

Attorney for Petitioner  
AMERICAN CIVIL LIBERTIES  
UNION OF NORTHERN CALIFORNIA

AMERICAN CIVIL LIBERTIES UNION OF  
NORTHERN CALIFORNIA,

V.

Respondent.

Hrg. Time: 9:30 am

2. In my professional capacity, I review the media coverage regarding California's death penalty every day. I respond to requests for interviews and information regarding the death penalty from

1 professional journalists. I also respond to requests for information regarding California's death penalty  
2 from attorneys, elected officials, organizations and members of the public.

3         3.         In my experience, the public is extremely interested in every aspect of the death penalty  
4 in California, including the manner in which executions are performed and how public resources are  
5 used. During 2009 and 2010, the California Department of Corrections and Rehabilitation (CDCR)  
6 solicited comment from the public regarding its revised execution protocol, in three separate public  
7 comment periods. Based on a review of the records provided by the CDCR, I am informed and believe  
8 that more than 8,000 public comments were submitted during the first comment period, more than  
9 13,000 comments were submitted during the second comment period, and more than 8,000 comments  
10 were submitted during the third comment period. In total, the CDCR received 30,000 or more  
11 comments about the execution protocol.

12         4.         I have reviewed many of the public comments and the CDCR's response to them.  
13 Dozens of comments object to various aspects of the lethal injection process, specifically identifying  
14 problems with acquiring the lethal drugs as one of the reasons the CDCR should change the proposed  
15 protocol. Members of the public objected to the use of doctors in acquiring the drugs. Others  
16 questioned the decision to use sodium thiopental in the execution process because this drug is rarely  
17 used in medical practice, as it has been supplanted by newer medications. Thousands of people  
18 objected to the use of state resources, both employee time and money, on various aspects of the  
19 execution process.

20         5.         I have reviewed the final, approved lethal injection regulations adopted by the CDCR.  
21 The CDCR failed to make any meaningful changes to the protocol in response to the public comments.  
22 The CDCR specifically failed to make any changes to the drugs used or the manner in which the drugs  
23 would be acquired and failed to address concerns about the use of state resources, despite the  
24 objections of the public.

25         6.         Immediately after the CDCR revealed on October 6, 2010, that it had acquired a new  
26 batch of sodium thiopental, I received requests for information about the source of this new supply and  
27 how the CDCR had acquired it from journalists, elected officials, attorneys and members of the public.  
28

1 Some of these requests came specifically from individuals who submitted objections to the CDCR  
2 regarding the proposed lethal injection protocol.

3 7. I sent the CDCR a Public Record Act (PRA) request seeking this information on  
4 October 7, 2010. This request is the basis of this lawsuit. A copy of this request is attached to this  
5 Declaration as Exhibit A.

6 8. Professional journalists have been particularly interested in how the CDCR acquired  
7 sodium thiopental. We were specifically asked by reporters at the Associated Press, KPCC, KALW,  
8 and the SF Bay Guardian to share with them the records we received from the CDCR as soon as  
9 possible. In response, we posted the documents to our web site on the evening of December 8, 2010.  
10 Our website technician regularly keeps track of traffic on our website as part of her duties; this  
11 morning we reviewed the viewing statistics for the site, which indicated that the web page on which  
12 the records are posted has been viewed 652 times and visited 220 times since December 8, 2010.

13 9. The Associated Press story about the records disclosed to the ACLU-NC on December  
14 8, 2010, ran in more than 300 media outlets across the United States. A copy of this article is attached  
15 as Exhibit B to this declaration.

16 10. Since December 5, 2010, we have received inquiries regarding the records from  
17 reporters at the Wall Street Journal, the New York Times, the Associated Press, Harper's Magazine,  
18 the Financial Times, the San Francisco Chronicle, NBC News Channel 11, KPCC, KQED, KALW,  
19 LA Weekly, the SF Bay Guardian, and other media outlets.

20 11. On December 10, 2010, I received a request for information from a non-governmental  
21 organization that advocates for human rights in the United Kingdom. Because the California is  
22 attempting to acquire sodium thiopental from a source in the United Kingdom, human rights activist  
23 and attorneys in that country seek more information about the transaction, in order to determine  
24 whether British or international law has been violated. A copy of this letter is attached as Exhibit C to  
25 this declaration.

26 ///

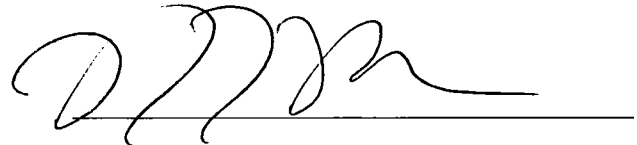
27 ///

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1           12.     On November 30, 2010, I received a copy of a letter that Senator Mark Leno sent to the  
2 CDCR seeking details about how the CDCR acquired the drugs. I received the letter by FAX from the  
3 senator's office. A copy of this letter is attached as Exhibit D to this declaration.  
4

5           I declare under penalty of perjury under the laws of the State of California that the foregoing is  
6 true and correct.

