWSKI: Well, let me close and I'll read it.

THE CHAIR: Read it into the record. You can keep the first sentence. Unless he covers it. I'm waiting to hear it.

MS. SNURKOWSKI: Okay. So it would read: Further restraints were placed on the Commission by the very nature of the lethal injection procedure itself. Period. That's in the thing.

His suggested language was: The use of medical personnel in capital punishment presents a profound dilemma. Every medical organization that has commented has taken a similar position. Medical personnel are prohibited from participating in executions and render technical advice. The prohibition hindered the Commission's ability to gather information. Many members of the medical profession were reluctant to appear in front of the Commission and were likewise reluctant to testify in that context - content, excuse me - of the lethal injection.

The Commission also is concerned that this prohibition may limit the best advice, the latest technology and the most capable individuals to enable lethal injection.

JUDGE MORRIS: Yeah, I want to - I may want to add something to that if I can just find it.

MS. SNURKOWSKI: Okay.

JUDGE MORRIS: Give me one second.

THE CHAIR: While he's doing that our proposal is to leave the first sentence.

MS. SNURKOWSKI: Uh-huh.

THE CHAIR: And then put that below it?

MS. SNURKOWSKI: Yes.

JUDGE MORRIS: Here is my thought, without writing it. That somehow to end that by saying that all expert testimony or the consensus of all expert testimony was that executions are not a medical procedure but that they partake - it's not a -

MR. LAPPIN: They include aspects.

JUDGE MORRIS: Yeah. I'm trying to - I'm trying to - Heath had the language in basically saying it picks up pieces. But if we could find his language it might be really helpful. I think I've got right it here.

THE CHAIR: Aspects is not a bad word.

MS. SNURKOWSKI: Aspects?

THE CHAIR: If we don't find a better word.

MR. LAPPIN: Not a medical procedure.

JUDGE MORRIS: Page 124.

MS. SNURKOWSKI: But it involves aspects or includes aspects.

MR. LAPPIN: Includes aspects.

JUDGE MORRIS: Heath was on the 12th. Right?

MS. SNURKOWSKI: Well, we can find out.

JUDGE MORRIS: I've got it right here somewhere.

MS. SNURKOWSKI: It's on our list who was where. Heath was on the 12th.

JUDGE MORRIS: The 12th. Okay. Page 124. Here is

what he said. This is the thought that I'm trying to get to. What he says is the central - I was just in this central paradox because I think it's the elephant that's not in the closet. The complexity of lethal injection requires that if it is going to be reliable it be performed by highly-trained medical specialists.

But the participation of such specialists raises deep complex ethical and professional issues.

That's the thought. I don't like the way he said it but that's the thought. So all I'm saying is it would seem to me that somehow we end this by saying that the consensus of all testimony, including the experts, was that execution by lethal injection is not a medical procedure. However, it partakes or it -

MS. SNURKOWSKI: Borrows.

JUDGE MORRIS: It borrows - whatever word you want to use.

MR. LAPPIN: It includes aspects of medical procedures.

JUDGE MORRIS: Which - and I think the other part he said is - what he talks about is have adequately prepared individuals to perform those tasks. And that's the difficulty. And so that's - I just think that ought to be reflected at the end of that paragraph

somehow.

MS. SNURKOWSKI: Well, but - you know, you could say so much because it seems to me that I believe Doctor Heath also was the physician who indicated that it didn't matter what initials were behind your name; that your proficiency -

JUDGE MORRIS: Is what counts.

MS. SNURKOWSKI: It did require that. I mean, that's what I mean. I think we could say a lot in this paragraph but, I mean, I don't know what -

JUDGE MORRIS: No. I'm just saying I think part of our difficulty is that. It's that we're trying - we look to medical experts. But I want whoever reads this report to know that we looked to medical experts for help. The medical experts we've said are constrained.

The second thing is that we clearly must state this is not a medical procedure. And yet, to obtain the adequate or proficient people certainly that would entail training; certainly that would - that is where part of the ethical conflict comes in, is how much - how can you rely on the medical community to help train people to do a good job for executions when they say they can't participate.

Somehow that's one of our difficulties. That's

been persistent throughout this.

MS. SNURKOWSKI: Do you think that the medical community has to do - I mean, I understand what you are saying but it seems to me, you know, when you talk about, you know, A, B, C College who teaches the phlebotomist, whatever the blood guy draws, you know, to do their - to do that, I mean, I don't know that they are considering themselves in the medical realm.

JUDGE MORRIS: I know, but I think what you have overall in this thing, when you review the utility of the drugs or if they are effective or not, or the - how do you determine whether the level of consciousness, those kinds of things, that takes a certain amount of medical expertise that we would like to translate to lay people who do that, or people who are not doctors, or whatever you want to say, that can do those jobs because we're recommending that. We're recommending that somebody walk in the room and make a determination of the depth of consciousness. But in order to really determine how you do that we're partaking of medical knowledge over here about how doctors in a clinical setting would do that.

MS. SNURKOWSKI: That's true, but we're also not suggesting that a medical doctor has to do that.

JUDGE MORRIS: No, we are not.

MS. SNURKOWSKI: We're saying that you could get the training from somebody who teaches CPR at the Red Cross, too.

JUDGE MORRIS: You might, but all I'm - I think one of the difficulties we've had here, that's all I want the report to reflect it's not a conclusion.

MS. SNURKOWSKI: No, I understand that.

JUDGE MORRIS: It's the difficulty of it. And that I think is - you know, and at some point in this report it has to be made absolutely clear that this is not a medical procedure. I mean, I think that ought to be in the - you know, somewhere up in this part of it saying that is one consensus we get from all lay and from all expert witnesses.

MS. SNURKOWSKI: Isn't that what we ought to do at the end of this sentence? I mean, we've talked about the problems with all - the Commission is concerned that the prohibition may look at the best advice, the latest technology and the most capable individuals to enact lethal injection.

That sentence does not necessarily entail before this that we're seeking - we have to have medical - the highest medical technicians.

JUDGE MORRIS: No. But what we're saying is we certainly tried to get advice on that. We had a difficulty getting advice on that and I think it ought to end with something saying the Commission was able to - or, you know, the expert testimony, or whatever you want to say, the consensus of testimony was, or the unanimity of testimony was this is not a medical procedure but it partakes of some kind of medical activity. I don't know how to put that. It's the last part that's giving me the trouble. That's all I want to say.

MS. SNURKOWSKI: All right. So you are saying this is not - you're saying the Commission - the unanimity of the testimony was that -

JUDGE MORRIS: This is not a medical procedure.

MS. SNURKOWSKI: - this is not a medical procedure. However -

JUDGE MORRIS: But it partakes of -

MS. SNURKOWSKI: Is that the however?

JUDGE MORRIS: Yes. However.

MS. SNURKOWSKI: However, there are procedures that -

JUDGE MORRIS: How about this. How about but it to somehow - to be successful it must be implemented by

those who are trained in certain medical processes.

THE CHAIR: Well, I -

JUDGE MORRIS: Do you understand what I'm trying not to say?

THE CHAIR: I think what you are trying not to say is - I think what you are trying to say that to comply with Eighth Amendments requirements, some parts of that are necessarily in there. Otherwise - otherwise you could go down and have your local butcher come down and perform the thing. Right? So you're trying to - the whole purpose of why you're trying to get - and the reason the DOC kept stressing medically qualified personnel out of their mouth so many times was that - I'm sure that's what's driving them.

JUDGE MORRIS: Well, I mean, I think that, you know, it is what it is. The DOC has relied upon qualified medical personnel, to their credit. Whether or not those qualified medical personnel did the best job that can be done is a separate issue. But certainly the DOC is trying to do that by relying on qualified medical people. And I think that's the dichotomy I'm pointing out. The difficulty for the Commission is that although it's not a medical procedure it partakes of -

MS. SNURKOWSKI: How about: However, in order to perform a vein lethal execution medical procedures are instituted and if to that end the people who are performing that need to have adequate training.

JUDGE MORRIS: That's fine. I'll accept that. That's my point. That's neutral.

MR. LAPPIN:: This process is not a medical procedure: however, the process requires some qualified medical personnel to successfully accomplish -

MS. SNURKOWSKI: A humane lawful execution. How is that?

JUDGE MORRIS: Right. I'll buy that. That's good. That's perfect. That's what I'm trying to say.

MR. LAPPIN: By the way, what did you say? So what we have here is we're keeping the first sentence. Add Doctor Varlotta's paragraph and then we're going to close it with the execution process. It's not a medical procedure; however, the process requires some qualified medical personnel to successfully accomplish a humane lawful execution.

MS. SNURKOWSKI: Right. Give me that and I'll type it. I can barely type but I'll type that. But give to me and somebody will type it for you.

JUDGE MORRIS: Bill, are we going to change the -

it says Number Three, Areas of Inquiry. That's not an accurate description but I don't know what to put yet.

But I think "Areas of Inquiry" are not the - that's not what we are talking about.

THE CHAIR: You want to call it preliminary issues or - I don't want to use the word "findings."

JUDGE MORRIS: It's not a finding.

THE CHAIR: Exactly. That's why I want to stay away from it.

MS. SNURKOWSKI: What are we trying to do?

JUDGE MORRIS: What I'm trying to figure out is what would you call this section? It's not area of inquiry.

MS. SNURKOWSKI: Preliminary Remarks.

JUDGE MORRIS: Okay. I'll take that. That's good and neutral.

THE CHAIR: On that next paragraph I want to get rid of all but the first sentence.

JUDGE MORRIS: You're going to thus?

MR. LAPPIN: Thus. So we're striking pretty much that whole paragraph and rewriting.

THE CHAIR: Up here, yes.

MR. LAPPIN: Right. Other than the first sentence? Yes, yes. Other than the first sentence the paragraph

is gone.

JUDGE MORRIS: What about the last sentence in that paragraph, Bill?

THE CHAIR: “Similarly, legal ethics regulating the profession of law limited the inquiry of those commissioners engaged in criminal defense work.”

JUDGE MORRIS: I mean, I can’t speak to that but you can. That’s why I’m saying, if you feel strongly about that it ought to be in there. But I - because I don’t know what restraints -

THE CHAIR: I think that’s - well, I think that’s what the reason why that next section is in there that Peter has. No less important. I think he is putting that in there for my benefit.

MR. LAPPIN: So it should be in both places or do you want to eliminate that one sentence?

JUDGE MORRIS: Well, what I’m asking is do you want the end of that paragraph dealing with your - with lawyers as opposed to -

THE CHAIR: No. I think let’s put in the next paragraph. I think just say similarly, and then just - I had that. I’ll put similarly.

JUDGE MORRIS: As a new paragraph?

THE CHAIR: As a new paragraph. We’re going to combine that into the next paragraph.

JUDGE MORRIS: Okay.

THE CHAIR: We're going to get rid of that first sentence.

JUDGE MORRIS: Okay. About complete journey?

THE CHAIR: Yeah, yeah, yeah.

JUDGE MORRIS: So would you go to - if you're going to leave in the sentence: Similarly, legal ethics requiring - et cetera, et cetera, would your next sentence be not: No less important are, but competing professional guidelines limit.

THE CHAIR: Competing. I think let's just start there. Competing -

JUDGE MORRIS: Yeah. Competing professional ethical guidelines limit -

THE CHAIR: Our ability.

JUDGE MORRIS: - some commissioners or affected commissioners? How about that? Because it may sound like some are ethical and some are not.

THE CHAIR: Okay.

MS. SNURKOWSKI: Some are and some aren't.

JUDGE MORRIS: Limit affected -

MR. LAPPIN: The professional ethics law guidelines. What's after?

JUDGE MORRIS: Yeah.

MR. LAPPIN: Limit what?

JUDGE MORRIS: What I was thinking is: Competing professional ethical guidelines limit affected commissioners in - or a limitation to affected commissioners in full participation of the process, or was a limitation. I didn't perceive that from my part but certainly other people did.

MS. SNURKOWSKI: And how do you want to say it again?

JUDGE MORRIS: What I'm saying is he wants to - that this paragraph to start with the word "similarly" up above.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: And then I would strike the entire first sentence, strike part of the second sentence, and I would go start with the word "competing." Competing professional ethical guidelines limit affected commissioners in full - or from fully participating in the process, or limited -

THE CHAIR: E-F-F?

JUDGE MORRIS: No.

MS. SNURKOWSKI: "A".

JUDGE MORRIS: "A", affective or affected. Limited. I'm sorry. Limited.

MS. SNURKOWSKI: So you say: Competing professional ethical guidelines -

THE CHAIR: - limit affected -

JUDGE MORRIS: - limited affected commissioners from -

THE CHAIR: - from fully participating.

JUDGE MORRIS: - participating, "I-N-G."

THE CHAIR: In this process.

MR. LAPPIN: Here is what I have.

JUDGE MORRIS: Okay.

MR. LAPPIN: Similarly, legal ethics regulating the profession of law limited the inquiry of those commissioners engaged in criminal defense work. Competing professional ethical guidelines limit affected commissioners from full participation in the Commission's work.

JUDGE MORRIS: That's fine. I would just put it in past tense. I would put limited -

MR. LAPPIN: Limited.

JUDGE MORRIS: - and participating.

MR. LAPPIN: From full participation.

JUDGE MORRIS: Either way.

MS. SNURKOWSKI: And so we're talking about the dichotomy of medical versus legal, or what?

JUDGE MORRIS: It's not a dichotomy. What he is saying is that not only would the medical professionals but Bill felt constraint as a defense attorney.

MR. LAPPIN: One more time.

MS. SNURKOWSKI: Okay, yeah.

MR. LAPPIN: Similarly, the legal ethics regulating the profession of law limited the inquiry of those commissioners engaged in criminal defense work. Competing professional ethical guidelines limited the affected commissioners from full participation in the Commission's work.

MS. SNURKOWSKI: You know, I'm not - I was just - I'm trying to figure out what it said. Could you say that again?

MR. LAPPIN: Competing professional ethical guidelines -

MS. SNURKOWSKI: Yeah, I got that.

MR. LAPPIN: -the competing guidelines of medical and legal - limited affected commissioners from full participation in the Commission's work.

MS. SNURKOWSKI: Okay. What was this stuff about in the law, defense law.

MR. LAPPIN: That's the last sentence.

JUDGE MORRIS: Last sentence, Bill, in the paragraph before that.

MR. LAPPIN: That's builds in the legal limitations. Similarly, legal ethics regulating the profession of law limited the inquiry of those commissioners engaged in criminal defense work.

MS. SNURKOWSKI: Okay.

JUDGE MORRIS: And if you wanted to make sense you could say:
Thus, comma, competing professional guidelines.

MS. SNURKOWSKI: That's what I was thinking. I thought -

MR. LAPPIN: That's a long sentence.

MS. SNURKOWSKI: Yeah. That's what I thought you were getting
at but a little backwards.

JUDGE MORRIS: Okay.

MS. SNURKOWSKI: Because you're trying to explain why so you
say these two entities have problems. Therefore, competing things result.

MR. LAPPIN: It's a little confusing given the flow. We talk about
the medical ethics in the first paragraph, paragraph three. Then we go to
legal ethics and then we try to sum it up in one sentence.

MS. SNURKOWSKI: Right.

MR. LAPPIN: There may be a better way to - you want to put it all in
one paragraph?

JUDGE MORRIS: Yes.

MS. SNURKOWSKI: I think that would be helpful.

MR LAPPIN: I think let's put it all in one paragraph.

JUDGE MORRIS: I would strike the entire last sentence there about
professional ethics and the law must remain harmonious.

MS. SNURKOWSKI: No. That's -

MR. LAPPIN: So the whole thing would read, this paragraph would read: Further restraints were placed on the Commission by the very nature of the lethal injection procedure itself.

Then we're going to add Doctor Varlotta's -

MS. SNURKOWSKI: Statement.

MR. LAPPIN: - statement.

MS. SNURKOWSKI: And I have it.

MR. LAPPIN: Followed by that sentence that we added, we've already -

MS. SNURKOWSKI: Right. I add that.

MR. LAPPIN: Then: Similarly, legal ethics regulating the profession of law limited inquiry - so that would be one paragraph.

MS. SNURKOWSKI: Okay. Can I ask a question.

THE CHAIR: I'm going to put the one - part of that last sentence for the doctors,, those commission members so limited are grateful to the other individual commission members for this understanding.

JUDGE MORRIS: That's fine with me if that's - I mean, that's -

THE CHAIR: I think the doctors were clearly appreciative of us.

JUDGE MORRIS: Okay.

MS. SNURKOWSKI: Well, the only thing I'm, you know, I don't think the ethical considerations was just the defense lawyers here. I think

that I have - I felt that I had some restrictions.

JUDGE MORRIS: Well, all of us have restrictions. I mean, I can't express an opinion on the death penalty.

MS. SNURKOWSKI: All right.

JUDGE MORRIS: And so I haven't.

MS. SNURKOWSKI: Well, I think - and that's my point. I think we ought to - I mean, the doctors just members generally, I think we could say: Members of the legal profession on the commission may also have -

JUDGE MORRIS: Okay.

THE CHAIR: Well, initially that's sentence has been struck with similar legal ethics regulating the profession of law limited. That covers everything.

MS. SNURKOWSKI: Right. And I think I would prefer that, Frankly.

THE CHAIR: And just strike the word -

JUDGE MORRIS: "Engaged in criminal defense work."

THE CHAIR: "Engaged in criminal defense work."

MS. SNURKOWSKI: Yeah.

MR. LAPPIN: Have you had time to type all type all of this into one paragraph?

MS. SNURKOWSKI: Yeah. I think I did.

MR. LAPPIN: You did.

JUDGE MORRIS: You know what the truth of the matter is, Bill? I want to strike the entire section of the next part of it. You've talked about the doctors. You've got Doctor Varlotta's statement in the additional sentence. And then you say: Similarly, legal ethics regulating the profession of law limited the inquiry of those commissioners.

THE CHAIR: Period.

JUDGE MORRIS: Period. And then you might want to finish it off with: Those of us so limited, or those commissioners so limited were grateful to the other members of the Commission for their understanding.

MS. SNURKOWSKI: Uh-huh.

THE CHAIR: Okay. That's cool.

MR. LAPPIN: So take out that competing professional.

THE CHAIR: Yeah.

JUDGE MORRIS: Yeah.

MR. LAPPIN: And the last sentence would be: Those of us -

JUDGE MORRIS: Those commission members.

THE CHAIR: Those commission members so limited are grateful to the other members - other commission members - other individuals - other commission members for their understanding.

JUDGE MORRIS: For their understanding or for understanding -

THE CHAIR: For their understanding. Yeah. Their understanding.

MR. LAPPIN: Appreciate the other commission members' understanding of this - of this what? Okay. I have: Those commission members appreciate the other commission members' understanding of this - of this what?

MS. SNURKOWSKI: Of these matters, or this matter. Of these issues.

MR. LAPPIN: Of their understanding on these issues.

MS. SNURKOWSKI: Yeah, these issues.

MR. LAPPIN: These ethical issues. How about that?

MS. SNURKOWSKI: Okay. This is for the court reporter. Would you read that whole sentence so we have it,

MR. LAPPIN: Those commission members appreciate the other commission members' understanding of these ethical issues.

JUDGE MORRIS: That's fine.

THE CHAIR: I would get rid of the word "daunting."

JUDGE MORRIS: And the next -

MS. SNURKOWSKI: Yeah.

JUDGE MORRIS: I wouldn't do that at all. I would put: The Commission - I would go straight to: The Commission was able to convene

in a manner that was -

THE CHAIR: Okay.

