

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \* \*

MARLO THOMAS,

Appellant,

v.

WILLIAM GITTERE, et al.,

Respondents.

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Elizabeth A. Brown  
Clerk of Supreme Court

No. 77345

District Court Case No.  
96C136862-1

(Death Penalty Case)

APPELLANT'S APPENDIX

Volume 12 of 35

Appeal from Order Dismissing Petition for Writ of Habeas  
Corpus (Post-Conviction)  
Eighth Judicial District Court, Clark County  
The Honorable Stefany Miley, District Judge

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## **CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on June 14, 2019. Electronic Service of the foregoing APPELLANT'S APPENDIX shall be made in accordance with the Master Service List as follows:

Steven S. Owens  
Chief Deputy District Attorney

*/s/ Jeremy Kip*

An Employee of the  
Federal Public Defender,  
District of Nevada

JUROR INFORMATION

070896

07

BADGE NUMBER: 037

JUROR NAME : BENGERT, TRINIDAD VIRGINIA

PRIOR JUROR : NO

JUROR OCCUP.: CLERK

YRS. EDUC. : 10

SP. OCCUP. : SINGLE

YRS. RESID. : 19

CITIZEN : YES

I.D. NUMBER : 1289527

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89110

=====

BADGE NUMBER: 038

JUROR NAME : LUCAS, NATALIE M

PRIOR JUROR : YES

JUROR OCCUP.: TEACHER

YRS. EDUC. : 24

SP. OCCUP. : SINGLE

YRS. RESID. : 03

CITIZEN : YES

I.D. NUMBER : 1321364

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89117

JUROR INFORMATION

070896

09

BADGE NUMBER: 039

JUROR NAME : ALOIA, ROXANNE TAMMY

PRIOR JUROR : NO

JUROR OCCUP.: RECEPTIONIST

YRS. EDUC. : 13

SP. OCCUP. : IRON WORKER

YRS. RESID. : 02

CITIZEN : YES

I.D. NUMBER : 1494544

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89128

=====

BADGE NUMBER: 040

JUROR NAME : JOHNSON, KATHERINE SMITH

PRIOR JUROR : NO

JUROR OCCUP.: PARALEGAL

YRS. EDUC. : 15

SP. OCCUP. : SINGLE

YRS. RESID. : 06

CITIZEN : YES

I.D. NUMBER : 1210008

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89121

AA2752

JUROR INFORMATION

070696

CA

BADGE NUMBER: 041

JUROR NAME : DONIAN, JUDY JONES

PRIOR JUROR :	NO	JUROR OCCUP.:	FINANCIAL OFF.SPEC.	
YRS. EDUC. :	13	SP. OCCUP. :	SUPERVISOR	
YRS. RESID. :	07			
CITIZEN :	YES	I.D. NUMBER :	933830	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89110

=====

BADGE NUMBER: 042

JUROR NAME : LABARO, ELENA N

PRIOR JUROR :	NO	JUROR OCCUP.:	CAGE SUPERVISOR	
YRS. EDUC. :	16	SP. OCCUP. :	SINGLE	
YRS. RESID. :	06			
CITIZEN :	YES	I.D. NUMBER :	1197525	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89128

JUROR INFORMATION

070896

01

BADGE NUMBER: 043

JUROR NAME : MASON, JACKSON PAUL

PRIOR JUROR : YES

YRS. EDUC. : 14

YRS. RESID. : 28

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: WRITER/INVENTOR

SP. OCCUP. : SINGLE

I.D. NUMBER : 35852

CITY/ST/ZIP : LAS VEGAS NV

89110

=====

BADGE NUMBER: 044

JUROR NAME : ROBINSON, VELDA MAE

PRIOR JUROR : NO

YRS. EDUC. : 11

YRS. RESID. : 02

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: UNEMPLOYED

SP. OCCUP. : CABLE TECHNICIAN

I.D. NUMBER : 1620336

CITY/ST/ZIP : LAS VEGAS NV

89122

12

AA2754



JUROR INFORMATION

070896

09

BADGE NUMBER: 045

JUROR NAME : KNAPIK, DAWN MILDRED

PRIOR JUROR : NO  
YRS. EDUC. : 16  
YRS. RESID. : 02  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: UNEMPLOYED  
SP. OCCUP. : RETIRED

I.D. NUMBER : 1524446

CITY/ST/ZIP : LAS VEGAS NV 89117

=====

BADGE NUMBER: 046

JUROR NAME : TOBLER, JOHN ALBERT

PRIOR JUROR : YES  
YRS. EDUC. : 14  
YRS. RESID. : 46  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: MEAT CUTTER  
SP. OCCUP. : HOMEMAKER

