

ADMINISTRATIVE REMARKS (1070)

ANNUAL ADMINISTRATIVE AUDIT COMPLETED			
DATE	SIGNATURE AND RANK	DATE	SIGNATURE AND RANK

DATE: Articles UCMJ explained to me this date as required by Article 137, UCMJ. (Signature)	DATE: Articles UCMJ explained to me this date as required by Article 137, UCMJ. (Signature)	BLOOD TYPE O
		DEPOSIT RECORD BOOK NO.
		CLASS SWIMMER UNQ

SEP 27 1968

CO "A", 7TH ENGRBN (REIN), FMF
IN COMPLIANCE WITH BNO 3012.2
I HAVE RECEIVED THE REQUIRED
INSTRUCTION PERTAINING TO THE
AFET. CARE AND CLEANING OF THE
M16 RIFLE THIS DATE.

Sam Howard Jr.

DATE 04 MAR 1969

COMBAT SERVICE CODE 5

00000

6 90812: Co "A", 7th Engrbn (Rein), FMF
Ration Card No. 837102 recovered and
destroyed this date.

C. J. Hines 00

6404/0 MCRF (C) III. KSC, MIL

Date
Assigned to the Ready Reserve
this date.

J. A. Valdivia

EMBOSSING PLATE IMPRESSION

422-68-3395

HOWARD, SAM JR. 2292928

NAME (Last) (First) (Middle) SERVICE NO.

NAVMC 118(11) (REV. 6-65)
Previous editions of NAVMC 118(11) and editions of NAVMC 118(1) are obsolete.

11. CONTINUED ON SUPPLEMENTAL PAGE

8-3376

ADMINISTRATIVE REMARKS (1070)

ANNUAL ADMINISTRATIVE AUDIT COMPLETED			
DATE	SIGNATURE AND RANK	DATE	SIGNATURE AND RANK

DATE: _____ Articles UCMJ explained to me this date as required by Article 137, UCMJ. _____ (Signature)	DATE: _____ Articles UCMJ explained to me this date as required by Article 137, UCMJ. _____ (Signature)	BLOOD TYPE _____ DEPOSIT RECORD BOOK NO. _____ CLASS SWIMMER _____
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9Sep69 SepSec, MB, NS, TI, STRAN 94130
 I hereby consent to be (discharged) (detached for release from active duty) on
9Sep69 in lieu of my normal
 date of (expiration of enlistment) on
23Jan70. I understand that
 entitlement to pay and allowances and
 credit for active Federal service ceases
 on the actual date of my separation from
 active service.
Sam Howard Jr.
 SAM HOWARD JR.

640910 MCRF (CI III), KSC, Mo.
 Date
 Assigned to the Ready Reserve
 this date.
J. G. [Signature] ByDir

740123
 Removed from the SB/RR this
 date. DD Form 889/44 furnished
 SelfServSystem, state of NY.
 Auth: Par P07 MCO P1900.16
 and
 Hon/Gen DisCert issued. RR/MRR.
M. [Signature] ByDir

EMBOSSING PLATE IMPRESSION

NAME (Last) (First) (Middle) SERVICE NO.

NAVMC 118(11) (REV. 6-65)
 Previous editions of NAVMC 118(11) and all editions of NAVMC 118(1) are obsolete.

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AA002127

OFFENSES AND PUNISHMENTS

Good Conduct Medal Period Commences: 24 JAN 1968

ENDORSED PLATE IMPRESSION

HOWARD, SAM JR.

422-68-3393
2292929

NAME (Last)	(First)	(Middle)	SERVICE NO.
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NAME 110(12)-PD (REV. 10-65) SUPERSEDES PREVIOUS 12-61 WHICH WILL BE USED

12.....

OFFENSES AND PUNISHMENTS

2-10000

SEA AND AIR TRAVEL-EMBARKATION SLIPS

23 Jul 68 (Date) embarked on board Govt Asft, at Norton, AFB, Calif.
 and departed therefrom 23 Jul 68 Arrived and disembarked at Kadena AFB,
 Okinawa, on 25 Jul 68 UD #122-68/21303
 Arr. Con. U.S. (Date) ☐ W/Dep. ☐ WO/Dep. *R. E. FRANZWA*
 Dep. Con. U.S. 23 Jul 68 R. E. FRANZWA, Capt. CO U.S.M.C.

28 Jul 68 (Date) embarked on board Govt Asft, at Kadena AFB, Okinawa
 and departed therefrom 28 Jul 68 Arrived and disembarked at Danang,
 Vietnam, on 28 Jul 68 UD #122-68/21303
 Arr. Con. U.S. (Date) ☐ W/Dep. ☐ WO/Dep. *R. E. FRANZWA*
 Dep. Con. U.S. R. E. FRANZWA, Capt. CO U.S.M.C.

(Date) embarked on board, at
 and departed therefrom Arrived and disembarked at
 on
 Arr. Con. U.S. (Date) ☐ W/Dep. ☐ WO/Dep.
 Dep. Con. U.S. U.S.M.C.

(Date) embarked on board, at
 and departed therefrom Arrived and disembarked at
 on
 Arr. Con. U.S. (Date) ☐ W/Dep. ☐ WO/Dep.
 Dep. Con. U.S. U.S.M.C.

HOWARD, SAM JR.

422-08-3353
 2292928

(LAST NAME) (First) (Middle) (Service No.)

EXHIBIT 155

EXHIBIT 155

NEVADA DEPARTMENT OF PRISONS

Incident Form

TO: DIRECTOR, NEVADA DEPARTMENT OF PRISONS
H.L. Whitley, Warden
FROM: Nevada State Prison

DATE: September 14, 1988

Type of Incident: Assault

Institution: Nevada State Prison Location: Unit 6, X-Wing

Date of Incident: September 14, 1988 Time of Incident: 8:24 A.M.

DATA ON INMATE(S) INVOLVED

Name: Samuel Howard DOP #: 18329

County Sentenced From: Clark Date Received at DOP: 5/13/83

Offense: Murder First Degree, With Use of
Deadly Weapon Sentence: Death

Physical Description: Sex: Male Race: Black Age: 34 DOB: 6/18/52

Name: DOP #:

County Sentenced From: Date Received at DOP:

Offense: Sentence:

Physical Description: Sex: Race: Age: DOB:

Name: DOP #:

County Sentenced From: Date Received at DOP:

Offense: Sentence:

Physical Description: Sex: Race: Age: DOB:

If the incident involved a serious assault on a staff member, accidental injury to a visitor or on duty staff, or a felonious act by a visitor or staff member, list the person's name below. If a staff member, also list their position.

NAME: POSITION:

PRESS RELEASE DATA: (Can only be made after specific notifications completed—AR 120)

Press release clearance approved by: (name) (title)

If clearance is received: Date Released to Press: Time of Release:

Person Making Press Release:

(USE REVERSE SIDE FOR SUMMARY OF INCIDENT)

DOP-019 (11/86)

AA002131

SUMMARY OF INCIDENT

On September 14, 1988, at approximately 8:30 A.M., Samuel Howard, #18329, moved from U-Wing to X-Wing per Classification. Upon entry, the wing door was secured and all housing doors were open. This wing is an open tier, housing Death Row inmates. Inmate Howard was then physically attacked by numerous inmates. The following inmates are housed in this unit wing:

#277 V. Jimenez, #24759
#278 H. Deutscher, #13235
#279 H. Dawson, #21643
#280 P. Browning, #23791
#281 L. Adams, #23617
#282 D. Padilla, #22666
#283 M. Hogan, #21252
#284 W. Thompson, #20065
#285 S. Howard, #18329
#286 J. Valerio, #26214
#287 S. Flanagan, #25932
#288 R. Moran, #20563

Inmate Samuel Howard sustained the following injuries: Hematoma to forehead, left eye orbital globe ruptured, lens free-floating, moderate bleeding. Emergency treatment was afforded him at the NSP Infirmary, and then he was transported to the Carson-Tahoe Hospital Emergency Room for treatment at approximately 9:00 A.M. The unit was locked down, with a shakedown in progress. Crime scene secured and photographed. The investigation is continuing.
(Lt. M. Budge)

SIGNATURE: H.L. Whitley
INSTITUTIONAL WARDEN/FACILITY MANAGER
H.L. Whitley, Warden
Nevada State Prison

HLW/lvw

cc: Security Squad
I-File
Incident File in Warden's Office
Mary Long, Court Compliance Monitor

If fire-related, copy of Fire Report Form to Deputy State Fire Marshal

Copy to be retained by Institution/Exhibit

EXHIBIT 156

EXHIBIT 156

DECLARATION OF JOHN LUCERO

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I, JOHN LUCERO, declare as follows:

1. I worked for the Clark County Public Defender's Office for seven years, and was their Chief Investigator at the time I quit, in 1994.
2. For a brief time, in January 1990, I worked as an investigator in the case, *State v. Billy Ray Riley*. Mr. Riley was charged with first-degree murder in the October 1, 1989, shooting death of Albert "Ramrod" Bolin, who at that time was residing in the home of Leodis Gorden at 2215 Englestad, North Las Vegas, NV 89030.
3. Although I assisted in the investigation of the Bolin homicide, I do not believe it was my assigned case. As far as I recall, the case was assigned to Joanie Coe, another investigator in the Clark County Public Defender's Office.
4. In fact, I had never seen the crime scene photos until I was interviewed about the Riley case by investigator Tom Casler on Saturday, December 21, 1997. I am certain I was not shown the photographs before trial. I also have no recollection of viewing the District Attorney's file, of going to the North Las Vegas Police Department's Evidence Vault to view any of the evidence, or of going to the North Las Vegas Police Department's homicide unit to review the homicide file. In fact, I probably only visited the Evidence Vaults at the Las Vegas Metropolitan and North Las Vegas Police Departments with a defense attorney about 10 times during the

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time I worked for the Clark County Public Defender's Office. From what I recall, if a lawyer in our office wanted to learn about a case, the lawyer would usually call opposing counsel at the DA's office about it. I seldom, if ever, went over there with an attorney to physically review the DA's case file.

5. One of the main reasons I left the Clark County Public Defender's Office was because it seemed to me that only a few attorneys there cared about the defendants we represented.
6. When I first went to work for the Clark County Public Defender, there were no rules, regulations, or standard operating procedures in place regarding investigator accountability. Likewise, there was virtually no structure or direction. Everybody just kind of did what they wanted to do. Finally, while at home recuperating from surgery, I put an investigative manual together. It took a considerable amount of effort to get it implemented and, even then, it was only half-heartedly accepted. Possibly the most important change was the appointment of a chief investigator. Until then, the Public Defender, Morgan Harris, assigned the investigators all of their cases.
7. While I worked in that office, equipment for investigators was always in short supply. The only investigative equipment we had was a Polaroid camera. So, in the end, most investigators supplied their own materials,
8. Race also seemed to play a part in cases litigated by the Public Defender's Office. In my opinion, and I am not alone in this regard, very

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little was done for black clients. Black clients got little or no representation. The general feeling seemed to be, if you're black you're guilty. That was one of the main reasons I quit. I couldn't take that lackadaisical attitude displayed by some of the attorneys anymore.

9. If I appear to be painting every attorney who worked in that office with the same brush, I am not. There were a few attorneys who visited their clients, stayed late, and really tried to do a good job.
10. In looking back, I recall knowing very little about this case at the time Mr. Riley's attorneys, Steve Dahl and Gene Martin, and I visited Leo Gorden's house. To my knowledge, I never saw the crime scene photos, the crime scene sketch, or the autopsy report. In fact, I have no recollection of having seen any discovery at all in this case. That's why, I think, Joanie Coe must have been assigned to this case.
11. According to the documentation shown to me by Mr. Casler, it looks like I started working on this case on January 5, 1990. I do not recall who conducted the initial interview of Mr. Riley. I may have done it, but I do not remember doing so, and there is no mention of who did do it in the case documentation. I know we often had volunteers do the initial interviews, and investigators did them as well, but I don't know who did the initial interview of Mr. Riley. Myself, I believe the attorney should be the first one to talk to the client, not a volunteer or investigator.
12. Whenever an initial interview was done, we used a "blue sheet," which has the name on it of the first person who spoke with the defendant. The

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sheet also contains a question asking the defendant if he wants to be polygraphed. That question was put there, I believe, as a means of holding down office expenses. In Billy Ray's case, for instance, his refusal to take a polygraph probably was taken to mean that he was guilty, and so little effort was put forth in his defense. That's the way it was in the Public Defender's Office at that particular time. Later, after this case, things in the office changed, mainly due to Steve Dahl's efforts. I don't know if it was because of what happened in Billy Ray Riley's case or what. But I do know that Steve Dahl was instrumental in getting the murder team going and providing these people with more resources and much better defenses.

13. I have thought a lot about this case since Mr. Casler first interviewed me about it in January 1997. From what I recall, I had few contacts with Steve Dahl or Gene Martin regarding Billy Ray's case. They decided everything among themselves and then, just before trial, they gave me a little list of things to do. According to documentation shown to me by Mr. Casler, the only Request for Investigation in this case was the one Gene Martin issued on January 5, 1990. Until then, I did very little work on it so I never really learned much. I have reviewed a Report of Investigation from myself and Joanie Coe, dated October 11, 1989, and believe the report, which refers to a bloody T-shirt, was a result of the initial interview done by either Joanie or myself at the Clark County Detention Center.

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RILEY, BILLY RAY
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The report was probably a "hot lead" and one of us followed through with it.

14. As I recall, I had no advance warning from Steve Dahl or Gene Martin that we would be going over to Leo Gorden's house to inspect the crime scene. I don't even know if I took a legal pad. I know I didn't take a camera or measuring tape.
15. During the time I worked for the Clark County Public Defender, I requested that the office purchase, or put together, a crime scene kit so we could simply grab the kit and head to the scene. But apparently that was asking too much. So I ended up having to supply my own equipment. Even a measuring wheel, which only costs about \$60, was too much. Every time someone needed a measuring wheel, I'd have to go and borrow one from some other county agency.
16. So, when we went out to Leo Gorden's house that day, I had no equipment at all and was completely unprepared. When we got into the room where Albert Bolin had been shot, Steve Dahl, I believe, wanted to take some measurements of the bed and dresser, and said, "What should we do?" And I said all I could say, "Improvise." So I got a stick from somewhere in the house and made my measurements with that. I had nothing else to work with. When I got back to the office, I measured it and then figured out the dimensions. But it wasn't very accurate, and the deputy DA, Bill Henry, made a fool out of me in the courtroom. It was a joke in court. It was like, "This is the kind of investigation we do." It was

JK
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embarrassing. But I really went more as a witness that day than anything. I don't think I even knew who Leo Gorden was at the time. Later, I realized he was the one who had let us in the house, but I don't think anyone actually interviewed him. From the case documentation, it looks like I asked him a couple of questions, and that's about it. If you look at my report, it says we were in the house for 25 minutes, from 11:30 to 11:55. You can't get a whole lot done in that amount of time, but that's how long we were there. And, again, that's what I mean: Very little investigation was actually done on Billy Ray's case, probably because the attorneys felt he was guilty or possibly they felt the state's case was too strong. I don't know.

17. While in Leo Gorden's house, I remember seeing blood on the floor, a pool of dried blood that you can see in one of the crime scene photographs. But I don't remember specifically looking for blood or collecting any blood scrapings. So I have no idea how the northwest corner walls got spattered with blood, considering that he was said to be standing with his back to the corner and it was not a through-and-through wound. As I recall, no questions were raised regarding the blood spatter on the walls or, for that matter, the lack of blood spatter on the bed. In retrospect, I think Gene and Steve probably went over there so they could say they had been to the scene. I don't know. I do know we never interviewed Leo Gorden, who had let us into the house, even though he was a key state witness and Mr. Bolin was killed in his home.

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18. As to Billy Ray Riley's trial, I remember testifying, but that's about it. I also interviewed a couple of jurors afterward. It appears I took some notes of those interviews but never filed any reports. As to the investigation, I think all I did was those few things I mentioned, going to Leo Gorden's house and searching through a dumpster at a trailer court for a bloody T-shirt, which we had been told was thrown there by Darrell Lee Jackson, who initially was a co-defendant in the case and who later became a key state's witness. From what I recall, the two people who were supposed to have seen the T-shirt were not called at trial. [See Addendum A, Notes of Investigation.] The trailer park was just off Miller Avenue, in North Las Vegas, only a few blocks from the crime scene. Joanie and I, though, didn't find anything. I know we talked to an old man about it, but I don't remember talking to his daughter. I also interviewed a couple of witnesses about a week before trial.
19. I have absolutely no recall of Billy Ray Riley's having gone to trial on an assault with a deadly weapon charge only a week and a half before his homicide trial was set to begin. I knew nothing about that until I was interviewed by Mr. Casler. But it doesn't surprise me that the assault case was tried before the homicide case, or even that Mr. Riley was later sentenced in that case to life without the possibility of parole. It's just another example of what I'm talking about. Many of the lawyers in that office just didn't care. For them, it's a career. They're in that office for life. I don't know if that's the way it was supposed to be, but that's the way

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it was. And that's what I found so frustrating. You want to do your job but you can't because the philosophy, or attitude, of the office was, "It doesn't matter anyway." At least that's the way it seemed to me. And that was one of the reasons why I quit. I couldn't take that kind of attitude anymore. It certainly wasn't the money because the money was very good. In fact, not long after I left, the chief investigator, I believe, got a \$12,000 a year raise. It went up to \$58,000. But I felt, if I had to sell my soul for a paycheck, I wasn't going to do it. I wasn't going to sell my soul. That's about all I can say. I'm sorry that's the way things were.

20. From looking at the documentation from the Clark County Public Defender's Office shown me by Tom Casler, it looks like I got this case on January 5, 1990, and was only asked to do those few things I mentioned earlier. I'm sure I did very little in this case. But that wasn't unusual, either, especially if the attorneys felt the client was guilty. It was like, who cares? I know that sounds harsh, but that's the way it was. It just seemed that only a few attorneys in that office cared.
21. I know Steve Dahl was unhappy as hell that they didn't have the money to represent people properly. Dahl was team chief of the death penalty section around that time, maybe a little while after that, because I don't think we even had a death penalty section at that time. Steve Dahl was one of the only ones in the office who complained to Morgan about what was going on.

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Prior Counsel Files

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22. I am aware of the practice of giving polygraph examinations to defendants represented by the Clark County Public Defender's Office, and I was never comfortable with that practice. In fact, a polygraph examination was one of the first things a defendant was asked about in the initial interview. However, the initial interview was not done by an attorney, but was often done by investigators or volunteers. Volunteers are people from outside the office who volunteer to go into the Clark County Detention Center and do these interviews. Sometimes, an initial interview was done by an investigator, but not necessarily one assigned to work on the case. When I worked for the Clark County Public Defender's Office, a blue interview sheet was filled out on each defendant. The interview sheet noted who conducted the initial interview and had a question asking whether the client was willing to be polygraphed. So being asked to take a polygraph is the very first thing that happens to a defendant. It says it right on the bottom of the blue sheet, "Will you take a polygraph?" So they're asked that right from the start, "Will you take a polygraph?" A page of Gene Martin's notes in this case shown to me by Mr. Casler corroborates what I'm saying. In bold letters, in the top right corner, it says, "Set Poly ASAP."

RILEY, BILLY RAY
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Prior Counsel Files

23. Personally, I don't think that question should even be posed, especially on the initial interview. You don't even know any of the facts of the case at this point, and the attorney doesn't know anything. And why is a volunteer or an investigator asking that question in the first place? That

should be an attorney's decision, not that of a volunteer or investigator. And why are you asking a client that right off the bat? You're just interviewing him. The very first time he meets anybody from your office, the first thing you want to know is, 'Will you take a polygraph?' To me, that's just wrong. I'm sorry, but I did not agree with that policy.

24. In my opinion, polygraphs were used more to get a defendant to take whatever offer was made by the District Attorney's Office than to assist in the person's defense or to get at the truth. Polygraphs were also used to determine if a person was telling the truth. So if a person failed a polygraph, that meant the person was guilty and there was no point in expending a lot of money defending him. It was the same if a person refused to take a polygraph, that person appeared to be guilty, too. So a defendant who failed a polygraph or who refused to take one was much less likely to get a good defense than one who passed the polygraph. Basically, polygraphing people was simply a means to save the office both time and money.
25. And as I said, polygraphs were also used to get a defendant to take a deal. If a defendant failed a polygraph, the attorney in the case would go back to the person and say he had failed the polygraph, that the attorney believed the defendant was more involved than he had admitted, and that he had better take the deal. Few defendants ever said no. Nearly every-one took the deal.

RILEY, BILLY RAY
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Prior Counsel Files

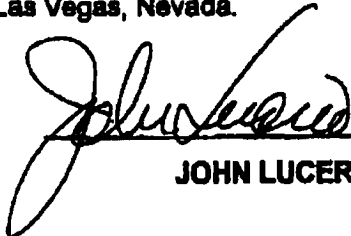
JH
1-29-98

26. Another thing that bothered me about the use of polygraphs was how they were conducted. At the time of Billy Ray's trial, polygraphs were being done in a room over in the Bridger Building. That was before the office polygrapher, Bill Mason, moved across the street to where he is now. The polygraphs were being done in a room on the first floor that had a glass wall and a glass front door, with people walking back and forth all day long. Back in 1989, defendants were brought over to this location from CCDC. To avoid noise and other distractions, Bill Mason would simply close the curtains, which I thought was absolutely stupid. In my opinion, a polygraph exam should not be done like that. In fact, it's very possible that this was the reason so many of Bill Mason's polygraphs resulted in inconclusive readings.
27. One time, before I became the Chief Investigator, I wrote a memo to Morgan Harris, the Clark County Public Defender, saying that so many of the polygraph results were inconclusive that the polygraphing of defendants was essentially useless. I might have written other memos on that subject, but I can't remember if that was the case. I do know, though, that, to this day, the Clark County Public Defender's Office continues to polygraph its clients in much the same manner it did in 1989. And, in my opinion, the practice of asking defendants in their initial interview if they will submit to a polygraph examination is not only improper, it's wrong, especially when they are being asked to do so by a non-lawyer.

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Prior Counsel Files

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I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct and that this declaration was executed on the 29 day of January, 1998, in Las Vegas, Nevada.


JOHN LUCERO

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RCVD 04MAY01 PC-28447
Prior Counsel Files

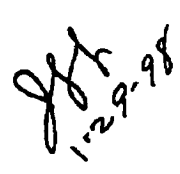

1-29-98

EXHIBIT 157

EXHIBIT 157

DECLARATION OF JOAN COE

I, Joan Coe, declare as follows:

1. I am a former investigator with the Clark County Public Defender's Office, where I worked from 1982 to the summer of 1990. Currently, I am employed as an investigator with Clark County Child Protective Services.
2. At the time of the Albert "Ramrod" Bolin homicide, October 1, 1989, I was actively employed as a Public Defender investigator and investigated all types of criminal cases. Back then, I was the only woman investigator in the Public Defender's Office.
3. On Thursday, January 22, 1998, Mr. Riley's investigator, Tom Casler, of Thomas W. Casler Investigations, interviewed me at the firm's office, 620 S. Casino Center Boulevard, Las Vegas, NV, 89101, regarding any recollections I might have of the Bolin homicide.
4. In addition to providing facts related to the October 1, 1989, homicide of Albert "Ramrod" Bolin, Mr. Casler showed me homicide scene photos and Public Defender memos and reports in an effort to prompt my memory. However, I do remember that because of time and financial constraints it was very hard for investigators to do a thorough investigation.
5. During the nine years I worked for the Public Defender, the investigators used to talk about the poor quality of work in the office. It was believed that the defendants really didn't need to worry, that they would win at the post-conviction level. That's how bad it was.
6. At that time, there was no murder team. We used to talk about how, in post-conviction, a defendant could use the investigative issue because, as an investigator, you were working for four or five attorneys. You had to do all of their cases and there were no special time allotments or teams for anyone to work on a homicide. So that meant a death penalty case, basically, was treated like any other case.
7. The homicide team was not founded until after I left the office.



RILEY, BILLY RAY
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Prior Counsel Files

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8. Mr. Casler also asked me about an Assault With a Deadly Weapon case that Mr. Riley was tried on shortly before the murder trial, but I have no recall of that case either. Mr. Casler told me that the AWDW case went to trial on January 9, 1990, that Mr. Riley was found guilty, and that the conviction in that case was used against Mr. Riley at his murder trial, which began January 21, 1990. From my experience, you never try a case like that prior to a capital case unless the case had possibly been dealt down to a misdemeanor.
9. During the time I was with the Public Defender's Office, defendants were often polygraphed. Normally, if I was assigned to the case, after I got the case memo, I'd tell the defendant. At other times, the attorney might do it. So, sometimes I'd ask them to take the polygraph and sometimes the attorney would ask them to take it. If they refused, I don't think there were any negative feelings. But if the defendant failed, there was probably a feeling the person was guilty.
10. In 1989, Bill Mason was the office polygrapher. He was just going through school then. Ray Slaughter was there earlier. Ray was very, very good. I don't think Bill was ever as good as Ray. At one point, we ran out of space in the office, so Bill was moved to the county building at 3rd and Bridger Streets. He had an office on the first floor. It had glass walls on two sides and was located just to the right of the elevators and, in my opinion, was not very conducive to doing a polygraph examination. It was my feeling that, because of the distractions, it was not a prime location for conducting these exams. I can't recall whether Bill pulled the drapes when he polygraphed a defendant or not, but I do recall that it was a fairly noisy location.
11. It seemed to me that the polygraph was used a lot of times to appose the defendants. At other times, if the attorney thought the defendant could pass, it might have been used to get some leverage with the DA working on the case. But there were definitely problems with doing polygraphs. I thought Ray Slaughter was excellent. But I know there were some difficulties with Bill
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P. 04

RILEY, BILLY RAY
RCVD 04MAY01 PC-10604
Prior Counsel Files

Mason and the results he'd get and the procedures he used. I know there were discussions about it, mainly because there were a lot of "inconclusives." It was a lot different with Ray. Ray had more street savvy and got very few inconclusives. It may have changed by now. I don't know.

12. From what I know, polygraphing defendants seemed more of an individual thing with the attorneys. Some would go 90 percent full-bore, regardless of the results, while others would be very affected by the results. I don't know how Steve Dahl and Gene Martin treated the results. There were other variables, too. Like some attorneys had a lot of faith in Bill Mason and others didn't.
13. In reviewing the memos and reports in the Billy Ray Riley case, one thing that sticks out is that it appears most of the investigation, what little was done, was begun shortly before the trial. From my experience, though, it was not unusual in a homicide case to begin the investigation within weeks of the trial. It looks like another investigator, John Lucero, and I went out on the Riley case in October, but I don't see any follow-ups on that. It also looks like the attorneys were alternating in using John and me. I mean, why didn't we both go to the house where the homicide occurred? It's very possible neither of us knew what the other was doing.
14. Mr. Casler asked me if Public Defender investigators had the necessary equipment to do our jobs, and I would have to say no. We had very little equipment to work with, probably because investigators were not a real budget item.
15. Overwork also played a prominent role when I worked for the Clark County Public Defender, especially when you mixed a death penalty case in with your daily team work. When you were working for 4 or 5 attorneys, a murder case did not get the kind of attention it should have gotten. My feeling was, because of the seriousness of the charge, you should have been able to work just on the murder case. The investigators used to talk about it, that how, if a defendant was convicted, he could always argue that his case was

jc

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P.03

RILEY, BILLY RAY
RCVD 04MAY01 PC-10903
Prior Counsel Files

poorly investigated, and win. We talked about that a lot. We just didn't have the time to do an adequate job. And from the looks of Billy Ray Riley's case, it's very possible the attorneys felt they had a loser and didn't put as much work into it as they might have.

16. But, in my opinion, the biggest problem was that we didn't have a murder team and specific investigators to work the murder cases. And as the only female investigator in the office, I had additional duties. At times an attorney would think a woman needed to be in on an interview, so I would go with another investigator to do that. I didn't mind doing it, but it certainly was a problem for my own cases.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 32nd day of January, 1998, at Las Vegas, Nevada.

Joan Coe
Joan Coe

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RILEY, BILLY RAY
RCVD 04MAY01 PC-10906
Prior Counsel Files

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Name		Alias		Charge	
Ac. _____ Apt. _____		ID # _____			
City		Phone	Message Phone: _____ Name: _____		Relationship
State _____ Zip _____		Prior Public Defender Service Where _____ Charge: _____			
<input type="checkbox"/> African American <input type="checkbox"/> Caucasian <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Other					Date of Birth
Age	<input type="checkbox"/> Male <input type="checkbox"/> Female	Height	Weight	Place of Birth	Social Security No.

MEDICAL HISTORY -- Mental or Physical Problems:

Arrest Date	Release Date	

FAMILY:

☐ **Single**☐ Married

☐ Divorced

☐ **Separated**

Children:

☒ YES☐ NO

How Many:

Ages:

Defendant Supports:

☐ Wife

☐ **Children**

☐ **Other:**

1. BRIEFLY tell us what happened concerning this charge:

[The page contains faint horizontal ruling lines.]

2. NEXT COURT DATE:

Confirmation

☐ Arraignment

☐ Preliminary Hearing

3. Did you give an oral or written statement to police?

☐ YES☐ NO

4. ...if you take a polygraph?

☐ YES☐ NO

5. Place of Interview:

Date:

Interviewed By:

RILEY, BILLY RAY
RCVD 04MAY01 PC-26630
Prior Counsel Files

6. CRIMINAL RECORD**A. Clark County SCOPE Attached****B. IN NEVADA
Other Than
Clark County**

Charge	Jurisdiction	Date	Disposition
Charge	Jurisdiction	Date	Disposition

**C. OUTSIDE
NEVADA****7. RESIDENCY**

Nevada Resident? <input type="checkbox"/> Yes <input type="checkbox"/> No Date:		Clark County Resident? <input type="checkbox"/> Yes <input type="checkbox"/> No How Long:	
Out Of State Address		City	State Zip Code
Telephone #		Messages #	
Education Completed Years		Where	

8. EMPLOYMENT

Present Employer		Full Time	Part Time
Add		City	State Zip Code
How Long	Occupation	Telephone #	
Supervisor	Monthly Net Income \$	Hourly Wage \$	

9. LIVING EXPENSES

Disability Income		Source	
Food	Food Stamps	Other:	
Rent Mortgage	Child Support	Other:	
Utilities	Credit Cards	Other:	
Medical	Loans	Other:	
Total Monthly Expenses			
Total Monthly Income (includes Spouse)			
Balance			

10. PERSONAL PROPERTY

Vehicle Make & Year	Vehicle Make & Year	Vehicle Make & Year
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RILEY, BILLY RAY
RCV'D 04MAY01 PC-26631
Prior Counsel Files

SHOWAR-8JDC2419

MOTN
DAVID ROGER
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Nevada Bar #002781
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(702) 671-2700
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

SAMUEL HOWARD,
#0624173

Defendant.

CASE NO: C053867

DEPT NO: V

**STATE'S NOTICE OF MOTION AND MOTION TO DISMISS
DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)**

DATE OF HEARING: 6/05/08
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through NANCY A. BECKER, Deputy District Attorney, and files this Notice of Motion and Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

This Motion is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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NOTICE OF HEARING

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for setting before the above entitled Court, in Department V thereof, on Thursday, the 5th day of June, 2008, at the hour of 9:00 o'clock a.m., or as soon thereafter as counsel may be heard.

DATED this 5 day of April, 2008.

DAVID ROGER
Clark County District Attorney
Nevada Bar #2781

BY 

NANCY A. BECKER
Deputy District Attorney
Nevada Bar #00145

STATEMENT OF THE CASE

On May 20, 1981 defendant Samuel Howard was indicted on one count of Robbery with Use of a Deadly Weapon involving a Sears security officer named Keith Kinsey on March 26, 1980; one count of Robbery with Use of a Deadly Weapon involving Dr. George Monahan and one count of Murder with Use of a Deadly Weapon involving Dr. Monahan, both committed on March 27, 1980. With respect to the murder count, the State alleged two theories: willful, premeditated and deliberate murder or murder in the commission of a robbery. (Reporter's Transcript of Proceedings "RT" 5/20/81, 1-115).

Howard was arrested in California where he was serving time for a robbery committed on or about April 1, 1980. He was extradited in November of 1982 and an initial appearance was set for November 23, 1982. At that time the matter was continued for appointment of counsel, the Clark County Public Defender's Office.

1 On November 30, 1982, Terry Jackson of the Public Defender's Office represented to
2 the district court that Howard qualified for the Public Defender's services, however Mr.
3 Jackson indicated he could not handle the case as his family were personal friends with Dr.
4 Monahan and he left it to the district court to determine if this would constitute a conflict for
5 the office as he was the team chief for the murder/major case unit of the office. The district
6 judge determined that the relationship did not create an actual conflict and appointed Mike
7 Peters to Howard's case. (RT 11/30/82, 2-6).

8 Mr. Peters requested a one week continuance to consult with Howard about the case.
9 Howard objected, insisted on being arraigned and demanded a speedy trial. After discussion,
10 the district court accepted a plea of not guilty and set a trial date of January 10, 1983. Mr.
11 Peters asked for an extension of time to file any writ of pre-trial habeas corpus once the
12 grand jury transcripts became available. The district court noted with such a short trial date,
13 this did not seem feasible, especially given Howard's insistence on proceeding forward as
14 quickly as possible. (Id. at 3-5).

15 Howard filed a motion in late in December asking for his counsel to be removed and
16 substitute counsel appointed. The motion alleged lack of communication, investigation and
17 conflict of interest (Jackson's friendship with victim) and general mistrust of the public
18 defender system as grounds for relief. (RT 12/30/82, 3-7). Mr. Peters asked for time to
19 respond. In his response, Mr. Peters indicated he had been in trial in another capital murder
20 case and that the reason he initially asked for time to consult with Howard at the arraignment
21 was to discuss Peters' trial schedule and the problems inherent with defending a murder
22 case, particularly one in which the State indicated it would be seeking death, on such a short
23 trial setting. (Id. at 8).

24 Mr. Peters indicated he got the existing discovery and met with Howard within five
25 days of being appointed. He further stated that based on the initial review of the discovery,
26 he filed a motion for funds to hire a psychiatric expert and discussed his trial schedule and
27 the discovery with Howard. Mr. Peters explained he did not give Howard copies of the
28

1 discovery because that presented logistic problems.¹ Mr. Peters affirmed that Mr. Jackson
2 had no contact with the case, but that Howard was unwilling to discuss the case with him or
3 Mr. Cooper. Mr. Peters noted that Howard's refusal to communicate presented problems as
4 well as the short trial setting and he indicated he would be moving for continuance. (RT
5 12/30/82, 8-12).

6 The district court indicated that Howard's concerns about investigation and
7 communication were understandable and that Mr. Peters should step up his efforts. The
8 court found no conflict of interest, told Howard he was not entitled to have copies of the
9 discovery and continued the matter with instructions that Howard talk to counsel about their
10 concerns with an early trial setting telling. The district court indicated that counsel should
11 inform the court about their ability to meet the January 10, 1983 trial date on January 4th.
12 With respect to the motion for a psychiatric expert, the district court inquired if this was for
13 competency and counsel indicated it was not, but it was to help evaluate Howard's mental
14 status at the time of the events. The district court granted the motion and appointed Dr.
15 O'Gorman to assist the defense. (RT 12/30/82, 13-15).

16 At the status check on January 4, 1983, Mr. Marcus Cooper, co-counsel for Howard,
17 appeared as Mr. Peters was in trial. Mr. Cooper indicated the defense could not be ready for
18 the January 10th trial date. Mr. Cooper represented that there was still a great deal of
19 investigation to be done based on the discovery. Howard objected to any continuance even
20 with knowledge that his attorneys' could not complete the investigations by that date.
21 Howard stated unequivocally that he wanted to go to trial. Mr. Cooper represented that
22 Howard was still refusing to cooperate with counsel. The district court noted that if Howard
23 wanted to act against his best interests, it was his decision to make. The district court then
24 directed counsel that the Public Defender's Office should clear all other work so as to
25 accommodate Howard. After giving Howard one more caution about the downsides of
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27 ¹ Aside from the time it takes to make copies, because other inmates may gain access to a defendant's discovery and use
28 that to a defendant's disadvantage, the Public Defender's Office discouraged clients from keeping legal documents in
their cells.

1 forcing counsel to proceed and receiving Howard's response that he did not want a
2 continuance, the district court stated the trial would go forward as scheduled. (RT 1/4/83).

3 On the day of trial, Mr. Cooper appeared with Mr. George Franzen. Because of Mr.
4 Peters' on-going trial, Mr. Cooper assumed lead counsel status and recruited Mr. Franzen as
5 second chair. Mr. Cooper moved to withdraw citing the conflict with Mr. Jackson and
6 noting that another deputy public defender, Mr. Gibson also knew the Monahans and had
7 apparently expressed to others (not trial counsel) that Howard should die. Mr. Cooper
8 indicated these facts create mistrust in Howard and he therefore refused to cooperate. This
9 motion was denied. (RT 1/10/83 10AM, 1-3).

10 Defense counsel then moved for a continuance as they did not feel comfortable
11 proceeding to trial in this case, given the issues involved, with only six weeks to prepare.
12 The district court noted that defense counsel had filed several motions so they must be
13 prepared and defense counsel responded that the motions used standard language in an effort
14 to do as much as possible for Howard but they were inadequate and, as expected, the State
15 had now formally filed a Notice of Intent to Seek the Death Penalty. Defense counsel
16 indicated they had been working diligently, but as an example of the problems, although they
17 were able to talk to mental health facilities, there was not enough time to obtain records.
18 Moreover, Howard had refused to talk to Dr. O'Gorman and there were issues about
19 Howard's competency at the time of the offenses and given what happened in the California
20 proceedings, Howard's competency to stand trial might need to be evaluated. Counsel also
21 stated that numerous out-of-state witnesses had not been interviewed and the transcripts of
22 the California proceedings needed to be obtained. (RT 1/10/83 10AM, 3-8).

23 At this point Howard indicated that based on what Mr. Cooper was saying; Mr.
24 Cooper had won him over and appeared to be wavering on the issue of a continuance. The
25 district court indicated he saw no issue of competency to stand trial and gave counsel time to
26 discuss the situation with Howard in light of Howard's comments. (RT Id at 8-14). After a
27 recess, defense counsel indicated Howard still wanted new counsel and still wanted to go to
28 trial. They asked for additional time to speak with Howard. Court was recessed until the

1 afternoon. (RT 1/10/83 11AM, 1-3).

2 After lunch defense counsel renewed their motion for a continuance indicating this
3 was not an area where the client had absolute control. The district court was obviously
4 frustrated by Howard's attitude and noted there was no conflict of interest and no reason for
5 Howard's fears, but reiterated that only Mr. Cooper and Mr. Franzen would be involved in
6 the case. The district court then went on a tirade about how the Public Defender's Office
7 should have the resources to drop everything and accommodate a six week trial setting in a
8 death penalty case if that was what the client desired. The district court then granted the
9 continuance in light of the fact this was a death case. (RT 1/10/83 1:30PM, 3-11).

10 The guilt phase of the trial began on April 11, 1983 and concluded on April 22, 1983.
11 The jury returned a verdict of guilty on all three counts. The penalty phase was set to begin
12 on May 2, 1983. In the interim, one of the jurors, Marilyn Capasso, tried to contact the trial
13 judge about a problem. Because the district judge was on vacation, someone referred Ms.
14 Capasso to the district attorney's office. Ms. Capasso contacted Mr. Mel Harmon, one of the
15 trial deputies, who told Ms. Capasso he could not talk to her and referred her to the jury
16 commissioner. (RT 5/2/83, 1421-1429).

17 At an evidentiary hearing, Ms. Capasso confirmed that Mr. Harmon refused to talk to
18 her and simply told her if the judge wasn't available she should see the jury commissioner.
19 Ms. Capasso and the Jury Commissioner, Lynn Kennington testified as to the nature of their
20 conversation. In essence, Ms. Capasso had trouble sleeping over the weekend after the end
21 of the guilt phase and was concerned about her emotional ability to proceed. By the time of
22 May 2nd, she indicated she was fine. The district court denied Howard's motions for a
23 mistrial or elimination of the death penalty as a sentencing consideration. (RT 5/2/83, 1431-
24 1450, 1462).

25 Defense counsel renewed their motion to withdraw indicating they had irreconcilable
26 differences with Howard over the conduct of the penalty phase. Mr. Franzen indicated they
27 had documents and witnesses in mitigation, but that Howard had instructed them not to
28 present any mitigation evidence. Howard also instructed them not to argue mitigation and

1 they would not follow that directive, but would argue mitigation. Mr. Franzen also indicated
2 that Howard told them he wished to testify, but would not tell them the substance of his
3 testimony. Finally Mr. Franzen indicated they had attempted to get military and mental
4 health records but were unsuccessful because the agencies possessing the records would not
5 send copies without a release signed by Howard and Howard refused to sign the releases.
6 Mr. Franzen stated that perhaps new counsel would be able to convince Howard to change
7 his mind. The district court canvassed Howard if this was correct and Howard confirmed it
8 was true and that he did not want any mitigation presented. The district court found Howard
9 understood the consequences of his decision and denied the motion to withdraw concluding
10 defense counsel's disagreement with Howard's decision was not a valid basis to withdraw.
11 (RT 5/2/83, 1415-1421).

12 The penalty phase began on May 2, 1983 and concluded on May 4, 1983. The State
13 originally alleged three aggravating circumstances: the murder was committed by a person
14 who had previously been convicted of a felony involving the use of violence - namely
15 Robbery with Use of a Deadly Weapon in California and a 1978 New York conviction in
16 absentia for Robbery with Use of a Deadly Weapon and the murder occurred in the
17 commission of a robbery. Howard moved to strike the California conviction because the
18 conviction occurred after the Monahan murder and the New York conviction because it was
19 not supported by a judgment of conviction. The district court struck the California
20 conviction² but denied the motion as to the New York conviction, noting that the records
21 reflected a jury had convicted Howard and the lack of a formal judgment was the result of
22 Howard's absconding in the middle of trial. (RT 5/2/83, 1451-1460).

23 The State presented evidence of the aggravating circumstances (RT 5/2/83, 1465-
24 1480) and Howard took the stand and related information on his background. Howard
25 discussed his military service and stated he had suffered a concussion and received a Purple
26

27
28 ² This case was tried before the law regarding the timing of a violent felony conviction vis-à-vis the penalty phase of a capital case was clarified.

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1 Heart.³ Howard also stated he was on veteran's disability in New York.⁴ He said he was in
2 various mental health facilities in California including being housed in the same facility as
3 Charlie Manson. He testified he had been diagnosed as a schizophrenic, but that some of the
4 doctors thought he was malingering. When asked about his childhood, Howard became
5 upset. He indicated he didn't want to talk about the death of his mother and sister. Howard
6 indicated he was not mentally ill and knew what he was doing at all times. (RT 5/2/83,
7 1514-1529).

8 During a break in the testimony, Howard suddenly stated he didn't understand what
9 mitigation meant and that he would leave it up to his attorneys to decide what to do. The
10 district court asked Howard if he was now instructing his attorneys to present mitigation and
11 he refused to answer the question. Howard did indicate that he wanted his attorney's to
12 argue mitigation and defense counsel asked for time to prepare, which was granted. (RT
13 5/2/83, 1529-1535).

14 The jury found both aggravating circumstances existed and that no mitigating
15 circumstances outweighed the aggravating circumstances. The jury returned a sentence of
16 death.

17 Howard appealed to the Nevada Supreme Court. On appeal he was represented by
18 Elizabeth Hatcher. Howard raised the following issues on direct appeal: 1) ineffective
19 assistance of counsel based on actual conflict arising out of Jackson's relationship with Dr.
20 Monahan; 2) denial of the motion to sever the Sears' count from the Monahan counts; 3)
21 denial of an evidentiary hearing on the motion to suppress Howard's statements and
22 evidence derived therefrom; 4) refusal to instruct the jury that accomplice testimony should
23 be viewed with mistrust; 5) refusal to instruct the jury that Dawana Thomas was an
24 accomplice as a matter of law; 6) the denial of the motion to strike the felony robbery and
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26 ³ The military records attached to the petition do not reflect any such injury or award.

27 ⁴ Howard's military records do not support this and there are no records of any admissions to a veteran's hospital.
28 Howard admits he was never actually admitted to a hospital in New York because they required identification and he
could not identify himself due to existing warrants for his arrest.

1 New York prior violent felony aggravators; and 7) the giving of an anti-sympathy instruction
2 and refusal to instruct the jury that sympathy and mercy were appropriate considerations.

3 The Nevada Supreme Court affirmed Howard's conviction and sentence. Howard v.
4 State, 102 Nev. 572, 729 P.2d 1341 (1986) (hereinafter "Howard I"). The Court held that
5 the relationship of two members of the Public Defender's Office with Monahan did not
6 objectively justify Howard's distrust and there was no evidence that those attorneys had any
7 involvement in his case. Therefore no actual conflict existed and the claim of ineffective
8 assistance of counsel on this basis had no merit. The Court further concluded the district
9 court did not abuse its discretion by refusing to sever the counts and by not granting an
10 evidentiary hearing on the suppression motion. The Court noted that the record reflected
11 proper Miranda warnings were given and the statements were admitted as rebuttal and
12 impeachment after Howard testified. The Court also found that the district court did not
13 error in rejecting the two accomplice instructions; the anti-sympathy language in one of the
14 instructions was not err in light of the totality of the instructions and the record supported the
15 district court's refusal to instruct on certain mitigating circumstances for lack of evidence.
16 The Court concluded by stating it had considered Howard's other claims of error and found
17 them to be without merit. Howard filed a petition for rehearing which was denied on March
18 24, 1987. Remittitur was stayed pending the filing of a Petition for Writ of Certiorari to the
19 United States Supreme Court on the anti-sympathy issues. John Graves, Jr. was appointed to
20 represent Howard on the writ petition. The petition was denied on October 5, 1987 and
21 Remittitur issued on February 12, 1988.

22 On October 28, 1987, Howard filed his first State petition for post-conviction relief.
23 John Graves Jr. and Carmine Colucci originally represented Howard on the petition. They
24 withdrew and David Schieck was appointed. The petition raised the following claims for
25 relief: 1) ineffective assistance of trial counsel – guilt phase - failure to present an insanity
26 defense and Howard's history of mental illness and commitments; 2) ineffective assistance
27 of trial counsel – penalty phase – failure to present mental health history and documents;
28 failure to present expert psychiatric evidence that Howard was not a danger to jail

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1 population; failure to rebut future dangerousness evidence with jail records and personnel;
2 failure to object to improper prosecutorial arguments involving statistics regarding
3 deterrence, predictions of future victims, Howard's lack of rehabilitation, aligning the jury
4 with "future victims," comparing victim's life with Howard's life, diluting jury's
5 responsibility by suggesting it was shared with other entities, voicing personal opinions in
6 support of the death penalty and its application to Howard, references to Charles Manson,
7 voice of society arguments and referring to Howard as an animal; 3) ineffective assistance of
8 appellate counsel – failure to raise prosecutorial misconduct issues.

9 An evidentiary hearing was held on August 25, 1988. George Franzen, Lizzie
10 Hatcher, John Graves and Howard testified.⁵ Supplemental points and authorities were filed
11 on October 3, 1988. The district court entered an oral decision denying the petition on
12 February 14, 1989. The district court concluded that trial counsel performed admirably
13 under difficult circumstances created by Howard himself. As to the failure to present an
14 insanity defense and present mental health records, the court found that Howard was
15 canvassed throughout the proceedings about his refusal to cooperate in obtaining those
16 records, particularly his refusal to sign releases. Howard knew what was going on, was
17 competent and was trying to manipulate the proceedings and that there was no evidence to
18 support an insanity defense, therefore counsel were not ineffective in this regard. (RT
19 2/14/89, 1-12).

20 On the issue of failure to object to prosecutorial misconduct, the district court found
21 that defense counsel did object where appropriate and the arguments that were not objected
22 to did not amount to misconduct and were a fair comment on the evidence. Even if some of
23 the comments were improper, the district court concluded that they would not have
24 succeeded on appeal as they were harmless beyond a reasonable doubt. (RT 2/14/89, 1-12).

25
26
27 ⁵ Howard, in complete contradiction to his trial statements, now claimed he had cooperated fully with counsel, asked
28 them to present mitigating evidence and not only agreed to sign releases but asked them to obtain the military and health
records.

1 Formal Findings of Fact and Conclusions of Law were filed on July 5, 1989.⁶

2 The Nevada Supreme Court affirmed the district court's denial of Howard's first state
3 petition for post-conviction relief. Howard v. State, 106 Nev. 713, 800 P.2d 175 (1990)
4 (hereinafter "Howard II"). David Schieck represented Howard in that appeal. On appeal
5 Howard raised ineffective assistance of trial and appellate counsel regarding the
6 prosecutorial misconduct issues. The Supreme Court found three comments to be improper
7 under Collier v. State, 101 Nev. 473, 705 P.2d 1126 (1985)⁷ : 1) a personal opinion that
8 Howard merited the death penalty, 2) a golden rule argument – asking the jury to put
9 themselves in the shoes of future victims and 3) an argument without support from evidence
10 that Howard might escape. The Court found that counsel were ineffective for failing to
11 object to these arguments but concluded there was no reasonable probability of a contrary
12 result absent these remarks and therefore no prejudice. The Court rejected Howard's other
13 contentions of improper argument.

14 With respect the mitigation evidence issues, the Nevada Supreme Court upheld the
15 district court's findings that this was a result of Howard's own conduct and not ineffective
16 assistance of counsel.⁸

17 Howard proceeded to file a second federal habeas corpus petition on May 1, 1991.
18 This proceeding was stayed for Howard to exhaust his state remedies on October 16, 1991.

19 Howard then filed his second state petition for post-conviction relief on December 16,
20 1991. Cal J. Potter, III and Fred Atcheson represented Howard in the second state petition.
21 In that petition, Howard alleged denial of a fair trial based on prosecutorial misconduct,
22 namely: 1) jury tampering based on Mr. Harmon's contact with Juror Capasso; 2)

23
24 ⁶During the pendency of the first State petition for post-conviction relief, Howard filed his first Federal petition for
habeas relief. That petition was dismissed without prejudice on June 23, 1988.

25 ⁷ Collier was decided two years after Howard's trial.

26
27 ⁸ The State filed a petition for rehearing with respect to sanctions imposed on the prosecutor because his remarks
28 violated Collier. The State noted that Howard's trial occurred before Collier therefore the Court should not sanction
counsel for conduct that occurred before the Court issued the Collier opinion. Rehearing was denied February 7, 1991.

1 expressions of personal belief and a personal endorsement of the death penalty; 3) reference
2 to the improbability of rehabilitation, escape, future killings; 3) comparing Howard's life
3 with Dr. Monahan's and 4) a statement that the community would benefit from Howard's
4 death. The petition also asserted an ineffective assistance of trial counsel claim for failing to
5 explain to Howard the nature of mitigating circumstances and their importance. Finally the
6 petition raised a speedy trial violation and cumulative error.

7 The State moved to dismiss the second state petition as procedurally barred or
8 governed by the law of the case on February 10, 1992. In his reply, Howard dropped his
9 speedy trial claim as unsubstantiated and indicated if the other claims were barred, then they
10 had been exhausted and Howard could proceed in Federal Court.

11 The district court denied the petition on July 7, 1992. The district court found that the
12 claims of prosecutorial misconduct and ineffective assistance of counsel relating thereto as
13 well as the claims relating to mitigation evidence had been heard and found to be without
14 merit or failed to demonstrate prejudice. Such claims were therefore barred by the law of the
15 case. The district court further concluded that any claim of cumulative error and any issues
16 not raised in previous proceedings were procedurally barred. Finally the district court found
17 the speedy trial violation was a naked allegation, frivolous and procedurally barred.

18 Howard appealed the denial of his second state petition to the Nevada Supreme Court,
19 which dismissed his appeal on March 19, 1993. The Order Dismissing Appeal found that
20 Howard's second state petition was so lacking in merit that briefing and oral argument was
21 not warranted. Howard filed a Petition for Writ of Certiorari challenging the summary
22 affirmance and the United States Supreme Court denied the request on October 4, 1993.

23 On December 8, 1993, Howard returned to federal court and filed a new pro se habeas
24 petition rather than lifting the stay in the previous petition. After almost three years, on
25 September 2, 1996, the federal district court dismissed the petition as inadequate and ordered
26 Howard to file a second amended federal petition that contained more than conclusory
27 allegations. Thereafter Howard, now represented by Patricia Erickson, filed a Second
28 Amended Petition for Writ of Habeas Corpus on January 27, 1997. After almost five years,

1 on September 23, 2002, the Second Amended Federal Petition was stayed for Howard to
2 again exhaust his federal claims in state court.

3 Howard filed his third state petition for post-conviction relief on December 20, 2002.
4 Patricia Erickson represented him on this petition. The petition asserted the following
5 claims, phrased generally as denial of a fundamentally fair trial or assistance of counsel
6 under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution or as
7 cruel and unusual punishment under the Eighth Amendment: 1) failure to sever Sears
8 robbery count from Monahan robbery/murder counts; 2) failure to suppress Howard's
9 statements to LVMPD and physical evidence derived therefrom; 3) speedy trial violation; 4)
10 trial counsel actual conflict of interest – Jackson issue; 5) failure to give accomplice as a
11 matter of law and accomplice testimony should be viewed with distrust instructions – Dwana
12 Thomas; 6) improper jury instructions – diluting standard of proof - reasonable doubt,
13 second degree murder as lesser included of first degree murder, premeditation, intent and
14 malice instructions; 7) improper jury instructions – failure to clearly define first degree
15 murder as specific intent crime requiring malice and premeditation; 8) improper
16 premeditation instruction blurred distinction between first and second degree murder; 9)
17 improper malice instruction; 10) improper anti-sympathy instruction; 11) failure to give
18 influence of extreme mental or emotional disturbance mitigator instruction; 12) improper
19 limitation of mitigation by giving only “any other mitigating circumstance” instruction; 13)
20 failure to instruct that mitigating circumstances findings need not be unanimous; 14)
21 prosecutorial misconduct – jury tampering, stating personal beliefs, personal endorsement of
22 death penalty, improper argument regarding rehabilitation, escape and future killings;
23 comparing Howard and victim's lives, comparing Howard to notorious murder (Charles
24 Manson) and improper community benefit argument; 15) use of felony robbery as aggravator
25 and basis for first degree murder; 16) improper reasonable doubt instruction; 17) ineffective
26 assistance of trial counsel – inadequate contact, conflict of interest, failure to contact
27 California counsel to obtain records, failure to obtain Patton and Atescadero hospital records,
28 failure to obtain California trial transcripts, failure to review Clark County Detention Center

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1 medical records, failure to challenge competency to stand trial, failure to obtain suppression
2 hearing, failure to present legal insanity, failure to object to reasonable doubt instruction,
3 failure to view visiting records and call witnesses based upon same, failure to call Pinkie
4 Williams and Carol Walker in penalty phase, failure to investigate and call Benjamin Evans
5 in penalty phase, failure to obtain San Bernardino medical records regarding suicide attempt,
6 failure to obtain military records, failure to adequately explain concept of mitigation
7 evidence, failure to object to prosecutorial misconduct in closing arguments, failure to refute
8 future dangerousness argument, failure to object to trial court's limitation of mitigating
9 circumstances and failure to object to instructions which allegedly required unanimous
10 finding of mitigating circumstances; 18) ineffective assistance of appellate counsel – failed
11 to raise claims 3, 4, 6-9, 12, 13, 15, 16, 20 and 21 on appeal; 19) ineffective assistance of
12 post-conviction counsel – failure to adequately investigate and develop all trial and appeal
13 claims; 20) cumulative error; 21) Nevada's death penalty is administered in an arbitrary,
14 irrational and capricious fashion; 22) lethal injection constitutes cruel and unusual
15 punishment and 23) the death penalty violates evolving standards of decency.

16 The State filed a motion to dismiss Howard's third State petition on March 4, 2001.
17 The State argued that the entire petition was procedurally barred under NRS 34.726(1) (one
18 year limit) and NRS 34.800 (five year laches) and that Howard had not shown good cause
19 for delay in raising the claims to overcome the procedural bars. The State also analyzed
20 each claim and noted what issues had already been raised and decided adversely to Howard
21 or should have been raised and were waived.

22 Howard filed an amended third state petition. The amended petition expanded the
23 factual matters under Claim 17 regarding Howard's family background that Howard asserted
24 should have been presented in mitigation.

25 On August 20, 2003, Howard filed his opposition to the State's motion to dismiss his
26 third state petition. As good cause for delay, Howard alleged Nevada's successive petition
27 and waiver bar (NRS 34.810) is inconsistently applied and Pellegrini v. State, 117 Nev. 860,
28 34 P.3d 519 (2001) is not controlling. Howard contended NRS 34.726 did not apply because

any delay was the fault of counsel not Howard and NRS 34.726 is unconstitutional and cannot be applied to successive petitions Pellegrini notwithstanding. Howard argued the Due process and Equal Protection clauses of the Federal Constitution bar application of NRS 34.726, NRS 34.800 and NRS 34.810 to Howard. In addition, Howard asserted NRS 34.800 did not apply because the State had not shown prejudice and the presumption of prejudice was overcome by the allegations in the petition.

