NO. 60014

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

JAN 10 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

THOMAS RANDOLPH,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK and THE HONORABLE STEPHANIE MILEY, District Judge,

Respondents.

Case No. C250966
Dept. No. XXIII

Emergency Review Requested

PETITION FOR EMERGENCY WRIT OF MANDAMUS

COME NOW, Petitioner Thomas Randolph (for the limited purpose of filing this Writ), E. Brent Bryson, Esq. and Yale Galanter, Esq. and allege as follows:

That this Court has original jurisdiction pursuant to Article 6, Section 4 of the Nevada Constitution. That at all times relevant hereto, Respondent was a duly elected, acting and qualified Judge of Department Twenty-three of the Eighth Judicial District Court of the State of Nevada in and for the County of Clark.

POINTS AND AUTHORITIES

I. FACTS.

Defendant Thomas Randolph is charged with capital murder and the State is seeking the death penalty. Trial of the matter is currently set to begin on January 17, 2012.

That on January 5, 2012, Defendant Randolph informed his retained counsel, Yale E. Galanter, Esq. (admitted to practice in Nevada pro hac vice) and E. Brent Bryson, Esq. (local Nevada counsel) that they were fired as a result of irreconcilable differences and breakdown in the attorney-client relationship. This breakdown in the attorney-client relationship was, and is, so severe that Randolph is unable to effectively assist Galanter and Bryson in adequately preparing for trial. Upon being fired by Randolph on January 5, 2012, Bryson notified the law clerk for the District Court Judge presiding over the trial, the Honorable Stephanie Miley, as well as the District Attorneys prosecuting the case, Robert Daskas, Esq. and David Stanton, Esq..

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Additionally, Bryson sought guidance from the State Bar of Nevada's assistant bar counsel on ethics, Patrick King, Esq.

On January 6, 2012, Bryson placed on the record that Defendant Randolph had fired Bryson and Galanter, as well as Private Investigator, Thomas Dillard the previous day. After informing the Court of Randolph firing Bryson and Galanter, Bryson gave an overview of the law from his perspective regarding Randolph's right to counsel of his choosing pursuant to the Sixth Amendment. Bryson articulated that it was his belief that the three part test enunciated in *Young* and *Garcia* was not applicable to privately retained counsel.

It is noteworthy that Randolph became indigent after exhausting all funds as and for the retaining of Galanter and Bryson. As a result, although Bryson did not believe the rule of *Young* and *Garcia* applied to retained counsel, Bryson out of an abundance of caution analyzed the rationale behind Randolph's firing of Bryson and Galanter under the three part test of *Young* codified in *Garcia*. The following record was made in those regards. (See pp. 4-15 of Transcript marked as Exhibit "A")

After Bryson made the above referenced record, the Court then questioned the State regarding its position on Mr. Randolph firing Galanter and Bryson. The State's position was articulated by Mr. Stanton. (See pp. 16-21 of Transcript marked as Exhibit "A")

After hearing from both Bryson and the State, the Court then undertook inquiry of Mr. Randolph on the record, in-camera, outside the presence of State prosecutors and without Bryson and Galanter being present. After Mr. Randolph made his record, the Court then questioned Bryson and Galanter in-camera on the record, outside the presence of Defendant Randolph who agreed to allow Bryson and Galanter to be questioned outside his presence.

The Court also called and heard from the State Bar Assistant Counsel, Patrick King, on ethics regarding the conversation that took place between Bryson and Mr. King on January 5, 2012. (See Transcript marked as Exhibit "B" filed under seal for the questioning and answers of:

1) Defendant Thomas Randolph;

2) E. Brent Bryson, Esq.;

3) Patrick King, Esq., Assistant Bar Counsel, Ethics Department; and

4) Yale Galanter, Esq.

After considering all testimony of Defendant Randolph, Mr. Bryson, Mr. Galanter and Assistant State Bar counsel Mr. King (all of which was testimony which has been sealed at the request of Mr. Bryson), as well as the State's position, the Court made the following ruling:

> THE COURT: Taking into consideration everything, first of all, I want to say that the Court's opinion, after reading the Young versus State case, 120 Nev. 963, and Garcia versus State, 121 Nev. 327, the Court finds that the factors set forth in those cases are applicable to the incident [sic] case. Notwithstanding the distinction that in those cases it happened to be appointed counsel versus in this case it's retained counsel, the Court finds it's really a distinction without a difference.
>
> And so the Court, in making its decision, has taken into consideration those three factors, specifically the extent of the conflict. Again, by those cases the Court was - - has been directed to inquire into the conflict and the surrounding circumstances, and also the Court has been directed to look at the timeliness of the motion.
>
> Taking all those factors into consideration, the Court's going to deny Mr. Randolph's request to remove Mr. Galanter and Mr. Bryson as attorneys. The Court does not find sufficient cause based upon my inquiries this morning to remove them from the case.

(See p. 23, ll. 6-25 - Exhibit "A")

> The Court looks at the court record, and the court record indicates that there's been multiple pretrial motions filed and evidentiary hearings heard over the last several years of this case. Also the Court notes that as of today's date, and looking back into the court record, there's been no request by Mr. Randolph to remove either Mr. Galanter or Mr. Bryson from this case.
>
> Okay. Specifically what the Court looks to is in this particular case there's been multiple hearings. There's been multiple times where Mr. Randolph has been before this Court. At no time has Mr. Randolph ever indicated to this Court, and he's had the ability to do so, that he would like different counsel.
>
> The Court also looks to the fact that this request for the first time to remove his attorneys comes 11 days before the trial. I think the timing alone suggests a dilatory motive on behalf of Mr. Randolph.
>
> The Court also looks to the fact that a calendar call has passed, and at the time of calendar call just last month the attorneys announced that they were ready in this case. Again, there was representations made to this Court another time, on January 3, 2012, the same week, wherein the attorneys indicated to the Court and the Court had every reason the attorneys would be ready to go in this case.

And in fact, we have multiple motions in limine that are set to be heard on . . .

(See p. 24, ll. 1-25 - Exhibit "A")

today's date.

After hearing from the counsel and speaking to Mr. Randolph, there's absolutely no indication to this Court that the attorneys in this case have been anything other than diligent in this case. Again, the Court looks to the fact there's been multiple motions filed and hearings held in this case. There's also been writs filed with the Nevada Supreme Court. It appears from the court record that a lot of work has been performed on behalf of the attorneys.

The defense attorneys have indicated to me, and this was also conceded by Mr. Randolph, that over the last three years the attorneys or their representatives have been in frequent contact with Mr. Randolph. And that would be the attorneys themselves or some other members of their defense team.

The Court also looks to the fact of the prejudice that would ensue in the - - if this case were continued again. The Court again looks to the fact that it's 11 days before the trial. Presumably both the State and the defense have subpoenaed witnesses. They've paid experts to come here at the date of trial.