I.D. NUMBER : 84673

CITY/ST/ZIP : LAS VEGAS NV 89102

JUROR INFORMATION

070896

29

BADGE NUMBER: 047

JUROR NAME : MARSCHALK, RAYMOND JOHN SR

PRIOR JUROR : YES

YRS. EDUC. : 12

YRS. RESID. : 29

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: RETIRED

SP. OCCUP. : HOMEMAKER

I.D. NUMBER : 264880

CITY/ST/ZIP : LAS VEGAS NV 89102

=====

BADGE NUMBER: 048

JUROR NAME : GORDINE, LORI JAN

PRIOR JUROR : NO

YRS. EDUC. : 12

YRS. RESID. : 03

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: CLERK TYPIST

SP. OCCUP. : ACCOUNT EXECUTIVE

I.D. NUMBER : 1569158

CITY/ST/ZIP : LAS VEGAS NV 89103

JUROR INFORMATION

070896

07

BADGE NUMBER: 049

JUROR NAME : KOWAL, JOYCE E

PRIOR JUROR : NO

YRS. EDUC. : 12

YRS. RESID. : 24

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: RETAIL SALES

SP. OCCUP. : CARPENTER

I.D. NUMBER : 188265

CITY/ST/ZIP : LAS VEGAS NV 89110

=====

BADGE NUMBER: 050

JUROR NAME : KNESH, JEFFREY MARTIN

PRIOR JUROR : NO

YRS. EDUC. : 16

YRS. RESID. : 22

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: ANALYST

SP. OCCUP. : SINGLE

I.D. NUMBER : 1328529

CITY/ST/ZIP : LAS VEGAS NV 89102

AA2757

JUROR INFORMATION

070896

09

BADGE NUMBER: 051

JUROR NAME : SHAPLEY, TED RENE

PRIOR JUROR : NO

YRS. EDUC. : 10

YRS. RESID. : 26

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: UNEMPLOYED

SP. OCCUP. : SINGLE

I.D. NUMBER : 401937

CITY/ST/ZIP : N LAS VEGAS NV 89030

=====

BADGE NUMBER: 052

JUROR NAME : POLDA, SUSAN KEY

PRIOR JUROR : NO

YRS. EDUC. : 12

YRS. RESID. : 46

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: MANAGER

SP. OCCUP. : GENERAL FOREMAN

I.D. NUMBER : 82297

CITY/ST/ZIP : LAS VEGAS NV 89104

AA2758

JUROR INFORMATION

070896

29

BADGE NUMBER: 053

JUROR NAME : TEDESCO, DENISE A

PRIOR JUROR : NO

JUROR OCCUP.: ACCOUNTANT

YRS. EDUC. : 13

SP. OCCUP. : SINGLE

YRS. RESID. : 07

CITIZEN : YES

I.D. NUMBER : 1054915

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89117

=====

BADGE NUMBER: 054

JUROR NAME : HARPER, DONALD ALLEN

PRIOR JUROR : YES

JUROR OCCUP.: ANALYSIS

YRS. EDUC. : 14

SP. OCCUP. : MANAGER

YRS. RESID. : 11

CITIZEN : YES

I.D. NUMBER : 833809

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89130

JUROR INFORMATION

070896

09

BADGE NUMBER: 055

JUROR NAME : DICKERSON, GLORIA JEAN

PRIOR JUROR : NO

YRS. EDUC. : 16

YRS. RESID. : 08

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: FINANCIAL SALES

SP. OCCUP. : SALES MANAGER

I.D. NUMBER : 1612521

CITY/ST/ZIP : LAS VEGAS NV

89122

=====

BADGE NUMBER: 056

JUROR NAME : MORSE, JEANNE V

PRIOR JUROR : NO

YRS. EDUC. : 12

YRS. RESID. : 20

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: SECRETARY

SP. OCCUP. : MECHANIC

I.D. NUMBER : 22755

CITY/ST/ZIP : LAS VEGAS NV

89108

AA2760

JUROR INFORMATION

070896

09

BADGE NUMBER: 057

JUROR NAME : REYES, EMA

PRIOR JUROR : NO

YRS. EDUC. : 16

YRS. RESID. : 03

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: LAB ASSISTANT

SP. OCCUP. : SINGLE

I.D. NUMBER : 1421402

CITY/ST/ZIP : LAS VEGAS NV 89121

=====

BADGE NUMBER: 058

JUROR NAME : CRONISTER, VALERIA DYER

PRIOR JUROR : NO

YRS. EDUC. : 11

YRS. RESID. : 30

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: MANAGER

SP. OCCUP. : RETIRED

I.D. NUMBER : 306481

CITY/ST/ZIP : BOULDER CITY NV 89005

AA2761

JUROR INFORMATION

070896

09

BADGE NUMBER: 059

JUROR NAME : JUSTICE, JOHN PERRY

PRIOR JUROR : NO

JUROR OCCUP.: RETIRED

YRS. EDUC. : 11

SP. OCCUP. : SINGLE

YRS. RESID. : 06

CITIZEN : YES

I.D. NUMBER : 1026931

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89109

=====

BADGE NUMBER: 060

JUROR NAME : EVANS, DONNA MARIE

PRIOR JUROR : NO

JUROR OCCUP.: TYPIST

YRS. EDUC. : 13

SP. OCCUP. : PAROLE OFFICER

YRS. RESID. : 11

CITIZEN : YES

I.D. NUMBER : 829764

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89122

AA2762



JUROR INFORMATION

070896

CJ

BADGE NUMBER: 061

JUROR NAME : BISCHOFF, JANIS PEARSON

PRIOR JUROR : NO

JUROR OCCUP.: TEACHER

YRS. EDUC. : 16

SP. OCCUP. : CPA

YRS. RESID. : 26

CITIZEN : YES

I.D. NUMBER : 109386

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89121

=====

BADGE NUMBER: 062

JUROR NAME : STRONG, WILLIAM ERIC

PRIOR JUROR : NO

JUROR OCCUP.: SPEECH PATHOLOGIST

YRS. EDUC. : 18

SP. OCCUP. : SPECIAL EDUCATOR

YRS. RESID. : 04

CITIZEN : YES

I.D. NUMBER : 1282494

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89119

AA2763

JUROR INFORMATION

070896

07

BADGE NUMBER: 063

JUROR NAME : KANTERMAN, DAVID MARTIN

PRIOR JUROR : NO

YRS. EDUC. : 12

YRS. RESID. : 04

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: US AIR FORCE

SP. OCCUP. : HOMEMAKER

I.D. NUMBER : 1331665

CITY/ST/ZIP : N LAS VEGAS NV 89030

=====

BADGE NUMBER: 064

JUROR NAME : GALLEGOS, JEROME PATRICK

PRIOR JUROR : NO

YRS. EDUC. : 16

YRS. RESID. : 01

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: AIRPLANE MECHANIC

SP. OCCUP. : TICKET AGENT

I.D. NUMBER : 1572853

CITY/ST/ZIP : LAS VEGAS NV 89117

JUROR INFORMATION

070896

09

BADGE NUMBER: 065

JUROR NAME : BERGMANS-ADAMS, RUTH R

PRIOR JUROR : NO

JUROR OCCUP.: OFFICE MANAGER

YRS. EDUC. : 12

SP. OCCUP. : WAITER

YRS. RESID. : 08

CITIZEN : YES

I.D. NUMBER : 1616335

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89128

=====

BADGE NUMBER: 066

JUROR NAME : AMUNDSON, ROSEANN

PRIOR JUROR : NO

JUROR OCCUP.: HOMEMAKER

YRS. EDUC. : 11

SP. OCCUP. : SINGLE

YRS. RESID. : 02

CITIZEN : YES

I.D. NUMBER : 1439329

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : HENDERSON NV

89015

AA2765

JUROR INFORMATION

070896

01

BADGE NUMBER: 067

JUROR NAME : VOLHARD, WALTER JR

PRIOR JUROR : YES

YRS. EDUC. : 14

YRS. RESID. : 02

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: OUTSIDE SALES

SP. OCCUP. : RETIRED

I.D. NUMBER : 1473466

CITY/ST/ZIP : N LAS VEGAS NV 89030

=====

BADGE NUMBER: 068

JUROR NAME : FELTUS, DERRICK

PRIOR JUROR : NO

YRS. EDUC. : 12

YRS. RESID. : 31

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: SLOT MACHINE WORKER

SP. OCCUP. : SINGLE

I.D. NUMBER : 1586025

CITY/ST/ZIP : N LAS VEGAS NV 89030

AA2766

JUROR INFORMATION  
070896

09

BADGE NUMBER: 069

JUROR NAME : PETUYA, GERMAIN PIERRE

PRIOR JUROR :	YES	JUROR OCCUP.:	RETIRED	
YRS. EDUC. :	12	SP. OCCUP. :	SINGLE	
YRS. RESID. :	02			
CITIZEN :	YES	I.D. NUMBER :	1480086	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89122

=====

BADGE NUMBER: 070

JUROR NAME : NEET, DAVID LEONARD

PRIOR JUROR :	YES	JUROR OCCUP.:	CONSTRUCTION ANALYST	
YRS. EDUC. :	13	SP. OCCUP. :	GROCERY CLERK	
YRS. RESID. :	03			
CITIZEN :	YES	I.D. NUMBER :	1475172	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LOGANDALE NV	89021

AA2767

JUROR INFORMATION

070896

(C)

BADGE NUMBER: 071

JUROR NAME : STARK, MICHAEL JAMES

PRIOR JUROR : NO

JUROR OCCUP.: UNEMPLOYED

YRS. EDUC. : 12

SP. OCCUP. : SINGLE

YRS. RESID. : 20

CITIZEN : YES

I.D. NUMBER : 983481

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS, NV

89108

BADGE NUMBER: 072

JUROR NAME : CARTER, ARLENE F

PRIOR JUROR : NO

JUROR OCCUP.: NURSE

YRS. EDUC. : 14

SP. OCCUP. : CORRECTIONS OFFICE

YRS. RESID. : 13

CITIZEN : YES

I.D. NUMBER : 619807

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89107

*Know Margaret  
Nurse (interview)  
"I supervised  
MS nurse"*

AA2768

JUROR INFORMATION

070896

09

BADGE NUMBER: 073

JUROR NAME : WOTELL, DAVID ROBERT

PRIOR JUROR : NO

JUROR OCCUP.: PILOT

YRS. EDUC. : 16

SP. OCCUP. : SALES PERSON

YRS. RESID. : 11

CITIZEN : YES

I.D. NUMBER : 739119

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : HENDERSON NV

89014

=====

BADGE NUMBER: 074

JUROR NAME : KAZMIERSKI, MARVIN T

PRIOR JUROR : YES

JUROR OCCUP.: RETIRED

YRS. EDUC. : 14

SP. OCCUP. : SINGLE

YRS. RESID. : 01

CITIZEN : YES

I.D. NUMBER : 1534057

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89134

AA2769

JUROR INFORMATION

070896

09

BADGE NUMBER: 075

JUROR NAME : LOZANO, ABRAHAM

PRIOR JUROR : NO

YRS. EDUC. : 13

YRS. RESID. : 06

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: BUS PERSON

SP. OCCUP. : SINGLE

I.D. NUMBER : 1431766

CITY/ST/ZIP : LAS VEGAS NV 89101

=====

BADGE NUMBER: 076

JUROR NAME : BOSTON, GERALD NORMAN JR

PRIOR JUROR : NO

YRS. EDUC. : 16

YRS. RESID. : 02

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: PRODUCTION CONTROL

SP. OCCUP. : SINGLE

I.D. NUMBER : 1424725

CITY/ST/ZIP : LAS VEGAS NV 89115

AA2770



JUROR INFORMATION

070896

69

BADGE NUMBER: 139

JUROR NAME : MEASER, RICHARD M

PRIOR JUROR : NO

JUROR OCCUP.: ACTOR/MODEL

YRS. EDUC. : 16

SP. OCCUP. : SINGLE

YRS. RESID. : 03

CITIZEN : YES

I.D. NUMBER : 1326368

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89117

=====

BADGE NUMBER: 140

JUROR NAME : FOURNIER-SAYLES, NICOLE

PRIOR JUROR : NO

JUROR OCCUP.: MARKETING MANAGER

YRS. EDUC. : 16

SP. OCCUP. : OPERATIONS SUPRV.

YRS. RESID. : 03

CITIZEN : YES

I.D. NUMBER : 1437168

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89117

AA2771

JUROR INFORMATION

070896

09

BADGE NUMBER: 141

JUROR NAME : PHILP, DIANN

PRIOR JUROR : NO  
YRS. EDUC. : 12  
YRS. RESID. : 20  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: PROGRAM ASSISTANT  
SP. OCCUP. : TEXTBOOK MANAGER

I.D. NUMBER : 406327

CITY/ST/ZIP : LAS VEGAS NV 89121

=====

BADGE NUMBER: 142

JUROR NAME : ZOLOTT, LAWRENCE STEVEN

PRIOR JUROR : NO  
YRS. EDUC. : 18  
YRS. RESID. : 06  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: REAL ESTATE AGENT  
SP. OCCUP. : SINGLE

I.D. NUMBER : 1070860

CITY/ST/ZIP : LAS VEGAS NV 89126

JUROR INFORMATION

070896

09

BADGE NUMBER: 143

JUROR NAME : UNDERWOOD, MARLENE R

PRIOR JUROR : NO

JUROR OCCUP.: RETIRED

YRS. EDUC. : 14

SP. OCCUP. : RETIRED

YRS. RESID. : 01

CITIZEN : YES

I.D. NUMBER : 1533091

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89119

BADGE NUMBER: 144

JUROR NAME : CHESTNEY, REGINALD F

PRIOR JUROR : YES

JUROR OCCUP.: COMPUTER OPERATOR

YRS. EDUC. : 12

SP. OCCUP. : SINGLE

YRS. RESID. : 06

CITIZEN : YES

I.D. NUMBER : 873053

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89117

JUROR INFORMATION

070896

69

BADGE NUMBER: 145

JUROR NAME : MARTINICO, MELINA L

PRIOR JUROR :	NO	JUROR OCCUP.:	RECEPTIONIST	
YRS. EDUC. :	14	SP. OCCUP. :	SUPERVISOR	
YRS. RESID. :	02			
CITIZEN :	YES	I.D. NUMBER :	1438184	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89124

=====

BADGE NUMBER: 146

JUROR NAME : BLAUSCHILD, DEBRA J

*Blaus-child*

PRIOR JUROR :	NO	JUROR OCCUP.:	TECHNICIAN AIDE	
YRS. EDUC. :	12	SP. OCCUP. :	SINGLE	
YRS. RESID. :	09			
CITIZEN :	YES	I.D. NUMBER :	795267	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89121

*Sup. to  
Dr. Allen*

AA2774

JUROR INFORMATION

070896

29

BADGE NUMBER: 147

JUROR NAME : GOMES, GAIL LEAH

PRIOR JUROR : NO

JUROR OCCUP.: RETIRED

YRS. EDUC. : 16

SP. OCCUP. : REAL ESTATE BROKER

YRS. RESID. : 12

CITIZEN : YES

I.D. NUMBER : 631877

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89120

=====

BADGE NUMBER: 148

JUROR NAME : MONTEFUSCO, EDMUND J

PRIOR JUROR : NO

JUROR OCCUP.: SLOT TECHNICIAN

YRS. EDUC. : 12

SP. OCCUP. : SINGLE

YRS. RESID. : 03

CITIZEN : YES

I.D. NUMBER : 1518928

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : HENDERSON NV

89015

AA2775

JUROR INFORMATION

070896

C9

BADGE NUMBER: 149

JUROR NAME : DAVIS, MARY L

PRIOR JUROR : NO  
YRS. EDUC. : 12  
YRS. RESID. : 11  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: NURSE AIDE  
SP. OCCUP. : RETIRED

I.D. NUMBER : 1554816

CITY/ST/ZIP : LASA VEGAS NV 89115

=====

BADGE NUMBER: 150

JUROR NAME : ANDERSEN, DALE GORDON

PRIOR JUROR : YES  
YRS. EDUC. : 20  
YRS. RESID. : 12  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: DEAN  
SP. OCCUP. : HOMEMAKE

I.D. NUMBER : 710388

CITY/ST/ZIP : LAS VEGAS NV 89130

AA2776

JUROR INFORMATION

070896

64

BADGE NUMBER: 151

JUROR NAME : CHERRY, JENNIE JACKSON

PRIOR JUROR : YES

YRS. EDUC. : 15

YRS. RESID. : 45

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: BUDGET ANALYST

SP. OCCUP. : ELECTRICIAN

I.D. NUMBER : 149485

CITY/ST/ZIP : LAS VEGAS NV 89102

=====

BADGE NUMBER: 152

*Woj - toe - wiz*

JUROR NAME : WOJTOWICZ, JENNIFER CHRISTINE

PRIOR JUROR : NO

YRS. EDUC. : 14

YRS. RESID. : 08

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: COCKTAIL SERVER

SP. OCCUP. : SINGLE

I.D. NUMBER : 1345189

CITY/ST/ZIP : LAS VEGAS NV 89108

AA2777

JUROR INFORMATION

070896

09

BADGE NUMBER: 153

JUROR NAME : RUSSELL, JOHN ALVIA

PRIOR JUROR : YES

JUROR OCCUP.: RETIRED

YRS. EDUC. : 12

SP. OCCUP. : RELIGIOUS EDUC.