JUDGE MORRIS: - mandated upon us by the - and the mandate bestowed upon us by the Governor.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: I would eliminate "and citizens of the State of Florida." There was no mandate. I mean, it was just the Governor.

THE CHAIR: Okay.

MS. SNURKOWSKI: And I would just - can't you say: The Commission was able to do that and as a result.

THE CHAIR: The Commission was able to propose several findings and recommendations.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: Why don't we put the - make that present tense.

THE CHAIR: Yes.

JUDGE MORRIS: As a result, the Commission is proposing several findings and recommendations in hopes to be considered strongly by - or hopes it will be considered by those who create policy and are charged with its implementation.

I don't like the adjective "strongly." I don't see any reason for that.

THE CHAIR: Right.

JUDGE MORRIS: I mean, obviously if we didn't care about it we wouldn't recommend it.

MR. LAPPIN: Can we just say: Findings and recommendations and hopes the Governor will give consideration?

MS. SNURKOWSKI: No. You know, why are we doing that. Why don't we just say: The Commission is proposing several findings and recommendations for the Governor's review.

JUDGE MORRIS: I think the reason I would be - I would leave it as is, is that for policy and implementation, is that the Warden has been given a lot of authority. And what he said to us was: I haven't made any changes. I'm waiting to see what you people say.

And I think that - I don't think the Warden needs permission of the Governor. I mean, I think it would be prudent, but I think if the Warden felt like he needed to change in this implementation, at least the Secretary couldn't do that without permission of the Governor. And both of them said to us: We want to know what you think.

So I would think that's - they are charged - as far as I'm concerned, they are charged with the policy and implementation of the policy.

MS. SNURKOWSKI: Okay. Then say - why don't we - if we want to be affirmative then we ought to say: The Commission is proposing several findings and recommendations regarding policy - to create additional

policies and charge those with the - I mean, get it - make it forceful if you're going to do it. I had a -

JUDGE MORRIS: Okay. Then you can say that the -

MS. SNURKOWSKI: Is proposing several findings and recommendations -

JUDGE MORRIS: As a result the Commission is proposing -

MS. SNURKOWSKI: To be considered by those who create policy and those charged with its implementation.

JUDGE MORRIS: That's fine. That's fine.

THE CHAIR: So findings and recommendations - after that what were you going to say?

MS. SNURKOWSKI: To be considered by those who create policy and those charged with its implementation.

THE CHAIR: By those who create policy and those charged with its implementation. Okay.

MR. LAPPIN: So that paragraph will read: The Commission was able to convene in a manner that was collegial, deliberate and dedicated to the mandate bestowed upon it by the Governor.

MS. SNURKOWSKI: Period.

MR. LAPPIN: Period. As a result, the Commission is proposing several findings and recommendations it hopes will be considered by

those who create policy.

MS. SNURKOWSKI: No, no.

JUDGE MORRIS: Just to be considered.

MS. SNURKOWSKI: Recommendations to be considered.

MR. LAPPIN: Recommendations to be considered.

JUDGE MORRIS: That's correct.

MS. SNURKOWSKI: By those -

MR. LAPPIN: Recommendations to be considered by those who create policy and those charged with its implementation.

JUDGE MORRIS: Right.

THE CHAIR: I question this whole section.

JUDGE MORRIS: Yeah.

MS. SNURKOWSKI: Thank you.

THE CHAIR: The eyewitness accounts.

JUDGE MORRIS: I agree.

MR. LAPPIN: We're questioning this whole section, The Road Required.

JUDGE MORRIS: Yes. I'm uncomfortable with it.

MR. LAPPIN: I could strike it.

MS. SNURKOWSKI: It seems to me that if you were to do it - and I'm not advocating you do it - put in the State's legal foundation but I don't

know that we need that.

JUDGE MORRIS: Here's my concern. I think this is overkill. But at some point somewhere we have to say that we examined the execution of Angel Diaz very specifically in the hopes of determining whether or not - whether or not his execution was successfully carried out. That's not what I'm trying to say.

I'm trying to say that we looked at, what we listed to and heard from the witnesses was a dispute as to whether or not he suffered and we can't reach any conclusions on that.

I mean, I think that's a fair statement in there. We spent a hell of a lot of time listening to people give us accounts of what they saw and asking people where they were, and asking people their observations of the inmate in the hopes that we could glean from that whether or not he had unnecessarily suffered. And I don't think we could reach an conclusion on that.

THE CHAIR:: I'm not in disagreement on that. I don't think we can make that recommendations but we were talking about the findings yesterday. Is that included in one of the findings?

MR. LAPPIN: Well, it was discussed.

MS. SNURKOWSKI: It was discussed but -

MR. LAPPIN: I don't know that it was in the defining process.

MS. SNURKOWSKI: Right. And I was going to say, what I - the Commission's goal, purpose - what's the term you want to use?

JUDGE MORRIS: I think that the -

MS. SNURKOWSKI: Intent?

JUDGE MORRIS: - Commission's goal was to see if we needed to change the protocols.

MS. SNURKOWSKI: Okay.

JUDGE MORRIS: In order to do that we had attempted to determine -

MS. SNURKOWSKI: Okay. And that's what I'm saying. I'm trying to get to that.

JUDGE MORRIS: Yeah.

MS. SNURKOWSKI: I think we're talking about that. The Commission's goals was to determine -

JUDGE MORRIS: If we were going to recommend changes in protocol.

MS. SNURKOWSKI: Okay. All right. Period.

JUDGE MORRIS: Period.

MS. SNURKOWSKI: The Commission, in getting - in reaching that end, or trying to accomplish that goal, those goals -

MR. LAPPIN: I'm still thinking about -

JUDGE MORRIS: It's something to the effect of the examination of the execution of Angel Diaz.

MS. SNURKOWSKI: Okay. The reason I'm coming to this is this is the paragraph that we're in and I think we're kind of getting there. It is the Commission's intent - this is in my findings - The Commission's intent in setting forth the findings is to address questions as to what occurred during the December 13th, 2006 execution.

JUDGE MORRIS: That's fine. I like that.

MS. SNURKOWSKI: Okay. Determine whether the current lethal injection protocols in effect on December 13, 2006, are adequate and make whatever recommendations are apropos in light of these findings.

JUDGE MORRIS: I agree with that.

MS. SNURKOWSKI: Okay. Based upon this evidence presented through the testimony appearing before the Commission, documentary evidence presented related to the Commission's commission as set forth by the Executive Order. The summary of the findings in fact the execution of Angel Diaz and current execution protocols in effect the following were made. I mean, I didn't -

JUDGE MORRIS: I think that's fine.

MS. SNURKOWSKI: Okay. So - and I finish that -

JUDGE MORRIS: I'm satisfied with it.

MS. SNURKOWSKI: Okay. That last sentence we can fix to put it back into where this is.

JUDGE MORRIS: No. I'm just saying -

THE CHAIR: What paragraph were you reading from?

MS. SNURKOWSKI: This is the paragraph under findings.

THE CHAIR: The first paragraph?

MS. SNURKOWSKI: Yes.

MR. LAPPIN: The question is, where does this go?

JUDGE MORRIS: Well, I - here is the question I have. Are we going to do this - are we going to do Carolyn's summary? I'm not in favor of this summary. If I'm going to put in something about the Eighth Amendment, it's going to be what she wrote because that's an accurate statement of the law as far as I understand it. And so if we're going to do that legal framework about the Eighth Amendment - and we may need to do that to satisfy Representative Ross who thought it should be in there and I think we ought to respect that. I would put in what Carolyn wrote because I think it's an accurate statement of what we are held to.

MR. LAPPIN: That we do away with this section on The Road Required.

JUDGE MORRIS: I would not put the Road Required.

MR. LAPPIN: And replace it with a legal -

THE CHAIR: Legal overview. In conclusion.

MS. SNURKOWSKI: Right. So what you can say that - I guess you can put this. You start this. This is our intent. Here is the legal stuff. These are the witnesses. And then it goes - okay. What I was suggesting is that, okay, if you are going to do that then you can start - if you like this paragraph you can start kind of this paragraph is the introductory thing. Say these are the legal - these are the legal parameters we work in based on what the law is. And then these are the witnesses we heard and then that kind of falls into, okay, these are our findings and then this is our recommendations. Is that what you want to do?

MR. LAPPIN: Because you're going to take this first paragraph and move it to the front of the legal overview?

MS. SNURKOWSKI: Yeah. Is that what you want to do?

JUDGE MORRIS: Yeah. Because here is what I'm thinking. As I read through this, what Peter did was he set up some of the problems that we addressed, whether we reached conclusions on them or not. And I think in our findings we're talking about these same things. And I don't see any reason for this paragraph to go back and be redundant. I think we're going to talk about the concerns with training pancuronium bromide, et cetera, in the findings. So why do it here?

Could we take a break and get some more coffee?

THE CHAIR: Yes.

[Brief break taken.]

JUDGE MORRIS: Go ahead. About a page and a half?

MS. SNURKOWSKI: Uh-huh.

THE CHAIR: Just simply in the way that you did it, you just simply listed just generalized what the law said.

MS. SNURKOWSKI: Uh-huh.

THE CHAIR:: And whether it was state, or federal, or -

MS. SNURKOWSKI: Right.

THE CHAIR: Okay. You just sort of listed, I assume, that would be the leading cases or certainly what appears to be the leading cases.

MS. SNURKOWSKI: Right. And quoted from them. Right. Right. Or I quoted from - let's see. Or - well, I may not have put quotes around them but I was paraphrasing it. I try to keep quotes when necessary but sometimes -

THE CHAIR: Is there any way - before the Judge on this. Is any of this, in your opinion -

MS. SNURKOWSKI: Biased?

THE CHAIR: No, no. Redundant is the word. In other words, you said you had the ability to shorten things up. I'm wondering if any of that - if not, that's fine. I mean -

JUDGE MORRIS: You know, I wouldn't shorten this and I'll tell you why.

THE CHAIR: Okay.

JUDGE MORRIS: This is one place where if people want to go find out what this law is, this is important. And there are plenty of references here. It is redundant in some places that, you know, I can point out two or three places, but I don't think the redundancy interferes with the flow of it. And I think it's logical and I think it is - I mean, you could write twenty pages on this and she wrote a page. I think that's as much as we can ask.

THE CHAIR: Okay.

JUDGE MORRIS: I mean, certain concepts are in there. The death can't be torturous; involving standards of decency. All those things that people would - that a lay reader would see and recognize, things like that, are in there with the case law that backs it up. So I think that's why I would leave it like it is. And I think for law people it will be a nice - if they choose to read it - a nice little encapsulation of what our rules are.

THE CHAIR: Okay.

MS. SNURKOWSKI: How we got to the point.

JUDGE MORRIS: Right, exactly.

THE CHAIR: Okay. So the legal overview is going to be the last or

it will be the part right before we get to the witnesses, which starts Eyewitness Accounts.

MS. SNURKOWSKI: The problem I have with some of this is that it is an editorializing.

Mr. LAPPIN: Whereabouts?

MS. SNURKOWSKI: Huh?

THE CHAIR: Which?

MS. SNURKOWSKI: Well, for example: A widely circulated story from the *Associated Press*.

THE CHAIR: Okay. You're down there.

MS. SNURKOWSKI: I mean, I'm just - that just, you know -

THE CHAIR: What is the paragraph?

MS. SNURKOWSKI: It is the third paragraph.

THE CHAIR: Media Accounts?

MS. SNURKOWSKI: Uh-huh.

THE CHAIR: Just put the *Associated Press*, widely circulated, by adding that.

MR. LAPPIN: Let me just ask a question. All of the transcripts are public. Right?

MS. SNURKOWSKI: Uh-huh.

MR. LAPPIN: If somebody wants this they could just go to the

transcript. Correct? Is there a need for us to -

JUDGE MORRIS: I think that - here is the need that I see. And I don't know if we need to do it as extensively as this has been done. But we need to reflect the conflict the Commission encountered. And you clearly have a conflict between, for instance, Dupree, or the written accounts of the reporters, and the Warden, and the Assistant Warden. I mean, we can - we tried to resolve those conflicts by looking at where people were, what they were paying attention to. And I think there are ways to resolve that. But by the same token, I think there are just conflicts that there's differences. And any public person reading this record, any person in the public reading the record, would clearly see these discrepancies. And I don't know that we were able to resolve it. I don't think we can.

MS. SNURKOWSKI: Well, and I guess the problem I have was portraying an account. I mean, I might think that one account or how I perceived different witnesses came across is different. So, I mean, I don't - and I don't know if everybody would agree with all of this accounting. I'm more concerned that we have a record, we have - it's all out there, and we have told who testified. And if somebody is that interested in finding out what was said, what specifically they want to see, they could go to those records.

JUDGE MORRIS: What you could do, if that's your methodology, is to simply recite that. And, you know, we recited who the witnesses were; all matters were a matter of - were in the Sunshine, and there has been a transcript and record created available to anyone who chooses to read it and will be submitted as an attachment to the report, I presume.

MS. SNURKOWSKI: Uh-huh.

JUDGE MORRIS: And then to go to some general statements about, you know, those conflicts between the observations of law individuals, members of the execution team, and that there are clear conflicts as point one.

Point two, we attempted to resolve some of those conflicts by reliance upon some medical testimony.

MS. SNURKOWSKI: Right, right.

JUDGE MORRIS: And we were unable to do that. I mean, I think where you and I differ is you find the greater weight of the evidence points to certain things.

MS. SNURKOWSKI: Sure, right.

JUDGE MORRIS: I wouldn't even go that far. I would say there are just conflicts and the commissioners came to various conclusions based on their - what they heard and saw.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: And I think that's pretty plain. I mean, I think that harkens back to what we said earlier, that we tried to use the medical profession and we had a limitation on that. And so our evaluation of other testimony, such as observations: What does it mean to be awake for twenty minutes, or fifteen minutes, or ten minutes, or what does it mean if he grimaced, or he blinked, or he did these things. We had difficulty doing that. We couldn't arrive at conclusive - the Commission never arrived at conclusions about that because it couldn't. I couldn't.

MR. LAPPIN: I agree.

THE CHAIR: The only problem I see is having dealt with folks reading -

JUDGE MORRIS: They don't read the transcripts.

THE CHAIR: They are not going to go to the transcripts. And so I think it is important at least to put factually. And anything that you think he said that's editorialized needs to be stricken from it. But the quotes are quotes, and that's what they said.

MS. SNURKOWSKI: But I mean but I might emphasize some other quote. That's my point. I mean, are we going to go back and pull the record and identify the quote I think is more relevant to or it puts in context the quote has been taken out? That's the problem with fly-specking the record and picking out what you think is important to you.

I might think it is important to me; somebody else might think - and that's why when we do this routinely from a record, when I go in the courtroom there is the other side has the opportunity to make a thing. I think we're trying to be collegial and try to put the best of our knowledge forward. And in that sense I don't think we ought to be summarizing for the general public what we heard. If they want to read it then I think they need to read the whole thing in context.

JUDGE MORRIS: I think where I agree with Carolyn is the dangers of omission. It's not what's included; it's what is omitted.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: And I think this. I think - I'm trying to remember how we were going to ground our findings. And, for instance - let me just give you a for instance. Where we talk about the success or the lack of success of the adherence to the protocols, and we talk about their decision-making process and their decision to administer the lethal drug when they went back to line four, well, what we know is, and what we may site in the record is, one of the reasons we would recommend a change in protocol is their own FDLE agent immediately after the execution saw the spidering up and the swelling at the injection sites. And therefore we think there was a problem with this, whether we - we don't define when the IV's were dislocated because we don't know. But we know that at least at that

point there already was a problem.

And so there are things we're going to do in the record to support our findings. That's one thing. And the general summary of the testimony is more difficult because I think you have a lot of omissions.

And I think what you should reflect is a clear conflict from credible witnesses.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: I mean, I think Neal Dupree, to me, is a very credible witness. And he clearly conflicts with what the Warden said. And that's fine. The Warden is a credible witness, Neal is a credible witness. You can argue who has other interest but they are in conflict and there is no way to resolve that. And we couldn't resolve it. You know, we had the Warden, and we had Ms. Whitehead, and you had Neal Dupree and you have some Press accounts. And I don't know if they were at the same execution. I can't resolve them.

MS. SNURKOWSKI: So are you suggesting that we make separate comments - I mean, just the general comments about the testimony that we find.

JUDGE MORRIS: Yes.

MS. SNURKOWSKI: That we commend to the public -

JUDGE MORRIS: We comment to the reading of the record for

their own conclusions.

MS. SNURKOWSKI: Right. And suggest that they will find that there are conflicts with regard to the testimony regarding the execution of Mr. Diaz. There's conflicts as to what transpired by the execution team. There's conflicts with regard to what happened - the medical testimony.

JUDGE MORRIS: Medical significance.

MS. SNURKOWSKI: Right. Of all -

JUDGE MORRIS: Of these facts.

MS. SNURKOWSKI: Of these facts.

JUDGE MORRIS: Of these conflicting facts.

MS. SNURKOWSKI: And, I don't know. I think it's probably those three things.

JUDGE MORRIS: I mean, that's just my way of doing it because I - I tend to share with Carolyn. Not that I like - I mean, I like a lot of things that are in here and pointing them out. But I think there's no way you can comprehensively - if you go to Doctor Heath's testimony, he covered a lot of ground.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: And I don't know that it is fairly reflected here, all his concerns. And the same with Doctor Derschwitz.

If you go to Hamilton, Hamilton reaches conclusions that this thing

was botched. And, again, I think that - I don't know that we adequately reflect that in some of these. But clearly our discussions reflected that because all of us talked about this conclusion, that conclusions, and comparisons. And that's what bothers me. It is an omission thing.

MR. LAPPIN: I'm with you. I think it leaves too much interpretation to the writer, not matter who it is.

MS. SNURKOWSKI: And again, if you take this in a court of law, like either Bill or I would be on either side, I mean, we would probably be pointing at the same sentence but there might be another sentence that we also point to for our particular position. So I think - in fairness to the commissioners, too, I think they've heard everything we've heard. And they may have - you know, I'm trying to - in the sense, Monday, you know, I would think this is compelling testimony. And then I would hear something else, "Well, it wasn't so compelling." Well, now, my view on that is different. So I think -

JUDGE MORRIS: I mean, the testimony, as I say, is what it is.

MS. SNURKOWSKI: It is there.

THE CHAIR: So we are at the point of doing the findings.

JUDGE MORRIS: I would have a statement that in the testimonial process, both from the oral testimony given to the Commission, the reports rendered to the Commission, and the -

THE CHAIR: This is a lead-in paragraph to the findings?

JUDGE MORRIS: Yes. Some kind of lead-in finding that there was - this was fraught with conflict and fraught with completely different observations that were not subject to absolute resolution by the Commission.

MS. SNURKOWSKI: Well, not fraught. That's kind of -

JUDGE MORRIS: Well, I think it was.

THE LAPPIN: Let's give it a run here.

MS. SNURKOWSKI: Okay. Well, right, because we tried already.

JUDGE MORRIS: Gosh, I hate drafting. I hate drafting.

MR. LAPPIN: Well, what we're saying is based on our listening to the witnesses -

JUDGE MORRIS: Reviewing reports.

MR. LAPPIN: - reviewing the written reports, there were - there was conflict.

MS. SNURKOWSKI: And availability of the transcripts. We need to say it because we did have that for our commissioners to read.

THE CHAIR: Yes, but let's put that in later.

MS. SNURKOWSKI: Okay. All right.

MR. LAPPIN: Testimony, written reports.

THE CHAIR: Well, that's the interesting thing about them, they

were available.