And again, I want to point on the fact of I know that defense counsel made - - brought it up that they are retained counsel versus public defenders. I recognize that they are being paid differently than obviously a public defender . . .

(see p. 25, ll. 1-25 - Exhibit "A")

would be, but the Court also recognizes that I did sign documents indicating that Mr. Randolph was indigent.

And pursuant to the Widdis [phonetic] case, that made certain resources at public expense available to Mr. Randolph. For example, those would be investigatory fees, expert fees, et cetera. So there is quite a bit of prejudice that would ensue by continuing this case.

And also the Court looks to the fact that it took three years to get this case ready for trial. It is a complex case. The charges are very severe. The potential consequences are very severe, and it would take a long time to get this case ready for trial again and again, and also getting all the attorneys together and getting a court date would also push this case further down the road.

And lastly, I took into consideration the skill of the two attorneys. I have Mr. Bryson and Mr. Galanter. The Court is familiar with them by reputation. They are highly skilled attorneys. They have had other cases of a similar nature and they are - - and I feel confident that at this point they have prepared this case and can go

to court.

(See p. 26, ll. 1-20 - Exhibit "A".)

After the Court's ruling, Bryson clarified that the Court was ordering Bryson and Galanter to go forward. (See p. 10, ll. 5-12 - Exhibit "C") Randolph then made the statement, "Well, I want to be on the record. I don't want these guys working for me." (See p. 10, ll. 24, 25 - Exhibit "C")

Bryson and Galanter bring this instant Writ on their own behalf and also pursuant to the authorization of Randolph to bring this Writ on his behalf. Randolph has made it quite clear to Bryson and Galanter that other than drafting and filing this Writ, he no longer desires the representation of Galanter and Bryson. It is Randolph's position that Bryson and Galanter are fired and that he no longer has attorneys representing him.

II. ISSUES.

There are three issues which are appropriate for this Court, pursuant to public policy and constitutional law, to consider by way of extraordinary relief of a writ versus waiting until trial of this matter is concluded.

Issue No. 1: Does a criminal defendant on trial for capital murder have the right to fire privately retained counsel prior to trial?

Issue No. 2: Did the District Court commit error in ordering privately retained counsel previously fired to continue to represent a criminal defendant facing the death penalty; and

Issue No. 3: Did the District Court err in analyzing a defendant's right to fire privately retained counsel using an improper test.

Although this counsel is aware of opinions surrounding retained counsel substituting in for appointed counsel, and appointed counsel substituting in for other appointed counsel, this counsel was unable to find any Nevada Supreme Court opinions that have discussed the right of an indigent defendant to fire privately retained counsel which was hired prior to the defendant becoming indigent. Then after the Defendant was declared indigent to fire the privately retained counsel and request Court appointed counsel to "substitute in." Thus, it is this counsel's belief

this is a case of first impression in Nevada jurisprudence. This court has previously stated that there "is a strong presumption in favor of a non-indigent criminal's right to counsel of his or her own choosing." See *Ryan v. The Eighth Judicial District Court of the State of Nevada*, 123 Nev. 419, 168 P.3d 703 (Nev. 2007).

The Court in *Ryan* stated:

> Lawyers are not fungible and often the most important decision the defendant makes in shaping his defense is his selection of an attorney. Within the range of effective advocacy, attorneys will differ as to their trial strategy, oratory style, and the importance they place on certain legal issues. They may also differ with respect to expertise in certain areas of law, and experience a familiarity with opposing counsel and the judge. These differences will impact a trial in every way the presence or absence of counsel impacts a trial. *Id.*

Randolph is aware that a District Court has broad discretion to balance a non-indigent criminal defendant's right to choose his or her own counsel against the administration of justice. However this Court has previously stated in balancing that proposition against the defendant's Sixth Amendment right that "there is a strong presumption in favor of a non-indigent criminal defendant's right to counsel of her own choosing." See *Ryan* at 15. Randolph, Galanter and Bryson are also aware that the right to counsel of choice is not absolute. However, it is submitted that the Sixth Amendment right to counsel of choice in a death penalty case is as close to being absolute as possible without being absolute.

This Court relying upon a California Court of Appeals case has also quoted John Stewart Mills' observation as follows:

> In each person's own concerns, his individual spontaneity is entitled to free exercise. Considerations to aid his judgment, exhortations to strengthen his will may be offered to him, even obtruded on him, by others; but he himself is the final judge. All errors which he is likely to commit against advice and warning are far outweighed by the evil of allowing others to constrain him to what they deem his good.

See *Ryan* at 15.

In continuing upon reliance of California law in these regards, we find that in the case of *People v. Mario Lara*, 86 Cal.App.4th 139, 103 Cal.Rptr.2d 201 (2001) held:

. . .

> In contrast to situations involving appointed counsel, a defendant may discharge his retained counsel of choice at any time with or without cause. (*People v. Ortiz*, *supra*, 51 Cal.3d 983).

The *Lara* Court went on to hold:

> The right to discharge, retained counsel is based on necessity in view both of the delicate and confidential nature of the relation between attorney and client and of the evil engendered by friction or distrust. [Citation] In order to ensure effective assistance of counsel, a non-indigent defendant is accorded the right to discharge his retained attorney: the attorney-client relationship . . . involves not just the causal assistance of a member of the bar, but an intimate process of consultation and planning which culminates in a state of trust and confidence between the client and his attorney. This is particularly essential, of course, when the attorney is defending the client's life or liberty. [Citation] Thus, we conclude that the right to counsel of choice reflects not only a defendant's choice of a particular attorney, but also his decision to discharge an attorney whom he hired but no longer wishes to retain.

Lara at 22, 23.

In California the right to "substitute in" appointed counsel for other appointed counsel is governed by the same three part test enunciated in Nevada's cases, *Young* and *Garcia.* In California when a defendant with appointed counsel attempts to have another appointed counsel appointed, it is done through a vehicle known as a Marsden hearing where showing of "good cause" for replacing one appointed counsel for another must be demonstrated. In *Lara* the California court held that the conducting of a Marsden type hearing to fire private counsel was not necessary. *Lara* at 30, 31.

Furthermore, it has been held by the Supreme Court of the Untied States in *U.S. v. Cuauhtemoc Gonzalez-Lopez*, 48 U.S. 140, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006) that:

> The Sixth Amendment right to counsel of choice commands not that a trial be fair but that a particular guarantee of fairness be provided - - to wit, that the accused be defended by the counsel he believes to be best. . . In sum, where the right at stake is the right to counsel of choice, not the right to a fair trial, and that right is violated because a deprivation of counsel was erroneous, no additional showing of prejudice is required to make the violation complete." *Id.*

Thus, where the right to be assisted by counsel of one's choice is wrongfully denied, it is unnecessary to conduct an ineffectiveness inquiry to establish prejudice for a Sixth Amendment violation to manifest. *Id.* To go forward with trial now, after Bryson and Galanter have been fired and the attorney-client relationship has been destroyed resulting in Randolph being

ineffective in assisting in trial preparation and his overall defense, it is submitted, guarantees reversal of any conviction obtained by the prosecutors in this case.