YRS. RESID. : 37

CITIZEN : YES

I.D. NUMBER : 265237

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89119

=====

BADGE NUMBER: 154

JUROR NAME : CYRUS-GORDON, JUDY MARIE

PRIOR JUROR : NO

JUROR OCCUP.: ASST. MANAGER

YRS. EDUC. : 14

SP. OCCUP. : SINGLE

YRS. RESID. : 02

CITIZEN : YES

I.D. NUMBER : 1447835

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89120

AA2778



JUROR INFORMATION

070896

(9)

BADGE NUMBER: 155

JUROR NAME : FLOYD, VALERIE LAVINIA

PRIOR JUROR : NO

JUROR OCCUP.: SUPERVISOR

YRS. EDUC. : 15

SP. OCCUP. : DISABLE

YRS. RESID. : 11

CITIZEN : YES

I.D. NUMBER : 902074

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89108

=====

BADGE NUMBER: 156

JUROR NAME : MCKENZIE, PATRICK KEVIN

PRIOR JUROR : NO

JUROR OCCUP.: FLOOR STOCKER

YRS. EDUC. : 12

SP. OCCUP. : SINGLE

YRS. RESID. : 03

CITIZEN : YES

I.D. NUMBER : 1396708

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89121

AA2779

JUROR INFORMATION

070896

69

BADGE NUMBER: 157

JUROR NAME : WALKER, KEITH ERIC

PRIOR JUROR : YES

JUROR OCCUP.: TEACHER

YRS. EDUC. : 18

SP. OCCUP. : HOMEMAKER

YRS. RESID. : 42

CITIZEN : YES

I.D. NUMBER : 235362

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : HENDERSON NV

89015

BADGE NUMBER: 158

JUROR NAME : BUSTER, NATALIE E

PRIOR JUROR : NO

JUROR OCCUP.: TEACHER

YRS. EDUC. : 16

SP. OCCUP. : SINGLE

YRS. RESID. : 05

CITIZEN : YES

I.D. NUMBER : 1258828

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : N LAS VEGAS NV

89031

*N. Long (waitress)  
was a  
student  
of mine*

JUROR INFORMATION

070896

CA

BADGE NUMBER: 159

JUROR NAME : BIBBY, NONA JEAN

PRIOR JUROR : YES

JUROR OCCUP.: RETIRED

YRS. EDUC. : 12

SP. OCCUP. : RETIRED

YRS. RESID. : 08

CITIZEN : YES

I.D. NUMBER : 846777

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89117

=====

BADGE NUMBER: 160

PAS-SAL-ACK-WA

JUROR NAME : PASSALACQUA, MARK R

PRIOR JUROR : NO

JUROR OCCUP.: FIREFIGHTER

YRS. EDUC. : 12

SP. OCCUP. : UNKNOWN

YRS. RESID. : 17

CITIZEN : YES

I.D. NUMBER : 1418135

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89134

AA2781

JUROR INFORMATION

070896

09

BADGE NUMBER: 161

JUROR NAME : SANDER, CYNTHIA LOUISE

PRIOR JUROR : NO

JUROR OCCUP.: NURSE

YRS. EDUC. : 15

SP. OCCUP. : SLOT FLOORMAN

YRS. RESID. : 18

CITIZEN : YES

I.D. NUMBER : 315113

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89121

=====

BADGE NUMBER: 162

JUROR NAME : BURCH, WANDA JO

PRIOR JUROR : NO

JUROR OCCUP.: NURSE ASSISTANT

YRS. EDUC. : 12

SP. OCCUP. : SINGLE

YRS. RESID. : 10

CITIZEN : YES

I.D. NUMBER : 809091

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : NORTH LAS VEGAS, NV 89030

AA2782

JUROR INFORMATION

070896

09

BADGE NUMBER: 163

JUROR NAME : WOODLOCK, EUGENE GORDON

PRIOR JUROR : YES

YRS. EDUC. : 12

YRS. RESID. : 29

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: INSTALLER

SP. OCCUP. : SINGLE

I.D. NUMBER : 735170

CITY/ST/ZIP : LAS VEGAS NV

89110

=====

BADGE NUMBER: 164

JUROR NAME : PETERSON, MARK A

PRIOR JUROR : NO

YRS. EDUC. : 16

YRS. RESID. : 07

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: NURSE

SP. OCCUP. : NURSE

I.D. NUMBER : 1520771

CITY/ST/ZIP : HENDERSON NV

89014

AA2783

JUROR INFORMATION

070896

29

BADGE NUMBER: 165

JUROR NAME : HOWARD, CYNTHIA

PRIOR JUROR : YES

YRS. EDUC. : 13

YRS. RESID. : 01

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: RETAIL MANAGER

SP. OCCUP. : UNEMPLOYED

I.D. NUMBER : 1595811

CITY/ST/ZIP : LAS VEGAS NV 89110

=====

BADGE NUMBER: 166

JUROR NAME : MARTIN, DAVID A

PRIOR JUROR : NO

YRS. EDUC. : 12

YRS. RESID. : 05

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: KITCHEN WORKER

SP. OCCUP. : SINGLE

I.D. NUMBER : 1163866

CITY/ST/ZIP : LAS VEGAS NV 89128

AA2784

JUROR INFORMATION  
070896  
09

BADGE NUMBER: 167

JUROR NAME : FORDYCE, MELANIE F

PRIOR JUROR :	NO	JUROR OCCUP.:	HUMAN RESOOURCE MAN.	
YRS. EDUC. :	16	SP. OCCUP. :	SINGLE	
YRS. RESID. :	03			
CITIZEN :	YES	I.D. NUMBER :	1572093	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89129

=====

BADGE NUMBER: 168

JUROR NAME : ANDERSEN, LORI LEE

PRIOR JUROR :	NO	JUROR OCCUP.:	DIR.BUS.DEVELOPMENT	
YRS. EDUC. :	14	SP. OCCUP. :	SINGLE	
YRS. RESID. :	35			
CITIZEN :	YES	I.D. NUMBER :	1372923	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89108

JUROR INFORMATION

070896

CJ

BADGE NUMBER: 169

JUROR NAME : TIGER, J D

PRIOR JUROR : YES

JUROR OCCUP.: RETIRED

YRS. EDUC. : 13

SP. OCCUP. : SINGLE

YRS. RESID. : 22

CITIZEN : YES

I.D. NUMBER : 38221

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89115

=====

BADGE NUMBER: 170

JUROR NAME : REID, ERIC GREGORY

PRIOR JUROR : NO

JUROR OCCUP.: NETWORK MANAGER

YRS. EDUC. : 14

SP. OCCUP. : ATTENDANCE CLERK

YRS. RESID. : 35

CITIZEN : YES

I.D. NUMBER : 100629

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89130



JUROR INFORMATION

070896

09

BADGE NUMBER: 171

JUROR NAME : MEANS, MICHELLE

PRIOR JUROR : NO

YRS. EDUC. : 17

YRS. RESID. : 13

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: RETAIL SALES

SP. OCCUP. : BELLMAN

I.D. NUMBER : 1199844

CITY/ST/ZIP : CAL NEV ARI NV 89039

=====

BADGE NUMBER: 172

JUROR NAME : BORN, JOHN I

PRIOR JUROR : NO

YRS. EDUC. : 15

YRS. RESID. : 06

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: BAR MANAGER

SP. OCCUP. : SINGLE

I.D. NUMBER : 1397654

CITY/ST/ZIP : LAS VEGAS NV 89121

AA2787

JUROR INFORMATION

070896

09

BADGE NUMBER: 173

JUROR NAME : PRESCOTT, JEFFREY O

PRIOR JUROR :	NO	JUROR OCCUP.:	SYSTEMS SPECIALIST	
YRS. EDUC. :	18	SP. OCCUP. :	SINGLE	
YRS. RESID. :	03			
CITIZEN :	YES	I.D. NUMBER :	1418641	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89107

=====

BADGE NUMBER: 174

JUROR NAME : IVERSON, CYLE BRYAN

PRIOR JUROR :	NO	JUROR OCCUP.:	MANAGER	
YRS. EDUC. :	18	SP. OCCUP. :	NURSE	
YRS. RESID. :	30			
CITIZEN :	YES	I.D. NUMBER :	412823	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	NORTH LAS VEGAS NV	89031

DPT. 13

DATE: 1-22-97

TIME: 10:00

Edge Numbers:

40/466

TYPE: OK

66-3-603

EXCUSALS:

420

430

440

Return to  
Room 1013

AA2789

*Drathy*

012297  
012297

*Lang*  
BADGE NUMBER: 401

JUROR NAME : LAING, LAINEGENE PATRICIA

PRIOR JUROR : NO  
YRS. EDUC. : 16  
YRS. RESID. : 02  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: SALES COUNSELOR  
SP. OCCUP. : RETIRED  
I.D. NUMBER : 1623993  
CITY/ST/ZIP : LAS VEGAS NV

89121

*PD'S  
5th  
peremptory*

BADGE NUMBER: 402

JUROR NAME : MCCONNELL, DALE MARVIN

PRIOR JUROR : NO  
YRS. EDUC. : 12  
YRS. RESID. : 02  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: CAGE CASHIER  
SP. OCCUP. : CAGE CASHIER  
I.D. NUMBER : 1613415  
CITY/ST/ZIP : LAS VEGAS NV

89123

JUROR INFORMATION  
012297

BADGE NUMBER: 403

JUROR NAME : RESNICK, BILLIE SUE

PRIOR JUROR : NO  
YRS. EDUC. : 12  
YRS. RESID. : 08  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: GREETER  
SP. OCCUP. : DISABLED

I.D. NUMBER : 1571161

CITY/ST/ZIP : LAS VEGAS NV

89103

*PD's 1st peremptory*

BADGE NUMBER: 404

JUROR NAME : BLAKELY, BRADFORD LINDE

PRIOR JUROR : NO  
YRS. EDUC. : 17  
YRS. RESID. : 05  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: ARTIST  
SP. OCCUP. : ANALYST

I.D. NUMBER : 1215399

CITY/ST/ZIP : HENDERSON NV

89015

*State's 2nd peremptory*

JUROR INFORMATION  
012297

BADGE NUMBER: 405

JUROR NAME : SHUSTEK, EMANUEL

PRIOR JUROR : NO  
YRS. EDUC. : 13  
YRS. RESID. : 15  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: RETIRED  
SP. OCCUP. : RETIRED

I.D. NUMBER : 473019

CITY/ST/ZIP : LAS VEGAS NV

89121

BADGE NUMBER: 406

JUROR NAME : PETERSON, MARK FORD

PRIOR JUROR : NO  
YRS. EDUC. : 18  
YRS. RESID. : 15  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: TEACHER  
SP. OCCUP. : TEACHER

I.D. NUMBER : 353061

CITY/ST/ZIP : LAS VEGAS NV

89128

JUROR INFORMATION  
012297

BADGE NUMBER: 407

JUROR NAME : MARPLE, HOMER RICHARD

PRIOR JUROR : NO  
YRS. EDUC. : 12  
YRS. RESID. : 02  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: COTTAGE PARENT  
SP. OCCUP. : COTTAGE PARENT

I.D. NUMBER : 841602

CITY/ST/ZIP : BOULDER CITY NV 89006

*Accessed by Judge  
Proceed on wife's address 1/22  
household -  
I am in  
child care +  
my wife takes  
medical treatment  
3x a week  
no relief*

BADGE NUMBER: 408

JUROR NAME : SNOCK, DAVID STEPHEN

PRIOR JUROR : YES  
YRS. EDUC. : 12  
YRS. RESID. : 02  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: COOK  
SP. OCCUP. : COOK