7  
8           December 13, 2010,

A handwritten signature in black ink, appearing to read 'Natasha Minsker', written over a horizontal line.

9           Natasha Minsker  
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# Exhibit A



October 7, 2010

*Transmitted by First-Class mail and by fax to*

Pat Champion, PRA Coordinator  
California Department of Corrections and Rehabilitation  
1515 S Street suite 101N  
Sacramento, CA 94283-0001  
Fax (916) 327-1988

Re: Request for Records Pursuant to the California Public Records Act re Sodium Thiopental

Dear Ms. Champion:

As you are aware, we submitted a request to the California Department of Corrections (CDCR) on August 9, 2010, seeking specific records related to the CDCR's preparations for carrying out executions. Thus far we have received 401 pages of responsive documents. Kristina Lindquist of your office indicated to me over the phone that there are "many more" responsive documents still in the CDCR's possession which have not yet been produced due to the time needed to redact the documents. On September 27, 2010, I left Ms. Lindquist a message inquiring about the status of these documents. I received no response. I called Ms. Lindquist again today and her voice mail indicates she is out of the office until October 11. We continue to seek prompt delivery of these documents which you have acknowledged we are legally entitled to receive.

By this letter, we are now submitting a new and distinct request for records pursuant to the California Public Records Act, California Government Code sections 6250 to 6270 and article 1 section 3(b) of the California Constitution. We ask that you give this new request priority, and we understand that delivery of the documents responsive to the August 9 request may necessarily be delayed further as a result.

We seek copies of all records<sup>1</sup> in the agency's possession, regardless of who wrote them, **regarding the CDCR's acquisition of sodium thiopental on or about September 30, 2010**, including but not limited to the following:

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<sup>1</sup> The request is only for records not previously disclosed pursuant to the attached May 8, 2009 request issued by my office. Specifically, we do not seek budget documents unless they were not previously disclosed.

The term "records" as used in this request is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Cal. Gov't Code § 6252, subsection (e). "Writing" is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." Cal. Gov't Code § 6252, subsection (g).

NANCY PEMBERTON, CHAIRPERSON | SUSAN MIZNER, JAHAN SAGAFI, FARAH BRELVI, ALLEN ASCH, VICE CHAIRPERSONS | DICK GROSBOLL, SECRETARY/TREASURER  
ABDI SOLTANI, EXECUTIVE DIRECTOR | KELLI EVANS, ASSOCIATE DIRECTOR | CHERI BRYANT, DEVELOPMENT DIRECTOR | SHAYNA GELENDER, ORGANIZING & COMMUNITY ENGAGEMENT DIRECTOR  
LAURA SAPONARA, COMMUNICATIONS DIRECTOR | ALAN SCHLOSSER, LEGAL DIRECTOR | ALLEN HOPPER, NATASHA MINSKER, NICOLE A. OZER, DIANA TATE VERMEIRE, POLICY DIRECTORS  
FRANCISCO LOBACO, LEGISLATIVE DIRECTOR | VALERIE SMALL NAVARRO, SENIOR LEGISLATIVE ADVOCATE | TIFFANY MOK, LEGISLATIVE ADVOCATE | STEPHEN V. BOMSE, GENERAL COUNSEL


1. All documents indicating how much the state paid for the newly acquired sodium thiopental, how payment was made and from what account.
2. All documents indicating from whom the CDCR acquired the sodium thiopental obtained on September 30, 2010.
3. All documents indicating who authorized the purchase of the sodium thiopental.
4. All documents indicating when the CDCR became aware of the October 1, 2010 expiration date of its previous supply of sodium thiopental, and when the CDCR began to search for a new supply of sodium thiopental.
5. All communications, internal or external, regarding efforts by the CDCR to obtain sodium thiopental, between August 1, 2010 and today.
6. All documents relating to all attempts by the CDCR to acquire sodium thiopental, successful or unsuccessful, between August 1, 2010 and today.
7. All documents relating to the disposition of all expired sodium thiopental in the CDCR's possession between August 1, 2010 and today.
8. Copies of any packaging, labels, instructions or documents that accompanied the sodium thiopental which the CDCR received on or about September 30, 2010.
9. Package inserts for the sodium thiopental currently in the CDCR's possession and copies of all writings on the package containing the sodium thiopental currently in the CDCR's possession.