The United States Supreme Court divides constitutional errors into two classes. The first is called "trial error" because the errors occurred during the presentation of the case to the jury and their effect may be quantitatively accessed in the context of other evidence presented in order to determine whether they were harmless beyond a reasonable doubt. The second class of constitutional errors is called "structural defects." These errors define analysis by harmless error standards because they effect the framework within which the trial proceeds, and are not simply an error in the trial process itself. Such errors include the denial of counsel, the denial of the right of self-representation, the denial of the right to public trial, etc. *Cuauhtemoc, supra.*

> Erroneous deprivation of the right to counsel of choice with consequences that are necessarily unquantifiable and indeterminate unquestionably qualifies as a structural error.

See *Cuauhtemoc, supra.*

In *U.S. v. Trinidad Rivera-Corona*, 618 F.3d 976 (9th Cir. 2010) the Ninth Circuit had an opportunity to address one of the issues before this Court, which is, what standard should a trial court apply and what burden must the defendant demonstrate when considering a criminal defendant's motion to discharge his privately retained counsel and to proceed with a different court appointed lawyer instead. In the *Corona* case, the Ninth Circuit held that the three part test which is the identical three part test enunciated in *Young* and *Garcia* is not the applicable standard to apply to a situation where privately retained counsel has been fired and a defendant attempts to substitute in a court appointed attorney. See *Corona* at 5. The *Corona* court rejected the three part analysis identical to the test in *Young* and *Garcia* and determined that the correct standard to use in a case where a criminal defendant fires privately retained counsel and wishes to substitute in appointed counsel, was the "extent of conflict" standard.

Based upon the record in response to Judge Miley's questioning, it is clear that there is an irreconcilable difference between attorneys Galanter and Bryson and Defendant Randolph. The irreconcilable differences have resulted in a complete breakdown in the attorney-client relationship. Defendant Randolph has the perception that Bryson and Galanter are rendering

ineffective assistance of counsel which is depriving him of his due process right to a fair trial and his Sixth Amendment right to effective counsel. This breakdown between attorney and client is preventing an adequate defense to be prepared by Bryson and Galanter in a case which carries the potential penalty of death, the most severe penalty in the American judicial system.

Even under the three part test of *Young* and *Garcia* which Defendant Randolph, Bryson and Galanter assert is not the correct test, the record indicates that Randolph's motion was timely (under *Garcia*), that the breakdown between attorney and client is irreparable and that Randolph does not trust his attorneys and considers them to be ineffective (*Young* and *Garcia* factors) and the District Court properly questioned defense counsel and the Defendant, and even went a step further and questioned State Bar Counsel. It is not the fact that defense counsel have vigorously defended Randolph to date, nor the trial Court's belief that attorneys Bryson and Galanter are skilled attorneys who will conduct an appropriate trial on behalf of Randolph which are the issues in this Writ. The issues before this Court are that Randolph has lost confidence in his attorneys, that there is a fundamental difference in how this case should proceed between Bryson, Galanter and Randolph and how this case was handled, and how this case should be presented to the jury. In those regards, whether this Court analyzes the attorney-client conflict under the *Young* and *Garcia* case, or under the Ninth Circuit extent of conflict test enunciated in *Corona,* the record overwhelmingly demonstrates that this Writ should be granted and that Defendant Randolph be allowed to substitute in court appointed counsel on his behalf and that this Court confirm Bryson and Galanter are fired and released from further duties on behalf of Randolph.

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WHEREFORE, Petitioner prays that an Emergency Writ of Mandamus issue from this Honorable Court confirming Defendant Randolph has fired his retained counsel and that Bryson and Galanter are released from further duties on Randolph's behalf and that Randolph be appointed counsel by the Court.

DATED this ____ day of January, 2012.

Respectfully submitted,

E. BRENT BRYSON, LTD.

By _____
E. BRENT BRYSON, ESQ.
Nevada Bar No. 4933
3202 W. Charleston Blvd.
Las Vegas, Nevada 89102
Co-counsel for Defendant

YALE . GALANTER, P.A.

By _____
YALE E. GALANTER, ESQ.
3730 N.E. 199th Terrace
Aventura, Florida
Co-counsel for Defendant Pro Hoc Vice

AFFIDAVIT OF E. BRENT BRYSON, ESQ.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

E. Brent Bryson, being first duly sworn, under penalty of perjury, deposes and says:

1. That affiant is an attorney licensed to practice before the Supreme Court of the State of Nevada.

2. That affiant was one of the previous attorneys of record for Petitioner Thomas Randolph prior to being fired by Randolph. That affiant and Yale Galanter, Esq. are bringing this Writ upon the limited authority of Petitioner Randolph.

3. That affiant has read the foregoing Petition for Emergency Writ of Mandamus, know the contents thereof, and that same are true and correct to the best of affiant's knowledge, except as to matters herein alleged on information and belief, and as to those matters, affiant believes them to be true.

4. Attached hereto as Exhibit "A" is a true and correct copy to the best of affiant's knowledge of Transcript of Proceedings of Defendant's Oral Motion to Have His Counsel, E. B. Bryson, Esq. and Yale L. Galanter, Esq. Withdraw From This Case, taken January 6, 2012.

5. Attached hereto as Exhibit "B" is a true and correct copy to the best of affiant's knowledge of Sealed Transcript of Proceedings on Defendant's Oral Motion to Have His Counsel, E. B. Bryson, Esq. and Yale L. Galanter, Esq. Withdrawn From This Case taken January 6, 2012.

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6. Attached hereto as Exhibit "C" is a true and correct copy to the best of affiant's knowledge of the cover page and page 10 of Transcript of Proceedings on Continuation of Defendant's Oral Motion to Have His Counsel, E.B. Bryson, Esq. and Yale L. Galanter, Esq. Withdrawn From This Case.

Further affiant sayeth naught.

E. BRENT BRYSON, ESQ.

Subscribed and sworn to before me
this 9th day of January, 2012.

JESSICCA MENESES
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 2-01-14
Certificate No: 10-2391-1

NOTARY PUBLIC in and for said
County and State

CERTIFICATE OF MAILING AND TELECOPYING

I hereby certify that on the 9th day of January, 2011, I served a copy of the foregoing Emergency Writ of Mandamus (without exhibits) upon the appropriate parties hereto by depositing a true copy thereof in the United States Mail, postage prepaid thereon, addressed to:

Robert Daskas, Deputy District Attorney
Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155
Attorney for State of Nevada

Via facsimile 477-2978

David Stanton, Deputy District Attorney
Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155
Attorney for State of Nevada

Via facsimile 477-2974

An employee of
E. BRENT BRYSON, LTD.