I.D. NUMBER : 1421809

CITY/ST/ZIP : LAS VEGAS NV 89117

*PR's 4th  
Perempt*

JUROR INFORMATION  
012297

BADGE NUMBER: 409

JUROR NAME : THOMPSON, JOHNNY RAY

PRIOR JUROR : YES

JUROR OCCUP.: ENGINEER

YRS. EDUC. : 14

SP. OCCUP. : SECRETARY

YRS. RESID. : 15

CITIZEN : YES

I.D. NUMBER : 431612

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89108

=====

BADGE NUMBER: 410

JUROR NAME : DYE, KIMBERLY D

PRIOR JUROR : YES

JUROR OCCUP.: CAGE CASHIER

YRS. EDUC. : 15

SP. OCCUP. : VAULT ATTENDANT

YRS. RESID. : 05

CITIZEN : YES

I.D. NUMBER : 1521777

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : HENDERSON, NV

89015



JUROR INFORMATION  
012297

BADGE NUMBER: 411

JUROR NAME : ISAACSON, JEROME ALAN

PRIOR JUROR : NO  
YRS. EDUC. : 16  
YRS. RESID. : 02  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: ACCOUNTANT  
SP. OCCUP. : SINGLE

I.D. NUMBER : 1599643

CITY/ST/ZIP : LAS VEGAS NV 89102

BADGE NUMBER: 412

JUROR NAME : HODGES, SAMUEL LEON

PRIOR JUROR : NO  
YRS. EDUC. : 12  
YRS. RESID. : 16  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: FLOORPERSON  
SP. OCCUP. : SINGLE

I.D. NUMBER : 1174099

CITY/ST/ZIP : LAS VEGAS NV 89109

*State's  
3rd peremptory*

*Know Dr. Cory Brown  
He is my dr.*

*(Handwritten mark)*

JUROR INFORMATION  
012297

BADGE NUMBER: 413

JUROR NAME : DELAVEGA, CHRISTOPHER

PRIOR JUROR : YES  
YRS. EDUC. : 14  
YRS. RESID. : 09  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: CUSTOMER SERV. CLERK  
SP. OCCUP. : SINGLE  
I.D. NUMBER : 1619082  
CITY/ST/ZIP : LAS VEGAS NV

89109

*State's 1st peremptory*

(12)

BADGE NUMBER: 414

JUROR NAME : MESSINA, NINA J

PRIOR JUROR : NO  
YRS. EDUC. : 12  
YRS. RESID. : 02  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: RETIRED  
SP. OCCUP. : SINGLE

I.D. NUMBER : 1525660

CITY/ST/ZIP : LAS VEGAS NV

89103

*Defence's 3rd peremptory*

JUROR INFORMATION  
012297

BADGE NUMBER: 415

JUROR NAME : MIZELL, STEVE A

PRIOR JUROR : NO  
YRS. EDUC. : 22  
YRS. RESID. : 09  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: RESEARCH PROFESSOR  
SP. OCCUP. : HOMEMAKER

I.D. NUMBER : 821809

CITY/ST/ZIP : LAS VEGAS NV 89108

*Daughter;  
Have concerns -  
She is in  
Sports pants -*

BADGE NUMBER: 416

JUROR NAME : KENNEDY, DARRELL W

PRIOR JUROR : NO  
YRS. EDUC. : 15  
YRS. RESID. : 57  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: BRICK MASON  
SP. OCCUP. : TELEPHONE OPERATOR

I.D. NUMBER : 45442

CITY/ST/ZIP : LAS VEGAS NV 89102

*Release  
by Judge 1-22*

*Dim 66 +  
1 letter  
- 6*

JUROR INFORMATION  
012297

BADGE NUMBER: 417

JUROR NAME : DEPEW, ROBERT F

PRIOR JUROR : YES  
YRS. EDUC. : 13  
YRS. RESID. : 02  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: CAGE CASHIER  
SP. OCCUP. : SINGLE  
I.D. NUMBER : 1525065  
CITY/ST/ZIP : LAS VEGAS NV

89103

BADGE NUMBER: 418

JUROR NAME : ANTONELLA, DEBORAH

PRIOR JUROR : NO  
YRS. EDUC. : 18  
YRS. RESID. : 02  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: NURSE  
SP. OCCUP. : SECURITY GUARD  
I.D. NUMBER : 1515012  
CITY/ST/ZIP : HENDERSON NV

89015

*Victim @ 15  
+  
Debra  
Antonella  
Chambers for*

JUROR INFORMATION  
012297

BADGE NUMBER: 419

JUROR NAME : MIKULICH, THOMAS O

PRIOR JUROR : NO  
YRS. EDUC. : 16  
YRS. RESID. : 32  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: SLOT DIRECTOR  
SP. OCCUP. : HOMEMAKER

I.D. NUMBER : 415114

CITY/ST/ZIP : LAS VEGAS NV

89129

BADGE NUMBER: 420

JUROR NAME : LAUDENSLAGER, VIRGINIA K

PRIOR JUROR : YES  
YRS. EDUC. : 12  
YRS. RESID. : 33  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: RETIRED  
SP. OCCUP. : SINGLE

I.D. NUMBER : 16167

CITY/ST/ZIP : LAS VEGAS NV

89104

JUROR INFORMATION  
012297

BADGE NUMBER: 421

JUROR NAME : GEISSLER, DALE ROBERT

PRIOR JUROR : NO  
YRS. EDUC. : 12  
YRS. RESID. : 15  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP. : WIFE ATTENDANT  
SP. OCCUP. : SINGLE  
I.D. NUMBER : 1428458  
CITY/ST/ZIP : LAS VEGAS NV

89104

BADGE NUMBER: 422

JUROR NAME : RICHART, VIVIAN LOREA

PRIOR JUROR : NO  
YRS. EDUC. : 14  
YRS. RESID. : 10  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: RETIRED  
SP. OCCUP. : RETIRED  
I.D. NUMBER : 907632  
CITY/ST/ZIP : LAS VEGAS NV

89108

JUROR INFORMATION  
012297

BADGE NUMBER: 423

JUROR NAME : POOLE, GALE

PRIOR JUROR : YES  
YRS. EDUC. : 12  
YRS. RESID. : 32  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: TELEPHONE OPERATOR  
SP. OCCUP. : SINGLE

I.D. NUMBER : 498996

CITY/ST/ZIP : LAS VEGAS NV

89106

*P.D.'s  
6th perempt*

BADGE NUMBER: 424

JUROR NAME : WHITSETT, JANINE PEARNS

PRIOR JUROR : NO  
YRS. EDUC. : 15  
YRS. RESID. : 32  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: CLERK  
SP. OCCUP. : CLERK

I.D. NUMBER : 411199

CITY/ST/ZIP : LAS VEGAS NV

89106

*broader  
w/ metro  
w/ gang unit*

AA2801

JUROR INFORMATION  
012297

*PD's 7th  
peremptory*

BADGE NUMBER: 425

JUROR NAME : NALLEY, BEVERLY EASTON

PRIOR JUROR : YES  
YRS. EDUC. : 12  
YRS. RESID. : 32  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: SECRETARY  
SP. OCCUP. : CONTRACTOR

I.D. NUMBER : 148803

CITY/ST/ZIP : LAS VEGAS NV 89108

BADGE NUMBER: 426

*Tejeda*

JUROR NAME : TEJEDA, ELIZABETH MARIE

PRIOR JUROR : NO  
YRS. EDUC. : 14  
YRS. RESID. : 11  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: THERAPIST ASSISTANT  
SP. OCCUP. : SALES DIRECTOR

I.D. NUMBER : 729498

CITY/ST/ZIP : HENDERSON NV 89014

*State's 17th  
peremptory*



JUROR INFORMATION  
012297

BADGE NUMBER: 427

JUROR NAME : PARISH, DANIEL V

PRIOR JUROR : NO  
YRS. EDUC. : 12  
YRS. RESID. : 03  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: LETTER CARRIER  
SP. OCCUP. : SINGLE  
I.D. NUMBER : 1538631  
CITY/ST/ZIP : LAS VEGAS NV

89123

*State's 8th peremptory*

=====

BADGE NUMBER: 428

JUROR NAME : WELLS, FRANCIS WILLIAM

PRIOR JUROR : NO  
YRS. EDUC. : 10  
YRS. RESID. : 04  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: RETIRED  
SP. OCCUP. : HOMEMAKER  
I.D. NUMBER : 1615284  
CITY/ST/ZIP : LAS VEGAS NV

89130

JUROR INFORMATION  
012297

BADGE NUMBER: 431

JUROR NAME : KRUSE, DEBORAH A

PRIOR JUROR :	NO	JUROR OCCUP.:	RECEPTIONIST	
YRS. EDUC. :	12	SP. OCCUP. :	SINGLE	
YRS. RESID. :	01			
CITIZEN :	YES	I.D. NUMBER :	1535820	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	HENDERSON NV	89015

=====

BADGE NUMBER: 432

JUROR NAME : DEMPSEY, KATHLEEN F

PRIOR JUROR :	YES	JUROR OCCUP.:	UNEMPLOYED	
YRS. EDUC. :	12	SP. OCCUP. :	RETIRED	
YRS. RESID. :	04			
CITIZEN :	YES	I.D. NUMBER :	1515669	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89107

*Daughter of  
by Frank  
Dempsey*

AA2804

JUROR INFORMATION  
012297

BADGE NUMBER: 433

JUROR NAME : GABRIEL, ELISABETH

PRIOR JUROR : NO  
YRS. EDUC. : 14  
YRS. RESID. : 02  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: FOOD SERVICE MANAGER  
SP. OCCUP. : SINGLE

I.D. NUMBER : 1511284

CITY/ST/ZIP : LAS VEGAS NV 89108

BADGE NUMBER: 434

JUROR NAME : YOUNG, GAYLA M

PRIOR JUROR : NO  
YRS. EDUC. : 16  
YRS. RESID. : 09  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: TECHNICIAN  
SP. OCCUP. : EQUIPMENT OPERATOR

I.D. NUMBER : 1366878

CITY/ST/ZIP : LAS VEGAS NV 89108

JUROR INFORMATION  
012297

BADGE NUMBER: 435

JUROR NAME : MCDONALD, PETER J

PRIOR JUROR : NO  
YRS. EDUC. : 13  
YRS. RESID. : 01  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: MILITARY  
SP. OCCUP. : BANK TELLER

I.D. NUMBER : 1629636

CITY/ST/ZIP : LAS VEGAS NV 89103

*Not used by Judge  
1-22*

*Not authorized  
to serve on  
panel -  
in military*

=====

BADGE NUMBER: 436

JUROR NAME : MALLOY, PAMELA S

PRIOR JUROR : NO  
YRS. EDUC. : 20  
YRS. RESID. : 06  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: BILL COLLECTOR  
SP. OCCUP. : THERAPIST

I.D. NUMBER : 1428522

CITY/ST/ZIP : HENDERSON NV 89014

JUROR INFORMATION  
012297

BADGE NUMBER: 437

JUROR NAME : CURRY, WILLIAM E

PRIOR JUROR :	NO	JUROR OCCUP.:	RETIRED	
YRS. EDUC. :	18	SP. OCCUP. :	RETIRED	
YRS. RESID. :	01			
CITIZEN :	YES	I.D. NUMBER :	1548178	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89117

=====

BADGE NUMBER: 438

JUROR NAME : KERNER, LENORE LEAH

PRIOR JUROR :	NO	JUROR OCCUP.:	RETIRED	
YRS. EDUC. :	16	SP. OCCUP. :	RETIRED	
YRS. RESID. :	09			
CITIZEN :	YES	I.D. NUMBER :	883445	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89108

JUROR INFORMATION  
012297

BADGE NUMBER: 439

JUROR NAME : STEWART, JEANETTE MARIE

PRIOR JUROR :	NO	JUROR OCCUP.:	UNEMPLOYED	
YRS. EDUC. :	14	SP. OCCUP. :	SINGLE	
YRS. RESID. :	01			
CITIZEN :	YES	I.D. NUMBER :	1567598	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89129