I look forward to your determination on this request within ten days of your receipt of it as required by section 6253 of the California Government Code, or earlier if you can make that determination without having to review the records in question. To assist with the prompt release of responsive material, I ask that you make records available to me as you locate them, rather than waiting until all responsive records have been collected and copied. Please notify me immediately of any copying fee for these materials so that I may provide payment and ensure prompt delivery of the requested material.

If you determine that any of the information I have requested is exempt and will not be disclosed, please provide me with a signed notification citing the legal authorities upon which you rely. See Cal. Gov't Code § 6255. Pursuant to section 6253, please disclose all reasonably segregable non-exempt information from any portions of records you claim are exempt from disclosure.

If I can provide any additional information that will expedite your processing of my request, please do not hesitate to contact me.

Sincerely,



Natasha Minsker, Esq.  
Death Penalty Policy Director

# Exhibit B



Thursday, December 9, 2010

Docs show Calif.'s worldwide execution drug search  
The Associated Press

SAN FRANCISCO (AP) — The e-mail from one California prison official to another almost reads like something out of a spy novel: "May have a secret and important mission for you."

Department of Corrections and Rehabilitation undersecretary Scott Kernan sent that message to assistant secretary Anthony Chaus on Sept. 29. The "mission" turned out to be a trip to Arizona for a fresh supply of sodium thiopental, the so-called knock-out drug used in the state's three-drug lethal injection.

California's only batch was set to expire and the drug was in short supply — as the state's first execution in five years loomed.

In August, Kernan, Chaus and other officials began a desperate worldwide search over two months for the drug, according to nearly 1,000 pages of documents released late Wednesday.

Kernan needed Chaus to send "one of your So Cal guys" to the Arizona State Prison Complex to pick up 12 grams of sodium thiopental.

The next day, on Sept. 30, Warden Carson McWilliams in Florence, Ariz., handed a California prison agent 24 vials of it. The agent then drove more than eight hours to Gorman, where he handed the vials off to another CDCR agent to complete the trip to San Quentin Prison, which houses the state's death chamber.

The trip went through even though California authorities on Sept. 29 had called off the planned Sept. 30 execution of Albert Greenwood Brown because of an adverse court ruling connected to the expiration date of the sodium thiopental on hand.

California had earlier "loaned" Arizona pancuronium bromide, another vital ingredient in the lethal injection, so it could carry out an execution.

The documents on California's lethal injection drug search were obtained by the American Civil Liberties Union and posted on its Northern California chapter's website.

They detail the state's attempt to replace Illinois-based Hospira Inc. as a sodium thiopental supplier. Hospira, the only U.S. manufacturer of sodium thiopental, ran into production problems that prevented it from delivering a fresh supply of the drug to California.

The state's only supply of the drug on hand expired on Oct. 1 and resolving legal challenges brought by the condemned inmate would delay his execution beyond that date, leaving the state attorney general's office no choice but to halt its attempts to proceed with the execution.

The office said the state won't schedule any more executions until a federal lawsuit claiming the state's lethal injection process is unconstitutional is resolved.

Most of the documents are internal e-mails that show California Department of Corrections and Rehabilitation officials scrambling to find a new supplier beginning in August because of the problems at Hospira, which led to a nationwide shortage of the drug in nearly every state that carries out lethal injections, except in Texas.

The e-mails show officials complaining about a Texas prison system — described in a local newspaper story as "well stocked" — apparently refusing to loan any sodium thiopental anywhere. Texas has executed 17 inmates this year and plans three more lethal injections by year's end.

"It is unfortunate that Texas would not share some of its 'well stocked' supply to help sister states but down the road they may need help in some other way and this position does not help their image," a Sept. 29 e-mail to Kernan states. "Nevertheless, in the prison business things are always changing and Texas is no exception."

The sender's name was blacked out by prison department lawyers before the e-mail was turned over the ACLU. It ends by saying "Sorry we were not able to help more."

Texas authorities were unavailable because of the late hour the documents were released.

California authorities called nearly 100 hospitals and even considered a supplier in Pakistan until acquiring 521 grams of the drug manufactured by Archimedes Pharma of Great Britain. The department still hasn't received the shipment, which is being held on the East Coast awaiting clearance from the Food and Drug Administration, spokeswoman Terry Thornton said.

Thornton said Wednesday night that the documents highlight the department's determination to carry out the execution of Brown, who was convicted in Riverside County of raping and killing a high school student and then taunting her mother.

"We have always said we were actively seeking a new supply of sodium thiopental," Thornton said.

The department managed to scrounge 8 grams of the drug on Aug. 24 from a supplier not identified in the documents.

"It is enough to do one execution," Kernan told department Secretary Matt Cade in an e-mail. "Bad news is drug expires in Oct."