The State filed a reply to the opposition on September 24, 2003. The district court issued an oral decision on October 2, 2003 dismissing the third State petition as procedurally barred under NRS 34.726 and finding Howard had failed to overcome the bar by showing good cause for delay. The district court independently dismissed the claims under NRS 34.810. Written findings were entered on October 23, 2003.

Howard appealed the dismissal to the Nevada Supreme Court, which affirmed the district court's dismissal of the third State petition on December 4, 2004. The High Court addressed Howard's assertions that he had either overcome the procedural bars or they could not constitutionally be applied to him and rejected them. Among its conclusions, the Court noted that the record reflected Howard was aware that all his claims challenging the conviction or imposition of sentence must be joined in a single petition and that Howard had no right to post-conviction counsel at the time of the filing of his first and second State petitions for post-conviction relief and hence ineffectiveness of post-conviction counsel could not be good cause for delay.⁹

Howard then returned to Federal District Court where he filed his Third Amended Petition for Writ of Habeas Corpus on October 23, 2005. That petition has not been stayed. Two years after filing his third amended petition in Federal Court, Howard filed the instant fourth State petition for post-conviction relief on October 25, 2007.

STATEMENT OF FACTS

On March 26, 1980, around noon, a Sears' security officer, Keith Kinsey, observed

⁹ See 1987 Nev. Stat., ch. 539, § 42 at 1230 (providing that appointment of counsel was discretionary not mandatory).

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1 Howard take a sander from a shelf, remove the packing and then claim a fraudulent refund
2 slip from a cashier. Kinsey approached Howard and asked him to accompany Kinsey to a
3 security office. Kinsey enlisted the aid of two other store employees. Howard was
4 cooperative, alert and indicated there must be some mistake. In the security office, Kinsey
5 observed Howard had a gun under his jacket and attempted to handcuff Howard for safety
6 reasons. A struggle broke out and Howard drew a .357 revolver and pointed it at the three
7 men. Howard had the men lay face down on the floor and took Kinsey's security badge, ID
8 and a portable radio (walkie-talkie). Howard threatened to kill the three men if they
9 followed him and he fled to his car in the parking lot. (RT 4/12/83, 218-240). A yellow
10 gold jewelry ID bracelet was found at the scene and impounded. (*Id.* at 369-372). It was
11 later identified as Howard's. (RT 4/20/83, 930). The Sears in question was located at the
12 corner of Desert Inn Road and Maryland Parkway at the Boulevard Mall.

13 Dawana Thomas, Howard's girlfriend, was waiting for him in the car.¹⁰ Howard had
14 told her to wait for him and she was unaware of his intentions to obtain money through a
15 false refund transaction. (RT 4/20/83, 935). Fleeing from the robbery, Howard hopped into
16 the car, a 1980 black Oldsmobile Cutlass with New York plates 614 ZHQ and sped away
17 from the mall. (RT 4/20/83, 937-945). While escaping, Howard rear-ended a white corvette
18 driven by Stephen Houchin. Houchin followed Howard when Howard left the scene of the
19 accident. Howard pointed the .357 revolver out the window of the Olds and at Houchin's
20 face, telling Houchin to mind his own business. (RT 4/12/83, 377-387; 4/20/83, 937-945).

21 Howard drove to the Castaways Motel on Las Vegas Boulevard South and parked the
22 car for a few hours. Thomas and Howard walked about and Howard made some phone calls.
23

24 ¹⁰ Howard claimed Thomas was his wife and moved to suppress her statements under the marital privilege doctrine. The
25 district court held an evidentiary hearing. Certified copies of Thomas' marriage to Lenon Thomas in Tuscon, Arizona in
26 1974 were admitted together with a decree of divorce from Thomas dated September 5, 1980. Howard testified he
27 married Thomas in New York in 1979 but could not remember where, who performed the ceremony, where a license had
28 been obtained. Howard also introduced letters written by Thomas to Howard while he was in custody in California that
were signed "love you, your wife." Thomas denied ever marrying Howard and indicated the letters were just an
expression of her feelings at the time. The district court ruled that Howard could not have been legally married to
Thomas as she had not been divorced from her first husband and denied the motion. (RT 4/19/83, 869-875, 877-896;
4/20/83, 900-912; 4/21/83, 1108-1109).

1 Later that evening Howard left for a couple of hours. When he returned he told Thomas that
2 he had met up with a pimp, but the pimps' girls were with him so he couldn't rob him.
3 Howard indicated he had arranged to meet with the "pimp" the next morning and would rob
4 him then. (RT 4/20/83, 945-950, 968-980).

5 Howard and Thomas drove to the Western Six motel located on the Boulder Highway
6 near the intersection of Desert Inn Road. The couple had stayed at this motel before and
7 Howard instructed Thomas to register under an assumed name, Barbara Jackson. The motel
8 registration card under that name was admitted into evidence and a documents' examiner
9 compared handwriting on the card with Thomas' and indicated they matched. (RT 4/20/83,
10 968-980; 4/22/83, 1269-1279, 1283-1292).

11 Around 6:00 a.m. on March 27, 1980, Thomas and Howard left the motel and went to
12 breakfast. After breakfast, Thomas dropped Howard off in the alley behind Dr. Monahan's
13 office. This was at approximately 7:00 a.m. Thomas returned to the motel room.
14 Approximately an hour later, Howard returned to the motel. Howard had a CB radio with
15 him that had loose wires and a gold watch she had never seen before. Howard told
16 Thompson that he was tired of Las Vegas and to pack up their things as they were leaving
17 for California. (RT 4/20/83, 968-980).

18 Dr. George Monahan was a dentist with a practice located on Desert Inn Road within
19 walking distance of the Boulevard Mall. He was attempting to sell a uniquely painted van
20 and would park the van in the parking lot of the mall, near the Desert Inn and Maryland
21 intersection and the Sears store and then walk to his office. The van had a sign in it listing
22 Dr. Monahan's home and business phone numbers and the business address. (RT 4/12/83,
23 415-419).

24 About 4:00 p.m. on March 26, 1980, Dr. Monahan's wife, Mary Lou Monahan,
25 received a phone call at her home inquiring about the van. The caller was a male who
26 identified himself as "Keith" and stated he was a security guard at Caesar's Palace. He
27 indicated he was interested in purchasing the van and wanted to know if someone could meet
28 him at Caesar's during his break time at 8:00 p.m. Mrs. Monahan indicated the caller would

1 have to talk to her husband who was expected home shortly. A second call was made around
2 4:30 p.m. and Dr. Monahan made arrangements to meet "Keith" at Caesar's later that night.
3 (RT 4/12/83, 419-423).

4 The Monahans and two relatives, Barbara Zemen and Mary Catherine Monahan, met
5 "Keith" that evening at the appointed time and place. Howard was identified as the man
6 who called himself "Keith". Howard was carrying a walkie-talkie radio at the time. Howard
7 talked to Dr. Monahan for about ten minutes about purchasing the van and looked inside the
8 van but did not touch the door handle while doing so. Howard arranged to meet Dr.
9 Monahan the next morning to take a test drive. The Monahan's left Caesar's and parked the
10 van at Dr. Monahan's office before returning home in another vehicle. (RT 4/21/83, 423-
11 434).

12 The next day, March 27, 1980, Dr. Monahan left his home at about 6:50 a.m. He took
13 with him his wallet, a gold Seiko watch, daily receipts and the van title. When Mrs.
14 Monahan arrived at the office at about 8:00 a.m. Dr. Monahan was not there and a patient
15 was waiting for him. Dr. Monahan's truck was in the parking lot to the rear of the office.
16 Dr. Monahan had not entered the office. (RT 4/12/83, 434-38). A black man wearing a
17 radio or walkie-talkie on his belt came into the office at about 7:00 a.m. that morning
18 looking for Dr. Monahan and stating that he had an appointment with the doctor. (RT
19 4/14/83, 595-613).

20 Mrs. Monahan called Caesar's Palace and learned no "Keith" fitting the description
21 she gave worked security. After obtaining this information, Mrs. Monahan called the police
22 to report her husband as a missing person. This occurred at about 9:00 a.m. (RT 4/12/83,
23 348-350).

24 Charles Marino owned the Dew Drop Inn located near the corner of Desert Inn and
25 Boulder Highway, just a few blocks from Dr. Monahan's office and almost across the road
26 from the Western Six motel. Early on the morning of March 27, 1980, as he approached his
27 business, he observed the Monahan van backing into the rear of the bar. When he arrived at
28 the Inn, he looked in the driver's side and saw no one. He asked patrons if they knew

1 anything about the van and no one spoke up. Marino remained at the business until the early
2 afternoon. The van was still there and had not been moved. Later that day, at around 7:00
3 p.m. he received a call to return to the bar as a dead body had been found in the van. (RT
4 4/14/83, 613-624).

5 In response to television coverage, the police learned the Monahan van was behind
6 the Dew Drop Inn around 6:45 p.m. Dr. Monahan's body was found under an overturned
7 table and some coverings. (RT 4/14/83, 500-507). He had been shot once in the head. (RT
8 4/18/83, 681-695). The bullet went through Dr. Monahan's head and a projectile was
9 recovered on the floor of the van. The projectile was compared to Howard's .357 revolver.
10 Because the bullet was so badly damaged; forensic analysis could not establish an exact
11 match. It was determined that the bullet could have come from certain makes and models of
12 revolvers, Howard's included. (RT 4/20/83, 1069-1082). The van's CB radio and a tape
13 deck had been removed. Dr. Monahan's watch and wallet were missing. (RT 4/14/83, 500-
14 507.) A fingerprint recovered from one of the van's doors matched Howard's. (RT 4/18/83,
15 633-680).

16 Homicide detectives were aware of the Sears robbery that had occurred on March
17 26th. The description of the Sears suspect matched that given by Mrs. Monahan of the man
18 calling himself Keith at Caesar's Palace. Based upon that, the use of the name Keith, the
19 walkie-talkie in possession of the suspect, the close proximity of the dental office to the
20 Sears and the fact that the van had been parked in the Sears' parking lot, the police issued a
21 bulletin to state and out-of-state law enforcement agencies describing the suspect and the car
22 used in the Sears' robbery.

23 On March 27, 1980, while the police were searching for Dr. Monahan, Howard and
24 Thompson drove to California. They left the motel between 8:00 a.m. and 9:00 a.m. and on
25 the way they stopped for gas. At that time Howard had a brown or black wallet that had
26 credit cards and photos in it. Howard went to the gas station rest room and when he returned
27 he no longer had the wallet. (RT 4/20/83, 981-984).

28 On March 28, 1980, Howard and Thompson went to a Sears in San Bernadino,

1 California. Once again Howard left Thompson in the car while he entered the Sears, picked
2 up merchandize and tried to obtain a refund on it. This time he used the stolen Kinsey Sears
3 security badge the attempt. The Sears personal were suspicious and left Howard at the
4 register while they called Las Vegas. When they returned Howard had left. Howard had
5 returned to the car and Thompson and Howard ducked down when the people from Sears
6 stepped outside to view the parking lot. (RT 4/19/83 760-773, 787-806; 4/20/83, 984-989).

7 On or about April 1, 1980, Howard robbed a car salesman in San Bernadino.¹¹ Later
8 that day, at around noon, Howard went to the Stonewood Shopping Center in Downey,
9 California. He entered a jewelry store and talked to a security agent, Manny Velasquez.
10 Another agent in the store, Robert Slater, who also worked as a police officer in Downey,
11 saw Howard and noticed the grip of a gun under Howard's jacket. Slater talked to
12 Velasquez and decided to call the Downey Police. Howard left the jewelry store went to the
13 west end of the mall near a Thrifty drugstore. (RT 4/19/83, 810-819). Downey Police
14 officers observed Howard walking up and down the aisles of the drugstore, picking items up
15 and replacing them on shelves. Howard was stopped on suspicion of carrying a concealed
16 weapon. No gun was found on him nor was he carrying the walkie-talkie. A search of the
17 aisles he had been in revealed a .357 magnum revolver and the walkie-talkie and Sears'
18 security badge stolen from Kinsey. (RT 4/19/83, 819-835).

19 Howard was arrested for carrying a concealed weapon and then identified and booked
20 for the San Bernadino robbery. Howard was given his Miranda rights by Downey Police
21 officers. Disputed evidence was presented regarding his response and whether he invoked
22 his right to silence. Based on information in the all-points bulletin, the California authorities
23 contacted the Las Vegas Metropolitan Police Department about Howard. On April 2, 1980,
24 Detective Alfred Leavitt went to California and, after reading Howard his Miranda rights,
25 which Howard indicated he understood, interviewed Howard regarding the Sears robbery
26 and Dr. Monahan's murder. Howard did not invoke his right to remain silent or to counsel at
27

28 ¹¹ The jury did not hear evidence of this crime as the district court struck the aggravator relating to it.

1 this time. (RT 4/21/83, 1256-1263; 4/22/83, 1267-1268).

2 Howard told Detective Leavitt he recalled being at the Sears department store but no
3 details about what happened and that he did not remember anything about March 27, 1980,
4 he could have killed Dr. Monahan but he doesn't know.¹² (RT 4/21/83, 1256-63).

5 To establish identity, motive, lack of mistake and modus operandi, the State, after a
6 Petrocelli hearing, introduced the testimony of Ed Schwartz. Schwartz was working as a car
7 salesman in New York on October 5, 1979. When he arrived at work at approximately 9:00
8 a.m. Howard entered the agency and was looking at an Oldsmobile car. Howard showed
9 Schwartz a New York driver's license and checkbook and told Schwartz that he worked for a
10 security firm in New York. Howard asked if they could take a demonstration ride and
11 Schwartz drove the car for a few blocks while Howard was the passenger. Howard asked if
12 he could drive the car and the men switched seats. After driving for a short time, Howard
13 pulled over and pointed an automatic pistol at Schwartz. Schwartz was told to get down on
14 the floor of the car and remove his shoes and pants. Schwartz complied and Howard took
15 Schwartz' watch, ring and wallet. Schwartz got out of the car when ordered to do so and
16 Howard drove off. The car was later found abandoned. (RT 4/21/83, 1129-1150).

17 Howard called witnesses who testified they saw the Monahan van being driven by a
18 black man who did not match Howard's description, in particular the man had a large afro
19 and Howard had short hair. John McBride state that he saw the van around 8:30 to 8:45 a.m.
20 in his apartment complex which is located about five miles from Desert Inn and Boulder
21 Highway. (RT 4/21/83, 1177-1183). Lora Mallek was employed at a Mobile gas station at
22 the corner of DI and Boulder Highway and she stated serviced the van when it pulled into
23 the station between 3:00 p.m. and 4:00 p.m. Mallek testified that a black man with a large
24 afro was driving, a black woman who did not match Thomas' description was in the
25 passenger seat and a white man was sitting in the back. (RT 4/21/83, 1193-1208).

26 Howard testified over the objection of counsel. (RT 4/21/83, 1166). He indicated he
27

28 ¹² Howard's statements were not admitted in the State's case-in-chief. They were admitted to rebut and impeach Howard's testimony in the defense case-in-chief.

1 did not recall much about March 26, 1980. He remembered being in Las Vegas in general
2 on and off and that at one point Dwana Thomas' brother, who was about Howard's height,
3 age and weight, and had a large afro, visited them. Howard said he remembers incidents, not
4 dates and Kinsey could have been telling the truth about the Sears store. Howard indicated
5 he wasn't sure because when the Sears people gathered around him, it reminded him of
6 Vietnam and he kind of had a flashback. Howard said he thinks he left Las Vegas
7 immediately after the Sears incident. Howard also stated that he did not meet Dr. Monahan,
8 rob or kill him as he couldn't be that callous.¹³ (RT 4/21/83, 1237-1255).

9 On cross-examination, Howard admitted he left New York in the middle of his
10 robbery trial and was asked about statements he made to Detective Leavitt. Howard also
11 acknowledged he has used a number of aliases including Harold Stanback. Howard
12 indicated he was taking the blame for Dawana and her brother Lonnie. (Id.; 4/22/83, 1293-
13 1300).

14 Dawana Thomas was called in rebuttal and indicated her brother Lonnie had not been
15 in Las Vegas in March of 1980. (RT 4/22/83, 1269-1279).

16 In the penalty phase, the State presented evidence on the details of Howard's 1979
17 New York conviction for robbery. A college nurse who knew Howard, Dorothy Weisband,
18 testified that Howard robbed her at gunpoint taking her wallet and car. He forced her into a
19 closet and demanded she removed her clothes. She refused and he left. After the robbery,
20 Howard called Weisband trying to get more cash from her in return for her car and
21 threatening her. (RT 5/2/83, 1465-1480). Howard testified as noted above regarding his
22 military, family and mental health histories.

23 POINTS AND AUTHORITIES

24 Twenty-Seven years ago, Howard was convicted of First Degree Murder and two
25 counts of Robbery with Use of a Deadly Weapon. The eye-witness and forensic evidence
26 overwhelmingly supported the jury's verdict. Howard robbed Keith Kinsey at gunpoint and
27 _____

28 ¹³ Howard had no explanation for his fingerprint on the door of the van.

1 robbed and killed Dr. Monahan. In addition to the instant crimes, the jury heard evidence of
2 Howard's violent history, including two robberies with use of a deadly weapon in New York
3 and the assault with a deadly weapon upon Houchin as Howard escaped from Sears.
4 Howard chose not to present additional mitigation evidence and the evidence that was
5 included with the post-conviction petitions contradicts his trial testimony.

6 The trial and penalty phase evidence formed the basis for the jury's guilty verdict and
7 sentence of death, a sentence that has been upheld on direct appeal from the conviction as
8 well as appeals from three previous state petitions for post-conviction relief. This is
9 Howard's fourth state petition for post-conviction relief and the State asserts the petition is
10 procedurally barred under NRS 34.726 (one year rule - untimely), NRS 34.810(2)
11 (successive/abusive petition) and NRS 34.810(1)(b) (waiver - failure to raise in previous
12 proceeding). In addition, the State contends the petition is subject to dismissal under NRS
13 34.800 (laches). Finally, many of Howard's claims are prohibited by the Law of the Case
14 Doctrine, having previously been decided on their merits. Howard alleges several grounds
15 for excusing the procedural bars. The State submits no grounds exist and that the petition
16 should be dismissed in its entirety.

17 Before considering the individual claims, and to put the factual background in proper
18 prospective, a review of the applicable bars and Nevada case law on this issue is warranted.
19 First, procedural bars are timeframes established by the Legislature to curb repetitive post-
20 conviction pleadings. In Nevada, they can be found at NRS 34.726 (1 year time bar), NRS
21 34.800 (5-year laches), NRS 34.810(1)(b) (waiver - failure to previously raise), and NRS
22 34.810(2) (successive or abusive petition).

23 Procedural bars are not discretionary with a court and cannot be ignored. Riker v.
24 State, 121 Nev. 255, ___, 112 P.3d 1070, 1075 (2005). As the Nevada Supreme Court noted
25 in Pellegrini v. State, 117 Nev. 860, 34 P.3d 519, 530 (2001), "the legislative history of the
26 habeas statutes shows that Nevada's lawmakers never intended for petitioners to have
27 multiple opportunities to obtain post-conviction relief absent extraordinary circumstances."
28 Furthermore, legislative imposition of statutory time limits "evinces intolerance toward

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1 perpetual filing of petitions for relief, which clogs the court system and undermines the
2 finality of convictions.” Id. 34 P.3d at 529. Defendants are entitled to “one time through the
3 system absent extraordinary circumstances” Id. “Where the intention of the Legislature is
4 clear, it is the duty of the court to give effect to such intention and to construe the language
5 of the statute so as to give it force and not nullify its manifest purpose.” Woofter v.
6 O’Donnell, 91 Nev. 756, 762, 542, P.2d 1396, 1400 (1975); see also Pellegrini v. State, 117
7 Nev. 860, 34 P.3d 519, 528-529 (2001).

8 NRS 34.726 and NRS 34.810 provide that a court shall dismiss petitions or claims
9 that violate the statute. NRS 34.800 provides that a court may dismiss a petition, but then
10 establishes a presumption that the State is prejudiced when a petition is brought more than
11 five years after the direct appeal and the petition should be dismissed.

12 Nevada recognizes two grounds for excusing procedural bars. The defendant must
13 prove specific facts that 1) demonstrate good cause for the delay in bringing the claims and
14 undue prejudice or 2) the failure to consider the petition will result in a fundamental
15 miscarriage of justice. Mazzan v Warden, 112 Nev. 838, 842, 921 P.2d 920, 922
16 (1996)(Mazzan I).

17 The Nevada Supreme Court defines “good cause” under the statutes as “an
18 impediment external to the defense which prevented [the petitioner] from complying with
19 the state procedural rules.” Crump v. Warden, 113 Nev. 293, 934 P.2d 247, 252 (1997); see
20 also Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), quoting State v.
21 Estencion, 625 P.2d 1040, 1042 (Haw. 1981)(“Good cause” under NRS 34.726 “means a
22 substantial reason; one that affords a legal excuse.”). However, even when an external
23 impediment exists that might constitute good cause for failure to raise a claim at an earlier
24 proceeding; the claim must still be raised in a timely fashion once it is discovered. For
25 example, a claim of ineffective assistance of counsel would excuse the failure to raise a
26 claim at trial or on appeal, but the ineffective assistance of counsel claim must be timely
27 raised. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3rd 503, 506 (2003)(footnotes
28 omitted) .

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1 Undue prejudice is defined as “actual and substantial disadvantage, infecting his
2 entire trial with error of constitutional dimensions” United States v. Frady, 456 U.S. 152,
3 170 (1982)(cited in Bejarano v. State, ___ Nev. ___, 146 P3d. 265 (2006).

4 A fundamental miscarriage of justice occurs “where a constitutional violation has
5 probably resulted in the conviction of one who is actually innocent.” Murray v. Carrier, 477
6 U.S. 478, 488 (1986). Actual innocence means factual innocence not mere legal
7 insufficiency. Bousley v. United States, 523 U.S. 614, 623 (1998). A defendant claiming
8 actual innocence must demonstrate that it is more likely than not that no reasonable juror
9 would have convicted him absent a constitutional violation. Pellegrini v. State, 117 Nev.
10 860, 887, 34 P.3rd 519, 537 (2001).

11 In addition, the Nevada Supreme Court has ruled that Nevada’s procedural bars are
12 consistently enforced and the district courts are not free to ignore them. Riker, 112 P2d at
13 1076-77. Moreover, the High Court has reiterated that court rules or case law governing
14 appellate practice are not procedural bars and should not be used as evidence that procedural
15 bars are not uniformly enforced. Riker at 1077-82. Cases and orders reflecting an appellate
16 court’s decision not to apply a general court rule or policy have no bearing on issues relating
17 to statutory procedural bars. Id.

18 Finally, the Law of the Case Doctrine operates independently of statutory procedural
19 bars. Thus a claim may be governed by the Law of the Case Doctrine even if it is not
20 procedurally barred. Where an issue has already been decided on the merits by the Nevada
21 Supreme Court, the Court’s ruling is law of the case, and the issue will not be revisited.
22 Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001); see McNelton v. State, 115 Nev. 396,
23 990 P.2d 1263, 1276 (1999); Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99
24 (1975); see also Valerio v. State, 112 Nev. 383, 386, 915 P.2d 874, 876 (1996); Hogan v.
25 Warden, 109 Nev. 952, 860 P.2d 710 (1993). The law of a first appeal is the law of the case
26 in all later appeals in which the facts are substantially the same; this doctrine cannot be
27 avoided by more detailed and precisely focused argument. Hall, supra; see also McNelton,
28 supra; Hogan, supra.

1 Applying these doctrines and statutes, the entirety of Howard's fourth state petition
2 should be dismissed as procedurally barred.

3
4 **I. HOWARD'S PETITION IS TIME BARRED AND SHOULD**
5 **BE DISMISSED PURSUANT TO NRS 34.726(1)**

6 **1. NRS 34.726 – One Year Time Bar**

7 On February 12, 1988 the Supreme Court of Nevada issued its Remittitur dismissing
8 Howard's direct appeal. Howard filed the instant petition for writ of habeas corpus on
9 October 25, 2007. Howard's petition was filed more than one year (over 19 years) from the
10 filing of the remittitur on Howard's direct appeal. As such, it is procedurally time barred
11 under NRS 34.726. The statute provides:

12 Unless there is good cause shown for delay, a petition that
13 challenges the validity of a judgment or sentence must be filed
14 within 1 year after entry of the judgment of conviction or, if an
15 appeal has been taken from the judgment, *within 1 year after the
supreme court issues its remittitur*. For the purposes of this
subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 16 a) that the delay is not the fault of the petitioner; and
17 b) that dismissal of the petition as untimely will unduly prejudice
the petitioner.

18 See NRS 34.726 (Emphasis added).

19 However, because the Nevada Supreme Court issued Remittitur from the direct
20 appeal before the provisions of NRS 34.726(1) became effective on January 1, 1993, the one
21 year time limit is extended and begins to run from the effective date of the statute, that is,
22 January 1, 1993. Pellegrini v State, 24 P.3d 519, 529 (2001). The Supreme Court held that
23 "for purposes of determining the timeliness of successive petitions pursuant to NRS 34.726,
24 **assuming the laches bar does not apply**, it is both reasonable and fair to allow petitioners
25 one year from the effective date of the amendment to file any successive habeas petitions."
26 Id.

27 The Ninth Circuit applied a similar analysis to Federal statutes, holding that where a
28 petitioner's conviction became final before the statute was enacted the time limitation begins

1 to run from the effective date of the statute. United States v. Valdez, 195 F.3d 544, 546 (9th
2 Cir. 1999) (holding one year statute of limitations under AEDPA began tolling from
3 effective date of statute); see also United States v. Lomax, 86 F.Supp.2d 1035 (D. Or. 2000)
4 (holding petitioner had one year from effective date of AEDPA to file timely motions where
5 conviction was prior to enactment of statute). Therefore, because Remittitur issued before
6 the effective date of NRS 34.726, the statutory time limit to file a petition for post conviction
7 relief would have commenced on January 1, 1993, and expired on December 31, 1993.
8 Defendant filed the present petition on October 25, 2007 after the one year deadline of
9 January 1, 1994. Therefore, Defendant's petition is still time-barred and must be dismissed,
10 absent a showing of good cause for the delay and undue prejudice.

11 NRS 34.726 is strictly enforced. In Gonzales v. State, 118 Nev. 590, 53 P.3d 901,
12 902 (2002), the Nevada Supreme Court rejected a habeas petition, pursuant to the mandatory
13 provisions of NRS. 34.726(1) that was filed two days late. Gonzales reiterated the
14 importance of filing the petition within the mandatory deadline, absent a showing of "good
15 cause" for the delay in filing. Gonzales, 53 P.3d at 902.

16 The statute clearly states that the burden of overcoming applicability of the time bar is
17 on the petitioner. As noted above, good cause for delay means "an impediment external to
18 the defense prevented him or her from complying with the state procedural default rules."
19 Hathaway v. State, 119 Nev. 248, 71 P.3d 503, 506 (2003) (Internal citations omitted). The
20 Nevada Supreme Court has issued several rulings in this area. The lack of the assistance of
21 counsel when preparing a petition, and even the failure of trial counsel to forward a copy of
22 the file to a petitioner, have been found to not constitute good cause. See Phelps v. Director
23 Nevada Department of Prisons, 104 Nev. 656, 660, 764 P.2d 1303 (1988); Hood v. State,
24 111 Nev. 335, 890 P.2d 797 (1995). Also, the failure of counsel to inform the petitioner of
25 his right to direct appeal did not rise to good cause for overcoming the time bar. Dickerson v.
26 State, 114 Nev. 1084, 967 P.2d 1132 (1998). Similarly, a decision to pursue federal habeas
27 in lieu of filing a State petition does not constitute good cause. Colley v. State, 105 Nev. at
28 235-36, 773 P.2d at 1230.

1 In contrast, an external impediment could be "that the factual or legal basis for a
2 claim was not reasonably available to counsel, or that 'some interference by officials' made
3 compliance impracticable". Hathaway, 71 P.3d at 506; quoting Murray v. Carrier, 477 U.S.
4 478, 488, 106 S.Ct. 2639, 2645 (1986); see also Gonzalez, 53 P.3d at 904; citing Harris v.
5 Warden, 114 Nev. 956, 959-60 n. 4, (64 P.2d 785 n. 4 (1998)).

6 In addition to justifying the delay, a defendant must also demonstrate that the
7 dismissal of a petition will cause undue prejudice. Undue prejudice is defined as "actual and
8 substantial disadvantage, infecting his entire trial with error of constitutional dimensions."
9 United States v. Frady, 456 U.S. 152, 170 (1982)(cited in Bejarano v. State, ___ Nev. ___,
10 146 P3d. 265 (2006)).

11 Absent a showing of good cause for the delay and undue prejudice, only a
12 fundamental miscarriage of justice may excuse a time-barred claim. A fundamental
13 miscarriage of justice occurs "where a constitutional violation has probably resulted in the
14 conviction of one who is actually innocent." Murray v. Carrier, 477 U.S. 478, 488 (1986).
15 Actual innocence means factual innocence not mere legal insufficiency. Bousley v. United
16 States, 523 U.S. 614, 623 (1998). A defendant claiming actual innocence must demonstrate
17 that it is more likely than not that no reasonable juror would have convicted him absent a
18 constitutional violation. Pellegrini v. State, 117 Nev. 860, 887, 34 P.3rd 519, 537 (2001).
19 Actual innocence is a stringent standards designed to be applied only in the most
20 extraordinary situations.

21 Finally, the United States Supreme Court recognizes the importance of procedural
22 bars. In Bousley v. United States, 523 U.S. 614, 629, 118 S.Ct. 1604, 1614 (1998), the
23 Court stated "No criminal law system can function without rules of procedure conjoined
24 with a rule of finality." In Murray v. Carrier, 477 U.S. 478, 106 S.Ct. 2639 (1986), the
25 United States Supreme Court stated that "A State's procedural rules serve vital purposes on
26 appeal as well as at trial and on state collateral attack, and the standard for cause should not
27 vary depending on the timing of a procedural default."

28 As noted below, the Petition fails to demonstrate good cause for the twenty year delay

1 in bringing these post-conviction claims. Nor has Howard demonstrated actual innocence.
2 Howard has failed to overcome the one-year procedural bar.

3 **II. HOWARD'S PETITION WAS FILED OVER FIVE YEARS AFTER THE**
4 **JUDGMENT OF CONVICTION AND SHOULD BE DISMISSED PURSUANT**
5 **TO NRS 34.800**

6 NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period of
7 five years [elapses] between the filing of a judgment of conviction, an order imposing
8 sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the
9 filing of a petition challenging the validity of a judgment of conviction." The judgment of
10 conviction was filed May 4, 1983. Since over twenty-four (24) years have elapsed between
11 the entry of the judgment of conviction and the filing of the instant motion, NRS 34.800
12 directly applies in this case.

13 NRS 34.800 indicates a petition may be dismissed if the State pleads laches and the
14 delay in the filing of a petition prejudices the State. Where the prejudice involves the State's
15 ability to respond to the petition, the defendant must demonstrate that he could not, through
16 the exercise of reasonable diligence, have known of the grounds for his petition until after
17 the circumstances constituting prejudice occurred. NRS 34.800(1)(a).

18 If the prejudice involves the State's ability to conduct a retrial, then a defendant must
19 show that a fundamental miscarriage of justice has occurred in the proceedings leading to his
20 conviction.

21 The State pleads laches in the instant case. Howard's judgment of conviction was
22 entered on May 3, 1983 and he filed a timely notice of appeal. Remittitur issued on the
23 denial of his direct appeal on February 12, 1988. Howard filed three previous state petitions
24 for post-conviction relief, October 28, 1987, December 16, 1991 and December 20, 2002.
25 Howard filed the instant petition for habeas corpus on October 25, 2007. Since over twenty-
26 four (24) years have elapsed between the Defendant's judgment of conviction and the filing
27 of the instant petition, NRS 34.800 directly applies in this case and prejudice is presumed.
28 Thus Howard must show that he could not, through reasonable diligence, have known of the

1 claims before prejudice attached and that a fundamental miscarriage of justice would result if
2 the claims are not considered.

3 Many of the claims in Howard's petition are mixed questions of law and fact that will
4 require the State to prove or rebut facts that are over twenty (20) years old. NRS 34.800 was
5 enacted to protect the State from having to relitigate matters that have become ancient
6 history. If courts required evidentiary hearings for long delayed petitions as in the instant
7 matter, the State would have to call and find long lost witnesses whose once vivid
8 recollections have faded and re-gather evidence that in many cases has been lost or destroyed
9 because of the lengthy passage of time. Therefore, this Court should summarily deny the
10 instant petition according to the doctrine of laches pursuant to NRS 34.800, as the delay of
11 more than twenty-four (24) years in filing is unexcused.

12 **III. HOWARD'S CLAIMS ARE BARRED UNDER NRS 34.810**

13 **A. NRS 34.810(1)(b) – Failure to Raise in Previous Proceedings (Waiver)**

14 The Legislature has mandated that claims be timely raised at trial, direct appeal and
15 first post-conviction petitions for habeas relief. NRS 34.810(1)(b) states that a court shall
16 dismiss a petition if:

17 (b) The petitioner's conviction was the result of a trial and the
18 grounds for the petition could have been:

- 19 (1) Presented to the trial court;
20 (2) Raised in a direct appeal or a prior petition for a writ of
21 habeas corpus or postconviction relief; or
(3) Raised in any other proceeding that the petitioner has
taken to secure relief from his conviction and sentence,

22 unless the court finds both cause for the failure to present the
grounds and actual prejudice to the petitioner.

23 The Nevada Supreme Court has indicated that the standard for demonstrating good
24 cause for delay and prejudice under NRS 34.810(1)(b) is the same as for NRS 34.726,
25 namely a "an impediment external to the defense prevented him or her from complying with
26 the state procedural default rules." Hathaway v. State, 119 Nev. 248, 71 P.3d 503, 506
27 (2003) (Internal citations omitted). The claim-by-claim analysis below demonstrates that all
28 but one of the claims could have been presented either at trial, direct appeal or Howard's

1 first State petition for post-conviction relief. That claim arises from the Nevada Supreme
2 Court decision in McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004). However, a
3 McConnell claim must still be presented in a timely fashion once it arises and because the
4 instant McConnell claim was not raised until three years after the McConnell decision, it is
5 still barred under NRS 34.726.

6 Because the claims could have been presented in a previous petition, they are barred and
7 Howard as failed to present evidence sufficient to overcome the procedural bars or to
8 demonstrate actual innocence.

9 **B. NRS 34.810(2) – Successive/Abusive Petition**

10 Howard's instant petition should be dismissed pursuant to NRS 34.810 as it is
11 successive and abusive. Pertinent portions of NRS 34.810 state:

12 2. A second or successive petition must be dismissed if the judge
13 or justice determines that it fails to allege new or different
14 grounds for relief and that the prior determination was on the
15 merits or, if new and different grounds are alleged, the judge or
justice finds that the failure of the Defendant to assert those
grounds in a prior petition constituted an abuse of the writ.

16 3. Pursuant to subsections 1 and 2, the petitioner has the burden
of pleading and proving specific facts that demonstrate:

17 (a) Good cause for the petitioner's failure to present the claim or
18 for presenting the claim again; and

19 (b) Actual prejudice to the petitioner.

20 Howard filed previous state petitions for writ of habeas corpus (post-conviction) on
21 October 28, 1987, December 16, 1991 and December 20, 2002. The first state petition was
22 denied on the merits and the subsequent two petitions were procedurally barred. The
23 Nevada Supreme Court upheld the district courts' determinations. Consequently, the instant
24 fourth state petition, filed on October 25, 2007 is a successive petition and an abuse of the
25 writ. To avoid the procedural default under NRS 34.810(2), Howard again has the burden of
26 pleading and proving specific facts that demonstrate both good cause for his failure to
27 present his claim again or raising new arguments on a procedurally barred claim and actual
28 prejudice. The same standards and rules that apply to NRS 34.810(1)(b) also apply to NRS

34.810(2) bars. In the absence of good cause, Howard may also overcome the procedural bars by showing actual innocence. For the reasons cited below, except as to the McConnell issue, Howard meets neither of these criteria and the petition is barred.

IV. CLAIMS ANALYSIS

1. **McConnell Claim** - this claim is based upon the felony robbery aggravator and the lack of a special verdict form. It was raised in the third State petition and dismissed as procedurally barred. Subsequent to the third State petition, the Nevada Supreme Court decided McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004), *rehearing denied*, 121 Nev. 25, 107 P.3d 1287 (2005). McConnell found that felony robbery could not be used as the grounds for first degree murder and as an aggravating circumstance. However, so long as the reviewing court can be certain that the jury based finding of first degree murder upon a theory other than felony murder, it is harmless error. In McConnell, the defendant admitted committing willful, premeditated and deliberate murder and the error was found to be harmless.

The McConnell decision was issued in 2004, yet Howard waited until 2007, almost three years later, to raise his McConnell claim. As such the claim is procedurally barred under NRS 34.726 as untimely since it was not raised within one year of the decision. Howard claims the one year time period should not began until the Nevada Supreme Court made McConnell retroactive in Bejarano v. State, 122 Nev. 1066, 146 P.3d 265 (2006). Howard could have raised the issue of retroactivity in a petition for post-conviction relief however, and the time period should run from when the claim was reasonably available, 2004 and not 2006.

Howard also claims he is actually innocent of this aggravator and therefore the procedural bar does not apply. This is incorrect. Unlike Leslie v. State, 118 Nev. 773, 59 P.3d 440 (2002) the felony aggravator is not, in itself invalid. Rather it is the general verdict form that creates the issue, not the substantive law of the aggravator. Nor is Howard actually innocent of the death penalty as a remaining aggravator exists – the prior felony aggravator

1 based upon the New York robbery. Thus actual innocence has not been demonstrated and
2 therefore the procedural bar has not been overcome.

3 In the event the court finds this claim is not procedurally barred, the State has
4 addressed the merits of the claim in subsection VI below.

5 **2. Ineffective Assistance of Trial Counsel**

6 a. **Conflict of Interest Clark County Public Defender** – this claim was
7 raised on direct appeal and denied. It was further raised in the third state post-conviction
8 petition and found procedurally barred, which finding was upheld on appeal. The claim is
9 therefore governed by the law of the case doctrine, new arguments are waived under NRS
10 34.810(1)(b), and it is successive and abusive under NRS 34.810(2), time-barred by NRS
11 34.726 and barred by laches under NRS 34.800.

12 b. **Failure to investigate, develop and present mitigation evidence** –
13 this claim was raised in the first state petition for post-conviction relief and denied, which
14 denial was upheld on appeal. It was also raised in the third state post-conviction petition,
15 found procedurally barred and that finding was upheld on appeal. The claim is therefore
16 governed by the law of the case doctrine, new arguments are waived under NRS
17 34.810(1)(b), it is successive and abusive under NRS 34.810(2), time-barred by NRS 34.726
18 and barred by laches under NRS 34.800.

19 c. **Failure to request special verdict form on mitigating circumstances**
20 – this precise issue does not appear to have been previously raised. It could have been raised
21 on direct appeal and in the previous three state petitions for post-conviction relief. The claim
22 is therefore waived under NRS 34.810(1)(b), successive and abusive under NRS 34.810(2),
23 time-barred by NRS 34.726 and barred by laches under NRS 34.800.

24 d. **Failure to hire mental health and mitigation experts** – parts of this
25 argument were incorporated in the first state post-conviction petition and in the third state
26 post-conviction petition under the general auspices of failure to present mitigation evidence.
27 To that extent this claim was denied in the first state petition for post-conviction relief and
28 the denial was upheld on appeal. It was procedurally barred in the third state petition and

1 that finding was upheld on appeal. The claim is therefore governed by the law of the case
2 doctrine, waived under NRS 34.810(1)(b), successive and abusive under NRS 34.810(2),
3 time-barred by NRS 34.726 and barred by laches under NRS 34.800.

4 e. **Failure to provide resources without polygraph** – this appears to be a
5 new claim. It could have been raised in the previous three state petitions for post-conviction
6 relief. The claim is therefore waived under NRS 34.810(1)(b), successive and abusive under
7 NRS 34.810(2), time-barred by NRS 34.726 and barred by laches under NRS 34.800.¹⁴

8 **3. Invalid Waiver/Incompetency** – this appears to be a new argument. It could
9 have been raised on direct appeal and in the previous three state petitions for post-conviction
10 relief. The claim is therefore waived under NRS 34.810(1)(b), successive and abusive under
11 NRS 34.810(2), time-barred by NRS 34.726 and barred by laches under NRS 34.800.

12 **4. Cognitive Impairment/Post-traumatic Stress Disorder** – issues regarding
13 Howard's alleged mental status and failure to investigate or retain experts were raised in the
14 first and third State petitions for post-conviction relief. These claims were denied or found
15 to be procedurally barred and the findings were upheld on appeal. Thus the law of the case
16 doctrine would apply. To the extent this is a claim based on new information, it could have
17 been presented through due diligence in the previous proceedings. The claim is therefore
18 waived under NRS 34.810(1)(b), successive and abusive under NRS 34.810(2), time-barred
19 by NRS 34.726 and barred by laches under NRS 34.800.

20 **5. Validity of New York Violent Felony Aggravator** – the issue was partially
21 raised on direct appeal in regards to the sufficiency of the evidence to prove this aggravator.
22 This aspect of the claim is governed by the law of the case doctrine. New arguments could
23 have been raised in previous pleadings. The claim is therefore waived under NRS
24 34.810(1)(b), successive and abusive under NRS 34.810(2), time-barred by NRS 34.726 and
25 barred by laches under NRS 34.800.

26
27
28 ¹⁴ This is no indication in the record that the alleged policy was ever applied in Howard's case.

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Howard claims that a recent United States Supreme Court case, Burton v. Steward, 127 S.Ct. 793 (2007) creates new case law on what constitutes a final judgment and therefore the portion of the claim that challenges the use of an *in absentia* conviction may be raised as new case law constitutes good cause for delay. Burton defines what is a final judgment for purposes of the procedural bar provisions of the Antiterrorism and Effective Death Penalty Act (AEDPA) and has no bearing on what constitutes a conviction under NRS 200.033. It does not state new law, Nevada has existing case law that discusses what constitutes a final judgment, however this is irrelevant to the statute which speaks of convictions, not judgments. Burton does not constitute good cause for delay.

6. **Denial of Motion to Sever** – this claim was raised on direct appeal and the Nevada Supreme Court affirmed the denial of the motion. It is governed by the law of the case doctrine. The claim was also raised in the first and third state post-conviction petitions and found to be procedurally barred, which finding was upheld on appeal. The claim is successive and abusive under NRS 34.810(2), time-barred by NRS 34.726 and barred by laches under NRS 34.800.

7. **Motion to Suppress Issues** – this claim was raised on direct appeal and the Nevada Supreme Court affirmed the district court did not abuse it's discretion in admitting Howard's statements and evidence seized from him. The law of the case doctrine applies to the timeliness issue and to the High Courts conclusion that the record reflected no Miranda violations. The claim was also raised in the third state post-conviction petition, found to be procedurally barred, which finding was upheld on appeal. The claim is therefore successive and abusive under NRS 34.810(2), time-barred by NRS 34.726 and barred by laches under NRS 34.800.

8. **Denial of Speedy Trial** – this claim was raised in the second state petition and withdrawn as belied by the record and in the third state petition where it was procedurally barred and the bar was upheld on appeal. It could have been raised on direct appeal. The claim is therefore waived under NRS 34.810(1)(b), successive and abusive under NRS 34.810(2), time-barred by NRS 34.726 and barred by laches under NRS 34.800.

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1 **9. Trial Court Interference with Attorney/Client Relationship** – this claim is a
2 different argument on the conflict of interest claim. Aspects of it were raised on direct
3 appeal, the first state post-conviction relief petition and the third state petition. Those
4 aspects that were raised in regard to the conflict of interest claim were denied on the merits
5 or found to be procedurally barred (mistrust, lack of communication) and the law of the case
6 doctrine applies. The concept that the trial court found counsel to be incompetent but
7 refused to remove them from the case; is a new theory which could have been raised in the
8 previous post-conviction petitions.¹⁵ The claim is therefore waived under NRS 34.810(1)(b),
9 successive and abusive under NRS 34.810(2), time-barred by NRS 34.726 and barred by
10 laches under NRS 34.800.

11 **10. Failure to Give Accomplish Instructions** – this claim was raised on direct
12 appeal and denied by the Nevada Supreme Court. It was also raised in the third State
13 petition and procedurally barred which finding was upheld on appeal. The aspect of the
14 claim alleging ineffective assistance of trial counsel for not investigating or impeaching
15 Dawana Thomas were raised in the third state petition and procedurally barred which
16 findings were upheld on appeal. The claim is governed by the law of the case doctrine. The
17 claim is successive and abusive under NRS 34.810(2), time-barred by NRS 34.726 and
18 barred by laches under NRS 34.800.

19 **11. Presumption of Innocence/Reasonable Doubt Instructions** – these issues
20 were raised in the third state petition, found to be procedurally barred and the finding was
21 upheld on appeal. They could have been raised on direct appeal and in the first petition for
22 post-conviction relief. The claims are therefore waived under NRS 34.810(1)(b), successive
23 and abusive under NRS 34.810(2), time-barred by NRS 34.726 and barred by laches under
24 NRS 34.800.

25
26
27 ¹⁵ As noted above, a review of the record reflects the trial court made no such finding, it simply expressed dissatisfaction
28 that that Clark County Public Defender's Office didn't drop everything to accommodate Howard's wish to be tried
within a six week time frame on a capital murder charge. (RT 1/10/83, 3-11).

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1 **12. Improper Mental Intent Instructions** - these issues were raised in the third
2 state petition, found to be procedurally barred and the finding was upheld on appeal. They
3 could have been raised on direct appeal and in the first petition for post-conviction relief.
4 The claims are therefore waived under NRS 34.810(1)(b), successive and abusive under
5 NRS 34.810(2), time-barred by NRS 34.726 and barred by laches under NRS 34.800.

6 **13. Kazlyn Instruction** – this issue was raised in the third state petition, found to
7 be procedurally barred and the finding was upheld on appeal. It could have been raised on
8 direct appeal or in the first state petition. The claim is therefore waived under NRS
9 34.810(1)(b), successive and abusive under NRS 34.810(2), time-barred by NRS 34.726 and
10 barred by laches under NRS 34.800.

11 **14. Improper Malice Instructions** - these issue were raised in the third state
12 petition, found to be procedurally barred and the finding was upheld on appeal. They could
13 have been raised on direct appeal and in the first petition for post-conviction relief. The
14 claims are therefore waived under NRS 34.810(1)(b), successive and abusive under NRS
15 34.810(2), time-barred by NRS 34.726 and barred by laches under NRS 34.800.

16 **15. Anti-Sympathy Instruction** – this issue was raised on direct appeal and found
17 to be without merit. The law of the case doctrine applies. The issue was also raised in the
18 third state petition, found to be procedurally barred and the finding was upheld on appeal.
19 The claim is therefore waived under NRS 34.810(1)(b), successive and abusive under NRS
20 34.810(2), time-barred by NRS 34.726 and barred by laches under NRS 34.800.

21 **16. Failure to Give Extreme Mental Mitigator Instruction** – this issue was
22 raised on direct appeal and found to be without merit. The law of the case doctrine applies.
23 The issue was also raised in the third state petition, found to be procedurally barred and the
24 finding was upheld on appeal. The claim is therefore waived under NRS 34.810(1)(b),
25 successive and abusive under NRS 34.810(2), time-barred by NRS 34.726 and barred by
26 laches under NRS 34.800.

27 **17. Limitation on Litigators Instruction** – parts of this issue were raised on
28 direct appeal and rejected by the Nevada Supreme Court in connection with the conclusion

1 that other statutory mitigators were not supported by the evidence. The law of the case
2 doctrine applies. The claim was raised in the third state petition, found to be procedurally
3 barred and the finding was upheld on appeal. The claim is therefore waived under NRS
4 34.810(1)(b), successive and abusive under NRS 34.810(2), time-barred by NRS 34.726 and
5 barred by laches under NRS 34.800.

6 **18. Instructions Implied Unanimity on Mitigation** - The claim was raised in the
7 third State petition, found to be procedurally barred and the finding was upheld on appeal. It
8 could have been raised on direct appeal and in the first state petition. The claim is therefore
9 waived under NRS 34.810(1)(b), successive and abusive under NRS 34.810(2), time-barred
10 by NRS 34.726 and barred by laches under NRS 34.800.

11 **19. Prosecutorial Misconduct** – the majority of these issues were raised in the
12 first state petition for post-conviction relief and denied. On appeal from the first state
13 petition, the Nevada Supreme Court concluded few of the claims amounted to misconduct
14 and counsel were not ineffective for failing to object or raise the issue on appeal. The Court
15 found three instances of misconduct that should have been objected to but held that the
16 prejudice prong of Strickland had not been satisfied, thus affirming the district court's denial
17 of the petition. The alleged jury tampering issue was raised in the second and third state
18 petitions, found to be procedurally barred, which finding was upheld on appeal. The law of
19 the case doctrine is therefore applicable. Any new charges of prosecutorial misconduct
20 could have been raised on direct appeal or the first state petition for post-conviction relief.
21 The claims are therefore waived under NRS 34.810(1)(b), successive and abusive under
22 NRS 34.810(2), time-barred by NRS 34.726 and barred by laches under NRS 34.800.

23 **20. Second McConnell Claim** – see argument for Claim 1 and McConnell
24 analysis below.

25 **21. Ineffective Assistance of Trial Counsel** – the portions of the claim that deal
26 with insanity and mental health evidence at the guilty phase and mitigation evidence at the
27 penalty phase were raised in the first state petition, denied by the district court and affirmed
28 on appeal. The remaining claims were included in the third state petition, procedurally

1 barred and that finding was upheld on appeal. Thus the law of the case doctrine applies. To
2 the extent that new arguments are espoused, they could have been raised in the previous
3 petitions. The claims are therefore waived under NRS 34.810(1)(b), successive and abusive
4 under NRS 34.810(2), time-barred by NRS 34.726 and barred by laches under NRS 34.800.

5 **22. Ineffective Assistance of Appellate Counsel** – the claim asserts that appellate
6 counsel failed to raise the issues incorporated in the instant petition as Claims One through
7 Thirty-Two. As noted earlier, Claims 2(a), 5-7, 10 and 15-17 were raised on appeal and
8 found to be without merit. Failure to raise the prosecutorial misconduct claims relating to
9 arguments found in Claim 19 was raised as ineffective assistance of appellate counsel in the
10 first petition for post-conviction relief and denied. The denial was upheld on appeal. To this
11 extent the law of the case doctrine applies. The remaining claims were either raised in the
12 third state petition or could have been raised in the first, second and third petitions. The
13 claims are therefore waived under NRS 34.810(1)(b), successive and abusive under NRS
14 34.810(2), time-barred by NRS 34.726 and barred by laches under NRS 34.800.

15 **23. Ineffective Assistance of Post-Conviction Counsel** – this issue was raised in
16 connection with the third state petition for post-conviction relief. The Nevada Supreme
17 Court, in its order affirming the dismissal of the third state petition as procedurally barred
18 specifically noted that Howard was not entitled to the appointment of post-conviction
19 counsel and therefore no claim for ineffective assistance can be maintained. The law of the
20 case doctrine governs this conclusion. The claims are successive and abusive under NRS
21 34.810(2), time-barred by NRS 34.726 and barred by laches under NRS 34.800.

22 **24. Nevada Death Penalty Scheme Unconstitutional** - The claim was raised in
23 the third State petition, found to be procedurally barred and the finding was upheld on
24 appeal. It could have been raised on direct appeal and in the first State petition. The claim
25 is therefore waived under NRS 34.810(1)(b), successive and abusive under NRS 34.810(2),
26 time-barred by NRS 34.726 and barred by laches under NRS 34.800.

27 **25. Inadequate Review by Nevada Supreme Court** – this appears to be a new
28 claim based on information that was available for several years. It could have been raised in

1 the previous petitions and direct appeal. The claim is therefore waived under NRS
2 34.810(1)(b), successive and abusive under NRS 34.810(2), time-barred by NRS 34.726 and
3 barred by laches under NRS 34.800.

4 **26. Lethal Injection** – The claim was raised in the third state petition, found to be
5 procedurally barred and the finding was upheld on appeal. It could have been raised on
6 direct appeal and in the first state petition. The claim is therefore waived under NRS
7 34.810(1)(b), successive and abusive under NRS 34.810(2), time-barred by NRS 34.726 and
8 barred by laches under NRS 34.800. To the extent it challenges specific injection protocols,
9 it is pre-mature as no execution date as been set and the nature of the protocols may change.

10 **27. Elected Judiciary** - this appears to be a new claim based on information that
11 was available for several years. It could have been raised in the previous petitions. The
12 claim is therefore waived under NRS 34.810(1)(b), successive and abusive under NRS
13 34.810(2), time-barred by NRS 34.726 and barred by laches under NRS 34.800.

14 **28. Restrictive Conditions of Death Row** – this appears to be a new claim based
15 on information that was available for several years. It could have been raised in the previous
16 petitions. The claim is therefore waived under NRS 34.810(1)(b), successive and abusive
17 under NRS 34.810(2), time-barred by NRS 34.726 and barred by laches under NRS 34.800.

18 **29. Death Penalty Unconstitutional – Innocent People** - this appears to be a new
19 claim based on information that was available for several years. It could have been raised in
20 the previous petitions. The claim is therefore waived under NRS 34.810(1)(b), successive
21 and abusive under NRS 34.810(2), time-barred by NRS 34.726 and barred by laches under
22 NRS 34.800.

23 **30. Nevada's Scheme Fails to Narrow** - The claim was raised in the third state
24 petition, found to be procedurally barred and the finding was upheld on appeal. The claim
25 is therefore waived under NRS 34.810(1)(b), successive and abusive under NRS 34.810(2),
26 time-barred by NRS 34.726 and barred by laches under NRS 34.800.

27 **31. Evolving Standards of Decency** - The claim was raised in the third state
28 petition, found to be procedurally barred and the finding was upheld on appeal. The claim

1 is therefore waived under NRS 34.810(1)(b), successive and abusive under NRS 34.810(2),
2 time-barred by NRS 34.726 and barred by laches under NRS 34.800.

3 **32. Cumulative Error** – as the claims are procedurally barred, so to is cumulative
4 error based upon those claims. The claim was raised in the third state petition, found to be
5 procedurally barred and the finding was upheld on appeal. The claim is therefore waived
6 under NRS 34.810(1)(b), successive and abusive under NRS 34.810(2), time-barred by NRS
7 34.726 and barred by laches under NRS 34.800.

8 **V. HOWARD HAS NOT SHOWN GOOD CAUSE TO OVERCOME THE**
9 **PROCEDURAL BARS**

10 Howard asserts several grounds for overcoming the procedural bars. They are: 1)
11 ineffective assistance of trial counsel; 2) ineffective assistance of appellate counsel; 3)
12 ineffective assistance of state post-conviction counsel; 4) inconsistent and discretionary
13 application of procedural bars by the Nevada Supreme Court; 5) violations of Brady v
14 Maryland (failure to disclose exculpatory evidence) and Giglio v United States (failure to
15 disclose impeachment evidence)¹⁶; and 6) fundamental miscarriage of justice – actual
16 innocence (McConnell). The State contends the allegations in the Petition support none of
17 the grounds and do not constitute good cause for delay.

18 **1. Ineffective Assistance of Trial, Appellate and Post-Conviction Counsel**

19 The Nevada Supreme Court has recognized that ineffective assistance of trial or
20 appellate counsel constitutes good cause for failure to raise an issue at trial or on appeal.
21 Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997). However, substantive claims and
22 allegations of ineffective assistance of counsel for not raising those claims must still be
23 raised in a timely fashion under NRS 34.726 and NRS 34.800 or they are procedurally
24 barred. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003)(footnotes omitted) .

25 In addition, if a defendant was entitled to the appointment of post-conviction counsel
26 by statute, ineffective assistance of post-conviction counsel may also constitute good cause
27

28 ¹⁶ Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972).

1 for failure to raise a substantive or ineffective assistance of trial/appellate counsel in a first
2 petition for post-conviction relief, but it cannot excuse a failure to comply with the time bars
3 under NRS 34.726 or NRS 34.800.

4 In this case, Defendant's substantive and ineffective assistance of trial and appellate
5 counsel claims relating to the failure to pursue the substantive claims at trial or on appeal
6 were required to be filed within one-year of the remittitur February 12, 1988 or alternatively
7 within one-year from the effective date of NRS 34.726 – January 1, 1993. This Petition was
8 filed on October 25, 2007. Thus any claims of ineffective assistance of trial and appellate
9 counsel that were not raised in the first state petition for post-conviction relief are time
10 barred. They are also barred by NRS 34.800. They cannot constitute good cause for failing
11 to raise trial and appellate issues in a timely fashion because they themselves are time-
12 barred.

13 Similarly, any claims relating to ineffective assistance of post-conviction counsel
14 would be required to be filed within one year of the remittitur from the affirmance of the
15 denial of the first petition for post-conviction relief or they would be time-barred and could
16 not constitute good cause for delay. Moreover, where post-conviction counsel is not
17 required by statute to be appointed, ineffectiveness of post-conviction counsel cannot
18 constitute good cause.