EXHIBIT "A"

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C250966
	)	DEPT NO. XXIII
vs.	)	
	)	
THOMAS WILLIAM RANDOLPH,	)	**TRANSCRIPT OF PROCEEDINGS**
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

DEFENDANT'S ORAL MOTION TO HAVE HIS COUNSEL, E.B. BRYSON, ESQ. AND YALE L. GALANTER, ESQ. WITHDRAWN FROM THIS CASE

FRIDAY, JANUARY 06, 2012

APPEARANCES:

FOR THE STATE: DAVID STANTON, ESQ.
Chief Deputy District Attorney
ROBERT J. DASKAS, ESQ.
Chief Deputy District Attorney

FOR THE DEFENDANT: E. BRENT BRYSON, ESQ.
YALE L. GALANTER, ESQ.

Also present telephonically: Patrick O. King, Esq.

RECORDED BY MARIA GARIBAY, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

LAS VEGAS, NEVADA, FRIDAY, JANUARY 6, 2012, 9:38 A.M.

(Court was called to order.)

THE COURT: Do we have Defendant?

THE MARSHAL: They're in back talking to him right now.

THE COURT: Are they going to be ready sometime soon?

(Pause in proceeding.)

THE COURT: We're on the record. Do you know if they're going to be coming in soon?

THE MARSHAL: Just about two or three minutes, Judge.

THE COURT: Okay. We can go off.

(Off record from 9:40 a.m. until 9:45 a.m.)

THE COURT: Okay. Mr. Randolph, can you hear me, sir?

THE DEFENDANT: [No audible response.]

THE COURT: Can you hear me now?

THE DEFENDANT: [No audible response.]

THE MARSHAL: No volume on it.

THE COURT: We don't want to turn it up too much.

THE MARSHAL: It's all the way up.

THE COURT: Is it all the way up?

THE MARSHAL: Last time it was clicking on and off. I'd hear something and then it would go off.

THE COURT: Can you hear me?

THE MARSHAL: No.

THE COURT: Okay. Do we have other headphones?

(Off-record colloquy.)

THE COURT: Can you hear me?

THE DEFENDANT: Yes.

THE COURT: Perfectly?

THE DEFENDANT: I can hear you, yes.

THE COURT: Will you tell me if you cannot hear me, please?

THE DEFENDANT: When I talk, I have to kind of pull it away from my ear, because then that's all I can hear is me. It just...

THE COURT: Okay. If at some point you cannot hear me or hear any of the attorneys in this case, please let me know, okay?

THE DEFENDANT: Is there a way I could have one hand out so I can pull it away from my ear? Normally they're looser and I can reach my head. Today they got them tight.

THE COURT: I mean, maybe Jason can adjust something, but...

THE MARSHAL: Do you want to stand up?

THE COURT: I'm fine if you want to adjust them looser.

THE DEFENDANT: See, if they put them up here, I got all that to work with. They put them down here, it don't go up. It'll go down, but it won't go up. And honest, it's

that three years of sitting over there eating that mystery meat.

THE COURT: That's all right. We all get older. Okay. Is that better, Mr. Randolph?

THE DEFENDANT: Yes.

THE COURT: Okay. And you can hear me okay, and I'm going to assume that you can hear me unless you tell me otherwise, okay?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. All right. Good morning everybody. We're here on State of Nevada versus Thomas Randolph, Case C250966.

Counsel, if you'd please introduce yourselves for the record.

MR. DASKAS: Good morning, Judge. Robert Daskas and David Stanton on behalf of the State.

MR. BRYSON: Good morning, Your Honor. E. Brent Bryson, Yale Galanter on behalf of Mr. Randolph.

MR. GALANTER: Good morning, Judge.

THE COURT: Good morning, Counsel. Okay. We're here today because we have multiple pretrial motions on calendar. Are there any other issues we need to address before we start into the motions?

MR. BRYSON: There are, Your Honor, as yesterday, when Mr. Galanter and myself and our investigator, Thomas

Dillard, went over to speak with Mr. Randolph regarding these motions, the status of the upcoming trial, things that were going to happen procedurally, things that were going to happen from a strategic standpoint, Mr. Randolph informed me that we were fired and terminated as counsel.

We explained to Mr. Randolph the significance and ramifications of such action by him, although we did so in a neutral fashion so as not to attempt to coerce him in any fashion, either to keep us or to terminate us. Mr. Randolph again stated in the affirmative that he wished to terminate our representation.

Mr. Randolph had previously spoken to me maybe a week ago and had inquired if Mr. Galanter was terminated by him whether or not I would stay on the case. I said it would depend upon what would happen, but in all -- the facts and circumstances and the reason for his termination, but in all probability if Mr. Galanter was gone, I would be gone also.

After Mr. Randolph explained that he wanted us terminated, I then proceeded to take several steps. Number one is that I contacted state bar counsel --

THE COURT: Okay. Give me a date, because this was yesterday?

MR. BRYSON: This was yesterday that we were informed. I contacted state bar counsel for an opinion from the ethics lawyer, who stated that if indeed Mr. Randolph

fired us, that ethically neither myself nor Mr. Galanter could further proceed on his behalf.

The second call that I made last night and I was unable to receive a response, although I was able to receive a response this morning, was to my malpractice carrier, to ask them in the event that I've been terminated, and happened to be ordered by this Court to continue to go forward, would I be at risk for a malpractice action. And the response was in the affirmative.

Also, after speaking with bar counsel yesterday afternoon, I spoke with an attorney here in this jurisdiction that basically practices in the area of murder and capital murder cases, one Norman Reed, who is in this court today. I would ask that he be allowed to be heard also as a friend of the court.

One of the reasons that I contacted Mr. Reed was in looking at the caselaw surrounding whether or not an individual can fire a counsel, there's some factors that the Court are to consider. And I wanted to determine whether or not Mr. Reed's office had actually ever been appointed to represent Mr. Randolph. They had not.

Mr. Reed informed me -- but I knew that he had, I believe, made an appearance on behalf of Mr. Randolph and had at least had interaction with Mr. Randolph. Mr. Reed informed me that the procedure of his law office is that anytime

someone is charged with a crime of this nature, his office is there to protect the rights until a determination is made as to whether or not that person is going to retain private counsel.

Mr. Randolph retained private counsel. He originally retained Mr. Galanter and Mr. Grasso, Gabe Grasso. I took over from Mr. Grasso as local counsel and have proceeded with Mr. Galanter on Mr. Randolph's behalf.