=====

BADGE NUMBER: 440

JUROR NAME : SABATELLO, LISA C

PRIOR JUROR :	YES	JUROR OCCUP.:	CREDIT CLERK	
YRS. EDUC. :	12	SP. OCCUP. :	MANAGER	
YRS. RESID. :	09			
CITIZEN :	YES	I.D. NUMBER :	868831	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89130

JUROR INFORMATION  
012297

BADGE NUMBER: 441

JUROR NAME : HOWARD, CHRISTINE

PRIOR JUROR : NO  
YRS. EDUC. : 12  
YRS. RESID. : 01  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: SUPERVISOR  
SP. OCCUP. : CONSTRUCTION

I.D. NUMBER : 1520880

CITY/ST/ZIP : HENDERSON NV 89015

BADGE NUMBER: 442

JUROR NAME : SORESENSEN, SAMUEL THOMAS II

PRIOR JUROR : NO  
YRS. EDUC. : 12  
YRS. RESID. : 02  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: OPERATOR  
SP. OCCUP. : SINGLE

I.D. NUMBER : 1548313

CITY/ST/ZIP : HENDERSON NV 89009

JUROR INFORMATION  
012297

BADGE NUMBER: 443

JUROR NAME : BLEVINS, HUBERT WAYNE

PRIOR JUROR :	NO	JUROR OCCUP.:	DIRECTOR	
YRS. EDUC. :	20	SP. OCCUP. :	SINGLE	
YRS. RESID. :	01			
CITIZEN :	YES	I.D. NUMBER :	1556483	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89134

=====

BADGE NUMBER: 444

JUROR NAME : PALOCHIK, LAWRENCE EDWARD

PRIOR JUROR :	NO	JUROR OCCUP.:	PHARMACIST	
YRS. EDUC. :	17	SP. OCCUP. :	UNEMPLOYED	
YRS. RESID. :	17			
CITIZEN :	YES	I.D. NUMBER :	299242	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89117



JUROR INFORMATION  
012297

BADGE NUMBER: 445

JUROR NAME : LEE, RANDOLPH EUGENE

PRIOR JUROR : NO  
YRS. EDUC. : 18  
YRS. RESID. : 18  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: TEACHER  
SP. OCCUP. : SINGLE

I.D. NUMBER : 107004

CITY/ST/ZIP : LAS VEGAS NV 89130

BADGE NUMBER: 446

JUROR NAME : STEELE-DIESKO, VALERIE LORRAINE

PRIOR JUROR : NO  
YRS. EDUC. : 12  
YRS. RESID. : 27  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: DANCE INSTRUCTOR  
SP. OCCUP. : ANIMAL HANDLER

I.D. NUMBER : 756505

CITY/ST/ZIP : LAS VEGAS NV 89130

*1/22/97 - everyone refused  
by Judge Helaw  
this line*  
**DEE-ES-KO**

JUROR INFORMATION  
012297

BADGE NUMBER: 447

JUROR NAME : MASON, CHRISTINE ELIZABETH

PRIOR JUROR :	NO	JUROR OCCUP.:	JOURNALIST	
YRS. EDUC. :	16	SP. OCCUP. :	SINGLE	
YRS. RESID. :	04			
CITIZEN :	YES	I.D. NUMBER :	1331037	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89108

=====

BADGE NUMBER: 448

JUROR NAME : MONTEZ, RAMON PANTUNILLA

PRIOR JUROR :	YES	JUROR OCCUP.:	TRANSPORTER	
YRS. EDUC. :	16	SP. OCCUP. :	SELF EMPLOYED	
YRS. RESID. :	04			
CITIZEN :	YES	I.D. NUMBER :	1318881	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	HENDERRSON NV	89014

JUROR INFORMATION  
012297

BADGE NUMBER: 449

JUROR NAME : SAENZ, EDGAR HAROLD

PRIOR JUROR : NO  
YRS. EDUC. : 09  
YRS. RESID. : 30  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: WAREHOUSEMAN  
SP. OCCUP. : HOMEMAKER  
I.D. NUMBER : 216247  
CITY/ST/ZIP : LAS VEGAS NV

89122

*Excluded  
1-22  
Person's  
wife of my  
has been  
damaged*

BADGE NUMBER: 450

JUROR NAME : SPENCER, DEBORAH DARLENE

PRIOR JUROR : NO  
YRS. EDUC. : 12  
YRS. RESID. : 15  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: POSTAL CLERK  
SP. OCCUP. : MANAGER  
I.D. NUMBER : 1494838  
CITY/ST/ZIP : LAS VEGAS NV

89129

AA2813

JUROR INFORMATION  
012297

BADGE NUMBER: 451

JUROR NAME : LEMOINE, NICHELE EILEEN

PRIOR JUROR :	NO	JUROR OCCUP.:	CASHIER	
YRS. EDUC. :	12	SP. OCCUP. :	RECEIVING MANAGER	
YRS. RESID. :	19			
CITIZEN :	YES	I.D. NUMBER :	1584568	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	HENDERSON NV	89015

=====

BADGE NUMBER: 452

JUROR NAME : BROOKS, CHAPIN COLE

PRIOR JUROR :	NO	JUROR OCCUP.:	RETIRED	
YRS. EDUC. :	18	SP. OCCUP. :	SINGLE	
YRS. RESID. :	10			
CITIZEN :	YES	I.D. NUMBER :	1428340	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89103

JUROR INFORMATION  
012297

BADGE NUMBER: 453

JUROR NAME : DRISCOLL, JOHN EDWARD II

PRIOR JUROR :	YES	JUROR OCCUP.:	RETIRED	
YRS. EDUC. :	16	SP. OCCUP. :	SINGLE	
YRS. RESID. :	34			
CITIZEN :	YES	I.D. NUMBER :	258264	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89117

=====

BADGE NUMBER: 454

JUROR NAME : ARANT, FRANK VINCENT

PRIOR JUROR :	NO	JUROR OCCUP.:	FINANCIAL ADVISOR	
YRS. EDUC. :	13	SP. OCCUP. :	SINGLE	
YRS. RESID. :	25			
CITIZEN :	YES	I.D. NUMBER :	992824	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89107

JUROR INFORMATION  
012297

BADGE NUMBER: 455

JUROR NAME : BUTTURINI, BARBARA C

PRIOR JUROR :	NO	JUROR OCCUP.:	HOMEMAKER	
YRS. EDUC. :	12	SP. OCCUP. :	BUYER	
YRS. RESID. :	03			
CITIZEN :	YES	I.D. NUMBER :	1318691	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89130

=====

BADGE NUMBER: 456

JUROR NAME : GERKEN, EILEEN HARVEY

PRIOR JUROR :	NO	JUROR OCCUP.:	MANAGER	
YRS. EDUC. :	18	SP. OCCUP. :	REALTOR	
YRS. RESID. :	04			
CITIZEN :	YES	I.D. NUMBER :	1248257	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	HENDERSON NV	89014

JUROR INFORMATION  
012297

BADGE NUMBER: 457

JUROR NAME : RUSS, JAMES LAWAYNE

PRIOR JUROR :	NO	JUROR OCCUP.:	MAIL PROCESSOR	
YRS. EDUC. :	12	SP. OCCUP. :	RETAIL CLERK	
YRS. RESID. :	03			
CITIZEN :	YES	I.D. NUMBER :	1607282	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	N LAS VEGAS NV	89031

=====

BADGE NUMBER: 458

JUROR NAME : ARMSTRONG, LYNN JEAN

PRIOR JUROR :	NO	JUROR OCCUP.:	NURSE	
YRS. EDUC. :	14	SP. OCCUP. :	MECHANIC	
YRS. RESID. :	18			
CITIZEN :	YES	I.D. NUMBER :	258005	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89121

JUROR INFORMATION  
012297

BADGE NUMBER: 459

JUROR NAME : MOSS, CYNTHIA ANNETTE

PRIOR JUROR :	NO	JUROR OCCUP.:	HOMEMAKER	
YRS. EDUC. :	12	SP. OCCUP. :	ROUTE SUPERVISOR	
YRS. RESID. :	01			
CITIZEN :	YES	I.D. NUMBER :	1546278	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89103

=====

BADGE NUMBER: 460

JUROR NAME : KIRCHHOFF, DICK H

PRIOR JUROR :	NO	JUROR OCCUP.:	RETIRED	
YRS. EDUC. :	08	SP. OCCUP. :	SINGLE	
YRS. RESID. :	05			
CITIZEN :	YES	I.D. NUMBER :	1358455	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89117



JUROR INFORMATION  
012297

BADGE NUMBER: 461

JUROR NAME : FLEISCHER, ANJELIQUE CSINSAK

PRIOR JUROR : NO  
YRS. EDUC. : 12  
YRS. RESID. : 27  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: SALES ASSOCIATE  
SP. OCCUP. : SELF EMPLOYED

I.D. NUMBER : 991310

CITY/ST/ZIP : LAS VEGAS NV 89121

*excused by judge  
1-22*

*Done for  
brother  
2 days a  
wk  
(mentally  
disabled)  
Glover  
Shop*

BADGE NUMBER: 462

JUROR NAME : SCHILLER, GERTRUDE YOST

PRIOR JUROR : NO  
YRS. EDUC. : 12  
YRS. RESID. : 33  
CITIZEN : YES  
LANG. PROB. : NO  
FELONY CONV.: NO

JUROR OCCUP.: OFFICE MANAGER  
SP. OCCUP. : RETIRED

I.D. NUMBER : 202528

CITY/ST/ZIP : LAS VEGAS NV 89110

JUROR INFORMATION  
012297

BADGE NUMBER: 463

JUROR NAME : ~~PEOPLE~~, CHRISTOPHER SCOTT

PRIOR JUROR :	NO	JUROR OCCUP.:	POT WASHER	
YRS. EDUC. :	12	SP. OCCUP. :	SINGLE	
YRS. RESID. :	03			
CITIZEN :	YES	I.D. NUMBER :	1436199	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV	89102

=====

BADGE NUMBER: 464

JUROR NAME : SYLER, JILL LEAH

PRIOR JUROR :	NO	JUROR OCCUP.:	MANAGER	
YRS. EDUC. :	15	SP. OCCUP. :	SINGLE	
YRS. RESID. :	09			
CITIZEN :	YES	I.D. NUMBER :	946880	
LANG. PROB. :	NO			
FELONY CONV.:	NO	CITY/ST/ZIP :	HENDERSON NV	89014

JUROR INFORMATION  
012297

BADGE NUMBER: 465

JUROR NAME : LOCATELLI, MARCELLA MARIA

PRIOR JUROR :	NO	JUROR OCCUP.:	KENO SUPERVISOR
YRS. EDUC. :	06	SP. OCCUP. :	SINGLE
YRS. RESID. :	21		
CITIZEN :	YES	I.D. NUMBER :	227674
LANG. PROB. :	NO		
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV 89121

BADGE NUMBER: 466

JUROR NAME : KENNEDY, DOROTHY P

*Excused by Jury 1-22*

PRIOR JUROR :	NO	JUROR OCCUP.:	TELEPHONE OPERATOR
YRS. EDUC. :	14	SP. OCCUP. :	BRICK MASON
YRS. RESID. :	30		
CITIZEN :	YES	I.D. NUMBER :	15266
LANG. PROB. :	NO		
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV 89102

*Victim*

$$\begin{aligned}
 \text{Left: } & \int_0^1 \int_0^1 \frac{1}{1+x^2+y^2} dx dy \\
 &= \int_0^1 \left[ \arctan \frac{y}{1+x} \right]_{x=0}^{x=1} dy \\
 &= \int_0^1 \left( \arctan y - \arctan \frac{y}{2} \right) dy \\
 &= \left[ \frac{1}{2} \ln(1+y^2) - \frac{1}{2} \ln(1+\frac{y^2}{4}) \right]_0^1 \\
 &= \frac{1}{2} \ln \frac{5}{2}
 \end{aligned}$$

**AA2822**

REF NO 62675  
REF NO 304

REF NO 62675  
REF NO 304

AA2823

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TOTAL DUES: 100.00  
 FUND: 100.00

AA2824



**AA2825**

## MINUTE ORDER FOR JUDGMENT OF IMPRISONMENT

STATE OF NEVADA

CASE NO. C C125353

vs.