19 In this case, Howard was not entitled to appointment of post-conviction counsel on
20 his first post-conviction petition. Between July 1, 1987 and January 3, 1993, appointment of
21 post-conviction counsel, even in capital cases, was discretionary. See 1985 Statutes of
22 Nevada, 63rd Session Ch. 435, Section 4 p. 1230 and Section 7, p. 1231; 1987 Statutes of
23 Nevada, 64th Session Ch. 539, Section 14, p. 1218; 1991 Statutes of Nevada, 66th Session,
24 Ch. 44, Section 20, p.87. Because Howard was not entitled to post-conviction counsel, there
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1 can be no ineffective assistance of post-conviction counsel claim to constitute good cause for
2 failing to raise issues in the first state post-conviction petition.¹⁷

3 Even if Howard were entitled to appointed first post-conviction petition counsel, any
4 claims of ineffective assistance of post-conviction counsel must be timely made under NRS
5 34.726 and NRS 34.800 or they are barred. In the instant case, the remittitur on the first state
6 petition for post-conviction relief was issued in 1991. Therefore all claims alleging
7 ineffective assistance of first post conviction counsel should have been raised in the second
8 state petition filed on December 16, 1991. Thus any claims of ineffective assistance of first
9 post-conviction counsel filed after that date are time barred and cannot be used to constitute
10 good cause for delay in raising those claims in a timely fashion in the instant petition.

11 As all of Howard claims for ineffective assistance of counsel are time barred under
12 NRS 34.726 or subject to laches under NRS 34.800, they cannot constitute good cause for
13 the twenty year delay in bringing the claims and the procedural bars have not been
14 overcome. Therefore the Petition must be dismissed as procedurally barred.

15 2. Alleged Inconsistent Application of Procedural Bars

16 Nevada courts, and the Nevada Supreme Court in particular, have been under regular
17 attack by petitioners who claim Nevada does not consistently apply its procedural bars. See,
18 e.g., Loveland v. Hatcher, 231 F.3d 640 (9th Cir.2000) (denying claim made that Nevada
19 does not consistently apply NRS 34.726(1), the one year limit for filing habeas petition).
20 These attacks have continued even though both the Nevada Supreme Court and the Ninth
21 Circuit have recently ruled that “a petitioner must establish ‘good cause’ and ‘actual
22 prejudice’ to overcome a post conviction procedural bar.” Valerio v. State, 112 Nev. 383,
23 390, 915 P.2d 874 (1998); Loveland, supra. As long as the State rules are consistently
24 applied, the federal courts must show deference to the State court’s application of procedural
25 bars. Loveland, supra. In Petrocelli v. Angelone, 248 F.3d 877 (9th Cir, 2001) the Ninth
26

27 ¹⁷ Under past and current law, the right to assistance of counsel on successive post-conviction petitions is discretionary.
28 Thus there can be no claim of ineffective assistance of counsel relating to the second and third state post-conviction
petitions.

1 Circuit Court of Appeals, citing its earlier decision in Moran v. McDaniel, 80 F.3d 1261 (9th
2 Cir.1996) found that the Nevada Supreme Court had consistently applied the procedural bar
3 in NRS 34.800.

4 The Nevada Supreme Court definitely addressed this issue in State v. Riker, 121 Nev.
5 225, 112 P.3d 1070 (2005). The High Court stated:

6 . . .we flatly reject the claim that this court at its discretion
7 ignores procedural default rules. Riker offers a number of
8 flawed, misleading, and irrelevant arguments to back his position
9 that this court “has exercised complete discretion to address
constitutional claims, when an adequate record is presented to
resolve them, at any stage of the proceedings, despite the default
rules contained in [NRS] 34.726, 34.800, and 34.810.”

10 To begin with, Riker criticizes this court's consideration of
11 unpreserved error on direct appeal and equates such
12 consideration with a failure to respect procedural bars in post-
13 conviction proceedings. This equation is utterly without merit.
14 Unpreserved error on direct appeal is not subject to procedural
15 bars or anything equivalent to such bars; on the contrary, statutes
16 grant this court the discretion to consider unpreserved errors or
17 even require the court, in some cases, to consider such errors.
NRS 178.602 expressly provides this court with the discretion on
direct appeal to consider plain error despite a failure to preserve
the issue at trial or to raise the issue on appeal. As we have
explained before, this plain-error rule applies only on direct
appeal and “does not create a procedural bar exception in any
habeas proceeding.” [Footnotes omitted].

18 Riker, 121 Nev. at 236, 112 P.3d at 1077.

19 The Riker Court then went on to criticize and analyze why none of the cases and
20 unpublished orders Riker claimed support his theory of inconsistent application did no such
21 thing. The shotgun approach used in Riker is identical to the one used in this Petition,
22 attaching a plethora of orders and opinions, asserting they demonstrate inconsistent
23 application of procedural bars. See PE 201-249. In fact, many of the exhibits are the same
24 cases referenced in Riker. This Court is not free to disregard Riker and must reject
25 inconsistency as good cause to excuse the procedural bars pursuant to Riker.

26 3. Brady and Giglio Claims

27 Evidence that was not disclosed by the prosecution at an earlier date in violation of
28 Brady or Giglio can be good cause for failure to raise claims relating to that evidence in a

1 timely fashion. The non-disclosure constitutes good cause, while the materiality standard
2 under Brady usually demonstrates prejudice. Mazzan v. Warden, 116 Nev. 48, 61-65, 993
3 P.2d 25, 36-37 (2000)(Mazzan II). However, as with ineffective assistance of counsel
4 claims, Brady/Giglio issues must be timely brought under NRS 34.726 and NRS 34.800.
5 Boyd v. State, 913 So.2d 1113 (Ala.Crim. App 2003); DeBruce v. State, 890 So.2d 1068
6 (Ala. Crim. App. 2003). That is, the claim should be brought within a reasonable time
7 period of its discovery, which is presumptively one year after its discovery pursuant to the
8 rationale discussed in Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001).

9 Here, the Petition does not set forth any specific facts that were not discoverable
10 through due diligence due to Brady/Giglio improprieties. The Petition simply makes a
11 general allegation. A general allegation is insufficient to overcome the procedural bars, even
12 when timely made.

13 Howard has failed to demonstrate good cause to overcome the procedural bars. In its
14 order affirming the dismissal of the third state post-conviction petition, the Nevada Supreme
15 Court analyzed many of the argued in this Petition for excusing the delay and concluded they
16 did not constitute good cause to overcome the procedural bars. The same rationale still holds
17 true.

18 To the extent Howard may imply that good cause exists because his claims were
19 remanded from Federal Court. However, Defendant's innuendo is without merit and the
20 remand simply provides Howard with the opportunity to exhaust state remedies. It in no way
21 obligates the state to yet another rehearing on the merits and the state's dismissal based on its
22 own procedural bars provides an exhaustion of state remedies.

23 A remand from Federal Court does not constitute good cause to overcome state
24 procedural bars. See Shumway v. Payne, 223 F.3d 982, 989 (9th Cir. 2000) in which the
25 court upheld a Washington state statute imposing a one-year limit on collateral attacks on
26 judgment and sentence in criminal cases; see also, Pelligrini v. State, 117 Nev. ---, 34 P.3d
27 519 (2001).

28 No grounds exist for excusing the procedural grounds and the Petition should be

1 dismissed.

2 VI. MCCONNELL ANALYSIS

3 The Nevada Supreme Court has indicated that where an aggravating circumstance is
4 stricken, the death sentence may be upheld if the court can conclude, beyond a reasonable
5 doubt, that the jury would still have found the remaining aggravators were not outweighed
6 the mitigating circumstances or that the inclusion of the improper aggravator amount to
7 harmless error. In reviewing the evidence, the court looks at the evidence at the time of trial.
8 Leslie v. Warden, 118 Nev. at 783, 59 P.3d at 440.

9 In the instant case the jury heard evidence that Howard committed armed robbery in
10 New York approximately one year prior to robbing and murdering Dr. Monahan. He
11 attacked a woman he knew, Dorothy Weisband, taking her money and car.

12 The mitigating evidence consisted of Howard's testimony. Howard indicated he
13 served honorably in Vietnam, was wounded and received a Purple Heart and that he had a
14 history of mental illness possibly attributable to his experiences in Vietnam. He testified that
15 he had been incarcerated in the mental health facilities or wards of California's prison
16 system with people like Charles Manson. Howard also said he told Detective Leavitt he
17 doesn't know what he hurts people and that he needed help. The jury also heard evidence
18 that, at a young age, Howard witnessed his father murder his mother and sister. The record
19 reflects Howard broke down or became emotional when asked questions about the incident,
20 necessitating a recess. Yet Howard never expressed remorse at Dr. Monahan's death or
21 Howard's treatment of Nurse Weisband.

22 Other evidence presented at trial and in the penalty hearing rebutted Howard's
23 portrayal as a troubled Vietnam veteran with mental health issues. Howard himself indicated
24 he knew what he was doing. His actions in robbing the Sears store, contacting Dr. Monahan
25 and arranging the false test drive also belie this picture. So too does his robbery of Mr.
26 Schwartz in New York. None of his actions in those instances support he was acting out of
27 mental illness as opposed to greed.

28 The Petition discusses the emphasis the State made in closing arguments on the

1 felony robbery aggravator. But equal emphasis was placed on the prior violent felony
2 aggravator and Howard's actions as they rebutted the alleged mitigation evidence.
3 Moreover, the jury could consider the facts of the Monahan robbery as they related to
4 rebutting Howard's mitigating evidence even if the Monahan robbery could be used to
5 support the "in commission of a robbery" aggravator.

6 Based upon the evidence, the State submits that any error related to the felony
7 robbery aggravator was harmless beyond a reasonable doubt. The jury would still have
8 found the aggravating circumstance was not outweighed by the mitigating circumstances.
9 Given Howard's violent actions before, during and after the Monahan murder, his lack of
10 remorse and his obvious credibility problems (he denied ever meeting Monahan, yet his
11 fingerprints were on the van, etc.) the jury would still have rendered a verdict of death.

12 **CONCLUSION**

13 Based on the foregoing, the State's Motion to Dismiss should be granted as the claims
14 are procedurally barred. In the alternative, as to the McConnell claim, the court should deny
15 the petition, finding that any error was harmless beyond a reasonable doubt.

16 DATED this 4 day of April, 2008.

17 Respectfully submitted,

18 DAVID ROGER
19 Clark County District Attorney
Nevada Bar #002781

20
21
22 BY N. A. Becker
23 NANCY A. BECKER
24 Deputy District Attorney
25 Nevada Bar #00145
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CERTIFICATE OF MAILING

I hereby certify that service of STATE'S NOTICE OF MOTION AND MOTION TO DISMISS DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION), was made this 8th day of April, 2008, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

FRANNY FORSMAN
Federal Public Defender
BRIAN ABBINGTON
Assistant Federal Public Defender
411 E. Bonneville Ave., Suite 250
Las Vegas, Nevada 89101



Employee for the District Attorney's
Office

NAB/ed

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15 Attorneys for Petitioner

FILED

FEB 24 12 05 PM '09

E. Howard
CLERK

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 SAMUEL HOWARD,

19 Petitioner,

20 v.

21 E.K. McDANIEL, Warden, and
22 CATHERINE CORTEZ MASTO,
23 Attorney General for the State
24 of Nevada,

25 Respondents.

Case No. C53867
Dept. No. XVII

**PETITIONER'S OPPOSITION TO
MOTION TO DISMISS**

Date of Hearing: 6-11-09
Time of Hearing: 8:00 AM

(Death Penalty Case)

26 Petitioner Samuel Howard hereby opposes the State's motion to dismiss his petition
27 for writ of habeas corpus. This opposition is made and based on the following points and
28 authorities and the entire file herein.

DATED this 24th day of February 2009.

FRANNY A. FORSMAN
Federal Public Defender

[Signature]
MICHAEL B. CHARLTON
Assistant Federal Public Defender

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2 The State alleges in its Motion to Dismiss that Mr. Howard's claims are either time
3 barred or barred by the law of the case doctrine. See Motion to Dismiss, pp. 22-31. The
4 State contends that each of these claims are subject to the time bars of NRS 34.726(1) (the
5 one year period following remittitur), pp 26-28, and 34.800 (a presumption of prejudice from
6 a delay of more than five years), pp. 29-30. The State also argues that these claims are barred
7 because they could have been but were not raised before, NRS 34.810(1)(b), see p. 30-31,
8 and under the successive/abusive petition rule of NRS 34.810(2), see page 31.¹

9 | ARGUMENT

0 I. The McConnell Claim

As to the specific claim based on McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004) and Bejarano v. State, 122 Nev. 1066, 146 P.3d 265 (2006), the State urges that this claim is barred because it is filed more than one year from the date of the McConnell petition. The problem with the State's assertion is that no law, statutory or decisional, creates a time bar when the claim is based on a newly created legal right. The State cites no authority for dismissal of a petition based on such a claim based on a filing one year or more after the legal right is created and for good reason: no such authority exists. NRS 34.726 creates a one year deadline after the conviction is final. See Bejarano, 146 P.3d at 269. The State is, in effect, asking the Court to create one out of whole cloth. The absence of legal authority for the Court to make this decision should give pause. The Court should also judicially notice that the State is taking a contrary position to its arguments in past cases. In Greg Leonard v. State, Eighth Judicial District Court, No. C126285, the petitioner filed his McConnell claim within one year of Bejarano but more than one year after McConnell. The State conceded error and Mr. Leonard was given a new penalty hearing. Ex 1.

25 The Nevada statutory bars do not apply when the claim is based on a newly created
26 legal right. McConnell was such a claim. As the Nevada Supreme Court made clear in

1 Mr. Howard contends that he has a conflict with this office.

1 McConnell, for years the Court upheld the dual use of the underlying felony in a felony
2 murder prosecution as an aggravating circumstance. “This court first addressed the
3 contention that in a felony-murder prosecution the underlying felony cannot be considered
4 as an aggravating circumstance in Petrocelli v. State [(citation omitted)] in 1985. Petrocelli
5 rejected that contention. . . . We have followed Petrocelli’s rationale since.” 102 P.3d at
6 1062-63. Petrocelli’s holding on this issue was thus, overruled and prior law disavowed.

7 Bejarano recognized the impact of this holding and the effect of a newly created legal
8 right on the procedural bars: NRS 74.726 and 74.810, the same bars advanced here.
9 Bejarano’s successor petition was filed 15 years after his direct appeal and was clearly
10 untimely. Because his claims either could have been or were previously raised, 74.810
11 applied as well. The Court excused all of the procedural defaults. “[A] procedural default
12 is excused if a petitioner establishes both good cause and prejudice. Good cause for failing
13 to file a timely petition or raise a claim in a previous proceeding may be established where
14 the factual or legal basis for the claim was not reasonably available. Prejudice occurs where
15 the errors worked to a defendant’s ‘actual and substantial disadvantage, infecting his entire
16 trial with error of constitutional dimensions.” 146 P.3d at 270. The Court concluded that
17 good cause was established because the claim was not reasonably available when Bejarano
18 filed his first state post conviction petition. Id. Prejudice could be established there was a
19 reasonable doubt that the jury would have returned a death sentence absent the stricken
20 aggravators. 146 P.3d at 270-71.

21 The same rationale applies to Mr. Howard in the instant case. This Court must decide
22 which of the alleged aggravating factors are still valid and then reweigh the remaining
23 aggravators against the mitigating evidence. The State’s argument to the contrary is created
24 entirely from whole cloth.

25 On the merits, Mr. Howard’s felony murder aggravator must fall. Both McConnell
26 and Bejarano make that clear.

27 ///

28 ///

II. The Prior Violent Felony Aggravator

This Court must also address the validity of the one aggravator remaining after the murder in the course of a felony aggravator. The State's Notice of Intent to seek death listed two aggravators by the time the penalty phase started: murder in the course of a felony and the existence of a prior felony conviction involving an act of violence. Ex. 2. To satisfy the latter allegation, the State's notice listed a conviction from San Bernadino County, California. Both parties agree that the trial court disallowed that aggravator. The State then chose to proceed to use a case from New York State where no judgment of conviction was ever entered nor a sentence handed down and, in doing so, never sought to amend its notice of aggravators.²

Because Mr. Howard can successfully challenge the McConnell aggravator and plausibly challenge the prior violent felony conviction aggravator, he has made a colorable showing of innocence of the death penalty; this Court must now address all the issues. Leslie v. Warden, 118 Nev. 773, 59 P.3d 440 (2003).

A. The Lack of Notice

No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal. (Citation omitted). . . . It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made.

Cole v Arkansas, 333 U.S. 514 (1948). Lankford v Idaho, 500 U.S. 110, 121, 127 fn.22 (1991) ("fair notice is the bedrock of any constitutionally fair procedure."). In the case at

² As Exhibits 2 and 3 make clear, the state originally filed a notice of intent to seek death with the aggravators set forth above. Exhibit 3 was a supplemental notice of intent to seek death which alleged three offenses from New York that the State intended to use as evidence at the penalty phase "in addition to information provided" in the initial notice of intent to seek death. The prosecution made no attempt to alter the alleged aggravators. Further, at trial, the state did not introduce any of the evidence set forth in the supplemental notice.

1 bar, the prosecution filed its notice of intent to seek death and listed the aggravating factors
2 it intended to rely upon to secure a death sentence. Those factors included the murder in the
3 course of a robbery now void under McConnell, *supra*, (NRS 200.033(4), a prior conviction
4 for a felony involving the use or threat to use violence, (NRS 200.033 (2)(b), and a murder
5 committed during the course of an escape, NRS 200.033(5). The last aggravator was
6 dismissed prior to trial.

7 The only remaining aggravator left that can possibly justify Mr. Howard's death
8 sentence is the conviction involving the use of or threat to use violence. The notice of intent
9 alleged that this aggravator would be proved by the use of documents "showing that
10 SAMUEL HOWARD was convicted in San Bernadino County California, in 1980 or 1981
11 of the felony offenses of robbery with use of a firearm and unlawful taking of a motor
12 vehicle." Ex. 2. The notice also alleged that certain witnesses would testify to the
13 underlying facts. Id.

14 At trial, the court struck the aggravator because the San Bernadino County offense
15 was committed after the instant offense. The prosecution then introduced evidence that Mr.
16 Howard had been convicted in absentia in Queens Supreme Court of the offense of robbery.³
17 The trial court instructed the jury that one of the aggravating factors was a conviction for an
18 offense involving either violence or the threat of violence to another; no specific offense was
19 named. The prosecution, in its final argument, urged the jury to find the aggravator
20 applicable based on the Queens Supreme Court case.

21 Nevada has implemented two sets of procedures to satisfy the due process requirement
22 set forth above in death penalty litigation. NRS 177.552 and SCR 250, promulgated in 1990
23 and applicable to trials after its effective date; "both are intended to ensure that defendants
24

25 ³ The evidence at trial established that Mr. Howard was present in court for two
26 days and then, failed to appear for the balance of the trial. The trial concluded when the
27 jury returned a verdict of guilty; no judgment of conviction or sentence was ever entered.
28 This conviction was listed in the notice of intent to seek death, not as a statutory
aggravating factor but as part of the evidence the prosecution intended to use as character
evidence to justify the death penalty.

1 in capital cases receive notice sufficient to meet due process requirements.” State v Second
2 Judicial District Court, 116 Nev. 953, 959 11 P.3d 1209, 1212 (2000). See also Deutscher
3 v State, 95 Nev. 669, 678, 601 P.2d 407, 413 (1979) (“We believe that the purpose of [NRS
4 175.552] is to provide the accused notice and to insure due process so that he can meet any
5 new evidence which may be presented during the penalty hearing.”) (emphasis added).

6 The Nevada Supreme Court has consistently strictly applied the requirements of each
7 procedure. Even technical compliance, however, has been found to violate due process. See
8 Emmons v State, 107 Nev. 53, 62, 807 P.2d 718, 724 (1991) (“Consistent with the
9 constitutional requirement of due process, defendants should be notified of any and all
10 evidence to be presented during the penalty hearing. Although the state in this case did give
11 the accused notice before the commencement of the penalty hearing [and thus complied with
12 the statute], it was only one day’s notice. We hold that the notice given in this case was
13 inadequate to meet the requirements of due process.”). Mason v. State, 118 Nev. 554, 562,
14 51 P.3d 521, 526 (2002).

15 In Bennett v. Eighth Judicial District Court, 212 Nev. 802, 121 P.3d 605 (2005), the
16 prosecution filed a notice of aggravating circumstances in 1988 and obtained a death
17 sentence. The sentence was later reversed and a new penalty hearing ordered. At that point,
18 three aggravating factors remained from the original prosecution: the murder created a risk
19 of death to more than one person, NRS 200.033(3), the murder was committed in the course
20 of a burglary, NRS 200.033(4), and that the murder was committing during the course of an
21 attempted robbery, NRS 200.033(4). The last two were invalidated under McConnell, supra,
22 immediately prior to trial. The state then sought to add three new aggravating factors to its
23 notice of intent under SCR 250. The trial court permitted the prosecution to add two of the
24 three. 121 Nev. At 805, 1212 P.3d at 607-08. Bennett sought a writ of mandamus to compel
25 the dismissal of the added factors.

26 The Nevada Supreme Court rejected the state’s argument that it had shown good cause
27 under Rule 250 to amend its notice of intent to seek death by adding new aggravating factors;
28 the intervening decision in McConnell did not satisfy Rule 250’s good cause requirement to

1 amend:

2 Our view on this matter is only strengthened by the fact that this
3 evidence upon which the State bases the newly alleged
4 aggravators has existed since Bennett's original prosecution in
5 1988. The State originally passed on these aggravators, which it
6 has recognized in its answer to Bennett's petition were weaker
than the ones it actually chose to pursue. That we issued the
McConnell opinion does not now give the State cause to
resurrect weaker aggravating circumstances it rejected nearly 17
years ago.

7 121 Nev. at 811, 121 P.3d at 611. The Supreme Court has clearly evidenced its intent that
8 the notice provisions, whether statutory, under NRS 175.552 or rule based under SCR 250,
9 be interpreted strictly. Due process demands no less.

10 Here the State made no effort to amend its notice of intent, even after the penalty
11 hearing had begun. It simply substituted evidence it had previously intended to use to
12 demonstrate Mr. Howard's character. Because the trial court had already struck the San
13 Bernardino County aggravating circumstance and because no new allegation or amended
14 allegation was made that would justify or support the use of the Queens Supreme Court case,
15 and because the jury instruction made no reference to any alleged aggravator, there was no
16 aggravator that could have supported the jury's decision. The State cannot rely on a theory
17 that it neither provided notice of, nor submitted to the jury. Given that it is the only
18 remaining aggravator after the murder in the course of robbery is invalidated, Mr. Howard's
19 death sentence cannot stand.

20 **B. The Queens Supreme Court case was not a conviction.**

21 The evidence of the Queens Supreme Court case is uncontradicted. The State
22 introduced no conviction or sentence. Mr. Howard appeared for trial for two days and then
23 failed to reappear in court. The trial judge proceeded to submit the case to the jury and
24 obtain a verdict of guilty from that jury.

25 The term "conviction" in 1983, at the time of Mr. Howard's trial, had a specific legal
26 meaning. NRS 50.095 permitted and still permits the use of convictions to impeach a
27 witness's credibility. The Nevada Supreme Court had chosen to interpret that concept to
28 require something more than merely an arrest or, as in the case at bar, a guilty verdict. In

1 1967, the Court handed down Fairman v. State, 83 Nev. 287, 429 P.2d 63 (1967) and ruled
2 that where a jury had returned a verdict of guilty against a defendant but the entry of a
3 judgment on that verdict and sentencing had been delayed a week, the prosecution could not
4 use that verdict to impeach the defendant on a trial that occurred after the verdict but before
5 entry of judgment and sentencing. The verdict of the jury was not a judgment of the court
6 nor its final determination. The Court upheld the rule of Fairman, in Colle v. State, 85 Nev
7 289, 292, 454 P.2d 21 (1969). in Boley v State, 85 Nev. 466, 470, 456 P.2d 447 (1969) and
8 in Ruvelta v State, 86 Nev. 224, 227, 467 P.2d 105 (1970).

9 In other contexts, the same definition for conviction has been applied. In Ruvelta v.
10 State, supra, the Court ruled that no judgment of conviction can be complete without a
11 sentence. In another context, the Court ruled that the mere pronouncement of a conviction
12 and sentence of imprisonment was not sufficient to constitute a conviction; the judgment
13 could not be final until signed by the judge and entered by the clerk. Miller v. Hayes, 95
14 Nev. 927, 604 P.2d 117 (1979). See also Bradley v State, 109 Nev. 1090, 864 P.2d 1272
15 (1993).

16 It must be presumed that the Nevada Legislature was “cognizant of these
17 constructions.”

18 In the absence of any language in the amendment indicating a
19 contrary intention, it must also be presumed that the word . . .
20 was used by the Legislature with the meaning ascribed to it by
21 the court. If the Legislature uses words which have received a
22 judicial interpretation, they are presumed to be used in that
23 sense, unless the contrary intent can be gathered from that
24 statute.

25 Latterner v Latterner, 51 Nev. 285, 274 P. 194 (1929).

26 In 1997, the Legislature amended 200.033(2)(b) to permit its use when the jury had
27 simply returned a verdict. In that context, the Nevada Supreme Court has held that when the
28 Legislature changes an existing statute, it intends to either create a new right or withdraw an
old one. The change is presumed to indicate a change in legal rights. Courts assume the
Legislature was aware of the previous interpretation and evinced its disagreement with it by

1 enacting the change. Utter v Casey, 81 Nev. 268, 274, 401 P.2d 684, 688 (1965).⁴

2 Under then existing Nevada law, Mr. Howard had not been convicted. Only a jury
3 verdict of guilty had occurred. No sentence and no judgment of conviction was ever entered
4 at any time. Thus, even if the prior Queens Supreme Court action were properly noticed, it
5 was not enough.

6 C. Re-weighing

7 If the Queens Supreme Court action was properly noticed and if it met the Nevada
8 standards for a legal conviction, this Court must reweigh the evidence against this remaining
9 aggravator. When re-weighing the evidence this Court must consider not just that evidence
10 presented at trial but all of the mitigating evidence that Mr. Howard now contends should
11 have been presented at that trial. Leslie, 118 Nev. 773, 59 P.3d 440. See also State v.
12 Haberstroh, 119 Nev. 173, 69 P.3d 676 (2003) (newly discovered evidence not presented
13 based on trial counsel's ineffectiveness); State v. Bennett, 119 Nev. 589, 81 P.3d 1, 11
14 (2003) (Evidence relevant to mitigation was suppressed by State. "Considering this
15 undisclosed mitigating evidence with the invalid aggravating evidence, we conclude that the
16 district court correctly vacated Bennett's death sentence and ordered a new penalty
17 hearing."). In Nevada, eligibility for the death penalty requires a sentencing jury to consider
18 the validity of the alleged aggravating factors and balance them against the mitigating
19 evidence presented. Rippo v. State, 122 Nev. ___, 146 P.3d 279, 284 (2006) ("The primary
20

21 ⁴ The Legislative History of the change indicates that the Legislature intended to
22 make a very precise change. Senator Mark James, Chair of the Committee on Judiciary
23 asked, when the bill came up, what was wrong with the "previously convicted of another
24 murder" language. The representative of the Nevada District Attorneys noted that the
25 existing language was confusing. Committee counsel noted that under the then existing
26 statute, a person would have to be convicted of murder at the time of the commission of a
27 subsequent murder to invoke the aggravating circumstances; "with passage of the
28 proposed amendment, a person would only need to have been convicted at the sentencing
stage prior to commission of a subsequent murder in order to invoke aggravating
circumstances." Clearly, the Legislature intended by this amendment to reduce the
State's burden of proof by not requiring a conviction as that term had been previously
understood.

1 focus of our analysis, therefore, is on the effect of the invalid aggravators on the jury's
2 eligibility decision, i.e. whether we can conclude beyond a reasonable doubt that the jurors
3 would have found that the mitigating circumstances did not outweigh the aggravating
4 circumstances even if they had considered only the three valid aggravating circumstances
5 rather than six.") Further, after re-weighing the remaining aggravating factors and the
6 mitigating evidence, if the Court finds a reasonable probability that absent the invalid
7 aggravating factor, the jury would not have imposed death, the defendant has established the
8 fundamental miscarriage of justice that overcomes the procedural bars. Leslie v. Warden,
9 118 Nev. 773, 59 P.3d 440 (2003); Bennett v. State, 119 Nev. 589, 598, 81 P.3d 1, 4 (2003);
10 Pellegrini v. State, 117 Nev. 860, 34 P.3d 519, 537 (2001) (procedural bars can be overcome
11 by demonstrating that the court's failure to review an issue would result in a fundamental
12 miscarriage of justice.)

13 Leslie, in effect holds that if an aggravating factor is invalid, the defendant is
14 "innocent" of that aggravating factor and in that context, the Court must review all of the
15 evidence tendered at trial and in post conviction. In House v. Bell, 547 U.S. 518, 126 S.Ct.
16 2064 (2006), the Court made it clear that, where a habeas petitioner argues that his actual
17 innocence forgives a procedural default, the habeas court must consider not only the trial
18 evidence but the new evidence as well. Id. at 126 S.Ct. at 2077, citing Schlup v. Delo, 513
19 U.S. 298, 424-32 (1995). In Sawyer v. Whitley, 505 U.S. 333 (1992), the Court extended this
20 innocence exception to procedural default to a claim of innocence of the death penalty, a
21 claim which requires a showing that, but for the constitutional error, no reasonable juror
22 would have found the defendant eligible for the death penalty. Though this Court's treatment
23 of this issue has not been consistent, on at least two occasions, the Court has also reviewed,
24 not just the evidence adduced at trial, but that developed in state post conviction and the
25 reasons for that failure as well. See State v. Haberstroh, 119 Nev. 173, 69 P.3d 676 (2003)
26 (newly discovered evidence not presented based on trial counsel's ineffectiveness); State v.
27 Bennett, 119 Nev. 589, 81 P.3d 1, 11 (2003) (Evidence relevant to mitigation was suppressed
28 by State. "Considering this undisclosed mitigating evidence with the invalid aggravating

1 evidence, we conclude that the district court correctly vacated Bennett's death sentence and
2 ordered a new penalty hearing.")

3 Mr. Howard contends that, with the invalid aggravators and the vast amount of
4 uninvestigated and unpresented mitigating evidence, he is innocent of the death penalty, that
5 is, he is no longer eligible for a sentence of death. He thus has established a fundamental
6 miscarriage of justice and the entirety of the evidence must be considered. Both the holdings
7 of this Court and of the United States Supreme Court mandate it.

8 Whether the standard is one of re-weighing or a fundamental miscarriage of justice,
9 Mr. Howard has clearly met his burden. The amended petition lists a wealth of mitigating
10 evidence this Court must consider and balance against only one arguable viable remaining
11 aggravator.

12 **D. Other issues**

13 Because the re-weighing process essentially is a test for harmless error, this Court
14 must consider how the State exploited the error. See Satterwhite v. Texas, 486 U.S. 249
15 (1981). There the Court found the error harmful because, in part, of the State's exploitation
16 of the argument and the error's importance to the state's case. 486 U.S. at 260. It is in this
17 context that the Court must consider the issues of prosecutorial misconduct. The greatest
18 harm suffered by Mr. Howard as a result of his trial lawyer's incompetence is that he did not
19 object to the prosecutorial misconduct during the penalty phase argument where the
20 prosecutor told the jury:

21 How about release? Are you going to give Sam Howard
22 life with the possibility of parole? Do you think maybe Sam
23 Howard might kill again if he were paroled and out on the
streets...

24 . . . As the instruction tells you, and it wouldn't be there if it
weren't a possibility of reality, life without the possibility of
25 parole does not exclude executive clemency. That means
26 somebody could let him loose, even though the jury has give
him life without the possibility of parole, even though that's
27 your verdict and you say, Sam, you've got to stay in jail the rest
of your life, someone can turn that decision around.

1 ROA Vol XXVII, p. 1596.⁵

2 In Sechrest v. Ignacio, 549 F. 3d 789 (9th Cir. 2007), the court found similar
3 arguments not only were prosecutorial misconduct, but rose to the level of constitutional
4 error. In its decision, the court noted that neither the defense counsel nor the trial judge did
5 anything to stop the prosecutor from making the statements. Id. at 811. In a footnote the
6 court added:

7 Additionally, as noted below, we hold that Sechrest's counsel
8 provided him with ineffective assistance. It is therefore
9 unsurprising that defense counsel failed to object to the
10 prosecutor's blatantly inappropriate remarks.

10 Id.

11 Misleading and inflammatory arguments by a prosecutor can violate the Sixth and
12 Fourteenth Amendment right to a fair trial. E.g., Darden v. Wainwright, 477 U.S. 168, 181
13 (1986), U.S. v. Young, 470 U.S. 1, 11-12 (1985); Donnelly v. DeChristoforo, 416 U.S. 637,
14 645 (1974); see also Furman v. Wood, 190 F.3d 1002, 1005-05 (9th Cir. 1999); cf. Parker
15 v. Gladden, 385 U.S. 363, 363-65 (1966) (per curiam) (defendant's right to an impartial jury
16 violated by court bailiff's statements, overheard by at least some of the jurors, that the
17 defendant was "wicked" and "guilty," and that the Supreme Court would correct any errors
18 the jury made in finding the defendant guilty).

19 Here, the prosecutor misled and inflamed the passions of the jury with his argument
20 that it was virtually certain that Mr. Howard would receive executive clemency or would
21 otherwise not spend his life in prison if the jury imposed any penalty other than death, and
22 threatened the jurors with the idea that someone else would be killed if he was let out of
23 prison. Also, the prosecutor's repeated misconduct reflected a pattern of practice particular
24 to him, and general to the Clark County Public Defender's Office, as noted in the Nevada
25

26 ⁵ Mr. Howard concedes that this instance of prosecutorial misconduct has not been
27 exhausted. As pointed out by the Nevada Supreme Court in its opinion at p. 717, the
28 lawyer on direct appeal did not raise any issues of prosecutorial misconduct. Further,
these facts do not fundamentally alter the claim.

1 Supreme Courts' opinion in Mr. Howard's case.

2 These arguments were improper for multiple reasons. They improperly invoked the
3 prestige of the District Attorney's Office and implied special expertise, experience, and
4 knowledge of facts outside the record in support of the prosecutor's argument.

5 By giving his opinion, an attorney may increase the apparent
6 probative force of his evidence by virtue of his personal
7 influence, his presumably superior knowledge of the facts and
8 background of the case, and the influence of his official
9 position. . . The prosecutor is not just a retained attorney; he is
10 a public official occupying an exalted station. Should he be
11 allowed to "testify" in closing argument, jurors hear the "expert
testimony" of a trusted officer of the court on, perhaps, a crucial
issue. On the other side may be appointed counsel, laboring
valiantly to present all defenses available to the accused, who
nevertheless may be unable to respond to the implied challenge
by asserting his personal belief in his assigned client's
innocence.

12 U.S. v. Morris, 568 F.2d 396, 401-02 (5th Cir. 1978); accord, U.S. v. Young, 470 U.S. at 18-
13 19 ("The prosecutor's opinion carries with it the imprimatur of the government and may
14 induce the jury to trust the government's judgment rather than its own view of the
15 evidence.").

16 In fact, the prosecutor in this case explicitly relied upon his position by telling the
17 jurors "I represent the State and its citizens," and that "there are so many cases where non-
18 executed murders who have been sent to prison have killed again in any one of these
19 situations that I have enumerated." ROA Vol. XXVII, p. 1596. These arguments were based
20 on no evidence in the record and were entirely speculative, but they were delivered to the jury
21 as plain facts. The prosecutor's argument was a deliberate attempt to mislead the jury on an
22 issue that was likely to influence its decision. The argument that imposing the death penalty
23 was the only way to prevent the defendant from killing again continued the prosecutor's
24 speculative theme, and was plainly improper. Darden v. Wainwright, 477 U.S. at 180; see
25 Kelly v. Stone, 514 F.2d 18, 19 (9th Cir. 1975)(argument that "maybe the next time [the
26 victim] will be someone you know"); Mashburn v. State, 522 SW.2d 900, 901 (Tex. Crim.
27 App. 1975) (prejudicial to argue that jury should impose excessive sentence to compensate
28 for, or protect against, actions of pardons board.)

1 Under Caldwell v. Mississippi, “it is constitutionally impermissible to rest a death
2 sentence on a determination made by a sentencer who has been led to believe that the
3 responsibility for determining the appropriateness of the defendant’s death rests elsewhere.”
4 472 U.S. 320, 328-29 (1985). Here, the prosecutor misinformed the jury by stating that only
5 a death verdict would remain undisturbed, and that any other verdict could be set aside. In
6 other words, the jury was left to believe that Mr. Howard’s “real” sentence would be
7 determined by the Pardons Board instead of their verdict. As the Supreme Court held in
8 Caldwell, “[an] uncorrected suggestion that the responsibility for any ultimate determination
9 of death will rest with others presents an intolerable danger that the jury will in fact choose
10 to minimize the importance of its role.” 472 U.S. at 333.

11 In Coleman, the Court found the constitutional violation prejudicial because it invited
12 the jury “to speculate that the only way it could be assured Coleman would not be released
13 would be to sentence him to death.” Coleman, 210 F.3d at 1051. The Court specifically
14 relied upon the prosecutor’s argument to the jury that the defendant “would remain a risk to
15 ‘all of us’ if a death sentence were not imposed.” Id. Exactly the same argument was made
16 in Mr. Howard’s case, and vacation of the sentence is equally necessary.

17 The prosecutor’s repeated emphasis on his own false and misleading speculation about
18 the certainty of the defendant’s release if the jury imposed a sentence of life imprisonment
19 without possibility of parole establishes “a deliberate and especially egregious error” that is
20 also “combined with a pattern of prosecutorial misconduct,” Brecht v. Abrahamson, 507 U.S.
21 619, 638 n. 9 (1993), that justifies vacating the sentence without reference to prejudice. In
22 any event, as in Coleman, the error here had a “substantial and injurious effect or influence
23 in determining the jury’s verdict.” Brecht v. Abrahamson, 507 U.S. 619, 637 (1993) (internal
24 quotation marks and citation omitted). There can be no reasonable dispute that the
25 prosecutor’s misconduct was intended to, and did, affect the jury’s decision to return a
26 verdict of death. Whether the defendant could be released on parole, would have been a
27 highly significant issue to the jury. Theodore Eisenberg and Martin T. Wells, Deadly
28 Confusion: Juror Instruction in Capital Cases, 79 Cornell L. Rev. 1, 4-5, 7-8 (1993) (“Our

1 data confirms that jurors' deliberations emphasize dangerousness and that misguided fears
2 of early release generate death sentences,") quoted with approval, Coleman, 210 F.3d at
3 1051; Stephen P. Garvey, Aggravation and Mitigation in Capital Cases: What do Jurors
4 Think?, 98 Colum. L. Rev. 1538, 1559 (1998) (reporting that 57.9% of jurors surveyed more
5 likely to vote for death if they thought defendant might present danger to society); see also
6 Simmons v. South Carolina, 512 U.S. 154, 163-164, 170-171 (1994). The prosecutor's
7 argument was calculated to play on the fears of the jury arising from the false assumption that
8 the defendant was assured of an early release. The only alternative the jurors could have
9 thought they had was to return a death sentence. See Coleman v. Calderon, 310 F.3d at 1051.

10 The fact that this issue did not relate to one of the statutory aggravating and mitigating
11 factors is of no consequence: the question of prejudice focuses on the totality of the effect
12 of the error, not whether it relates to a statutory aggravating or mitigating factor, see
13 Williams v. Taylor, 529 U.S. 362, 398-399 (2000); and, under Nevada law, the balance of
14 aggravating and mitigating factors is not necessarily the "heart" of the sentencing decision,
15 because the jury always has the power to impose a sentence less than death regardless of the
16 weight of aggravation or even the total lack of mitigation. E.g., Bennett v. State, 106 Nev.
17 135, 144-145, 787 P.2d 797 (1990).

18 III. The Jury Instructions on Premeditation

19 Claims Three and Four of the Amended Petition challenge Jury Instruction 12 which
20 defined premeditation:

21 [A] design, a determination to kill, distinctly formed in the mind
22 at any moment before or at the time of the killing.
23 Premeditation need not be for a day, an hour or even a minute.
24 For if the Jury believes from the evidence that the act
25 constituting the killing has been preceded by and has been the
26 result of premeditation, no matter how rapidly the premeditation
27 is followed by the act constituting the killing, it is willful,
28 deliberate and premeditated murder.

26 2 ROA 228.

27 The instruction is unconstitutional because it muddled the distinction between first
28 and second degree murder and thereby violated the constitutional requirement that the state's

1 death penalty scheme be narrowly applied, Zant v. Stephens, 462 U.S. 862, 877 (1983);
2 Byford v. State, 116 Nev. 215, 233-37, 994 P.2d 712-15 (2000).

3 The misdefining of premeditation in this way, and the failure to explain the different
4 mental states involved in the degrees of murder, deprived Mr. Howard of his right to have
5 the jury decide all the necessary elements of the charged crime and rendered the second
6 degree murder instruction meaningless. Smith v. Mitchell, 437 F.3d 884, 889 (9th Cir. 2006)
7 (“whether, after viewing the evidence in the light most favorable to the prosecution, any
8 rational trier of fact could have found the essential elements of the crime beyond a reasonable
9 doubt.”) (citing Jackson v. Virginia, 443 U.S. 307, 319, (1979)); see also In re Winship, 397
10 U.S. 358, 364 (1970); Fiore v. White, 531 U.S. 225, 228-29 (2001); U.S. Const. amend.
11 XIV.; Nolan v. State, 122 Nev. ___, 132 P.3d 564, 573 (2006) (citations omitted). This error
12 substantially prejudiced Mr. Howard, rendered the trial proceeding fundamentally unfair,
13 eroded the reliability of the verdicts and had a substantial and injurious effect on the guilt and
14 penalty phase verdicts.

15 The instruction was unconstitutional because it muddled the distinction between first
16 and second degree murder and thereby violated the constitutional requirement that a greater
17 degree of punishment resulting from the conviction of a greater offense, or a greater degree
18 of an offense, must be supported by a rational distinction which distinguishes the greater
19 culpability from the lesser, People v. Calvaresi, 534 P.2d 316, 318 (Colo. 1975); and the
20 requirement that criminal laws must be written so that there are significant differences
21 between offenses and so that the exact same conduct is not subject to different penalties.
22 State v. Bryan, 709 P.2d 257, 263 (Utah 1985); City of Chicago v. Morales, 527 U.S. 41,
23 56-61 (1999).

24 On December 31, 2008, the Nevada Supreme Court addressed Polk v. Sandoval, 530
25 F.3d 903 (9th Cir. 2007) in Nika v. State, 124 Nev. ___, 198 P.3d 839 (2008). In the Nika
26 decision, Nevada Supreme Court discussed the history of its decisions interpreting the terms
27 willfulness, premeditation, and deliberation, and it concluded that the Court attributed
28 different meanings to these terms at different times. See Nika, 124 Nev. ___, 198 P.3d 839

1 at 8-14. The one constant theme in the Court's historical decisions, however, was its
2 recognition that premeditation and deliberation "are not synonyms for 'malice
3 aforethought.'" Id. at 11. Otherwise, it "would obliterate the distinction between the two
4 degrees of murder." Id. (citing Hern v. State, 97 Nev. 529, 532, 635 P.2d 278, 280 (1981)).
5 However, the Court acknowledged that its decision in Powell v. State, 108 Nev. 700, 838
6 P.2d 927 (1992), "reduced 'premeditation and deliberation' to 'intent,'" a decision this Court
7 sought to justify by claiming that three other states made the same mistake in interpreting
8 their first-degree murder statutes. The Court subsequently held that Byford announced a
9 change in the law – rather than a clarification – and summarily concluded that the change did
10 not have any constitutional implications and did not apply retroactively to Mr. Nika. Id. 20-
11 26.

12 The Nevada Supreme Court completely overlooked the constitutional vagueness
13 concerns that arise from this Court's interpretation of the law as it existed at the time of Mr.
14 Howard's trial. Taking what this Court said in Nika, Byford, and Hern as true, at the time
15 of Mr. Howard's trial, this Court had changed the law in such a way that there was a
16 "complete erasure" of the "distinction between first- and second-degree murder." Byford v.
17 State, 116 Nev. 215, 235, 994 P.2d 700, 713 (2000). Under the state and federal
18 constitutions, penal statutes must give "fair notice" of what is forbidden, e.g., Gallegos v.
19 State, 123 Nev. ___, 163 P.3d 456, 458-459 (2007); Lanzetta v. New Jersey, 306 U.S. 451,
20 453 (1939); and "the more important aspect of the vagueness doctrine 'is . . . the requirement
21 that a legislature establish minimal guidelines to govern law enforcement.'" Kolender v.
22 Lawson, 461 U.S. 352, 358 (1983), quoting Smith v. Goguen, 415 U.S. 566, 574-575 (1974).
23 "[A]bsent adequate guidelines, a criminal law may permit a standardless sweep, which would
24 allow the police, prosecutors, and juries to 'pursue their personal predilections.'" Silvar v.
25 Dist. Ct., 122 Nev. 289, 293, 129 P.3d 682, 685 (2006) (emphasis added), quoting Kolender,
26 461 U.S. at 358; Gallegos, 163 P.3d at 461.

27 That a capital murder statute may violate due process standards because of vagueness
28 depends on the application of two distinct principles, both of which are violated by the

1 Nevada Supreme Court's construction of the pre-Byford statute. First, a statute may be void
2 for vagueness if it fails to provide to an ordinary citizen that his conduct is forbidden, or that
3 it encourages arbitrary and erratic law enforcement conduct, that it criminalizes normally
4 innocent conduct or that it places unfettered discretion in the hands of law enforcement.
5 Papachristou v. City of Jacksonville, 405 U.S. 156, (1972). Second, a death penalty statute
6 may be so vague as to violate both the Eighth Amendment and the due process clause of the
7 Fourteenth Amendment if the statute applies no restraint on the arbitrary and capricious
8 infliction of the death penalty. Godfrey v. Georgia, 446 U.S. 410 (1980).

9 The Nevada Supreme Court has determined that murder is defined in one fashion for
10 cases decided prior to Byford and in another fashion for those cases tried after it. Mr.
11 Howard's case falls in the former category and, according to the Byford court, there is no
12 meaningful distinction between first and second degree murder.

13 In Kolender v. Lawson, 461 U.S. 352 (1983), the Court considered a challenge to a
14 California statute that made it criminal for a suspect to fail to provide "credible and reliable"
15 identification when so demanded by a police officer. The Court noted that the void for
16 vagueness doctrine requires that a penal statute define an offense with sufficient clarity that
17 ordinary people can understand what conduct is prohibited and in a manner that does not
18 encourage arbitrary and discriminatory enforcement. 461 U.S. at 356 citing Village of
19 Hoffman Estates v. Flipside, 455 U.S. 489 (1982). The more important aspect of the doctrine
20 "is not actual notice, but the other principal element of the doctrine- the requirement that a
21 legislature establish minimal guidelines to govern law enforcement." When those guidelines
22 are missing, a criminal statute may permit "a standardless sweep [that] allows policeman,
23 prosecutors and juries to pursue their personal predilection." 461 U.S. at 358, quoting from
24 Smith v. Goguen, 415 U.S. 566, 574-75 (1974). See also City of Chicago v. Morales, 527
25 U.S. 41 (1999).

26 In the case at bar, conflating the requirements of the culpable mental states so that
27 there is no meaningful distinction between first and second degree murder leaves the decision
28 on whether to prosecute a death penalty case or a second degree murder case solely in the

1 hands of the prosecution without any meaningful standard, in fact, no standard at all. That
2 decision is thus left solely to the prosecutor's individual judgment, bias and predilection, a
3 discretion forbidden by the due process clause.

4 In the death penalty context, as noted, there is a concern: both due process and the
5 Eighth Amendment require a restraint on the arbitrary and capricious infliction of the death
6 penalty. Godfrey v. Georgia, *supra*. A capital sentencing scheme must provide a meaningful
7 basis for "distinguishing the few cases in which [the penalty] is imposed from the many cases
8 in which it is not." 446 U.S. at 427.

9 This means that if a State wishes to authorize capital punishment
10 it has a constitutional responsibility to tailor and apply its law in
11 a manner that avoids the arbitrary and capricious infliction of
12 the death penalty. Part of a State's responsibility in this regard
13 is to define the crimes for which death may be the sentence in a
14 way obviates "standardless discretion."

15 446 U.S. at 429, quoting from Gregg v. Georgia, 428 U.S. 153, 196, n. 47 (1976).⁶ Given the
16 lack of any distinction, much less meaningful distinction, between first and second degree
17 murder invites the kind of unlimited discretion condemned in Godfrey.

18 Clearly, this challenge did not arise until the Nevada Supreme Court handed down its
19 opinion in Nika.

20 Further, the Nevada Supreme Court's conflicting precedents (which caused it to
21 declare that it had simply changed the law), results in no possibility that "ordinary people can
22 understand what conduct is prohibited" as first-degree murder under the Kazalyn instruction.
23 Kolender, 461 U.S. at 357. Even more important, however, is that the "complete erasure"
24 of the distinction between first and second-degree murder left juries with no "adequate
25 guidelines" for determining when a homicide is first rather than second-degree murder. The
26 absence of such adequate standards does not merely "encourage arbitrary and discriminatory
27 enforcement," Kolender, 461 U.S. at 357 (citations omitted), but virtually ensures it. This

28 ⁶ "[W]e adhere to Furman's determination that where the ultimate punishment of
death is at issue a system of standardless jury discretion violates the Eighth and
Fourteenth Amendments.

1 constitutional violation leads, in turn, to two other constitutional violations. First, the
2 “standardless sweep” of the definition will result in disparate treatment of similarly situated
3 defendants, whose offenses will be indistinguishable but whose treatment, by conviction of
4 first or second-degree murder, will be determined by the “personal predilections” of juries.
5 This gives rise to a violation of the equal protection guarantee that “all persons similarly
6 situated should be treated alike,” Cleburne v. Cleburne Living Center, 473 U.S. 432, 439
7 (1985), unless there is a “rational basis for the difference in treatment.” Village of
8 Willowbrook v. Olech, 528 U.S. 562, 564 (2000)) (per curiam) (citations omitted). Second,
9 Nevada law restricts imposition of the death penalty to cases involving convictions of first-
10 degree murder. Nev. Rev. Stat. § 200.030(4)(a). A state system that limits the application
11 of the death penalty to first-degree murders, but then erases the distinction between first and
12 second-degree murders, necessarily results in arbitrary imposition of the death penalty in
13 violation of the Eighth Amendment. Basing death-eligibility on a vague aggravating factor
14 invites “arbitrary and capricious application of the death penalty.” Stringer v. Black, 503
15 U.S. 222, 228, 235-236 (1992); cf. Jones v. State, 101 Nev. 573, 582, 707 P.2d 1128 (1985)
16 (high degree of premeditation is a prerequisite to death eligibility). Basing it on conviction
17 of a capital offense when the conviction is predicated upon a vague definition of the elements
18 that are supposed to distinguish it from second-degree murder, is even more arbitrary and
19 capricious.

20 The conflation of premeditation and deliberation with simple intent to kill also has the
21 effect of eliminating any necessity of showing any actual evidence from which the jury could
22 infer that the defendant actually premeditated and deliberated. See Sandstrom v. Montana,
23 442 U.S. 510, 521 (1979); Polk, 503 F.3d at 909-10. The “instantaneous” premeditation
24 theory has the practical effect of eliminating the necessity for any such evidentiary showing
25 from which premeditation and deliberation can be inferred. See State v. Thompson, 65 P.3d
26 420, 427 (Ariz. 2003). If a court can simply recite that premeditation can be instantaneous,
27 and essentially identical to, and arising at the same time as, simple intent to kill, it can
28 completely ignore the absence of any evidence that would support an inference that

1 premeditation and deliberation actually occurred.

2 The Kazalyn instruction also violates Article 6 § 12 of the state constitution which
3 provides that “[j]udges shall not charge juries in respect to matters of fact, but may state the
4 testimony and declare the law.” Nev. Const. art. 6 § 12. The few cases applying this
5 provision have held that it is violated when a judge expresses or implies an opinion on a
6 factual issue, and thus deprives the defendant of the “uninfluenced and unbiased” decision
7 of the jury guaranteed by this section.⁷ In particular, judicial comments or instructions
8 referring to the credibility of witnesses or the quality of the evidence violate the section.⁸
9 The Kazalyn instruction has the same effect. See State v. Stenback, 2 P.2d 1050, 1056 (Utah
10 1931). It emphasized to the jury how short (or even non-existent) a time was necessary for
11 the formation of premeditation and deliberation; and it did not include any counterbalancing
12 language that would have emphasized to the jury that some factual conditions could interfere
13 with, or extend the time necessary for, the defendant to form the necessary mental state. See
14 2 LaFave, Substantive Criminal Law § 14.7(a) at 479. Nor did it, as the post-Byford
15 instruction does, caution the jury that it is not the amount of time available in the abstract that
16 is determinative, but whether the defendant actually did premeditate and deliberate the act
17 of killing. See Byford, 116 Nev. at 236-237. Mr. Howard possesses a constitutionally
18 protected liberty interest in the application of this constitutional provision under Hicks v.
19 Oklahoma, 447 U.S. 343, 347 (1980).

20 The Nevada Supreme Court’s Nika opinion raises yet another problem that did not
21

22 ⁷ State v. Harkin, 7 Nev. 377, 383-384 (1872) (judge’s comment on state of
23 evidence in ruling on objection violated section); State v. Tickel, 13 Nev. 502, 510-512
24 (1878) (judge’s comment on accuracy of justice court’s record of witness’ deposition
25 violated section); State v. Scott, 37 Nev. 412, 430-431 (1914) (judge’s comments before
the jury as to adequacy of evidence that statement was dying declaration violated section).

26 ⁸ State v. Warren, 18 Nev. 459, 463-465 (1884) (judge’s comment, in refusing
27 instruction, that he did not remember evidence to support it violated section, where
28 evidence was present in record); Graves v. State, 82 Nev. 137, 141, 413 P.2d 503 (1996)
(reversing under art. 6, § 12 and its “sense of justice,” because the district court instructed
the jury on “consequences” and “temptations” relating to defendant’s own testimony).

1 exist until the decision and thus, must either be addressed or remanded to the state courts for
2 resolution. While the Ex Post Facto clause of the Constitution applies only to legislative
3 enactments, the Due Process Clause of the Fourteenth Amendment does prohibit the
4 retroactive application of a judicial construction of a criminal statute which is “unexpected
5 and indefensible by reference to the law which had been expressed prior to the conduct in
6 issue.” Rogers v. Tennessee, 532 U.S. 451 (2001).

7 The Nevada Supreme Court’s complete failure to determine whether Byford should
8 apply retroactively to defendants like Mr. Howard as a substantive rule of criminal law
9 violated his federal due process rights. Specifically, the retroactivity principles enunciated
10 in Schiro v. Summerlin, 542 U.S. 348 (2004), establish a constitutional floor that bind state
11 courts under the federal due process clause. While this Court may choose to provide greater
12 retroactivity than exists in federal habeas proceedings, it may not provide less: “Federal law
13 simply ‘sets certain minimum requirements that States must meet but may exceed in
14 providing appropriate relief.’” See Danforth v. Minnesota, 128 S. Ct. 1029, 1045 (2008)
15 (citation omitted). It does not matter whether the Nevada Supreme Court characterizes
16 Byford as a super-legislative change in the law or whether it characterizes Byford as a non-
17 constitutional ruling, slip. op. at 20-25, Colwell and Summerlin both require retroactive
18 application when a decision of the Court narrows the scope of a criminal statute; otherwise,
19 “there would be ‘a significant risk that a defendant . . . faces a punishment that the law
20 cannot impose.’” Bejarano v. State, 122 Nev. 1066, 146 P.3d 265, 274 (2006) (citation
21 omitted); e.g., Bousley v. United States, 523 U.S. 614, 619-20 (1998) (retroactivity not an
22 issue when the court “decides the meaning of a criminal statute”). This Court’s decision in
23 Mr. Nika’s case opens two lines of irreconcilably inconsistent jurisprudence: in one universe,
24 this Court applies the Colwell and Summerlin framework to determine whether a new rule
25 is substantive and retroactive; in the other universe, this Court simply cites to Bunkley v.

1 Florida, 538 U.S. 835 (2003), and ignores the Colwell/Summerlin framework.⁹ There is no
2 coherent distinction between the cases where this Court chooses to determine whether a new
3 decision constitutes a new rule of substantive law and those where it simply fails to do so.

4 **IV. The Nevada Procedural Bars should not foreclose the presented claims.**

5 The failure to raise any of the claims asserted in this petition, which were susceptible
6 to decision on direct appeal, was the result of ineffective assistance of counsel on appeal.

