

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

In re: OHIO EXECUTION
PROTOCOL LITIGATION,

Case No. 2:11-cv-1016

Chief Judge Edmund A. Sargus, Jr.
Magistrate Judge Michael R. Merz

This Order relates to Plaintiffs
Campbell, Tibbetts, and Gapen

**REPORT OF IN CAMERA INSPECTION; ORDER SUSTAINING
DEFENDANTS' OBJECTION TO PRODUCTION**

During the deposition of Larry Greene at the Southern Ohio Correctional Facility on October 11, 2017, Plaintiffs requested a written statement of the witness relating to the execution of Gary Otte. Defendants refused to produce the statement on the ground that it was attorney work product protected from production by Fed. R. Civ. P. 26(b)(3) and *Hickman v. Taylor*, 329 U.S. 495 (1947). ODRC counsel Stephen Gray advised the Court that he had directed Mr. Greene to prepare the statement on the day of the Otte execution, September 13, 2017.

At the Court's instruction, the statement was forwarded to the Court for in camera inspection under cover of the attached email from Mr. Gray. Having examined the document, I find it to be what Mr. Gray represented. I further find that because Plaintiffs have been able to depose Mr. Greene on the subject of the statement, Plaintiffs do not have a substantial need for the statement because his deposition testimony should provide them with the substantial equivalent. See Fed. R. Civ. P. 26(b)(3)(A)(ii).

Accordingly, Defendants' objection to production is SUSTAINED.

October 12, 2017.

s/ *Michael R. Merz*
United States Magistrate Judge



Confidential --in camera

stephen.gray@odrc.state.oh.us to: Michael R. Merz (Michael_Merz@ohsd.uscourts.gov) 10/11/2017 05:20 PM

Cc: "Jocelyn K. Lowe", "Zoe A Lamberson"

From: "stephen.gray@odrc.state.oh.us" <stephen.gray@odrc.state.oh.us>
To: "Michael R. Merz (Michael_Merz@ohsd.uscourts.gov)" <Michael_Merz@ohsd.uscourts.gov>,
Cc: "Jocelyn K. Lowe" <Jocelyn.Lowe@ohioattorneygeneral.gov>, "Zoe A Lamberson" <Zoe.Lamberson@ohioattorneygeneral.gov>

1 attachment



Statement (Greene).PDF

Your honor: Per your request, attached is the statement of Mr. Greene that he provided to me. In the afternoon after the Otte execution, I asked him to prepare a short statement of his recollection of events, in anticipation of litigation concerning Ms. Wright's exiting the witness room that morning, based on the public statements she made immediately after the Otte execution.

Kindly advise my attorneys, Ms. Lowe and Ms. Lamberson (now known also by her married name, Saadey), if you require any additional information from me or them.
Thank you.

Sincerely,

Steve Gray
Chief Counsel and Managing Director of Risk Management
Ohio Department of Rehabilitation and Correction
(614) 752-1773

Please note that an e-mail message, or a portion thereof, may be releasable as a public record in accordance with Chapter 149 of the Ohio Revised Code.