MS. SNURKOWSKI: Yes.

MR. LAPPIN: Clearly reflected - I'm just throwing down some words here - conflict -

MS. SNURKOWSKI: Contemplated.

MR. LAPPIN: - within this oral and written testimony.

JUDGE MORRIS: And the question is, do you want to give examples. I mean examples would be generic examples.

MR. LAPPIN: Yeah.

JUDGE MORRIS: Let me just think about this for a second.

THE CHAIR: Before you think about I just think testimony, written reports and put the word "and" transcripts of testimony. Is that what you are talking about?

MS. SNURKOWSKI: Uh-huh.

MR. LAPPIN: And transcripts of testimony, witnesses testimony.

JUDGE MORRIS: The classic example - and I would say as an example, not as a -

THE CHAIR: Clearly defined.

JUDGE MORRIS: Would be observations of the defendant by various witnesses.

MS. SNURKOWSKI: Witnesses to the execution.

JUDGE MORRIS: In terms of - in terms of his movement of his body, facial expressions, or the lack thereof. That was a classic example. And his breathing, whatever you want to put in there as a couple of examples. And then how that was we would often ask questions of the medical experts and could not reach conclusions because the underlying facts that there were addressing were in conflict.

MS. SNURKOWSKI: Okay. But why don't you do this.

JUDGE MORRIS: How do you do that?

MS. SNURKOWSKI: I was going to say, why don't you do those three things. Say, for example, the conflicts with regard to the actual execution. And then say "for example." And then say one, I mean, about the execution because you're giving examples. For example, that the witnesses, the perception of how the execution took place were the movements of the inmate during the execution, his facial expressions, his -

JUDGE MORRIS: Breathing.

MS. SNURKOWSKI: Breathing. Right. Those were conflicted by witnesses.

With regard to the medical information received it was clear that there was conflicts between the - what? What happened with regard to the IV's; how the potential - how it could've been - how it could've reached that result. I mean, we had Hamilton saying absolutely went right through

the first time. We have somebody saying: Well, it could've been some sort of a wall.

JUDGE MORRIS: Or during the autopsy.

MS. SNURKOWSKI: Yes. So I think there are various theories of how drugs entered the subcutaneous layer of fat or skin. How is that? And what was the - I had a third conflict. Those are two. What was the third conflict?

JUDGE MORRIS: Lay observations; the medical testimony.

MS. SNURKOWSKI: There was a third one. Well, how about the protocol. And conflicts with the protocol, whether they were followed or not.

THE CHAIR: That's true. Even some of the - the DOC published that report, some of their own witnesses -

MS. SNURKOWSKI: Right.

THE CHAIR: - didn't think - thought everything was fine.

MS. SNURKOWSKI: Right. Because they may not have known there was a variety of reasons, but there was still that inherent conflict with regard to what the protocols, whether they were carried out in the fashion they were supposed to be.

I'm trying to think is there any other conflicts or any other of, you know, body of testimony that we're missing here?

JUDGE MORRIS: Well, the other body of testimony -

MS. SNURKOWSKI: Yes. The experts - disagreement among the experts.

JUDGE MORRIS: The other body of testimony we haven't addressed, and I'm not sure that we should other than to say that we received this public comment. And the reason I say that is on some point there is one very specific request in the public comment - I believe it was the Governor's representative. I don't know -

MS. SNURKOWSKI: Right.

JUDGE MORRIS: I mean, that to me, I think something ought to say that we received this. The Commission has as members, two members of the Legislature. And we leave it to them and not to - not to - the Commission makes no recommendation. I don't want to make a recommendation -

MS. SNURKOWSKI: No. And maybe we ought to instead of going about making faces because that's not really part of the conflict here. I mean, we're talking about conflict. We're not talking about conflict here. We're talking about - and then we can say: Additionally, that we had access to the general public, including the League of Women Voters. Do you want to do it that way?

JUDGE MORRIS: Yes. I just - you're right. Let's separate out any

comment on the public comment.

THE CHAIR: Yeah, make a separate section.

JUDGE MORRIS: Make the section completely - just leave it out and get to it at some point in the report.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: Because I think you have to - the League came in here, or the League, through its representative, came in and said, "We would like you to recommend this." And I don't think we should, I don't believe anybody agreed to do that, but certainly they had their say, and it's in the record, and they had two legislators listening to them. So -

MS. SNURKOWSKI: Right.

JUDGE MORRIS: I'm trying to think of any other conflicts.

MS. SNURKOWSKI: Me, too.

THE CHAIR:: The experts, did you want that in?

MS. SNURKOWSKI: Yeah, I think we need to put it -

MR. LAPPIN: I put down we took testimony of the experts, medical witnesses regarding effects of whatever, effects of drugs.

MS. SNURKOWSKI: Impact of drugs.

MR. LAPPIN: Impact of drugs.

MS. SNURKOWSKI: For example, absorbed rate of drugs, whatever. We had a whole pamphlet of things that we could've -

JUDGE MORRIS: I think the other thing you don't want to point out because you're going to do it in your findings, is the lay witnesses disagreement on the level of training.

MS. SNURKOWSKI: Uh-huh. Yeah, conflicts in -

JUDGE MORRIS: There was a conflict in the level of training received by various participants.

MS. SNURKOWSKI: Because those really fit in with the notion of what we're going to get to. So, I mean, we're really kind of summarizing the product that we're going to have to present now.

JUDGE MORRIS: Right.

MR. LAPPIN: Okay. We want to lead in with a sentence that conveys the fact that at the end of all this review of testimony, written reports, and the transcript of witness testimony, that a number of conflicts were revealed. And I heard somebody say that we could - that the end we couldn't resolve.

JUDGE MORRIS: They are unresolved.

MS. SNURKOWSKI: Right. That went unresolved.

MR. LAPPIN: So is that kind of a lead-in sentence?

JUDGE MORRIS: Yes.

MS. SNURKOWSKI: Well, first of all, like the Commission, we don't want to say that -

MR. LAPPIN: Yeah. The Commission listened to and reviewed the testimony, written reports, and transcripts of the witness testimony which resulted in the determination that many conflicts were -

MS. SNURKOWSKI: How about testimony presented at the - however many meetings we had - that they -

JUDGE MORRIS: Well, I think you have the - you know, the only other category left out of that summary was all the articles that -

THE CHAIR: Eyewitness accounts.

JUDGE MORRIS: The - whether they are newspaper articles, or other things that were submitted. I know we passed out the *New York Times* article and others. We all had access to them.

MS. SNURKOWSKI: Right. And written materials.

JUDGE MORRIS: Okay. Written materials is good. That's fine.

MS. SNURKOWSKI: Yes.

MR. LAPPIN: So maybe we should start this off by saying: After review of the testimony, written reports, transcripts of the witness testimony, articles and other accounts, it is the conclusion of the Commission that there are many conflicting -

MS. SNURKOWSKI: There is conflicting accounts and -

MR. LAPPIN: - of what occurred during the Angel Diaz execution.

MS. SNURKOWSKI: Okay. How is that?

JUDGE MORRIS: Which the Commission is not able to resolve.

MR. LAPPIN: Which the Commission was unable to resolve. As a result of the review of the testimony, right?

MS. SNURKOWSKI: Uh-huh.

MR. LAPPIN: Written reports, transcripts - when you said - I mean, is there any -

MS. SNURKOWSKI: Witness transcripts.

MR. LAPPIN: Witness transcripts.

MS. SNURKOWSKI: That kind of puts it succinctly.

JUDGE MORRIS: Let me stop you at the transcripts, and I'll tell you why. I read through your statements about the application of how you do this in federal. That wasn't exactly testimony. It was certainly contribution by a member of the Commission. It was a matter of record.

MS. SNURKOWSKI: How comments members - or how commissioners comments.

JUDGE MORRIS: That would be better. Comments by members of the Commission, or members -

MR. LAPPIN: Witness transcripts. So we want to say transcripts? That includes everybody?

MS. SNURKOWSKI: No. Witness transcripts -

MR. LAPPIN: And commissioner's -

MS. SNURKOWSKI: - and comments -

MR. LAPPIN: - comments?

MS. SNURKOWSKI: Right.

MR. LAPPIN: By the commissioners.

THE CHAIR: Not that I don't like that being in there. Just that everything said was written, was a transcript.

MR. LAPPIN: Right. That's what I was questioning. When I saw written transcripts, that is everyone. I know. I didn't put that. That's why I was wondering if we shouldn't just put transcripts.

JUDGE MORRIS: Transcripts.

MR. LAPPIN: Because that's everything.

MS. SNURKOWSKI: Okay.

MR. LAPPIN: That's all we said.

JUDGE MORRIS: Okay. Okay. You're right.

MS. SNURKOWSKI: Okay. Let's -

THE CHAIR: Commission transcripts.

MR. LAPPIN: Commission transcripts.

MS. SNURKOWSKI: Huh?

MR. LAPPIN: Commission transcripts.

MS. SNURKOWSKI: Well, that's why I wanted, you know, to make sure that it's not some other transcripts over many years.

MR. LAPPIN: Right. So we can get it by saying commission transcripts and -

JUDGE MORRIS: Other Commission proceedings.

THE CHAIR: At some point how do you get to the other things that were submitted and other -

MS. SNURKOWSKI: Articles and other documentation.

JUDGE MORRIS: Articles and other written submissions.

THE CHAIR: Documentation submitted to the Commission.

MS. SNURKOWSKI: Right.

MR. LAPPIN: Other documentation submitted to the Commission.

It is a long lead-in.

MS. SNURKOWSKI: That's okay.

MR. LAPPIN: It is the Commission's conclusion - it is the conclusion of the Commission that many -

MS. SNURKOWSKI: Conflicts.

MR. LAPPIN: - conflicts -

MS. SNURKOWSKI: Are unresolvable.

JUDGE MORRIS: Remain unresolved.

MR. LAPPIN: I was going to say unresolved conflicts. I'll just put many unresolved conflicts -

MS. SNURKOWSKI: Exists.

MR. LAPPIN: - exists.

MS. SNURKOWSKI: Okay. How about many - how about "a number." I mean, you all - some of us agreed on things that we were - it's not a conflict amongst us. There are some things we can't agree on with regard to whether there was pain. You know, but we -

JUDGE MORRIS: That's one that ought to be stated.

MS. SNURKOWSKI: But we all say - you know, we all I think agree that there was a flub-up.

JUDGE MORRIS: Yeah.

MR. LAPPIN: As a result of the review of testimony, written reports, commissioner transcripts of the proceedings, articles, and documents submitted to the Commission, it is the conclusion of the Commission that many conflicts remain unresolved.

JUDGE MORRIS: Okay.

MS. SNURKOWSKI: Okay.

MR. LAPPIN: Period.

JUDGE MORRIS: Period.

MR. LAPPIN: And then we list out some of these.

JUDGE MORRIS: We could give examples. For example, comma.

MR. LAPPIN: Such as observations of the inmate during the execution process, i.e., movement of the body.

MS. SNURKOWSKI: Facial expressions.

MR. LAPPIN: Facial expressions.

JUDGE MORRIS: Verbal.

MR. LAPPIN: Verbal -

MS. SNURKOWSKI: Comments.

MR. LAPPIN: - comments, et cetera. We don't have to list them all
but -

JUDGE MORRIS: Breathing. Those were four that I think are -

THE CHAIR: For my information when I type this I'm going to put
right after that, this includes but is not limited to the following. One, period;
two, period, like that.

MS. SNURKOWSKI: Yes.

THE CHAIR: That was my thought of the way I should do it.

MS. SNURKOWSKI: Right.

MR. LAPPIN: Conflicting testimony of the expert medical witnesses
regarding impact of drugs, absorption of drugs.

MS. SNURKOWSKI: IV.

JUDGE MORRIS: Success of the -

MR. LAPPIN: IV insertion. Success of the IV insertion, comma, et
cetera.

MS. SNURKOWSKI: Right.

MR. LAPPIN: I mean, there could more added but it gives a flavor of -

MS. SNURKOWSKI: We don't know the time. Could've been the very first time or after -

JUDGE MORRIS: Yes. I would say success of the insertion and -

THE CHAIR: We can use that in a finding. We had one -

JUDGE MORRIS: A better way of putting it.

THE CHAIR: Put that a better way. I remember that now.

MR. LAPPIN: We're just trying to give a flavor of -

JUDGE MORRIS: A flavor, right.

MS. SNURKOWSKI: Right. Just to - yeah.

MR. LAPPIN: That's why I'm not sure we have to be that detailed here. Conflicts of whether or not the DOC's execution protocols were carried out as expected and conflicts about the level of training provided to team members.

JUDGE MORRIS: I would say, here is the juxtaposition maybe we could draw. And the first one of those, the observations of the inmate and of the medical implications of that. There is conflict that we are not able to resolve. An example of conflicts we were able to resolve was that the Commission's consensus was that the protocols had not been properly adhered to. And there is a second one. And that recommendations

should be made as to -

MR. LAPPIN: But wouldn't that -

JUDGE MORRIS: Conflicts that were resolved were two clearly. And that's training and adherence to protocol.

MS. SNURKOWSKI: And leadership.

JUDGE MORRIS: Leadership. Three. Okay. That would be examples, although there were conflicts we were able to reach a conclusion.

MR. LAPPIN: So these are conflicts we were unable to resolve.

JUDGE MORRIS: Right. And then there are conflicts that we were able to resolve, or at least conflicts that led to a consensus that we could make -

MS. SNURKOWSKI: Yes. Because you are trying to explain why we - though we can't resolve the conflicts why are we making recommendations. So you've got to come in there and say: Well, obviously there were many things that we could resolve and we felt that we could make findings as well as recommendations.

MR. LAPPIN: So following this we come back and say there were conflicts where a consensus of the Commission agreed could be resolved.

JUDGE MORRIS: Right.

MR. LAPPIN: And we could list the -

JUDGE MORRIS: Well, could be addressed.

MS. SNURKOWSKI: Yeah.

MR. LAPPIN: Could be addressed. Okay.

JUDGE MORRIS: We didn't resolve them but they were credible enough that we made recommendations on them.

MR. LAPPIN: We have enough there to write this first part, Bill? You can't read this. I'm assuming you're going to get it from the transcript.

THE CHAIR: You can't read your writing.

Mr. LAPPIN: Let me go back over here to yours for a minute. As we go down through you scribble and scratch. I mean, I can go back and write and rewrite. It will take me a little time but -

MS. SNURKOWSKI: Can I type it? Do you think I can type it?

MR. LAPPIN: No, you can't. I mean, I can come over there and read it to you and you can type it.

MS. SNURKOWSKI: I can't type that fast.

JUDGE MORRIS: We will rely on the transcript.

MR. LAPPIN: CHAIR: What is that?

JUDGE MORRIS: Rely on the transcript.

MR. LAPPIN: That's why I was trying to re-read everything.

MS. SNURKOWSKI: Re-read it.

MR. LAPPIN: She will type if and you guys from that can write.

JUDGE MORRIS: Okay.

THE CHAIR: Is that right?

MS. SNURKOWSKI: Yes. That's what I was hoping to.

MR. LAPPIN: I was, too. Now when we get into this much detail.

MS. SNURKOWSKI: Yes.

MR. LAPPIN: Okay. So one more time. As a result of the review of the testimony, written reports, Commission transcripts of the proceedings, articles and documents submitted to the Commission, it is the conclusion of the commissioners that many conflicts remain unresolved. For example, observations of the inmate during the execution process, i.e., movement of the body, facial expressions, comments made by the inmate, et cetera. Conflicting testimony of the expert medical witnesses regarding the effects of the chemicals, i.e., impact of the drugs, absorption rate of the drugs, insertion of the IV's. Conflicts of whether or not the DOC's execution protocols were carried out as expected and the level of training provided to the team members.

JUDGE MORRIS: Okay.

MR. LAPPIN: Then we're going to go into a paragraph that says: Some conflicts were - it was the conclusion of the Commission that some conflicts could be resolved.

JUDGE MORRIS: I would add - back up a second.

MR. LAPPIN: Okay.

JUDGE MORRIS: When you get to the inmate I think there is a conflict of whether the inmate was in pain or not.

MS. SNURKOWSKI: Uh-huh. I thought we said that already.

JUDGE MORRIS: Did we say that?

MS. SNURKOWSKI: Well, he said -

THE CHAIR: We can add it. Unresolved.

JUDGE MORRIS: That's an unresolved conflict.

MR. LAPPIN: Observation of the inmate during the execution process, movements of the body, facial expressions, whether or not he was in pain, could be added to that.

JUDGE MORRIS: Okay. I would like that in there.

MS. SNURKOWSKI: Right there.

MR. LAPPIN: We couldn't determine whether or not he was in pain.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: That's an unresolved conflict. That's your example.

MR. LAPPIN: Now, the next phase of this section will be those conflicts that we did resolve. Correct?

JUDGE MORRIS: Correct.

MR. LAPPIN: And this will be a lead-in to our findings, I assume.

MS. SNURKOWSKI: Right.

MR. LAPPIN: And the three you were talking about were need for training -

JUDGE MORRIS: Right.

MR. LAPPIN: - to ensure the protocol is carried out in the manner it is intended to be carried out. What were the other two?

JUDGE MORRIS: There should be leadership and I don't know whether communication is part of leadership or separate?

MR. LAPPIN: I would put that under it. Personally I would put that under leadership.

MS. SNURKOWSKI: Right. All right.

MR. LAPPIN: Need for training. What was the other one?

MS. SNURKOWSKI: I guess the modification of protocol.

MR. LAPPIN: Oh, protocol.

MS. SNURKOWSKI: Right. Modification of protocol.

MR. LAPPIN: Protocol. Let me make a run here. Here is one that I tried to address in the recommendations I gave you. It may be better served here than in recommendations. And that was developmental - my first recommendation to go to the -

JUDGE MORRIS: Right.

MR. LAPPIN: It basically talks about the need for a written outline.

MS. SNURKOWSKI: Okay. Development of - the need for a detailed written outline of complete lethal injection procedure with emphasis on ensuring lethal injection is carried out in the most professional, humane and compassionate manner for all persons involved.

Develop and implement a complete procedural checklist to be utilized by the different components of the lethal injection process including lethal injection team.

MR. LAPPIN: So we could modify - I mean, the gist of our conclusion is we could resolve this. The protocol was not followed; may have been incomplete. And as a result we need this to happen, or some variation of that comment.

MS. SNURKOWSKI: Uh-huh.

MR. LAPPIN: So we have protocol; we have the need for training based on that protocol; and an assurance that the leadership -

MS. SNURKOWSKI: Will implement -

MR. LAPPIN: - understands -

MS. SNURKOWSKI: Understands.

MR. LAPPIN: - the protocol and the procedures -

THE CHAIR: Clear lines of leadership.

MR. LAPPIN: Clear lines of leadership and a communication with

team members.

MS. SNURKOWSKI: Right. And the ability to communicate during the execution.

JUDGE MORRIS: Let me ask a question. Do you think there was a consensus that - how do I saw this? Do you think there was a consensus this execution was not properly carried out? Let me flesh that out.

There seemed to be an agreement from all the experts, except the medically qualified person who testified in the scrambler, that at some point there was a problem with the administration of drugs through those IVs. I think that's a fair statement.

And that's one of the reasons we're getting some of our recommendations. I think that somewhere we ought to state that. That's where I would use the greater weight of the evidence, because he had a right to his opinion. And it would seem to me the greater weight of the evidence to the Commission was that at some point this execution process did not occur as expected because there was some problem with either the placement or utility of the intravenous lines in the administration of drugs that resulted in subcutaneous administration of drugs. And that based on that problem, part of the recommendations are based upon the fact that the Commission found that those things happened. I think we have to say that at some point.