7 The failure to raise any of the claims asserted in this petition, which were susceptible
8 of being raised in the state post-conviction proceeding, and appeal, was the result of
9 ineffective assistance of counsel, in a proceeding in which Mr. Howard had a right to
10 effective assistance of counsel under state and federal constitutional law; was the result of
11 representation by counsel that violated state and federal constitutional due process standards;
12 and/or was induced by the state trial court's refusal to permit appointed counsel adequate
13 time or resources to identify and present all of the available constitutional claims in violation
14 of the right to an adequate opportunity to be heard guaranteed by the due process clause of
15 the Fourteenth Amendment. Mr. Howard did not consent to the failure to raise any available
16 constitutional claim and did not knowingly and intelligently waive any such claim. Mr.
17 Howard did not conceal from, or fail to disclose to appointed counsel, at any stage of the
18 proceedings, any fact relevant to any available constitutional claim.

19 Mr. Howard and previous counsel were prevented from discovering and alleging all
20 of the claims raised in this petition by the state's action in failing to disclose all material
21 evidence in possession of its agents.

22 The Nevada Supreme Court has deemed counsel's failure to raise claims in prior
23 proceedings or in a timely manner as sufficient cause to allow new claims to be considered
24 and has disregarded such failures and addressed constitutional claims in the cases of
25

26 ⁹ Compare Bejarano v. State, 122 Nev. 1066, 146 P.3d 265, 272-74 (2006); Mitchell
27 v. State, 122 Nev. 1269, 1276-77 & n.25, 149 P.3d 33, 38 n.25 (2006), with Nika v. State,
28 124 Nev. Adv. Op. 103, slip. op. at 20-24 (2008), Clem v. State, 119 Nev. 615, 622-25,
81 P.3d 521, 526-29 (2003).

1 similarly-situated litigants. Barring consideration of the merits of Mr. Howard's claims
2 would violate the equal protection and due process clauses of the Fourteenth Amendment to
3 the United States Constitution.

4 The Nevada Supreme Court has exercised complete discretion to address
5 constitutional claims, when an adequate record is presented to resolve them, at any stage of
6 the proceedings, despite the default rules contained in NRS 34.726, NRS 34.800, and NRS
7 34.810. A purely discretionary procedural bar is not adequate to preclude review of the
8 merits of constitutional claims. E.g., Valerio v. Crawford, 306 F.3d 742, 774 (9th Cir. 2002)
9 (en banc); Morales v. Calderon, 85 F.3d 1387, 1391 (9th Cir. 1996). Although the Nevada
10 Supreme Court asserted in Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001), that
11 application of the statutory default rules, some of which were adopted in the 1980's, was
12 mandatory, 34 P.3d at 536, the examples cited below establish that the Nevada Supreme
13 Court has always exercised, and continues to exercise, complete discretion in applying them.
14 See also, Ybarra v. Warden, No. 43981, Order Affirming in Part, Reversing in Part, and
15 Remanding (November 28, 2005), Ex. 133,¹⁰ and Ybarra v. Warden, No. 43981, Order
16 Denying Rehearing (February 2, 2006), Ex. 134 (both reiterating that application of the
17 statutory default rules is mandatory despite alleged inconsistencies in application).

18 The Nevada Supreme Court has complete discretion to address constitutional claims,
19 when an adequate record is presented to resolve them, at any stage of the proceedings,
20 despite the default rules contained in NRS 34.726; 34.800; 34.810. The Nevada Supreme
21 Court has disregarded default rules and addressed constitutional claims, at any stage of
22 capital proceedings, in the exercise of its complete discretion to do so.

23 The Nevada Supreme Court has now provided a laboratory example of this disparate,
24 and therefore unconstitutional, treatment in the Rippo case. There, the Supreme Court, on
25 appeal from the denial of post-conviction habeas corpus relief, sua sponte directed the parties
26

27 ¹⁰ Citations to exhibits 101 through 141, refer to exhibits filed with Petitioner's
28 Exhibits in Support of Petition for Writ of Habeas Corpus (Post-conviction) on October
25, 2007.

1 to be prepared to argue an issue arising from a penalty phase jury instruction, regarding
2 whether the jury had to be unanimous in finding that the mitigating evidence outweighed the
3 aggravating factors to preclude death-eligibility. Rippo v. State, No. 44094; Bejarano v.
4 State, No. 44297, Order Directing Oral Argument (March 16, 2006), Ex. 135 at 2. The issue
5 was addressed on the merits by the Court in its decision. Rippo v. State, 122 Nev. ___, 146
6 P.3d 279, 285 (2006). This instructional issue had not been raised in any previous
7 proceeding, cf. NRS 34.810(1)(b),(2), or in the habeas proceedings in the trial court, or in the
8 Nevada Supreme Court itself. The only issue raised with respect to this jury instruction was
9 whether it adequately informed the jury that non-statutory aggravating evidence that was not
10 relevant to the statutory aggravating factors could be considered in the weighing process for
11 finding death-eligibility. Exs. 136 at 30-33; 137; 138 at 31-34; 139 at 30-32; 140 at 20-23,
12 141. The Supreme Court first raised the issue sua sponte in its order directing oral argument
13 in 2006, long after the one year rule, NRS 34.726(1), and the five year rule, NRS 34.800(2),
14 had elapsed from the finality of the conviction and sentence in 1998. Rippo v. State, 113
15 Nev. 1239, 946 P.3d 1017 (1997), cert. denied 524 U.S. 841 (October 5, 1998).

16 Despite the Nevada Supreme Court's repeated claim that it applies its default rules
17 consistently, State v. District Court (Riker), 121 Nev. ___, 112 P.3d 1070, 1074-1082 (2005);
18 Pellegrini v. State, 117 Nev. 860, 880-886, 34 P.3d 519 (2001), there can be no rational
19 dispute that in Rippo the court sua sponte raised and addressed on the merits a claim that was
20 barred under the statutory default rules. If those same rules are applied to bar consideration
21 of the merits of any of Mr. Howard's claims, the constitutional violation based on arbitrarily
22 disparate treatment of similarly-situated litigants will be complete. See, e.g., Bush v. Gore,
23 531 U.S. 98, 106-109 (2000) (per curiam); Village of Willowbrook v. Olech, 528 U.S. 564-
24 565 (2000) (per curiam); Myers v. Ylst, 897 F.2d 917, 921 (9th Cir. 1990) (equal protection
25 requires consistent application of state law to similarly-situated litigants).

26 In Rippo, the court's decision made no mention of the supposedly mandatory default
27 rules. See also, Bejarano v. State, 106 Nev. 840, 843, 801 P.2d 1388 (1990) (on appeal from
28 denial of collateral relief, "[w]e consider sua sponte whether failure to present such

[mitigating] evidence constitutes ineffective assistance”); Bejarano v. Warden, 112 Nev. 1466, 1471 n. 2, 929 P.2d 922 (1996) (addressing claim on merits despite default rules); Bennett v. State, 111 Nev. 1099, 1103, 901 P.2d 676 (1995) (addressing claims asserted to be barred by default rules; “[w]ithout expressly addressing the remaining procedural bases for the dismissal of Bennett’s petition, we therefore choose to reach the merits of Bennett’s contentions” (emphasis supplied); Ford v. Warden, 111 Nev. 872, 886-887, 901 P.2d 123 (1995) (addressing claim of error in court’s mandatory sentence review on direct appeal raised for first time on appeal in second collateral attack, without discussing or applying default rules); Hill v. Warden, 114 Nev. 169, 178-179, 953 P.2d 1077 (1998) (addressing merits claims raised for first time on appeal from denial of third post-conviction petition because claims “of constitutional dimension which, if true, might invalidate Hill’s death sentence and the record is sufficiently developed to provide an adequate basis for review.”); see also, Lane v. State, 110 Nev. 1156, 1168, 881 P.2d 1358 (1994) (vacating aggravating factor finding based on instructional error on mandatory review without noting issue not raised at trial or on appeal); Lord v. State, 107 Nev. 28, 38, 806 P.2d 548 (1991) (“Normally a proper objection is a prerequisite to our considering the issue on appeal. However, since this issue is of constitutional proportions, we elect to address it now.”) (citation omitted); Powell v. State, 108 Nev. 700, 705-06, 838 P.2d 921 (1992) (addressing issue of delay in probable cause determination without indicating that issue not raised at trial or on appeal); Farmer v. Director, Nevada Dept. Of Prisons, No. 18052, Order Dismissing Appeal (March 31, 1988) (addressing two substantive claims on merits (guilty plea involuntary, insufficiency of aggravating circumstances) despite failure to raise on direct appeal), Ex. 104; Farmer v. State, No. 22562, Order Dismissing Appeal (February 20, 1992) (denying claim of improper admission of victim impact evidence on merits despite default), Ex. 105; Feazell v. State, No. 37789, Order Affirming in Part and Vacating in Part, at 5-6 (November 14, 2002) (granting penalty phase relief sua sponte (on appeal of first state habeas corpus petition) on basis of ineffective assistance of post-conviction counsel without requiring petitioner to plead “cause” under NRS 34.726(1) or 34.810)), Ex. 107; Hardison v. State No. 24195, Order of

1 Remand (May 24, 1994) (addressing claims and granting relief despite timeliness and
2 successive petition procedural bars raised by state), Ex. 109; Hill v. State No. 18253, Order
3 Dismissing Appeal (June 29, 1987) (dismissing untimely appeal from denial of second post-
4 conviction relief petition but sua sponte directing trial court to entertain merits of new
5 petition), Ex. 110; Milligan v. State, No. 21504, Order Dismissing Appeal (June 17, 1991)
6 (rejecting two substantive claims on merits (error to admit uncorroborated testimony of
7 accomplice, death penalty cruel and unusual) despite failure to raise on direct appeal), Ex.
8 113; Neuschafer v. Warden No. 18371, Order Dismissing Appeal (August 19, 1987)
9 (addressing merits of claims without discussion of default rules, in case decided without
10 briefing, and in which court expressed “serious doubts” about authority of counsel to pursue
11 appeal, but decided to “elect” to entertain appeal due to “gravity of appellant’s sentence”),
12 Ex. 116; Nevius v. Sumner (Nevius I) Nos. 17059, 17060, Order Dismissing Appeal and
13 Denying Petition (February 19, 1986) (reviewing first and second collateral petitions in
14 consolidated opinion, without addressing default rules as to second petition), Ex. 117; Nevius
15 v. Warden (Nevius II), Nos. 29027, 29028, Order Dismissing Appeal and Denying Petition
16 for Writ of Habeas Corpus (October 9, 1996) (entertaining claim in petition filed directly
17 with Nevada Supreme Court despite failure to raise claim in district court; noting that district
18 court had “discretion to dismiss appellant’s petition”), Ex. 118; Nevius v. Warden
19 (Nevius III), Nos. 29027, 29028, Order Denying Rehearing (July 17, 1998) (same), Ex. 119;
20 Rogers v. Warden, No. 22858, Order Dismissing Appeal (May 28, 1993) (addressing two
21 claims on merits (objection to M’Naughten test for insanity, error to place the burden on
22 defendant to prove insanity) despite successive petition bar and direct appeal bar; claims
23 rejected under law of the case), Ex. 124; Stevens v. State, No. 24138, Order of Remand (July
24 8, 1994) (finding cause on basis of failure to appoint counsel in proceeding in which
25 appointment of counsel not mandatory, cf. Crump v. Warden, 113 Nev. 293, 303, 934 P.2d
26 247 (1997)), Ex. 128; Williams v. State, No. 20732, Order Dismissing Appeal (July 18,
27 1990) (addressing claim in third collateral proceeding on merits without discussion of default
28 rules), Ex. 130; Ybarra v. Director, No. 19705, Order Dismissing Appeal (June 29, 1989)

1 (addressing previously-raised claim without reference to default rules), Ex. 132.

2 The Nevada Supreme Court has disregarded the procedural bar arising from failure
3 to raise claims in earlier proceedings. See Valerio v. Crawford, 306 F.3d 742, 778 (9th Cir.
4 2002); See also, Rippo v. State, 146 P.3d at 285; Bejarano v. Warden, 112 Nev. 1466, 1471
5 n. 2, 929 P.2d 922 (1996) (addressing claim on merits despite default rules); Bennett v. State,
6 111 Nev. 1099, 1103, 901 P.2d 676 (1995) (addressing claims asserted to be barred by
7 default rules; “[w]ithout expressly addressing the remaining procedural bases for the
8 dismissal of Bennett’s petition, we therefore choose to reach the merits of Bennett’s
9 contentions” (emphasis supplied)); Ford v. Warden, 111 Nev. 872, 886-887, 901 P.2d 123
10 (1995) (addressing claim of error in court’s mandatory sentence review on direct appeal
11 raised for first time on appeal in second collateral attack, without discussing or applying
12 default rules); Hill v. Warden, 114 Nev. 169, 178-179, 953 P.2d 1077 (1998) (addressing
13 merits of claims raised for first time on appeal from denial of third post-conviction petition
14 because claims “of constitutional dimension which, if true, might invalidate Hill’s death
15 sentence and the record is sufficiently developed to provide an adequate basis for review.”);
16 Farmer v. State No. 22562, Order Dismissing Appeal (February 20, 1992) (denying claim of
17 improper admission of victim impact evidence on merits despite default), Ex. 105; Feazell
18 v. State, No. 37789, Order Affirming in Part and Vacating in Part, at 5-6 (November 14,
19 2002) (granting penalty phase relief sua sponte (on appeal of first state habeas corpus
20 petition) on basis of ineffective assistance of post-conviction counsel without requiring
21 petitioner to plead or prove “cause” in a successive petition), Ex. 107; Hardison v. State No.
22 24195, Order of Remand (May 24, 1994) (addressing claims and granting relief despite
23 timeliness and successive petition procedural bars raised by state), Ex. 109; Neuschafer v.
24 Warden No. 18371, Order Dismissing Appeal (August 19, 1987) (addressing merits of claims
25 without discussion of default rules, in case decided without briefing, and in which court
26 expressed “serious doubts” about authority of counsel to pursue appeal, but decided to
27 “elect” to entertain appeal due to “gravity of appellant’s sentence”), Ex. 116; Ybarra v.
28 Director No. 19705, Order Dismissing Appeal (June 29, 1989) (addressing previously-raised

1 claim without reference to default rules), Ex. 132.

2 The Nevada Supreme Court has consistently failed to apply the time bar provisions
3 of NRS 34.726, or the rebuttable presumption of NRS 34.800 (2) to capital habeas
4 petitioners. Rippo v. State, 122 Nev. ___, 146 P.3d at 285 (issue raised by Nevada Supreme
5 Court sua sponte in 2006, when conviction and sentence final in 1998); Bejarano v. Warden,
6 112 Nev. 1466, 1471 n. 2, 929 P.2d 922 (1996) (addressing claim on merits despite default
7 rules; successive petition filed approximately five years after direct appeal remittitur issued
8 on January 10, 1989); Ford v. Warden, 111 Nev. 872, 886-887, 901 P.2d 123 (1995)
9 (addressing claim of error in court's mandatory sentence review on direct appeal raised for
10 first time on appeal in second collateral attack, without discussing or applying default rules;
11 successive petition filed November 12, 1991, approximately five years after direct appeal
12 remittitur issued on April 29, 1986); Hill v. State, 114 Nev. 169, 953 P.2d 1077 (1998)
13 (addressing claims on merits filed directly with the Nevada Supreme Court; successive
14 petition claims filed September 19, 1996, approximately ten years after direct appeal
15 remittitur issued on September 5, 1986); Farmer v. State, No. 29120, Order Dismissing
16 Appeal (November 20, 1997) (successive petition filed August 28, 1995, approximately ten
17 years after direct appeal remittitur issued on September 17, 1985), Ex. 106; Jones v.
18 McDaniel, No. 39091, Order of Affirmance (December 19, 2002) (addressing all three-judge
19 panel claims on merits; successive petition filed May 1, 2000, approximately nine years after
20 direct appeal remittitur issued on October 25, 1991), Ex. 112; Milligan v. Warden, No.
21 37845, Order of Affirmance (July 24, 2002) (successive petition filed December 1992,
22 approximately seven years after direct appeal remittitur issued on October 15, 1986), Ex.
23 114; Nevius v. Warden (Nevius II), No. 29027, Order Dismissing Appeal (October 9, 1996)
24 (successive petition filed August 23, 1996, approximately eleven years after direct appeal
25 remittitur issued on December 31, 1985), Ex. 118; Nevius v. Warden (Nevius III), No.
26 29027, Order Denying Rehearing (July 17, 1998) (successive petition filed February 7, 1997,
27 approximately twelve years after direct appeal remittitur issued on December 31, 1985), Ex.
28 119; O'Neill v. State, No. 39143, Order of Reversal and Remand, at 2 (December 18, 2002)

(petition filed “more than six years after entry of judgment of conviction” and issuance of remittitur on direct appeal on March 13, 1996), Ex. 121; Riley v. State, No. 33750, Order Dismissing Appeal (November 19, 1999) (successive petition filed August 26, 1998, approximately seven years after direct appeal remittitur issued on July 18, 1991), Ex. 123; Sechrest v. State, No. 29170, Order Dismissing Appeal (November 20, 1997) (successive petition filed July 27, 1996, approximately eleven years after direct appeal remittitur issued on September 18, 1985), Ex. 126; Williams v. Warden, No. 29084, Order Dismissing Appeal (August 29, 1997) (addressing claim that trial counsel failed to rebut aggravating evidence; claim rejected under law of the case, successive petition filed December, 1992, approximately five years after direct appeal remittitur issued on July 17, 1987), Ex. 131.

The Nevada Supreme Court has also applied inconsistent rules when deciding whether a petitioner can demonstrate “cause” to excuse a procedural default. One particularly striking inconsistency is the court’s treatment of cases in which trial and/or appellate counsel acted as habeas counsel in the first state post-conviction petition. Compare Moran v. State, No. 28188, Order Dismissing Appeal (March 21, 1996) (finding that trial and appellate counsel’s representation in first habeas proceeding did not establish “cause” to review merits of claims in subsequent habeas proceeding), Ex. 115, with Nevius v. Warden (Nevius II), Nos. 29027, 29028, Order Dismissing Appeal and Denying Petition (October 9, 1996) (Petitioner “arguabl[y] established “cause” under same circumstances), Ex. 118; Wade v. State, No. 37467, Order of Affirmance (October 11, 2001) (holding sua sponte that petitioner had established “cause” to allow filing of successive petition in same circumstances), Ex. 129; Hankins v. State, No. 20780, Order of Remand (April 24, 1990) (remanding sua sponte for appointment of new counsel on first habeas petition due to representation by same office at sentencing and in post-conviction proceeding), Ex. 108.

The Nevada Supreme Court has reached inconsistent results on the issue of whether a procedural rule that does not exist at the time of a purported default may preclude the review of the merits of meritorious constitutional claims. Compare Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001) (applying NRS 34.726 to preclude review of merits of

1 successive habeas petition when one-year default rule announced for the first time in that
2 case); Jones v. McDaniel, No. 39091, Order of Affirmance (December 19, 2002) (same), Ex.
3 112, with State v. Haberstroh, 119 Nev. 173, 180-181, 69 P.3d 676, 681-82 (2003) (refusing
4 to retroactively apply rule that parties may not stipulate not to apply procedural default rules);
5 Smith v. State, No. 20959, Order of Remand (September 14, 1990) (refusing to apply default
6 rule that was not in existence at the time of the purported default), Ex. 127; Rider v. State,
7 No. 20925, Order of Remand (April 30, 1990) (same), Ex. 122.

8 The Nevada Supreme Court has taken opposite positions on whether application of
9 procedural default rules is waivable by the State. State v. Haberstroh, 119 Nev. 173, 180-
10 181, 69 P.3d 676, 681-682 (2003), holding that parties could not stipulate to overcome state's
11 procedural defenses, but construing a stipulation as establishing cause to overcome default
12 rules without identifying any theory of cause that such a stipulation would establish or how
13 it existed before the stipulation was entered; contra Doleman v. State, No. 33424, Order
14 Dismissing Appeal (March 17, 2000) (finding stipulation with state to allow adjudication of
15 merits of claim ineffective because of petitioner's failure to seek rehearing on claim and
16 failing to find "cause" on the basis of the stipulation), Ex. 103. See also, Jones v. State, No.
17 24497, Order Dismissing Appeal (August 28, 1996) (holding challenge to jurisdiction of
18 court waived by guilty plea), Ex. 111. The definition of cause is completely amorphous,
19 because it is whatever the Nevada Supreme Court says it is on any particular occasion. See
20 also, Leslie v. State, 118 Nev. 773, 59 P.3d 440, 445 (2002) (sua sponte expanding definition
21 of miscarriage of justice exception to default rules to include "innocence" of aggravating
22 factor); contra Colwell v. State, 118 Nev. 807, 59 P.3d 463 (2002)(case decided same day
23 as Leslie with the same aggravating factor and similar factual circumstances (a robbery case)
24 but failing to take notice of petitioner's "innocence" of aggravating factor) (verdict form
25 showing conviction of random and motiveless aggravating factor) Ex. 102; Rogers v.
26 Warden, No. 36137, Order of Affirmance, at 5-6 (May 13, 2003) (raising miscarriage of
27 justice exception sua sponte but failing to analyze petitioner's challenge to aggravating
28 circumstance under actual innocence standard), Ex. 125. See also Feazell v. State, No.

1 37789, Order Affirming in Part and Vacating in Part (November 14, 2002) (sua sponte
2 reaching both theory of cause not litigated in District Court or Supreme Court, and
3 substantive issue, post-Pellegrini), Ex. 107.

4 The State has admitted that the Nevada Supreme Court has disregarded procedural
5 default rules on grounds that cannot be reconciled with a theory of consistent application of
6 procedural default rules. Bennett v. State, No. 38934, Respondent's Answering Brief at 8
7 (November 26, 2002) ("upon appeal the Nevada Supreme Court graciously waived the
8 procedural bars and reached the merits" (emphasis supplied)), Ex. 101; Nevius v. McDaniel,
9 D. Nev., No. CV-N-96-785-HDM-(RAM), Response to Nevius' Supplemental Memorandum
10 at 3 (October 18, 1999) (Nevada Supreme Court noted issue raised only on petition for
11 rehearing in successive proceeding, "but it did not procedurally default the claim. Instead,
12 'in the interests of judicial economy' and, more than likely, out of its utter frustration with
13 the litigious Mr. Nevius and to get the matter out of the Nevada Supreme Court once and for
14 all, the court addressed the claim on its merits"), Ex. 120.

15 Default bars that can be "graciously waived," or disregarded out of "frustration," are
16 not "rules" that bind the actions of courts at all, but are the result of mere exercises of
17 unfettered discretion; and such impediments cannot constitutionally bar review of meritorious
18 claims. Lonchar v. Thomas, 517 U.S. 314, 323 (1996) ("There is no such thing in the Law,
19 as Writs of Grace and Favour issuing from the Judges.' Opinion on the Writ of Habeas
20 Corpus, Wilm. 77, 87, 97 Eng. Rep. 29, 36 (1758) (Wilmot, J.)."). The Nevada Supreme
21 Court's practices make review of the merits of constitutional claims a matter of "grace and
22 favor," and they cannot constitutionally be applied to bar consideration of Mr. Howard's
23 claims.

24 The Nevada Supreme Court could not apply any supposed default rules to bar
25 consideration of Mr. Howard's claims when it has failed to apply those rules to similarly-
26 situated petitioners, and thus has failed to provide notice of what default rules will be
27 enforced, without violating the equal protection and due process clauses of the Fourteenth
28 Amendment. Bush v. Gore, 531 U.S. 98, 104-109 (2000) (per curiam); Village of

1 Willowbrook v. Olech, 528 U.S. 562, 564-565 (2000) (per curiam); Ford v. Georgia, 498
2 U.S. 411, 425 (1991).

3 Mr. Howard is filing this petition more than one year following the filing of the
4 decision on direct appeal and issuance of the remittitur.

5 Mr. Howard alleges that any delay in filing this petition is not his “fault” within the
6 meaning of NRS 34.726(2). Mr. Howard has been continuously represented by counsel since
7 the beginning of the proceedings in this case, and counsel have been responsible for
8 conducting the litigation. Mr. Howard has not committed any “fault,” within any rational
9 meaning of that term as used in NRS 34.726(1), in connection with the failure to raise any
10 issue in the litigation. Any failure to raise these claims has been the fault of counsel, which
11 is not attributable to Mr. Howard under Pellegrini v. State, 117 Nev. 860, 36 P.3d 519, 526
12 n. 10 (2001); see also Strickland v. Washington, 466 U.S. 668 (1984).

13 Mr. Howard alleges that NRS 34.726 cannot properly or constitutionally be applied
14 to bar consideration of the merits of his claims.

15 NRS 34.726 has not been applied consistently to bar consideration of the claims of
16 similarly-situated litigants. Applying NRS 34.726 to bar consideration of Mr. Howard’s
17 claims would violate the due process and equal protection provisions of the Fourteenth
18 Amendment.

19 NRS 34.726 cannot properly or constitutionally be applied to this petition, because the
20 legislature did not intend it to apply to successive petitions. In holding that the section does
21 apply to successive petitions, the Nevada Supreme Court’s decision in Pellegrini v. State, 117
22 Nev. 860, 36 P.3d 519 (2001), arbitrarily ignored its own statutory construction precedents
23 in order to apply a new procedural bar in capital cases.

24 NRS 34.726 was enacted in 1993 as part of legislation to consolidate the former
25 statutory post-conviction procedure under Chapter 177 and the habeas procedure under
26 Chapter 34. The legislature was assured that the legislation would have the limited effect of
27 requiring the trial court to hear all the collateral proceedings, and of consolidating the
28 procedures.

1 The proposed amendments combining the two statutory collateral procedures were
2 generated by a committee created by the Nevada Supreme Court to study the post-conviction
3 process. Nevada Legislature, 66th Sess., Assembly Committee on Judiciary, Minutes at 3
4 (February 6, 1991).¹¹ The chair of the committee, who was staff counsel to the Chief Justice,
5 explained to the Assembly that the bill was intended to eliminate the chapter 177
6 proceedings. Those proceedings would be “unnecessary” if a related constitutional
7 amendment was approved to allow the district court, in which the trial was conducted, to
8 exercise habeas jurisdiction, rather than restricting habeas jurisdiction to the district in which
9 the Mr. Howard was incarcerated. Id. District Judge Fondi emphasized the problems of
10 increased workload in the district of confinement due to the rising prison population, and
11 stressed the propriety of habeas cases being heard in the original trial district. Id. at 4. Judge
12 Fondi represented that the proposed procedure “would lead to a simplification of the process,
13 judicial economy and the betterment of not only the courts but also the individuals seeking
14 relief and their attorneys.” Id. David F. Sarnowski, the Chief Deputy Attorney General for
15 the Criminal Justice Division, argued in favor of the amendment that “[t]he best forum for
16 the consideration of any claim is in the original trial court. . . .” Id. at 5. In response to the
17 question “who would be ahead and who would be behind?” under the proposed amendments,
18 the staff counsel to the Chief Justice explicitly represented to the assembly committee, “the
19 system would be ahead and no one would be behind. No access to the courts would be cut
20 off, but rather the process was being simplified by eliminating a redundant procedure.” Id.
21 (emphasis supplied). Following these representations, the Assembly committee
22 recommended passage of the bill. Id. at 6-7. The representations made to the Senate were
23 equally unequivocal. Staff counsel to the Chief Justice again characterized the proposed
24 amendments as simply making “a two-tier system for post-conviction relief into a one-tier
25

26 ¹¹ The legislative history of the provision is in the 1991 legislative materials,
27 although the statutory amendments took effect on January 1, 1993, because of the
28 necessity of amending the constitution to allow the statutory change. Nev. Const. art. 6,
sec. 6(1); art. 16, sec. 1(1).

1 system.” Nevada Legislature, 66th Sess., Senate Committee on Judiciary, Minutes at 3
2 (March 20, 1991). He explicitly “affirmed” to the Senate committee that “a defendant would
3 lose no procedural safeguards currently afforded him under Chapter 177” and that the bill
4 only “removes process for the sake of process.” Id. Most important, Chief Deputy Attorney
5 General Sarnowski, again testified on behalf of his office in support of the bill, which he
6 represented “as doing nothing more than transferring jurisdiction where it should be: in the
7 court where the case was originally heard.” Id. (Emphasis supplied). Following these
8 representations, the Senate committee recommended the bill for passage. Id. at 4.

9 In Pellegrini, the Court recognized that its interpretation of NRS 34.726 would add
10 a new procedural hurdle to successive petitions that had not existed under prior law, 34 P.3d
11 at 528, but it did not apply its normal rule that a statute should be interpreted consistently
12 with the legislative intent even if the plain language appeared to contradict that interpretation.
13 In Moody v. Manny’s Auto Repair, 110 Nev. 320, 325, 871 P.2d 935 (1994), the Nevada
14 Supreme Court construed a statute as codifying a court-created limitation on a rule of civil
15 liability, rather than as a codification of the rule itself, although it was not “explicitly stated”
16 in the statute, relying specifically upon the legislative history. See also, Nevada Power
17 Company v. Haggerty, 115 Nev. 353, 367 989 P.2d 870 (1999) (referring to legislative
18 history in construing statutory term); Banegas v. S.I.I.S., 117 Nev. 222, 19 P.3d 245, 249
19 (2001) (reviewing entire statute and legislative history to construe apparently unambiguous
20 phrase); Advanced Sports Information, Inc. v. Novotnak, 114 Nev. 336, 339-341, 956 P.2d
21 806 (1998) (reviewing legislative history to determine that term “product” ambiguous,
22 relying on principle that legislative intent prevails over “literal sense” of terms, and
23 concluding that “product” includes intangible services).

24 In Guinn v. Legislature, 119 Nev. 460, 76 P.3d 22 (2003) (on denial of rehearing),
25 decided after Pellegrini, the same court was faced with two constitutional provisions (the
26 requirements of funding education and of a legislative super-majority to impose taxes) that
27 were “clear on [their] face” yet still subject to “conflicting interpretations.” 76 P.3d at 29.
28 In construing the provisions, the Court resorted to “extrinsic evidence” to determine

1 legislative intent based upon the fact that the voters were not informed of the conflicting
2 interpretations before the passage of the constitutional provision. Id. at 29-30.
3 Consequently, the court in Guinn resorted to a review of legislative history - focusing
4 specifically upon the assurances made by proponents of the constitutional provision, id. at
5 25-27, in order to discern the intent of the legislation. Id. at 30. In particular, the court
6 focused upon consequences of the legislation that its proponents failed to warn about to
7 conclude that the super-majority requirement for tax legislation had to yield to the education
8 funding requirement. Id. 29-30. Had the court applied the same neutral principles of
9 statutory construction that it applied in Guinn to the Pellegrini case, it could not rationally
10 have concluded that NRS 34.726 applied to successive petitions.

11 The Court's failure to apply neutral principles in Pellegrini, and the resulting
12 unanticipated creation and retroactive application of a new default rule, makes the
13 application of NRS 34.726 to Mr. Howard's case impermissible under the due process and
14 equal protection guarantees of the state and federal constitutions. Bush v. Gore, 531 U.S. at
15 104-109; Village of Willowbrook v. Olech, 528 U.S. at 562-565; Myers v. Ylst, 897 F.2d
16 417, 421 (9th Cir. 1990); Hicks v. Oklahoma, 447 U.S. 343, 346 (1980); see Hoffman v.
17 Arave, 236 F.3d 523, 531 (9th Cir. 2001) ("if a state procedural rule frustrates the exercise
18 of a federal right, that rule is 'inadequate' to preclude federal courts from reviewing the
19 merits of the federal claim . . . [and] federal courts may reach the merits of the underlying
20 claim"); Williams v. Lockhart, 873 F.2d 1129, 1131-32 (8th Cir.), cert. denied, 493 U.S. 942
21 (1989) ("new [state] rule designed to thwart the assertion of federal rights" is not adequate,
22 and its violation will not be allowed to defeat federal jurisdiction).

23 Mr. Howard is "actually innocent" of the death penalty and this issue is therefore
24 appropriately considered in this proceeding. Leslie v. State, 118 Nev. 773, 779-80, 59 P.3d
25 440, 445 (2002). As set forth above, both aggravating circumstances filed against Mr.
26 Howard are illegal and were inappropriately applied at trial. Absent these aggravating
27 circumstances Mr. Howard would not have been sentenced to death; a fundamental
28 miscarriage of justice has clearly occurred. Id. The sentence of death must be vacated. Id.


1 at 447. See also State v. Haberstroh, 119 Nev. 173, 69 P.3d 676 (2003).

2 **CONCLUSION**

3 For the foregoing reasons, Mr. Howard respectfully requests that this Court deny the
4 State's motion to dismiss his petition for writ of habeas corpus. In the alternative, Mr.
5 Howard requests that this Court hold the State's motion in abeyance pending discovery and
6 an evidentiary hearing in order to show cause and prejudice to overcome the procedural
7 default bars raised by the State.

8 DATED this 24th day of February, 2009.

9 FRANNY A. FORSMAN
10 Federal Public Defender

11 
12 MICHAEL B. CHARLTON
13 Assistant Federal Public Defender
14 Nevada Bar No. 11025C

15 Attorneys for Petitioner
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1 List of Attached Exhibits in Support of Opposition to Motion to Dismiss

- 2 1. State of Nevada v. Gregory Neal Leonard, Eighth Judicial District Court, Case No.
3 C126285, State's Response and Motion to Dismiss Defendant's Petition for Writ of
4 Habeas Corpus (Post-Conviction) (excerpt), January 22, 2008
- 5 2. State of Nevada v. Samuel Howard, Eighth Judicial District Court, Case No.
6 C126285, Notice of Intent to Seek Death Penalty, January 7, 1983
- 7 3. State of Nevada v. Samuel Howard, Eighth Judicial District Court, Case No.
8 C126285, Supplemental Notice of Intent to Seek Death Penalty, January 12, 1983
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EXHIBIT 1

EXHIBIT 1

1 **RSPN**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **STEVEN S. OWENS**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #004352**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **THE STATE OF NEVADA,**
15 **Plaintiff,**

16 **-vs-**

17 **GREGORY NEAL LEONARD,**
18 **#1214424**
19 **Defendant.**

20 **CASE NO: C126285**
21 **DEPT NO: II**

22 **STATE'S RESPONSE AND MOTION TO DISMISS DEFENDANT'S PETITION**
23 **FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**
24 **(Death Penalty Habeas Corpus Case)**

25 **DATE OF HEARING: 3/13/08**
26 **TIME OF HEARING: 10:30 AM**

27 **COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through**
28 **STEVEN S. OWENS, Chief Deputy District Attorney, and hereby submits the attached**
29 **Points and Authorities in Opposition to Defendant's Petition for Writ of Habeas Corpus**
30 **(Post-Conviction) (Death Penalty Habeas Corpus Case).**

31 **This RESPONSE is made and based upon all the papers and pleadings on file herein,**
32 **the attached points and authorities in support hereof, and oral argument at the time of**
33 **hearing, if deemed necessary by this Honorable Court.**

34 **///**

35 **///**

36 **///**

POINTS AND AUTHORITIES
STATEMENT OF THE CASE

Original Proceedings in State Court

On February 28, 1995, an Information was filed charging Gregory Neal Leonard (hereinafter "Defendant") with one count each of BURGLARY (Felony - NRS 205.060), ROBBERY (Felony - NRS 200.380), and MURDER (Open) (Felony - NRS 200.010, 200.030). On March 1, 1995, Defendant pled Not Guilty to all three charges. The State filed a Notice of Intent to Seek Death Penalty on March 1, 1995. Defendant's Exhibit ("Def't's Ex."), Ex. 1. At the conclusion of the jury trial on August 14, 1997, Defendant was found GUILTY of Robbery and First-Degree Murder. In addition, the same trial jury found that there was one (1) aggravating circumstance in connection with the commission of the murder; namely, the murder was committed while Defendant was engaged in the commission of or an attempt to commit a robbery. On August 18, 1997, a unanimous jury determined that Defendant should be punished by death as to the First-Degree Murder conviction after finding no mitigating circumstances sufficient to outweigh the aggravating circumstance.

On September 25, 1997, Defendant was adjudged Guilty of Robbery and Murder of the First-Degree, and subsequently sentenced to Fifteen (15) years for Robbery and Death for Murder of the First-Degree. An Amended Judgment of Conviction was filed on October 10, 1997. Def't's Ex. 155.

Direct Appeal

On September 30, 1997, Defendant filed a Notice of Appeal. On December 9, 1998, the Nevada Supreme Court rejected Defendant's contentions and affirmed Defendant's Judgment of Conviction and sentence in SC31151. The Remittitur was issued on October 26, 1999. The opinion was published in Leonard v. State, 114 Nev. 1196, 969 P.2d 288 (1998). Defendant filed a Petition for Rehearing on December 24, 1998. On February 4, 1999, Defendant's petition for rehearing was denied.

Federal Proceedings in SC No. 31151

On February 11, 1999, Defendant filed a motion for stay of remittitur pending application for certiorari to the United States Supreme Court. On March 4, 1999, Defendant's motion was granted and Remittitur was stayed.

Defendant's petition for certiorari in the United States Supreme Court was denied on October 4, 1999. See Leonard v. State, 528 U.S. 828, 120 S.Ct. 81 (1999). Remittitur for Defendant's direct appeal was issued on October 26, 1999.

First Petition for Writ of Habeas Corpus (State)

On October 26, 1999, Defendant filed a Pro Per Petition for Writ of Habeas Corpus (Post-Conviction). Counsel was subsequently appointed, and on April 16, 2001, Defendant filed a Supplemental Points and Authorities in support of his Petition. Defendant alleged eight grounds for relief, most of his claims alleged ineffective assistance of trial and appellate counsel. The State filed its Opposition to Defendant's Points and Authorities on August 31, 2001. Defendant filed a Reply to State's Opposition on February 7, 2002. On April 16, 2002, the district court issued its Findings of Fact and Conclusion of Law denying Defendant's petition. See Exhibit "1". Defendant filed a Notice of Appeal on May 7, 2002. On August 20, 2003, the Nevada Supreme Court affirmed the district court's denial of Defendant's petition in case SC39627. See Exhibit "2".

Federal Habeas Proceeding

On October 15, 2003, Defendant petitioned the United States District Court for Writ of Habeas Corpus and Motion to Appoint Counsel and request to proceed in forma pauperis in case number 2:03-cv-01293-LRH-RJJ. Defendant filed an Amended Petition for Writ of Habeas Corpus on July 31, 2007. On August 30, 2007, the U.S. District Court ordered the federal proceedings stayed and his petition held in abeyance pending exhaustion of State remedies.

1 shown actual prejudice. As explained above, to avoid procedural default under NRS
2 34.810(2), Defendant has the burden of pleading and proving specific facts that demonstrate
3 both good cause for his failure to present his claims in earlier proceedings and actual
4 prejudice. NRS 34.810(3); Hogan v. Warden, 109 Nev. 952, 860 P.2d 710, (1993); Phelps,
5 104 Nev. at 656, 764 P.2d at 1303. Defendant has not done so, and therefore, his petition
6 should be dismissed.

7 **III. DEFENDANT'S CLAIMS ARE FURTHER PRECLUDED BY THE**
8 **DOCTRINE OF THE LAW OF THE CASE.**

9 Where an issue has already been decided on the merits by the Nevada Supreme Court,
10 the Court's ruling is law of the case, and the issue will not be revisited. McNelson v. State,
11 115 Nev. 396, 415, 990 P.2d 1263, 1275 (2000), (citing Pertgen v. State, 110 Nev. 554, 557-
12 58, 875 P.2d 361, 363 (1994), abrogated on other grounds by Pellegrini v. State, 117 Nev.
13 860, 34 P.3d 519 (2001)). "The doctrine of the law of the case cannot be avoided by a more
14 detailed and precisely focused argument subsequently made after reflection upon the
15 previous proceedings." Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975); see also
16 McNelson, 115 Nev. at 415, 990 P.2d at 1275.

17 Many of the issues in the instant Petition were raised in Defendant's direct appeal,
18 which the Nevada Supreme Court denied on the merits. See Leonard v. State, 114 Nev.
19 1196, 1207-08, 969 P.2d 288, 295-6. Accordingly, the Court's ruling of those issues is the
20 law of the case and should not be revisited.

21 However, even assuming, *arguendo*, that Defendant's petition was not time-barred or
22 successive, and this Court was not prevented from reaching the merits of Defendant's claims
23 by the law of the case, as more fully discussed below, Defendant's claims are without merit.

24 **IV. CLAIM 1: DEFENDANT IS ENTITLED TO A NEW PENALTY**
25 **HEARING BASED ON THE NEVADA SUPREME COURT'S DECISION**
26 **IN MCCONNELL.**

27 In McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004), the Nevada Supreme
28 Court held that it is unconstitutional to use an underlying felony to both establish first-degree
murder and to aggravate the murder to capital status. Recently, the Nevada Supreme Court

1 announced that McConnell had set forth a new rule of substantive law that applied
2 retroactively. Bejarano v. State, 122 Nev. Adv. Op. No. 92 (2006). After announcing the
3 retroactivity of McConnell, the Court then struck two of the aggravating circumstances in
4 Bejarano's case, re-weighed the remaining ones against the mitigating circumstances, and
5 determined that the jury would still have sentenced Bejarano to death. Id.; see also Rippo v.
6 State, 146 P.3d 279 (2006) (holding the death penalty intact after striking three aggravators
7 but concluding that jury still would have sentenced defendant to death based on remaining
8 aggravators.)

9 In the instant matter, the jury found Defendant guilty of one count each of Robbery
10 and First-Degree Murder, and then subsequently sentenced him to death. The jury
11 determined that only one aggravating circumstance was present; namely, that the murder was
12 committed during the commission of the robbery. As this aggravator could have been used
13 to both establish first degree murder and aggravate the murder to capital status, in violation
14 of McConnell, Defendant is entitled to a new penalty hearing and that reweighing is not an
15 option because there are no valid aggravators remaining. However, the new case law in no
16 way gives good cause for this court, or any other court, to hear Defendant's successive and
17 time-barred claims that relate to the guilt phase of his proceedings.

18 **V. CLAIMS 2 and 5: DEFENDANT'S JURY VENIRE CONSISTED OF A**
19 **FAIR CROSS-SECTION OF THE COMMUNITY.**

20 Defendant contends that his conviction and sentence are invalid because: (1) the jury
21 venire did not represent a fair cross-section of African-Americans in the community, (2) the
22 State's use of its peremptory challenge to remove the only African-American venire person
23 violated his constitutional rights, and (3) the State's reasoning for the peremptory challenge
24 was pretextual. However, as the Nevada Supreme Court has already ruled on these issues,
25 they were barred from reconsideration by the law of the case doctrine. Hall, 91 Nev. at 315,
26 535 P.2d at 798. During voir dire, defense counsel objected to the racial composition of the
27 jury and challenged the State's ability to strike the only African-American venire person
28 under Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712 (1986). The State used its

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CONCLUSION

Based on the foregoing, the State requests this Court deny Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

DATED this 22nd day of January, 2008.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY 
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352

1 **0232**

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4 Nevada Bar No. 00014

5 MIKE CHARLTON

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15 Attorneys for Petitioner

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 SAMUEL HOWARD,)

19 Petitioner,)

20 v.)

21 E.K. McDANIEL, Warden, and)
22 CATHERINE CORTEZ MASTO,)
23 Attorney General for the State)
24 of Nevada,)

25 Respondents.)

Case No. C53867

Dept. No. XVII

26 **AMENDED PETITION FOR WRIT**
27 **OF HABEAS CORPUS**
28 **[POST-CONVICTION]**

Date of Hearing: 6-11-09
Time of Hearing: 8:00 AM

(Death Penalty Case)

29 Petitioner, Samuel Howard, hereby files this Amended Petition for Writ of Habeas
30 Corpus (Post-Conviction) pursuant to NRS 34.720, et seq. Mr. Howard alleges that he is
31 being held in custody in violation of the Eighth and Fourteenth Amendments of the
32 Constitution of the United States and Article 1, Sections 6 and 8, and Article 4, Section 21
33 of the Nevada Constitution.

34 **PROCEDURAL ALLEGATIONS**

35 Mr. Howard is currently in the custody of the State of Nevada at the Ely State Prison
36 in Ely, Nevada, pursuant to a state court judgment of conviction and sentence of death. The
37 conviction and sentence were entered on May 6, 1983, in the Eighth Judicial District Court,
38 Clark County, Nevada, by the Honorable John F. Mendoza, Case No. C53867. 2 ROA

FILED

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CLERK OF DISTRICT COURT

1 349.^{1, 2} Respondent, E.K. McDaniel, is the Warden of Ely State Prison and Catherine Cortez
2 Masto is the Attorney General of the State of Nevada. The Respondents are sued in their
3 official capacities.

4 On June May 25, 1981, a Clark County Grand Jury indicted Mr. Howard on two
5 counts of robbery with the use of a deadly weapon, and one count of murder in the first
6 degree with use of a deadly weapon. 1 ROA 1-6. Mr. Howard was arrested in California and
7 extradited to Las Vegas, Nevada in November of 1982. He entered his plea of not guilty on
8 November 30, 1982. 1 ROA 17.

9 On April 22, 1983, the jury found Mr. Howard guilty of all charges: counts one and
10 two, robbery with the use of a deadly weapon, and count three, first degree murder with the
11 use of a deadly weapon. 2 ROA 293, Ex. 144³. Following the penalty hearing on May 2-4,
12 1983, the jury returned a sentence of death on the first-degree murder charge. 2 ROA 294.

13 The Nevada Supreme Court affirmed Mr. Howard's conviction and sentence on
14 December 15, 1986. Howard v. State (Howard I), 102 Nev. 572, 729 P.2d 1341 (1986), Ex.
15 145.⁴ On March 24, 1987, rehearing was denied. The United States Supreme Court denied

17 ¹ The record on appeal (ROA) cited to herein references the appendix filed in
18 1992, Nevada Supreme Court Docket No. 23386, unless otherwise noted.

19 ² On September 20, 1983, a judgment of conviction was entered, sentencing Mr.
20 Howard to fifteen years with a consecutive fifteen years on each of the two robberies with use of a
21 deadly weapon.

22 ³ Exhibits 101 through 163 were filed on October 25, 2007, in support of Mr.
23 Howard's Petition for Writ of Habeas Corpus (Post-Conviction), and are incorporated herein by
24 reference. Exhibit references beginning with 164, et. seq., are being filed contemporaneously with
25 the instant Amended Petition.

26 ⁴ On direct appeal, counsel raised the following issues:
27 1. Whether the appellant was afforded the effective assistance of counsel?
28 2. Whether the trial court erred when it refused to sever Counts I [sic] from
Counts II and III?
3. Whether the trial court erred when it refused to grant an evidentiary hearing
regarding the voluntariness of statements made by the appellant?
4. Whether the trial court erred when it failed to give an instruction to the jury
that the testimony of an accomplice ought to be viewed with distrust?
5. Whether the trial court erred when it failed to give an instruction directing the
jury to consider Dawana Thomas an accomplice as a matter of law?
6. Whether the trial court erred when it failed to prohibit the district attorney
from using three aggravating circumstances to which objections were raised?

1 Mr. Howard's Petition for Writ of Certiorari on October 5, 1987.

2 On October 28, 1987, Mr. Howard filed a Petition for Post-Conviction Relief in the
3 Eighth Judicial District Court for the State of Nevada. The district court denied the petition
4 and on November 7, 1990, the Nevada Supreme Court dismissed the appeal. Howard v. State
5 (Howard II), 106 Nev. 713, 800 P.2d 175 (1990), Ex. 146.⁵ While that proceeding was
6 pending, Mr. Howard filed a federal petition for habeas relief in the United States District
7 Court for the District of Nevada (CV-N-88-0264-ECR). On June 23, 1988, the federal case
8 was dismissed without prejudice.

9 On May 1, 1991, Mr. Howard filed another federal habeas corpus petition in the
10 United States District Court, District of Nevada (CV-N-91-196-ECR). Mr. Howard's
11 petition was a "mixed" petition, and on October 16, 1991, the United States District Court
12 entered an order granting Mr. Howard's request to stay the case and go back to state court
13 for exhaustion purposes.

14 Mr. Howard returned to state court and filed an amended petition for post-conviction
15 relief in the Eighth Judicial District Court on December 16, 1991. The court denied the
16 petition and on March 19, 1993, the Nevada Supreme Court dismissed his appeal. Ex. 164.⁶

17
18 7. Whether the trial court erred when it failed to instruct the jury regarding
sympathy and mercy?

19 5 On appeal from the dismissal of post-conviction relief, counsel raised the
20 following issues:

- 21 I. Howard was denied reasonably effective assistance of counsel at trial.
A. Improper closing argument denied Howard a fundamentally fair trial
as a result of ineffective assistance of counsel.
22 B. The failure to present substantial mitigating factors was the result of
ineffective assistance of counsel.
23 II. Howard was denied reasonable effective assistance of counsel on appeal.
24 III Howard was [sic] not waived the right to receive effective assistance of
counsel.
25 IV The cumulative effect of the conflict of interest and ineffective assistance of
counsel deprived Howard of numerous Constitutional rights and thus a fair trial.

26 6 The Nevada Supreme Court ordered the appeal of the denial of Mr. Howard's
27 second post conviction petition be decided without briefing or argument. The issues raised by
counsel in Mr. Howard's second post conviction petition were:

28 Ground One: Petitioner was denied a fundamentally fair trial by the numerous instances of
prosecutorial misconduct which occurred during trial, including, but not limited to: (1) tampering

1 The United States Supreme Court denied certiorari on October 4, 1993.

2 On December 8, 1993, Mr. Howard returned to the United States District Court and
3 filed a pro se Petition for Writ of Habeas Corpus (CV-S-93-1209-LDG(LRL)). On
4 September 2, 1996, the court dismissed the petition and required Mr. Howard to file a second
5 amended petition that stated his claims in a non-conclusory manner.

6 On January 27, 1997, Mr. Howard filed a Second Amended Petition for Writ of
7 Habeas Corpus in case no. CV-S-93-1209-LDG(LRL). On September 23, 2002, the court
8 entered an order staying the Second Amended Petition to allow Mr. Howard to return to state
9 court to exhaust his pending federal habeas claims.

10 On December 20, 2002, Mr. Howard filed his third state petition for post-conviction
11 relief. On October 23, 2003, the state court dismissed the petition on procedural grounds.
12 On December 1, 2004, the Nevada Supreme Court entered an order affirming the lower
13 court's dismissal of Mr. Howard's petition. Ex. 147. On December 23, 2005, the United
14 States District Court lifted its stay and directed the Clerk to file Mr. Howard's Third
15 Amended Petition for Writ of Habeas Corpus. Ex. 148. This federal habeas corpus petition
16 is currently pending in the United States District Court for the District of Nevada. (Howard
17 v. McDaniel, Case No. 2:93-cv-01209-LRH-(LRL)).

18 Mr. Howard another petition on October 25, 2007, within one year of the Nevada
19 Supreme Court's decisions in Rippo v. State, 122 Nev. ___, 146 P.3d 279, 284 (2006), and

20 _____
21 with a juror which resulted in a motion for mistrial by defendant which was denied; (2) expression
22 of personal belief and personal endorsement of the death penalty; (3) reference to the improbability
23 of rehabilitation, to the possibility of escape and future unknown killings, comparison of the
defendant's life to that of the victim, comparison of defendant to a notorious murderer, and reference
to the notion that the community would benefit if defendant received the death penalty.

24 Ground Two: Petitioner was denied effective assistance of counsel in violation of the sixth and
fourteenth amendments of the U.S. Constitution and Article I, section 8 of the Nevada Constitution
25 where his trial counsel failed to explain to him what it meant to proffer evidence of mitigating
circumstances at the penalty phase.

26 Ground Three: Petitioner was denied his right to a speedy trial in violation of the sixth amendment.

27 Ground Four: The cumulation of all the defects occurring at trial and on direct appeal, including
28 those previously raised all served to deprive Petitioner of a fair trial in violation on the fifth and
fourteenth amendment of the U.S. Constitution and Article I, section 8 of the Nevada Constitution.

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Appellant,

VS.

E.K. McDANIEL, WARDEN, and
CATHERINE CORTEZ MASTO,
ATTORNEY GENERAL FOR THE STATE
OF NEVADA,

Respondents.

Electronically Filed
May 12 2011 04:43 p.m.
Case No. 57469 Tracie K. Lindeman

APPELLANT'S APPENDIX

Appeal from Order Denying Petition
for Writ of Habeas Corpus (Post-Conviction)
Eighth Judicial District Court, Clark County

VOLUME 9 OF 14

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(702) 388-6577
[Mike Charlton@fd.org](mailto:Mike_Charlton@fd.org)

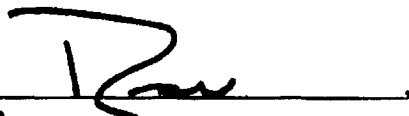
Attorneys for Appellant


bars are plainly presented in NRS 34.726(1) and NRS 34.810(3). Therefore, Howard had adequate notice of when procedural bars apply, and the district court did not err in dismissing his petition on this ground.

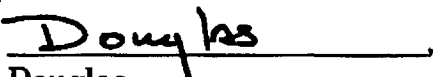
Finally, Howard contends that he was entitled to an evidentiary hearing because he raised claims under the due process and equal protection clauses of the Fourteenth Amendment. Howard was not entitled to an evidentiary hearing because he failed to allege a sufficient basis to overcome the procedural bars of NRS 34.726, NRS 34.800, and NRS 34.810.²³ Therefore, the district court did not err in dismissing his petition without a hearing.

Having concluded that Howard failed to demonstrate that the district court erred in denying his post-conviction petition for a writ of habeas corpus, we

ORDER the judgment of the district court AFFIRMED.

 J.
Rose

 J.
Maupin

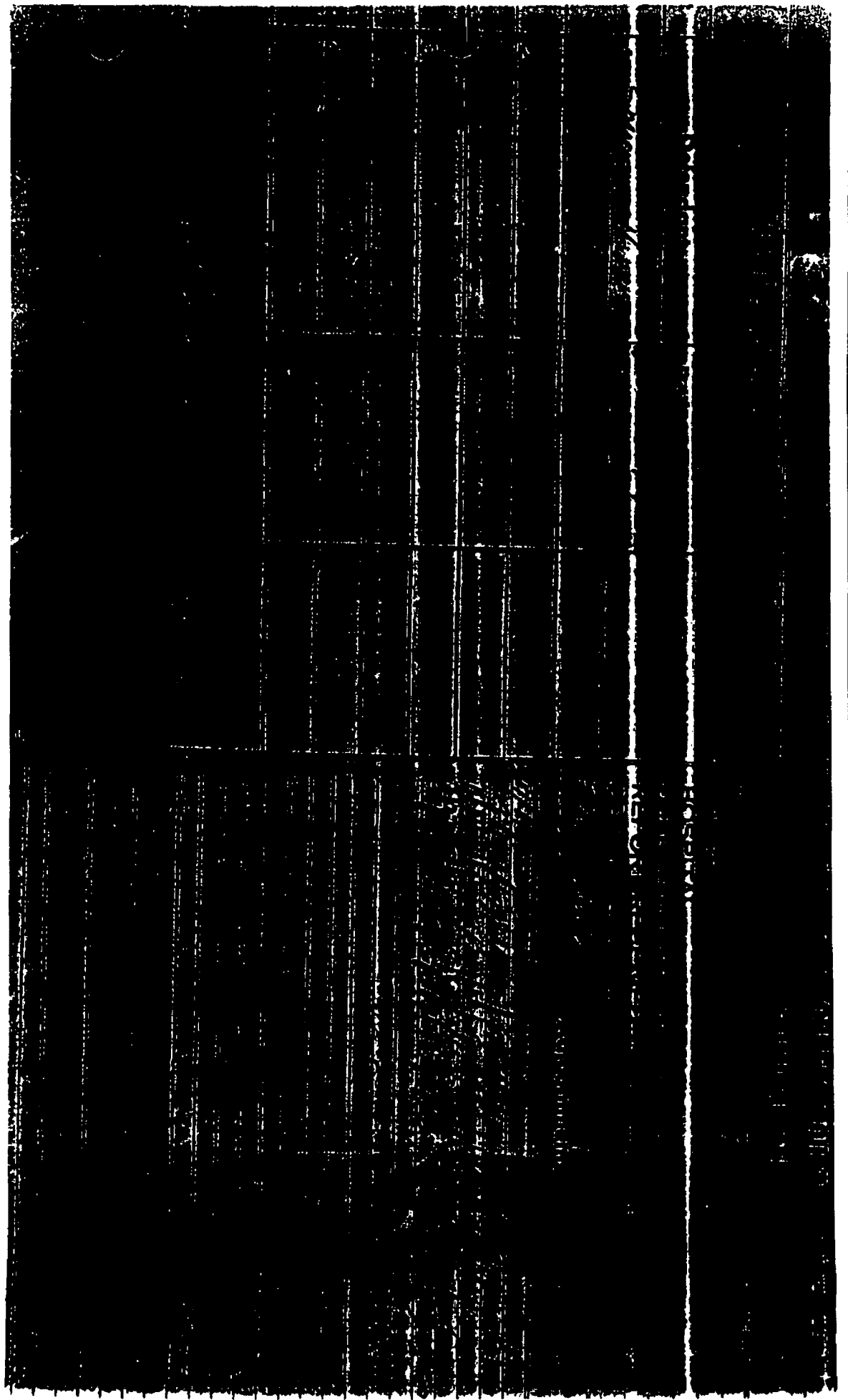
 J.
Douglas

²³See NRS 34.770(2).

cc: Hon. Jackie Glass, District Judge
Patricia Erickson
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

EXHIBIT 149

EXHIBIT 149



Supreme Court—Queens County, N. Y.