Without getting into the attorney-client privilege, although we're certainly willing to ask whatever question -- answer whatever questions this Court might have, I believe the caselaw basically states that that should occur in camera if we're going to have an in-depth inquiry. But in reviewing Nevada's caselaw, there's an important distinction. I'm going to talk about two cases basically.

The first case is going to be the Terrell Young case. There's a case that subsequently was authored by the Nevada Supreme Court, which is the Garcia case. Both of those cases dealt with counsel that had been appointed by the county, the state on behalf of an indigent defendant. At the time that Mr. Galanter and I were retained, there had been no finding of indigency on Mr. Randolph.

Mr. Randolph exhausted all of his funds for this case in retaining Mr. Galanter and myself, and subsequently there was a determination made by this Court that he was indigent.

After that finding, there have been experts that this Court -- well, not this Court, but the county has paid for. There's been public funds for experts, for costs, for private investigators.

Those costs would have been incurred regardless of whether Mr. Randolph had private counsel or whether public counsel, such as Mr. Reed, had been appointed from the beginning. Those services have not been lost, nor have those funds been wasted.

The cases that we're talking about here talk and focus on the accused's Sixth Amendment right to counsel of choice. Now, it's clear that that is not absolute. But these cases, as I state, deal with appointed counsel, not privately retained counsel. And there is a significant difference when I looked at other law having to do with the U.S. -- United States constitutional law, as well as California law that have spoken on this jurisdiction -- I mean, spoken on this issue.

The difference is that when Mr. Randolph retained us, he used his funds, and in essence there was a contractual relationship that was entered into between Mr. Randolph, myself and Mr. Galanter. Mr. Randolph has the right to terminate that relationship at any time he chooses. Caselaw says that even during trial that that can be accomplished with private counsel, then there's certain steps that a Court must take if that were to occur.

But looking at the factors as enunciated in Terrell Young and also in Garcia, the Court focuses on three areas which I do not believe are applicable to privately retained counsel, but I want to go through them anyway out of an abundance of caution.

THE COURT: I have the case in front of me.

MR. BRYSON: If you look, first of all is the timeliness of the motion. In the Garcia case, the Court determined that the motion was timely if it was -- that was three days before trial. So as long as the motion is brought before trial -- obviously they are of the opinion that they would like for it to be a lot sooner, if possible. But Garcia stands for the proposition that as long as the motion is brought prior to trial that it is timely.

Next the Court -- part of the three-part test enunciated in Young and codified by Garcia is you must look to the extent of the conflict. There is an absolute breakdown between the attorney-client relationship in -- between Mr. Randolph, myself, Mr. Galanter. There's a fundamental difference in the way we believe that this trial should proceed.

There is a fundamental difference of opinion regarding what should or should not have been done in this case. There is a fundamental breakdown in --

THE COURT: I'm going to stop you for just a second.

MR. BRYSON: Yes, ma'am.

THE COURT: Obviously I'm going to want additional information regarding these fundamental differences, but I don't want to put you or Mr. Randolph in a situation where you give up trial strategy. So I'm assuming you're giving me an overview, because at some point I'm going to need to --

MR. BRYSON: I understand.

THE COURT: -- additional information probably outside the presence of the prosecutors.

MR. BRYSON: I understand. And you're right. I'm just giving you an overview at this point, and explaining to the Court that I believe that there has been such a breakdown of the attorney-client relationship that it is irreparable. And I don't believe we -- as a matter of fact, we canvassed Mr. Randolph again this morning before this hearing began to once again just make sure.

And we also had, as I've represented, Mr. Reed as a friend of the court with us in the event that this Court terminates or allows Mr. Randolph to fire us, so that you can speak with counsel that we believe would end up taking over the case.

And then the third factor that has to be considered is kind of what the Court has just hit on, which is the adequacy of the Court's inquiry not only of counsel, but of the defendant.

The interesting -- well, not the interesting, but the part that's really relevant to Mr. Galanter and myself is the caselaw has established that we have a duty as attorneys to attempt to keep the attorney-client relationship intact, to use our best efforts to make sure that we can appease the client and satisfy the client, that we're doing what the client would like to be done, but also more importantly, what we believe should be done based upon the facts and circumstances of the case. I make the representation to the Court that we have done so.

In determining whether or not the types of things that the Court should look to, the Ninth Circuit, which was cited to in the Young case, the adequacy of the inquiry should focus primarily on four areas. The first area is whether the trial judge considered the length of continuance needed for a new attorney to prepare. That's one of the reasons that Mr. Reed is here before us today.

The second is the degree of inconvenience the delay would cause. The third -- and that's Footnote 21. It's on page 8 and 9 of LEXIS. If you have LEXIS, that's where it's going to be. If you've got Westlaw, I don't know where it's at. But it's Footnote 21.

The third factor that was listed in Moore, a Ninth Circuit case, was the degree of animosity between the attorney and client prevented accurate preparation for trial. And the

fourth factor that the Moore case states that the Court should inquire is why the motion to substitute counsel was not made earlier.

In those regards I can tell you that although Mr. Randolph has never fired -- stated he wanted to fire either myself or Mr. Galanter, Mr. Randolph has written numerous letters to both myself and Mr. Galanter expressing disfavor with the representations, based upon some fundamental differences that we can talk about in camera, which I don't feel comfortable talking about in open court.

And so as a result of these fundamental differences and the state bar opinion that I received, I'll represent to the Court also -- and you can feel free to speak with Mr. Galanter. But Mr. Galanter also called the state bar of Florida. Because he's admitted in this jurisdiction of pro hac vice, Nevada opinions would control.

But out of an abundance of caution he also called the bar counsel in Florida, presented to them the scenario, and was told under no set of circumstances could he go forward either once we've been told that we've been fired and that there is an -- that there's a breakdown in this.

In speaking with Mr. Reed -- he's here prepared to speak to the Court if the Court is so inclined. Mr. Reed was of the same opinion that I was. If this Court is desirous that this case go forward no matter what, there's basically --

from the United States constitutional law there's basically two things that the Court could order happen.

Number one, you could canvass Mr. Randolph to determine if he's competent to go forward in proper person and appoint standby counsel. I would submit that in a death penalty case it's the Court's decision, but I would urge -- even though I've been fired, I would urge the Court to be disinclined to do that given the penalty. Because the U.S. Supreme Court has enunciated that there is no greater penalty, no harsher penalty in our judicial system than the killing of an individual. So I would simply state that I would ask the Court, I don't think that would be a fair and equitable procedure.

The second thing that the Court could do, if the Court is of the mind that the trial must go forward, is to appoint counsel for Mr. Randolph, and canvass that counsel as to whether or not they could be ready for trial in the time period that's left to prepare.