That's where we get into one where there is a conflict clearly where we have resolved it. The consensus is that we have resolved that conflict. That something bad happened to him. Not necessarily because of a bad act of a person but something bad happened.

MR. LAPPIN: I hate to speak on behalf of - I won't speak on behalf of the other commissioners. But in my mind I think you hit it on the head there.

Based on their current protocol, if they had followed that strictly, you may not have led to the fact or it may not have led to the execution being carried out in the manner that it was in that the IV - he didn't have a good IV, access to the bag, and they failed to ensure unconsciousness prior to administering the fourth syringe, i.e., the pancuronium bromide.

In my mind I resolved that - in my mind I feel as though -

JUDGE MORRIS: Yeah. I think we ought to make that finding.

MR. LAPPIN: I feel as though it was my conclusion that was not carried out in consistent with what the protocol called for.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: And that, to me, is a conflict that we resolved, that the consensus of the Commission resolved by the greater weight of the evidence, if you want to use that term. I don't know that we need that legal term.

MS. SNURKOWSKI: No.

JUDGE MORRIS: But I would think that that is a conflict that was resolved.

MS. SNURKOWSKI: But can we say that - not that I don't disagree with what you're saying. But it seems to me how we get to that and what kind of leads us into what we're going to hopefully get to in finding the recommendation is that the protocols were not followed. And as a result of the protocols not being followed there appeared, based on a confusion as to what transpired, there appeared to be irregularities with regard to this execution. And the reason I say irregularities is the individual has passed away.

JUDGE MORRIS: I think that's correct as far as it goes. Let me tell you what I would add to it.

MS. SNURKOWSKI: Okay. Well -

JUDGE MORRIS: You have adherence to the protocols that caused this execution to proceed as it did, or didn't. But the second thing is, we're making recommendations to amend the protocols because there are things that even under the protocol they would not have done that we now believe they should. Checking on the depth of consciousness.

MS. SNURKOWSKI: Well, yeah, that's true. But the bottom line is that - but if they had followed the protocol. I mean, we can argue until the

cows come home what the problem. But if they had followed protocol, stopped, tried to re-insert the thing and it had gone through properly, we wouldn't be talking about this. We would be talking about something different.

JUDGE MORRIS: Probably not.

MS. SNURKOWSKI: We would be talking about something different, maybe, but not -

JUDGE MORRIS: Probably not.

MS. SNURKOWSKI: That's what I'm saying. We had an execution. The question is: At what point they failed to follow the protocols and as a result we had irregularities with regard to the processing of the execution.

Because there are those conflicts, while we have the conflicts, the Commission had no qualms about deciding - that's what I was trying to get to. They had no qualms about deciding that there needed to be a fix to this. And that as a result of that, the outcry was that you need to do A, B, and C. One of which was that you put in place a pause at a time when you determine depth of unconsciousness, and then you proceed with the execution. So, I mean, that's all I'm trying to get to.

JUDGE MORRIS: Yeah. I just - I don't want it to appear to be a criticism of the Division of Corrections for not doing something that wasn't in the protocol.

MS. SNURKOWSKI: I agree.

JUDGE MORRIS: I mean, that's what I'm trying to - I'm trying to graduate that somehow so that we can say clearly - clearly there was not an adherence to the protocol and that caused us concern. And then secondly, the protocol needs to be amended to ensure these other factors that came out through the consensus that we did reach.

MS. SNURKOWSKI: Right, right.

THE CHAIR: I agree with that. Not to - failure to adhere to their protocols, but then they changed it.

MS. SNURKOWSKI: Well, okay. That's exactly right.

THE CHAIR: Add that as well. They changed their protocol.

MS. SNURKOWSKI: That's true.

MR. LAPPIN: Without adequate -

MS. SNURKOWSKI: Leadership or -

MR. LAPPIN: - adequate information as to - there was not adequate input coming to the decision maker to make that change.

MS. SNURKOWSKI: Well, you know, I mean, that's another conflict that we're resolving but they may not think it. They may think we are taking issue with it because we discussed this and we thought this was right thing to do. They may - and everybody makes mistakes and at the time I thought it was the right thing to do. You know, so I mean -

JUDGE MORRIS: Yeah. I don't want to be - I mean, I don't think you can hold them accountable for something nobody ever asked them to do. That's the point. And now we've clearly - I mean, hindsight is twenty-twenty. But we should be able to tell them now that you should do this. And that's what we're doing. And I just wanted to differentiate between their lack of adherence to the protocols they had that caused problems. And I think Carolyn is right. If they had done it exactly - if the redundancy had been followed as it should've been I don't know that we would be sitting here. But it wasn't.

THE CHAIR: So we can call that failure to follow the -

JUDGE MORRIS: A resolved conflict.

Mr. LAPPIN: That's what I was just -

MS. SNURKOWSKI: Yeah. I think the irregularities in that adherence to the protocol resulted in a conflict. And because of that the Commission was able to look at the matter and actually put aside a lot of the testimony and say: Well, this is what you mean to do.

I mean, the bottom line is it didn't matter where the vein when the vein was stuck at the end of the day. It happened. So now we knowing that it happened, how do you resolve it so that it doesn't happen again.

I think Harry Singletary kept saying over again - I think we need to listen to his wisdom. And that was: You know, you've got a percentage

out there, there is a risk factor in all of this. What we're trying to do is make sure we make that number go down by implementing -

JUDGE MORRIS: Safeguards.

MS. SNURKOWSKI: Huh?

JUDGE MORRIS: Safeguards.

MS. SNURKOWSKI: Right. Safeguards. Exactly.

JUDGE MORRIS: Yeah. I mean, I think that's a really good example to say the conflict was - there was a conflict in the - in what caused the failure or success of the IV. Regardless, we're making recommendations to try to resolve that no matter what the original cause. I mean, that I think is what you are saying.

MS. SNURKOWSKI: Right.

Mr. LAPPIN: Let me make a run how we do this. Why don't we take the same approach we took just previously, that we found these unresolved things and we listed what they are and why we couldn't - you know, the fact that we couldn't resolve them.

MS. SNURKOWSKI: Right.

MR. LAPPIN: However, other identified conflicts that the Commission reviewed believes they have enough evidence - enough information to resolve those conflicts. We're just going to take the reverse approach and the three areas we have are protocol. Failure to follow the

protocol. Examples. Failure to ensure successful IV access throughout the course of the execution. It doesn't say when; it doesn't say how; whatever.

JUDGE MORRIS: That's a good way to put it.

MR. LAPPIN: Failure to administer the chemicals. Now here is the one I'm struggling with. Failure to administer the chemicals in the prescribed manner. Now, to be honest with you, the way their protocol is written -

JUDGE MORRIS: Doesn't -

MR. LAPPIN: - doesn't - it - they administer drugs in the manner in which the current protocol recommends they be administered.

MS. SNURKOWSKI: No. Well, that's true but, you know what? That fails to acknowledge that if there is a problem that you stop and start again.

MR. LAPPIN: You're right. That I don't disagree with. But as far as administer the three chemicals, they are - unlike what we are recommending there is no delay. We asked that several times.

MS. SNURKOWSKI: And that's true.

MR. LAPPIN: But you're correct. What they failed to do was assess along the way -

MS. SNURKOWSKI: Right.

JUDGE MORRIS: Right.

MR. LAPPIN: - the intended outcome of each chemical.

JUDGE MORRIS: Yeah. There is no question in my mind that we resolved that they failed to administer the chemicals properly. There is no question. And so I think that is a fair thing to say the Commission reached consensus on.

MR. LAPPIN: Changed the protocol without proper -

MS. SNURKOWSKI: Well, it's not proper.

MR. LAPPIN: - agreement. Without agreement of the supervising authority. Without the authority's authorization.

MS. SNURKOWSKI: It's two things. It's two things. I mean, I agree that that's enough because that's why we get to the protocols of why, or the recommendations why you have to have better one-on-one. We're not going to tap them on the shoulder.

Mr. LAPPIN: Right.

MS. SNURKOWSKI: I mean, if they thought they had the right to do that because they were looking at what they were supposed to do and saying this is how we accomplish that. So again, that's - like I said, like everything. At the time you do something and it ends of being a mistake, at the time you thought it was right. You thought you were actually doing what you were supposed to do. So I don't know that we can say that they

didn't get the authority. It really wasn't in place. I don't think the authority was in place or the understanding of the authority should've -

MR. LAPPIN: All right. So under protocol we're going to have fail to ensure successful IV access throughout the course. That's one conflict that we've resolved. Failure to administer the drugs in the prescribed manner. We've resolved that. The third one was - you want to change the third one. Changing the protocol. How do you - what do you want on it? How do you want to say that? Or do you want to just leave it with those two as examples?

MS. SNURKOWSKI: Yes. Well, that's it. I mean, I think what we need - I think what I was hoping we would get to that in spite of whatever the problem was we decided that we could acknowledge that there was a problem. I mean, you don't have to have all the components of a problem to know there is a problem and you know that you've got to go get it fixed. And that's what we did.

Mr. LAPPIN: Yes. So my question is: What, if anything, do you want there to be in a written document regarding changing the protocol?

MS. SNURKOWSKI: Well, the - I think that what we did was - for example, the pause. I think that we -

Mr. LAPPIN: I know that. But writing down here.

JUDGE MORRIS: How about this. How about the concept that

what we reached consensus on was that the protocol was insufficient in areas of leadership, or decision-making, or whatever. I mean, I think that's really what you are saying.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: Is that why you can't hold them accountable is because they were trying to follow protocol that didn't address those things.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: So we reached a consensus that the protocol needed to be amended to avoid those problems because it was deficient in areas of what you put in there. I think your number two, talking about training, and demarcation of leadership. Harry put that in?

MS. SNURKOWSKI: Uh-huh.

JUDGE MORRIS: So that might be a general way to categorize it.

MR. LAPPIN: Okay. So opening sentence is: There are other conflicts that the Commission believes they have resolved that has led to certain findings and recommendations. For example, the protocol. Failure to ensure successful IV access throughout the course of the execution. Failure to administer the chemicals in a precise manner. Protocol is insufficient in addressing certain events or certain -

JUDGE MORRIS: Processes.

Mr. LAPPIN: - processes performed during the course of the execution, period.

JUDGE MORRIS: Right.

MR. LAPPIN: Training. The fact that some team members, although - let me just back up here. Although the Commission was informed that training occurred it was clear that through their own acknowledgment that some team members had not been trained. We resolved that conflict, in my mind. Is that fair?

JUDGE MORRIS: Yes.

MR. LAPPIN: And uncertainty due to lack of familiarity with the protocol on how to proceed, or how to carry out the execution. There were - my sense was that there were some people didn't know exact - they were so specialized, one, they didn't know what to do in case there was a change or an incident that required some change.

MS. SNURKOWSKI: Right.

MR. LAPPIN: Or two, they just weren't familiar enough with what their role was, including the FDLE.

JUDGE MORRIS: You're right.

Mr. LAPPIN: So that's training.

MS. SNURKOWSKI: I mean, even the best example I would use is that, you know, we had a party there that requires - we have an official

witness, yet the official witness doesn't show up to here he is supposed to witness.

MR. LAPPIN: And then under leadership we just have a consensus that there was a breakdown or a failure of the team members to effectively communicate with the lead - with the -

MS. SNURKOWSKI: I think that it was inadequate - I think there's inadequate protocols out to the responsibility of the leader. I think - you know, he -

JUDGE MORRIS: I agree. I think the protocols didn't address specifically - because the Warden could look at the protocol and say: I make all the key decisions when they switch lines.

THE CHAIR: Right.

JUDGE MORRIS: Which is what we are recommending. So I think we have to say that the protocols that the -

MR. LAPPIN: CHAIR: The protocol fails to specifically identify -

MS. SNURKOWSKI: Line of authority.

MR. LAPPIN: - the line of authority and what decisions must be made for the -

JUDGE MORRIS: The line of authority -

MS. SNURKOWSKI: The ultimate yes man, or no man, however you want to say that.

MR. LAPPIN CHAIR: The decision maker.

MS. SNURKOWSKI: Yes.

THE CHAIR: Okay. We've had enough?

JUDGE MORRIS: Yes. I think it - I mean, to me that's generic but it clearly lets anybody in the public reading know: Yes, this Commission agreed this execution was not as successful as it should've been. That's a fair comment without being unduly critical of the DOC because of the failure to adhere to something that didn't exist.

MR. LAPPIN: Right.

JUDGE MORRIS: And then you can reach your own conclusions about their testimony versus the lay testimony and class, and prejudice, and other kind of things.

MS. SNURKOWSKI: Got that? So scribed?

THE CHAIR: However, if you want to give that to me I will take it and -

MR. LAPPIN: I'm going to give it to you. I'm going to give you everything I've got here.

JUDGE MORRIS: And then he's going to get on a plane and go home.

MR. LAPPIN: You can have everything that I have here just as long as you don't put this anywhere and say: This is the leadership for the

Bureau of Prisons. Where are we going next? What is next?

MS. SNURKOWSKI: Findings.

THE CHAIR: Findings.

MR. LAPPIN: Findings. Well, actually in your draft there is a section called Procedures and Protocols that I kind of - again, I thought it was a reiteration. I thought I was going to have the same difficulty I was having with the eyewitness testimony. The reason we got away from the eyewitness testimony was because of personal interpretations.

JUDGE MORRIS: You know, I would omit the remainder of this and go straight to findings and recommendations.

MS. SNURKOWSKI: We're getting awful long in the tooth here.

MR. LAPPIN: Well, I agree.

JUDGE MORRIS: What we are talking about, Bill, is where it starts on page eight, nine and ten you have Peter's thing about procedures and protocols, and medical.

THE CHAIR: Conclusions.

JUDGE MORRIS: Yeah. He doesn't get to his proposed findings and recommendations until page eleven and that's where I think we're at.

MR. LAPPIN: Let me ask you this. Should this - this paragraph d., Medical Conclusions. Could that not be - or should we not take some of that to put in the section we just talked about, or is that verbiage -

THE CHAIR: I wouldn't go into the verbiage. Finds that both of the periphery IV lines were not properly inserted. We've restated that to a degree over here by saying that they didn't - they did not ensure venous access through the course of the execution.

MS. SNURKOWSKI: Right.

MR. LAPPIN: You just want to eliminate that, too, or do you think -

JUDGE MORRIS: I think it is a more generic statement the way you put it. We didn't know if it is was initial, or later, or what. We know it's not right.

MS. SNURKOWSKI: I think we have the -

MR. LAPPIN: We're okay with that?

JUDGE MORRIS: Yes, okay with that. I think you did a better job of it. Do we have a particular order on the findings and recommendations, Bill? We were following this yesterday during the discussions. That's what I didn't pay attention to is if the discussions yesterday followed this format, or if we went through it differently.

THE CHAIR: We went through it differently than we did on the -

MS. SNURKOWSKI: We need to rearrange them. It must be kind of hard say what they are. I think the very first thing, for example, is the execution took longer.

MR. LAPPIN: Do we have transcripts of the - what we just looked at

today?

THE COURT: We have two.

JUDGE MORRIS: You do?

MS. SNURKOWSKI: Oh, we do. Okay. My question was Senator Crist said cannot prove whether he suffered.

JUDGE MORRIS: The first finding is it took too long.

MR. LAPPIN: That's correct. I think that's where it really started.

MS. SNURKOWSKI: Well, all I'm saying that was just something he said. But I think you're right, in order, right.

JUDGE MORRIS: Well, we've just gone through that. I mean, that's what we just did, is go through and find where we had conflicts that were - things that were in conflict and things that were conflicts that we had resolved. So I don't know why we would go through that again.

MS. SNURKOWSKI: So we're going to say we're going to do Rodney's first.

MR. LAPPIN: I'm looking for Rodney.

MS. SNURKOWSKI: Okay. Rodney comes up - I'm of the opinion we do not have to do this. There are some clear observations that the -

MR. LAPPIN: What page are you on?

MS. SNURKOWSKI: I'm trying to find it. It doesn't have a page number. About four pages into this.

JUDGE MORRIS: It's on page six.

MS. SNURKOWSKI: Yes. Because he had the burning candles. I'm going back. I think what the most obvious thing that went wrong and moved to the left, and recommendations - but it took longer than usual. That was on the bottom of page six.

JUDGE MORRIS: Bottom of page six?

MS. SNURKOWSKI: Yeah.

THE CHAIR: It took longer than usual.

MS. SNURKOWSKI: Yeah.

THE CHAIR: Longer than the nineteen that preceded this one.

MS. SNURKOWSKI: Right.

THE CHAIR: So that's a finding that it took -

MS. SNURKOWSKI: I think that's where we had execution took longer. And I've got - and deviated - deviation executive protocols, execution protocols. Excuse me.

JUDGE MORRIS: You know, let me make a - we just did part of this with what we just read.

MR. LAPPIN: We did?

MS. SNURKOWSKI: Uh-huh.

JUDGE MORRIS: In generic terms.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: Why don't we go straight to recommendations and in explaining the recommendation, Recommendation One, whatever it is, revise the protocol. Whatever one you want to start with. And then as an explanation of those things we can go back to the findings.

MS. SNURKOWSKI: That's a good idea.

JUDGE MORRIS: This execution took too long because, or whatever. As opposed to - the findings that I see are the execution took too long; there was a problem in the insertion or maintenance of the IV; some of the drugs were administered subcutaneously; that the order of the drugs, we were unable to determine that the effect of the drugs, the order in which the drugs took effect because of the failure to adhere to the protocols.

Those are the kind of findings I guess we can make. And then the finding that we really couldn't make, that everybody wanted the answer to, was did this man suffer or not. We couldn't make that finding.

MS. SNURKOWSKI: Okay. That's true. So we want to -

THE CHAIR:: But the problem I have is that is - well, the problem that I think needs to be in there is that you make these findings but you are going to - are you not going to, at some point, have to put the factual basis

for them?

JUDGE MORRIS: Yeah. I think you can. What I'm saying is - what I'm saying is that they - you might want to say recommendations, or you can say recommendations and findings upon which they are based.

MS. SNURKOWSKI: That's okay. That's what I was thinking. Do a recommendation and then right after you make that statement then say: These are the findings that reached this recommendation, and explain it.

MR. LAPPIN: So you want to back into it just like we did yesterday.

MS. SNURKOWSKI: Yeah.

JUDGE MORRIS: Yeah.

MR. LAPPIN: We know what our recommendations are. And then we will determine the basis of those recommendations, the findings. And then we can decide do we have a category that is findings and recommendations, or do we split this. After we get this all done, here are the findings. Based on that here are the recommendations. You could do it either way.

MS. SNURKOWSKI: Right.

MR. LAPPIN: So no different than yesterday, Bill, when we kind of went through and determined recommendations. We then came back and determined what findings led us to those recommendations.

MS. SNURKOWSKI: Right.

MR. LAPPIN: Does that make sense?

THE CHAIR: Yes. But the one concern I have is that since we went around the room yesterday we need to at least go through the document, the document you have on your computer, and the copy that you have, to make sure that every one of those findings gets -

MS. SNURKOWSKI: Put in there.

THE CHAIR: - put in there. So we at least need to have those.

JUDGE MORRIS: I mean, the one you're already done like the one I'm suggesting that there is a problem for the medical community. We did that already.

MR. LAPPIN: Yes. Another findings yesterday included lack of adherence to the protocol; training; leadership; and the other fact that it took too long.