TRIAL

Part 5 Date 7-9-74 10:30, 11:30, 12:30

Justice REED
A.D.A. E. TIMMONS
Deft. Atty. William Spelling 15 P

Steno. W Spouron

Verdict GUILTY of Rob - 1st D 14
aggravated harassment

* all outside mail sheet July 10, 74

PLEA

Part _____ Date _____

Steno. _____

Defendant withdraws former plea and
pleads guilty before - during
trial to _____

Acceptance of plea recommended by

A.D.A. _____

Counsel present _____

Justice _____

PENDING SENTENCE

Committed () Bail Continued () ROR ()

Sentence Date _____

() NACC exam ordered

INDICTMENT DISMISSED

Date _____

On motion of _____

Steno _____

Justice _____ Part _____

Predicate Felony Info Filed _____

Arraigned on Info _____

Admits () Stands Mute () Denies ()

Justice _____ Part _____

Deft. Att'y _____

SENTENCE

Part _____ Date _____

Steno _____

Counsel Present _____

Justice _____

Arraigned on Narcotic Addiction

Admits () Stands Mute () Denies ()

Sentence: _____

() ADVISED AND GIVEN NOTICE OF RIGHT TO APPEAR

ARRAIGNMENT

Defendant advised pursuant 170.10 CCL ()

Part F Date 12-11-78

Justice 15 J. L. H. H.

Counsel Present GA

Plea Guilty to Murder
7/6

() Remanded

() Bail Fixed

() Bail Cont. () ROR

Assignment Cal 7/17 Part _____

() Court directs 1A & 2A

City of New York
Department of Probation
Supreme Court - Adult Court Services

COURT ORDER FOR PRE-SENTENCE INVESTIGATION

Date: 7-13-79

TO: Department of Probation -- BRANCH

QUEENS

FROM:

Judge

Vincent F. Riavo

Part

1227 78

Indictment#

TIMON

ADA

DEFENDANT'S NAME:

Last

Howard Samuel

First

AKA

8 18 48 30

Date of Birth/Age

ADDRESS:

No.

15328 70th

Street

Apt.No.

Queens

City/County

State

Phone No.

CONVICTED OF:

Robb 104

(Nomenclature, Section & Law)

AGGRAV HARRASS

DATE OF CONVICTION:

7 11 79
Month Day Year

()
By Plea

()
By Trial

DATE OF SENTENCE:

CUSTODY STATUS:

BAIL

(V)

PAROLE

()

JAIL

()

N.Y.S.I.D.#

3	8	3	8	7	5	8	0
---	---	---	---	---	---	---	---

CONFINED AT:

INSTRUCTIONS TO DEPARTMENT OF PROBATION:

Defendant is absentia B/w was
issued during Trial

INSTRUCTIONS TO DEFENDANT:

YOU ARE INSTRUCTED TO REPORT IMMEDIATELY TO THE DEPARTMENT OF PROBATION

ROOM

FLOOR

ADDRESS

Imansi

BY

Clerk of Court (Signature)

e: Please attach copy of Accusatory Instrument, ROR Report & Criminal History Record.

tribution: Original to Department of Probation
First copy to Defendant

Second copy to Court, Attach to Court Papers

136-575

5-10-11 Draft appears for Trial 1/c to be Spelling.¹⁰¹
Draft continued on trial. Draft returned to Harrison County
forthwith. Cldg. 5-31-79 13/c

JUL 10 1979

Hon. V. F. Naro (S)

Defendant did not appear for continuing jury selection
Case on trial, BU & BF issued, jury selection continuing.
Counsel William Spachan present. Objection overheard

JUL 10 1979 E/W W 1066 ISSUED

copy shown

JUL 12 1979

(William Spachan)
Def not present counsel present hearings held appropriately
test. take motions denied - Reason on record.

HON. VINCENT F. NARO

Supreme Court—Queens County, N. Y.

SUPPLEMENTARY SHEET

Trial

Thodore Smolac adj 8.4.78 DE 5000, 11100
C.C.

AUG 4 1978 Defendant appeared for Trial
with counsel

Def expects to be able to obtain next counsel
8/29/78 B/C Hon Sol R. Danken (5)

OCT 20 1978

Def appeared for Trial Cal.

Samuel Ira Glass
Rudy Hirschman pro def. before Hon
J.P. 11/1/78 P.C.
HON. VERNON E. NERO 3

12/7/78 Def not pres. Counsel Rudy Hirschman pres.
Order to Prod def from Nassau County
(East Meadow Facility) for 12/14/78 13h
Hon V.E. NERO 5

12 Def for 870...
...INSTRUCTED TO CALL NASSAU...
...of def... Hon V.E. NERO 1, 5

FEB 22 1979

Defendant appeared for Trial Cal.
with counsel

Samuel Glass by Rudy Hirschman
Samuel Glass relieved & L.N.S. assigned
notified adj 2/26/79 Kern

HON. VERNON E. NERO 5

MR 2: 190
T. 30000 300 - U.P. (PRO-SE MOTION

**SUPREME COURT: CRIMINAL TERM
QUEENS COUNTY**

THE PEOPLE OF THE STATE OF NEW YORK

against

SAMUEL HOWARD

Defendant.

Indictment For

ROBBERY FIRST DEGREE
(Displaying Firearm)

AGGRAVATED HARASSMENT

NO. 1227-78

FIRST COUNT

THE GRAND JURY OF THE COUNTY OF QUEENS, by this indictment,
accuse the defendant of the crime of ROBBERY IN THE FIRST
DEGREE,
committed as follows:

The defendant, abovenamed
on or about May 24, 1978
in the County of Queens, did forcibly steal certain property
from DOROTHY WEISBAND
to wit, a purse its contents, and an automobile
and in the course of the commission of the crime and of the
immediate flight therefrom displayed what appeared to be a
pistol, revolver, rifle, shotgun, machine gun or other firearm.

**SUPREME COURT: CRIMINAL TERM
QUEENS COUNTY**

Indictment For

THE PEOPLE OF THE STATE OF NEW YORK

against

SAMUEL HOWARD

Defendant.

AGGRAVATED HARASSMENT

SECOND COUNT

**THE GRAND JURY OF THE COUNTY OF QUEENS, by this indictment, accuse the
defendant of the crime of AGGRAVATED HARASSMENT**

committed as follows:

The defendant , aforesaid

on or about May 25, 1978

**in the County of Queens did with intent to harass, annoy or threaten or
alarm DOROTHY WEISBAND, communicate with her by telephone, in a manner
likely to cause annoyance of alarm.**

intentional

11.1.78

[Signature]

DATE 06-24-78
TIME 0102
FAX NO 001010
HON NO 9298

STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES
ALBANY, NEW YORK 12203

TRANS NO 13659R
PAGE WP1

CONFIDENTIAL TO: NYCPD HQ

DOB 08-18-48
RAC NEGRO
SEX MALE
HGT 5-11
SOC 422-68-3398
FBI 906131N4

NAME HOWARD, SAMUEL I NYSID 38397590 I

----- STATUS SYSTEM SEARCH RESULTS -----

CAUTION: RESULTS BASED ON COMPARISON OF NAME, PHYSICAL AND
NUMERIC DESCRIPTORS, AND NOT A COMPARISON OF FINGERPRINTS.

----- DCJS RESULTS -----

CONTACT: NYCPD WARRANT DIV
49 CHAMBERS ST
NEW YORK NY

ARREST NYCPD PCT 107
AGENCY: 106 01 7340 AVENUE
FRESH MEADOWS NY 11365

WANTED FOR: ROBBERY

WPR/H0000692

MKE NY0303001 HOWARD, SAMUEL
HGT/5-11 WGT/175 HAI/BLK
SOC/422-86-3398 OFF/1299
NIC/ NYS/
MIS/578 DKT 0813715

M N 08-18-48
MNU/ OCA/E78400016
DOV/05-01-78 FF/16015

IMMEDIATELY CONTACT WANTING AGENCY TO DETERMINE IF THIS IS SAME INDIVIDUAL
FINGERPRINTED BY YOUR AGENCY AND TO CONFIRM WARRANT AND EXTRADITION.

----- NCIC RESULTS -----

CONTACT: NYCPD WARRANT DIV
49 CHAMBERS ST
NEW YORK NY

ARREST NYCPD HQ
AGENCY: 1 POLICE PLAZA
NEW YORK NY 10038

WANTED FOR: ROBBERY

Y0303000
W NY0303001 NAM/HOWARD, SAMUEL SEX/M RAC/N POB/US DOB/081848 HGT/511
GT/175 EYE/BRO HAI/BLK SOC/422863398
FF/1299 DOV/060178 OCA/E78400016
IS/578 DKT 0813715

FF/16015

IC/4109740886
RI IS NEW YORK PD NY
IC/4109740886

SUBJECTS CRIMINAL HISTORY FOLLOWS

☐ BENCH WARRANT

Docket No. / Year

The Name of the People of the State of New York: Any Police Officer of the City of New York.

appropriate accusatory instrument having been filed with this Court against HOWARD SAMUEL
 defendant in the criminal action herein, charging him with Robbery 1st Degree (P.L. 160.15), and
 the defendant not having been arraigned upon the accusatory instrument by which this criminal action against him was commenced and this Court requiring his appearance before it for the purpose of arraignment upon the accusatory instrument specified above.

the defendant having been arraigned upon the accusatory instrument by which this criminal action against him was commenced and this Court requiring his appearance before it in this pending criminal action,

the defendant having been convicted of _____ and having been sentenced to _____
 and this Court requiring his appearance before it,

are therefore commanded forthwith to arrest the defendant named above and bring him before this Court without unnecessary delay.
 However, when a different procedure after arrest is mandated by law, you shall proceed in compliance with that mandate.

Dated: JUNE 1, 1978
 City of New York

By Order of the Court

Judge (Arrest Warrant)

DANIEL S. WEISS

Court Clerk (Bench Warrant)

☐ NYSID No. Not Available

☐ NYSID No. Entered in Box 10 Below

BAIL CONDITION VIOLATED:

PRINT OR TYPE ALL INFORMATION CAPTIONS

ENTERED NCIC NO.		ENTERED DCJS NO.		ENTERED LOCAL NO.		CANCELLED DATE		MO.		DAY		YR.	
DEFENDANT'S LAST NAME, FIRST, M.I.		2. SEX		3. RACE		4. DATE OF BIRTH		5. HGT.		6. WGT.		7. EYE COLOR	
<u>HOWARD SAMUEL</u>		<u>M</u>		<u>B</u>		<u>018/118/418</u>		<u>5'11"</u>		<u>175</u>		<u>B</u>	
11. SOCIAL SECURITY NO.		12. DRIVER'S LICENSE NUMBER		13. OPER.		14. CHAUF.							
<u>4122863398</u>													
15. YEAR 12. OFFENSE CODE		16. DATE OF WARRANT		17. NYCPD WARRANT DIVISION SERIAL NO.		18. COURT DOCKET NUMBER							
<u>P.L. 160.15</u>		<u>MO. DAY YR.</u>		<u>OCA 578</u>		<u>0513715</u>							
19. MISC. INFORMATION (e.g. scars, marks, Bp, etc.)													
<u>6409</u>		<u>78</u>											
20A. APT. NO.		21. BORO, TOWN, CITY, STATE, ZIP CODE		22. DEF. RES. PCT.		23. DATE OF ARREST		24. PCT. OF ARR.					
<u>153-28 Foch Blvd. P.H.</u>		<u>Qns N.Y. N.Y.</u>											
25. CHARGE: PENAL LAW, TRAFFIC, V.A.C., ETC.		27. CRIME CLASS		28. NAME & ADDRESS, NEXT OF KIN									
<u>P.L. 160.15</u>		<u>Q m v</u>		<u>Mrs. S. Williams-153-24 Foch Blvd.</u>									
29. ARRESTING OFFICER'S NAME		30. TAX. REG. NO.		31. SHIELD NO.		32. DEPT./AGENCY		33. COM'D CODE					
<u>Det. John F. McNicholas</u>		<u>81437012</u>		<u>555</u>		<u>N.Y. P.D.</u>		<u>107</u>					
DEFENDANT'S EMPLOYER'S NAME		ADDRESS		TEL. NO.									

FOR OFFICE USE ONLY

FIELD ACTIVE NAME		SHIELD NO.		WARRANT EXECUTED		DATE	
				<input type="checkbox"/> ARR. <input type="checkbox"/> VS. <input type="checkbox"/> CT.		MO. DAY YR.	
NAME		COM'D		TAX. REG. NO.		DATE OF ARREST	
						MO. DAY YR.	
DATE DAY YR.		PAGE NO.		COMMANDS		CODE	
ED DATE DAY YR.		LOCATION		IO. NUMBER			
CHECK DATE DAY YR.		NO. RESULT		INITIALS			
DATE DAY YR.		FAX NO.		ARR/OFF. COM'D		A/O TAX. REG. NO.	
						DATE MO. DAY YR.	

ATTACH POLAROID PHOTO
 USE SCOTCH TAPE

NOTE:
 If the Polaroid Photo was not attached to this form, indicate by signing your name in the appropriate space.

SIGNATURE

DATE

INSTRUCTIONS:

Arresting Officers shall complete all information captions which are not shaded.
 Court Clerks shall enter the "Bail Condition Violated" and enter the NYSID Number if arising from caption No. 10.

3. In all warrant cases without an arresting officer, Summons Part Court Clerk's shall complete captions 1-2-3-6-7-8-20-20a-21 based upon the information supplied by the complainant.
 The name and address of the complainant is to be entered in caption 19.

ORIGINAL/DUPLICATE TO WARRANT DIVISION - TRIPLICATE TO COURT

☒ ARREST WARRANT

Criminal Court of the City of New York

CRC 320 (REV. 1-74)

☐ BENCH WARRANT

Part: _____ County: _____

In the Name of the People of the State of New York: To any Police Officer of the City of New York.

Docket Number / Year

An appropriate accusatory instrument having been filed with this Court

against _____, the defendant in the criminal action herein,

charging him with _____, and

☒ the defendant not having been arraigned upon the accusatory instrument by which this criminal action against him was commenced and this Court requiring his appearance before it for the purpose of arraignment upon the accusatory instrument specified above,

☐ the defendant having been arraigned upon the accusatory instrument by which this criminal action against him was commenced and this Court requiring his appearance before it in this pending criminal action,

☐ the defendant having been convicted of _____

and having been sentenced to _____

and this Court requiring his appearance before it,

You are therefore commanded forthwith to arrest the defendant named above and bring him before this Court without unnecessary delay. However, when a different procedure after arrest is mandated by law, you shall proceed in compliance with that mandate.

Dated: City of New York



By Order of the Court _____

Judge (Arrest Warrant)

Court Clerk (Bench Warrant)

☐ NYSID No. Not Available☐ NYSID No. Entered in Box Number 14 Below

BAIL CONDITION VIOLATED: _____

W.P.R. No. _____										PRINT / TYPE ALL INFORMATION CAPTIONS									
1. DEFENDANT'S LAST NAME										2. SEX									
FIRST M.I.										3. RACE									
4. DATE OF BIRTH										5. NYSID NUMBER (NYSID)									
6. HEIGHT										7. WEIGHT									
8. EYE COLOR										9. HAIR COLOR									
10. SKIN TONE										11. MNU									
12. SOCIAL SECURITY NUMBER										13. DRIVERS LICENSE NUMBER									
14. STATE										15. YR. EXPIRES									
16. OFFENSE CODE										17. DATE WARRANT ISSUED									
18. COURT DOCKET NUMBER (OCA)										19. FOR OFFICE USE ONLY (N.Y.P.D. WARRANT SERIAL NO.)									
20. MISCELLANEOUS INFORMATION										21. PCT. COMPLAINT # / YEAR									
22. DEFENDANT'S RESIDENCE ADDRESS										23. BOROUGH / TOWN / CITY, ETC.									
24. STATE										25. ZIP CODE									
26. APT. NO.										27. DEF. RES. PCT.									
28. DATE OF ARREST										29. ARREST PCT.									
30. ARREST NUMBER										31. PENAL LAW CHG. NO.									
32. CRIME CLASS										33. FOR OFFICE USE ONLY									
34. LOCATION OF ARREST										35. TAX REGISTRY NUMBER									
36. P.D. COMM. CODE										37. LAST NAME OF ARRESTING OFFICER									
38. FAX CONTROL NUMBER										39. DEFENDANT'S EMPLOYER'S NAME & ADDRESS									

ATTACH POLAROID PHOTO
USE SCOTCH TAPE

NOTE:
If the Polaroid Photo was not attached to this form, indicate by signing your name in the appropriate space

INSTRUCTIONS:

THE PEOPLE OF THE STATE OF NEW YORK
vs.

Samuel Howard

1. _____
2. _____
3. _____
4. _____

DEFENDANTS

STATE OF NEW YORK

COUNTY OF Queens

SS.:

Det. Nicholas #555 of 107 1st.

Address

County

State

being duly sworn, deposes and says that on May 24, 1978 at about 5:20 PM

at Kiosena Blvd. (Queens College) Queens, State of New York,
Address County

the defendant committed the offenses of:

A. PL 160.15 Robbery 1st

B. _____

C. _____

D. _____

in that said defendants

under the following circumstances: Deponent states that he is informed by one Dorothy Veisband, that the defendant did forcibly take and remove the said informant's property at gunpoint in that the defendant did display and threaten the said informant with a gun and forcibly take the contents of her purse to wit: her auto keys, her credit card, and approximately \$4.00 in change and did flee the scene with the said informant's vehicle a 1977 Cadillac, Reg./1430 SV.

Sworn to before me on June 1, 1978 19____

Deponent

FELONY COMPLAINT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

THE PEOPLE OF THE STATE OF NEW YORK

-against-

SAMUEL HOWARD

IND. # 1227-78

Defendant(s) .

NOTICE OF INTENTION TO OFFER AT TRIAL EVIDENCE OF
STATEMENT MADE BY THE DEFENDANT TO A PUBLIC
SERVANT, PURSUANT TO C.P.L. SECTION 710.30 (1) (a)

SIR:

PLEASE TAKE NOTICE, that the People intend to offer at trial statements made by the defendant ~~above named~~

to public servants.

Substance of Statements

Admitted being in possession of the car in question but claimed that he had driven it to Toms with another person.

Dated: Kew Gardens New York
 , 197

Yours, etc.

To:
Attorney (s) for Defendant

JOHN J. SANTUCCI
District Attorney
Queens County

Clerk of the Supreme Court
Criminal Term

QDAC 302 2/77

SUPREME COURT
COUNTY OF QUEENS

-----x
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

Ind. No. 100221

James H. ...

Defendant.
-----x

[C]
\$250.20
DEMAND FOR NOTICE OF ALIBI

S I R:

PLEASE TAKE NOTICE that the People demand that defendant serve, within eight (8) days of the service hereof, upon the undersigned, a notice of alibi reciting:

- a. The place or places where the defendant claims to have been at the time of commission of the crime charged, and
- b. The names, the residential addresses, the places of employment with the addresses thereof of every alibi witness upon whom he intends to rely.

PLEASE TAKE NOTICE that the notice of alibi must be served upon the undersigned if the defendant intends to offer such testimony.

PLEASE TAKE FURTHER NOTICE that if said notice is not served as prescribed, the defendant will be precluded from offering such testimony.

Dated: Kew Gardens, New York

July 6 1978

Yours, etc.

TO: _____
Attorney for Defendant (s)

JOHN J. SANTUCCI
District Attorney
Queens County, New York

COPY RECEIVED _____



Office of the
District Attorney
of Queens County

QUEENS CRIMINAL COURTS BUILDING
125-01 QUEENS BOULEVARD
KEW GARDENS, JAMAICA, N.Y. 11415
TELEPHONE: 520-

JOHN J. SANTUCCI
DISTRICT ATTORNEY

Date: 6/30/78

FROM: Sheldon I. Galfunt Chief of Grand Jury

TO: Supreme Court Record Room

SUBJECT:

Indictment Number 1298-78

Please VOID Indictment Number 1298-78.

This number is a duplicate of 1227-78, (D.S.)

Defendant: Samuel Howard Q813715

CC: D.A. Record Room
Computer
File

SUPREME COURT OF THE STATE OF NEW YORK
CRIMINAL TERM : : : QUEENS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

-against-

SAMUEL HOWARD,

Defendant

A F F I R M A T I O N

INDICTMENT NO.: 1227/78

STATE OF NEW YORK)

) SS.

COUNTY OF QUEENS)

I, THEODORE SMOLEAR, Esq., an attorney admitted to practice in the State of New York, being of counsel with LEON S. SMOLEAR, Esq., attorney at law for the defendant, affirm, under the penalties of perjury that the following facts, upon information and belief, are true:

The source of SMOLEAR's information and belief is the Court, records, the records on file in our office and conversations had with the Defendant.

It is charged by the Indictment that the Defendant committed the crimes of Robbery in the First Degree, and Aggravated Harassment, in that it is alleged that on MAY 24, 1978, at about 8:20 P.M., at Queens College, Kissena Blvd., in the County of Queens, the defendant allegedly forcibly stole property of Dorothy Weisbaud, with the use of what appeared to be a firearm.

ORDER REMANDING FOR TRIAL

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM

PART No. 5

DATED 7 14 78, 19

Present:

Hon. Vincent F. NHAO

Justice.

No. 122778

THE PEOPLE OF THE STATE OF
NEW YORK

against

SAMUEL HOWARD

Indicted for LRP 1st

Agg. Assault

It is ordered by the Court that the said

he and is hereby committed to the custody of the Commissioner of Correction of the City of New York and his duly authorized agents to be by them detained in the House of Detention of the City of New York, for recall for trial when directed.

Clerk.

8000-2065-1M-113071 (7.3)

ORDER REMANDING FOR TRIAL

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM

PART No. 7

DATED JUL 14 1978, 19

Present:

Hon.

1227-78

Justice.

THE PEOPLE OF THE STATE OF
NEW YORK

against

Indicted for Robb /
Agg. Assault

1. MOTION TO INSPECT THE GRAND JURY MINUTES
AND DISMISS THE INDICTMENT

That the evidence presented before the Grand Jury was insufficient, inadequate and illegal, that such evidence violates the constitutional rights of the defendant; and that therefore, such evidence is insufficient to warrant the return of the indictment herein.

It is therefore, respectfully requested that Your Honor grant the motion for Inspection of the Grand Jury minutes and either dismiss the indictment pursuant to Section 210.20, 210.30, 210.40 of the C.P.L., or hold a hearing on this motion pursuant to Section 210.45(6) of the C.P.L., and pursuant to People v. Townsend 39 AD 2d 569 and People v. Laskowski, 72 Misc. 2d 580.

2. DISCOVERY AND INSPECTION

That the items requested are necessary to the defendant of this indictment and the defendant is entitled to said items by virtue of the discovery section of the C.P.L., and pursuant to People v. Willie Wright, as reported in the New York Law Journal, March 12, 1973, PART 44, New York County, Mr. Justice Leff's.

That included within "Brady" material (Brady v. Maryland 373 U.S 83) is evidence of the prior criminal records of prosecution witnesses and other impeachment evidence, United States v. Moreci 359 F. Supp. 431).

~~that without such particulars, it is your deponent's~~
belief, that the defendant cannot proceed to trial on this action
and his defense will be greatly jeopardized by the failure to
obtain such information.

That this information is within the knowledge and con-
trol of the District Attorney and his witnesses and cannot be
obtained from any other source.

3. BILL OF PARTICULARS

That the items requested are necessary to the defense of
this indictment and are necessary for the preparation and for any
pre-trial motions and hearings which may be appropriate.

That without such particulars, it is your deponent's
belief that the defendant would be greatly prejudiced in preparing
his defense and cannot proceed to trial without being greatly
jeopardized without such information.

That this information is within the knowledge and con-
trol of the District Attorney and his witnesses, and the defen-
dant cannot obtain them from any other available source in this
County.

4. MOTION FOR PRE-TRIAL HEARING ON THE QUESTION OF
ADMISSIBILITY OF CERTAIN STATEMENTS, ADMISSIONS,
AND/OR CONFESSION

That upon information and belief on or about the 1st
or 24th day of MAY, 1978, the defendant was interrogated for a
period of time by police officers assigned to the case, and
allegedly made a statement which the People intend to introduce
against him on trial.

5. And for such other and further relief as to
the Court may seem just and proper.

DATED: QUEENS, NEW YORK
JULY 25th, 1978

Yours, etc.,

LEON B. POLSKY, ESQ.,
Attorney for Defendant
124-24 Queens Boulevard
Kew Gardens, New York 11415

TO: JOHN J. SANTUCCI
District Attorney
Queens County

BY: THEODORE SMOLAR, Esq.,
of Counsel

JOHN J. DURANTE
Clerk of the Court
Queens County

PT 5
8/4

SUPREME COURT OF THE STATE OF NEW YORK
CRIMINAL TERM : : : COUNTY OF QUEENS

-----X
THE PEOPLE OF THE STATE OF NEW YORK :

-against-

: OMNIBUS MOTION

SAMUEL HOWARD,

: INDICTMENT NO.: 1227/78

Defendant :

-----X
S I R S :

PLEASE TAKE NOTICE, that upon the annexed affirmation of
THEODORE SMOLAR, Esq., duly affirmed to on the 25th day of JULY,
1978, a motion will be made at PART V, of this Court, held in and
for the County of Queens, on the 4th day of AUGUST, 1978, at
10:00 o'clock in the forenoon of that day, or as soon thereafter
as counsel can be heard, for an Order granting to the defendant
the relief requested in this Omnibus Motion, as follows:

1. For the Transcription and Inspection of the Grand Jury minutes upon which the indictment against the defendant was predicated, and dismissal of said indictment pursuant to Sections 190.25(6), 210.20, 210.25, 210.30, 210.35, 210.40, and 210.45 of the C.P.L., and Amendments 5, 6 and 14 of the United States Constitution; or, in the alternative, for a hearing on same pursuant to Section 210.45 Subdivision 6 of the C.P.L.
2. For a Discovery and Inspection as follows:
 - a) Copies of any expert reports, including but not limited to medical reports, and fingerprint analysis, which may be introduced against the defendant at trial.
 - b) The right to inspect any physical evidence seized from the defendant or any physical evidence which shall be sought to be introduced against the defendant at any trial of this matter.

- c) Copies of any statements, confessions, or admissions, by the defendant, whether written, recorded or oral, and an opportunity to listen to any voice tape of statements made by the defendant.
- d) Photographs of any line-up wherein this defendant took part.
- e) Copies of any expert reports including but not limited to laboratory and ballistic reports and fingerprint analysis which may be introduced against the defendant at trial.
- f) Any and all reports, papers and forms, of the New York City Police Department and Department of Corrections relating to this case: Form UF-61, DD-5, DD-19, UF-6, 911 Tape; Arrest Report, Wanted, Alarms, Radio Runs, the defendant's BCI and/or NYSSIS sheet, Mug Shots, and Department of Corrections, forms 85A, 111A, and 239-A; and all other papers concerning the investigation and arrest of the defendant.
- g) The Criminal records, if any, of each witness the People, intends to call at the trial.
- h) The name and address, if any, of each witness known to the People and a full account of each witness' statement.
- i) Copies of any statements, whether written, recorded or oral, made by any co-defendants herein, which inculcate or exculpate the defendant in the crime charged.
- j) The names of any persons who are considered co-perpetrators but who have not been indicted therefore.
- k) Any evidence known to the People which may be exculpatory in nature or favorable to the defendant.
- l) Pursuant to Section 240.40 of the Criminal Procedure Law, that as to any items granted herein, the People have a continuing duty to disclose additional property covered by the Order.

m) for an Order requiring the District Attorney of Queens County to state that the items requested in this Omnibus Motion do not exist, on the grounds that the requested items are material to the preparation of the defense and that the request for them is reasonable.

3. Bill of Particulars setting forth:

a) The exact time, date and place the defendant allegedly committed the crimes charged.

b) The exact time, date and place where the defendant was identified as the perpetrator of the alleged crime and whether any pre-trial identification procedure.

c) The exact date, time and place of the arrest of the defendant and whether arrest was pursuant to a warrant.

d) The property of every nature and description taken from the complainant during the commission of the crimes charged and from where the property was taken.

e) The property of every nature and description taken from the defendant and whether seized pursuant to a warrant.

f) The specific acts allegedly attributable to the defendant under each and every count of the indictment.

g) The specific injuries allegedly inflicted on the complainant; whether or not they were treated, and, if so, where and by whom.

4. For a hearing on the question of admissibility of certain statements, admissions, or confessions, allegedly made by the defendant herein which is to be offered as evidence at the trial of this matter pursuant to Section 710.20 of the C.P.L.

189
38

IND. NO. 1227-78

PEOPLE OF THE STATE OF NEW YORK

vs.

SAMUEL HOWARD

JUDGE SOI. DUNKIN

PART 5 DATE AUGUST 4, 1978

NATURE OF PROCEEDING: _____

OMNIBUS MOTION

SUBMITTED ()

ARGUED ()

HEARING
CONDUCTED ()

APPEARANCES:

Assistant District Attorney

LEGAL AID

Attorney (of counsel) for

Defendant _____

ADJOURNED:

8/4/78

2. (a) Approximate time 5/24/78 at 7:15 P. M. in the vicinity of Kissena Boulevard, Queens College, Queens County, New York.

(b) thru

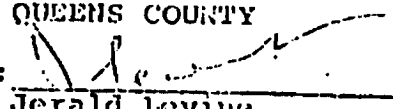
(f) Oppose.

(g) No injuries to complainant.

4. (a) Consent to Huntley.

Dated: Kew Gardens, New York
August 3rd, 1978.

RESPECTFULLY SUBMITTED,
JOHN J. SANTUCCI
DISTRICT ATTORNEY
QUEENS COUNTY

BY: 
Jerald Levine
Asst. District Attorney

To: Leon B. Polsky, Esq.
Theodore Smolar, Esq.,
of counsel
124-24 Queens
Kew Gardens, New York 11415

CLERK, SUPREME COURT, CRIMINAL TERM

MEMORANDUM

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM, PART 5

THE PEOPLE OF THE STATE OF NEW YORK

~~-against-~~

SAMUEL HOWARD,

Defendant.

BY SOL R. DURKIN,

J.

DATED AUGUST 9,

1978

Ind. No. 1227/78

The defendant makes this omnibus motion for the following relief:

1. For inspection of the Grand Jury minutes and dismissal of the indictment.
2. For an order of discovery and inspection.
3. For an order granting a bill of particulars.
4. For a hearing on the admissibility of statements.

The first branch of the defendant's motion is for inspection of the Grand Jury minutes and dismissal of the indictment on the ground that the Grand Jury testimony was insufficient to support the indictment. The defendant's motion is granted to the extent of an inspection of the Grand Jury minutes by the Court in camera. The minutes having been submitted to the Court for inspection, the Court finds sufficient legal evidence has been adduced to sustain the indictment.

The Court further finds that the indictment is fully in compliance with the provisions of the Criminal Procedure Law and the United States Constitution. It apprises the defendant of the charges against him with sufficient specificity, will enable the defendant to prepare a defense and will prevent prosecution a second

time to the same crimes. The indictment is proper in its form and contains all of the elements of the crime charged.

Defendant's moving papers do not set forth sufficient legal or factual grounds to warrant a hearing.

The motion to dismiss the indictment or in the alternative for a hearing is denied.

The second branch of the defendant's motion which is for discovery and inspection is disposed of as follows:

Item (a) is moot in view of the response in the District Attorney's answering affirmation.

Item (b) is moot in view of the fact that the District Attorney has consented to inspection of the physical evidence.

Item (c) is moot in view of the fact that the requested information has already been supplied by the District Attorney in his answering affirmation.

Item (d) is denied.

Item (e) is moot in view of the response in the District Attorney's answering affirmation.

Item (f) is denied.

Item (g) is denied at this time. The District Attorney, however, is reminded of his duty to disclose exculpatory material.

Item (h) is denied.

Item (i) is moot in view of the response in the District Attorney's answering affirmation.

Item (j) is denied.

Item (k) is moot in view of the response in the District Attorney's answering affirmation. The District Attorney, however, is reminded of the continuing nature of his duty to disclose.

Item (1). The District Attorney is again reminded that he has a continuing duty to disclose.

Item (m) is denied.

The third branch of the defendant's motion which is for an order granting a bill of particulars is disposed of as follows:

Item (a) is granted to the extent of the response in the District Attorney's answering affirmation.

Item (b) is granted to the extent that the District Attorney is directed to set forth the nature of any identification procedures utilized in this case as well as the date and place of such procedures.

Item (c) is granted to the extent that the District Attorney is directed to set forth whether or not an arrest warrant was utilized in this case and if so, to make a copy of the warrant available to the defendant for his inspection.

Item (d) is denied.

Item (e) is granted to the extent that the District Attorney is directed to set forth a description of any property seized from the defendant which will be offered in evidence against him at trial and to state whether said seizure was pursuant to a warrant.

Item (f) is denied.

Item (g) is moot in view of the response in the District Attorney's answering affirmation.

The fourth branch of the defendant's motion which is for a hearing on the question of the admissibility of the defendant's statements is granted to the extent that a hearing is ordered.

Order entered accordingly.

Supreme Court of the State of New York
Criminal Term : Queens County

The People of the State of New York

-against-

Ind. No. 1227 - 78

SAMUEL HOWARD,

Defendant

AFFIRMATION

State of New York)

County of Queens) ss.:

I, JERALD LEVINE, an Assistant District Attorney
of Queens County, do hereby affirm the statements herein to be
true under the penalties of perjury, except such as are made upon
information and belief, which matter I believe to be true.

1. (a) No expert reports.

(b) Evidence may be examined at a mutually
convenient time.

(c) Defendant stated he didn't take the car, he
drove to town to Texas with another fellow and it was his car.

(d) Oppose.

(e) None.

(f) Oppose.

(g) Oppose.

(h) Oppose.

(i) None.

(j) Oppose.

The Clerk of the Court is directed to mail a copy of this decision to the attorney for the defendant.



SOL R. DUNKIN, J.S.C.

Short Form Order

SUPREME COURT — STATE OF NEW YORK
CRIMINAL TERM PART 5 QUEENS COUNTY
125-01 Queens Boulevard Kew Gardens, N. Y.

P R E S E N T :

HON. SOE M. DUBININ
Justice.

THE PEOPLE OF THE STATE OF NEW YORK

-against-

SAMUEL HOWARD,

Defendant.

Ind. No. 1227/78

Motion Omnibus

Submitted August 4,

Argued

Hearing

10

10

10

The following papers numbered
1 to 4 submitted in this motion

Theodore Smolar, Esq.

~~XXXXXXXXXXXXXXXXXXXX~~

For the Motion

Gerald Levine, Esq., S.D.A.

Opposed

Notice of Motion and Affidavits Annexed

Answering and Reply Affidavits

Exhibits

Minutes

Other

Papers Numbered

1 - 2

3

4

Upon the foregoing papers the defendant's motion is granted in part
and denied in part. See accompanying memorandum dated August 10, 1978.

GRANTED:

Date: August 10, 1978

SOE M. DUBININ

J.S.C.

**SUPREME COURT
CRIMINAL TERM:**

QUEENS COUNTY

**THE PEOPLE OF THE STATE
OF NEW YORK**

against

**SAMUEL HOWARD,
DEFENDANT.**

AFFIRMATION

**JOHN J. SANTUCCI
District Attorney of Queens County
125-01 QUEENS BOULEVARD
KEW GARDENS, N. Y. 11415**

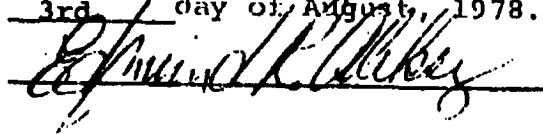
State of New York)
County of Queens) ss.:

AUDREY M. DANTZAY being duly sworn, deposes and says that on the 3rd day of August, 1978, she served the within Affidavits upon the attorneys for defendant in the within action by enclosing a true copy thereof in a securely, sealed, postpaid wrapper addressed as follows:

Leon B. Polsky, Esq. Theodore Smolar Esq., of counsel 124-24
Queens Bldg. Kew Gdns. N. Y. 11415
and by depositing the same in the postoffice box regularly maintained by the U. S. Government at 125-01 Queens Boulevard, Kew Gardens, New York, 11415.

Deponent further says that the said is the attorney for the defendant herein and that the address set forth on said wrapper is the office and postoffice address given by the said attorney upon the last paper served by him in the within action.

Sworn to before me this
3rd day of August, 1978.



EDMUND R. ALEKSEY
Notary Public State of New York
No. 41-037350 Queens County
Comm. Expires March 30, 1979

Supreme Court of the State of New York
Criminal Term : Queens County
-----x

The People of the State of New York :

-against-

: Ind. No. 1227 - 78

SAMUEL HOWARD,

Defendant :

-----x A F F I R M A T I O N

State of New York)

: ss.:

County of Queens)

I, JERALD LEVINE, an Assistant District Attorney
of Queens County, do hereby affirm the statements herein to be
true under the penalties of perjury, except such as are made upon
information and belief, which matter I believe to be true.

1. (a) No expert reports.

(b) Evidence may be examined at a mutually
convenient time.

(c) Defendant stated he didn't take the car, he
drove to town to Texas with another fellow and it was his car.

(d) Oppose.

(e) None.

(f) Oppose.

(g) Oppose.

(h) Oppose.

(i) None.

(j) Oppose.

(k) No exculpatory evidence.

(l) Opposed.

2. (a) Approximate time 5/24/78 at 7:15 P. M. in the vicinity of Kissena Boulevard, Queens College, Queens County, New York.

(b)
thru

(f) Oppose.

(g) No injuries to complainant.

4. (a) Consent to Huntley.

Dated: Kew Gardens, New York
August 3rd, 1978.

RESPECTFULLY SUBMITTED,
JOHN J. SANTUCCI
DISTRICT ATTORNEY
QUEENS COUNTY

BY: Jerald Levine

Jerald Levine
Asst. District Attorney

To: Leon B. Polsky, Esq.
Theodore Smolar, Esq.,
of counsel
124-24 Queens
Kew Gardens, New York 11415

CLERK, SUPREME COURT, CRIMINAL TERM

SUPREME COURT OF THE STATE OF N W YORK
COUNTY OF QUEENS PART 16

The People of the State of New York

- Against -

Samuel J. Howard
Defendant Pro-se

AFFIDAVIT IN SUPPORT
OF APPLICATION FOR
BAIL REDUCTION UNDER
SECTION 530.30 C.P.L.

Docket or Indictment

444-78-0826

SIRS:

_____, being duly sworn, deposes and
says:

That he is the defendant herein and makes this affidavit
in support of his application for an order of recognizance or
bail reduction pending disposition of felony complaint/ Indict-
ment, now pending in the Queens County Criminal/
Supreme Court.

That the defendant is and has since MAY 30, 1979 been con-
fined in the Queens House of Detention for Men.

That the defendant is charged in the complaint/ indictment
herein with the crime of Robbery
under section(s) _____, the Queens County Criminal
Court made and entered an order granting the defendant's appli-
cation for bail reduction and fixing bail in the amount of
\$ 5,000.

That under the circumstances of this case, the aforesaid amount
of bail is excessive for the following reasons:

1. That I Samuel Howard was studying
and attending college at the
time of the arrest whereas I
2. paid my own tuition which
were \$900 per semester and
paying my rent, clothes, food
3. clothing out of the sum of
\$140 per week plus I receive money
4. U.S. Education benefits at

(6). all of our money to bail
myself. I am promised the car
will last me for some time.

(7). I am in a great deal of
trouble with my health.

I have not been
working for some time.

I am in a great deal of
trouble with my health.

That no previous application has been made pursuant to
section 530.30 C.P.L..

WHEREFORE THE DEFENDANT prays to this Honorable Court
for an order vacating the order of the Queens County
Supreme Court and releasing the defendant on his
own recognizance or fixing bail at an amount this Honorable
Court reasons the defendant can afford according to the
facts before the court, and weighing seriously the factors
spelled out in detail in 510.30 of the C.P.L.. The
defendant further prays to this Honorable Court to please
set bail in a lesser amount than previously specified, and
for such other relief as the court deems just and proper.

Samuel S. S. S.
Defendant, Pro-se

126-02 82nd Ave.
New Gardens, N.Y. 11415

I do not have much money, I could not afford to
my parents are deceased, I do have

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS PART 10

The People Of The State Of New York

-against-

Samuel Howard
Defendant-Petitioner

Notice of Motion
To Reduce Bail

Indictment No. _____

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Samuel Howard, sworn to this 27 June 78, and upon all the proceedings heretofore and herein, the undersigned will move this court at a term thereof to be held at 125-01 Queens Blvd., (OR) 88-11 Sutphin Blvd. on the _____ day of _____ 19____, at 10:00 O'clock in the forenoon of the said day or as soon thereafter as counsel can be heard for an order vacating the order of the Queens County Criminal (OR) Supreme Court, which fixed the present bail herein in the amount of \$ 5,000, and releasing the Defendant on his recognizance or fixing bail is a lesser amount within his means and any other relief this Honorable Court deems just and proper in all conscious.

Kew Gardens, New York

Dated: 28 June 78

Yours Faithfully

Samuel Howard
Defendant-Petitioner

126-02 82nd Avenue
Kew Gardens, New York
11415

JULIO MIRANDA
COMMISSIONER OF DEEDS
CITY OF NEW YORK 3-1567
Certificate filed in New York County
Commission Expires March 1979

Julio Miranda
6/28/78

IND. NO.

1227/78

JUDGE

FREDERICK HAMMER

PART

CR 10

DATE

7/27/78

PEOPLE

VS.

Samuel Howard

NATURE OF PROCEEDING:

Bail Reduction

SUBMITTED

()

ARGUED

()

HEARING

CONDUCTED

()

APPEARANCES:

Edward Alksey

Assistant District Attorney

Leon Balaban

Attorney (of counsel) for

Defendant

ADJOURNED:

7/27/78

Application Withdrawn.

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM

THE PEOPLE, ETC.,

vs.

Indictment No. 1027/75

Samuel Howard

To the Clerk of the Supreme Court, Queens County, Criminal Term.

SIR:

You are hereby notified that I appear for Samuel Howard

the defendant in the above-entitled action.

Dated: Kew Gardens, N.Y. 10/30, 19 78

Yours, etc.,

Tel. No. 261-5000

Samuel Ira Glass

Attorney for Defendant

DEPT. CONFINED ☐

DEPT. BAILED-PAROLED ☒

Address

125-26 Queens Blvd.

Kew Gardens, N.Y. 11415

ATTORNEY RETAINED ☒

ATTORNEY ASSIGNED ☐

THE PEOPLE OF THE STATE OF NEW YORK

TO: THE WARDEN OF NASSAU COUNTY JAIL, EAST MEADOW, N.Y.,
and/or
THE WARDEN OF SUFFOLK COUNTY JAIL, RIVERHEAD, N.Y.,
and/or
THE COMMISSIONER OF CORRECTION OF THE CITY OF NEW YORK

GREETING:

WE COMMAND YOU that you, the Warden of Nassau County Jail, deliver to the Comm. of Correction of the City of N.Y., and/or his duly authorized agents, the body of SAMUEL HOWARD D.O.B. 8/18/48, by you imprisoned; and that the Comm. of Correction of the City of N.Y., and/or his duly authorized agents, deliver the body of said Samuel Howard at the Supreme Court of Queens County, Criminal Term, on December ~~14, 1978~~ 14, 1978 at 10 oc'clock in the forenoon, Part v thereof, or sooner if released prior to that date, for the purpose of disposition of Ind. No. 1227/78, and you then and there have this Writ; and it is further

ORDERED herein that the Comm. of Correction of the City of N.Y. take and keep the said Samuel Howard, in safe and secure custody until the termination of all necessary proceedings, and at the conclusion of such proceedings and on the further order of this Court, the said Comm. of Correction of the City of N.Y., and/or his duly authorized agents, return the said Samuel Howard to the Warden of the Nassau County Jail, who shall receive the said Samuel Howard pursuant to the original commitment thereto.

WITNESS, Hon. Vincent F. Naro, Justice, Supreme Court, Queens County, on the 7 day of December, One Thousand Nine Hundred and Seventy-eight.

THE WITHIN WRIT IS HEREBY ALLOWED.

Clerk

J.S.C.

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM

THE PEOPLE, ETC.,

vs.

Indictment No. 1227-78

Samuel Howard

To the Clerk of the Supreme Court, Queens County, Criminal Term.

SIR:

You are hereby notified that I appear for _____

_____, the defendant in the above-entitled action.

Dated: Kew Gardens, N.Y. _____, 19

Yours, etc.,

Leon P. Spector
By T. Spector

Attorney for Defendant

Tel. No. _____

Address _____

DEPT. CONFINED ☐

DEPT. BAILED-PAROLED ☐

ATTORNEY RETAINED ☐
ATTORNEY ASSIGNED ☐

The People of The State of New York
Supreme Court: Queens County

Samuel Howard Petitioner, Notice of Motion For
- Against - Reassignment of Counsel

The People of The State of New York, Indictment No. 1227/78
New York,

Defendant.

State of New York
County of Queens ss:

Samuel Howard, being duly sworn,
deposes and say that I am the petitioner
herein and am now in confinement in
the Queens County Jail, Kew Gardens,
New York 11415 under an alleged indictment.
In view of the existing conflict between
Attorney and client and complete lack
of confidence in Mr. Smolar, capability
toward representing me in the above
mentioned cause of action this --
memorandum of Law is submitted in
support of releasing Mr Smolar. And -

PLEASE TAKE NOTICE, that the Court has assigned counsel to my case, but said counsel (Mr. Smolac) of the Legal-Aid Society is not adequate in the representation of my case, along with the following reasons:

- (1) He told me originally that I would need private counsel for my type of case.
- (2) He stated that the complainant's testimony alone would be sufficient in a conviction (moreover, being pessimistic).
- (3) On information and belief he has been taken of several other cases and is not skilled at trial matters.
- (4) That he with holds information from me and I believe he has knowledge of certain information that I have requested of him and he refuses to give me said information to me.
- (5) He does not discuss my case with me in privacy, other words he doesn't

Effective advocacy involves more than experience and familiarity with the law. The Attorney-client relationship contemplates trust and mutual cooperation, particular when the attorney is defending the client's liberty. The desirability of a relationship of trust and confidence between an indigent defendant and his attorney has been elevated to indispensability as a result of this court's recent decision in *People v. Sharp* (Modern Criminal Law) holding that defendant has no constitutional right to defend pro-se at trial.

AFTER *Sharp* an indigent defendant has no choice as a matter of right; he must be represented by the appointed counsel. Thus in this case the defendant must proceed with the appointed attorney, in place of other counsel in whom he has expressed confidence; as a result he will be compelled to acquiesce in subsequent trial tactics which he may find objectionable. It seems inevitable that this procedure will

Wherefore, for the above stated reasons:
I respectfully request that this
Honorable Court Assign-18-B Counsel
to aid me in making my defence
and invest-gate MATTERS herein

Sworn to before me this
21 day of March, 1979
Matthew C. Keenan

MATTHEW C. KEENAN
COMMISSIONER of DEEDS 3/21/79
CITY of NEW YORK 3-1638
Certificate filed in New York County
Commission Expires Feb. 1, 1981

Respectfully submitted

pro-se.

Samuel Howard

Samuel Howard

126-02 82nd Ave.

Kew Gardens, N.Y.

11415

74

IND. NO. 1227/78

PEOPLE OF THE STATE OF NEW YORK
vs.

SAMUEL HOWARD

JUDGE VINCENT F. NITZ
PART 5 DATE 3/23/78

NATURE OF PROCEEDING: RELIEF COUNSEL

SUBMITTED ()

ARGUED ()

HEARING
CONDUCTED ()

APPEARANCES:

Assistant District Attorney

Attorney (of counsel) for

Defendant Pro Se

ADJOURNED:

3/23 Granted

V F NITZ

vs.

Sharon L. Robinson

SIR:

_____, the defendant in the above-entitled action.

Yours, etc.,

Attorney for Defendant

Address _____

DEFT. BAILED-PAROLED ☐

ATTORNEY ASSIGNED

SUPREME COURT OF STATE OF NEW YORK

COUNTY OF QUEENS

THE PEOPLE OF THE STATE OF NEW YORK,

against
SAMUEL HOWARD
153-28 FOCH BLVD.,
JAMAICA, N.Y.

Defendant

Indictment No. 1227-78

ORDER APPOINTING
COUNSEL

Charge: ROB 1

After a review of the defendant's financial status and being satisfied that the above defendant is financially unable to obtain counsel and said defendant not having waived the appointment of counsel; and pursuant to the designation by the Administrator of Legal Defense Panel Plan;

IT IS ORDERED that the following member of the Bar is hereby appointed to represent the defendant in all matters pertaining to this action in this Court:

Name WILLIAM H. SPERLING, ESQ.,
Address 125-10 QUEENS BLVD.,
KEW GARDENS, N.Y.
Telephone No. 263-7687

The said attorney is authorized, pursuant to the provisions of Article 18-B of the County Law of the State of New York, to present to the court a claim for compensation and reimbursement for expenses of representation reasonably incurred.

Dated: this 26 day of MARCH, 19 79

VINCENT F. NARO

Justice of Supreme Court

NOTICE OF ENTRY

Sir:- Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on
19

Dated,

Yours, etc.,

WILLIAM H. SPERLING

Attorney for

Office and Post Office Address
125-10 Queens Boulevard
KEW GARDENS, N. Y. 11415

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:- Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

the day of 19
M.

Yours, etc.,

WILLIAM H. SPERLING

Attorney for

Office and Post Office Address
125-10 Queens Boulevard
KEW GARDENS, N. Y. 11415

To

Attorney(s) for

Index No. **1227-75**

Year 19

SUPREME COURT STATE OF NEW YORK

ORIGINAL TERM: QUEENS COUNTY

PEOPLE OF THE STATE OF NEW YORK

-against-

SAMUEL HOWARD

Defendant

ORDER

WILLIAM H. SPERLING

Attorney for

Office and Post Office Address, Telephone

125-10 Queens Boulevard
KEW GARDENS, N. Y. 11415
(212) 263-7687

HON. JOHN J. SANTUCCI
To DISTRICT ATTORNEY QUEENS COUNTY

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

At a Criminal Term, Part V
Supreme Court of the State of
New York held in and for the
County of Queens at the Court-
house at 125-01 Queens Boule-
vard, New Gardens, New York on
the 29th day of March, 1979

P R E S E N T :

HON: JUDGE VICTOR J. JULIANO

JUSTICE

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

SAMUEL HOWARD

Ind.# 1227-78

ORDER

-----X
An application having been made by the Defendant for an
Order assigning a Private Investigator, pursuant to Article 18B of
the County Law to the Defendant's case and the same having duly
come on to be heard before me,

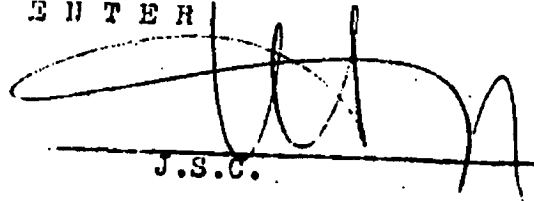
NOW, after hearing an oral application of WILLIAM H. SPENGLING
ON THE 29TH DAY OF MARCH, 1979, and the Assistant District Attorney
not in opposition thereto, and due deliberation having been had
thereon, it is

ORDERED that VICTOR JULIANO, Private Investigator, with off-
ices at 125-10 Queens Boulevard, New Gardens, New York is hereby
appointed, authorized and directed to investigate the charges
against the Defendant herein, and it is further

ORDERED, that compensation to VICTOR JULIANO, Private Investigator shall be paid as provided in Article 18B of the County Law, and it is further

ORDERED, that the original and copies of this order be delivered to the Clerk of this Court and he is directed to furnish to VICTOR JULIANO a copy thereof and to make such arrangements as are applicable and necessary.

ENTER



J.S.C.

SUPREME COURT -- STATE OF NEW YORK
CRIMINAL TERM PART 5 QUEENS COUNTY
 125-01 Queens Boulevard Kew Gardens, N. Y.

P R E S E N T :

HON. VINCENT F. NARO
 Justice.

THE PEOPLE OF THE STATE OF NEW YORK

-against-

SAMUEL HOWARD,

Defendant.

Ind. No. 1227/78

Motion Hearing to suppress
statements

Submitted April 23, 197 9

Argued _____ 197

Hearing April 23, 197 9

The following papers numbered
 1 to 2 submitted in this motion

William H. Sperling, Esq.

For the Motion

James Delaney, A.D.A.

Opposed

	Papers Numbered
Notice of Motion and Affidavits Annexed _____	<u>1 - 2</u>
Answering and Reply Affidavits _____	_____
Exhibits _____	_____
Minutes _____	_____
Other _____	_____

Upon the foregoing papers, for the reasons stated on the record, and after a hearing was held and testimony taken, the application to suppress statements is granted.

GRANTED:

Date: April 23, 1979

John J. Durante

Vincent F. Naro, J.S.C.

**SUPREME COURT
CRIMINAL TERM:**

QUEENS COUNTY

**THE PEOPLE OF THE STATE
OF NEW YORK**

against

SAMUEL HOWARD,

DEFENDANT.

**SUPPLEMENTARY BILL
OF PARTICULARS**

JOHN J. SANTUCCI
District Attorney of Queens County
**125-01 QUEENS BOULEVARD
KEW GARDENS, N. Y. 11415**

POLICE DEPARTMENT

A 327253

PROPERTY CLERK'S INVOICE

THIS PROPERTY IS: ☒ F. ☐ M. ☐ J.D. ☐ VIO.
 (Check Only One Box)

☐ ARREST EVIDENCE ☐ INVESTIGATORY EVIDENCE
☐ DECEDENT'S PROPERTY ☐ FOUND PROPERTY ☐ OTHER

(See Instructions on last copy)

DATE PREPARED: _____

19 _____

PCT. _____

Arresting/Assigned Officer:

John McNicholas

Rank

Shield No.

Tax Reg. No.

Command

Det.

555

843702

107 Sgd.

Officer's Last Name

First

Age

No. of Prisoners

Address

Howard

Samuel

29

1

153-38 102nd Blvd. Jamaica

Date of Arrest

Arrest No.

Charge

6/23/78

14610

FL 160.15 Robbery.

Index of Property

Assigned Officer.

Owner's Name (See Instructions)

Corothy Weisband.

Complainant's Name

Corothy Weisband

Address

Address

200-33 45 Dr. Bayside.

Address

200-33 45 Dr. Bayside.

Complaint No

6409

Apt. No.

Apt. No.

PH

Apt. No.

PH

ITEM NO.	QUANTITY	ARTICLE	CASH VALUE U.S. Currency only	(For Property Clerk's Use Only) DISPOSITION	and DATE
1	2	Amoco Credit Card. #471-600-525-3 8/456 001 420 6 1			
2	2	Playboy Club Cards. #411 515 471X #411 478 597X			
3	1	Chase Visa #4225 947 264 536.			
4	1	Master Charge #5217 1373 603 265.			
5	1	JCPenney #018 495 619 1 1			
6	1	US Social Security Card. #133 48 6246			
7	1	Blue Cross Blue Shield. #133486246			
8	1	NYS Drivers Lic. #E18075 52184 785606 56			
9	1	NYS Drivers Lic. #MO3104 10087 965626 58			
10	1	NYS Registration Vin. #6D47374631137			
11	1	NYS Registration Vin. #124B1515323.			
12	1	Black & Brown Wallet.			
TOTAL				LOCATION WHERE PROPERTY STORED	

The above is a complete list of all property.

REMARKS: (See instructions on last copy)

Receipt Returned/Issued _____

Rank

Signature of S. H. Officer

Shield No.

Signature of Arresting/Assigned Officer

Property Clerk's Signature

A 327253

BENCH WARRANT

Under the Seal of the City of New York

In the Name of the People of the State of New York: To any Police Officer of the City of New York.

An appropriate accusatory instrument having been filed with this Court against **HOWARD SAMUEL**
 the defendant in the criminal action herein, charging him with **Robbery 1st Degree (Felony)**

☒ the defendant not having been arraigned upon the accusatory instrument by which this criminal action against him was commenced and this Court requiring his appearance before it for the purpose of arraignment upon the accusatory instrument specified above.

☐ the defendant having been arraigned upon the accusatory instrument by which this criminal action against him was commenced and this Court requiring his appearance before it in this pending criminal action.

☐ the defendant having been convicted of **Robbery 1st Degree** and this Court requiring his appearance before it, that he **without** being sentenced to

You are therefore commanded forthwith to arrest the defendant named above and bring him before this Court without unnecessary delay. However, when a different procedure of arrest is mandated by law, you shall proceed in compliance with that mandate.