I've spoken with Mr. Reed. Mr. Reed's available to address the Court. In those regards I can state that in speaking with Mr. Reed, he said there would be absolutely no way that of a case of this magnitude he could be ready to go, that his initial contact with Mr. Randolph was very limited until Mr. Randolph prepared -- until Mr. Randolph retained private counsel.

There was one issue in speaking with your law clerk yesterday. And I want to make it clear, in no way did we address any of the merits. It was an informative phone call. I also contacted the State, as I stated. But there was an issue surrounding what about the fact that public funds have been used for these experts and things of that nature.

And I explained to the law clerk -- and I want it on the record so that there is -- no one is going to accuse us of any type of ex parte contact. I explained to him what I just stated in open court, that the -- any public funds that have been used were used for experts or for investigators, and would not be lost or would not be wasted. Mr. Randolph is the person that would be losing out at this time.

I also would inform the Court, and you're going to talk to Mr. Randolph, but in speaking with Mr. Randolph, he is indigent. He does not have funds to substitute in additional private counsel; therefore, the burden would fall now upon the county to defend this action, which is also why Mr. Reed is here to speak on those behalves [sic].

At this point I have nothing further to say. As a general outline of what transpired yesterday, I'll simply tell this Court that by no means is this a ruse on my part. I've been working 12 to 16-hour days preparing for this trial. I have caused to be filed the numerous motions that I was prepared to argue today.

And when I say I, I'm also speaking conjunctively with Mr. Galanter, and Mr. Galanter and I have spoken ad nauseam about all of the motions. So when I say I, it's really we. I say I because I signed the pleadings. And there is no reason on -- from a legal standpoint, as far as the lawyering, that we're not prepared to go forward.

The reason we can't go forward is because there's a complete breakdown and lack of confidence by our client in us. And since that has occurred, there is no way that I believe that I can ethically, nor does Mr. Galanter believe that he can ethically go forward in any manner on Mr. Randolph's behalf at this point.

So if this Court has no questions regarding the general outline I've provided to the Court, I would ask that the Court hear Mr. Reed as a friend of the court on this issue, and if the Court is so inclined, I would ask that Mr. Reed be allowed to speak.

THE COURT: At this point I'm not. I'd like to hear from -- unless Mr. Galanter has something to add to your position, I'd like to hear from the State.

MR. BRYSON: Thank you.

THE COURT: Mr. Galanter, anything, sir?

MR. GALANTER: Just the only other thing, it was more than just a termination. It was also an instruction not to proceed further on his behalf.

THE COURT: All right. Thank you.

The State, please.

MR. STANTON: Your Honor, the State's position at least is a little bit bifurcated, if you will. The first as to assess the legal fabric and framework that the Court -- that the State believes that the Court is now in a position to --

THE DEFENDANT: Your Honor, these headphones --

THE COURT: Hold on a second. They're not working?

THE DEFENDANT: They just keep clicking on and off.

(Pause in proceeding.)

THE COURT: Can you hear me? Yes? Okay. Let's continue. Mr. Stanton.

MR. STANTON: Judge, the State believes that the law in this area is as follows: Number one, we recognize that there is a distinction between court appointed counsel and retained counsel, as appellate courts have addressed this issue. There seems to be a consistent theme in the jurisdictions that have addressed this recognizing that fact. But everybody recognizes, or all jurisdictions recognize that the right is not absolute.

Counsel cited to the Terrell Young case. And while we are well aware of the facts of Young, Mr. Daskas much more than I -- Mr. Daskas was the prosecutor in the Terrell Young case through all the proceedings. When it was remanded, both

Mr. Daskas and myself were the ones that prosecuted Mr. Young. We're well aware that that was a court appointed case, and it was a capital -- or it was a capital case at its inception and the retrial it was not.

We're also aware that in the Young case, borrowing from the federal three-prong test, the Supreme Court outlined the criteria of which Mr. Bryson mentioned today. I'd just like to comment a couple things, that the timeliness and the relevant factors are still the same as I review the court opinions regarding retained and court appointed.

I think if there's to be a distinction drawn between the decisions, court appointed counsel situations are probably deemed to be less of a -- of a significant factor to Courts in reviewing it, because they're retained counsel.

And when they come up in the conflict scenario of merely they don't get along, Court's are reticent on that basis or something similar to it and court appointing counsels, to then unplug the lawyer, recognizing, as I think they do under the Sixth Amendment, the retention of counsel has maybe a little broader authority. But nonetheless, it's not an absolute right.

And let me just address, I think, probably what are the two most critical components of the request. One is the timeliness of it. To some extent the record speaks for itself regarding the timeliness of it. Mr. Bryson relates that there

are letters that are written by the defendant to Mr. Galanter and to Mr. Bryson that obviously we're not privy to, we're not aware of, as I'm sure the Court isn't, when the timing of those are.

I know that this case is a three-year case pending in district court. But there have been multiple continuances that have been requested, three all at the defense request, in this case.

Unlike most of the cases that I've been involved in where a defendant seeks to terminate the relationship with their lawyers, there is normally a pro per motion, or a statement made in court by the defendant where he expresses prior to trial, and it differs as to the timeliness of it, saying I'm unsatisfied with my lawyer.

I don't think that's required, but a lot of cases and a lot of examples reflect that kind of activity. And ultimately I think it's important for this Court, in its inquiry into this matter, to determine indeed that.

Now, if those are reflected in the letters, if it's a combination of the letters and communications that counsel can provide to this Court whether we're here or not, I think that's important in consideration of the timeliness prong that this Court needs to assess.

I think probably the more significant and more grave concern for the State is the conflict between the defendant

and his attorneys, the nature of the conflict, the severity of it all seem to be a common theme in appellate court decisions in determining and assessing that prong. And once again, to a significant degree we probably are blind and unable to assess that information for the obvious reasons.

I will advise the Court that there are a couple things that we are aware of about it, and one of them is raised in an opposition that was filed by Mr. Bryson and Mr. Galanter to today's motion, to admit the prior bad act of what we commonly refer to as the Morrison [phonetic] prior bad act.

And in that pleading in that opposition, on page 4 under subcategory Roman Numeral III, is an opposition that is based and it's entitled "Due to the eleventh hour disclosure of the Morrison evidence by the State, the testimony of Glen Morrison and any statements made by him should be excluded." We are prepared today to address that both legally and factually.

We have information and evidence to present to this Court that would directly refute those claims. That evidence, and besides refuting that claim, goes to what I believe is a part of the fracture or the disconnect between counsel and the defendant. And it's probably just one piece of a larger picture, but it's one that we're aware of.

As I mentioned to the Court, and I'm sure it's not

lost on you, that there is a vast majority of the relationship and the problems and the facts and the issues that we have no access to. But we do have access to this information.

And so the State is somewhat in a quandary, in what we reviewed the evidence to be for the limited sections and areas that we do know, as to whether or not that is sufficient enough to show that a conflict and a significant enough conflict exists between the defendant and his counsel to trigger the Sixth Amendment protections that the caselaw speaks of.