MS. SNURKOWSKI: Okay. But let me just say this. That we're here to talk about this and discuss it. We've got some poor guy out there who didn't come to me because he couldn't. And he is going to look at this and he is going to be sending us e-mail saying forgot my protocol or my findings. So I think what we need to do is probably go through the findings.

JUDGE MORRIS: Whatever you want to do.

MS. SNURKOWSKI: So that no one feels like their observation was

missed.

MR. LAPPIN: I don't disagree with you. What I'm saying is it might be easier for us to get the recommendation up there and then we'll go through this and list the findings and make sure that we've got a cross-walk between what we heard yesterday and -

MS. SNURKOWSKI: I think that's how the report should finally come out. But I'm just saying I think we probably need to -

THE CHAIR: I'm not saying the report can't look like that but we at least need to -

MS. SNURKOWSKI: Weed out what they say.

THE CHAIR: Find the findings first and then just make sure, otherwise we're going to leave something out.

MR. LAPPIN: So do we start with the recommendations and after that the finding. Is that what you want to do? Like yesterday we discussed the record.

THE CHAIR: I understand but I think we at least need to make sure. Let's find all the findings. Okay? Let's go through and find the findings and then we'll have it in our mind anyhow what those sere.

MS. SNURKOWSKI: Well, I just went through the whole document and I didn't see any of them.

MR. LAPPIN: You didn't see any of them? That's what My -

there's not many of - we talk a lot about the issue of any suffering and I think we've come to the conclusion, or at least my sense of our discussion was that we could not determine whether or not the inmate suffered.

JUDGE MORRIS: Right.

MR. LAPPIN: We've got the issue on page six.

THE CHAIR: That in itself is a finding.

JUDGE MORRIS: That's a finding that we couldn't reach -

MS. SNURKOWSKI: Right. And that was the top one we cannot do.

THE CHAIR: Whether the inmate suffered or not, there was pain.

MR. LAPPIN: And then we have the issue that it took too long, page six.

MS. SNURKOWSKI: And then the next one was findings, add number three.

MR. LAPPIN: I'm sorry. Where?

MS. SNURKOWSKI: Well, I've got notes. I said add number three. And add number three I believe was in the draft: The unintended events during the execution were not isolated acts but a result of the flawed decision making which elevated execution results over those procedures and protocols designed to protect Eighth Amendment concerns.

These unintended events were exacerbated by the restriction

placed on the physician participation in executions as expressed by the American Medical Association and other similar medical organizations. These restrictions significantly reduce the number of available competent physicians willing to participate in executions.

And that's what I had as the third one.

MR. LAPPIN: And you're on findings. Correct?

MS. SNURKOWSKI: Yeah.

THE CHAIR: That may have been the point at which we were going down. That would've been Varlotta probably yesterday.

MS. SNURKOWSKI: I don't have - all I have is "add number three."

JUDGE MORRIS: Well, it's got to be one of the threes.

MS. SNURKOWSKI: Yeah. And that was the only three I had circled. Mine is circled and -

THE CHAIR: Well, it could be three: Develop and implement a communication system. That would be -

MS. SNURKOWSKI: Yeah. I didn't circle that one, though.

MR. LAPPIN: All right. As I read here, for example, I know that I made a suggestion that a finding include some training. I don't see that anywhere in this document.

JUDGE MORRIS: He's got it in here. It's on page nine.

MR. LAPPIN: Is it? I missed it.

MS. SNURKOWSKI: Singletary. Here is Singletary's. But his - his was three years. I didn't circle his three either.

MR. LAPPIN: You're looking for what?

MS. SNURKOWSKI: We're looking to see what three was.

JUDGE MORRIS: You're talking about which ones that he agreed to on Singletary's?

MS. SNURKOWSKI: Well, I have those marked, yeah.

JUDGE MORRIS: Okay.

THE CHAIR: It just says finding on leadership.

JUDGE MORRIS: Well, that's just his summary statement in this. His real earlier discussions that he had made about leadership and other such things I don't think were reflected in this. They're not. So that's why I said you circled what he - he kept going back and saying, "I recommended one a year," whatever it was.

MS. SNURKOWSKI: Yeah. And that's what I tried to get.

MR. LAPPIN: But, Carolyn, I want to make sure. There were two different sections yesterday. The first we did on training and we were circling E, whatever.

MS. SNURKOWSKI: These are my findings.

MR. LAPPIN: You're in the finding section.

MS. SNURKOWSKI: This would be my findings. See findings, it is

page -

MR. LAPPIN: Yes. And we were referencing Harry's doctor.

MS. SNURKOWSKI: Yes. I have some of Harry's, but the one I have, exactly what I have is "Add number three."

THE CHAIR: This is findings. That was always on the wrong page and I think it's going to be this one.

MR. LAPPIN: This is recommendations.

MS. SNURKOWSKI: Yeah.

MR. LAPPIN: Training and re-training standards with benchmarks and time frames must be established with priority in the execution by lethal protocol.

THE CHAIR: I'm just making sure you didn't have another three.

MS. SNURKOWSKI: That was our second Harry's three.

THE CHAIR: It can't be your three.

MS. SNURKOWSKI: And it's not my three and so - and it was not - it wasn't Mr. - Harley's.

MR. LAPPIN: My three is on communication so that's not it.

MS. SNURKOWSKI: Right. And the only other - so I have "add number three" and the only thing I didn't put was the site, but I did circle and marked this one. And that's the draft one.

MR. LAPPIN: Of who's? Well, maybe we decided to put that in as

a flaw - as a finding that this is flawed decision making, perhaps.

MS. SNURKOWSKI: Yeah.

THE CHAIR: I thought we modified that one. I don't think we had it as written.

MS. SNURKOWSKI: Well, right under that I have, "The preponderance of the physical evidence demonstrates unsuccessful venous access at the time was a change in the protocols in the administration of drugs." And we said that was based on Doctor Hamilton, the FDLE witness. So that could be the thing - could've been the thing because that's what we're talking about. So let's get that -

THE CHAIR: The training .

MS. SNURKOWSKI: That would've been recorded, wouldn't it? Didn't we talk about that one?

THE CHAIR: Yes. I think we're back to your writing now.

JUDGE MORRIS: I don't think you're going to be able to go through and - what I'm saying is I think if you want to make findings then go through and say: The Commission made the following findings. One, the execution took too long; two, there was a failure to adhere to the stated protocol; three, there was unsuccessful either insertion or maintenance -

MR. LAPPIN: Maintenance of the IV.

JUDGE MORRIS: - of the IV; four, there was subcutaneous administration of drugs, of the lethal drugs; five, that the Commission could not - that because of the failure of adherence to protocol it could not be determined in what order the drugs were administered to the inmate.

And then you might want to make a finding the Commission was unable to reach a conclusion as to whether or not the inmate suffered. For the reasons stated above the Commission couldn't, because we don't know what order the drugs were administered. Big fight. Did he get enough Sodium Pentothal.

MR. LAPPIN: I think that's -

JUDGE MORRIS: I mean, that's what I'm saying.

MR. LAPPIN: Maybe I'm having a problem with the word "order" because I thought that the other DOC document - I know we had some testimony that varied from that, but we also had folks that I thought would testify about all that business of syringe, one of Rack A, and all that stuff.

JUDGE MORRIS: But the doctor's point is not necessarily how they follow the syringe numbers. But actually on the receptor.

THE CHAIR: Oh, okay.

JUDGE MORRIS: How did the drugs - you know, what drugs entered at what time in his body, which one came first, second or third because of the unsuccessful venous access. See what I'm saying.

THE CHAIR: That's fine. That's fine. Now I understand.

JUDGE MORRIS: So I think there was a consensus that we couldn't determine, and that's one of the big fights. That's what tells us we can't tell if he is in pain or not.

THE CHAIR: Okay. I started writing down what was on the -

JUDGE MORRIS: What's on the board?

THE CHAIR: - on the board. And so under the idea that you had let's put findings under that. First of all was Warden is in charge of all decisions, and I think we were going to keep that later, by the way.

MR. LAPPIN: I think we're on recommendations.

JUDGE MORRIS: We're on recommendations.

THE CHAIR: Right. Isn't that what you were going to do? Ultimately you said that you wanted to do recommendations in the back. Use that for the findings under the recommendations, which means you will repeat some, I'm sure. But is that what you want, recommendations and based on findings.

JUDGE MORRIS: Well, I'm revisiting that because -

THE CHAIR: I think you have to repeat the findings.

MR. LAPPIN: In the report it doesn't have to be under it. I mean, right now for us to pull it together, you've got your recommendation. And then we list the findings associated with that. At the end we will come back

and -

MS. SNURKOWSKI: Fine tooth.

MR. LAPPIN: And just take the - we won't repeat the findings. We will just put them in the findings section.

MS. SNURKOWSKI: Based on the -

MR. LAPPIN: Based on these findings we came up with these recommendations. You're right. Some of the findings may fall under several of the recommendations.

MS. SNURKOWSKI: We did it in an organized fashion. We started with training. I mean, we started at the beginning through the whole protocol.

THE CHAIR: Right.

MS. SNURKOWSKI: And maybe that's what we ought to be doing. Let's get some organization here.

JUDGE MORRIS: Okay. In other words, go to - just style it recommendations and go to the order that we followed yesterday?

MS. SNURKOWSKI: Yeah. And then we can give this a logical effort to get back where we were.

JUDGE MORRIS: Okay.

MR. LAPPIN: I think in the end we're going to find we're going to have all the findings. We can then collapse those into one document and

put it in the findings section so that it is not repeated time, after time, after time.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: Where does it start with?

MR. LAPPIN: It started with the Warden is in charge of all decisions.

MS. SNURKOWSKI: Training.

THE CHAIR: No, the training came later. The training was page two.

MR. LAPPIN: If you go to the protocol we started with the Warden is in charge of all decisions. That's the first -

JUDGE MORRIS: Is that the first record? What is on these pages?

MR. LAPPIN: This is it right here. This is it right here.

JUDGE MORRIS: Okay.

MR. LAPPIN: But the thing is, we didn't move that somewhere else.

MS. SNURKOWSKI: Yeah. Because again, I think that we're kind of getting lost.

MR. LAPPIN: Well, this okay.

MS. SNURKOWSKI: No, I'm not going to change it. I just want to see what the next page says to see where I am in order. Okay. Great. Perfect. Because that's what goes with the Lappin's six, so-and-so's

seven.

THE COURT: Yeah. Right.

MS. SNURKOWSKI: That's what I have.

JUDGE MORRIS: Where do you want to start?

MS. SNURKOWSKI: Training, the man at the top.

JUDGE MORRIS: Are you talking about Varlotta?

MS. SNURKOWSKI: No, no, no. Not training.

THE CHAIR: Let's look at the other things while we're here. Let's look back a couple of pages and see what we have. I'm just trying to see if there is anything that -

MS. SNURKOWSKI: Right. And the reason we put it back there was because we wanted to reemphasize that.

MR. LAPPIN: I agree because it's really not appropriate in the definitions. That's just telling you who these people are.

MS. SNURKOWSKI: That's what it was. I knew that - I knew it was something that -

MR. LAPPIN: It was - we were trying to put it in definitions which was probably inappropriate.

MS. SNURKOWSKI: Yeah, right. That's what it was. I was like, why do I have that.

MR. LAPPIN: So really, the first thing we did was, was the selection

of the execution team. We made a recommendation, as I recall, on the selection of the execution team. Team will report in writing.

MS. SNURKOWSKI: No. We've got to go back because that was in our definition and we don't have to - see, we're still - right.

THE CHAIR: We have this. That's in the definition section.

MR. LAPPIN: Well, I don't know. I mean, I took it from - at this point I was paraphrasing what I had written here under number two. I'm sorry. Number five.

MS. SNURKOWSKI: Okay. You know what we could do. Like in the purpose, to establish procedure because it does say the Warden is in charge. At the very beginning, purpose. I mean, no matter where we want to put it.

THE CHAIR: Did we not come to the conclusion though that we weren't going to - we weren't going to write in where the protocol went. It was up to them to do that.

MS. SNURKOWSKI: Right.

THE CHAIR: So we will simply make the statement: The Warden is in charge, along with the other thing, and now let's do along with the other part about the Warden's general thing. And hopefully they will put that in different places although -

MS. SNURKOWSKI: Right. Okay. Well, we can start. You can

say: The Warden is in charge and then to that end -

JUDGE MORRIS: Let me ask you a question.

THE CHAIR: Yes, sir.

JUDGE MORRIS: Sorry to interrupt.

MS. SNURKOWSKI: That's all right.

JUDGE MORRIS: Is there a way to organize our recommendations something like personnel. The Warden is in charge of all decisions. If there is something else - placement of people in the - you know, the protocol should be - reflect where each individual is located. The protocol should reflect what each individual's task is. So a focus on personnel. And then maybe the next one goes to -

MR. LAPPIN: Protocol.

JUDGE MORRIS: Yeah. Procedures in the protocol for administration of drugs. And then you have the things we talked about with the gap, or the things we talked about with going back with redundancy, or the things like that. Is there a way to organize it? I mean, I didn't think about those recommendations in terms of categories. Or do we want to just list them and say, you know, the first thing is, you know, the Warden is responsible. And the second thing is everybody should know what they are doing. And the third thing is based on - they are trained to know what they are doing.

THE CHAIR: In order to do that probably the quickest way is to type these up, printing them for you. Why don't we just look at each of them. And we can start at the back here and go this way. And then see if your idea of anything comes to oh, they are falling into -

MS. SNURKOWSKI: Place.

THE CHAIR: - categories.

MS. SNURKOWSKI: And the reason I say that is that I think we all would agree we are not rewriting these forms. So when you -

JUDGE MORRIS: No, I agree with that.

MS. SNURKOWSKI: So, when you start seeing technical terms like personnel, this and that, your -

JUDGE MORRIS: Well, what I'm saying is we're recommending modifications in the protocol to be considered by the Department in these general categories.

MR. LAPPIN: I think we've already done this.

MS. SNURKOWSKI: Yeah.

MR. LAPPIN: To me it comes under leadership of personnel, protocol, and training.

MS. SNURKOWSKI: Okay. If we could - all right. Let's -

JUDGE MORRIS: And then miscellaneous.

MR. LAPPIN: Yeah. One for any other small things. But if you look

at that you've got the issue on the Warden and you've got selection of the team. That pretty much whatever is your personnel issues.

MS. SNURKOWSKI: Right.

THE CHAIR: All right. Well, let's just then go through these.

MS. SNURKOWSKI: Let's do them and then we will plug them in later. All right. We're going to have Warden and personnel. Right? All right. Protocols?

MR. LAPPIN: I mean, you're going to do all everything - you're going to go through and pick out everything that goes in this.

MS. SNURKOWSKI: I went through. I want the categories because you're going to leave us.

MR. LAPPIN: Oh. Leadership and personnel, protocol, and training.

MS. SNURKOWSKI: And training.

MR. LAPPIN: And then miscellaneous to pick up anything else.

MS. SNURKOWSKI: All right. Got you.

JUDGE MORRIS: Do you want to go through these, Bill? Go back through and see where they fit?

THE CHAIR: And then we will go back through and see how many fit, uh-huh. Or we could - if you want to try and plug them into that we can do it first. It doesn't matter.

JUDGE MORRIS: I don't care. However - I mean, if you want to just go through those.

MS. SNURKOWSKI: See, let's fine then there and then we can get the ones we haven't done.

JUDGE MORRIS: Right. That's what we're doing.

THE COURT: Okay. We have Singletary number nine. Do you have that real quick?

MS. SNURKOWSKI: Singletary number nine.

JUDGE MORRIS: That's under personnel. That's the FDLE.

MS. SNURKOWSKI: Debriefing should be a formal process. Right?

JUDGE MORRIS: That's it is training.

THE CHAIR: That's protocol. That's correct, yes.

MS. SNURKOWSKI: And?

JUDGE MORRIS: And the second would be that everybody knows their job and their job is totally defined and all. That's protocol, isn't it?

MR. LAPPIN: To me that's protocol.

THE CHAIR: This is protocol. I don't know what the first part says because this is an add-on.

MS. SNURKOWSKI: All right. It says - okay.

THE CHAIR: Singletary nine. You've got to read what that, that's the first part. I've got it right here. Okay.

MR. LAPPIN: Debriefing should be a formal process that details who should participate, what should be covered and record should be - and a record should be produced. This includes FDLE agents. This would include the detail logs by the FDLE agents.

THE CHAIR:: Okay. So I think this is the - that's a protocol issue.

MR. LAPPIN: Protocol. Put P-2.

THE CHAIR: I think this is an M for miscellaneous. Okay. Administration of drugs. That's a protocol issue.

MR. LAPPIN: I would say it's a protocol issue.

MS. SNURKOWSKI: Right.

MR. LAPPIN: And Warden is -

JUDGE MORRIS: Personnel.

MR. LAPPIN: - a personnel issue. Leadership and personnel.

JUDGE MORRIS: L and P.

MR. LAPPIN: L and P. Okay. Oh, wait a minute. Oh, that's fine. Protocol. I don't want you guys getting confused thinking that's leadership and -

THE CHAIR: Leadership and personnel is protocol. Protocol.

JUDGE MORRIS: That would be in the protocol, communication and responsibility of each person.

MR. LAPPIN: Yes.

JUDGE MORRIS: For miscellaneous, down below it says:
Additional clocks and lighting. That's miscellaneous.

MR. LAPPIN: To me that's protocol.

THE CHAIR: This is still protocol?

MR. LAPPIN: I believe it is.

MS. SNURKOWSKI: Right. The monitor. Is that the monitor?
Yeah.

MR. LAPPIN: You want to be able to see the - look at the inmate,
the individuals in the room. It's going to be personnel?

THE CHAIR: Yes. I think that's personnel.

MS. SNURKOWSKI: L and P.

JUDGE MORRIS: Next is miscellaneous, isn't it? Clocks and -

THE CHAIR: Additional clocks, yes.

MR. LAPPIN: I would see that as part of protocol because you want
lighting. You know, I think that's just a generic - I'm not sure - the thing is,
you know, here's my concern over this. Is that we - we haven't been
there to see that there was a lighting problem. We're making an
assumption.

MS. SNURKOWSKI: Well, that's why we - I think that's why it is
suggestions. And that's why it is in miscellaneous and not protocol. If you
put everything into protocol, my gosh, you're going to have twenty pages

of protocol. That's protocol. Defining the duties of the FDLE.

THE CHAIR: Okay. That's got to be personnel because that was - we were asking for a second one.

MS. SNURKOWSKI: Yes, that was debriefing. Well, number eight is debriefing. The second thing is debriefing where personnel - Singletary's 12-C is the IV launch, the IV be inserted and secure when the inmate enters the chamber. So that would be procedure.

JUDGE MORRIS: Protocol.

MR. LAPPIN: Protocol.

MS. SNURKOWSKI: Protocol, yes.

MR. LAPPIN: Okay. The top one, personnel?

MS. SNURKOWSKI: The top one is -

THE CHAIR: Second.

MS. SNURKOWSKI: That's debriefing. Don't you want him to have - I think those are all protocol.

THE CHAIR: Okay. But isn't -

MR. LAPPIN: This is who is involved now. Isn't that -

JUDGE MORRIS: That's the execution team and they're talking about adding and FDLE agent to stand where the audience stands.

MS. SNURKOWSKI: Right.

THE CHAIR: So that would be protocol or personnel?

MR. LAPPIN: I would put it in the personnel area.

JUDGE MORRIS: Put it in personnel. I yield. That makes sense.

MS. SNURKOWSKI: Well, but this is to invite - tell them that we think they ought to have a second person. And that's part of the protocol that -

JUDGE MORRIS: He's talking about adding to the personnel, aren't you?