Dated: **July 11, 1978**

City of New York

Judge (Arrest Warrant) **DANIEL S. WEISS** Court Clerk (Bench Warrant)

RAIL CONDITION VIOLATED:

ENTERED NCIC NO.		ENTERED NCIS NO.		ENTERED LOCAL NO.		CANCELLED DATE:		MO.		DAY		YR.			
DEFENDANT'S LAST NAME, FIRST, M.I.		WPR NO.		SEX		RACE		DATE OF BIRTH		MO.		DAY		YR.	
1. NAME		2. SEX		3. RACE		4. DATE OF BIRTH		5. MO.		6. DAY		7. YR.		8. COLOR	
9. HEIGHT		10. WEIGHT		11. SOCIAL SECURITY NO.		12. DRIVER'S LICENSE NUMBER		13. EYES		14. HAIR		15. SKIN		16. MARKS	
17. FINGERPRINTS		18. OFFENSE CODE		19. DATE OF WARRANT		20. NYCPD WARRANT DIVISION SERIAL NO.		21. COURT OF CRIMINAL JUSTICE NUMBER		22. COUNTY		23. JUDGE		24. CLERK	
25. ANTECEDENT NO.		26. PCT. COMPLAINT NO.		27. MISC. INFORMATION (SEE PAGE 2 OF 2)		28. RESIDENCE ADDRESS		29. APT. NO.		30. BORO, TOWN, LIPS, ETC.		31. DEF. RES. PCT.		32. DEF. MO.	
33. DEF. NAME		34. CHARGE: PENAL LAW, TRAFFIC, V.A.C., ETC.		35. CRIME CLASS		36. NAME & ADDRESS, NEXT OF KIN		37. DEF. NAME		38. DEF. ADDRESS		39. DEF. MO.		40. DEF. DAY	
41. DEF. NAME		42. DEF. ADDRESS		43. DEF. MO.		44. DEF. DAY		45. DEF. YR.		46. DEF. MO.		47. DEF. DAY		48. DEF. YR.	

FOR OFFICE USE ONLY

VENDOR ACTIVE NAME		SHIELD NO.		WARRANT EXECUTED		DATE		MO.		DAY		YR.	
VENDOR NAME		COM'D		TAX REG. NO.		DATE OF ARREST		MO.		DAY		YR.	
FWD. DATE		PAGE NO.		COMMANDS		CODE		INITIALS		FAR NO.		ARR. OFF. COM'D	
LOCATED DATE		LOCATION		TO NUMBER		DATE		MO.		DAY		YR.	
DC. CHECK DATE		RESULT		DATE		MO.		DAY		YR.		DATE	
F.P.R. DATE		FAR NO.		ARR. OFF. COM'D		A/O TAX REG. NO.		DATE		MO.		DAY	

INSTRUCTIONS:

1. Arresting Officers shall complete all information captions which are not shaded.
 2. Clerks shall enter the Rail Condition Violated and enter the NYSD Number if any from caption No. 10.

3. In all warrant cases without an existing arrest, the arresting officer shall enter the captions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100. The name and address of the complainant is to be entered in caption 10.

ORIGINAL / DUPLICATE TO WARRANT DIVISION - TRIPLICATE TO COURT

KET:mrf
6/29/79

Criminal Term : Queens County

The People of the State of New York

-against-

Ind. No. 1227-78

SAMUEL HOWARD,

Defendant

~~XXXXXXXXXXXXXXXXXXXX~~

SUPPLEMENTARY

BILL OF PARTICULARS

State of New York)

: ss.:

County of Queens)

I, KATHERINE E. TIMON, an Assistant District Attorney of Queens County, do hereby affirm the statements herein to be true under the penalties of perjury, except such as are made upon information and belief, which latter I believe to be true.

BILL OF PARTICULARS:

1. No identification procedure utilized.
2. Arrest warrant utilized. See attached warrant.
3. See attached vouchers, upon information and belief no search warrant utilized.

Dated: Kew Gardens, N.Y.
June 29, 1979

Respectfully submitted,

JOHN J. SANTUCCI

District Attorney-Queens County

By:

Katherine E. Timon
Katherine E. Timon

Assistant District Attorney

CC:
WILLIAM SPERLING, ESQ.
125-10 Queens Blvd.
Kew Gardens, N.Y. 11415

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM

DAILY REPORT TO CENTRAL JURY ROOM

PART 5

DATE 7-9-79

Hon. Vincent F. Vano Presiding

Indictment No. 1227-78

People vs.

Samuel Howard

JURORS SERVING

1. No. 53631 JOSEPH DILIBERTO
2. " 9592 ARTHUR KNUDSEN
3. " 9466 CHARLES A DEUCALE
4. " 9484 ROBERT CASALINUOVO
5. " 9781 FRANK TINNERINO
6. " 9639 DONALD MARIGLIANO

7. No. 8685 VINCENT J. GRASSO
8. " 9652 PHILIP MIGLIORE
9. " 4492 CAROL R TURNER
10. " 9480 MARIANNE C. CARTER
11. " 3251 IRA EWEN
12. " 4773 ARTHUR B. SUDRAN

Alternate

① 43568 JERRY COHEN

Alternate

② 9794 LUCILLE TRIOLLO

Return this Sheet Promptly
To Central Jury Room.

Almanick
Court Clerk

**COUNSEL UNDER ARTICLE 18-B OF THE COUNTY LAW
THE COMPTROLLER OF THE CITY OF NEW YORK**

To WILLIAM H. SPERLING

DEC 4 1979

(Name of Payee)

125-10 Queens Boulevard, Kew Gardens, New York 11415

(Address)

Pursuant to the authorization contained in the attached copy of the ORDER APPOINTING COUNSEL in the case of People of the State of New York QUEENS County against SAMUEL HOWARD Indictment/Docket No. 1227-78, a felony ☒ misdemeanor ☐ claim is hereby made for compensation and expenses of representation, as follows:

I. TIME SPENT IN OPEN COURT

	Part	Date	Judge or Justice	Hours
(a) Arraignment	V	3-27-79	HARO	2
(b) Plea Not Guilty	V	3-30-79	HARO	1
(c) Sentence				
(d) Continuances (list time for each date separately: Use rider if necessary)	V	4-20-79	HARO	1/2
	V	4-23-79	HARO	0
	V	5-2-79	HARO	1/2
	V	5-18-79	HARO	1
	V	5-31-79	HARO	1
(e) Hearings conducted (specify nature)	V	4-23-79	HARO	5
(f) Trial (list time for each date separately: use rider if necessary)	V	7-9-79	HARO	5 1/2
	V	7-10-79	HARO	4 1/2
	V	7-11-79	HARO	4 1/2
	V	7-12-79	HARO	4
	V	7-13-79	HARO	1 1/2

II. TIME SPENT IN PREPARATION (OUT OF COURT)

(a) Interviews with client (specify place)	3/27; 4/20; 5/20; 6/26/79		2
(b) Legal research			
(c) Investigative work:	4/9; 7/10/79		1 1/2
Interviews with witnesses			
Consultation with prosecuting officials			
Consultation with probation officers			
Other (specify) Priv. Inv.	4/20; 5/2; 5/7	7/2/79	3
(d) Preparation of Motion papers			
(e) Other (specify)		3/30-79	2

III. EXPENSES OF REPRESENTATION (ITEMIZE)

Do Not Include Office Overhead Expenses

AMOUNT

IV. DISPOSITION OF CHARGES (CHECK APPROPRIATE SPACE):

After Trial: Acquittal ☐; Conviction as charged ☒; Conviction, less than charged (Felony ☐; Misdemeanor ☐; Violation ☐)

After Plea: Conviction as charged ☐; Conviction, less than as charged (Felony ☐; Misdemeanor ☐; Violation ☐) Y.O.

Other: Complaint withdrawn ☐; Defendant absconded ☒; Abated by death ☐; Defendant certified incompetent ☐; Relieved by court sua sponte ☐; at your request ☐; Defendant's request ☐; private counsel retained ☐; Dismissed (failure to prosecute) ☐; Dismissed (interest of justice) ☐ ACD

Name of Judge of Justice HON. VINCENT F. HARO Date _____

V. Has compensation and/or reimbursement in this case been applied for or received.

Yes ☐ No ☒ If yes, Amount \$ _____

Item I
Item II
Item III

CLAIM

No. of hrs. 36
No. of hrs. 8 1/2

ALLOWANCE

FOR COURT USE ONLY
DO NOT WRITE IN THIS SPACE

**VOUCHER FOR SERVICES RENDERED OTHER THAN COUNSEL
UNDER ARTICLE 18-B, SECTION 722-c OF THE COUNTY LAW**

TO THE COMPTROLLER OF THE CITY OF NEW YORK

Name INVESTIGATOR: VICTOR JULIANO
125-10 QUEENS BLVD.,
 Address KEW GARDENS, NY.

Pursuant to the authorization contained in the attached copy of the ORDER of the SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF QUEENS in the case of THE PEOPLE OF THE STATE OF NEW YORK against SAMUEL HOWARD

Indictment No. 1227-78
 defendant, Docket

the following services were rendered for which claim is made in the amount of \$ 180.00

I. TIME SPENT IN OPEN COURT

Hearing	Explain nature of services	Qns.	Sup.	Ct.	Pt.	5 (Naro, J.)	Date	No. of Hours
							4/23/79	1

TOTAL

1

II. TIME SPENT OUT OF COURT

(a) Interviews (specify)	Joseph Falcone-Legal Aid Soc.	4/18/79	2
Defendant-Qns.	House of Det. for Men	4/26/79	2
Defendant-		6/26/79	1
(b) Consultations- with defense counsel		4/20/79	1
Jamaica Hospital-89th Ave. and Van Wyck Expwy.			
Booth (b) Consultations	Memorial Hosp.-56th Ave. and Main St.		
106th Pct, Liberty Avenue and 101st Street, Ozone Park		4/27/79	3
With Defense Counsel		5/ 2/79	1/2
With Defense Counsel		5/ 7/79	1/2
With Defense Counsel		7/ 2/79	1
(c) Examinations vicinity of 34th Ave. and 11th Street		7/17/79	3
Corona, Queens		7/20/79	2 1/2

TOTAL

16 1/2

III. If compensation and/or reimbursement in this case has heretofore been applied for or received, so state _____

AMOUNT CLAIMED

Item I 1 hrs.

16 1/2

Item II _____ hrs.

**DO NOT WRITE IN THIS SPACE
FOR COURT USE ONLY**

AMOUNT ALLOWED



Office of the District Attorney

CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA 89101
(702) 386-4711

ROBERT J. MILLER
DISTRICT ATTORNEY

April 25, 1983

Supreme Court of Queens County
12501 Queens Boulevard
Kew Gardens
New York, N. Y. 11514

Attention: Morty Greenstein, Room 710

Reference: Defendant SAMUEL HOWARD, Our Case C53867

Dear Mr. Greenstein:

This is to confirm our telephone conversation of 25 April 1983 regarding court records on file of one SAMUEL HOWARD.

For your information he has been found guilty of First Degree Murder in this jurisdiction and the information from your files will be used in the penalty phase of our case.

Thank you for your cooperation.

Sincerely,

ROBERT J. MILLER
District Attorney

Alan W. Rakes

By OLAN W. RAKES
Special Investigator
Major Violators Unit

OWR/lb

Transcript mailed 4/26/83 (m.s.)

AT A CRIMINAL TERM OF THE SUPREME
COURT, held in and for Queens
County at the Court House, Bay
Gardens, Queens County, N.Y. on
the 2nd day of AUGUST 1989

PRESENT:

Honorable VINCENT F. NARO
Justice

Indictment No. 1227-78

THE PEOPLE OF THE STATE OF NEW YORK
-against-
SAMUEL HOWARD
Defendant.

Ind. Filed 6/29/78
Indicted for Robb 1
Agg Harass
Found Guilty As Charged

The defendant SAMUEL HOWARD having heretofore
been admitted to bail, and cash of \$ 1000 having been
deposited herein on 7/28/78 conditioned for the
appearance of the defendant herein for trial of this indictment;
and this indictment having regularly come on for SENTENCE
before this Court on 7/12/79,
and the surety upon said cash bail having been duly notified
to produce the defendant herein; and the defendant not
appearing; and CHARLES WILLIAMS his surety not
bringing him forth to answer to this charge pursuant to the
condition of their cash bail on said 7/28/78,

NOW, on motion of the District Attorney, it is
ORDERED that the said cash bail be and the same is hereby
forfeited;

AND IT IS FURTHER ORDERED that the said cash bail receipt
together with a duplicate-original copy of this order of
forfeiture be filed in the Office of the Treasurer of the City
of New York.

GRANTED 8/2/80

[Signature]
Justice of the Peace

NYC - Dept. of Records & Information Services

Request Out Card

Requestor:
Deliver To: SUPREME COURT, NY STATE - QNS
Comment:



* 10077 *

Offsite Box No: 08038360

Agency 934
Div/Unit 01-001

Rec Series Code: 03382

Accession No:

SUPREME COURT, NY STATE - QNS
11th JUDICIAL DIST. / QUEENS COUNTY

Rec. Series Description: CRIMINAL CASE FILES

Barcode: 100388898

Description: 1213 - 1235

Box Year: From: 1/1/1978 To: 12/31/1978

Current Location: RECORDS STORAGE FACILITY

Shelf Location:

Requestor

BM

Agency

934

Div/Unit

01-001

SUPREME COURT, NY STATE - QNS

11th JUDICIAL DIST. / QUEENS COUNTY

Description:

1227-78

HOWARD, SAMUEL

Current Location: RECORDS STORAGE FACILITY



* 102795375 *

STATUS	
<input type="checkbox"/>	FILLED
<input type="checkbox"/>	RECORD NOT IN CONTAINER
<input type="checkbox"/>	NAME DIFFERS
<input type="checkbox"/>	CIRCULATED PREVIOUSLY
<input type="checkbox"/>	NEED MORE INFORMATION
<input type="checkbox"/>	RECORD SERIES NOT IN MRC
<input type="checkbox"/>	RECORDS DESTROYED

Filed _____ Bond
 day of _____ 19____
 Pleads,

SUPREME COURT: CRIMINAL TERM
Queens County

THE PEOPLE

vs.

Q813715 **SAMUEL HOWARD**

Defendant

JOHN J. SANTUCCI,
District Attorney

INDICTMENT FOR

ROBBERY 1°
AGGRAVATED HARASSMENT

A TRUE BILL

[Signature] **Foreman**

Counsel,

Tried the _____ day of _____ 19____

Verdict,

Sentence,

Having appeared for arraignment without counsel, defendant was asked whether he desired the aid of counsel and responded that he did

**Counsel for defendant waives read
 Defendant pleads not guilty.
 Defendant**

Assignment calendar

Adjournments

At a Criminal Term of the Supreme
Court, held in and for Queens County at the Court House,
Kew Gardens, Queens County, N. Y., on the 13th day
of July, 1979

PRESENT:

Honorable Vincent P. Naro

Justice of the Supreme Court.

Indictment No. 1227-78

THE PEOPLE OF THE STATE OF NEW YORK

vs.

Samuel Howard

On 7/10/79 Bench Warrant issued for defendant during jury selection.

On 7/13/79 defendant was found guilty in absentia by jury verdict of Robbery 1st degree & Aggravated Harassment.

Handwritten signature: The People's Court § 1.20 (5) - Confrontation (17)

CERTIFICATION

A TRUE EXTRACT FROM THE MINUTES. 4/26/83

Handwritten signature: J. J. [unclear]
Clerk.

EXHIBIT 150

EXHIBIT 150

JUDGMENT

(Commitment to State Hospital as provided by Section 1368 P.C.)

THE PEOPLE OF THE STATE OF CALIFORNIA

- vs -

HOWARD, SAMUEL (001)

Case No. SCR936881 F-12295 Dept 21

HON. JUDGE WILLIAM PITT HYDE

Deputy DA M. McDowell
District Attorney

Deputy PD R. Webb
Counsel for Defendant

WHEREAS, on May 23, 1980 an INFORMATION was filed in said Court by the District Attorney charging the Defendant with PC 211/ROBBERY, a felony; CVC 10851/UNLAWFUL DRIVING OR TAKING OF A MOTOR VEHICLE

The defendant being represented by Deputy Public Defender Wet Criminal Proceedings were suspended and a Medical Commission consisting of two psychiatrists were appointed pursuant to 1368 P.C.

Drs. O. L. GERICKE/ DR. WILHELM SOLTZ/DEPT. MENTAL HEALTH were appointed as experts and alienists to examine said defendant and investigate his present mental competency to stand trial and to testify in Court.

THEREAFTER, on June 11, 1980 the COURT having found the defendant to be presently mentally incompetent to stand trial the matter is referred to the Director of Mental Health for a recommendation.

THEREAFTER, on June 11, 1980 after consideration of the report of the Mental Health Director, criminal proceedings are to remain suspended and the Court ORDERED, ADJUDGED AND DECREED that the defendant be committed to, and the Sheriff of this County is ORDERED to deliver said defendant SAMUEL HOWARD to PATTON State Hospital for care and treatment until the defendant becomes presently mentally competent to stand trial. This period not to exceed 5 weeks

When the defendant becomes presently mentally competent to stand trial the Superintendent shall so certify and the Sheriff shall return the defendant to this Court for further proceedings.

IT IS FURTHER ORDERED that a report be submitted for hearing on OCT. 20, 1980 at 8:30 A.M. in San Jose and thereafter every six months.

DATED: July 9, 1980



William Pitt Hyde
Judge of the Superior Court
HONORABLE JUDGE WILLIAM PITT HYDE

EXHIBIT 151

EXHIBIT 151

Court Order: Date 7-9-80

No. F 12295

County SRDO:

~~William Pitt Hyde; Dest. No.: 1~~

Arresting Agency _____
Arresting Officer _____
Arresting Agency Address _____
Arresting Agency Phone _____
Arresting Agency Fax _____
Arresting Agency Email _____
Arresting Agency Website _____
Arresting Agency Social Media _____
Arresting Agency Other Information _____
Arresting Agency Signature _____
Arresting Agency Date _____
Arresting Agency Title _____
Arresting Agency Department _____
Arresting Agency Division _____
Arresting Agency Unit _____
Arresting Agency Shift _____
Arresting Agency Station _____
Arresting Agency District _____
Arresting Agency Region _____
Arresting Agency State _____
Arresting Agency Zip _____
Arresting Agency Country _____
Arresting Agency City _____
Arresting Agency County _____
Arresting Agency Precinct _____
Arresting Agency Substation _____
Arresting Agency Beat _____
Arresting Agency Block _____
Arresting Agency Lot _____
Arresting Agency Parcel _____
Arresting Agency Tract _____
Arresting Agency Section _____
Arresting Agency Township _____
Arresting Agency Range _____
Arresting Agency Quarter _____
Arresting Agency Meridian _____
Arresting Agency Base Line _____
Arresting Agency Monument _____
Arresting Agency Survey _____
Arresting Agency Plat _____
Arresting Agency Book _____
Arresting Agency Page _____
Arresting Agency Volume _____
Arresting Agency Series _____
Arresting Agency File _____
Arresting Agency Folder _____
Arresting Agency Box _____
Arresting Agency Cabinet _____
Arresting Agency Shelf _____
Arresting Agency Drawer _____
Arresting Agency Compartment _____
Arresting Agency Container _____
Arresting Agency Vessel _____
Arresting Agency Package _____
Arresting Agency Parcel _____
Arresting Agency Item _____
Arresting Agency Object _____
Arresting Agency Substance _____
Arresting Agency Material _____
Arresting Agency Component _____
Arresting Agency Part _____
Arresting Agency Piece _____
Arresting Agency Fragment _____
Arresting Agency Remnant _____
Arresting Agency Residue _____
Arresting Agency Debris _____
Arresting Agency Waste _____
Arresting Agency Scrap _____
Arresting Agency Junk _____
Arresting Agency Trash _____
Arresting Agency Garbage _____
Arresting Agency Refuse _____
Arresting Agency Litter _____
Arresting Agency Filth _____
Arresting Agency Dirt _____
Arresting Agency Dust _____
Arresting Agency Grime _____
Arresting Agency Gunk _____
Arresting Agency Crud _____
Arresting Agency Sludge _____
Arresting Agency Muck _____
Arresting Agency Slop _____
Arresting Agency Mess _____
Arresting Agency Chaos _____
Arresting Agency Disorder _____
Arresting Agency Confusion _____
Arresting Agency Hubbub _____
Arresting Agency Uproar _____
Arresting Agency Riot _____
Arresting Agency Revolt _____
Arresting Agency Rebellion _____
Arresting Agency Insurrection _____
Arresting Agency Uprising _____
Arresting Agency Mutiny _____
Arresting Agency Sedition _____
Arresting Agency Treason _____
Arresting Agency Betrayal _____
Arresting Agency Perfidy _____
Arresting Agency Treachery _____
Arresting Agency Deceit _____
Arresting Agency Fraud _____
Arresting Agency Trickery _____
Arresting Agency Guile _____
Arresting Agency Craftiness _____
Arresting Agency Cunning _____
Arresting Agency Slyness _____
Arresting Agency Wily _____
Arresting Agency Shrewd _____
Arresting Agency Astute _____
Arresting Agency Sharp _____
Arresting Agency Quick _____
Arresting Agency Nimble _____
Arresting Agency Agile _____
Arresting Agency Spry _____
Arresting Agency Alert _____
Arresting Agency Watchful _____
Arresting Agency Vigilant _____
Arresting Agency On Guard _____
Arresting Agency Ready _____
Arresting Agency Prepared _____
Arresting Agency Equipped _____
Arresting Agency Armed _____
Arresting Agency Loaded _____
Arresting Agency Charged _____
Arresting Agency Energized _____
Arresting Agency Motivated _____
Arresting Agency Inspired _____
Arresting Agency Empowered _____
Arresting Agency Enabled _____
Arresting Agency Assured _____
Arresting Agency Confident _____
Arresting Agency Sure _____
Arresting Agency Certain _____
Arresting Agency Positive _____
Arresting Agency Optimistic _____
Arresting Agency Hopeful _____
Arresting Agency Cheerful _____
Arresting Agency Joyful _____
Arresting Agency Glad _____
Arresting Agency Happy _____
Arresting Agency Content _____
Arresting Agency Satisfied _____
Arresting Agency Pleased _____
Arresting Agency Delighted _____
Arresting Agency Ecstatic _____
Arresting Agency Euphoric _____
Arresting Agency Blissful _____
Arresting Agency Carefree _____
Arresting Agency Relaxed _____
Arresting Agency Unworried _____
Arresting Agency At Ease _____
Arresting Agency Comfortable _____
Arresting Agency Cozy _____
Arresting Agency Snuggly _____
Arresting Agency Warm _____
Arresting Agency Soft _____
Arresting Agency Gentle _____
Arresting Agency Mild _____
Arresting Agency Placid _____
Arresting Agency Tranquil _____
Arresting Agency Peaceful _____
Arresting Agency Quiet _____
Arresting Agency Still _____
Arresting Agency Motionless _____
Arresting Agency Inert _____
Arresting Agency Lifeless _____
Arresting Agency Dead _____
Arresting Agency Deceased _____
Arresting Agency Departed _____
Arresting Agency Gone _____
Arresting Agency Missing _____
Arresting Agency Absent _____
Arresting Agency Out _____
Arresting Agency Away _____
Arresting Agency Distant _____
Arresting Agency Remote _____
Arresting Agency Solitary _____
Arresting Agency Lone _____
Arresting Agency Single _____
Arresting Agency One _____
Arresting Agency Unique _____
Arresting Agency Singular _____
Arresting Agency Individual _____
Arresting Agency Personal _____
Arresting Agency Private _____
Arresting Agency Confidential _____
Arresting Agency Secret _____
Arresting Agency Hidden _____
Arresting Agency Concealed _____
Arresting Agency Veiled _____
Arresting Agency Masked _____
Arresting Agency Disguised _____
Arresting Agency Camouflaged _____
Arresting Agency Cloaked _____
Arresting Agency Enshrouded _____
Arresting Agency Obscured _____
Arresting Agency Forgotten _____
Arresting Agency Overlooked _____
Arresting Agency Neglected _____
Arresting Agency Ignored _____
Arresting Agency Dismissed _____
Arresting Agency Rejected _____
Arresting Agency Refused _____
Arresting Agency Denied _____
Arresting Agency Withheld _____
Arresting Agency Retained _____
Arresting Agency Kept _____
Arresting Agency Held _____
Arresting Agency Stored _____
Arresting Agency Saved _____
Arresting Agency Preserved _____
Arresting Agency Protected _____
Arresting Agency Defended _____
Arresting Agency Guarded _____
Arresting Agency Watched _____
Arresting Agency Monitored _____
Arresting Agency Supervised _____
Arresting Agency Managed _____
Arresting Agency Controlled _____
Arresting Agency Regulated _____
Arresting Agency Governed _____
Arresting Agency Ruled _____
Arresting Agency Commanded _____
Arresting Agency Directed _____
Arresting Agency Led _____
Arresting Agency Guided _____
Arresting Agency Advised _____
Arresting Agency Recommended _____
Arresting Agency Suggested _____
Arresting Agency Proposed _____
Arresting Agency Offered _____
Arresting Agency Presented _____
Arresting Agency Introduced _____
Arresting Agency Brought _____
Arresting Agency Carried _____
Arresting Agency Transported _____
Arresting Agency Moved _____
Arresting Agency Transferred _____
Arresting Agency Relocated _____
Arresting Agency Shifted _____
Arresting Agency Changed _____
Arresting Agency Altered _____
Arresting Agency Modified _____
Arresting Agency Adjusted _____
Arresting Agency Adapted _____
Arresting Agency Evolved _____
Arresting Agency Developed _____
Arresting Agency Progressed _____
Arresting Agency Advanced _____
Arresting Agency Improved _____
Arresting Agency Enhanced _____
Arresting Agency Upgraded _____
Arresting Agency Updated _____
Arresting Agency Revised _____
Arresting Agency Rewritten _____
Arresting Agency Recreated _____
Arresting Agency Remade _____
Arresting Agency Remodeled _____
Arresting Agency Renovated _____
Arresting Agency Restored _____
Arresting Agency Rehabilitated _____
Arresting Agency Rebuilt _____
Arresting Agency Reconstructed _____

Facility and Address	Date Admitted	Date Discharged	Remarks
			<p>Continued on back <input type="checkbox"/></p>

Psychiatric	Somatic
<p>8-18-80</p> <p>Axis I: 294.80, Organic brain syndrome, atypical, due to drugs.</p> <p>Axis II: 799.92, Diagnosis deferred.</p> <p>Axis III: None.</p> <p>Axis IV: Psychosocial stressors: 1 - None.</p> <p>Axis V: Highest level of adaptive functioning past year: 0 - Unspecified.</p> <p>Carl M. Clark, M.D./kap</p>	<p>bp</p> <p>Continued on back <input type="checkbox"/></p> <p>Operations, post operative complications, allergies and sensitivities, infections, etc.</p> <p>Continued on back <input type="checkbox"/></p>
<p>Continued on back <input type="checkbox"/></p> <p>Date Discharged or released: <u>12-12 80</u></p> <p>Decased <input type="checkbox"/> Coroner's case <input type="checkbox"/></p> <p>Autopsy: Hospital <input type="checkbox"/> Coroner <input type="checkbox"/></p> <p>Transferred or referred to: <u>Atascadero State Hospital</u></p> <p>Condition on discharge: _____</p>	<p>MT: _____ Medi-Cal No. _____</p> <p>WT: _____ Medicare No. _____</p> <p>Clients SSN: <u>422-68-3398</u> Alien reg. no. _____</p> <p>Address: <u>438 E. Redlands Blvd.</u> <u>Redlands, CA 92373</u></p> <p>Correspondent, relative, conservator</p> <p>Name: <u>Marie Howard</u></p> <p>Address: <u>153-24 Foch Blvd.</u> <u>Jamica, N.Y. 11434</u></p> <p>Telephone: <u>(212) 723-3718</u> Relationship: <u>parents</u></p>

Confidential Client/Patient Information

See California W&I Code
Section 5328

US 1710 (7/78)

NAME: HOWARD, SAZUEL
PAT 134310-2 M SOL BLK 8-12-49
FILE NO.: 7-17-80 SBDO PC 1370 N.Y.
FACILITY: AKA WILLIAMS, GEORGE PROT
UNL

EXHIBIT 152

EXHIBIT 152

SUMMARY

- ☒ EVALUATION/ADMISSION ☐ ADDENDUM
☐ PSYCHOLOGICAL TESTING
☐ REVIEW (Period) _____
☐ RELEASE
☐ OTHER (Specify) _____

NAME: Samuel HOWARD

Chart Number: 61-33-72

Date of Birth: 8/28/48

CONFIDENTIAL PATIENT INFORMATION
SEE CALIFORNIA WELFARE AND
INSTITUTIONS CODE SECTION 5328

Date: Admitted: 4/3/80

PAGE NUMBER 1

ADMISSION HISTORY:
IDENTIFYING DATA:

Samuel Howard is a 30 year old Black single male, who claims to be a resident of Jamaica, New York. He was born in New York. Occupation: None. He has been in the San Bernardino County for the past two days, and the State of California for the past one month. He is referred here by the San Bernardino County Jail.

PRESENTING COMPLAINT:

The patient attempted to hang himself by a chain.

CURRENT PROBLEM:

The patient was brought over here from the San Bernardino County Jail after he attempted to hang himself with a chain attached to a secured bunk. After getting him down he began yelling his Marine Corp number. He was incoherent and physically aggressive. The patient was arrested for robbing and assaulting an individual. He has an extensive criminal legal history in the State of New York from where he came.

SOCIAL HISTORY:

The patient has no stable living arrangements. He has been moving around since he left New York. He claims to be a service connected disabled veteran receiving \$111. a month. He claims that he is 45% disabled. He claims that he has a high school education plus some college. He has not worked. He has never been married. He was in the U.S. Marine Corp from 1968 to 1969. He spent time in Vietnam where he was wounded by a mine in 1969.

PSYCHIATRIC HISTORY:

The patient has been to numerous psychiatric hospitals in New York, such as South Memorial in Flushing, Jamaica Hospital in Jamaica, Elmhurst Hospital, VA hospitals etc. He has not taken his treatment consistent at one place. He claims that he frequently gets headaches, and has a difficult time sleeping. Father is also a mental patient, and has been in a mental hospital for a long time.

PHYSICAL HEALTH:

The patient claims to have serious physical problems related to the accident which he had in Vietnam. Following that accident he has not been able to sleep. He is constantly

SUMMARY

- ☒ EVALUATION/ADMISSION ☐ ADDENDUM
☐ PSYCHOLOGICAL TESTING
☐ REVIEW (Period) _____
☐ RELEASE
☐ OTHER (Specify) _____

NAME: Samuel HOWARD

Chart Number: 61-33-72

Date of Birth: 8/28/48

CONFIDENTIAL PATIENT INFORMATION
SEE CALIFORNIA WELFARE AND
INSTITUTIONS CODE SECTION 5328

Date:

Admitted: 4/3/80

PAGE NUMBER 2

using street drugs and medication. He drinks every day. Overall his personality has changed remarkably. He claims to have memory lapses and blackouts.

MENTAL STATUS:

This is a 30 year old Black male of medium height and built dressed in hospital attire. His appearance is fairly neat and clean. Eye contact is good. Speech is clear coherent and relevant. He is suspicious and guarded. He has paranoid ideations. He denies having auditory and visual hallucinations. His judgment is grossly impaired. He claims that he has memory lapses. He is fairly alert and oriented times three. Insight is almost nil. I.Q. is estimated to be in the dull normal range.

DIAGNOSIS:

Deferred.

RECOMMENDATIONS:

Continue evaluation. Gather additional history.

Raj Lall, M.S.W.
Mental Health Clinician III

Staff Psychiatrist

D&T: 4/3/80-4/4/80
RL:sb:MWPC

EXHIBIT 153

EXHIBIT 153

SUMMARY

- ☒ EVALUATION/ADMISSION ☐ ADDENDUM
- ☐ PSYCHOLOGICAL TESTING
- ☐ REVIEW (Period) _____
- ☐ RELEASE
- ☐ OTHER (Specify) _____

NAME: Samuel HOWARD

Chart Number: 61-33-72

Date of Birth: 8-24-48

CONFIDENTIAL PATIENT INFORMATION
SEE CALIFORNIA WELFARE AND
INSTITUTIONS CODE SECTION 5328

Date: 4/9/80

PAGE NUMBER 1

ADMISSION HISTORY

IDENTIFYING DATA:

Samuel Howard is a 31-year-old, Black single male who claims to be a resident of Jamaica, New York. Has address is 13312 Sutphin Boulevard, Jamaica, New York 11436. He was born in New York. Occupation; none. He has been in San Bernardino County for less than a month. Important person to contact would be his sister, Diane Woodridge, who lives at 3910 Folly Street, Dallas, Texas. Also, a friend named Mrs. Pinkey who can be reached at (212) 322-7964.

PRESENTING COMPLAINT:

Patient referred to the Mental Health Unit by the court for evaluation.

CURRENT PROBLEM:

The patient was here a week ago following a suicide attempt. He was returned to jail because he was not found to be depressed, suicidal or psychotic at that time. The patient appeared in the court on April 7, and an order was issued by Judge Rankins. The order states that Samuel tried to commit suicide by hanging, resulting in a physical injury. On April 6, 1980 he refused to answer questions to his arraignment on a felony fugitive complaint. His facial expressions and mannerisms were inappropriate to the situation presented at his arraignment.

While talking to patient about his problems he tends to be very tangential and circumstantial. He talks about going to heaven to be with his mother and sister. He also states that he has been in communication with God. He has paranoid ideation and he can be very explosive. In some ways his behavior appears to be manipulative. Since his admission here he has not shown symptoms of depression or suicidal ideation. He has not talked about suicide on the unit. His judgment is certainly very poor. Impulse control is very poor. Although he complains about memory lapses, for the most part he is able to relate relevant information. He does have an extensive history of drug and alcohol abuse.

SOCIAL HISTORY:

The patient has had no stable living arrangement since he left New York. He came out here with a friend. I spoke with Mrs. Pinkey, a friend of patient who related that patient has extensive criminal/legal history. There is an outstanding

SUMMARY

- ☒ EVALUATION/ADMISSION ☐ ADDENDUM
- ☐ PSYCHOLOGICAL TESTING
- ☐ REVIEW (Period) _____
- ☐ RELEASE
- ☐ OTHER (Specify) _____

NAME: Samuel HOWARD
61-33-72

Chart Number:

8-24-48

Date of Birth:

CONFIDENTIAL PATIENT INFORMATION
SEE CALIFORNIA WELFARE AND
INSTITUTIONS CODE SECTION 5328

Date:

4/9/80

2

PAGE NUMBER
warrant for his arrest on a felony charge in New York. The friend feels that the patient left the area to avoid prosecution. He is a Vietnam veteran and receives a disabled veteran's pension, \$311 a month. He claim to be 45% disabled. The patient has not had a job for quite sometime. He claims that he was attending school after his return from Vietnam. He got into numerous trouble because of his explosive behavior. He has never been married. He was in the U. S. Marine Corps from 1968 to 1969. He received an honorable medical discharge. He claimed that he was wounded by a mine in Vietnam in 1969.

PSYCHIATRIC HISTORY:

The patient admits to having been to numerous psychiatric and medical hospitals in the New York area. He also claims that complete examinations have been done and that he has received treatment. However, he did not follow-through on their recommendations. He has been extensively involved in alcohol and drug abuse. As mentioned above the patient's behavior has been antisocial and criminal for the most part. There might be an organic factor involved here since he claims having sustained serious injuries to his head. He claims that his father is also a mental patient.

PHYSICAL HEALTH:

The patient appears to be in good physical health. He claims that he has been on medication following his discharge from the Marine Corps. He also admits to abusing street drugs such as amphetamines, marijuana, PCP. There is also a history of alcohol abuse. At this time the patient does not appear to be depressed and he has not talked about committing suicide.

MENTAL STATUS:

This is a 31-year-old, Black, single male of medium height and build. He was dressed in hospital clothes. His appearance is fairly neat and clean. Eye contact is good. Speech is clear, coherent for the most part. However, he is suspicious and has paranoid ideation. He can easily become very angry and shows very poor impulse control. There is no clear indication of hallucinations auditory or visual. His affect is appropriate for the most part due to the situation. The patient tends to answer questions selectively, although he talks about memory lapses. For the most part he is able to give information that he wishes to. His judgment is poor. Concentration is fair. I. Q. is estimated to be in the dull normal range. He is alert and oriented x three. Fund of information is adequate. His memory is fair both for recent and remote events. Insight is almost nil. When confronted about his

SUMMARY

- ☒ EVALUATION/ADMISSION ☐ ADDENDUM
☐ PSYCHOLOGICAL TESTING
☐ REVIEW (Period) _____
☐ RELEASE
☐ OTHER (Specify) _____

NAME: Samuel HOWARD

Chart Number: 61-33-72

Date of Birth: 8-24-48

CONFIDENTIAL PATIENT INFORMATION
SEE CALIFORNIA WELFARE AND
INSTITUTIONS CODE SECTION 5328

Date: 4/9/80

PAGE NUMBER 3

behavior outside, patient stated rather strongly that he had no regrets and that he would do it again. He has no remorse or guilt about having committed crimes. He tends to justify his behavior. Defense mechanism of rationalization and projection are quite strong.

PROVISIONAL DIAGNOSIS:

301.7 Antisocial personality with possible organic factor involved.

RECOMMENDATIONS:

Continue evaluation.

Ethel Chapman, M.D.
Staff Psychiatrist II

Dictated by:

Raj Lall, M.S.W.
Mental Health Clinician III

KL:jk
HWPC
DET: 4/10/80

EXHIBIT 154

EXHIBIT 154

HEALTH RECORD

IMMUNIZATION RECORD

All entries in ink to be made in block letters

VACCINATION AGAINST SMALLPOX (Number of previous vaccination scars)

CONVULSIONS NOT BELIEVED

DATE	ORIGIN	BATCH NUMBER	RESULT		STATION	PHYSICIAN'S NAME
			1-4 DAYS	5-14 DAYS		
FEB 07 1968	NDC			ACC	USMCRD, PISC R.	LANGSTON, LT MC USNR
MAR 26 1968	56801 N7				7th ENQ.	SS Andrew L. Mc
						SEICW 122614122 DIAZON

ENTER RESULTS AS: IMMEDIATE REACTION (of intensity); ACCELERATED REACTION (Painful); TYPICAL PRIMARY VACCINA

TRIPLE TYPHOID VACCINE

DATE	DOSE	UNTOWARD REACTION	PHYSICIAN'S NAME	DATE	DOSE	UNTOWARD REACTION	PHYSICIAN'S NAME
FEB 07 1968	0.5cc		R. LANGSTON, LT MC USNR				
MAR 26 1968	0.5cc		R. LANGSTON, LT MC USNR				
	0.5cc						

TETANUS-TOXOID

DATE	DOSE	UNTOWARD REACTION	PHYSICIAN'S NAME	DATE	DOSE	UNTOWARD REACTION	PHYSICIAN'S NAME
FEB 07 1968	0.5cc		R. LANGSTON, LT MC USNR				
MAR 26 1968	0.5cc		R. LANGSTON, LT MC USNR				

SCHICK TESTING AND DIPHTHERIA IMMUNIZATION

DATE	DOSE	REACTION	PHYSICIAN'S NAME	DATE	DOSE	REACTION	PHYSICIAN'S NAME

VETERANS SERVICES DIVISION

JUN 30 1981

TYPHUS VACCINE

DATE	DOSE	REACTION	PHYSICIAN'S NAME	DATE	DOSE	REACTION	PHYSICIAN'S NAME
FEB 31 1968	0.5cc		R. LANGSTON, LT MC USNR				

FOIA/PRIVACY ACT RELEASE

CHOLERA VACCINE

DATE	ORIGIN	BATCH NO.	PHYSICIAN'S NAME	DATE	ORIGIN	BATCH NO.	PHYSICIAN'S NAME
FEB 07 1968	NDC		R. LANGSTON, LT MC USNR				
MAR 26 1968			R. LANGSTON, LT MC USNR				

YELLOW FEVER VACCINE

DATE	ORIGIN	BATCH NO.	STATION	PHYSICIAN'S NAME
FEB 31 1968	NDC	71 6152	USMCRD, PARRIS ISLAND, S.C.	R. LANGSTON, LT MC USNR

DATE	RACE	GRADE, RATING OR POSITION	ORGANIZATION UNIT	COMPONENT OR BRANCH	SERVICE, DEPT. OR AGENCY
FEB 31 1968	W	PVT	USMC	DOD	

PATIENT'S NAME (LAST, FIRST, MIDDLE NAME) 2292728 18 AUG 1948 2292928

IMMUNIZATION RECORD
Standard Form 601

OTHER IMMUNIZATIONS

DATE	TYPE	DOSE	REACTION	REMARKS	PHYSICIAN'S NAME
JAN 2 1969	INFLUENZA	1.0cc			R. LANGSTON, LT MC USNR
JAN 2 1969	TRIVALENT POLIOVIRUS VACCINE, TYPE I, II AND III				R. LANGSTON, LT MC USNR
JAN 2 1969	TRIVALENT POLIOVIRUS VACCINE, TYPE I, II AND III				R. LANGSTON, LT MC USNR
JUL 1 1968	PLAGUE	1.0cc			R. LANGSTON, LT MC USNR
					TRANS.
	ADENOVIRUS VACCINE, LIVE ORAL TYPE 4 CONTROL NO.				
	WYETH LABORATORIES				R. LANGSTON, LT MC USNR
	66	5.			TRANS.
JAN 9 1969	Flu	1.0cc			R. LANGSTON, LT MC USNR
JAN 9 1969	Plague	0.2cc			R. LANGSTON, LT MC USNR
JUN 9 1969	Plague	0.2cc			R. LANGSTON, LT MC USNR

SENSITIVITY TESTS (Tuberculin, etc.)

DATE	TYPE	DOSE	ROUTE	RESULTS	PHYSICIAN'S NAME
JAN 2 1969	TUBERCULIN P.P.D.	0.1cc	INTRADERMAL	zero	R. LANGSTON, LT MC USNR
	P.P.D.	0.1cc	70		

REACTIONS (To transfusions, drugs, sera, foods, allergens, etc.)

DATE	AGENT	TYPE OF REACTION	SEVERITY	PHYSICIAN'S NAME

BLOOD TYPING

DATE	TYPE (International)	Rh FACTOR	PHYSICIAN'S NAME
JAN 2 1969			R. LANGSTON, LT MC USNR

REMARKS AND RECOMMENDATIONS (Including history of diseases for which any of the above immunizing agents were given with year and place of attack)

U. S. MARINE CORPS RECRUIT DEPOT, PARRIS ISLAND, SOUTH CAROLINA

Lot number of vaccine administered over the signature of R. Langston are filed at this activity for one year following administration.

*Dose in accordance with manufacturers recommendation.

Received 1,200,000 UNITS OF BENZATHINE PENICILLIN--G as streptococcal prophylaxis.

FOIA/PRIVACY ACT RELEASE

THIS RECORD IS ISSUED IN ACCORDANCE WITH ARTICLE 99, WHO SANITARY REGULATION NO. 2

ARMED DEPARTMENT
7TH ENGINEER BATTALION (REIN)
APO SAN FRANCISCO, 96602

M A L A R I A D E B R I E F I N G

By virtue of having been in Vietnam, I recognize that I have been exposed to malaria. Malaria may develop long after my departure from Vietnam. In order that I not contract malaria, it will be necessary for me to continue my antimalarial tablets after leaving Vietnam. To not do so would be a violation of Department of Defense orders as well as a violation of a moral obligation not to endanger my country, my friends, and my family.

"I have been taking Chloroquine —Primaquine antimalarial tablets weekly (salmon or orange colored tablets), and I will take one (1) tablet a week for eight (8) weeks following my departure from Vietnam. I have received the necessary tablets."

Sam Howard Jr. 15 July 68
(SIGNATURE) (DATE)

Sam Howard Jr. 2292922
(PRINTED NAME) (SERVICE NO.)

VETERANS SERVICES DIVISION

JUN 30 1968

FOIA/PRIVACY ACT RELEASE

HEALTH RECORD

DENTAL

SECTION I. DENTAL EXAMINATION

1. PURPOSE OF EXAMINATION

☒ INITIAL ☐ SEPARATION ☐ OTHER (Specify)

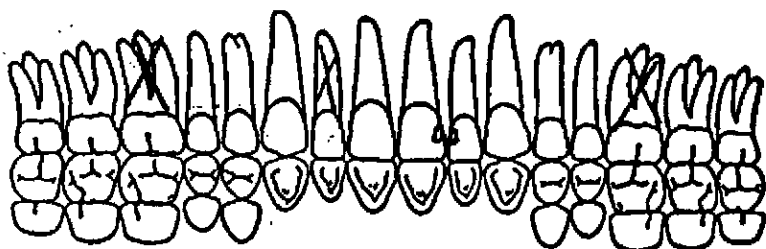
2. TYPE OF EXAM.

☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5

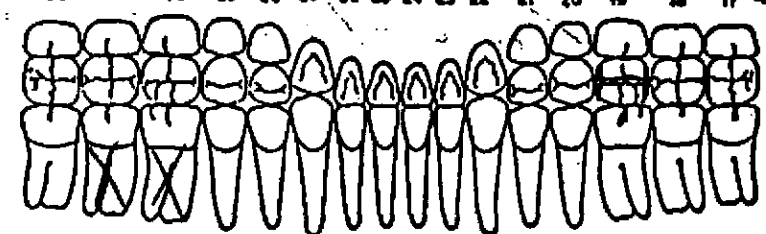
3. DENTAL CLASSIFICATION

☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5

4. MISSING TEETH AND EXISTING RESTORATIONS



RIGHT 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 LEFT
32 31 30 29 28 27 26 25 24 23 22 21 20 19 18 17



REMARKS

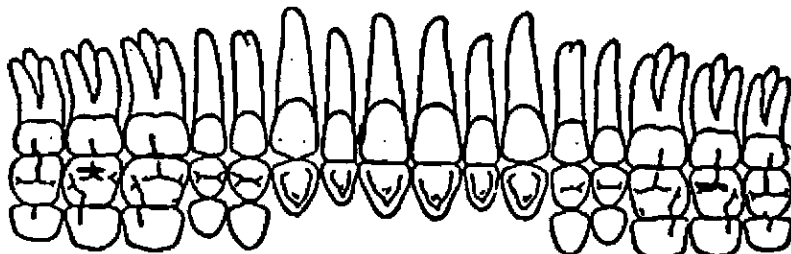
PLACE OF EXAMINATION
HCRD PARRIS

DATE
Jan 68

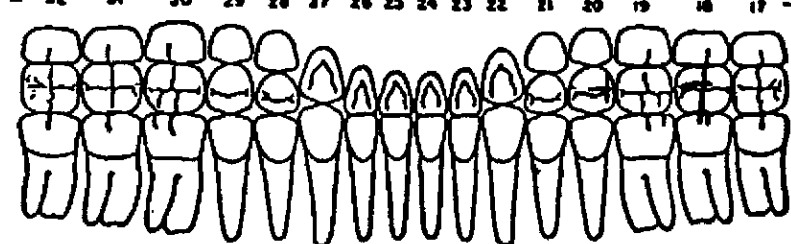
SIGNATURE OF DENTIST COMPLETING THIS SECTION

D. J. Parker LT. DS 104

5. DISEASES, ABNORMALITIES, AND X-RAYS



RIGHT 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 LEFT
32 31 30 29 28 27 26 25 24 23 22 21 20 19 18 17



A. CALCULUS
☐ SLIGHT ☐ MODERATE ☐ HEAVY

B. PERIODONTITIS
☐ LOCAL ☐ GENERAL
☐ INCIPIENT ☐ MODERATE ☐ SEVERE

C. STOMATITIS (Specify)
☐ GINGIVITIS ☐ VINCENT'S

D. DENTURES NEEDED
(Include dentures needed after indicated extractions)
☐ FULL ☐ PARTIAL
☐ U ☐ L ☐ U ☐ L

ABNORMALITIES OF OCCLUSION-REMARKS

6. INDICATE X-RAYS USED IN THIS EXAMINATION

☐ FULL MOUTH PERIAPICAL ☒ POSTERIOR BITE-WINGS ☐ OTHER (Specify)

DATE Jan 68

PLACE OF EXAMINATION
HCRD PARRIS ISLAND SC

SIGNATURE OF DENTIST COMPLETING THIS SECTION

D. J. Parker LT. DS 104

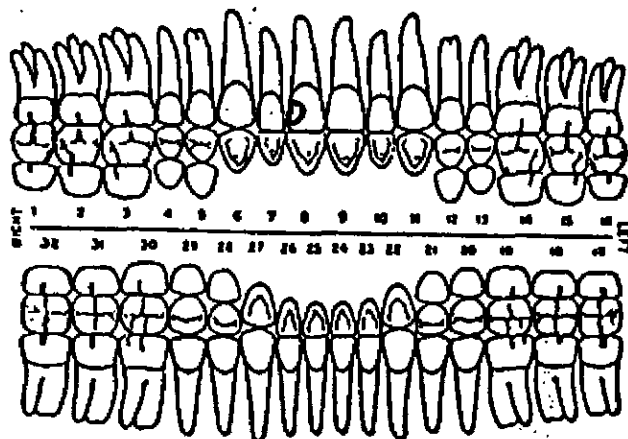
SECTION II. PATIENT DATA

6. SEX ☒ M ☐ F 7. RACE ☒ W ☐ N 8. GRADE, RATING, OR POSITION PVT 9. ORGANIZATION UNIT 110 10. COMPONENT OR BRANCH 11. SERVICE, DEPT., OR AGENCY

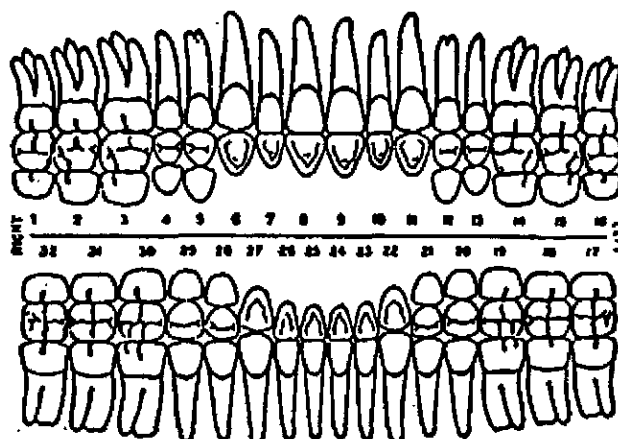
12. PATIENT'S LAST NAME (HOWARD, SAM JR.) 13. DATE OF BIRTH (DAY-MONTH-YEAR) 18 JAN 65 14. IDENTIFICATION NO. 2292928

13. RESTORATIONS AND TREATMENTS (Completed during service)

10. SUBSEQUENT DISEASES AND ABNORMALITIES



REMARKS



REMARKS

17. SERVICES RENDERED

[illegible]

PATIENT'S LAST NAME-FIRST NAME-MIDDLE NAME

HEALTH RECORD

CHRONOLOGICAL RECORD OF MEDICAL CARE

DATE

SYMPTOMS, DIAGNOSIS, TREATMENT, TREATING ORGANIZATION (Sign each entry)

MEDICAL DETACHMENT, USMCRD, PARRIS ISLAND, S. C.

JAN 27 1963

SCREENING PHYSICAL EXAMINATION CONDUCTED THIS DATE AND FOUND
TO BE PHYSICALLY FIT TO UNDERGO MILITARY TRAINING.

DEFECTS NOTED: NONE

R. H. S. Langston

R. H. S. LANGSTON LT MC USNR

VETERANS SERVICES DIVISION

JUN 30 1961

FOIA/PRIVACY ACT RELEASE

SEX <i>M</i>	RACE <i>Neg</i>	GRADE, RATING, OR POSITION <i>R/92</i>	ORGANIZATION UNIT <i>7th Fleet</i>	COMPONENT OR BRANCH <i>USMC</i>	SERVICE, DEPT. OR AGENCY <i>DOD</i>
PATIENT'S LAST NAME—FIRST NAME—MIDDLE NAME HOWARD, SAM JR.			DATE OF BIRTH (DAY—MONTH—YEAR) 18 AUG 1948	IDENTIFICATION NO. 2292928	
PVT		9900 110 680124	32102 480819	CHRONOLOGICAL RECORD OF MEDICAL CARE Standard Form 600	

STANDARD FORM 600

HEALTH RECORD CHRONOLOGICAL RECORD OF MEDICAL CARE

28 July 1968 MEDICAL DEPARTMENT
7TH ENGINEER BATTALION (REIN)
1ST MARINE DIVISION, FNF
FPO, SAN FRANCISCO, CALIFORNIA 96602

Malaria prophylaxis program initiated this date to be effective while in a malaria endemic area and for eight weeks following departure from the malarious area. Chemoprophylaxis consists of the following:

1. Upon assignment you will be supplied with Chloroquine and Primaquine tablets and will take one (1) tablet weekly for as long as you remain in the endemic area.

2. Upon departure you will be issued eight (8) tablets and you will continue to take one tablet each week for the following eight weeks. In the event that you become ill you will report to the nearest Medical Facility and inform the Medical Officer that you have been in a malarious area.

EARL MCKENZIE III
LT MCUSNR

VETERANS SERVICES DIVISION

JUN 30 1981

SEX	RACE	GRADE	FOIA/PRIVACY ACT RELEASE		
Male	Nez	KOP1			
LAST NAME	FIRST NAME	MIDDLE NAME	DOB	IDENT. NO.	
Howard	Sam	Jr.	16 AUG 1948	2292928	

2

DATE	SYMPTOMS, DIAGNOSIS, TREATMENT, TREATING ORGANIZATION (Sign each entry)
09 SEP 1969	HEALTH RECORD CLOSED THIS DATE IN ACCORDANCE WITH MOD 16-14
	Dispensary U. S. Naval Station Treasure Island San Francisco, Calif.

100-100000-100
100-100000-100
100-100000-100

SICK CALL TREATMENT RECORD

NAME

615073

LAST NAME

FIRST NAME

MIDDLE NAME

SER. NO.

DOB

USN

USMC

HOWARD Sam Jr.

229292F

18 JUL 1948

DATE

NAME OF TREATING FACILITY, COMPLAINT, TREATMENT ADMINISTERED
SIGNATURE AND RANK/RATE OF PERSON ADMINISTERING TREATMENT

7th ENGINEER BATTALION

25 Aug 68

Tenderness in ankle following injury about a week ago.

1. ASA 944 PRN.

2. Methyl Salicylic acid

SEP 09 1968

7th ENGINEER BATTALION

pt states he had to much to drink last night and has upset stomach and vomiting this morn.

VETERANS SERVICES DIVISION

Rx

Compazine

182h #6

JUN 30 1981

FOIA/PRIVACY ACT RELEASE

SEP 17 1968

7th ENGINEER BATTALION

pt in to get his shaving kit. area don't look bad enough to warrant kit at this time. will advise to shave in lavatory. no return of no avail.

Russell H. H. H.

SICK CALL TREATMENT RECORD

NAVJED 6150/3 (REV. 12-67) FRONT

(TYPE OR PRINT BELOW IDENTIFICATION DATA)

(LAST NAME) HOWARD	(FIRST NAME) SAM	(MIDDLE NAME) DR	FILE/SERVICE NUMBER 2292928	DATE OF BIRTH 18 AUG 48	<input type="checkbox"/> USN <input checked="" type="checkbox"/> USMC
------------------------------	----------------------------	----------------------------	---------------------------------------	-----------------------------------	---

DATE

NAME OF TREATING FACILITY, COMPLAINT, TREATMENT ADMINISTERED, SIGNATURE AND RANK/RATE OF PERSON ADMINISTERING TREATMENT

1 8 FEB 1969

BAS 7TH ENGINEER BN
FPO SAN FRANCISCO, 98602

*RT 1/0 bump on lower chin. Desires
no shaving kit.*

Inj. Folliculitis

TO see M.O.

Pseudo folliculitis barbae

Save it every 3 days

S. ANDREWS

USMC/USN

Andrews

1 7 MAR 1969

BAS 7TH ENGINEER BN
FPO SAN FRANCISCO, 98602

*RT 1/0 cold, green mucous obtained
upon coughing, Temp 98.8°*

Rx - artificial salivary 198h - 23oz 14m3

2 9 MAR 1969

BAS 7TH ENGINEER BN
FPO SAN FRANCISCO, 98602

*RT complains of rash in area
of groin*

VETERANS SERVICES DIVISION

JUN 30 1981

*Advise to keep area
dry by use of powder
at M. Andrews*

0 6 JUN 1969

FOIA/PRIVACY ACT RELEASE
BAS 7TH ENGINEER BN
FPO SAN FRANCISCO, 98602

*1/0 rash on face. Says
previous Rx unsatisfactory. To see M.O.*

Pseudo folliculitis barbae

Use - Tetracycline 500mg QID x 5 days

Cordier cream tid

No shaving x 2 wks

Andrews

(Over)

7th Eng BAS
22 Jan 69

Rt. has lac on bottom of foot.
S-soled + cleaned, bandage applied
No prolonged walking + etc

Schultz AW

JAN 28 1968

PT 40 burning upon urination discharge x 1 day.
LSC XI WTC. Instruct to hold urine after midnight + to return
to a.m. SLC for U.A + Gram stain. R. H. Thoms

JAN 30 1969

BAS 7TH ENGINEER BN
FPO SAN FRANCISCO, 96802

08 FEB 1969

BAS 7TH ENGINEER BN
FPO SAN FRANCISCO, 96802

PT 40 SL. irritates occasionally - no discharge

Written for U.A.