So I guess, Judge, we are ready to go to trial. We have been for almost the entirety of the three years of this case. There are at least 25 out-of-state witnesses in this case. At considerable expense, time, effort, they are all prepared and able to testify. But we're aware of kind of the difficult position that this Court is now in.

I think for the record and for this Court to make the informed decision, a much more detailed inquiry needs to be made in the areas that I've outlined and what I think the law suggests. There is kind of a prevailing theme, both not only in Young, but in other cases, that the appellate courts really look to the trial record to see what is done.

And the cases where I found that the decision by the Court to deny the removal of counsel, either in the appointed or the retained situation, is usually based upon a lack of a

record that exists as to the basis of the Court's denial. But Judge, we are prepared to address that fact.

There are a few other items that we are aware of that we could provide to the Court as well. We're obviously concerned, because at the end of the day three years down the road, we represent everybody in this courtroom, the Court and defense counsel. Our desire is not to try this case twice. We're aware of some facts and we believe that additional facts need to be provided to this Court to make an informed decision in this regard.

THE COURT: Okay. At this point I do need to have some discussions with defense counsel and Mr. Randolph, and that will be outside the presence of the prosecution.

I'm also going to ask that -- I know there's cameras in here. I don't think that cameras should be part of this, since it gets down into attorney-client discussions, strategies in this case, et cetera. So I'm going to ask that the cameras please be turned off and those individuals step out of the courtroom.

Mr. Stanton and Mr. Daskas, if you can just wait outside.

MR. DASKAS: Of course. Thank you, Judge.

THE COURT: We are going to remain on the record however.

MR. BRYSON: I would ask that anyone that is not

affiliated with this case also, given the fact that attorney-client discussions --

THE COURT: I agree.

MR. BRYSON: -- might have, should leave, except for Mr. Reed that is making an appearance as friend of the court.

THE COURT: Actually, I would -- I think this portion it's appropriate for Mr. Reed to step out, because it does again -- I want to protect the attorney-client relationship.

(District attorneys and others ordered exit the courtroom.)

THE COURT: All right. We are still on the record. And I'm going to ask you three gentlemen how you'd like to do it from here. Obviously I'm going to have questions for both counsel and Mr. Randolph.

Mr. Randolph, this kind of comes down to you, because --

MR. BRYSON: Can I ask one thing before we start, Your Honor, please?

THE COURT: Yes.

MR. BRYSON: This portion -- since we're on the record, I'm requesting that this portion be under seal at this point. So any questions and answers that are had are not -- they're a part of the official court record; however, they will be sealed and not available to anyone absent a good reason and court order.

THE COURT: I agree, and so they'll be sealed. But

they do, however, as you're aware, need to be part of the official court record.

MR. BRYSON: I understand.

(Excerpt of proceedings filed under seal at 10:19 a.m.)

(Case recalled at 11:56 a.m.)

THE COURT: Taking into consideration everything, first of all, I want to say that the Court's opinion, after reading the Young versus State case, 120 Nev. 963, and Garcia versus State, 121 Nev. 327, the Court finds that the factors set forth in those cases are applicable to the incident case. Notwithstanding the distinction that in those cases it happened to be appointed counsel versus in this case it's retained counsel, the Court finds it's really a distinction without a difference.

And so the Court, in making its decision, has taken into consideration those three factors, specifically the extent of the conflict. Again, by those cases the Court was -- has been directed to inquire into the conflict and the surrounding circumstances, and also the Court has been directed to look at the timeliness of the motion.

Taking all those factors into consideration, the Court's going to deny Mr. Randolph's request to remove Mr. Galanter and Mr. Bryson as attorneys. The Court does not find sufficient cause based upon my inquiries this morning to remove them from the case.

The Court looks at the court record, and the court record indicates that there's been multiple pretrial motions filed and evidentiary hearings heard over the last several years of this case. Also the Court notes that as of today's date, and looking back into the court record, there's been no request by Mr. Randolph to remove either Mr. Galanter or Mr. Bryson from this case.

Okay. Specifically what the Court looks to is in this particular case there's been multiple hearings. There's been multiple times where Mr. Randolph has been before this Court. At no time has Mr. Randolph ever indicated to this Court, and he's had the ability to do so, that he would like different counsel.

The Court also looks to the fact that this request for the first time to remove his attorneys comes 11 days before the trial. I think the timing alone suggests a dilatory motive on behalf of Mr. Randolph.

The Court also looks to the fact that a calendar call has passed, and at the time of calendar call just last month the attorneys announced that they were ready in this case. Again, there was representations made to this Court another time, on January 3, 2012, the same week, wherein the attorneys indicated to the Court and the Court had every reason the attorneys would be ready to go in this case. And in fact, we have multiple motions in limine that are set to be heard on

today's date.

After hearing from the counsel and speaking to Mr. Randolph, there's absolutely no indication to this Court that the attorneys in this case have been anything other than diligent in this case. Again, the Court looks to the fact there's been multiple motions filed and hearings held in this case. There's also been writs filed with the Nevada Supreme Court. It appears from the court record that a lot of work has been performed on behalf of the attorneys.

The defense attorneys have indicated to me, and this was also conceded by Mr. Randolph, that over the last three years the attorneys or their representatives have been in frequent contact with Mr. Randolph. And that would be the attorneys themselves or some other members of their defense team.

The Court also looks to the fact of the prejudice that would ensue in the -- if this case were continued again. The Court again looks to the fact that it's 11 days before the trial. Presumably both the State and the defense have subpoenaed witnesses. They've paid experts to come here at the date of trial.

And again, I want to point on the fact of I know that defense counsel made -- brought it up that they are retained counsel versus public defenders. I recognize that they are being paid differently than obviously a public defender

would be, but the Court also recognizes that I did sign documents indicating that Mr. Randolph was indigent.

And pursuant to the Widdis [phonetic] case, that made certain resources at public expense available to Mr. Randolph. For example, those would be investigatory fees, expert fees, et cetera. So there is quite a bit of prejudice that would ensue by continuing this case.

And also the Court looks to the fact that it took three years to get this case ready for trial. It is a complex case. The charges are very severe. The potential consequences are very severe, and it would take a long time to get this case ready for trial again and again, and also getting all the attorneys together and getting a court date would also push this case further down the road.

And lastly, I took into consideration the skill of the two attorneys. I have Mr. Bryson and Mr. Galanter. The Court is familiar with them by reputation. They are highly skilled attorneys. They have had other cases of a similar nature and they are -- and I feel confident that at this point they have prepared this case and can go to court.

Now, defense counsel, everything has been recorded during this case. It is my intent at this point to move on to the motions that are scheduled for today, but I am not insensitive to the fact of you may find it necessary to file something.

