

10. Affidavit of Janine S Arvizu dated March 31, 2008.

## AFFIDAVIT

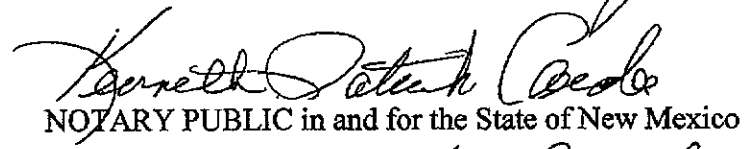
JANINE S. ARVIZU, having been duly sworn, hereby states as follows:

1. I am a quality consultant and laboratory quality auditor located in Tijeras, NM 87059.
2. My education includes a B.S. degree in biochemistry (California Polytechnic State University at San Luis Obispo, 1976) and ABD in chemistry (University of New Mexico). I have been certified by the American Society for Quality as a Quality Auditor (certificate #19856) and I specialize in assessments of laboratories.
3. From 1982 – 1992, I was employed by EG&G Idaho, Inc. (operating contractor for the Department of Energy's Idaho National Engineering Laboratory). In the course of my career, I established and managed an analytical chemistry laboratory for the Department of Energy, developed and implemented quality assurance programs, and served as Lead Auditor for dozens of audits. I served as Program Manager for the U.S. Navy's nationwide laboratory Quality Assurance Program; in this capacity I managed the audit program that evaluated government and commercial laboratories, assessed operating procedures, and performed independent quality assessments.
4. In my capacity as a quality auditor, I conduct independent evaluations of diverse procedures, systems, and controls, and assess their efficacy in reliably meeting their intended objectives. These assessments typically include an evaluation of procedures, guidelines, and instructional materials, as well as operating records related to the implementation of procedures.
5. Capital Collateral Regional Counsel attorneys for Mark Dean Schwab hired me to conduct a focused review and quality assessment of documents related to the Department of Correction's procedures and practices for carrying out an execution by lethal injection. I provided counsel with an initial report of conclusions (dated August 14, 2007).
6. After my initial report of conclusions, I received and reviewed copies of additional training records provided by the Department of Corrections. The records included notes related to Florida State Prison training conducted on July 11, 2007, July 18, 2007, and August 1, 2007 (the effective date for the new execution procedure). I provided an affidavit in which I reported my conclusions as to the efficacy of the training administered by the Department of Corrections (DOC).
7. In November, 2007, I was provided with a copy of DOC training records for a total of five training scenarios conducted on two additional days in August, 2007 (8/15/07 and 8/22/07). These training scenarios were conducted after the effective date of the DOC protocol; as such, they should have been fully compliant with the approved procedure that was in effect at the time the training was conducted.
8. Although I have reviewed copies of all the available training records from August 2007, it is my understanding that defense counsel has not yet been provided access to documents that provide important context and information relevant to an assessment of the reliability and efficacy of the DOC execution procedure (previously identified as items 1, 2, 3, 4, 5, 9, 10, 11, 12, 16, and 17 in the Defendant's Motion to Compel previously filed in Schwab v. State). This affidavit conveys my continued opinion that the previously requested records and documents are relevant and necessary to

independently assess the current efficacy of the DOC execution procedure. This conclusion has been bolstered by my review of the records from the mock executions that were staged in August 2007. Although these training exercises were conducted on and after the effective date for the revised procedure, they demonstrate a continued pattern of limited scope, inadequate controls, and unacceptable performance. These records indicate that in August 2007, the department's training program was still deficient. The additional requested records are needed to determine whether the current state of the training program has improved and will be adequate to ensure the reliability of the execution procedure.

The foregoing is true and correct to the best of my knowledge, information, and belief. Dated  
3/31/2008.

  
Janine S. Arvizu

  
NOTARY PUBLIC in and for the State of New Mexico

Residing at: *Bernalillo County*

My appointment expires:  
*March 1, 2009*