MR. LAPPIN: Right. You're going to add somebody to the DOC's -

THE CHAIR: I don't have a problem putting it because the fact he's there is personnel. The fact that he -

MR. LAPPIN: What he is going to do -

THE CHAIR: I bet if you look at Singletary eight -

MS. SNURKOWSKI: Eight is to be part of the debriefing. Observe and -

THE CHAIR: Right. It's going to be protocol. So what this part of it is personnel, right?

MR. LAPPIN: You want to add a person. That's personnel. What you want him to do is -

THE CHAIR: L and P.

MS. SNURKOWSKI: L and P is personnel.

THE CHAIR: And this part of it is protocol. Okay. Singletary

twelve is protocol.

MS. SNURKOWSKI: 12-C, the IV line should be under protocol.

Lappin's eight is -

THE CHAIR: Part of the protocol, too, I bet.

MS. SNURKOWSKI: Eight is -

MR. LAPPIN: That's the IV access, yes.

THE CHAIR: IV access.

MS. SNURKOWSKI: Yeah. Eleven, okay, is develop venous -

THE CHAIR: This is on the -

MS. SNURKOWSKI: Monitor.

MR. LAPPIN: - monitor.

MS. SNURKOWSKI: So it is protocol.

THE CHAIR: This is protocol. This is part of that.

MS. SNURKOWSKI: Yeah, right, Doctor Varlotta.

MR. LAPPIN: And you should have a twelve there somewhere.

MS. SNURKOWSKI: Yes, 12-B.

MR. LAPPIN: Singletary's 12-B.

MS. SNURKOWSKI: 12-B is -

MR. LAPPIN: Hang on a minute. Now we had my twelve in there somewhere, too.

THE CHAIR: Singletary twelve.

JUDGE MORRIS: That's protocol, isn't it?

MS. SNURKOWSKI: 12-B is yes, restraints.

MR. LAPPIN: We're getting mixed up on what twelves are what.
Singletary 12-B.

MS. SNURKOWSKI: Right.

THE CHAIR: DOC doctor validation process.

MS. SNURKOWSKI: Protocol.

THE CHAIR: One week out. That's probably under protocol, too, I
would bet.

MS. SNURKOWSKI: Right. Report, right, protocol. Protocol with a
checklist.

THE CHAIR: Change the designation of the lines.

JUDGE MORRIS: It is changing from -

THE CHAIR: That would be protocol, too. Right?

MS. SNURKOWSKI: Yes.

MR. LAPPIN: The next one is protocol.

JUDGE MORRIS: It's the labeling.

MS. SNURKOWSKI: That's personnel where they're placed.

THE CHAIR: And so how many folks. That's personnel to me. L
and P.

MR. LAPPIN: L and P because you're signing -

THE CLASS: Is that the way you would put it in yours?

MR. LAPPIN: Okay.

THE CHAIR: Training.

MS. SNURKOWSKI: Six. Is the -

MR. LAPPIN: Number six is the -

THE CHAIR: We have training.

MR. LAPPIN: Number six is all training.

MS. SNURKOWSKI: Right.

MR. LAPPIN: Number seven is training. That's all training.

THE CHAIR: So it is all T.

MS. SNURKOWSKI: Right.

THE CHAIR: On the first page. Definitely L and P.

MR. LAPPIN: L and P is that first one. All right. Where do you want it? It could be either place.

MS. SNURKOWSKI: I think we need to emphasize that. I think it ought to be -

JUDGE MORRIS: It could be both places. That has to be - shouldn't that be in the protocol?

MR. LAPPIN: It is in the protocol, yes.

JUDGE MORRIS: Okay.

THE CHAIR: It's a protocol. Both definitional and later -

JUDGE MORRIS: Okay.

THE CHAIR: The individuals involved will have -

MR. LAPPIN: That is personnel, in my opinion.

MS. SNURKOWSKI: Yes, I think so, too. I think it is better than protocol.

MR. LAPPIN: And if you go to - if you want an example, my number two - no, wait a minute. No. My number five is an example.

MS. SNURKOWSKI: Yeah, we used that because we cut it. I have it chopped up. We used the -

MR. LAPPIN: Oh, did you?

MS. SNURKOWSKI: Yes.

MR. LAPPIN: Just in case you ever want to reference it.

THE CHAIR: Member of the team must be able to communicate with primary language.

MR. LAPPIN: That is - I had that under personnel. I thought we were - what we want to do is have somebody on the team who can communicate with the inmate.

MS. SNURKOWSKI: I think it's more miscellaneous. I think it is something that we want, we are asking them to do to ensure that somebody who is not a foreign born or not primary English speaking language that we have an interpreter.

THE CHAIR: Miscellaneous?

MR. LAPPIN: We looked at it - just so you - we wanted a diverse team so that no matter who, including women. Because oftentimes we found that having woman on the team created better communications between the inmate and the team.

JUDGE MORRIS: Did they do that when they executed what's her name?

MS. SNURKOWSKI: What? Yes.

JUDGE MORRIS: Whatever her -

MS. SNURKOWSKI: Judy -

MR. LAPPIN: Did I miss it. I know we put it in there. I didn't see it in there. It's number twelve of mine. It deals with the - with the fact that you will start over again -

JUDGE MORRIS: Redundancy.

MS. SNURKOWSKI: Right. Redundancy.

MR. LAPPIN: Right. If something happens you stop.

JUDGE MORRIS: Isn't that in the drug part there, Bill? Flip over a couple of pages. I thought we had written that down.

MS. SNURKOWSKI: Yeah. We have that.

JUDGE MORRIS: I think it is there. It's just -

THE CHAIR: I think we wrote it. I think it should go on the last

page. Not this page. The page before, I think.

JUDGE MORRIS: Try the next one and just let me see what's on it.

MS. SNURKOWSKI: Yeah. We'll talk about - here it is.

THE CHAIR: Administration of drugs. Stop the syringe; check level of consciousness. Right?

MR. LAPPIN: Yeah.

MS. SNURKOWSKI: Yeah. There's a number three; there's a number four there.

MR. LAPPIN: That's why I'm missing number twelve.

MS. SNURKOWSKI: Okay. You think number twelve -

MR. LAPPIN: We discussed number twelve. Read it. It says:
Development: One: Procedures to ensure that if at any stage of the administration of lethal substance if a decision is made to change IV sites or utilize a secondary site, that the entire lethal substance administration process is reinitiated from the beginning unless the Warden or his designee -

JUDGE MORRIS: I agree with that. I think we did agree to that. I thought that was redundancy. I thought we put it in there.

Mr. LAPPIN: I just didn't see it on there anywhere.

MS. SNURKOWSKI: Now let's put number twelve on that page, number twelve will go back.

JUDGE MORRIS: Put Lappin number twelve, please.

THE CHAIR: I think it will probably go -

JUDGE MORRIS: Under that.

THE CHAIR: - right under here.

MS. SNURKOWSKI: Right there. Right, Lappin twelve.

JUDGE MORRIS: If you want put "add twelve" so it is a separate thought from the one above it.

MR. LAPPIN: Because that's a key issue on -

JUDGE MORRIS: Yeah. I agree. I agree.

THE CHAIR: And that's still under the heading of protocol.

MS. SNURKOWSKI: Right.

MR. LAPPIN: To me it's all protocol, yes.

THE CHAIR: Okay. Now to find it, you want to - either one to turn the pages as we do this and I will type it for you.

MS. SNURKOWSKI: I'll turn. I don't mind.

THE CHAIR: So I can type it.

MS. SNURKOWSKI: You take notes and I will turn it.

MR. LAPPIN: No, no. I can do this and turn this page. I'm that skilled.

JUDGE MORRIS: What time is your plane?

MR. LAPPIN: 1:30 and I can change it if I have to.

JUDGE MORRIS: He's making me nervous. I don't want you to be up there getting frisked because you came late.

MR. LAPPIN: Can we take a break?

[Brief break taken.]

THE CHAIR: We're in the findings section and we are sort of fleshing them out first before we go in and fill in. The first findings that we put down was execution too long.

The second one we put down is the preponderance of physical evidence demonstrates that venous access at the time was not maintained and administered at time of execution.

MS. SNURKOWSKI: Okay. And then we're looking to Doctor Hamilton's testimony to talk about the FDLE agent's testimony.

THE CHAIR: And that's the point I was about to bring up when we -

JUDGE MORRIS: I'm sorry. How do you want that worded?

THE CHAIR: Well, as opposed to putting from Doctor Hamilton and Doctor - and then we're going to say what they said?

JUDGE MORRIS: No. I think you can just - I think you can - I don't know that you have to put in the lines or stuff. I would just put: From the testimony of the Medical Examiner Doctor Hamilton and from the observations of the Florida Department of Law Enforcement observer, Mr. Westveer - Agent Westveer.

MS. SNURKOWSKI: Agent Timothy -

THE CHAIR: All right. From the testimony of Doctor Hamilton, M.E. and Agent Westveer. Okay.

MS. SNURKOWSKI: And I do have a reference it looks like it says trans 171, and so -

JUDGE MORRIS: They need lines on those. Perhaps -

MS. SNURKOWSKI: Let's decide if we're going to or not. If you don't want to do it, fine. I think we ought to just say that's their testimony.

JUDGE MORRIS: We ought to say - yeah. I don't think we ought to go quoting as far as the record.

MS. SNURKOWSKI: Okay. All right. The next one then is - this I have Peters number two about the unintentional actions. Peters number two was the failure of the Department of Corrections to correctly carry out the execution of Angel Diaz was accidental but best defined as being unintentional.

THE CHAIR:: Who is -

MS. SNURKOWSKI: I don't know whose it was. All I have is four, unintentional. Do you know who it was?

JUDGE MORRIS: No, no. I mean, I didn't write down anything. I don't ever remember it. Somebody said it.

MS. SNURKOWSKI: Uh-huh.

THE CHAIR: What was the lead into that? Failure to what?

MS. SNURKOWSKI: It says the failure of the Department of Corrections to correctly carry out the execution of Angel Diaz was accidental, best defined as being unintentional.

JUDGE MORRIS: Is that a finding the board made or -

THE CHAIR: Someone - actually I thought you said it but you said, "Oh, yeah." You said, "Well, Peters Number Two is all right." I can't remember when you said it. I just don't know.

MS. SNURKOWSKI: Well, I mean, I very well could have said it. I'm not saying I didn't say it. I just thought -

THE CHAIR: Because that was the only one I think -

MS. SNURKOWSKI: Yeah.

THE CHAIR: I just don't remember that. I'm sorry.

MS. SNURKOWSKI: Well, if you don't, don't -

JUDGE MORRIS: I don't think that's a finding. There is no allegation that they intentionally prolonged or botched this execution.

MS. SNURKOWSKI: Right. All right. Take it off then.

JUDGE MORRIS: There was an allegation, the only thing in the record, that was for that is his niece says that some months prior to the execution the family had been told by him -

MS. SNURKOWSKI: Maybe that's what we were talking about, the

comments.

JUDGE MORRIS: Yeah. His family had been told by him about the remarks of the guards. And I think we've established that there's nobody on the execution team and when he's transferred there's no allegations that any remarks were made immediately. I went back and looked at her testimony and it was that months before he had conveyed this to them. And that he was a Latin man and that he would not express this pain if he had the opportunity. And so I - I don't see that.

THE CHAIR: I mean, we're simply saying it was accidental.

MS. SNURKOWSKI: Well, I know, but why would - I want to be able to say - what we don't want to say that the execution of Angel Diaz was accidental. Best defined as being unintentional. Well, actually it's not that because we intended to do so - I don't think we need it.

JUDGE MORRIS: I don't understand what we would even put that in there. They didn't carry it out correctly. I mean, part of that is because we think that the protocols were insufficient. So how would we hold them accountable for an insufficient protocol -

MS. SNURKOWSKI: Right.

JUDGE MORRIS: - that they don't have yet.

THE CHAIR: True. But the main problem was they failed to follow their own protocol. I mean, even they say they didn't.

JUDGE MORRIS: Well then the second finding could be that the Department of Corrections failed to follow its own protocol, period.

MS. SNURKOWSKI: Right. And that's mainly what this is saying.

THE CHAIR: Okay. Highlight it and when I get the transcript we can define who said it. And if that doesn't exist we'll just delete it.

JUDGE MORRIS: Well, I think it clearly is one of our findings.

MS. SNURKOWSKI: What, that they -

JUDGE MORRIS: That they failed to follow their protocol.

MS. SNURKOWSKI: Yes.

THE CHAIR: Department of Corrections failed to follow their -

MS. SNURKOWSKI: Existing protocol.

THE CHAIR: - for August -

MS. SNURKOWSKI: August 20th?

JUDGE MORRIS: August 16th.

THE CHAIR: - August 16th, 2006. Thank you. Okay.

MS. SNURKOWSKI: All right. The next line there was training that -

THE CHAIR: We were putting in on each of these -

JUDGE MORRIS: The findings.

THE CHAIR: We were putting derived from. I've put derived from the DOC's report and testimony, the testimony of witnesses.

MS. SNURKOWSKI: Yeah. That the - how about the December

20th report, their task force report.

THE CHAIR: December 20th?

MS. SNURKOWSKI: Uh-huh.

THE CHAIR: The testimony of -

JUDGE MORRIS: Well, the testimony would be concerning execution would be the - for instance, the order of the - the order of the administration of the chemicals.

THE CHAIR: So that's going to be - I'm sorry. The DOC person back there we had the identity of?

MS. SNURKOWSKI: Matthews.

THE CHAIR: Matthews. Thank you. And primary executioner.

JUDGE MORRIS: And the primary executioner and the medical - qualified medical personnel. There's three sources all -

MS. SNURKOWSKI; The last witness.

JUDGE MORRIS: He talked about the order in which the drugs were administered and -

MS. SNURKOWSKI: Right.

THE CHAIR: Qualified medical -

JUDGE MORRIS: Well, that's the way it is listed in the reference. Qualified medical.

MS. SNURKOWSKI: How it is listed in the - here.

THE CHAIR: Thank you. Yes.

JUDGE MORRIS: Qualified member of the execution - medically qualified member of the execution team. That's what it says. That's the way it came out in the transcript.

THE CHAIR: Medically qualified member of the execution team, We will put it that way, too. Qualified -

MS. SNURKOWSKI: - member of the execution team.

THE CHAIR: Yes, I'm sorry. Medically qualified. Is that the way the transcript, medically qualified?

MS. SNURKOWSKI: Uh-huh.

THE CHAIR: Okay.

MS. SNURKOWSKI: Then the next thing I know is training statement. People are not fully trained and they lacked - there was a lack of visibility with regard to Diaz' - the execution of Angel Diaz.

THE CHAIR: Okay. Before we - the training, that was a broad statement. So we know for sure that the executioner, right, so they had -

JUDGE MORRIS: Executioner said not that they hadn't been trained but that they hadn't been to training. They did not train with others. And the primary executioner said that the training was received the seven years earlier. But I think he said on three occasions.

MS. SNURKOWSKI: Right. It was dated or obsolete.

THE CHAIR: Okay. Can you draw from the protocol that they had not received training, proper training?

MS. SNURKOWSKI: Well, how about continuous training?

JUDGE MORRIS: I would say the proper training because the executioner, to our knowledge, had not been given a copy of the August 16th, 2006 protocol.

MS. SNURKOWSKI: No, you're right.

JUDGE MORRIS: So, I mean, it's not -

MS. SNURKOWSKI: I don't know if any of the team had a copy.

THE CHAIR: Well, yeah. I think we can say the executioner.

JUDGE MORRIS: The execution team says they are supposed to do it quarterly, except for the executioners and the medical personnel. That the other members of the execution team -

THE CHAIR: What I'm trying to do is do a statement that would include both. The medically qualified person that gives that go-ahead, right, as well as the executioner. Is there a way that we can include both of those in a training thing or do we need to separate them out? You call them execution. I think you need to say the chemical group because I don't think there's any testimony -

JUDGE MORRIS: Well, I don't know.

MS. SNURKOWSKI: Well, I mean, aren't we still faulting them that

they don't adequately training people. And so the fact that we're not really - would you just say that there doesn't appear to be adequate training with regard to personnel both in the chemical room and the execution chamber. And then say, you know, to the extent that we don't - there's no - we have no evidence. Well, I guess we did because they had the execution reports and 30 days -

THE CHAIR: Right.

MS. SNURKOWSKI: But apart from that, that's our -

JUDGE MORRIS: Yeah, but that's not - that's on-the-job.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: We're talking about something else here.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: Our finding is that there is inadequate training.

There was inadequate training as to both -

MS. SNURKOWSKI: Why don't we quit saying who. Why don't we just put it as to what.

JUDGE MORRIS: Well, that's what I was -

MS. SNURKOWSKI: There was inadequate training as to the new protocols initiated on August 16th.

JUDGE MORRIS: That's fine because we're going to talk about leadership duties in a separate category and a separate finding. In other

words, what I'm trying to say is not only did they not follow the protocol, but their protocol didn't tell them what to do.

MS. SNURKOWSKI: Right, right.

JUDGE MORRIS: Duties and responsibilities of each team member. That may be a separate finding, that the protocols were deficient in defining the duties and responsibilities of each team member.

THE CHAIR: Inadequate training as to the August 16th -

MS. SNURKOWSKI: For the existing August - they were -

THE CHAIR: The August 16th protocol. I think that's -

MS. SNURKOWSKI: Yes.

THE CHAIR: Just leave it like that. Inadequate training as to the August 16th, 2006 protocols. Okay. And again, we're at the point of -

MS. SNURKOWSKI: And didn't you want to say they failed - that was a finding, number six. Failure to carry out execution.

THE CHAIR: I have that.

MS. SNURKOWSKI: Oh, we already did that. Got that.

THE CHAIR: Derived from?

JUDGE MORRIS: Oh, the training. Derived from the primary executioner.

MS. SNURKOWSKI: The FDLE agent.

JUDGE MORRIS: FDLE agent. The - I'm trying to - never mind.

When we asked the medically qualified member of the execution team what he said was: I've done eighty-five executions, advised in five states, and that was his concept. He didn't - it sounded like he didn't think he needed training, but certainly he had to be trained when he -

MS. SNURKOWSKI: When he was part of the -

JUDGE MORRIS: He was part of it.

MS. SNURKOWSKI: Did the Warden say he was there? That he shows up and does that.

JUDGE MORRIS: No. I think our point was should he. Should the medically qualified member of the team show up and participate and it would have to be -

THE CHAIR: Yeah, that was part of ours. But beyond that I think based on what you've written is even if they did show up for the training it obviously was inadequate because they failed to follow it.

MS. SNURKOWSKI: Right, right. See, that's what -

THE CHAIR: So we could put -

MS. SNURKOWSKI: Couldn't we say for example, and then there - and then various references to this.

JUDGE MORRIS: Say for example the primary executioner.

MS. SNURKOWSKI: Yeah.

JUDGE MORRIS: And the FDLE agent.

THE CHAIR: I put primary executioner, FDLE agent Westveer.

JUDGE MORRIS: That's fine.

THE CHAIR: And the medically qualified member of the execution team.

MS. SNURKOWSKI: Uh-huh.

THE CHAIR: Derived from testimony.

MS. SNURKOWSKI: We really didn't make very many findings. I mean, I've got 8 we found.

JUDGE MORRIS: I want to go back to something. On the issue of the maintenance and the insulation or whatever we used in the maintenance of the IV's.

THE CHAIR: Back under the -

JUDGE MORRIS: Well, don't move yet. I want to think with you for a second.

THE CHAIR: Well, it is easy.