10 FEB 69 - U.A. OCCULT BLOOD - neg microscopic - WBC - TWTC
Protein - trace
Glucose - neg
pH - 6

prostate soft, boggy, enlarged + tender

Imp Prostatitis

Rel - tetracycline 500mg QID x 7 days
RTC 3 days

E. S. Andrews

E. S. ANDREWS
LT/MC/USNR

VETERANS SERVICES DIVISION

JUN 30 1981

FOIA/PRIVACY ACT RELEASE

1 5 AUG 1969

6AS 2TH ENGINEER
FPO SAN FRANCISCO

7
*Examined this date & found
to be physically qualified for
transfer*

W.D. Elinor H.M.

VETERANS SERVICES DIVISION

JUN 30 1969

FOIA/PRIVACY ACT RELEASE

MEDICAL EXAMINATION

LAST NAME - FIRST NAME - MIDDLE NAME

WARD JR SAM

HOME ADDRESS (Number, street or RFD, city or town, state and zip)

WILLIAMS 1438 FULTON ST APT 2ND FL
BROOKLYN NY 11216

SEX: MALE RACE: Negro

DATE OF BIRTH: 8 AUG 48

PLACE OF BIRTH: BROOKLYN NEW YORK

EXAMINING FACILITY OR EXAMINER AND ADDRESS: AFEES, FT. HAMILTON, BKLYN, N.Y. SS-58

RATING OR SPECIALTY

PURPOSE OF EXAMINATION

PRE-INDUCT 22 AUG 67

10. AGENCY

11. ORGANIZATION UNIT

12. NAME, RELATIONSHIP AND ADDRESS OF NEXT OF KIN: Mrs PINKIE WILLIAMS

13. OTHER INFORMATION: #48 48 8351

TIME IN THIS CAPACITY (Years)

LAST SIX MONTHS

CLINICAL EVALUATION	
OR-124	ABNOR-MAL
1. HEAD, FACE, NECK, AND SCALP	
2. NOSE	
3. EARS	
4. MOUTH AND THROAT	
5. EARS - GENERAL (freq. & int. sounds) (Auditory acuity under 20 and 25)	
6. DRUMS (Perforation)	
7. EYES - GENERAL (Visual acuity and refraction under 20, 25 and 30)	
8. OPHTHALMOSCOPIC	
9. PUPILS (Equality and reaction)	
10. OCULAR MOTILITY (Accommodated parallel vision, strabismus)	
11. LUNGS AND CHEST (Include breathers)	
12. HEART (Thrust, size, rhythm, sounds)	
13. VASCULAR SYSTEM (Verneuil's, etc.)	
14. ABDOMEN AND VISCERA (Include rectum)	
15. ANUS AND RECTUM (Hemorrhoids, fistulas) (Prostate, if indicated)	
16. ENDOCRINE SYSTEM	
17. G-U SYSTEM	
18. UPPER EXTREMITIES (Strength, range of motion)	
19. FEET	
20. LOWER EXTREMITIES (Edema, feet) (Strength, range of motion)	
21. SPINE, OTHER MUSCULOSKELETAL	
22. IDENTIFYING BODY MARKS, SCARS, TATTOOS	
23. SKIN, LYMPHATICS	
24. NEUROLOGIC (Abnormalities noted under item 18)	
25. PSYCHIATRIC (Abnormalities noted under item 18)	
26. PELVIC (Females only) (Check box below)	
<input type="checkbox"/> VAGINAL <input type="checkbox"/> RECTAL	

NOTES: (Describe every abnormality in detail. Enter pertinent item number before each comment. Continue in item 13 and use additional sheets if necessary.)

#4 153 Foch Blvd
Jamaica, N.Y.

#14 same as #1A

39. Tactile: arm - clon 30s

(Continue on Form 23)

44. DENTAL (Place appropriate symbols above or below number of upper and lower teeth, respectively.)

O - Restorable teeth
N - Non-restorable teeth

X - Missing teeth
XXX - Replaced by dentures

(S, R) - Fixed bridge, brackets or
partial dentures

R	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	L
I																	E
G	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17	F
H																	T
T																	

REMARKS AND ADDITIONAL DENTAL
DEFECTS AND DISEASES

dent

LABORATORY FINDINGS

ANALYSIS: A. SPECIFIC GRAVITY

URINE

AR

LOGY (Specify test used and result)

BIO MICRO TEST

D. MICROSCOPIC

46. EKG

47. BLOOD TYPE AND RH FACTOR

48. CHEST X-RAY (Date, film, view, number and result)

49. OTHER TESTS

REPORT OF MEDICAL EXAMINATION

88-10-104

1. LAST NAME—FIRST NAME—MIDDLE NAME HOWARD JR SAM		2. GRADE AND COMPONENT OR POSITION CIV	3. IDENTIFICATION NO. 157
4. HOME ADDRESS (Number, street or RFD, city or town, zone and State) C/O WILLIAMS 1438 FULTON ST APT 2ND FL BKLYN NY 11216		5. PURPOSE OF EXAMINATION PRE-INDUCT 22 AUG 67	6. DATE OF EXAMINATION
7. SEX MALE	8. RACE Negro	9. TOTAL YEARS GOVERNMENT SERVICE MILITARY 0 CIVILIAN 0	10. AGENCY
11. ORGANIZATION UNIT		12. DATE OF BIRTH 18 AUG 48	
13. PLACE OF BIRTH ALABAMA		14. NAME, RELATIONSHIP, AND ADDRESS OF NEXT OF KIN MRS PINKIE WILLIAMS 1438 FULTON ST BKLYN	
15. EXAMINING FACILITY OR EXAMINER, AND ADDRESS AFEEF, FT. HAMILTON, BKLYN, N.Y. 55:50		16. OTHER INFORMATION 048 48 0351	
17. RATING OR SPECIALTY		TIME IN THIS CAPACITY (Years)	
		LAST SIX MONTHS	

CLINICAL EVALUATION	
NORMAL	ABNORMAL
<input checked="" type="checkbox"/>	18. HEAD, FACE, NECK, AND SCALP
<input checked="" type="checkbox"/>	19. NOSE
<input checked="" type="checkbox"/>	20. SINUSES
<input checked="" type="checkbox"/>	21. MOUTH AND THROAT
<input checked="" type="checkbox"/>	22. EARS—GENERAL (Ins. & ext. canals) (Auditory acuity under items 70 and 71)
<input checked="" type="checkbox"/>	23. DRUMS (Perforation)
<input checked="" type="checkbox"/>	24. EYES—GENERAL (Visual acuity and refraction under items 25, 26 and 27)
<input checked="" type="checkbox"/>	25. OPHTHALMOSCOPIC
<input checked="" type="checkbox"/>	26. PUPILS (Equality and reaction)
<input checked="" type="checkbox"/>	27. OCULAR MOTILITY (Associated parietal movements, conjugate)
<input checked="" type="checkbox"/>	28. LUNGS AND CHEST (Include breaths)
<input checked="" type="checkbox"/>	29. HEART (Thrust, size, rhythm, sounds)
<input checked="" type="checkbox"/>	30. VASCULAR SYSTEM (Varicosities, etc.)
<input checked="" type="checkbox"/>	31. ABDOMEN AND VISCERA (Include hernia)
<input checked="" type="checkbox"/>	32. ANUS AND RECTUM (Hemorrhoids, fistulas, fissures, etc.)
<input checked="" type="checkbox"/>	33. ENDOCRINE SYSTEM
<input checked="" type="checkbox"/>	34. G-U SYSTEM
<input checked="" type="checkbox"/>	35. UPPER EXTREMITIES (Strength, range of motion)
<input checked="" type="checkbox"/>	36. FEET
<input checked="" type="checkbox"/>	37. LOWER EXTREMITIES (Strength, range of motion)
<input checked="" type="checkbox"/>	38. SPINE, OTHER MUSCULOSKELETAL
<input checked="" type="checkbox"/>	39. IDENTIFYING BODY MARKS, SCARS, TATTOOS
<input checked="" type="checkbox"/>	40. SKIN, LYMPHATICS
<input checked="" type="checkbox"/>	41. NEUROLOGIC (Equilibrium tests under item 29)
<input checked="" type="checkbox"/>	42. PSYCHIATRIC (Specify any personality deviation)
<input checked="" type="checkbox"/>	43. PELVIC (Females only) (Check how done) <input type="checkbox"/> VAGINAL <input type="checkbox"/> RECTAL

NOTES: (Describe every abnormality in detail. Enter pertinent item number before each comment. Continue in item 73 and use additional sheets if necessary.)

39. Testes - normal - clear - 3 cm

(Continue in item 73)

44. DENTAL (Place appropriate symbols above or below number of upper and lower teeth, respectively.)																	REMARKS AND ADDITIONAL DENTAL DEFECTS AND DISEASES	
O—Restorable teeth X—Missing teeth (E X R)—Fixed bridge, brackets to include abutments —Nonrestorable teeth XXX—Replaced by dentures																		
R	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16		L
I	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17		E
H																	F	
T																	T	

LABORATORY FINDINGS			
45. URINALYSIS: A. SPECIFIC GRAVITY		46. CHEST X-RAY (Place, date, film number and result)	
B. ALBUMIN		47. EKG	
C. SUGAR		48. BLOOD TYPE AND RH FACTOR	
49. SEROLOGY (Specify test used and result)		50. OTHER TESTS	
CARDIO MICRO TEST			

MEASUREMENTS AND OTHER FINDINGS

DATE: 1/4/66 TIME: 1600

53. COLOR HAIR: Black 54. COLOR EYES: Brown 55. BUILD: (Choose one) SLIMDER MEDIAN OBESE 56. TEMPERATURE: _____

BLOOD PRESSURE (Arm of heart level): _____

57. VISION (Far): 20/20 58. VISION (Near): 20/20 59. REFRACTION: _____ 60. AFTER EXERCISE: _____ 61. 2 MIN. AFTER: _____ 62. RECURRENT: _____ 63. AFTER STANDING 3 MIN.: _____

64. FIELD OF VISION: _____ 65. DEPTH PERCEPTION (Test used and score): _____ 66. RED LENS TEST: _____ 67. INTRAOCULAR TENSION: _____

68. ACCOMMODATION: _____ 69. PSYCHOLOGICAL AND PSYCHOMOTOR (Tests used and scores): _____

70. HEARING: _____ 71. AUDIOMETER: _____

72. NOTES (Continued) AND SIGNIFICANT OR INTERVAL HISTORY: _____

ABRT Score: *[Signature]*

Form K Per 13 Cat *[Signature]*

PY *[Signature]*

CH 8 *[Signature]*

MEDICAL INSPECTION

NO ADDITIONAL DISCOVERIES

EXEMPTED FROM MILITARY SERVICE

SPRUE PT. HAMILTON

APT. N.C.

24 JAN 1966

AQB Administered *[Signature]*

(Use only when necessary)

74. SUMMARY OF DEFECTS AND DIAGNOSES (See diagram with item numbers): _____

75. RECOMMENDATIONS—FURTHER SPECIALIST EXAMINATIONS INDICATED (Specify): _____

76. EXAMINEE (Check)

A. ☒ IS QUALIFIED FOR

B. ☐ IS NOT QUALIFIED FOR

INDUCTEE

A. PHYSICAL PROFILE									
P	U	I	M	E	S				

77. IF NOT QUALIFIED, LIST DISQUALIFYING DEFECTS BY ITEM NUMBER: _____

78. TYPED OR PRINTED NAME OF PHYSICIAN: **P. H. FLICK LTC MC.**

SIGNATURE: *[Signature]*

79. TYPED OR PRINTED NAME OF PHYSICIAN: _____

SIGNATURE: _____

80. TYPED OR PRINTED NAME OF DENTIST OR PHYSICIAN (Indicate which): _____

SIGNATURE: _____

81. TYPED OR PRINTED NAME OF REVIEWING OFFICER OR APPROVING AUTHORITY: **BILEY D. MARSH, CPT, MC**

SIGNATURE: *[Signature]*

NUMBER OF ATTACHED SHEETS: _____

U.S. GOVERNMENT PRINTING OFFICE: 1943 O-760-742

1. NAME - LAST NAME - FIRST NAME
HOWARD JR SAH

2. HOME ADDRESS (Number, street or RFD, city or town, State and ZIP Code)
**C/O WILLIAMS 1438 FULTON ST APT 2ND FL
BKLYN NY 11216**

3. DATE OF BIRTH
18 AUG 48

4. SEX
MALE

5. RACE
NEGRO

6. TOTAL YEARS GOVERNMENT SERVICE
0

7. MILITARY
0

8. CIVILIAN
0

9. ORGANIZATION UNIT
PRE-INDUCT 22 AUG 67

10. EXAMINER'S FACILITY OR EXAMINER, AND ADDRESS
AFEEES, FT. HAMILTON, BKLYN, N.Y. SS158 448 4357

11. STATEMENT OF EXAMINEE'S PRESENT HEALTH IN OWN WORDS (Follow by description of past history, if complaint exists)
Good

12. FAMILY HISTORY

RELATION	AGE	STATE OF HEALTH	IF DEAD, CAUSE OF DEATH	AGE AT DEATH	YES	NO	REMARKS
FATHER	48	POOR					HAD TUBERCULOSIS
MOTHER							HAD STYPHILIS
SPOUSE							HAD STYPHILIS
BROTHERS							HAD STYPHILIS
SISTERS	17	POOR					HAD STYPHILIS
CHILDREN							HAD STYPHILIS

13. HAVE YOU EVER HAD OR HAVE YOU NOW (Place check at left of each item)

YES	NO	(Check each item)	YES	NO	(Check each item)	YES	NO	(Check each item)	YES	NO	(Check each item)
		SCARLET FEVER, DYSENTERY			COUGH			TUBERCULOSIS, CIP, CANCER			"TRICK" OR LOCKER
		DIPHTHERIA			TUBERCULOSIS			WARTS / MOLES			POOR TROUBLE
		RHEUMATIC FEVER			SORE THROAT (Night sweats)			APENDICITIS			NEURALGIA
		SWOLLEN OR PAINFUL JOINTS			ASTHMA			WOUNDS OR BURNS			PARALYSIS (Left or right)
		HUMPS			SHORTNESS OF BREATH			INJURY OR FRACTURE			EPILEPSY OR FITS
		COLOR BLINDNESS			PAIN OR PRESSURE IN CHEST			STROKE OR BLOOD IN URINE			EAR, NOSE, OR THROAT TROUBLE
		FREQUENT OR SEVERE HEADACHE			CHRONIC COUGH			WOUND OR LAMENESS IN ARM			POOR TROUBLE
		DIZZINESS OR FAYTING SPELLS			PALPITATION OR POUNDING HEART			WOUND OR LAMENESS IN LEG			POOR TROUBLE
		EYE TROUBLE			HIGH OR LOW BLOOD PRESSURE			WOUND OR LAMENESS IN OTHER			POOR TROUBLE
		EAR, NOSE OR THROAT TROUBLE			CRAMPS IN YOUR LEGS			WOUND OR LAMENESS IN OTHER			POOR TROUBLE
		HOARSENESS			INDIGESTION			WOUND OR LAMENESS IN OTHER			POOR TROUBLE
		HEARING LOSS			STOMACH, LIVER OR INTESTINAL TROUBLE			WOUND OR LAMENESS IN OTHER			POOR TROUBLE
		CHRONIC OR FREQUENT COLDS			SALT BLANDER TROUBLE OR GALL STONES			WOUND OR LAMENESS IN OTHER			POOR TROUBLE
		SEVERE TOOTH OR GUM TROUBLE			LAMENESS			WOUND OR LAMENESS IN OTHER			POOR TROUBLE
		STOMACH			ANY REACTION TO SERUM, BLOOD OR MEDICINE			WOUND OR LAMENESS IN OTHER			POOR TROUBLE
		FLU, MEASLES			HISTORY OF BROKEN BONES			WOUND OR LAMENESS IN OTHER			POOR TROUBLE
		HISTORY OF HEAD INJURY						WOUND OR LAMENESS IN OTHER			POOR TROUBLE
		SKIN DISEASES						WOUND OR LAMENESS IN OTHER			POOR TROUBLE

14. HAVE YOU EVER (Check each item)

		WORN GLASSES - CONTACT LENS			ATTEMPTED SUICIDE
		WORN AN ARTIFICIAL EYE			WORN A "WALKER"
		WORN HEARING AIDS			LIVED WITH ANYONE WHO HAD TUBERCULOSIS
		STUTTERED OR STAMMERED			CONCERN OF BLOOD
		WORN A BRACE OR BACK SUPPORT			WOUND EXCESSIVELY AFTER INJURY OR LOGIC EXTRACT

15. HOW MANY JOBS HAVE YOU HAD IN THE PAST THREE YEARS?
6

16. WHAT IS THE LONGEST PERIOD YOU WED ANY OF THESE JOBS?
1 mo

17. WHAT IS YOUR USUAL OCCUPATION?
Salesman

18. ARE YOU (Check one)
☒ RIGHT HANDED ☐ LEFT HANDED

REPORT OF MEDICAL HISTORY

THIS INFORMATION IS FOR OFFICIAL USE ONLY AND WILL NOT BE RELEASED TO UNAUTHORIZED PERSONS

89-105-01

1. LAST NAME—FIRST NAME—MIDDLE NAME HOWARD JR SAM		2. GRADE AND COMPONENT OR POSITION CIV		3. IDENTIFICATION NO. 157	
4. HOME ADDRESS (Number, street or R.F.D., city or town, State and ZIP Code) C/O WILLIAMS 1438 FULTON ST APT 2ND FL BKLYN NY 11216		5. PURPOSE OF EXAMINATION PRE-INDUCT 22 AUG 67		6. DATE OF EXAMINATION	
7. SEX MALE	8. RACE NEGRO	9. TOTAL YEARS GOVERNMENT SERVICE MILITARY 0 CIVILIAN 0		10. AGENCY	
11. ORGANIZATION UNIT		12. DATE OF BIRTH 18 AUG 48			
13. PLACE OF BIRTH ALABAMA		14. NAME, RELATIONSHIP, AND ADDRESS OF NEXT OF KIN MRS PINKIE Williams 1438 Fulton Street			
15. EXAMINING FACILITY OR EXAMINER, AND ADDRESS AFES, FT. HAMILTON, BKLYN, N.Y. SS:58		16. OTHER INFORMATION 048 48 0351			
17. STATEMENT OF EXAMINEE'S PRESENT HEALTH IN OWN WORDS (Follow by description of past history, if complaint exists) Good					

18. FAMILY HISTORY					19. HAS ANY BLOOD RELATION (Parent, brother, sister, other) OR HUSBAND OR WIFE				
RELATION	AGE	STATE OF HEALTH	IF DEAD, CAUSE OF DEATH	AGE AT DEATH	YES	NO	(Check each item)	RELATIONS	
FATHER	48	Good					<input checked="" type="checkbox"/> HAD TUBERCULOSIS		
MOTHER							<input checked="" type="checkbox"/> HAD SYPHILIS		
SPOUSE							<input checked="" type="checkbox"/> HAD DIABETES		
BROTHERS							<input checked="" type="checkbox"/> HAD CANCER		
AND							<input checked="" type="checkbox"/> HAD KIDNEY TROUBLE		
SISTERS	17	Good					<input checked="" type="checkbox"/> HAD HEART TROUBLE		
							<input checked="" type="checkbox"/> HAD STOMACH TROUBLE		
CHILDREN							<input checked="" type="checkbox"/> HAD RHEUMATISM (Arthritis)		
							<input checked="" type="checkbox"/> HAD ASTHMA, HAY FEVER, WHEEZES		
							<input checked="" type="checkbox"/> HAD EPILEPSY (Fits)		
							<input checked="" type="checkbox"/> COMMITTED SUICIDE		
							<input checked="" type="checkbox"/> BEEN INSANE		

20. HAVE YOU EVER HAD OR HAVE YOU NOW (Place check at left of each item)															
YES	NO	(Check each item)	YES	NO	(Check each item)	YES	NO	(Check each item)	YES	NO	(Check each item)	YES	NO	(Check each item)	
		<input checked="" type="checkbox"/> SCARLET FEVER, DYSENTERY			<input checked="" type="checkbox"/> GOUT			<input checked="" type="checkbox"/> TUMORS, GROWTH, CYST, CANCER			<input checked="" type="checkbox"/> "TICK" OR LOCKED ANGLE				
		<input checked="" type="checkbox"/> DIPHTHERIA			<input checked="" type="checkbox"/> TUBERCULOSIS			<input checked="" type="checkbox"/> RUPTURE / HERNIA			<input checked="" type="checkbox"/> FOOT TROUBLE				
		<input checked="" type="checkbox"/> RHEUMATIC FEVER			<input checked="" type="checkbox"/> SWEATING SWEATS (Night sweats)			<input checked="" type="checkbox"/> APPENDICITIS			<input checked="" type="checkbox"/> NEURITIS				
		<input checked="" type="checkbox"/> SWOLLEN OR PAINFUL JOINTS			<input checked="" type="checkbox"/> ASTHMA			<input checked="" type="checkbox"/> PILES OR RECTAL DISEASE			<input checked="" type="checkbox"/> PARALYSIS (Inc. infantile)				
		<input checked="" type="checkbox"/> RUMPS			<input checked="" type="checkbox"/> SHORTNESS OF BREATH			<input checked="" type="checkbox"/> FREQUENT OR PAINFUL URINATION			<input checked="" type="checkbox"/> EPILEPSY OR FITS				
		<input checked="" type="checkbox"/> COLOR BLINDNESS			<input checked="" type="checkbox"/> PAIN OR PRESSURE IN CHEST			<input checked="" type="checkbox"/> KIDNEY STONE OR BLOOD IN URINE			<input checked="" type="checkbox"/> CAR, TRAIN, SEA, OR AIR SICKNESS				
		<input checked="" type="checkbox"/> FREQUENT OR SEVERE HEADACHE			<input checked="" type="checkbox"/> CHRONIC COUGH			<input checked="" type="checkbox"/> SPUR OR ALUMINUM IN URINE			<input checked="" type="checkbox"/> FREQUENT TROUBLE SLEEPING				
		<input checked="" type="checkbox"/> DIZZINESS OR FAINING SPELLS			<input checked="" type="checkbox"/> PALPITATION OR POUNDING HEART			<input checked="" type="checkbox"/> RAILS			<input checked="" type="checkbox"/> FREQUENT OR FRIGHTENING NIGHTMARES				
		<input checked="" type="checkbox"/> EYE TROUBLE			<input checked="" type="checkbox"/> HIGH OR LOW BLOOD PRESSURE			<input checked="" type="checkbox"/> VD-SYPHILIS, GONORRHEA, ETC.			<input checked="" type="checkbox"/> DEPRESSION OR EXCESSIVE WORRY				
		<input checked="" type="checkbox"/> EAR, NOSE OR THROAT TROUBLE			<input checked="" type="checkbox"/> CRAMPS IN YOUR LEGS			<input checked="" type="checkbox"/> RECENT GAIN OR LOSS OF WEIGHT			<input checked="" type="checkbox"/> LOSS OF MEMORY OR AMNESIA				
		<input checked="" type="checkbox"/> RINGING EARS			<input checked="" type="checkbox"/> FREQUENT INDIGESTION			<input checked="" type="checkbox"/> ARTERITIS OR PNEUMATISM			<input checked="" type="checkbox"/> BED WETTING				
		<input checked="" type="checkbox"/> HEARING LOSS			<input checked="" type="checkbox"/> STOMACH, LIVER OR INTESTINAL TROUBLE			<input checked="" type="checkbox"/> BONE, JOINT, OR OTHER DEFORMITY			<input checked="" type="checkbox"/> NERVOUS TROUBLE OF ANY SORT				
		<input checked="" type="checkbox"/> CHRONIC OR FREQUENT COLDS			<input checked="" type="checkbox"/> GALL BLADDER TROUBLE OR GALL STONES			<input checked="" type="checkbox"/> LAMENESS			<input checked="" type="checkbox"/> ANY DRUG OR NARCOTIC HABIT				
		<input checked="" type="checkbox"/> SEVERE TOOTH OR GUM TROUBLE			<input checked="" type="checkbox"/> JAWRICE			<input checked="" type="checkbox"/> LOSS OF ARM, LEG, FINGER, OR TOE			<input checked="" type="checkbox"/> EXCESSIVE DRINKING HABIT				
		<input checked="" type="checkbox"/> SINUSITIS			<input checked="" type="checkbox"/> ANY REACTION TO SERUM, DRUG OR MEDICINE			<input checked="" type="checkbox"/> PAINFUL OR "TICK" SHOULDER OR ELBOW			<input checked="" type="checkbox"/> HOMOSEXUAL TENDENCIES				
		<input checked="" type="checkbox"/> HAY FEVER			<input checked="" type="checkbox"/> HISTORY OF BROKEN BONES			<input checked="" type="checkbox"/> RECURRENT BACK PAIN			<input checked="" type="checkbox"/> PERIODS OF UNCONSCIOUSNESS				
		<input checked="" type="checkbox"/> HISTORY OF HEAD INJURY													
		<input checked="" type="checkbox"/> SKIN DISEASES													

21. NAME YOUR EYES (Check each item)				22. FEMALES ONLY: A. HAVE YOU EVER—				B. COMPLETE THE FOLLOWING:			
<input checked="" type="checkbox"/> WORN GLASSES—CONTACT LENS	<input checked="" type="checkbox"/> ATTEMPTED SUICIDE			<input checked="" type="checkbox"/> BEEN PREGNANT			AGE AT ONSET OF MENSTRUATION				
<input checked="" type="checkbox"/> WORN AN ARTIFICIAL EYE	<input checked="" type="checkbox"/> BEEN A SLEEP WALKER			<input checked="" type="checkbox"/> HAD A VAGINAL DISCHARGE			INTERVAL BETWEEN PERIODS				
<input checked="" type="checkbox"/> WORN HEARING AIDS	<input checked="" type="checkbox"/> LIVED WITH ANYONE WHO HAD TUBERCULOSIS			<input checked="" type="checkbox"/> BEEN TREATED FOR A FEMALE DISORDER			DURATION OF PERIODS				
<input checked="" type="checkbox"/> STUTTERED OR STAMMERED	<input checked="" type="checkbox"/> COUGHED UP BLOOD			<input checked="" type="checkbox"/> HAD PAINFUL MENSTRUATION			DATE OF LAST PERIOD				
<input checked="" type="checkbox"/> WORN A BRACE OR BACK SUPPORT	<input checked="" type="checkbox"/> BLED EXCESSIVELY AFTER INJURY OR TOOTH EXTRACTION			<input checked="" type="checkbox"/> HAD IRREGULAR MENSTRUATION			QUANTITY: <input type="checkbox"/> NORMAL <input type="checkbox"/> EXCESSIVE <input type="checkbox"/> SCANTY				
23. HOW MANY JOBS HAVE YOU HAD IN THE PAST THREE YEARS? 1				24. WHAT IS THE LONGEST PERIOD YOU KEPT ANY OF THESE JOBS? 7 mo				25. WHAT IS YOUR USUAL OCCUPATION? Salesman			
								26. ARE YOU (Check one) <input checked="" type="checkbox"/> RIGHT HANDED <input type="checkbox"/> LEFT HANDED			

CHECK EACH ITEM YES OR NO. EVERY ITEM CHECKED YES MUST BE FULLY EXPLAINED IN PLAIN SPACE ON RIGHT

YES	NO	
	<input checked="" type="checkbox"/>	27. HAVE YOU EVER REFUSED EMPLOYMENT OR BEEN UNABLE TO HOLD A JOB BECAUSE OF: A. SENSITIVITY TO CHEMICALS, DUST, SMOKE, ETC. B. INABILITY TO PERFORM CERTAIN MOTIONS C. INABILITY TO ASSUME CERTAIN POSITIONS D. OTHER MEDICAL REASONS (If yes, give reasons)
	<input checked="" type="checkbox"/>	28. HAVE YOU EVER WORKED WITH RADIOACTIVE SUBSTANCES
	<input checked="" type="checkbox"/>	29. DID YOU HAVE DIFFICULTIES WITH SCHOOL STUDIES OR TEACHING? (If yes, give details)
	<input checked="" type="checkbox"/>	30. HAVE YOU EVER BEEN NAMED FOR INSURANCE? (If yes, state reason and give details)
	<input checked="" type="checkbox"/>	31. HAVE YOU HAD, OR HAVE YOU BEEN ADVISED TO HAVE, ANY OPERATIONS? (If yes, describe and give age at which occurred)
	<input checked="" type="checkbox"/>	32. HAVE YOU EVER BEEN A PATIENT (Compulsory or voluntary) IN A MENTAL HOSPITAL OR SANATORIUM? (If yes, specify when, where, why, and name of doctor, and complete address of hospital or clinic)
	<input checked="" type="checkbox"/>	33. HAVE YOU EVER HAD ANY ILLNESS OR INJURY OTHER THAN THOSE ALREADY NOTED? (If yes, specify when, where, and give details)
	<input checked="" type="checkbox"/>	34. HAVE YOU CONSULTED OR BEEN TREATED BY CLINICS, PHYSICIANS, HEALERS, OR OTHER PRACTITIONERS WITHIN THE PAST 5 YEARS? (If yes, give complete address of doctor, hospital, clinic, and details)
	<input checked="" type="checkbox"/>	35. HAVE YOU TREATED YOURSELF FOR ILLNESSES OTHER THAN THOSE ALREADY NOTED? (If yes, which illnesses)
	<input checked="" type="checkbox"/>	36. HAVE YOU EVER BEEN DEJECTED FOR MILITARY SERVICE BECAUSE OF PHYSICAL, MENTAL, OR OTHER REASONS? (If yes, give date and reason for rejection)
	<input checked="" type="checkbox"/>	37. HAVE YOU EVER BEEN DISCHARGED FROM MILITARY SERVICE BECAUSE OF PHYSICAL, MENTAL, OR OTHER REASONS? (If yes, give date, reason, and type of discharge: whether honorable, other than honorable, for ineptness or unsuitability)
	<input checked="" type="checkbox"/>	38. HAVE YOU EVER RECEIVED, AS THESE PHYSICANS, OR HAVE YOU APPLIED FOR PENSION OR COMPENSATION FOR DISABILITY BECAUSE OF? (If yes, specify what kind, granted by whom, and what amount, when, why)

WARNING: A FALSE OR FAVORABLE ANSWER TO ANY OF THE QUESTIONS ON THIS FORM MAY BE PUNISHED BY FINE OR IMPRISONMENT (18 U.S.C. 1001).

I CERTIFY THAT I HAVE REVIEWED THE FOREGOING INFORMATION SUPPLIED BY ME AND THAT IT IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

NOTWITHSTANDING ANY OF THE DOCTOR, HOSPITAL, OR CLINIC NOTATIONS ABOVE IN THIS FORM, I HEREBY REQUEST THAT MY MEDICAL RECORDS FOR PURPOSES OF PROFESSIONAL OR EMPLOYMENT BE RELEASED.

TYPE OR PRINTED NAME OF EXAMINEE

Sam JR. Howard

SIGNATURE

Sam Howard

39. PHYSICIAN'S SUMMARY AND ELABORATION OF ALL PATIENT DATA (Physician shall comment on all possible answers in items 27 thru 38)

Practiced with Mrs. Wright

JOES 010210

TYPE OR PRINTED NAME OF EXAMINER OR EXAMINEE

DATE

SIGNATURE

NUMBER OF ATTACHED SHEETS

NO	CHECK EACH ITEM	NO. EVERY ITEM CHECKED "YES" MUST BE FULLY EXPLAINED IN BLANK SPACE
✓	27. HAVE YOU BEEN REFUSED EMPLOYMENT OR BEEN UNABLE TO HOLD A JOB BECAUSE OF: A. SENSITIVITY TO CHEMICALS, DUST, SMOKE, ETC. B. INABILITY TO PERFORM CERTAIN MOTIONS C. INABILITY TO ASSUME CERTAIN POSITIONS D. OTHER MEDICAL REASONS (If yes, give reasons)	
✓	28. HAVE YOU EVER WORKED WITH RADIOACTIVE SUBSTANCES?	
✓	29. DID YOU HAVE DIFFICULTY WITH SCHOOL STUDIES OR TEACHERS? (If yes, give details)	
✓	30. HAVE YOU EVER BEEN DENIED LIFE INSURANCE? (If yes, state reason and give details)	
✓	31. HAVE YOU HAD, OR HAVE YOU BEEN ADVISED TO HAVE, ANY OPERATIONS? (If yes, describe and give age at which occurred)	
✓	32. HAVE YOU EVER BEEN A PATIENT (Committed or voluntary) IN A MENTAL HOSPITAL OR SANATORIUM? (If yes, specify when, where, why, and name of doctor, and complete address of hospital or clinic)	
✓	33. HAVE YOU EVER HAD ANY ILLNESS OR INJURY OTHER THAN THOSE ALREADY NOTED? (If yes, specify when, where, and give details)	
✓	34. HAVE YOU CONSULTED OR BEEN TREATED BY CLINICS, PHYSICIANS, HEALERS, OR OTHER PRACTITIONERS WITHIN THE PAST 5 YEARS? (If yes, give complete address of doctor, hospital, clinic, and details)	
✓	35. HAVE YOU TREATED YOURSELF FOR ILLNESSES OTHER THAN MINOR COLDS? (If yes, which illnesses)	
✓	36. HAVE YOU EVER BEEN REJECTED FOR MILITARY SERVICE BECAUSE OF PHYSICAL, MENTAL, OR OTHER REASONS? (If yes, give date and reason for rejection)	
✓	37. HAVE YOU EVER BEEN DISCHARGED FROM MILITARY SERVICE BECAUSE OF PHYSICAL, MENTAL, OR OTHER REASONS? (If yes, give date, reason, and type of discharge: whether honorable, other than honorable, for unfitness or unsuitability)	
✓	38. HAVE YOU EVER RECEIVED, IS THERE PENDING, OR HAVE YOU APPLIED FOR PENSION OR COMPENSATION FOR EYES-ING DISABILITY? (If yes, specify what kind, granted by whom, and what amount, when, why)	

IF A FALSE OR DISHONEST ANSWER TO ANY OF THE QUESTIONS ON THIS FORM MAY BE PUNISHED BY FINE OR IMPRISONMENT (18 U.S.C. 1001)
 I (THAT I) HAVE REVIEWED THE FOREGOING INFORMATION SUPPLIED BY ME AND THAT IT IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.
 ORDER ANY OF THE DOCTORS, HOSPITALS, OR CLINICS MENTIONED ABOVE TO FURNISH THE GOVERNMENT A COMPLETE TRANSCRIPT OF MY MEDICAL RECORD FOR PURPOSES OF PROCESSING MY APPLICATION FOR THIS APPOINTMENT OR SERVICE.

OR PRINTED NAME OF EXAMINEE: **Sam JR. Howard** SIGNATURE: *Sam Howard*

PHYSICIAN'S SUMMARY AND ELABORATION OF ALL PERTINENT DATA (Physician shall comment on all positive answers in items 20 thru 38)

Practiced L. collar from my sign

OR PRINTED NAME OF PHYSICIAN OR EXAMINER: **F. H. FLICK LTC NO.** DATE: SIGNATURE: *F. H. Flick* NUMBER OF ATTACHED SHEETS:

REPORT OF MEDICAL EXAMINATION

88-107

1. LAST NAME—FIRST NAME—MIDDLE NAME HOWARD, SAM JR.			2. GRADE AND COMPONENT OR POSITION LCPL		3. IDENTIFICATION NO. 2292928	
4. HOME ADDRESS (Number, street or R.F.D., city or town, zone and State) 153-24 Foch Blvd., Jamaica, N.Y.			5. PURPOSE OF EXAMINATION R.A.D.		6. DATE OF EXAMINATION 26 Aug. 1969	
7. SEX MALE	8. RACE Negroid	9. TOTAL YEARS GOVERNMENT SERVICE MILITARY <input type="checkbox"/> CIVILIAN <input type="checkbox"/>		10. AGENCY	11. ORGANIZATION UNIT USNS T1, SF CALIF.	
12. DATE OF BIRTH 18 Aug. 1948		13. PLACE OF BIRTH Brooklyn, N.Y.		14. NAME, RELATIONSHIP, AND ADDRESS OF NEXT OF KIN Pinkie W. Howard Same as #4		
15. EXAMINING FACILITY OR EXAMINER, AND ADDRESS NAVAL DISPENSARY, T1, SF, CALIF.				16. OTHER INFORMATION RELIGION: CATHOLIC		
17. RATING OR SPECIALTY				TIME IN THIS CAPACITY (Total)		LAST SIX MONTHS

CLINICAL EVALUATION		
NOR- MAL	(Check each item in appropriate column; enter "NE" if not evaluated.)	ABNO- MAL
<input checked="" type="checkbox"/>	18. HEAD, FACE, NECK, AND SCALP	
<input checked="" type="checkbox"/>	19. NOSE	
<input checked="" type="checkbox"/>	20. EARS	
<input checked="" type="checkbox"/>	21. MOUTH AND THROAT	
<input checked="" type="checkbox"/>	22. EARS—GENERAL (Int. & ext. exam) (Audiometry usually under items 70 and 71)	
<input checked="" type="checkbox"/>	23. DRUMS (Perforation)	
<input checked="" type="checkbox"/>	24. EYES—GENERAL (Visual acuity and refraction under items 68, 69 and 77)	
<input checked="" type="checkbox"/>	25. OPHTHALMOSCOPIC	
<input checked="" type="checkbox"/>	26. PUPILS (Equality and reaction)	
<input checked="" type="checkbox"/>	27. OCULAR MOTILITY (Associated parallel movements, nystagmus)	
<input checked="" type="checkbox"/>	28. LUNGS AND CHEST (Include breasts)	
<input checked="" type="checkbox"/>	29. HEART (Thrust, size, rhythm, sounds)	
<input checked="" type="checkbox"/>	30. VASCULAR SYSTEM (Varicose veins, etc.)	
<input checked="" type="checkbox"/>	31. ABDOMEN AND VISCERA (Include hernia)	
<input checked="" type="checkbox"/>	32. ANUS AND RECTUM (Hemorrhoids, fistulae) (Describe if indicated)	
<input checked="" type="checkbox"/>	33. ENDOCRINE SYSTEM	
<input checked="" type="checkbox"/>	34. G-U SYSTEM	
<input checked="" type="checkbox"/>	35. UPPER EXTREMITIES (Strength, range of motion)	
<input checked="" type="checkbox"/>	36. FEET	
<input checked="" type="checkbox"/>	37. LOWER EXTREMITIES (Strength, range of motion)	
<input checked="" type="checkbox"/>	38. SPINE, OTHER MUSCULOSKELETAL	
<input checked="" type="checkbox"/>	39. IDENTIFYING BODY MARKS, SCARS, TATTOOS	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	40. SKIN, LYMPHATICS	
<input checked="" type="checkbox"/>	41. NEUROLOGIC (Equilibrium tests under item 78)	
<input checked="" type="checkbox"/>	42. PSYCHIATRIC (Specify any personality deviation)	
<input checked="" type="checkbox"/>	43. PELVIC (Females only) (Check how done) <input type="checkbox"/> VAGINAL <input type="checkbox"/> RECTAL	

NOTES. (Describe every abnormality in detail. Enter pertinent item number before each comment. Continue in item 73 and use additional sheets if necessary.)

#39.

1. VSULA
2. LS 2" left elbow
3. CS 1" left knee
4. TATTOO INDIAN GIRL left arm

VETERANS SERVICES DIVISION

JUN 30 1981

FOIA/PRIVACY ACT RELEASE

(Continue in item 73)

44. DENTAL (Place appropriate symbols above or below number of upper and lower teeth, respectively.)																		REMARKS AND ADDITIONAL DENTAL DEFECTS AND DISEASES	
O—Restorable teeth —Nonrestorable teeth X—Missing teeth XXX—Replaced by dentures (X's)—Fixed bridge, brackets to include abutments																			
R	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	L		
I	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17	F		

T-3 C-2

LABORATORY FINDINGS			
45. URINALYSIS: A. SPECIFIC GRAVITY WNL		46. CHEST X-RAY (Place, date, film number and result) NAVDISP, T.I. 26 Aug. 1969 SF, CALIF. FILM # 021224 WNL	
B. ALBUMIN NEG		48. MICROSCOPIC	
C. SUGAR NEG		49. BLOOD TYPE AND RH FACTOR	
47. SEROLOGY (Specify test used and result) VDRL NON REACTIVE		50. OTHER TESTS	

12ND NSTI 6150/2 (10-64)

REPORT OF MEDICAL EXAMINATION

CFB MW
11/23/69
48-103

1. LAST NAME—FIRST NAME—MIDDLE NAME HOWARD, SAM JR.			2. GRADE AND COMPONENT OR POSITION LOPL		3. IDENTIFICATION NO. 2202928	
4. HOME ADDRESS (Number, street or RFD, city or town, zone and State) 163-24 Pouch Blvd., Jamaica, N.Y.			5. PURPOSE OF EXAMINATION R.A.D.		6. DATE OF EXAMINATION 26 Aug. 1969	
7. SEX MALE	8. RACE Negroid	9. TOTAL YEARS GOVERNMENT SERVICE 7 1/2		10. AGENCY	11. ORGANIZATION UNIT USNS TI, SF CALIF.	
12. DATE OF BIRTH 18 Aug. 1948		13. PLACE OF BIRTH Brooklyn, N.Y.		14. NAME, RELATIONSHIP, AND ADDRESS OF NEXT OF KIN Pinkie W. Howard Same as #4		
15. EXAMINING FACILITY OR EXAMINER, AND ADDRESS NAVAL DISPENSARY, TI, SF, CALIF.				16. OTHER INFORMATION RELIGION: CATHOLIC		
17. RATING OR SPECIALTY				TIME IN THIS CAPACITY (Total)		LAST SIX MONTHS

CLINICAL EVALUATION		
NOR- MAL	(Check each item in appropriate col- umn; enter "NE" if not evaluated.)	ABNO- MAL
X	18. HEAD, FACE, NECK, AND SCALP	
X	19. NOSE	
X	20. SINUSES	
X	21. MOUTH AND THROAT	
X	22. EARS—GENERAL (Ins. & ext. canals) (Auditory acuity under items 70 and 71)	
X	23. DRUMS (Perforation)	
X	24. EYES—GENERAL (Visual acuity and refraction under items 68, 69 and 72)	
X	25. OPHTHALMOSCOPIC	
X	26. PUPILS (Equality and reaction)	
X	27. OCULAR MOTILITY (Associated parallel move- ments, nystagmus)	
X	28. LUNGS AND CHEST (Include breasts)	
X	29. HEART (Thrust, size, rhythm, sounds)	
X	30. VASCULAR SYSTEM (Varicose veins, etc.)	
X	31. ABDOMEN AND VISCERA (Include hernia)	
X	32. ANUS AND RECTUM (Hemorrhoids, fistulas, prolapse, if indicated)	
X	33. ENDOCRINE SYSTEM	
X	34. G-U SYSTEM	
X	35. UPPER EXTREMITIES (Strength, range of motion)	
X	36. FEET	
X	37. LOWER EXTREMITIES (Strength, range of motion)	
X	38. SPINE, OTHER MUSCULOSKELETAL	
X	39. IDENTIFYING BODY MARKS, SCARS, TATTOOS	X
X	40. SKIN, LYMPHATICS	
X	41. NEUROLOGIC (Equilibrium tests under item 73)	
X	42. PSYCHIATRIC (Specify any personality deviation)	
X	43. PELVIC (Females only) (Check how done) <input type="checkbox"/> VAGINAL <input type="checkbox"/> RECTAL	

NOTES. (Describe every abnormality in detail. Enter pertinent item number before each comment. Continue in item 73 and use additional sheets if necessary.)

#3W.

1. VBULA
2. LS 2" left elbow
3. CS 1" left knee
4. TATTOO INDIAN GIRL left arm

(Continue in item 73)

44. DENTAL (Place appropriate symbols above or below number of upper and lower teeth, respectively.)																		REMARKS AND ADDITIONAL DENTAL DEFECTS AND DISEASES	
O—Restorable teeth I—Nonrestorable teeth X—Missing teeth XXX—Replaced by dentures (S X S)—Fixed bridge, brackets to include abutments																			
R	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	L		
I	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17	F		

1-3 0-2

45. URINALYSIS: A. SPECIFIC GRAVITY NRL				46. CHEST X-RAY (Place, date, film number and result) NAVDISP, T.I. 26 Aug. 1969 SF, CALIF. FILM # 021224 NRL			
B. ALBUMIN NRO				D. MICROSCOPIC			
C. SUGAR NRO				E. BLOOD TYPE AND RH FACTOR			
47. SEROLOGY (Specify test used and result) VDRL NON REACTIVE				48. OTHER TESTS			

12ND NSTI 6150/2 (10-64)

MEASUREMENTS AND OTHER FINDINGS

51. HEIGHT 68		52. WEIGHT 165		53. COLOR HAIR BLACK		54. COLOR EYES BRN		55. BUILD: <input type="checkbox"/> SLENDER <input checked="" type="checkbox"/> MEDIUM <input type="checkbox"/> HEAVY <input type="checkbox"/> OBESE				56. TEMPERATURE NORMAL																																																			
57. BLOOD PRESSURE (Arm of heart level)								58. PULSE (Arm of heart level)																																																							
A. SITTING SYS. 128 DIAL 74		B. RECUMBENT SYS. DIAL.		C. STANDING (3 min.) SYS. DIAL.		A. SITTING 72		B. AFTER EXERCISE		C. 2 MIN. AFTER		D. RECUMBENT		E. AFTER STANDING 3 MIN.																																																	
59. DISTANT VISION				60. REFRACTION				61. NEAR VISION																																																							
RIGHT EY 20		CORR. TO 20		BY		S.		OK		CORR. TO		BY																																																			
LEFT EY 20		CORR. TO 20		BY		S.		OK		CORR. TO		BY																																																			
62. METEOROPHORIA (Specify distance)																																																															
ES°		EX°		R. H.		L. H.		PRISM DIV.		PRISM CORV. CT		PC		PD																																																	
63. ACCOMMODATION				64. COLOR VISION (That used and result)				65. DEPTH PERCEPTION (That used and score)				UNCORRECTED																																																			
RIGHT LEFT				AOC (REV) 1940 14/14								CORRECTED																																																			
66. FIELD OF VISION				67. NIGHT VISION (That used and score)				68. RED LENS TEST				69. INTRAOCULAR TENSION																																																			
70. HEARING				71. AUDIOMETER								72. PSYCHOLOGICAL AND PSYCHOMOTOR (That used and score)																																																			
RIGHT EY 16/16				/18				<table border="1"> <tr> <td></td> <td>2500</td> <td>2000</td> <td>1500</td> <td>1000</td> <td>500</td> <td>250</td> <td>125</td> <td>63</td> <td>31</td> <td>16</td> </tr> <tr> <td></td> <td>2500</td> <td>2000</td> <td>1500</td> <td>1000</td> <td>500</td> <td>250</td> <td>125</td> <td>63</td> <td>31</td> <td>16</td> </tr> <tr> <td>RIGHT</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>LEFT</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>									2500	2000	1500	1000	500	250	125	63	31	16		2500	2000	1500	1000	500	250	125	63	31	16	RIGHT											LEFT														
	2500	2000	1500	1000	500	250	125	63	31	16																																																					
	2500	2000	1500	1000	500	250	125	63	31	16																																																					
RIGHT																																																															
LEFT																																																															

73. NOTES (Continued) AND SIGNIFICANT OR INTERVAL HISTORY

"I CERTIFY THAT I HAVE BEEN INFORMED AND UNDERSTAND
THE PROVISIONS OF BUMED INSTRUCTION 6120.6"

SIGNATURE

VETERANS SERVICES DIVISION

JUN 30 1981

FOIA/PRIVACY ACT RELEASE

(Use additional sheets if necessary)

74. SUMMARY OF DEFECTS AND DIAGNOSES (List diagnoses with item numbers)

75. RECOMMENDATIONS—FURTHER SPECIALIST EXAMINATIONS INDICATED (Specify)

77. EXAMINEE (Check)

A. ☐ IS QUALIFIED FOR
B. ☐ IS NOT QUALIFIED FOR

IS/IS NOT QUALIFIED FOR ACTIVE DUTY AT SEA
AND/OR ON FOREIGN SHORE AND FOR: R.A.D.

78. IF NOT QUALIFIED, LIST DISQUALIFYING DEFECTS BY ITEM NUMBER

79. TYPED OR PRINTED NAME OF PHYSICIAN

D. J. BEASLEY, LCDR MC USN

SIGNATURE

80. TYPED OR PRINTED NAME OF PHYSICIAN

SIGNATURE

81. TYPED OR PRINTED NAME OF DENTIST OR PHYSICIAN (Indicate which)

F. DOBRONTE, CAPT MC USN

SIGNATURE

82. TYPED OR PRINTED NAME OF REVIEWING OFFICER OR APPROVING AUTHORITY

SIGNATURE

NUMBER OF AT-
TACHED SHEETS

MEASUREMENTS AND OTHER FINDINGS

51. HEIGHT 68		52. WEIGHT 165		53. COLOR HAIR BLACK		54. COLOR EYES BROWN		55. BUILD: <input type="checkbox"/> SLIM <input checked="" type="checkbox"/> MEDIUM <input type="checkbox"/> HEAVY <input type="checkbox"/> OVER		56. TEMPERATURE NORMAL			
57. BLOOD PRESSURE (Arm at heart level)						58. PULSE (Arm at heart level)							
A. SITTING SYS. 128 DIAS. 74		B. RECLIN- GENT SYS. 74 DIAS. 74		C. STANDING (3 min.) SYS. 74 DIAS. 74		A. SITTING 72		B. AFTER EXERCISE		C. 2 MIN. AFTER			
59. DISTANT VISION		60. REFRACTION		61. NEAR VISION									
RIGHT 20		CORR. TO 20		BY S. OX		CORR. TO		BY					
LEFT 20		CORR. TO 20		BY S. OX		CORR. TO		BY					
62. METROPHORIA (Specify distance)													
R. H.		L. H.		PRISM DIV.		PRISM CORV.		PC		PD			
63. ACCOMMODATION		64. COLOR VISION (Test used and result)				65. DEPTH PERCEPTION (Test used and score)		UNCORRECTED					
RIGHT LEFT		AOC (REV) 1940 14/14						CORRECTED					
66. FIELD OF VISION				67. NIGHT VISION (Test used and score)				68. RED LENS TEST		69. INTRAOCULAR TENSION			
70. HEARING				71. AUDIOMETER								72. PSYCHOLOGICAL AND PSYCHOMOTOR (Test used and score)	
RIGHT 15/25				1000 2000 3000 4000 5000 6000 7000 8000 9000 10000									
LEFT 15/25				RIGHT LEFT									

73. NOTES (Continued) AND SIGNIFICANT OR INTERVAL HISTORY

I CERTIFY THAT I HAVE BEEN INFORMED AND UNDERSTAND THE PROVISIONS OF BUMED INSTRUCTION 6120.6"

SIGNATURE

Sam Howard J.