# Exhibit C

**FAXED**

S. A. Jefford  
A.C.A.T. United Kingdom  
Leeds City Office  
Fax: +44 (0) 113 228 1101

**URGENT!****To the attention:**

ACLU Northern California  
39 Drumm Street  
San Francisco  
CA 94111  
United States

**CONFIDENTIAL****Fax:** (001-415) 255 1478

**Fax:** [from U.S.]  
(011-44-113) 228 1101

**Pages:** One (1)**Email:** stephj@live.co.uk**Date:** 10 DEC 2010**Dear Director:****In Re:**

**The issue of supplies of  
Sodium Thiopental for use  
in executions**

I was interested to find an item on the Internet this afternoon concerning efforts reportedly made by the State of California to maintain supplies of drugs used in carrying out executions, including Sodium Thiopental. Recently there was controversy here in the United Kingdom when it emerged that the Secretary of State for Business had authorized exports of Sodium Thiopental to the United States; as an independent human rights NGO, we actively challenged this at various levels, and another NGO as well as a London law firm filed suit in The High Court in London. The Minister ultimately reversed himself on this issue, I am pleased to say. There is a significant body of British and European law that weighs against any such authorizations.

The States that came under the spotlight in the action were **Tennessee** [prisoner ZAGORSKI] and **Kentucky** [BAZE]; it was reportedly the case that **Arizona** executed a man named LANDRIGAN on October 26, prior to the legal challenge, using imported drugs.

We are wondering whether, so far as you know, any attempts have been or are being made by the State of California to obtain any such drugs for use in capital punishment from any British sources? This has been rumoured, this side of the water though no specific information has reached us at this time. If you know anything about this or can update us more generally, please do email.

Best regards from North England,

  
**Stephanie A. Jefford**  
Advocate

**FAX:** (011-44-113) 228 1101 (+8 hours)**EMAIL:** stephj@live.co.uk**or:** stephaniejefford@yahoo.com**MAILING:** Office: 103 Iveson Dr., LEEDS, LS16 6NJ, U.K.

# Exhibit D

STATE CAPITOL  
ROOM 4061  
SACRAMENTO, CA 95814  
TEL (916) 651-4003  
FAX (916) 445-4722

DISTRICT OFFICES  
455 GOLDEN GATE AVE  
SUITE 14800  
SAN FRANCISCO, CA 94102  
TEL (415) 557-1300  
FAX (415) 557-1252

3801 CIVIC CENTER DRIVE  
SUITE 425  
SAN RAFAEL, CA 94903  
TEL (415) 479-6612  
FAX (415) 479-1146

SENATOR.LENO@SEN.CA.GOV  
WWW.SENATE.CA.GOV/LENO

# California State Senate

SENATOR  
**MARK LENO**  
THIRD SENATORIAL DISTRICT



COMMITTEES:  
PUBLIC SAFETY  
CHAIR  
BUDGET  
SUBCOMMITTEE NO. 3  
CHAIR  
APPROPRIATIONS  
BUDGET AND  
FISCAL REVIEW  
HEALTH  
JUDICIARY  
LABOR AND INDUSTRIAL  
RELATIONS  
NATURAL RESOURCES  
AND WATER

November 19, 2010

Mr. Matthew Cate, Secretary  
CA Department of Corrections and Rehabilitation  
1515 S Street  
Sacramento, CA 95814

**Re: Informational request regarding acquisition and purchase of sodium thiopental**

Dear Secretary Cate:

As you know from our previous phone conversation, it has come to my attention that the California Department of Corrections and Rehabilitation (CDCR) has recently obtained a new supply of sodium thiopental, one of the substances used by your department to carry out the lethal-injection protocol for executions of condemned inmates. As Chair of the Senate Committee on Public Safety, I am writing to ask that you provide my staff with detailed information explaining how the department came into possession of this new supply of sodium thiopental and the price the department paid to purchase the drug.

It was my understanding that CDCR had asserted in federal court that the department's remaining supply of sodium thiopental was going to expire on October 1, 2010 and that a new supply of the drug could not be obtained until 2011. As such, I was surprised to learn that CDCR affirmed the following month in federal district court that the department was now in possession of twelve grams of sodium thiopental on September 30, 2010 and that supply would not expire until 2014.

Any information you could provide on how much your department paid for the newly acquired sodium thiopental, the source of the newly acquired drug, and what was done with the previous supply which had reached its expiration date would be very much appreciated.

If you have any further questions about this request, please do not hesitate to contact me, or one of my staff, at (916) 651-4003.

Sincerely,

  
MARK LENO  
Senator, 3<sup>rd</sup> Senate District