JUDGE MORRIS: The other problem that we clearly found was that these drugs were in part subcutaneous. So where do we put that in. That's a finding we clearly made. It's something we relied on to show that this was not -

THE CHAIR: I put the preponderance of the physical evidence demonstrates that venous access at the time of the execution was not

maintained and administered. Derived from the testimony of Doctor Hamilton. You would have to -

MS. SNURKOWSKI: He was the one who said that it was subcutaneous.

THE CHAIR: You would have to delineate that.

JUDGE MORRIS: Well, I mean, you also have the examples right after the execution of all the -

THE CHAIR: And the FDLE Agent Westveer.

JUDGE MORRIS: That it was subcutaneous. I was just wondering if you put that in finding or is that implicit in that finding? That's what I'm saying.

MS. SNURKOWSKI: Well, I would - well, I think Hamilton said they went all the way through. He never said that he stopped. He was saying that it went right to the subcutaneous

THE CHAIR: I agree. Hamilton said he didn't think any of it got into the right -

MS. SNURKOWSKI: Right. My point is at least that's what his testimony was. Do you want to say, too? And that's fine.

JUDGE MORRIS: Only if you want to. My only question would be that we made a finding that the drugs were administered, at least in part, subcutaneously. I mean, I think that's -

MS. SNURKOWSKI: Well, okay. But that's the - isn't that one of those controversies that went undecided because we don't know at what point in time that occurred? We were -

JUDGE MORRIS: No, I don't think so. I think that we know that some of the drugs were administered subcutaneously because of Westveer's observations immediately after the autopsy. Whereas, the primary medical person says: Well, all of that would've occurred when they moved the body from here to the autopsy area.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: And he - you know, all I'm saying is that evidence is that it happened sometime between the time he died and the time the IV lines were put in. That's the most we can say.

MS. SNURKOWSKI: All right.

JUDGE MORRIS: We didn't say why or when.

MS. SNURKOWSKI: And, I know. And I thought that was the reason why we said early in this report that there are issues that are not resolved.

JUDGE MORRIS: We know that they got there subcutaneously. We don't know when this all happened. And that's all I'm asking. Is do we put into that finding. Because that's basically why we are saying the IV lines were improperly inserted or maintained because of that evidence.

THE CHAIR: I think I left out the word "improperly." I need to catch that. I have "not maintained." Was "improperly maintained." Right?

JUDGE MORRIS: Failure of the executioner to correctly - demonstrate the access, venous access at the time that it was improperly maintained and administered resulting in at least a partial subcutaneous injection of the drugs, or receipt of the drugs. Because we don't know if it partly got in the veins or not.

MS. SNURKOWSKI: Okay. I'm a little perplexed. It seems to me and where we should put that is the failure to carry out the execution per protocols, and put it there.

JUDGE MORRIS: Okay.

MS. SNURKOWSKI: Don't you think?

JUDGE MORRIS: Okay. That's fine. But how do you want to put it. Read that -

THE CHAIR: Well, let's just do this. DOC failed to follow their August 15th, 2006 -

JUDGE MORRIS: 16th.

MR. JENNINGS - protocols which resulted in -

MS. SNURKOWSKI: Evidence.

JUDGE MORRIS: The evidence that at least a portion of the drugs were received -

MS. SNURKOWSKI: Lethal chemicals.

JUDGE MORRIS: Thank you. - a portion of the lethal chemicals were received subcutaneously by the inmate or Inmate Diaz.

MS. SNURKOWSKI: Were administered into -

JUDGE MORRIS: Were administered -

MS. SNURKOWSKI: To - were administered to Angel Diaz subcutaneously.

THE CHAIR: Which resulted in administration of the chemicals -

MS. SNURKOWSKI: Lethal chemicals.

JUDGE MORRIS: To Inmate Diaz.

THE CHAIR: I'm sorry.

MS. SNURKOWSKI: To the inmate -

THE CHAIR: No, I have that. The question I have for you, though. We know number three is lethal.

JUDGE MORRIS: They're all lethal.

MS. SNURKOWSKI: All of these -

JUDGE MORRIS: Every one of them are lethal. In the quantities in which they are to be administered -

MS. SNURKOWSKI: We've had all that testimony.

JUDGE MORRIS: - they all said that any one of the three could kill you. The question is how long.

MS. SNURKOWSKI: Yeah, they all - they're all lethal dosages.

JUDGE MORRIS: You could say the protocol chemicals. Whatever you put there, I don't think it makes a difference.

MS. SNURKOWSKI: They are called lethal chemicals for execution.

THE CHAIR: Okay. Continuing. Which resulted in the administration of lethal chemicals to Inmate Diaz. Administration of lethal chemicals to Inmate Diaz.

MS. SNURKOWSKI: Resulting -

THE CHAIR: Which resulted or - I'm sorry. Which resulted in the administration of lethal chemicals to Inmate Diaz -

JUDGE MORRIS: At least in part subcutaneously.

MS. SNURKOWSKI: Yeah.

THE CHAIR: Okay.

MS. SNURKOWSKI: All right. Well, the next one was I have number four on my page. So that one -

JUDGE MORRIS: Let me go back and add two things. You don't have to put them in there. Here are the two thoughts. And at the end of that sentence - and again, listen to me - resulting in unresolved questions, or questions that could not be resolved by the Commission concerning the order in which the chemicals were received or if the inmate suffered any pain.

MS. SNURKOWSKI: Or any - huh?

JUDGE MORRIS: Do you follow me, Bill?

THE CHAIR: I understand. Where we put a separate finding on the thing as opposed to burying it in this one.

MS. SNURKOWSKI: Or you could say: Or the effect, or their effect with regard to how fast they were absorbed and then the next one.

JUDGE MORRIS: And in what order they would be because that would be determined. If he got one - if he got them in the right order he shouldn't have been in pain, according to the doctors. If he didn't get them in the right order.

THE CHAIR: I have a question. We have the ME saying that all the drugs were delivered. Correct?

JUDGE MORRIS: Right.

THE CHAIR: And his testimony was that he couldn't determine whether it was at the initial stick when it went through or as a result of movement prior to the administration of the drugs.

IM: Right.

THE CHAIR: But he was certain that it wasn't post-mortem.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: right.

THE CHAIR: The only - and I'm trying to think is the only person

was -

JUDGE MORRIS: Primary - was the medical person. The executioner is the only who was absolutely certain that the drugs went into the veins.

MS. SNURKOWSKI: That's speculative.

JUDGE MORRIS: Right.

MS. SNURKOWSKI: I mean, there was some other testimony in between. I think Matthews said that he didn't see any problem. He didn't see any problems but he was the one directing -

THE CHAIR: But the flash, does it eliminate the subcutaneous part? I'm just dealing with subcutaneous. I'm not arguing about when the IV - I'm not talking about - I'm not trying to define that anymore.

MS. SNURKOWSKI: Oh, okay.

THE CHAIR: But if you take it from the fact that it went - it penetrated through at the forty-five degree angle, either initially or -

MS. SNURKOWSKI: Whenever.

JUDGE MORRIS: When the drugs were administered.

MS. SNURKOWSKI: Right.

THE CHAIR: That means it doesn't have to say in part they're all delivered.

JUDGE MORRIS: Well, but the problem is that you have other

testimony that says that they believe at least in part some of the drugs got into the veins. As a matter of fact, one of the testimonies is that the sodium pentothal at least in part went in through the veins.

MS. SNURKOWSKI: Uh-huh. The executioner made statements as to when he had difficulty. And the difficulty came after the first saline flush.

JUDGE MORRIS: Which would have been when he got to bag number four.

MS. SNURKOWSKI: He finished three, started four.

JUDGE MORRIS: Pancuronium bromide.

THE CHAIR: Well, that's quick he was having trouble during the first -

MS. SNURKOWSKI: No. I think his testimony -

JUDGE MORRIS: No, no. He says that that's when it occurred and that's the issue. That's from the -

THE CHAIR: That's when they stopped it. They were having some resistance even before then.

JUDGE MORRIS: At that point.

MS. SNURKOWSKI: No. I think his testimony is that at that point -

JUDGE MORRIS: Well, maybe it's -

MS. SNURKOWSKI: Let's look. You know, actually Matthews may have even said when he was told. That was on the 9th. We've got that. I

believe it was last week.

JUDGE MORRIS: Page 63. Okay. Here is what he says. It's on page 67. And I think your question to him was:

For purposes of the Commission we need to go through that, starting with vial A, and advise us each step exactly what you did and approximately how much time each step took.

His answer: Okay. I can't advise you of the time because I was busy introducing vials. But I began with Vial One. I'm sorry. I may have misspoken.

Question: Is that Syringe One.

Syringe One.

Thank you. My fault. Okay. Go ahead.

Answer: Then I went to syringe two, then syringe three, then syringe four. And it became a little bit difficult to introduce the chemicals in syringe four. So I spoke to the gentleman, told him it was a little difficult and he recommended I try line B. So I introduced half of the remaining quantity in syringe four into line B.

And then he goes on about continuing, et cetera, et cetera, et cetera.

But his testimony, or the testimony of whoever it was - it was scrambled - was that a little bit of difficulty to introduce the chemicals in

syringe four. It doesn't say some other place where they do.

THE CHAIR: We have a finding from the DOC report that says the following:

As directed in the lethal injection procedure the primary executioner began the delivery of sodium pentothal from stand A into line A. The primary executioner noted that the pushing of the chemicals was more difficult and it took two or three times longer than normal just pushing those.

See they're getting some little resistance at that point.

Both executioners had advised to push slowly - that's why he told him to push slowly. He kept telling him slowly because of concerns over the man's veins. After dispensing the first two syringes and receiving the first half of the other one, the executioner advised -

MS. SNURKOWSKI: He couldn't push it.

THE CHAIR: That he couldn't push it any longer. See, he first had problems with pushing it and maybe did it very slowly, but they were still having some resistance, which is when they should've stopped and checked the lines and that -

MS. SNURKOWSKI: What does Matthew - Matthew may have said something, too. He is number 29.

THE CHAIR: Came out with the DOC ruling.

MS. SNURKOWSKI: The last witness, number 9.

JUDGE MORRIS: The last witness, number 29?

MS. SNURKOWSKI: Yeah.

JUDGE MORRIS: Okay. Your questions are: Approximately how long - doing each of the syringes how long between each one.

His answer: It varies. Never timed it or tried to guesstimate it.

Question: Is there a long pause between each one or steady pressure on the syringe?

Answer: I've never seen them go fast. From what I've seen and observed it's a steady continuous push.

Another question on how long between number one and number two.

Answer: It varies. I've never really measured to find out. A minute, three minutes.

I'm sorry. It wasn't clear. Between the time when the first - the first syringe is finished?

Answer: Yes. To the point at which the second syringe is inserted.

Would you pull out the first to put the second one in?

His answer: I would say immediately.

Could you tell us what occurred happening as the syringes were being administered?

Answer: The executioner noticed that there seemed to be an increased resistance as he continued to work across the first rack.

Do you remember at what point where this - what number syringe was that that occurred on?

Answer: Not to the best of my recollection. Second or third, somewhere. A member of the medical team checked the lines, checked the tension on the syringe and the plunger to see if there was any resistance. In other words, another opinion. The executioner continued. He felt like there was still increased resistance. Members were constantly at the same time looking at the IV site, looking at the monitor, looking at the executioners, and looking at what the executioners were doing.

And then he later says: At that point the medical team felt there was - there could possibly be - excuse me - could be a possibility of a problem. There was no evidence of it. At that point they elected to switch lines. They switched to the alternative line and proceeded in sequence.

MS. SNURKOWSKI: This sounds like there were a lot of it was - I mean, the first one is not accomplished; the second one, maybe; the flush, more likely. And then they couldn't get into the fourth one. So that - what's the point of this?

JUDGE MORRIS: It says - well -

MS. SNURKOWSKI: Or are going to sit where we can think about

this.

THE CHAIR: Whether any of the drugs were -

MS. SNURKOWSKI: Oh, and I think you can't say that.

JUDGE MORRIS: And that's one thought is, I really think there is a dispute as to whether any of the drugs got into the veins. And Hamilton clearly would say no. The primary medical person at the execution would clearly say all of it went into the veins and then any disruption occurred afterwards. Now, I don't find that credible because of what the FDLE agent observed. And Hamilton can't say whether it occurred at insertion or whether it occurred from it coming loose. He can't say. But he has a strong opinion that it was before the drugs were administered.

THE CHAIR: Correct.

JUDGE MORRIS: So he doesn't feel it got into the vein. So that's the polaris that we operate off of. And I don't think we've been definitively able to say that no drugs, especially on the first drug, was venous, or wasn't. Hamilton would say absolutely not. The primary executioner would say -

MS. SNURKOWSKI: Absolutely so.

JUDGE MORRIS: - absolutely so. And so I don't know that we've been able to come to a conclusion which way it is. So I think that's one of the unanswered -

MS. SNURKOWSKI: Issues.

JUDGE MORRIS: And that gives rise to the second question. And the second question is: You continue on - the violation of the protocol is to continue on instead of starting over. And the doctor's point was that the possibility that when you administer pancuronium bromine, the saline - the first drug has not taken effect. And therefore you paralyze somebody who is not under anesthesia. And that's the issue with the protocol is that we can't tell if that happened or not because we have nobody to interview. But clearly that's a possibility if, in fact, Doctor Hamilton is right. And then you get into the argument about: Well, even if Doctor Hamilton is right the rate of absorption is higher for the sodium pentothal than it is for the pancuronium bromide. So the sodium would've been absorbed first and he would've been in partially, at least, anaesthetized before he was paralyzed. And Doctor Dershwitz' testimony with the paralytic effects it absorbs through the tissues would be gradual and that the person would begin to complain or ask questions about the onset of paralysis. And that's why Dershwitz, I think, thought some of it got into the veins because there was no such complaint.

So that's the - I mean, that's the spectrum of the medical testimony is from Matthews, the primary executioner, Hamilton, Dershwitz, and I think probably Heath probably had the converse opinion of whether it got

into the veins or not. And then the primary medical person at the execution said there's a spectrum, and I don't know that the Commission could ever say definitively that none got into the veins. But they could say definitively that it raises the issue.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: It genders a second issue. What drug did he receive, in what amounts, in what order, to what effect.

MS. SNURKOWSKI: All right. So where are we here? You're questioning the -

THE CHAIR: Well, not to belabor it -

JUDGE MORRIS: You can belabor it.

THE CHAIR: - but if you were sitting as a judge that you would have a hard time with some of that testimony - which, of course, that's our job to solve that -

JUDGE MORRIS: I would exclude the last testimony.

THE CHAIR: Because they clearly - they clearly -

JUDGE MORRIS: The primary medical person.

MS. SNURKOWSKI: Oh, yeah.

THE CHAIR: They clearly testified that remember when they went to side B they didn't have any problem. I mean -

JUDGE MORRIS: And the only question I think was unanswered is,

was not clarified on the record, was exactly what Carolyn pointed out. They start this and they may have some resistance. But some resistance doesn't mean that none of the drugs got into the vein. They got to a point where - here's what I find hard in the credibility of this. That Matthews says there's no evidence of a problem but we switched lines. That makes no sense.

MS. SNURKOWSKI: Right. I agree.

JUDGE MORRIS: So, I mean, if you're asking as a judge what I would disregard, I would look askance at Matthews' testimony and I would disregard a great deal of what the primary medical person said because that's cold water compared to Hamilton.

MS. SNURKOWSKI: And getting back to what you are saying, too. I mean, and we have the primary executioner who is telling us what he thought - I mean, you got a report from DOC; I'm not saying it's wrong or write. I'm just saying that you have him testifying to us: This is what I felt. So, I mean -

JUDGE MORRIS: So that's the conflict. And I agree with you. There is such conflicting testimony.

MS. SNURKOWSKI: I don't find - yeah. I don't find him totally incredible, though. Because he's just doing - he's telling us what he felt.

THE CHAIR: Okay. Now, where were we?

JUDGE MORRIS: What I was trying to get to was how do we get to the point where we talk about the lack of adherence to the protocol? The lack of going back to the one to three in order after the switching of these lines could have at least allowed for the possibility of the administration of the second drug before the first took effect and the prisoner was in pain. That's what I really think. I think that's one of our - that's the reason we're having this discussion at issue. We reflect it in our findings that's what created part of the problem. That's why we're so concerned with the protocol, is that we can't answer the other questions.

THE CHAIR: There's one part mentioned I misfortune that they botched both things.

JUDGE MORRIS: Exactly.

THE CHAIR: Both sites.

MS. SNURKOWSKI: Right.

JUDGE MORRIS: That's what Doctor Springer said.

MS. SNURKOWSKI: Right. No, no. I understand. Well, I think, you know, probabilities -

JUDGE MORRIS: But how do we put that in, is what I'm saying.

THE CHAIR: Well, you're under four. You're talking about the protocols.

JUDGE MORRIS: Right.

THE CHAIR: And we've gotten lengthy at this point, but that doesn't matter. It's DOC failed to follow their August 15th, 2006 protocols which resulted in the administration of lethal chemicals to Inmate Diaz at least in part subcutaneously. Derived from the 12/20/06 DOC report. Matthews, primary execution, medically qualified member of the execution team's testimony.

MS. SNURKOWSKI: And why are - I'm interested. Why are we not leaving it at that. Because, you know what? After looking at all of these things everything gets boiled down to the same thing.

Our finding is: The execution didn't go off like it was supposed to because it was it was the protocols were not followed and that there needed to be the modifications to ensure that that doesn't happen. Aren't those the three findings we're making here?

THE CHAIR: I think it's important to say the other. But for a double problem -

MS. SNURKOWSKI: Oh, no, no. I'm not saying not to add more words. But seeing we're still not - everything is coming under three things.

JUDGE MORRIS: All I'm saying is, where we get to the point of the recommendation where we say adhere to that one, two, three -

MS. SNURKOWSKI: Yeah, right.

JUDGE MORRIS: That's the reason we're saying it is because you

have a danger of the - of mixing of the order of the receipt of the drugs if you don't.

THE CHAIR: Yes. That's what we're supposed to be doing.

MS. SNURKOWSKI: Right.

THE CHAIR: Okay. So we need to - you're right. There needs to be a finding to back up that one. Okay. So you can say one or both - one of the concerns or findings just put - I would just say the failure of site B, or the second -

MS. SNURKOWSKI: How about the complications and failure to administer the drugs through venous access resulting in subcutaneous access.

THE CHAIR: Well, we've got that.

MS. SNURKOWSKI: Yeah, I know. But I'm just trying to get through to the -

THE CHAIR: But I'm trying to get to the -

JUDGE MORRIS: All I'm talking about is -

THE CHAIR: Weren't you talking about the second, the fact that if the drugs had been delivered through Site B properly then we would've had the situation where he was receiving a number of the second and third drugs before the first could've taken effect.

JUDGE MORRIS: That's Doctor - that was Doctor -

MS. SNURKOWSKI: Well then let's go back and say -

THE CHAIR: And we will say something like that.

MS. SNURKOWSKI: - that the findings are that - but again, again -

THE CHAIR: And that sort of backs up the reasoning.

JUDGE MORRIS: Again -

THE CHAIR: Recommendation don't follow those.

JUDGE MORRIS: - it's not the finding that it happened.

THE CHAIR: Right.

JUDGE MORRIS: It's a finding that that failure creates this question. That's what I'm really trying to say. Is the failure creates the question that can't be answered and it goes back to our findings that we could not determine if the inmate was in pain or not. But clearly there is a - there is the opportunity for that to happen because of this failure. That's what we're trying to eliminate. How do we get that down?