LARRY JAMES THOMAS #0846620

On the 8th day of April, 1997, the Honorable DON P. CHAIREZ  
District Judge of the Eighth Judicial Court of the State of Nevada sentenced the above-  
named Defendant. The Defendant previously was (Found Guilty/~~Plead Guilty~~) on 31st day of  
January, 1997, and the sentence of imprisonment in the Nevada State Prison is as  
follows:

COUNT	OFFENSE	SENTENCE
<u>IX</u>	<u>Statutory Sexual Seduction (F)</u>	- 10 YRS NDP CONCURRENT with all other /cts
<u>X</u>	<u>statutory Sexual Seduction (F)</u>	- 10 YRS NDP CONCURRENT with all other /cts
<u>XI</u>	<u>statutory Sexual Seduction (F)</u>	- 10 YRS NDP CONCURRENT with all other /cts
<u>XII</u>	<u>statutory Sexual Seduction (F)</u>	- 10 YRS NDP CONCURRENT with all other /cts

with credit for time previously served in the amount of see pg 1 days.

Pursuant to NRS 176.335 the Sheriff of Clark County is instructed to immediately notify the director of the department of prisons and the director shall, without delay, send some authorized person to receive the prisoner for commitment.

LORETTA BOWMAN, County Clerk  
and Clerk of the Eighth Judicial  
District Court, in and for the County of  
Clark, State of Nevada.

By Theresa Lee, Deputy



## MINUTE ORDER FOR JUDGMENT OF IMPRISONMENT

STATE OF NEVADA

CASE NO. C C125353

vs.

LARRY JAMES THOMAS #0846620

On the 8th day of April, 1997, the Honorable DON P. CHAIREZ  
 District Judge of the Eighth Judicial Court of the State of Nevada sentenced the above-  
 named Defendant. The Defendant previously was (Found Guilty/~~Not Guilty~~) on 31st day of  
January, 1997, and the sentence of imprisonment in the Nevada State Prison is as  
 follows:

COUNT	OFFENSE	SENTENCE
<u>I</u>	<u>Statutory Sexual Seduction (E)</u>	<u>10 YRS NDP</u>
<u>IV</u>	<u>Statutory Sexual Seduction (E)</u>	<u>10 YRS NDP</u>
<u>VI</u>	<u>Statutory Sexual Seduction (E)</u>	<u>CONSECUTIVE to Ct. I</u>
<u>VII</u>	<u>Statutory Sexual Seduction (E)</u>	<u>10 YRS NDP</u>
<u>VIII</u>	<u>Statutory Sexual Seduction (E)</u>	<u>CONSECUTIVE to Ct. IV</u>
		<u>10 YRS NDP</u>
		<u>CONCURRENT with Cts I, IV, VI</u>
		<u>10 YRS NDP</u>
		<u>CONCURRENT with all other</u>
		<u>Cts.</u>

with credit for time previously served in the amount of 853 days.

Pursuant to NRS 176.335 the Sheriff of Clark County is instructed to immediately  
 notify the director of the department of prisons and the director shall, without delay, send  
 some authorized person to receive the prisoner for commitment.

LORETTA BOWMAN, County Clerk  
 and Clerk of the Eighth Judicial  
 District Court, in and for the County of  
 Clark, State of Nevada.

By Theresa Free Deputy

OFFICE OF  
CLERK OF THE SUPREME COURT  
CAPITOL COMPLEX  
201 South Carson Street  
Carson City, Nevada 89710

RECEIPT FOR DOCUMENTS

June 30, 1997

To: Morgan D. Harris, Public Defender (w/ docketing statement)  
Hon. Frankie Sue Del Papa, Attorney General  
Hon. Stewart L. Bell, District Attorney  
Loretta Bowman, Clark County Clerk

Re: LARRY JAMES THOMAS vs. THE STATE OF NEVADA

Supreme Court Docket No. 30652

District Court Case No.: C125353

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

Date

6/30/97	Filing Fee Waived: Criminal
6/30/97	Filed Certified Copy of Notice of Appeal. Appeal docketed in the Supreme court this day. (Docketing Statement mailed to counsel for appellant.)

Janette M. Bloom  
Clerk of Court  
JMB:ts

# MEMO

CASE NUMBER C125353

PLAINTIFF \_\_\_\_\_

DEFENDANT Thomas

STILL ACTIVE \_\_\_\_\_

SEALED FILE \_\_\_\_\_

SEALED PSI ✓

SEALED CHILD CUSTODY \_\_\_\_\_

# Clark County Justice Court

NORTH LAS VEGAS TOWNSHIP

THE STATE OF NEVADA,

Plaintiff,

—VS—

LARRY JAMES THOMAS

Defendant.

DISTRICT COURT CASE #:

125353

DEPARTMENT #:

13

XIII-6

JUSTICE COURT CASE #:

94FN1181X

RECEIVED OF JUSTICE COURT THE FOLLOWING ITEMS:

CRIMINAL PROCEEDINGS

CRIMINAL COMPLAINT

AMENDED CRIMINAL COMPLAINT

OR RECEIPT #119993 (on cts 5 & 7 only)

Affidavit

NLV PD Arrest Report

~~JUDGMENT SHEET~~

COMMITMENT & ORDER

States Exhibit 2 - Cert copy of NLVPD Booking Sheet on deft

Dated: JAN 09 1995

LORETTA BOWMAN, County Clerk

By: LOUELLA MYERS

Deputy



95-C-125353-C      STATE OF NEVADA      vs Thomas, Larry J

01/26/95 09:00 AM 00 INITIAL ARRAIGNMENT

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
BOBBI THIBODEAU, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004232	Carroll, Thomas M.	Y
001 D1	Thomas, Larry J	Y
004784	Walton, Stanley A.	Y

Mr. Walton stated that at defendant's Preliminary Hearing he was bound over on eleven (11) counts, and the Information shows thirteen (13) counts. He requested a continuance to clear this matter up, and by the COURT, SO ORDERED.

**CUSTODY**

02-09-95 9:00 AM ARRAIGNMENT CONTINUED

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 001

02/16/95 09:00 AM 00 ALL PENDING MOTIONS (2-16-95)

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: THERESA LEE, Court Clerk  
SUZY FURRER, Reporter/Recorder

PARTIES: STATE OF NEVADA

004748 Siegel, Jay

Y

Y

001 D1 Thomas, Larry J

Y

004784 Walton, Stanley A.

Y

ARRAIGNMENT CONTINUED...DEFENDANT'S MOTION FOR BAIL REDUCTION, OWN  
RECOGNIZANCE RELEASE AND/OR IN THE ALTERNATIVE, HOUSE ARREST

Court called the matter, deft. present in custody without Counsel, Mr. Walton having previously contacted the Court advising the Court due to other Court appearances he would arrive late. COURT ORDERED, due to congestion of Court's calendar, matter continued one day. Mr. Walton appeared later and advised of continuance date.

## CUSTODY

2-17-95 9:00 A.M. ARRAIGNMENT CONTINUED...DEFENDANT'S MOTION FOR BAIL  
REDUCTION, OWN RECOGNIZANCE RELEASE AND/OR IN THE ALTERNATIVE, HOUSE ARREST

02/17/95 09:00 AM 00 ALL PENDING MOTIONS (2-17-95)

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: THERESA LEE, Court Clerk  
ROBERTA THIBODEAU, Reporter/Recorder

PARTIES: STATE OF NEVADA

004748 Siegel, Jay

Y

Y

001 D1 Thomas, Larry J

Y

004784 Walton, Stanley A.

Y

ARRAIGNMENT CONTINUED...DEFT'S MOTION FOR BAIL REDUCTION, OWN RECOGNIZANCE  
RELEASE AND/OR IN THE ALTERNATIVE; HOUSE ARREST

Mr. Walton stated he is confirming as Counsel for Robert Archie, COURT SO ORDERED. Deft. THOMAS ARRAIGNED, PLED NOT GUILTY AND WAIVED THE 60 DAY RULE. COURT ORDERED, motion for O.R. Release and/or Reduction of Bail or House Arrest DENIED.

## CUSTODY

CONTINUED ON PAGE: 003

PRINT DATE: 09/28/95

PAGE: 002

MINUTES DATE: 02/17/95

AA2832

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 002

4-20-95 9:00 A.M. CALENDAR CALL

4-24-95 10:00 A.M. JURY TRIAL

04/18/95 09:00 AM 00 STATE'S MOTION TO ENDORSE NAMES ON  
INFORMATION

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: THERESA LEE, Court Clerk  
TYRONE LARUE, Reporter/RecorderPARTIES: STATE OF NEVADA  
000738 Berrett, Bill A.  
001 D1 Thomas, Larry J  
002574 Archie, RobertY  
Y  
Y  
Y

Mr. Archie stated he has no opposition to the motion, however, would like to note that there are no addresses given on the witnesses named, the only reason to withhold addresses is due to harrassment or danger to the witnesses which does not exist, requested State make them available. Mr. Berrett stated these witnesses are girls that were in deft's dance group, State does not have addresses, his Investigator is looking for these witnesses. COURT ORDERED, motion GRANTED.

## CUSTODY

04/20/95 09:00 AM 00 CALENDAR CALL

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: THERESA LEE, Court Clerk  
SUZY FURRER, Reporter/RecorderPARTIES: STATE OF NEVADA  
004232 Carroll, Thomas M.  
001 D1 Thomas, Larry J  
004784 Walton, Stanley A.Y  
Y  
Y  
Y

Mr. Walton stated the case will not be going forward, discussed this matter with Mr. Carroll, his Team Chief and Luis Rojas, State does not oppose a continuance. COURT ORDERED, trial date VACATED and RESET. Mr. Walton stated the Court invoked the 60 day rule for the deft. Upon examination of deft. by Court, deft. WAIVED 60 DAY RULE. Mr. Walton requested permission to approach the Bench, COURT SO ORDERED. COURT ORDERED, matter CONTINUED 30

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 003

days for status check to determine if additional discovery is completed and trial setting.

## CUSTODY

5-25-95 9:00 A.M. STATUS CHECK RE DISCOVERY...TRIAL SETTING

05/25/95 09:00 AM 00 ALL PENDING MOTIONS 05-25-95

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
TYRONE LARUE, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004232	Carroll, Thomas M.	Y
001 D1	Thomas, Larry J	Y
004784	Walton, Stanley A.	Y

STATUS CHECK RE: DISCOVERY...TRAIL SETTING

Mr. Weisman advised Court the discovery issue is not completed, and requested a continuance, and by the COURT, SO ORDERED.