I believe at this point your next place to go would be with the Nevada Supreme Court, if you feel that this course really is in error. You'd probably want to do that on an emergency basis, so it's done before trial. But we are going to go forward with the motions in limine.

Maria, how long would it take to get a transcript of this morning's proceedings? Can we have it by Monday? We need it by Monday morning.

THE COURT RECORDER: If you order it to be --

THE COURT: Expedited?

THE COURT RECORDER: I can [inaudible].

THE COURT: So I could have it by tomorrow?

THE COURT RECORDER: [Inaudible.]

THE COURT: By Monday. So I could have it Monday morning.

MR. BRYSON: Judge, I've got a question. Number one, I need to discuss with Galanter and Mr. Randolph whether or not we go to that next level. I think technically if we do, I need to make a motion to stay. So when that decision is made, that's coming and you need to rule upon that in court.

The other thing is just from a logistics standpoint, I understand you're saying that we're going to go forward. I'm telling you as an officer of the court and as an attorney that given what Mr. Randolph told me yesterday and what's transpired today, I've lost two days that I need for trial

preparation.

If we're going to start -- I know we previously were going to start on the 17th. Given Martin Luther King, I would respectfully request that we move it at least two days so that I can at least gain back these two days that I've lost. Because when Mr. Randolph instructed me that I was fired and bar counsel told me that I should take no further action, I prepared for this hearing, not for trial.

And so in all fairness, I would just respectfully request, since those are going to be half-days anyways, the 17th and the 18th, that maybe we could start on that Thursday, which is the full day, so that I haven't lost trial time. Because we're going to have to deal with the ramifications of this with Mr. Randolph, and we're also going to have to come to grips with how he's going to try to effectively assist us at this point.

So with all due respect, given the ruling, I would ask that, you know, I know we're going, but that we just get those couple days so that we don't lose time. I don't think that would prejudice either side for that to happen.

MR. DASKAS: Well, Judge, we're always concerned with records that are being made. When the suggestion is made that the defense has lost two days, I don't think that's accurate. Mr. Bryson and Mr. Galanter learned yesterday, I'm guessing it was around 3:00 or 4:00 o'clock in the afternoon, that

Mr. Randolph was going -- or at least attempting to fire them. Well, between yesterday at 3:00 or 4:00 o'clock and this morning, that's not two days.

Maybe they lost 14 hours, which would include from, you know, midnight until 7:00 a.m. I don't think they would have worked on the case anyway. So again, I'm always concerned about the record that's being made and making sure it's accurate, accurately reflects what really occurred here.

In terms of the trial start date, this was supposed to start January 3rd. The defense had mentioned they needed some more time, and so this Court was kind enough to accommodate their request and pushed it back two weeks or so to the 17th.

MR. BRYSON: Actually, that was by stipulation, I think, Mr. Daskas, at the Court's questioning.

MR. DASKAS: We believe that the majority of the first week would be jury selection anyway. And really, Judge, our concern is we've issued subpoenas. And it would prejudice the State if we learned for example, that, you know, two and a half weeks into the new trial date we didn't have witnesses who were available, and somehow that's either held against us because we need more time, or we simply don't have those witnesses who can come in and testify because now there's been a change in the schedule.

So that's our concern. Two days have not been lost.

Perhaps 12 hours have been lost.

MR. BRYSON: And just briefly in response to that, yesterday when we were told, I stopped. With all due respect, I'm glad the Court has the belief that I'm a good attorney. Obviously they, the other side does, and Mr. Galanter. But I'm not a robot. I now have to turn back my mindset to getting ready for a trial after the mindset was explaining to this Court the very difficult situation that we've done all day today. The rest of the day will be arguing these motions, and so --

MR. GALANTER: I'm not sure about that.

MR. BRYSON: Well, I'm just speaking from my standpoint. Mr. Galanter's lead counsel. So it is in essence, if you want to call it a full day or two days, I have to now get back in trial mindset for this case after being fired by my client and listening to the reasons that he said that.

I'm not a robot. I'm pretty good at putting my emotions and things aside but, you know, I need a little time to grasp the ramification of this and get back ready. It's just a fact of the way it is, and you can grant it or not. But you've never known me to welch on a trial or try to back out of a trial. That's not the reason. I'm just saying, just like you're a judge, you're still human. I'm a lawyer, I'm still human.

MR. GALANTER: Judge, it's more than that. So we're probably going to need probably until the 24th, instead of the 17th, and here's why. I'm -- I don't know whether we can represent him in the motions that are scheduled for today. I mean, I don't know. I need guidance. I mean, and believe me, I understand the Court's ruling.

But with all due respect to the Court, I've got a client who has fired me. I've got a client who has instructed me not to represent him any further or do anything on his behalf any further. You know, the Court has the right to deny his request to fire us, but that doesn't change what he's told me in terms of advocating on his behalf.

And I don't want to get sued. I don't want to get in trouble with either the Nevada Bar or the Florida Bar. So we're in a tricky wicket, as they say. And what I'd like to do is file a writ, take it up to the Nevada Supreme Court and whatever the Nevada Supreme Court says we'll abide by. But I'm really uncomfortable going forward at this point in time.

Because if, and again, I say this with respect, if the Court is incorrect, we're screwed. We could be sued for doing, you know, for representing somebody after we're fired and not following our client's directives. And the bar rules that we have to follow his directives. You know, the other rules say we got to follow the Court directives.

I mean, we're really stuck between a rock and a hard

place and until we get an answer, I'm -- I'm just -- I'm being honest with you as a lawyer and a human being. I'm really uncomfortable here.

THE COURT: Okay.

MR. GALANTER: So but what I will tell you is if we have the transcript on Monday, we'll get it up to the, you know, if we can get it at some decent time, we'll start working on it this weekend and get it up to the Supreme Court on Monday, no later than Tuesday. I mean, we'll get it done.

But I mean, we're compelled to ask for time and/or a stay, and we're also compelled to take the issue up. Because otherwise I'm just opened up like a can of sardines here in terms of liability, bar complaints, all kinds of stuff.

MR. BRYSON: Given what he said then, it's appropriate that I now make this motion. Given the fact that lead counsel has made the decision that he wants to take this up on a writ on this issue, I am making an oral motion for stay of these proceedings until the Supreme Court has had an opportunity to review our writ.

THE COURT: Okay. How about we do this. I have to give my staff lunch anyways, because they're government employees. Why don't you come in here at 1:30, and I will think about what all of you have represented to me. Okay. And Maria's going to put in an expedited request for the transcript over the lunch hour. Okay. So I'll see you back

at 1:30.

MR. DASKAS: Thank you, Judge.

MR. BRYSON: Okay.

(Hearing recessed at 12:10 p.m.)

EXHIBIT "B"

EXHIBIT "C"