THE CHAIR: Following that step is that that possibility would've - the level of consciousness not being sufficient, or however you want to phrase that part. That failure would've risen substantially had the second site been properly -

JUDGE MORRIS: The failure would've gone down substantially. Not risen.

MS. SNURKOWSKI: The likelihood.

JUDGE MORRIS: The likelihood that he would've been appropriately anaesthetized would've been increased with the application of the drugs in the proper order.

THE CHAIR: Yes. But in the way they did, we're making a finding, though, that they didn't do that -

JUDGE MORRIS: Oh, which increased -

THE CHAIR: - which increased the -

JUDGE MORRIS: Okay. I've got you. That's fine.

THE CHAIR: That's where I was going.

JUDGE MORRIS: Now I understand you.

THE CHAIR: So tell me how you want this? We'll just make a separate finding.

MS. SNURKOWSKI: Well, I mean - oh, we're doing a separate finding?

THE CHAIR: Yes. Let's just do a separate finding on this.

JUDGE MORRIS: Failure to follow the protocol -

THE CHAIR: Why don't you delineate which protocol we're talking about. Do we have that in front of us?

MS. SNURKOWSKI: I'm looking at it right now.

THE CHAIR: Yes. Let's find that page.

MS. SNURKOWSKI: Well, if the protocol we're talking about is E, I

think that's 14-E: If at any time prior or during the administration of lethal chemicals primary venous access becomes compromised a designated member of the executive team - execution team will immediately close the drapes to the witness gallery. One or more of the members of the execution team will assess the situation and take appropriate remedial action at that access site.

And then it goes on: If the primary access site is no longer viable the executioner will administer the lethal chemicals into the second access site using the extensions set labeled B. If the secondary access site or any other time becomes compromised, a designated member of the execution team will secure peripheral venous access at another appropriate site and will perform a central venous line placement. It goes on.

THE CHAIR: The second line is important, too.

MS. SNURKOWSKI: Well, no, but what I was saying, you know what, it doesn't say anything starting over.

JUDGE MORRIS: Yes, it says to go to B. What it says is -

MS. SNURKOWSKI: Okay. Well, that's what - okay. That's my point I was going to say that is so unclear that -

JUDGE MORRIS: It isn't clear.

MS. SNURKOWSKI: See, that's - isn't that what the finding should

be. That these or that 14-E, although it would appear to require them to start to B all over again, they went to B. They just didn't start at the beginning of B.

THE CHAIR: That's the failure.

JUDGE MORRIS: I think it's clear enough for me to know that if they go to the secondary site -

THE CHAIR: They are supposed to start.

JUDGE MORRIS: - using the extension site labeled B, they're supposed to start - they're supposed to go to the B rack.

MS. SNURKOWSKI: I agree, but they - where on the B rack? It doesn't say - see, that's - I mean, I always thought it was beginning but I think that's part of the problem. I mean, that's - I think that ties in with what we are saying.

JUDGE MORRIS: You're talking about the level of the confusion is created by that language?

MS. SNURKOWSKI: Yeah. That they very well may have thought they did it right because they went to B.

THE CHAIR: They've already - they said it up here in the -

MS. SNURKOWSKI: They tell them how to do it but I don't know. I saw it there someplace and that's why - wait a minute. Maybe I misread the thing that I was reading. Maybe I was reading more to it than it was.

THE CHAIR: It says: If after completion of the administration of lethal - I'm sorry.

If after completion of the lethal chemicals the heart monitors do not reflect a flat line reading and/or the physician cannot pronounce the inmate dead, the executioner will begin a second flow of chemicals at an alternative site.

MS. SNURKOWSKI: That's true. But that's the second round if they've done the first one correctly.

JUDGE MORRIS: They've done the first one the way correct.

THE CHAIR: Well, I understand that. But it doesn't really say that, does it?

MS. SNURKOWSKI: Well, it says it better than it does here.

THE CHAIR: All right. Maybe - I think we ought to do it this way. I think we should say not just failure to follow the protocol but failure to properly maintain the - whatever we said before. Maintain the - because it is a combination of the two.

MS. SNURKOWSKI: I know. But all I'm pointing out, trying to point out, is that it seems to me that this - that E is what they are supposed to be adhering to. They adhered to E. We just don't like how they did it and I don't think that anything in E bars them from doing what they did. I mean -

JUDGE MORRIS: It's a failure of the protocol, but not their failure to follow it.

MS. SNURKOWSKI: Yeah.

THE CHAIR: No, no. They didn't follow E.

MS. SNURKOWSKI: They didn't do the drape but they didn't stop -

THE CHAIR: That's what they failed to follow.

MS. SNURKOWSKI: I agree. That I totally agree on.

THE CHAIR: Okay.

MS. SNURKOWSKI: But I think part of the problem that Judge Morris is talking about is that: Okay, look at what happened. If they had gone back, this is why we're doing this, Well, I think we're doing it because we realize now that the protocols don't speak to that specifically.

THE CHAIR: Well, we can make a finding of that.

MS. SNURKOWSKI: That's -

JUDGE MORRIS: Okay. Let's do that. Let's just say that, first of all, make a finding they failed to adhere to Section 14-E which is clear, and that Section 14-E itself allows -

THE CHAIR: For the possibility of -

JUDGE MORRIS: - for the possibility - for the interpretation that you can continue on with the drugs in - that you do not have to recommence the drugs.

MS. SNURKOWSKI: Yes. That's what you want to say. That you want to start -

JUDGE MORRIS: To recommence the sequence of drugs.

MS. SNURKOWSKI: That you start from the first drug.

JUDGE MORRIS: Thank you. That's fine.

THE CHAIR: Failure to adhere to protocol, Department of Correction's protocol 14-E and -

JUDGE MORRIS: And that the protocol itself -

MS. SNURKOWSKI: In of 14-E - I know, but you want to make sure that they -

THE CHAIR: And that this protocol.

MS. SNURKOWSKI: Okay.

JUDGE MORRIS: Is clear.

MS. SNURKOWSKI: And adequately - because I think that's - and the more I look at it, it was -

THE CHAIR: Adequately?

MS. SNURKOWSKI: Inadequately.

THE CHAIR: Practice.

MS. SNURKOWSKI: Provides. How about provides. I don't think that applies to this, provides. The protocol -

THE CHAIR: Direction. Adequately provides direction.

MS. SNURKOWSKI: Uh-huh.

JUDGE MORRIS: To be given sequence of lethal drugs over again.

MS. SNURKOWSKI: In the -

THE CHAIR: In the second site.

THE CHAIR: Provides direction that the lethal chemicals are to begin in -

MS. SNURKOWSKI: No. Require -

JUDGE MORRIS: Require they be giving it in sequence. You should put this. Require that they go to the second set of drugs and that they be given in sequence.

MS. SNURKOWSKI: Right. That's perfectly clear.

THE CHAIR: Do that when changing to the secondary site - I'm going to put in parentheses B because they designated A as prior to B - that the lethal chemicals are to be administered -

MS. SNURKOWSKI: Or the second rack because that's what -

THE CHAIR: - lethal chemicals are to -

MS. SNURKOWSKI: Are to commence from the second rack.

JUDGE MORRIS: Commence with the second rack.

THE CHAIR: In order.

JUDGE MORRIS: In order.

MS. SNURKOWSKI: Yes. In designated sequence, whatever it is.

THE CHAIR: Commence with the second rack - which is again, Rack B, wasn't it?

MS. SNURKOWSKI: Correct.

THE CHAIR: Under their definition. Rack B in the designated order.

MS. SNURKOWSKI: The prescribed.

THE CHAIR: In the prescribed order. How is that? It doesn't say that, does it? It doesn't say the order you give the drugs.

MS. SNURKOWSKI: Well, remove the thing.

THE CHAIR: Oh, D, D. I'm sorry.

MS. SNURKOWSKI: 14-D.

JUDGE MORRIS: As the amount in the order that you are giving.

THE CHAIR: Order prescribed.

MS. SNURKOWSKI: You know what. If you change the word subject described directly.

JUDGE MORRIS: Direct.

THE CHAIR: 14-D, was it?

MS. SNURKOWSKI: Yes.

JUDGE MORRIS: Are you finished with it?

THE CHAIR: Yes.

JUDGE MORRIS: All right. I want you to type this and this is what I would - this would be the place for that. But since we don't have that I

would say: In this instance -

THE CHAIR: You want this in parenthesis or just directly put it?

JUDGE MORRIS: Just directly put it wherever you want. In this instance, the sequence in which the drugs were actually administered and the rack from which they were taken created the opportunity, along with the failure of the venous access, to allow the second drug to be perceived -

THE CHAIR: To be injected.

JUDGE MORRIS: - injected. Okay. It's not really injected. It's to be -

MS. SNURKOWSKI: Delivered or administered.

JUDGE MORRIS: No. To be absorbed. We will correct it later. It's the effect on the inmate.

THE CHAIR: I understand.

JUDGE MORRIS: Allows the drug to be absorbed by the inmate, possibility of the second drug being absorbed by the inmate prior to the first drug taking effect.

MS. SNURKOWSKI: To be -

THE CHAIR: Absorbed. That's probably the best you're going to get.

MS. SNURKOWSKI: Well, it's not absorbed.

THE CHAIR: Well, it's not being absorbed so it's going through the veins so -

MS. SNURKOWSKI: Taking effect. Isn't it taking effect?

JUDGE MORRIS: She's right. She's right. Allows the second drug to take effect. Allows the possibility of the second drug taking effect before the first drug can take effect.

MS. SNURKOWSKI: Fully.

JUDGE MORRIS: Fully taking effect. I think that's the best way to put it.

THE CHAIR: You want to also true from the third row? I think that's the big issue is this situation had a line and B then correctly may go ahead and finish out Rack A and delivered both, both of them.

JUDGE MORRIS: Yeah. Or second or third row.

MS. SNURKOWSKI: How about subsequent drugs.

JUDGE MORRIS: Subsequent drugs.

THE CHAIR: I was going to spell out the drugs. So we'll put in Pancuronium bromide and the potassium.

MS. SNURKOWSKI: All right.

JUDGE MORRIS: Except here - and I'm going to tell you what I'm feeling now. Just don't put me down.

If he had gotten the potassium chloride, the pancuronium bromide

had no effect and the first drug had no effect, we would've seen a reaction. Somebody would've seen a violent reaction because that's such a painful drug.

MS. SNURKOWSKI: Yeah.

JUDGE MORRIS: So one of two things happened. Either he had enough sodium pentothal that he was anesthetized, or the pancuronium bormide had taken effect and it was masted. That's the more logical -

THE CHAIR: Yes. I agree with you.

JUDGE MORRIS: I don't know if we need put all that in there. I'm just saying we've raised the possibility.

That's as far as I think we should go unless you want to have the next final statement is: It is this possibility that it gives rise to the unresolved question whether the inmate was in pain or not.

MS. SNURKOWSKI: Well, no. Okay. And I think - I agree with you but I think we will make that out - that will be the next finding. The finding is there is no way we can know with certainty. And that -

THE CHAIR: Because of finding number six there is no way we will know.

MS. SNURKOWSKI: Well, because of the findings above - because it's a multitude of findings.

THE CHAIR: Okay.

MS. SNURKOWSKI: Findings above. There is no -

THE CHAIR: There is no way for the Commission to -

MS. SNURKOWSKI: There is no way for any human being.

JUDGE MORRIS: Anyone.

MS. SNURKOWSKI: Anyone.

THE CHAIR: To know with certainty.

MS. SNURKOWSKI: To know, right, with a degree of certainty. I think that's it.

THE CHAIR: Of certainty.

JUDGE MORRIS: We don't want to use reasonable medical certainty. We're not holding ourselves to that standard.

THE CHAIR: Degree of certainty. Sorry. My spelling.

MS. SNURKOWSKI: You know, because some people said, you know, they didn't feel - they didn't believe, you know we have no ruling Commission.

JUDGE MORRIS: We have people who believe there was and people who believe there wasn't.

MS. SNURKOWSKI: Sure. So I think that we have to say a degree of certainty of -

THE CHAIR: We have a degree of certainty what? There is no way to know whether the inmate was in pain?

MS. SNURKOWSKI: Was in pain.

THE CHAIR: Right. That's what we need to finish it with.

MS. SNURKOWSKI: Uh-huh.

THE CHAIR: I'll read it to you one more time.

Because of the findings above there is no way for anyone to know with a degree of certainty whether Inmate Diaz was in pain. Period.

JUDGE MORRIS: I wouldn't put "anyone to know" because some people wanted - put the Commission to conclude with certainty. To conclude with certainty then we will limit it to ourselves.

MS. SNURKOWSKI: Right. Well, they have that right, yes, of course.

THE CHAIR: For the commission -

MS. SNURKOWSKI: To conclude.

THE CHAIR: - to conclude with a degree of certainty -

MS. SNURKOWSKI: Uh-huh.

THE CHAIR: - whether Inmate Diaz was in pain. Oh, I'm sorry. Back to the initial one you said the execution took too long.

MS. SNURKOWSKI: Uh-huh.

THE CHAIR: That was the one that you had.

MS. SNURKOWSKI: Right, right. That's Rodney's.

JUDGE MORRIS: What are you looking for now?

MS. SNURKOWSKI: Well, it just took too long.

THE CHAIR: The execution took too long. Is that the way you want it in that finding? Execution took too long?

MS. SNURKOWSKI: Well, we had some testimony that it took -

THE CHAIR: Oh, it was double. I mean, I don't think - even their reports -

MS. SNURKOWSKI: Well, I know and that's what I kind of was trying to say. Because I looked back where we had another one and they're all - we're all saying the same thing in different ways. We're coming at the same thing. It took long. There was a lack of definitive evidence as to whether the inmate experienced or did not experience pain. So that was the last - so we've already done that one. My point is, I'm at the end of my list.

THE CHAIR: I understand. But I'm going back to your first one to see where we -

JUDGE MORRIS: Actually we could put that in better language.

THE CHAIR: Either put it in better language even to add derived from the testimony of all witnesses.

JUDGE MORRIS: Concerning previous executions and the amount of time it took to do those.

MS. SNURKOWSKI: Oh, who said that?

JUDGE MORRIS: Well, there were previous -

MS. SNURKOWSKI: Everybody said that.

THE CHAIR: Yeah. That's what I'm saying.

MS. SNURKOWSKI: Everybody. Well, every witness who was in the execution chamber indicated that they thought it was too long.

JUDGE MORRIS: Why don't you say: Consensus of all witnesses who testified that - who were present at this execution was taking or took longer than those they had previously experienced.

MS. SNURKOWSKI: Yes.

JUDGE MORRIS: Or markedly longer, or some adjective or something that gives us the differentiation.

THE CHAIR: Significantly.

MS. SNURKOWSKI: Yes. Well, the other guy, the -

THE CHAIR: In the chemical room.

MS. SNURKOWSKI: Yeah, and the FDLE guy.

THE CHAIR: I think it's close enough the chemical.

MS. SNURKOWSKI: He went in there.

JUDGE MORRIS: At least for all members of the execution team.

THE CHAIR: I have a question about the report. It's just what I call. The question we'll call one room the chemical room. Okay. We had the other one called the death chamber.

JUDGE MORRIS: It's the death chamber.

THE CHAIR: That's what I thought.

JUDGE MORRIS: They used the word execution room, right. And where the execution - primary execution is located, you can have a mix-up. I think it is the death chamber.

MS. SNURKOWSKI: Well, I would put also execution room tends to go to another type of - I mean, this is an execution room but -

THE CHAIR: Okay. The consensus of all the witnesses is the death chamber and the chemical room -

Was -

MS. SNURKOWSKI: Oh, I'm sorry. I didn't think you would do. I would not -

JUDGE MORRIS: I'll tell you the other way to do it. Consensus of the members of the execution team who testified.

MS. SNURKOWSKI: Period. That it took -

JUDGE MORRIS: That it took significantly longer than prior executions.

THE CHAIR: Members of the -

MS. SNURKOWSKI: Significantly, yes, longer. Or you can say significantly longer in duration, however you want to say it.

THE CHAIR: Since we used the word "execution took too long," is

there a better way to say that, professional way to say that, the finding, the original finding based on what we just -

MS. SNURKOWSKI: The duration of the execution was longer than previous executions, or exceeded the time of other executions.

THE CHAIR: Significantly longer there. You want to put what adjective? You have to do something to distinguish this from all the others. Was substantially - is that it?

MS. SNURKOWSKI: I think so because I think, as I said, I'm looking at all the things and they are all saying the same thing.

THE CHAIR: Okay.

MS. SNURKOWSKI: So how many findings do we have?

THE CHAIR: Well, we have six or seven, depending on whether that failure to carry out either goes away from here or goes someplace else, or just goes away all together. I'll see - what I'm going to do is when she gets through with the transcript we will look - you'll look also by who said that and how it got brought up.

JUDGE MORRIS: Tell me how we're going to proceed with this because okay. I'm going to be in Tampa. I've got my computer.

THE CHAIR: Oh, that's no problem. How long will you be in Tampa?

JUDGE MORRIS: I'll be in Tampa for two days. I'll be at the

Sheraton downtown at the Judicial Education Summit.

THE CHAIR: Do you have a cell phone?

JUDGE MORRIS: Yes. Well, I've got Peters'. Give me a second.
I'm sorry.

THE CHAIR: We're in recess. We are officially -

MS. SNURKOWSKI: Before you say that, it is my understanding you are going to or Peter is going to organize the transcripts and all the attachments. And that won't be - you won't be sending that to any of us.

THE CHAIR: Correct. That will be -

MS. SNURKOWSKI: All right. Will there be, at some point in time, be available like an index or something of what that is? Because, I mean, the reason I ask that, it seems to me that there are some materials that I don't think we have received as members of the Commission. For example, Peter pulled out a - I think we were looking to see some testimony with regard to Mr. - Doctor Heath information.

THE CHAIR: Yes. You had asked him to get that.

MS. SNURKOWSKI: Yes. And he showed me something but -

THE CHAIR: A chart.

MS. SNURKOWSKI: But I don't think I have that chart. And I was just curious whether -

THE CHAIR: Because you think he already had these charts?

MS. SNURKOWSKI: I don't know.

THE CHAIR: I think if he had it we had to get permission from him to release that.

MS. SNURKOWSKI: He showed me - he showed me a chart.

JUDGE MORRIS: That chart is somewhere. I've seen that chart, or one of the charts. Oh, I know what it was. You're right. It was in the -

MS. SNURKOWSKI: On the presentation, the slides.

JUDGE MORRIS: Right.

MS. SNURKOWSKI: That's right. There's some information in the charts that we don't have.

JUDGE MORRIS: And he said he couldn't release them.

MS. SNURKOWSKI: And he said he would give us an index or what - or he may have an index. And I have a sense about where I - if I have anything, because I just feel like - I don't think I have it. Just to make sure, a final check.

JUDGE MORRIS: I'm impressed. It's all I can do to read the transcripts much less all that little material.

THE CHAIR: Okay. At this time we will adjourn.

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CERTIFICATE OF NOTARY PUBLIC

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, Patricia K. Gough, a Notary Public in and for the State of Florida at Large, do hereby certify that the foregoing proceedings were taken before me in the cause, at the time and place, and in the presence of counsel as set out in the caption hereto, at Page 1 hereof; and that the foregoing typewritten transcript consisting of pages contained herein, inclusive, is a true record of the proceedings had at said session.

I FURTHER CERTIFY that I am neither an attorney or counsel of any of the parties in this cause, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in the event of said cause.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal this 28th day of February, 2006.

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE

My commission expires May 21, 2007

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