06-27-95 9:00 AM STATUS CHECK RE: DISCOVERY...TRIAL SETTING

06/06/95 09:00 AM 00 DEFT'S PRO PER MOTION FOR RELEASE ON  
PERSONAL RECOGNIZANCE OR ALTERNATIVE

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
JANIE OLSEN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004577	Coumou, Frank	Y
001 D1	Thomas, Larry J	Y
002574	Archie, Robert	Y

Mr. Archie advised that he received this motion a week ago; it was filed in Proper Person. He continued that it would be an advantage to the defense if bail lowered. Mr. Coumou stated the State did not receive a copy of the motion. COURT ORDERED, Deft's Pro Per Motion, DENIED.

custody



## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 004

06-27-95 9:00 A.M. STATUS CHECK RE: DISCOVERY...TRIAL SETTING

06/27/95 09:00 AM 00 ALL PENDING MOTIONS (6-27-95)

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: THERESA LEE, Court Clerk  
FELICIA ZABIN, Reporter/RecorderPARTIES: STATE OF NEVADA  
004748 Siegel, Jay001 D1 Thomas, Larry J  
002574 Archie, RobertY  
Y  
Y  
Y

TRIAL SETTING...STATUS CHECK RE: DISCOVERY

Mr. Archie stated he has not received all of the discovery, i.e. addresses of the victims, requests have been made to the State, necessity to interview these six females and will not release the information to anyone. Mr. Siegel stated he is attempting to get present addresses of these people, and make them available for interviews with Mr. Archie and in the presence of Officers. COURT ORDERED, State to set up the interviews by 7-14-95. Mr. Siegel concurred. COURT ORDERED, trial date set.

CUSTODY

8-10-95 9:00 A.M. CALENDAR CALL

8-14-95 10:00 A.M. JURY TRIAL

08/01/95 09:00 AM 00 STATE'S MOTION TO ENDORSE NAMES ON  
INFORMATION

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
MARIA WOOLEY, Reporter/RecorderPARTIES: STATE OF NEVADA  
000047 Miller, James J.001 D1 Thomas, Larry J  
002574 Archie, RobertY  
Y  
Y  
Y

Mr. Archie stated he has no objection to State's motion; however, the State endorsed twelve names a couple of months ago; they were to make witnesses available. He further stated this is an additional six names; he has to

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 005

interview fifteen witnesses prior to trial which is thirteen days away. Mr. Miller stated this is Mr. Rojas case; Mr. Archie should contact him. COURT ORDERED, State's Motion to Endorse Names on Information CONDITIONALLY GRANTED; if witnesses cannot be made available by Thursday, they will not be accepted; matter continued for status check. Upon Mr. Archie's inquiry, Court stated this applies to the State's April 11th, motion, as well.

## CUSTODY

08-04-95 9:00 AM STATUS CHECK: STATE'S WITNESSES

08-10-95 9:00 AM CALENDAR CALL

08-14-95 10:00 AM JURY TRIAL

08/03/95 09:00 AM 00 ALL PENDING MOTIONS 08-03-95

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
FELICIA ZABIN, Reporter/Recorder

PARTIES: STATE OF NEVADA  
005107 Rojas, Luis  
  
001 D1 Thomas, Larry J  
002574 Archie, Robert

Y  
Y  
  
Y  
Y

STATE'S REQUEST TO CLARIFY MOTION TO ENDORSE...DEFT'S REQUEST TO CLARIFY  
WITNESS LIST

AFFIDAVIT OF MR. ROJAS FILED IN OPEN COURT. Mr. Rojas asserted that the State spent hours compiling witness list and fax'd it to Mr. Archie. Mr. Archie responded he wants to be able to meet with the witnesses prior to trial and had requested addresses when Calendar Call was first set. Court, addressing Mr. Archie, stated the State set up a meeting that he did not attend. Mr. Rojas stated some of the witnesses did not show up at that meeting. Mr. Archie responded that he requested names in April; he only got names, no addresses. Court replied that the witnesses can get together again, and if not ready, another date can be set. Mr. Rojas stated there has been no bad faith on the part of the State; witnesses were provided at a meeting and Mr. Archie was not there. Mr. Archie moved for a continuance, stating he received Motion to Endorse at the last minute. Mr. Rojas stated Mr. Archie has been provided all the names the State has. Mr. Rojas stated Mr. Archie is being provided with two voluntary statements by Barbara Sanders and Alea Sanders. COURT ORDERED, trial date VACATED and RESET.

## CUSTODY

CONTINUED ON PAGE: 007

PRINT DATE: 09/28/95

PAGE: 006

MINUTES DATE: 08/03/95

AA2836

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 006

09-21-95 9:00 AM CALENDAR CALL

09-25-95 10:00 AM JURY TRIAL

08/04/95 09:00 AM 00 STATUS CHECK: STATE'S WITNESSES VK 8/3

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DENISE TRUJILLO, Court Clerk  
CHERYL GARDNER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004577	Coumou, Frank	Y
001 D1	Thomas, Larry J	Y
002574	Archie, Robert	Y

Mr. Archie advised this matter was resolved yesterday (as to State's witnesses). COURT ORDERED, matter OFF CALENDAR.

## CUSTODY

09-21-95 9:00 AM CALENDAR CALL

09-25-95 10:00 AM JURY TRIAL

09/21/95 09:00 AM 00 CALENDAR CALL

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
MARY MALONE, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004748	Siegel, Jay	Y
001 D1	Thomas, Larry J	Y
004784	Walton, Stanley A.	Y

Conference at Bench. Mr. Walton stated that the State is ready to go; however, he requested a continuance due to the ill health of defense counsel. COURT ORDERED, trial date VACATED and RESET.

## CUSTODY

12-07-95 9:00 AM CALENDAR CALL

CONTINUED ON PAGE: 008

PRINT DATE: 09/28/95

PAGE: 007

MINUTES DATE: 09/21/95

AA2837

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 007

12-11-95 10:00 AM JURY TRIAL

12/07/95 09:00 AM 00 CALENDAR CALL

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: THERESA LEE, Court Clerk  
LEANN MURO, Reporter/RecorderPARTIES: STATE OF NEVADA  
000738 Berrett, Bill A.  
001 D1 Thomas, Larry J  
002574 Archie, RobertY  
Y  
Y  
Y

Mr. Archie stated the matter has been worked out, requested time to prepare deft. for his plea, COURT SO ORDERED, matter CONTINUED one day.

## CUSTODY

CONTINUED TO: 12/08/95 09:00 AM 01

12/08/95 09:00 AM 01 CALENDAR CALL

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: THERESA LEE, Court Clerk  
LEANN MURO, Reporter/RecorderPARTIES: STATE OF NEVADA  
000738 Berrett, Bill A.  
001 D1 Thomas, Larry J  
004784 Walton, Stanley A.Y  
Y  
Y  
Y

Mr. Walton stated this is the continued calendar call, State has provided defense with a Guilty Plea Memorandum yesterday afternoon, Mr. Archie went to the Doctor yesterday and is still under a Doctor's care, and requested Court vacate the trial date. Mr. Berrett objected and advised Court there are 40 witnesses, State is ready for trial, an offer was made weeks ago, offers have been made since this offense occurred, if defense is not ready for a plea at this time the State is ready for trial, the offer will not be good on Monday. Further argument by Mr. Walton in support of his request to continue, Mr. Archie needs to go over the plea with deft. COURT ORDERED, trial date stands, status check 12-1 -95 to determine if Mr. Archie is ready. Mr. Berrett stated this offer is not good on Monday. COURT ORDERED, TRIAL DATE SET 12-13-95 #1, Status Check 12-12-95 at 9 AM.

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 008

## CUSTODY

12-12-95 9:00 A.M. STATUS CHECK RE NEGOTIATIONS

12-13-95 10:00 A.M. JURY TRIAL (#1 STACK)

12/12/95 09:00 AM 00 STATUS CHECK: RE NEGOTIATIONS

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
KAREN MELL, Reporter/RecorderPARTIES: STATE OF NEVADA  
000738 Berrett, Bill A.  
001 D1 Thomas, Larry J  
004784 Walton, Stanley A.Y  
Y  
Y  
Y

Mr. Walton advised Court that Mr. Archie relayed State's offer to the deft. He stated Mr. Archie is requesting to withdraw as counsel because of his health, because deft rejected State's offer, which is a fair one, and because he has not been fully retained. Mr. Berrett stated the State's offer is that deft is to plead guilty to Two Counts of Sexual Assault; Minor allegation would be dropped, and the State to have the right to argue. COURT ORDERED, Mr. Archie's Oral Motion to Withdraw as Counsel, GRANTED; matter continued for Confirmation of Counsel by Public Defender; December 13th, Trial date, VACATED.

## CUSTODY

STATUS CHECK RE: NEGOTIATIONS...CONFIRMATION OF COUNSEL (HARRIS).

CONTINUED TO: 12/14/95 09:00 AM 01

CONTINUED ON PAGE: 010

PRINT DATE: 12/15/95

PAGE: 009

MINUTES DATE: 12/12/95

AA2839

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 009

12/14/95 09:00 AM 00 ALL PENDING MOTIONS 12-14-95

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
LISA FOGELBOCH, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004748	Siegel, Jay	Y
001 D1	Thomas, Larry J	Y
PUBDEF	Public Defender	Y
004546	Brown, Curtis	Y

STATUS CHECK: RE NEGOTIATIONS...CONFIRMATION OF COUNSEL (HARRIS)

Mr. Brown advised Court the Public Defender's Office will be representing the deft. He requested a continuance so Mr. DeJulio can confer with the deft, and by the COURT, SO ORDERED.

CUSTODY

12-21-95 9:00 AM STATUS CHECK RE: NEGOTIATIONS

12/21/95 09:00 AM 02 STATUS CHECK: RE NEGOTIATIONS

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: THERESA LEE, Court Clerk  
TYRONE LARUE, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004748	Siegel, Jay	Y
001 D1	Thomas, Larry J	Y
PUBDEF	Public Defender	Y
004735	Roundtree, Stacey	Y

Ms. Roundtree stated she was just assigned the case and received discovery yesterday, requested trial date set, on 4-20-95 deft. waived 60 day rule. COURT ORDERED, trial date reset in the ordinary course.

CUSTODY

2-8-96 9:00 A.M. CALENDAR CALL

2-12-96 10:00 A.M. JURY TRIAL

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA vs Thomas, Larry J  
CONTINUED FROM PAGE: 010

02/08/96 09:00 AM 00 CALENDAR CALL

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
DANELE REDDY, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	004232 Carroll, Thomas M.	Y
	001 D1 Thomas, Larry J	Y
	PUBDEF Public Defender	Y
	004735 Roundtree, Stacey	Y

Mr. Roundtree requested a continuance, stating she is not prepared for trial. She further stated she received a favorable offer from the District Attorney; the deft may be interested. COURT ORDERED, Trial Date VACATED; matter continued.

## CUSTODY

02-09-96 9:00 AM POSSIBLE NEGOTIATIONS

02/09/96 09:00 AM 00 POSSIBLE NEGOTIATIONS

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: THERESA LEE, Court Clerk  
LISA FOGLEBOCH, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	004630 Hendricks, Craig L.	Y
	001 D1 Thomas, Larry J	Y
	PUBDEF Public Defender	Y
	004735 Roundtree, Stacey	Y

Ms. Roundtree stated matter not resolved, deft. previously waived right to speedy trial. COURT ORDERED, matter set for trial.