(Use additional sheets if necessary)

74. SUMMARY OF DEFECTS AND DIAGNOSES (List diagnoses with item numbers)

75. RECOMMENDATIONS—FURTHER SPECIALIST EXAMINATIONS INDICATED (Specify)

76. EXAMINEE (Check)

A. ☐ IS QUALIFIED FOR

B. ☐ IS NOT QUALIFIED FOR

XXXX
IS/IS NOT QUALIFIED FOR ACTIVE DUTY AT SEA
AND/OR ON FOREIGN SHORE AND FOR: **E.A.D.**

76. IF NOT QUALIFIED, LIST DISQUALIFYING DEFECTS BY ITEM NUMBER

77. TYPED OR PRINTED NAME OF PHYSICIAN: **BEASLEY, LCDR MC USN**

SIGNATURE

78. TYPED OR PRINTED NAME OF PHYSICIAN

SIGNATURE

81. TYPED OR PRINTED NAME OF PHYSICIAN: **BOHANNON, CAPT-23 USN**

SIGNATURE

82. TYPED OR PRINTED NAME OF REVIEWING OFFICER OR APPROVING AUTHORITY

SIGNATURE

NUMBER OF ATTACHED SHEETS

1. LAST NAME—FIRST NAME—MIDDLE NAME

HOWARD JR SAM

2. GRADE AND COMPONENT OR POST

CIV

3. IDENTIFICATION NO

157

4. HOME ADDRESS (Number, street or RFD, city or town, State and ZIP Code)

C/O WILLIAMS 1438 FULTON ST APT 2ND FL
BKLYN NY 11216

5. PURPOSE OF EXAMINATION

PRE-INDUCT 22 AUG 67

6. DATE OF EXAMINATION

7. SEX

MALE

RACE

Negro

8. TOTAL YEARS GOVERNMENT SERVICE

MILITARY 0

CIVILIAN 0

10. AGENCY

11. ORGANIZATION UNIT

12. DATE OF BIRTH

18 AUG 48

13. PLACE OF BIRTH

ALABAMA

14. NAME, RELATIONSHIP, AND ADDRESS OF NEXT OF KIN

MRS PINKIE Williams
1438 Fulton Street

15. EXAMINING FACILITY OR EXAMINER, AND ADDRESS

AFES, FT. HAMILTON, BKLYN, N.Y. SS:50 048 48 0351

17. STATEMENT OF EXAMINEE'S PRESENT HEALTH IN OWN WORDS (Follow by description of past history, if complaint exists)

Good

18. FAMILY HISTORY

RELATION	AGE	STATE OF HEALTH	IF DEAD, CAUSE OF DEATH	AGE AT DEATH	YES	NO	(Check each item)	RELATION(S)
FATHER	48	POCK					<input checked="" type="checkbox"/> HAD TUBERCULOSIS	
MOTHER							<input checked="" type="checkbox"/> HAD SYPHILIS	
SPOUSE							<input checked="" type="checkbox"/> HAD DIABETES	
BROTHERS							<input checked="" type="checkbox"/> HAD CANCER	
AND							<input checked="" type="checkbox"/> HAD KIDNEY TROUBLE	
SISTERS	17	Good					<input checked="" type="checkbox"/> HAD HEART TROUBLE	
CHILDREN							<input checked="" type="checkbox"/> HAD STOMACH TROUBLE	
							<input checked="" type="checkbox"/> HAD RHEUMATISM (Arthritis)	
							<input checked="" type="checkbox"/> HAD ASTHMA, HAY FEVER, HIVES	
							<input checked="" type="checkbox"/> HAD EPILEPSY (Fits)	
							<input checked="" type="checkbox"/> COMMITTED SUICIDE	
							<input checked="" type="checkbox"/> BEEN INMATE	

20. HAVE YOU EVER HAD OR HAVE YOU NOW (Place check at left of each item)

(Check each item)	YES	NO	(Check each item)	YES	NO	(Check each item)	YES	NO	(Check each item)
<input checked="" type="checkbox"/> SCARLET FEVER, ERYTHRAEMA			<input checked="" type="checkbox"/> GONORR			<input checked="" type="checkbox"/> TUMOR, GROWTH, CYST, CANCER			<input checked="" type="checkbox"/> "TRICK" OR LOCKED KNEE
<input checked="" type="checkbox"/> DIPHTHERIA			<input checked="" type="checkbox"/> TUBERCULOSIS			<input checked="" type="checkbox"/> RUPTURE / HERNIA			<input checked="" type="checkbox"/> FOOT TROUBLE
<input checked="" type="checkbox"/> RHEUMATIC FEVER			<input checked="" type="checkbox"/> SOAKING SWEATS (Night sweats)			<input checked="" type="checkbox"/> APPENDICITIS			<input checked="" type="checkbox"/> HEMORRHOIDS
<input checked="" type="checkbox"/> SWOLLEN OR PAINFUL JOINTS			<input checked="" type="checkbox"/> ASTHMA			<input checked="" type="checkbox"/> PILES OR RECTAL DISEASE			<input checked="" type="checkbox"/> PARALYSIS (Inc. infantile)
<input checked="" type="checkbox"/> RUMPS			<input checked="" type="checkbox"/> SHORTNESS OF BREATH			<input checked="" type="checkbox"/> FREQUENT OR PAINFUL URINATION			<input checked="" type="checkbox"/> EPILEPSY OR FITS
<input checked="" type="checkbox"/> COLON BLINDNESS			<input checked="" type="checkbox"/> PAIN OR PRESSURE IN CHEST			<input checked="" type="checkbox"/> KIDNEY STONE OR BLOOD IN URINE			<input checked="" type="checkbox"/> EAR, NOSE, THROAT, OR AIR SICKNESS
<input checked="" type="checkbox"/> FREQUENT OR SEVERE HEADACHE			<input checked="" type="checkbox"/> CHRONIC COUGH			<input checked="" type="checkbox"/> SUGAR OR ALBUMIN IN URINE			<input checked="" type="checkbox"/> FREQUENT TROUBLE SLEEPING
<input checked="" type="checkbox"/> DIZZINESS OR FAINTING SPELLS			<input checked="" type="checkbox"/> PALPITATION OR POUNDING HEART			<input checked="" type="checkbox"/> BOILS			<input checked="" type="checkbox"/> FREQUENT OR TERRIFYING NIGHTMARES
<input checked="" type="checkbox"/> EYE TROUBLE			<input checked="" type="checkbox"/> HIGH OR LOW BLOOD PRESSURE			<input checked="" type="checkbox"/> NO-SYPHILIS, GONORRHOEA, ETC.			<input checked="" type="checkbox"/> DEPRESSION OR EXCESSIVE WORRY
<input checked="" type="checkbox"/> EAR, NOSE OR THROAT TROUBLE			<input checked="" type="checkbox"/> CRAMPS IN YOUR LEGS			<input checked="" type="checkbox"/> RECENT GAIN OR LOSS OF WEIGHT			<input checked="" type="checkbox"/> LOSS OF MEMORY OR AMNESIA
<input checked="" type="checkbox"/> BURNING EARS			<input checked="" type="checkbox"/> FREQUENT INDIGESTION			<input checked="" type="checkbox"/> ARTERITIS OR RHEUMATISM			<input checked="" type="checkbox"/> BED WETTING
<input checked="" type="checkbox"/> HEARING LOSS			<input checked="" type="checkbox"/> STOMACH, LIVER OR INTESTINAL TROUBLE			<input checked="" type="checkbox"/> BONE, JOINT, OR OTHER DEFORMITY			<input checked="" type="checkbox"/> NERVOUS TROUBLE OR ANY SORT
<input checked="" type="checkbox"/> CHRONIC OR FREQUENT COLDS			<input checked="" type="checkbox"/> KIDNEY TROUBLE OR GALL STONES			<input checked="" type="checkbox"/> LAMENESS			<input checked="" type="checkbox"/> ANY DRUG OR NARCOTIC HABIT
<input checked="" type="checkbox"/> SEVERE TOOTH OR GUM TROUBLE			<input checked="" type="checkbox"/> JAUNDICE			<input checked="" type="checkbox"/> LOSS OF ARM, LEG, FINGER, OR TOE			<input checked="" type="checkbox"/> EXCESSIVE DRINKING HABIT
<input checked="" type="checkbox"/> SINUSITIS			<input checked="" type="checkbox"/> ANY REACTION TO SERUM, DRUG OR MEDICINE			<input checked="" type="checkbox"/> PAINFUL OR "TRICK" SHOULDER OR ELBOW			<input checked="" type="checkbox"/> HOMOSEXUAL TENDENCIES
<input checked="" type="checkbox"/> MEASLES			<input checked="" type="checkbox"/> HISTORY OF BROKEN BONES			<input checked="" type="checkbox"/> RECURRENT BACK PAIN			<input checked="" type="checkbox"/> PERIODS OF UNCONSCIOUSNESS
<input checked="" type="checkbox"/> HISTORY OF HEAD INJURY									
<input checked="" type="checkbox"/> SKIN DISEASES									

21. HAVE YOU EVER (Check each item)

<input checked="" type="checkbox"/> WORN GLASSES—CONTACT LENS	<input checked="" type="checkbox"/> ATTEMPTED SUICIDE
<input checked="" type="checkbox"/> WORN AN ARTIFICIAL EYE	<input checked="" type="checkbox"/> BEEN A SLEEP WALKER
<input checked="" type="checkbox"/> WORN HEARING AIDS	<input checked="" type="checkbox"/> LIVED WITH ANYONE WHO HAD TUBERCULOSIS
<input checked="" type="checkbox"/> STUTTERED OR STAMMERED	<input checked="" type="checkbox"/> COUGHED UP BLOOD
<input checked="" type="checkbox"/> WORN A BRACE OR BACK SUPPORT	<input checked="" type="checkbox"/> FELL EXCESSIVELY AFTER INJURY OR TOOTH EXTRACTION

22. FEMALES ONLY: A. HAVE YOU EVER—

<input checked="" type="checkbox"/> BEEN PREGNANT	<input checked="" type="checkbox"/> HAD A VAGINAL DISCHARGE
<input checked="" type="checkbox"/> BEEN TREATED FOR A FEMALE DISORDER	<input checked="" type="checkbox"/> HAD PAINFUL MENSTRUATION
<input checked="" type="checkbox"/> HAD IRREGULAR MENSTRUATION	

B. COMPLETE THE FOLLOWING:

AGE AT ONSET OF MENSTRUATION	INTERVAL BETWEEN PERIODS
DURATION OF PERIODS	DATE OF LAST PERIOD
QUANTITY: <input type="checkbox"/> NORMAL <input type="checkbox"/> EXCESSIVE <input type="checkbox"/> SCANTY	

23. HAVE YOU EVER HAD YOU HAD IN THE THREE YEARS?

1

24. WHAT IS THE LONGEST PERIOD YOU HAD ANY OF THESE JOBS?

9 mo

25. WHAT IS YOUR USUAL OCCUPATION?

Salesman

26. ARE YOU (Check one)

☒ RIGHT HANDED ☐ LEFT HANDED

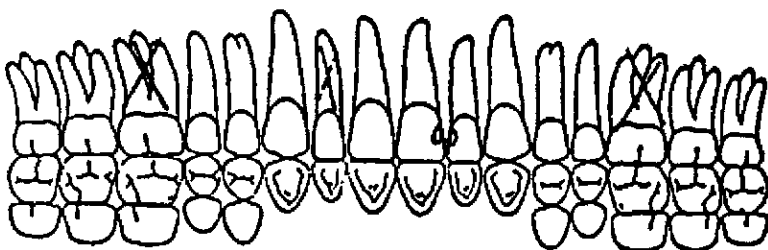
HEALTH RECORD

DENTAL

SECTION I. DENTAL EXAMINATION

1. PURPOSE OF EXAMINATION			2. TYPE OF EXAM.				3. DENTAL CLASSIFICATION				
INITIAL	SEPARATION	OTHER (Specify)	1	2	3	4	1	2	3	4	5

4. MISSING TEETH AND EXISTING RESTORATIONS



REMARKS

PLACE OF EXAMINATION

HORD PARRIS

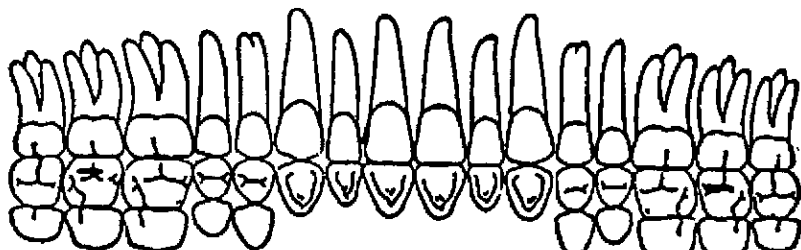
DATE

Jan 68

SIGNATURE OF DENTIST COMPLETING THIS SECTION

J. J. Parker LT. DC, USN

5. DISEASES, ABNORMALITIES, AND X-RAYS



A. CALCULUS

SLIGHT

MODERATE

HEAVY

B. PERIODONTICLARIA

LOCAL

GENERAL

INCIPIENT

MODERATE

SEVERE

C. STOMATITIS (Specify)

GINGIVITIS

VINCENT'S

D. DENTURES NEEDED

(Include dentures needed after indicated extractions)

FULL

PARTIAL

U

L

U

L

ABNORMALITIES OF OCCLUSION-REMARKS

E. INDICATE X-RAYS USED IN THIS EXAMINATION

FULL MOUTH
PERIAPICALPOSTERIOR
BITE-WINGS

OTHER (Specify)

DATE Jan 68

PLACE OF EXAMINATION

HORD PARRIS ISLAND CO

SIGNATURE OF DENTIST COMPLETING THIS SECTION

J. J. Parker LT. DC, USN

SECTION II. PATIENT DATA

6. SEX M	7. RACE W	8. GRADE, RATING, OR POSITION PVT	9. ORGANIZATION UNIT 110	10. COMPONENT OR BRANCH	11. SERVICE, DEPT., OR AGENCY
12. PATIENT'S LAST NAME HOWARD, SAM E JR.			13. DATE OF BIRTH (DAY-MONTH-YEAR) 18A 246 2292928	14. IDENTIFICATION NO.	

DENTAL
Standard Form 603
603-102-01

HEALTH RECORD

CHRONOLOGICAL RECORD OF MEDICAL CARE

DATE

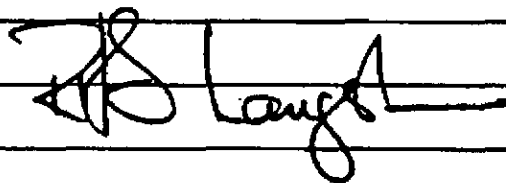
SYMPTOMS, DIAGNOSIS, TREATMENT, TREATING ORGANIZATION (Sign each entry)

MEDICAL DETACHMENT, USMCRD, PARRIS ISLAND, S. C.

JAN 27 1961

SCREENING PHYSICAL EXAMINATION CONDUCTED THIS DATE AND FOUND
TO BE PHYSICALLY FIT TO UNDERGO MILITARY TRAINING.

DEFECTS NOTED: NONE



R. H. S. LANGSTON LT MC USNR

VETERANS SERVICES DIVISION

JUN 30 1961

FOIA/PRIVACY ACT RELEASE

SEX Male	RACE Neg	GRADE, RATING, OR POSITION LTJG	ORGANIZATION UNIT USMC	COMPONENT OR BRANCH USMC	SERVICE, DEPT. OR AGENCY DOD
PATIENT'S LAST NAME—FIRST NAME—MIDDLE NAME HOWARD, SAM JR.			2292733	DATE OF BIRTH (DAY—MONTH—YEAR) 18 AUG 1948	IDENTIFICATION NO. 2792928
PVT		9900 110 680124	32102 1 982813	CHRONOLOGICAL RECORD OF MEDICAL CARE Standard Form 600	

HEALTH RECORD CHRONOLOGICAL RECORD OF MEDICAL CARE

28 July 1968 MEDICAL DEPARTMENT
 7TH ENGINEER BATTALION (REIN)
 1ST MARINE DIVISION, FMF
 FPO, SAN FRANCISCO, CALIFORNIA 96602

Malaria prophylaxis program initiated this date
 to be effective while in a malaria endemic area
 and for eight weeks following departure from the
 malarious area. Chemoprophylaxis consists of the
 following:

1. Upon assignment you will be supplied with
 Chloroquine and Primaquine tablets and will take
 one (1) tablet weekly for as long as you remain
 in the endemic area.

2. Upon departure you will be issued eight (8)
 tablets and you will continue to take one tablet
 each week for the following eight weeks. In the
 event that you become ill you will report to the
 nearest Medical Facility and inform the Medical
 Officer that you have been in a malarious area.

EARL MCENZIE III
 LT MC USNR

VETERANS SERVICES DIVISION

JUN 30 1968

SEX	RACE	GRADE	FOIA/PRIVACY ACT RELEASE		
Male	Hei	KOP1			
LAST NAME	FIRST NAME	MIDDLE NAME	DOB	IDENT. NO.	
Howard	Sam	Jr.	10 JUL 1945	7297728	

M A L A R I A D E B R I E F I N G

By virtue of having been in Vietnam, I recognize that I have been exposed to malaria. Malaria may develop long after my departure from Vietnam. In order that I not contract malaria, it will be necessary for me to continue my antimalarial tablets after leaving Vietnam. To not do so would be a violation of Department of Defense orders as well as a violation of a moral obligation not to endanger my country, my friends, and my family.

"I have been taking Chloroquine -- Primaquine antimalarial tablets weekly (salmon or orange colored tablets), and I will take one (1) tablet a week for eight (8) weeks following my departure from Vietnam. I have received the necessary tablets."

Sam Howard Jr. 15 July 69
(SIGNATURE) (DATE)

Sam Howard Jr. 2292928
(PRINTED NAME) (SERVICE NO.)

VETERANS SERVICES DIVISION

JUN 30 1969

FOIA/PRIVACY ACT RELEASE

HEALTH RECORD

IMMUNIZATION RECORD

All entries in ink to be made in black letters

VACCINATION AGAINST SMALLPOX (Number of previous vaccination scars)

	DATE	ORIGIN	BATCH NUMBER	RESULT		STATION	PHYSICIAN'S NAME
				3-4 DAYS	7-14 DAYS		
1		NDC			ACC	MC RD, PISC R.	LANGSTON, LT MC USN
2	10 FEB 69		56801 N7			7th ENG.	SS [signature] LT MC
3							
4							
5							
6							

ENTER RESULTS AS: IMMEDIATE REACTION (of immunity); ACCELERATED REACTION (Vaccinoid); TYPICAL PRIMARY VACCINA

TRIPLE TYPHOID VACCINE

	DATE	DOSE	UNTOWARD REACTION	PHYSICIAN'S NAME		DATE	DOSE	UNTOWARD REACTION	PHYSICIAN'S NAME
1		0.5cc		DKI R. LANGSTON, LT MC USNR					
2	MAR 26 1968	0.5cc		DKI R. LANGSTON, LT MC USNR					
3	16 APR 69	0.5		[signature]					
4									
5									
6									

TETANUS TOXOID

	DATE	DOSE	UNTOWARD REACTION	PHYSICIAN'S NAME		DATE	DOSE	UNTOWARD REACTION	PHYSICIAN'S NAME
1		0.5cc		DKI R. LANGSTON, LT MC USNR					
2		0.5cc		DKI R. LANGSTON, LT MC USNR					
3	MAR 26 1968	0.5		[signature]					
4									
5									
6									

SCHICK TESTING AND DIPHTHERIA IMMUNIZATION

DATE	DOSE	REACTION	PHYSICIAN'S NAME	DATE	DOSE	REACTION	PHYSICIAN'S NAME
TEST				TEST			
1				5			
2				6			
3				7			
4				8			

VETERANS SERVICES DIVISION

JUN 30 1981

TYPHUS VACCINE

DATE	DOSE	REACTION	PHYSICIAN'S NAME	DATE	DOSE	REACTION	PHYSICIAN'S NAME
FEB 31 1968	0.5cc		DKI R. LANGSTON, LT MC USNR				
16 APR 69	0.5		[signature]				

FOIA/PRIVACY ACT RELEASE

CHOLERA VACCINE

DATE	ORIGIN	BATCH NO.	PHYSICIAN'S NAME	DATE	ORIGIN	BATCH NO.	PHYSICIAN'S NAME
MAR 07 1968	0.5cc		DKI R. LANGSTON, LT MC USNR				
MAR 26 1968	0.5cc		DKI R. LANGSTON, LT MC USNR				
16 APR 69	0.5		[signature]				

YELLOW FEVER VACCINE

DATE	ORIGIN	BATCH NO.	STATION	PHYSICIAN'S NAME
MAR 31 1968	NDC	6152	USMC RD, PARRIS ISLAND, S.C.	R. LANGSTON, LT MC USNR

DATE	RACE	GRADE, RATING OR POSITION	ORGANIZATION UNIT	COMPONENT OR BRANCH	SERVICE, DEPT. OR AGENCY
MAR 31 1968	W	PVT Level	4th Eng Bn	USMC	DOD
PATIENT'S NAME (LAST, FIRST, MIDDLE NAME)	HOWARD, JAMES		2292723	DATE OF BIRTH (DAY-MONTH-YEAR)	IDENTIFICATION NO.
	PVT	9900	32102 1	181 1948	2292928

680124

480313

IMMUNIZATION RECORD

4/50/3

LAST NAME	FIRST NAME	MIDDLE NAME	SER. NO.	DOB	USN	USMC
HOWARD	Sam	Jr.	229292F	18 JUL 1948		

DATE: NAME OF TREATING FACILITY, COMPLAINT, TREATMENT ADMINISTERED
SIGNATURE AND RATE/RATE OF PERSON ADMINISTERING TREATMENT

7th ENGINEER BATTALION

25 Aug 68 Tenderness in D ankle following injury about a week ago.

1. ASA 2nd PRN.

2. with Salitid

SEP 09 1968

7th ENGINEER BATTALION

pt states he had to much to drink last night and has upset stomach and vomiting this morn.

VETERANS SERVICES DIVISION

RX | Compazine

162h #6

JUN 30 1961

FOIA/PRIVACY ACT RELEASE

SEP 17 1968

7th ENGINEER BATTALION

pt in to get his shaving kit. we don't have one right to request kit at this time. will advise to shave in barracks. To return if no avail.

Russell F. H. Jr.

(TYPE OR PRINT BELOW IDENTIFICATION DATA)

DATE	NAME OF TREATING FACILITY, COMPLAINT, TREATMENT ADMINISTERED, SIGNATURE AND RANK/RATE OF PERSON ADMINISTERING TREATMENT
1 8 FEB 1969	<p>BAS 7TH ENGINEER BN FPO SAN FRANCISCO, 96602</p> <p>PT 1/0 bump on lower chin. Desires no shaving chit.</p> <p>Imp. Folliculitis</p> <p>To see M.O.</p> <p>Pseudo folliculitis barbae</p> <p>Shave it every 3 days</p> <p>S. ANDREWS MSG/USAR</p> <p>Andrews</p>
7 MAR 1969	<p>BAS 7TH ENGINEER BN FPO SAN FRANCISCO, 96602</p> <p>Pt 1/0 cold, green mucous obtained upon coughing. Temp 98.8°</p> <p>Rx - acetefed tololide 198h - 2 rock 14m</p>
2 9 MAR 1969	<p>BAS 7TH ENGINEER BN FPO SAN FRANCISCO, 96602</p> <p>A complaint of rash in area of groin</p> <p>VETERANS SERVICES DIVISION</p> <p>JUN 30 1981</p> <p>Advise to keep area dry by use of powder</p> <p>St. M. Jennings</p>
0 6 JUN 1969	<p>BAS 7TH ENGINEER BN FPO SAN FRANCISCO, 96602</p> <p>FOIA/PRIVACY ACT RELEASE</p> <p>1/0 rash on face. Says previous Rx unsatisfactory. To see M.O.</p> <p>Pseudo folliculitis barbae</p> <p>See - tetra, chin soap, QID X 5 days</p> <p>Cordian cream tid</p> <p>No shaving x 2 weeks</p> <p>Andrews</p>

REPORT OF MEDICAL EXAMINATION

U.S. 11231 103

1. LAST NAME—FIRST NAME—MIDDLE NAME HOWARD, SAM JR.			2. GRADE AND COMPONENT OR POSITION LCPL		3. IDENTIFICATION NO. 2202938	
4. HOME ADDRESS (Number, street or R.F.D., city or town, zone and State) 163-24 75th Blvd., Jamaica, N.Y.			5. PURPOSE OF EXAMINATION R.A.U.		6. DATE OF EXAMINATION 26 Aug. 1969	
7. SEX MALE	8. RACE Negroid	9. TOTAL YEARS GOVERNMENT SERVICE MILITARY 7 1/2 CIVILIAN		10. AGENCY USNS TI, SF CALIF.	11. ORGANIZATION UNIT	
12. DATE OF BIRTH 18 Aug. 1946		13. PLACE OF BIRTH Brooklyn, N.Y.		14. NAME, RELATIONSHIP, AND ADDRESS OF NEXT OF KIN Pinkie R. Howard Same as #4		
15. EXAMINING FACILITY OR EXAMINER AND ADDRESS NAVAL DISPENSARY, TI, SF, CALIF.				16. OTHER INFORMATION RELIGION: CATHOLIC		
17. RATING OR SPECIALTY				TIME IN THIS CAPACITY (Total)		LAST SIX MONTHS

CLINICAL EVALUATION		
NOR- MAL	(Check each item in appropriate col- umn; enter "NE" if not evaluated.)	ABNOR- MAL
<input checked="" type="checkbox"/>	18. HEAD, FACE, NECK, AND SCALP	
<input checked="" type="checkbox"/>	19. NOSE	
<input checked="" type="checkbox"/>	20. SINUSES	
<input checked="" type="checkbox"/>	21. MOUTH AND THROAT	
<input checked="" type="checkbox"/>	22. EARS—GENERAL (Int. & ext. exams) (Auditory acuity under items 70 and 71)	
<input checked="" type="checkbox"/>	23. DRUMS (Perforation)	
<input checked="" type="checkbox"/>	24. EYES—GENERAL (Visual acuity and refraction under items 68, 69 and 71)	
<input checked="" type="checkbox"/>	25. OPHTHALMOSCOPIC	
<input checked="" type="checkbox"/>	26. PUPILS (Equality and reaction)	
<input checked="" type="checkbox"/>	27. OCULAR MOTILITY (Associated parallel move- ments, nystagmus)	
<input checked="" type="checkbox"/>	28. LUNGS AND CHEST (Include breaths)	
<input checked="" type="checkbox"/>	29. HEART (Thrust, size, rhythm, sounds)	
<input checked="" type="checkbox"/>	30. VASCULAR SYSTEM (Varicosities, etc.)	
<input checked="" type="checkbox"/>	31. ABDOMEN AND VISCERA (Include hernia)	
<input checked="" type="checkbox"/>	32. ANUS AND RECTUM (Hemorrhoids, fistulas, fissures, etc. (inspected))	
<input checked="" type="checkbox"/>	33. ENDOCRINE SYSTEM	
<input checked="" type="checkbox"/>	34. G-U SYSTEM	
<input checked="" type="checkbox"/>	35. UPPER EXTREMITIES (Strength, range of motion)	
<input checked="" type="checkbox"/>	36. FEET	
<input checked="" type="checkbox"/>	37. LOWER EXTREMITIES (Exempt feet (Strength, range of motion))	
<input checked="" type="checkbox"/>	38. SPINE, OTHER MUSCULOSKELETAL	
<input checked="" type="checkbox"/>	39. IDENTIFYING BODY MARKS, SCARS, TATTOOS	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	40. SKIN, LYMPHATICS	
<input checked="" type="checkbox"/>	41. NEUROLOGIC (Cerebellar tests under item 70)	
<input checked="" type="checkbox"/>	42. PSYCHIATRIC (Specify any personality deviation)	
<input checked="" type="checkbox"/>	43. PELVIC (Females only) (Check how done) <input type="checkbox"/> VAGINAL <input type="checkbox"/> RECTAL	

NOTES. (Describe every abnormality in detail. Enter pertinent item number before each comment. Continue in item 73 and use additional sheets if necessary.)

#34.

1. VSULA
2. LS 2nd left elbow
3. CS 1st left knee
4. TATTOO INDIAN GIRL left arm

(Continue in item 73)

44. DENTAL (Place appropriate symbols above or below number of upper and lower teeth, respectively.)

O—Restorable teeth
I—Nonrestorable teeth

X—Missing teeth
XXX—Replaced by dentures

(if X's)—Fixed bridge, brackets to
include abutments

R	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	L
I																	
G																	
H	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17	F
T		X	X														T

REMARKS AND ADDITIONAL DENTAL
DEFECTS AND DISEASES

T-3 C-2

LABORATORY FINDINGS

45. URINALYSIS: A. SPECIFIC GRAVITY

1.010

B. ALBUMIN

NEG

D. MICROSCOPIC

47. SEROLOGY (Specify test used and result)

DEL NON REACTIVE

48. EKG

49. BLOOD TYPE AND RH
FACTOR

46. CHEST X-RAY (Place, date, film number and result)

**NAVDISP, T.I. 26 Aug. 1969
SF, CALIF. FILM # 021224**

50. OTHER TESTS

12ND MSTI 6150/2 (10-64)

TRANSMITTAL OF AND/OR ENTITLEMENT TO AWARDS

DATE 10/25/94

NAME Howard, Sam Jr SERVICE NO./SSN 422 68 3398 BRANCH USMC RECORD GROUP 143 079182

- ☐ A REVIEW OF YOUR RECORD INDICATES THAT YOU ARE ELIGIBLE FOR THE FOLLOWING AWARDS.
☒ THE FOLLOWING AUTHORIZED AWARDS ARE ENCLOSED.
☒ PREVIOUSLY ISSUED AWARDS ARE INDICATED BY AN ASTERISK.
☐ SIGNATURE OF VETERAN IS REQUIRED PRIOR TO ISSUANCE OF AWARDS.

<input type="checkbox"/> DISTINGUISHED FLYING CROSS	<input type="checkbox"/> USCG MERITORIOUS UNIT COMMENDATION
<input type="checkbox"/> AIR MEDAL	
<input type="checkbox"/> BRONZE STAR MEDAL	
<input type="checkbox"/> PURPLE HEART MEDAL	
<input type="checkbox"/> COMMENDATION MEDAL (NAVY/USCG)	<input type="checkbox"/> USCG RESERVE GOOD CONDUCT MEDAL
<input type="checkbox"/> ACHIEVEMENT MEDAL (NAVY/USCG)	<input type="checkbox"/> NAVAL RESERVE MERITORIOUS SERVICE MEDAL
	<input type="checkbox"/> RESERVE MEDAL (ARMED FORCES/NAVY/MARCOR/CG)
	<input type="checkbox"/> ORGANIZED MARINE CORPS RESERVE MEDAL
<input type="checkbox"/> GOOD CONDUCT MEDAL: (RIBBON DEF NOT ENCL)	
<input type="checkbox"/> NAVY MARCOR USCG	
<input type="checkbox"/> WORLD II VICTORY MEDAL	<input checked="" type="checkbox"/> THE FOLLOWING ARE NOT AVAILABLE FOR ISSUANCE
<input type="checkbox"/> AMERICAN DEFENSE SERVICE MEDAL (w/CLASP)	<input checked="" type="checkbox"/> SEA SERVICE DEPLOYMENT RIBBON
<input type="checkbox"/> AMERICAN CAMPAIGN MEDAL	<input checked="" type="checkbox"/> USMC RIFLE/BADGE BADGES <i>marksman</i>
<input type="checkbox"/> ASIATIC PACIFIC CAMPAIGN MEDAL	<input type="checkbox"/> NAVY/MARCOR OVERSEAS SERVICE RIBBON
<input type="checkbox"/> EUROPEAN-AFRICAN-MIDDLE EASTERN CAMPAIGN MEDAL	<input type="checkbox"/> JOINT SERVICE MEDALS
<input type="checkbox"/> NAVY OCCUPATION SERVICE MEDAL (w/CLASP)	<input type="checkbox"/> INSIGNIAS
<input type="checkbox"/> CHINA SERVICE MEDAL (EXTENDED)	<input type="checkbox"/> USCG EXPERT RIFLE/PISTOL SHOT MEDAL
	<i>STARS</i>
<input checked="" type="checkbox"/> NATIONAL DEFENSE SERVICE MEDAL	
<input type="checkbox"/> SOUTHWEST ASIA SERVICE MEDAL	
<input type="checkbox"/> KOREAN SERVICE MEDAL	
<input type="checkbox"/> UNITED NATIONS SERVICE MEDAL	
<input type="checkbox"/> ARMED FORCES EXPEDITIONARY MEDAL	
<input checked="" type="checkbox"/> VIETNAM SERVICE MEDAL <i>w/4 BRONZE STARS</i>	
<input type="checkbox"/> HUMANITARIAN SERVICE MEDAL	
<input checked="" type="checkbox"/> PRESIDENTIAL UNIT COMMENDATION RIBBON <i>& Citation</i>	
<input type="checkbox"/> NAVY/USCG UNIT COMMENDATION RIBBON	<input checked="" type="checkbox"/> FOREIGN AWARDS
<input type="checkbox"/> MERITORIOUS UNIT COMMENDATION RIBBON	(FOREIGN DECORATIONS AND OTHER ITEMS NOT STOCKED/ISSUED BY THE DEPARTMENT OF THE NAVY MAY BE OBTAINED FROM CIVILIAN DEALERS OF MILITARY SUPPLIES.)
<input type="checkbox"/> NAVY "E" RIBBON	<input type="checkbox"/> PHILIPPINE DEFENSE/LIBERATION/INDEPENDENCE RIBBON
<input checked="" type="checkbox"/> COMBAT ACTION RIBBON	<input type="checkbox"/> PHILIPPINE/REPUBLIC OF KOREA/VIETNAM PRESIDENTIAL UNIT CITATION
<input type="checkbox"/> GOLD STAR LAPEL BUTTON	<input checked="" type="checkbox"/> REPUBLIC OF VIETNAM CAMPAIGN MEDAL
<input type="checkbox"/> NAVY EXPERT RIFLE/PISTOL MEDAL	<input checked="" type="checkbox"/> REPUBLIC OF VIETNAM MERITORIOUS UNIT CITATION
<input type="checkbox"/> ANTARCTICA SERVICE MEDAL	(Gallantry Cross Medal Color with Palm)
<input type="checkbox"/> USCG ARCTIC SERVICE MEDAL	<input checked="" type="checkbox"/> REPUBLIC OF VIETNAM MERITORIOUS UNIT CITATION
	(Civil Actions Medal, First Class Color w/Palm)

COMMENTS:

awards sent September 24, 1993. To Mrs. Janelle Howard 2990 Eagle Way #9, Boulder CO 80301. Your request concerning military Records has been forwarded to the National Personnel Records Center 9700 Page Blvd. St. Louis, MO 63132.

REQUESTOR:

BUREAU OF NAVAL PERSONNEL
 RETIRED RECORDS SECTION
 (PERS-313E)
 9700 PAGE BOULEVARD
 ST. LOUIS, MO 63132

22

REPLY CONCERNING MILITARY RECORDS

DATE

9-30-94

HOWARD, SAM JR. 2292928

THE REPLY TO THE INQUIRY WILL BE FOUND IN THE CHECKED ITEM(S). IF YOU WRITE TO US AGAIN ON THIS SUBJECT, PLEASE RETURN YOUR ORIGINAL REQUEST, THIS FORM, AND ANY OTHER FORM YOU COMPLETE.

☒ Copies of requested military ☒ personnel ☐ medical records are attached. We suggest you make an extra copy and guard against loss or damage. We regret if any photocopies may be of poor quality, but they are the best copies obtainable.

☐ The attached separation document may include the following information: authority for separation, reason for separation, Reenlistment Eligibility Code, and Separation (SPN/SPD) Code. If you require a copy of the separation document that does not contain the above information, you may request a deleted copy from this Center.

☐ The Privacy Act of 1974 does not permit the release of a social security number or other personal information to the public without the authorization of the veteran concerned; therefore, we have deleted personal identifying data relating to other persons.

☐ The Reenlistment Eligibility (RE) Code issued upon release from active duty on _____ is _____

☐ The reason and authority for separation from active duty/discharge on _____ is _____

☐ The record of service in the _____ indicates being in a POW status from _____ to _____

☒ Military personnel, upon discharge from the Armed Forces, are issued discharge certificates. These certificates are prepared in the original only; therefore, copies cannot be furnished. The law does provide that upon presentation of satisfactory proof of loss (such as a signed statement), an honorably discharged veteran or the surviving spouse may be given a "certificate in lieu of lost or destroyed discharge." We are unable to issue a certificate in lieu to anyone other than as provided by law.

☐ The document you have requested, DD Form 214, Report of Separation, was not used until Jan. 1, 1950. However, a similar form was used at the time the person named above was separated. A copy of it is attached.

☐ When the person named above was separated, it was not the practice to issue a document which served as a report of separation.

☐ The original report of separation was issued at the time of separation. Another original cannot be issued. The attached copy, however, will serve the same purpose as the original.

☐ No report of separation was issued, since the person named above had no active service, or less than 90 days of active duty for training.

☐ The service record of the person named above does not contain a copy of a report of separation, or its equivalent. Therefore, we are instead furnishing the attached NA Form 13038, Certification of Military Service. This will serve as verification of military service and may be used for any official purpose.

☒ That portion of your request seeking medals/awards has been referred to the office checked below. That office has jurisdiction over the issuance of medals/awards. Any further correspondence on this subject should be addressed to that office.

☐ ARPERCEN, Attn: DARP-VSE-A

☒ Navy Liaison Office, Room 3475

9700 Page Ave., St. Louis, MO 63132

☒ The medical records requested ☐ The documents requested pertaining to discharge have been sent to the Department of Veterans Affairs (VA) and may be obtained from the VA office shown below.

☐ The Department of Defense Privacy Program, 32 CFR 310.30(f), allows for the disclosure of medical records to the individual to whom they pertain. A portion of the requested medical records, however, contains information which can be interpreted and explained properly only by a physician. If you wish us to send copies to a designated physician, please furnish us with the name and address of that physician. The request MUST INCLUDE the written consent (signature) of the person whose records are involved, authorizing the release of the records to the designated physician.

☒ VARO

C# 422 68 3398

11000 WILSHIRE BLVD

LOS ANGELES, CA. 90024

PATRICIA M. ERICKSON ESQ

501 SOUTH SIXTH STREET

LAS VEGAS, NV. 89101

NCPM N-C

WILLIE J. BOSTICK L.76
Chief, Navy Reference Branch

FOR

NATIONAL PERSONNEL RECORDS CENTER
(Military Personnel Records)
9700 Page Avenue
St. Louis, Missouri 63132-5100

PA - AL DATA	1. LAST NAME-FIRST NAME-MIDDLE NAME HOWARD, Sam Jr				2. SERVICE NUMBER 2292928		3. SOCIAL SECURITY NUMBER 422 68 3398							
	4. DEPARTMENT, COMPONENT AND BRANCH OR CLASS USMC				5A. GRADE, RATE OR RANK LCpl		5B. PAY 1-3		6. DATE OF BIRTH Unknown					
	7. U. S. CITIZEN <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		8. PLACE OF BIRTH (City and State or Country) Clanton, Alabama				9. DATE OF BIRTH 18 Aug 48							
SELECTIVE SERVICE DATA	10B. SELECTIVE SERVICE NUMBER Not Available		10A. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, COUNTY, STATE AND ZIP CODE Not Available				11. DATE INDUCTED N/A							
	11A. TYPE OF TRANSFER OR DISCHARGE Transferred to the Marine Corps Reserve				11B. STATION OF INSTALLATION AT WHICH RECEIVED Separation Section, Marine Barracks, Naval Station, Treasure Island, San Francisco, Calif									
TRANSFER OR DISCHARGE DATA	12. LAST DUTY ASSIGNMENT AND MAJOR COMMAND A Co, 7th Engr Bn, 1st Mar Div				13. CHARACTER OF SERVICE HONORABLE		14. TYPE OF CERTIFICATE ISSUED N/A							
	14. DISTRICT, AREA COMMAND OR CORPS TO WHICH RESERVIST TRANSFERRED Marine Corps Reserve Forces (Class III) Kansas City, Missouri				15. REENLISTMENT CODE RE-1									
	16. TERMINAL DATE OF RESERVE/UMYS OBLIGATION DAY MONTH YEAR 23 Jan 74		17. CURRENT ACTIVE SERVICE OTHER THAN BY INDUCTION A. SOURCE OF ENTRY: <input checked="" type="checkbox"/> ENLISTED (First Enlistment) <input type="checkbox"/> ENLISTED (Prior Service) <input type="checkbox"/> OTHER				18. TERM OF SERVICE (Years) 2		19. DATE OF ENTRY DAY MONTH YEAR 24 Jan 68					
	18. PRIOR REGULAR ENLISTMENTS None		19. GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SVC Private (E-1)		20. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State) Brooklyn, New York									
SERVICE DATA	21. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County, State and ZIP Code) Brooklyn, New York				22. STATEMENT OF SERVICE									
	23A. SPECIALTY NUMBER & TITLE 1371-Combat Engineer				23B. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER 5-49.205 Rigger				24. CREDITABLE FOR BASIC PAY PURPOSES			25. TOTAL ACTIVE SERVICE		
									26. FOREIGN AND/OR SEA SERVICE Unknown					
									27. NET SERVICE THIS PERIOD 01 07 16			28. OTHER SERVICE 00 00 00		
									29. TOTAL (Line (1) plus Line (2)) 01 07 16					
24. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED Unknown														
25. EDUCATION AND TRAINING COMPLETED Unknown														
VA AND EMP. SERVICE DATA	26A. NON-PAY PERIODS/TIME LOST (Preceding Two Years) Unknown				26B. DAYS ACCRUED LEAVE PAID Unk		27A. INSURANCE IN FORCE (NSLI or USGLI) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		27B. AMOUNT OF ALLOTMENT N/A		27C. MONTH ALLOTMENT DISCONTINUED N/A			
	28. VA CLAIM NUMBER N/A				29. SERVICEMEN'S GROUP LIFE INSURANCE COVERAGE <input checked="" type="checkbox"/> \$10,000 <input type="checkbox"/> \$5,000 <input type="checkbox"/> NONE									
REMARKS	30. REMARKS None													
	31. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER TRANSFER OR DISCHARGE (Street, RFD, City, County, State and ZIP Code) 153-24 Foch Boulevard Jamaica, New York													
AUTHENTICATION	32. SIGNED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER L. VIERMANN, 1STLT, USMC, AOIC						33. SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED <i>Sam Howard Jr</i>							
							34. SIGNATURE OF OFFICER AUTHORIZED TO SIGN <i>L. Viermann</i>							

PERSONAL DATA	1. LAST NAME-FIRST NAME-MIDDLE NAME HOWARD, Sam Jr		2. SERVICE NUMBER 2292928		3. SOCIAL SECURITY NUMBER 422 68 3398		
	4. DEPARTMENT, COMPONENT AND BRANCH OR CLASS USMC		5a. GRADE, RATE OR RANK LCpl		5. PAY GRADE E-3		6. DATE OF BIRTH Unknown
	7. U. S. CITIZEN <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		8. PLACE OF BIRTH (City and State or Country) Clanton, Alabama		9. DATE OF BIRTH 18 Aug 48		
SELECTIVE SERVICE DATA	10a. SELECTIVE SERVICE NUMBER Not Available		10b. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, COUNTY, STATE AND ZIP CODE Not Available		11. DATE INDUCTED N/A		
	12. TYPE OF TRANSFER OR DISCHARGE Transferred to the Marine Corps Reserve		13. STATION OR INSTALLATION AT WHICH SELECTED Separation Section, Marine Barracks, Naval Station, Treasure Island, San Francisco, Calif				
TRANSFER OR DISCHARGE DATA	14. AUTHORITY OF THE GOVERNMENT, PARAGRAPH 6012.1a MARCORSEPM MEO 1900.27 and MCBul 1910 of 10 Mar 69		15. EFFECTIVE DATE 9 Sep 69		16. TYPE OF CERTIFICATE ISSUED N/A		
	17. LAST DUTY ASSIGNMENT AND MAJOR COMMAND A Co, 7th Engr Bn, 1st Mar Div		18. CHARACTER OF SERVICE HONORABLE		19. REENLISTMENT CODE RE-1		
	20. DISTRICT, AREA COMMAND OR CORPS TO WHICH RESERVIST TRANSFERRED Marine Corps Reserve Forces (Class III) Kansas City, Missouri						
SERVICE DATA	21. TERMINAL DATE OF RESERVE/UMTS OBLIGATION DAY MONTH YEAR 223 Jan 74		22. CURRENT ACTIVE SERVICE OTHER THAN BY INDUCTION a. SOURCE OF ENTRY: <input checked="" type="checkbox"/> ENLISTED (First Enlistment) <input type="checkbox"/> ENLISTED (Prior Service) <input type="checkbox"/> OTHER		23. TERM OF SERVICE (Years) 2		24. DATE OF ENTRY DAY MONTH YEAR 24 Jan 68
	25. PRIOR REGULAR ENLISTMENTS None		26. GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SVC Private (E-1)		27. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State) Brooklyn, New York		
	28. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County, State and ZIP Code) Brooklyn, New York		29. STATEMENT OF SERVICE				
	30. SPECIALTY NUMBER & TITLE 1371-Combat Engineer		31. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER 5-49.205 Rigger		32. CREDITABLE FOR BASIC PAY PURPOSES		
	33. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED Unknown		34. FOREIGN AND/OR SEA SERVICE Unknown				
VA AND EMP. SERVICE DATA	35. NON-PAY PERIODS/TIME LOST (Preceding Two Years) Unknown		36. DAYS ACCRUED LEAVE PAID Unk		37. INSURANCE IN FORCE (NSLI or USGLI) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		38. AMOUNT OF ALLOTMENT N/A
	39. VA CLAIM NUMBER N/A		40. SERVICEMEN'S GROUP LIFE INSURANCE COVERAGE <input checked="" type="checkbox"/> \$10,000 <input type="checkbox"/> \$5,000 <input type="checkbox"/> NONE				
REMARKS	41. REMARKS None						
AUTHENTICATION	42. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER TRANSFER OR DISCHARGE (Street, RFD, City, County, State and ZIP Code) 153-24 Foeh Boulevard Jamaica, New York				43. SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED <i>Sam Howard Jr</i>		
	44. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER L. VIEHMANN, 1STLT, USMC, AOIC				45. SIGNATURE OF OFFICER AUTHORIZED TO SIGN <i>L. Viehman</i>		

ENLISTMENT CONTRACT - ARMED FORCES OF THE UNITED STATES

(Also to be used by AFES in conjunction with induction processing as a means of providing data for manpower information reporting systems.)

Form Approved
Budget Bureau No. 22-R016

1. SERVICE NO. 2292928		2. HIGHEST SCHOOL GRADE COMPLETED 12NHS		3. RATE/GRADE PVT		4. BRANCH/CLASS AND COMPONENT USMC		5. LAST NAME - FIRST NAME - MIDDLE NAME HOWARD Sam Jr.	
6. DATE OF ENL/INDUC 68 01 24		7. TERM OF ENLISTMENT/INDUC TWO YEARS <input type="checkbox"/> MINORITY		8a. MARITAL STATUS		8b. NO. DEPEND 0		9. NAME & LOCATION OF ACTIVITY EFFECTING ENLISTMENT/REENLISTMENT/INDUCTION AFES Ft Hamilton Brooklyn NY	
10. AFQT SCORE 7-13		11. ENLISTED/REENLISTED/INDUCTED <input checked="" type="checkbox"/> 1ST ENLIST <input type="checkbox"/> REENL <input type="checkbox"/> INDUCTION		12. AUTHORITY FOR ENLISTMENT/REENLISTMENT/INDUC		13. TERM OF ACQU (Reserve only) 00 MONTHS		14. ACTIVE/INACTIVE STATUS (Reserve only) <input type="checkbox"/> RETAINED ON AD <input type="checkbox"/> (IMMED AD (within 24 hrs)) <input type="checkbox"/> INACTIVE DUTY	
15. DATE MIL OBLI INC 68 01 24		16. PMOS/AFS CODE/MOD 9900		17. RELIGION BAPT		18. SSAN 422 68 3398		19. ACCEPTED AT USMC RS NEW YORK NY (MCC 980)	
20. DATE OF BIRTH 48 08 18		21. CITIZENSHIP <input checked="" type="checkbox"/> US <input type="checkbox"/> NAT US		22. COUNTRY (Specify)		23. PLACE OF BIRTH (City, state or country) Brooklyn NY		24. TRANSFER TO (Activity and location) MCRD PARRIS ISLAND S.C.	
25. DATE OF TRANSFER 68 01 24		26. PHYSICAL PROFILE 11111 A		27. NA		28. TYPE OF LAST DISCHARGE 980		29. TYPE OF LAST DISCHARGE NONE	
30. DATE OF RATE/GR 68 01 24		31. SELECTIVE SERVICE NO. 50 48 48 351		32. RATE/GR APT/RAPT PVT		33. SELECTIVE SERVICE LOCAL BD (Bd No., city & state) BD NO 48 BROOKLYN NY		34. HOME OF RECORD BROOKLYN KINGS NEW YORK 11216	
35. DATE OF RATE/GR 68 01 24		36. TOTAL ACTIVE FEDERAL SERVICE 00 YEARS 00 MONTHS 00 DAYS		37. TOTAL INACTIVE FEDERAL SERVICE 00 YEARS 00 MONTHS 00 DAYS		38. MENTAL TEST SCORES		39. DATA PROCESSING CODE	
40. SEX M		41. RACE NGRD		42. DATA PROCESSING CODE		43. DATA PROCESSING CODE		44. DATA PROCESSING CODE	

AQB IN85 AE95 EL89 GM72 MM93 CL92 GT82

49. PRIOR SERVICE							
BRANCH & CLASS/ARMED FORCE & COMPONENT	SERVICE NUMBER	DATE ENL, IND, APT, AND/OR OAD	DATE OF DISCHARGE OR RELEASE	GRADE/RATE OR RANK	TYPE OF DISCHARGE	REASON FOR DISCHARGE	TIME LOST (No. Days)

50. I know that if I secure my enlistment by means of any false statement, willful misrepresentation or concealment as to my qualifications for enlistment, I am liable to trial by court martial or discharge for fraudulent enlistment and that, if rejected because of any disqualification known and concealed by me, I will not be furnished return transportation to place of acceptance.

I am of the legal age to enlist. I have never deserted from and I am not a member of the Armed Forces of the United States, the US Coast Guard or any Reserve component thereof; I have never been discharged from the Armed Forces or any type of civilian employment in the United States or any other country on account of disability or through sentence of either civilian or military court unless so indicated by me in Item 36, "Remarks" of this contract. I am not now drawing retired pay, a pension, disability allowance, or disability compensation from the government of the United States.

51. SECTION 5538 OF TITLE 10 OF THE UNITED STATES CODE is quoted: "(a) The Secretary of the Navy may extend enlistments in the Regular Navy and the Regular Marine Corps in time of war or in time of national emergency declared by the President for such period as he considers necessary in the public interest. Each member whose enlistment is extended under this section shall be discharged not later than six months after the end of the war or national emergency, unless he voluntarily extends his enlistment. (b) The substance of this section shall be included in the enlistment contract of each person enlisting in the Regular Navy or Regular Marine Corps."

52. SECTION 5540 OF TITLE 10 OF THE UNITED STATES CODE is quoted: "(a) The senior officer present afloat in foreign waters shall send to the United States by Government or other transportation as soon as possible each enlisted member of the naval service who is serving on a naval vessel, whose term of enlistment has expired, and who desires to return to the United States. However, when the senior officer present afloat considers it essential to the public interest, he may retain such a member on active duty until the vessel returns to the United States. (b) Each member retained under this section - (1) shall be discharged not later than 30 days after his arrival in the United States; and (2) except in time of war is entitled to an increase in basic pay of 25 percent. (c) The substance of this section shall be included in the enlistment contract of each person enlisting in the naval service."

53. I understand that, upon enlistment in a Reserve component of any of the Armed Forces of the United States, or upon transfer or assignment thereto, in time of war or National emergency declared by Congress, or when otherwise authorized by law, I may be ordered to active duty for the duration of the war or National emergency and for six months thereafter.

54. I have had this contract fully explained to me, I understand it, and certify that no promise of any kind has been made to me concerning assignment to any geographical area, schooling, special programs, assignment of government quarters, or transportation of dependents except as indicated above.

RECORD OF SERVICE

ORGANIZATION	DATE	REASON	PRIMARY DUTY	PROFICIENCY		CONDUCT	SIGNATURE OF MARKING OFFICER
				GENERAL MILITARY SUBJECTS	DUTY		
1st RecruitTrngBn, MCRDep, PISC	25 JAN 1968	jd	Under Recruit Trng				ByDir
1st RecruitTrngBn, MCRDep, PISC	28 MAR 1968	tr	RecruitTrng Compl		4.2	4.3	ByDir
2d ITBn, 1st ITR MCB, CAMLEJ, N.C.	30 MAR 1968		Police and Guard				BY DIR
2d ITBn, 1st ITR MCB, CAMLEJ, N.C.	APR 16 1968	ChPriDu	Duins ICI				BY DIR
2d ITBn, 1st ITR MCB, CAMLEJ, N.C.	MAY 04 1968	IR	ICT COMP		4.1	4.1	BY DIR
1stScolCo.MCES, MCB,Camlej	5 MAY 1968	jd	DUINS 1371				ByDir
1stScolCo.MCES, MCB,Camlej	5 JUN 1968	Ir	DUINS 1371		4.4	4.5	ByDir
Co"A", 7thEngrBn(Rein) FMF FPO SFRAN 96602	28 Jul 68	jd	1371 CombatEngr				CO
Co"A", 7thEngrBn(Rein) FMF FPO SFRAN 96602	31 JAN 1968	Semi-Ann	1371 Cbt Engr		4.4	4.4	CO
Co"A", 7thEngrBn(Rein) FMF FPO SFRAN 96602	18Feb69	ChPriDu	1371 CombatEngr				ByDir
Co"A", 7thEngrBn(Rein) FMF FPO SFRAN 96602	690731	Semi-Arm	1371 CombatEngr		4.3	4.3	CO
Co"A", 7thEngrBn(Rein) FMF FPO SFRAN 96602	690818	Tr	1371 Combat Engr		4.3	4.3	CO
WESLEY ver Mn	6/01		Inactive				J. G. Valdivia

EMBOSSED PLATE IMPRESSION

422-68-3398

HOWARD, SAN 68

2292928

NAME (Last) (First) (Middle) SERVICE NO.

NAVMC 118(3)-PD (Rev. 6-62) SUPERSEDES PREVIOUS EDITION WHICH WILL BE USED

AA002118

[illegible]

NAME (Last)	(First)	(Middle)	SERVICE NO.
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NAVMC 118(3)

187. 6-

PREVIOUS EDITIONS WILL BE USED.

* U.S. GOVERNMENT PRINTING OFFICE: 1967 O 344-000

AA002119

ORIGINAL

CLASSIFICATION AND ASSIGNMENT TEST RESULTS

APTITUDE - AREA CLASSIFICATION TEST BATTERY						
TESTS	(SYMBOL)	TEST SCORE	APTITUDE AREAS	(SYMBOL)	AREA SCORE	DATE
VERBAL	(VE)	82	INFANTRY	(IN)	80	FEB 68
ARITHMETIC REASONING	(AR)	79	ARMOR - ARTY & ENGINEER	(AE)	89	
PATTERN ANALYSIS	(PA)	83	ELECTRONIC	(EL)	70	
CLASSIFICATION INVENTORY	(CI)	80	GENERAL MAINTENANCE	(GM)	94	
MECHANICAL APTITUDE	(MA)	95	MOTOR MAINTENANCE	(MM)	99	
CLERICAL SPEED	(ACS)	114	CLERICAL	(CL)	98	
RADIO CODE	(ARC)	95	GENERAL TECHNICAL	(GT)	81	
GENERAL INFORMATION	(GIT)	78	RADIO CODE	(RC)		
SHOP MECHANICS	(SM)	99	DORE VERBAL (OFFICERS ONLY)			
AUTOMOTIVE INFORMATION	(AI)	99	DORE QUANTATIVE (OFFICERS ONLY)			
ELECTRONICS INFORMATION	(ELI)	58	TEST CLASS (OFFICERS ONLY)			

GENERAL CLASSIFICATION TEST BATTERY							
	OCT	RV	AC	AR	PA	FOOTNOTES	DATE
	81						

ELECTRONIC TECHNICIAN SELECTION TEST (ETST) -- SCORE:

DATE:

LANGUAGE PROFICIENCY				
LANGUAGE	PART I	PART II	TOTAL SCORE	DATE

ADDITIONAL LANGUAGE PROFICIENCY TEST ADMINISTERED?	YES:	NO:	
--	------	-----	--

REMARKS

S - SPECIAL COMPUTATION FROM A - A TEST BATTERY. * - RETEST

PLT 110

HOWARD SAM			422-00-3398 2292928	FEB 68	32102
NAME (LAST)	(FIRST)	(MIDDLE)	SERVICE NO.	DATE OF PREPARATION	R.U. CODE

NAVMC 118 (8) - PD (REV 4-66)
(2-64 EDITION WILL BE USED)ORIGINAL - FORWARD TO REPORTING UNIT
DUPLICATE - FORWARD TO CMC (CODE DGM)

AA002122

MILITARY AND CIVILIAN OCCUPATIONAL SPECIALTIES, EDUCATION COURSES, TECHNICAL TRAINING AND TESTS COMPLETED

MILITARY OCCUPATIONAL SPECIALTIES						
DATE	PRIMARY MOS	1ST ADD. MOS	2ND ADD. MOS	TITLE OF MOS	AUTHORITY	UNIT DIARY NO.
29 Mar 68	1300			Basic Cons Rep & SPM	MCPM par 3101.4	63-68 32102
9 JUN 1968	1377			Ch Eng	MCPM 3101.1A Ext Eng Byd	68/31402

CIVILIAN EDUCATION					CIVILIAN OCCUPATION	
TYPE SCHOOL	MAJOR SUBJECT	NO. YEARS	GRADUATE YES NO	YEAR LEFT SCHOOL	JOB TITLE	DUTIES
GRAMMAR SCHOOL		8	x	1965	Salesman, General Hardware	
HIGH SCHOOL	Acad	1 1/2		1966		Worked in department store selling automobile parts and other general hardware items.
COLLEGE-UNIVERSITY						
GRADE-BUSINESS	Ser Sta Attn	1	x	1966		

SERVICE SCHOOLS, TECHNICAL TRAINING AND MILITARY CORRESPONDENCE COURSES COMPLETED					
SCHOOL ATTENDED AND LOCATION	COURSE	NO. WEEKS	YEAR COMPLETED	INCOM- PLETE	UNIT DIARY NO.
*MCES, MCB, Camle, N.C.	*Cbt Eng*	4	1968	///	68/31402

ACADEMIC EDUCATION COURSES, TESTS AND CORRESPONDENCE COURSES COMPLETED				
DATE	TITLE OF COURSE OR TEST	SCHOOL AND LOCATION	CREDIT	GRADE

USAFI GED TESTS								
	DATE			STANDARD SCORES ON TESTS				
	PASSED	FAILED	INCOMPLETE	1	2	3	4	5
HIGH SCHOOL LEVEL								
COLLEGE LEVEL								
RETEST- LEVEL								
RETEST- LEVEL								

SPECIAL QUALIFICATIONS

Typing - 6wpm

REMARKS

AVERAGE 92.25 STANDING 5/25
 30 January 1968: UAT III A: WK 18; R 23; AC 19
 30 January 1968: UIAT D: WK 35; R--; AC 29

HOWARD, Sam Jr.

422-68-3398

2292928

DATE PREPARED

27 March 1968

NAME (Last)

(First)

(Middle)

SERVICE NO.

NAVMC 118(8a)-PD (REV. 9-66)

2-64 EDITION

BE USED

U.S. GOVERNMENT PRINTING

1964 O-290-352

4-11980

AA002123

COMBAT HISTORY - EXPEDITIONS

[illegible][illegible]

EMBOSSER PLATE IMPRESSION

HOWARD, SAM JR.

229228

NAME (Last, First, Middle)

SERVICE NO.

MAJMC 115(8)-FD (REV. 6-65)

Supercedes (1-8) edition which will be used

0-11603

AA002124

ADMINISTRATIVE REMARKS (1070)

ANNUAL ADMINISTRATIVE AUDIT COMPLETED			
DATE	SIGNATURE AND RANK	DATE	SIGNATURE AND RANK

DATE: JAN 29 1968 Articles UCMJ explained to me this date as required by Article 137, UCMJ. <i>Sam Howard Jr.</i> (Signature)	DATE: 07 APR 1969 Articles UCMJ explained to me this date as required by Article 137, UCMJ. <i>Sam Howard Jr.</i> (Signature)	MOOD TYPE: 0 DEPOSIT RECORD BOOK NO. CLASS SWIMMER: UQ
---	---	---

Instruction in code of conduct for members of the armed forces of the United States completed on **29 JAN 1968**

John P. H. ByDir

Member has received complete initial clothing issue.

ByDir

TYPES AND NATURE OF DISCHARGES CERTIFICATES AND CHARACTERS OF SERVICE AND RELATED MATTER EXPLAINED IAW MCPM PARA 13250.3A

JAN 29 1968

NAC COMPLETED **23 FEB 1968** BY USMC13C PRIOR TO ISSUANCE OF A SECURITY CLEARANCE REVIEW OF THE INVESTIGATIVE FILE IS REQUIRED.

John P. H. ByDir

11 JUL 1968

Received Predeploy trng law

MCO 1510.12

11 JUL 1968

1st Rep Co Stag Bn, Co, Campen, Calif.
 Instruction in Code of Conduct for members of the Armed Forces of the United States completed.

W. C. Chamberlain By direction

EMBOSSING PLATE IMPRESSION

HOWARD, SAM JR.

422-68-3398

2292928

NAME (Last) (First) (Middle) SERVICE NO.

NAVMC 118(11) (REV. 6-68)
 Previous editions of NAVMC 118(11) and editions of NAVMC 118(1) are obsolete.

11 JUL 1968 Issued One (1) Field Jacket in accordance with MCO P3000.1A

W. C. Chamberlain By direction

11 JUL 1968 1st Rep Co, Stag Bn, MCB, Campen, Calif. 92055 have been afforded an opportunity to make out a will and/or power of attorney and have been informed and understand that am scheduled to embark aboard Ship/Government Aircraft and depart from the CONUS for overseas on or about **23 JUL 1968**

further understand the provisions of Article 7 UCMJ as follows:
 "Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court martial may direct."

JUL 28 1968 ASSIGN OF ANNUAL CNRP MARKS AND ANNUAL REQUAL NOT REQUIRED WHILE SERVING IN THE REPUBLIC OF VIETNAM. AUTH CMC SPDLTR A03N-JAJ OF 27OCT65 28JUL68

CO "A", 1st Rep Co Stag Bn, MCB, Campen, Calif.
 ISSUED NAVC RATION CARD # 857102 THIS DATE, EXPIRES 21 Aug 68

JUL 28 1968

COB RESE SIZE 217-S.E.E.

28 JUL 1968

CO A, PHENORBN(REIN), PRF RECEIVED THIS DATE INDIVIDUAL RESPONSIBILITY INSTRUCTION AS REQUIRED BY DIVO 1610.5

28 JUL 1968 I HAVE RECEIVED INSTRUCTIONS THIS DATE ON SOPS

CONTINUED ON SUPPLEMENTAL PAGE

2-3378