## CUSTODY

5-9-96 9:00 A.M. CALENDAR CALL

5-13-96 10:00 A.M. JURY TRIAL

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 011

04/25/96 09:00 AM 00 STATE'S MOTION TO ENDORSE NAMES ON  
INFORMATION

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
SUE DEATON/SD, Relief Clerk  
MARIA WOOLEY, Reporter/Recorder

PARTIES: STATE OF NEVADA

001951 Leen, Peggy

Y

Y

001 D1 Thomas, Larry J

Y

PUBDEF Public Defender

Y

002122 Martin, Delbert E.

Y

Mr. Martin advised this is Ms. Roundtree's case and requested a continuance for her appearance. COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 04/30/96 09:00 AM 01

04/30/96 09:00 AM 00 ALL PENDING MOTIONS (4-30-96)

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: THERESA LEE, Court Clerk  
SUE DEATON/SD, Relief Clerk  
TYRONE LARUE, Reporter/Recorder

PARTIES: STATE OF NEVADA

004577 Coumou, Frank

Y

Y

001 D1 Thomas, Larry J

Y

PUBDEF Public Defender

Y

004735 Roundtree, Stacey

Y

Ms. Roundtree argued against State's Motion to Endorse Names on Information because one name listed (Lnu) had no address; Motion just had name and "unknown." Mr. Coumou amended by interlineation Order for Court's Signature and omitted the name of Lnu. Court said State could file another Motion if and when they had adequate information available. COURT ORDERED State's Motion to Endorse Names on Information (without witness named Lnu) GRANTED. Ms. Roundtree argued for Deft's Request for Discovery. There is a diary of one of the victims and she has been provided with copies of various pages of diary. She requested Court allow her Investigator to get the full diary out of Evidence to review. COURT SO ORDERED. COURT FURTHER ORDERED Deft's Request for Discovery GRANTED. Ms. Roundtree to prepare the Order.

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PRINT DATE: 05/07/96

PAGE: 012

MINUTES DATE: 04/30/96

AA2842



## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 012

## CUSTODY

5-9-96, 9:00 A.M., CALENDAR CALL

5-13-96, 10:00 A.M., JURY TRIAL

05/09/96 09:00 AM 00 CALENDAR CALL

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
DANELLE REDDY, Reporter/RecorderPARTIES: STATE OF NEVADA  
000047 Miller, James J.  
001 D1 Thomas, Larry J  
PUBDEF Public Defender  
005114 Rusley, Eric W.Y  
Y  
Y  
Y  
Y

Mr. Rusley advised Court he is appearing on behalf of Ms. Roundtree. She spoke to Mr. Berrett and it was agreed to continue this matter; COURT, SO ORDERED.

## CALENDAR CALL

05-13-96 10:00 AM JURY TRIAL

CONTINUED TO: 05/10/96 09:00 AM 01

05/10/96 09:00 AM 01 CALENDAR CALL

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
SUZY FURRER, Reporter/RecorderPARTIES: STATE OF NEVADA  
000738 Berrett, Bill A.  
001 D1 Thomas, Larry J  
PUBDEF Public Defender  
004735 Roundtree, StaceyY  
Y  
Y  
Y  
Y

Ms. Roundtree advised Court this is not negotiated. Mr. Berrett stated he has to do 'Prelims' on Monday; trial may have to commence on Tuesday, May 14th. Court stated it may have a Penalty Hearing on Monday; Jury is out now

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PRINT DATE: 05/10/96

PAGE: 013

MINUTES DATE: 05/10/96

AA2843

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 013

deliberating a murder case; therefore, ORDERED, matter TRANSFERRED to Overflow, Dept. X. Ms. Roundtree advised Court trial should take four to five days; Luis Rojas will be her co-counsel.

CUSTODY

05-13-96 10:00 AM TRIAL BY JURY-OVERFLOW-DEPT X

05/13/96 10:00 AM 00 OVERFLOW TRIAL FROM DEPT XIII  
BERRETT/ROUNDTREE & ROJAS 4-5 DAYS

HEARD BY: JACK LEHMAN, Judge; Dept. 10

OFFICERS: CINDY LORY, Court Clerk  
SHARLEEN NICHOLSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000738	Berrett, Bill A.	Y
001 D1	Thomas, Larry J	N
PUBDEF	Public Defender	Y
004735	Roundtree, Stacey	Y

Court advised counsel there are no courtrooms available for trial at this time. Counsel to check back with Department secretary at 11:00 a.m. this morning for status on availability. Matter continued.

CUSTODY

05-14-96 9:00 AM TRIAL SETTING

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 014

05/14/96 09:00 AM 00 TRIAL SETTING

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: THERESA LEE, Court Clerk  
SUE DEATON/sd, Relief Clerk  
FELICIA ZABIN, Reporter/Recorder

PARTIES: STATE OF NEVADA  
004748 Siegel, Jay  
001 D1 Thomas, Larry J  
PUBDEF Public Defender  
005607 Coffee, Scott L.

Y  
Y  
N  
Y  
Y

Court was advised no Judges were available when Trial was sent to Overflow. Court noted that Deft was not present in courtroom because In Custody Deft's were taken out for a bathroom break. COURT ORDERED matter set for speedy TRIAL.

## CUSTODY

7-2-96, 9:00 A.M., CALENDAR CALL

7-8-96, 10:00 A.M., JURY TRIAL

07/02/96 09:00 AM 00 ALL PENDING MOTIONS 07-02-96

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
KAREN MELL, Reporter/Recorder

PARTIES: STATE OF NEVADA  
004748 Siegel, Jay  
001 D1 Thomas, Larry J  
PUBDEF Public Defender  
004735 Roundtree, Stacey

Y  
Y  
Y  
Y  
Y

## CALENDAR CALL...STATE'S MOTION TO ADMIT EVIDENCE OF OTHER BAD ACTS

Ms. Roundtree advised Court she was ready for trial, but because of State's Motion, she needs time to respond. Mr. Siegel advised that Mr. Berrett stated Ms. Roundtree could respond before trial. Ms. Roundtree stated she does not know if the witnesses names are endorsed; she wants to talk to the them. Court noted the State's motion forces Ms. Roundtree to have a continuance. State advised this case is three years old. Ms. Roundtree argued against State's motion. After conference at the Bench, COURT

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PRINT DATE: 07/02/96

PAGE: 015

MINUTES DATE: 07/02/96

AA2845

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 015

ORDERED, State's Motion to Admit Evidence of Other Bad Acts, DENIED; Trial Date Stands. Counsel advised Bill Berrett and Luis Rojas will try the case, which should take one week; 15-20 witnesses.

CUSTODY

07-08-96 10:00 AM TRIAL BY JURY

07/08/96 10:00 AM 00 TRIAL BY JURY

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
MARIA WOOLEY, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
005107	Rojas, Luis	Y
000738	Berrett, Bill A.	Y
001 D1	Thomas, Larry J	Y
PUBDEF	Public Defender	Y
004735	Roundtree, Stacey	Y

Mr. Berrett and Ms. Roundtree announced they were ready for trial. Court recessed for ten minutes to check if the Civil hearing scheduled for today was going forward. LATER: Court advised the Civil matter is going to proceed; Evidentiary Hearing may take three to four hours; therefore, COURT ORDERED, Jury Trial continued.

CUSTODY

TRIAL BY JURY

CONTINUED TO: 07/09/96 10:15 AM 01

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 016

07/09/96 10:15 AM 01 TRIAL BY JURY

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
KRIS FLUKER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000738	Berrett, Bill A.	Y
005107	Rojas, Luis	Y
001 D1	Thomas, Larry J	Y
PUBDEF	Public Defender	Y
004735	Roundtree, Stacey	Y

Court convened Outside the Presence of the Jury Panel at 11:00 A.M. Upon Court's inquiry, deft stated he rejected the State's offer. Mr. Berrett stated the deft is facing numerous life sentences. Ms. Roundtree advised Court she, as well as other Public Defenders, explained this to the deft. Court informed deft he will be facing eighty-five (85) years in prison without the possibility of parole if convicted of all charges. Jury Panel brought into the Courtroom. Mr. Rojas read list of witnesses to panel. Clerk administered Voir Dire Oath to Panel. Court read instructions from Nevada Supreme Court to Panel. Conference at Bench. Voir Dire of Panel by Court and counsel commenced. Court advised panel of the differences between statutory sexual seduction, sexual assault and sexual assault with a minor. Court admonished and excused panel and recessed for lunch. Court reconvened Outside the Presence of the Jury Panel at 1:40 P.M. Ms. Roundtree advised Court that she does not have knowledge of fifteen (15) witnesses the State read from their list; she has not spoken to them. Mr. Rojas responded that the Court granted the Motion to Endorse; all names were on that motion; that information was provided to the defense seven-and-one-half months ago. Court responded that Ms. Roundtree was not representing the deft at that time; Bob Archie was deft's counsel. Ms. Roundtree requested a continuance, stating she has to speak to the witnesses. Mr. Berrett stated Ms. Roundtree looked at the State's file one month ago; nothing was hidden; she did not follow up with Mr. Archie. He further stated this case is two years old. Court reiterated to the deft the sentence he is facing if convicted, and that if he took the State's offer he would be looking at three more years before being eligible for parole. Deft responded he cannot plead guilty to something he did not do; he is willing to risk being in prison eighty-five (85) years. Ms. Roundtree read the names of the fifteen witnesses she did not have. Mr. Rojas stated the State may only call two or three of those witnesses. COURT ORDERED, Ms. Roundtree's Oral Motion to Continue Trial, GRANTED; Trial Date Reset.

CUSTODY

10-03-96 9:00 AM CALENDAR CALL

AA2847

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 017

10-07-96 10:00 AM TRIAL BY JURY

09/17/96 09:00 AM 00 STATE'S MOTION TO ENDORSE NAMES ON  
INFORMATION

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
KEN ISERI, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
001951	Leen, Peggy	Y
001 D1	Thomas, Larry J	Y
PUBDEF	Public Defender	Y
001135	Lieberman, Gary H.	Y

COURT ORDERED, State's Motion to Endorse Names on Information, GRANTED,  
provided any new or additional discovery is provided to defense.

CUSTODY

10-03-96 9:00 AM CALENDAR CALL

10-07-96 10:00 AM TRIAL BY JURY

10/03/96 09:00 AM 00 CALENDAR CALL

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
THERESA LANZA, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000047	Miller, James J.	Y
001 D1	Thomas, Larry J	Y
PUBDEF	Public Defender	Y
004735	Roundtree, Stacey	Y

State announced it is ready for trial, which should take one week; Mr.  
Berrett will try the case. Ms. Roundtree advised the defense is ready; deft  
has been in custody two (2) years. After conference at the Bench, COURT  
ORDERED, Calendar Call CONTINUED until tomorrow.

CUSTODY

CALENDAR CALL

CONTINUED TO: 10/04/96 09:00 AM 01

PRINT DATE: 10/04/96

PAGE: 018

CONTINUED ON PAGE: 019

MINUTES DATE: 10/03/96

AA2848

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 018

10/04/96 09:00 AM 01 CALENDAR CALL

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
SUZY FURRER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
001951	Leen, Peggy	Y
001 D1	Thomas, Larry J	Y
PUBDEF	Public Defender	Y
004735	Roundtree, Stacey	Y

Ms. Roundtree advised Court Mr. Berrett offered three counts of Statutory Sexual Seduction (F); deft does not want to accept that offer. Ms. Roundtree requested a continuance since she has another trial, which may take six days. COURT ORDERED, trial date VACATED and RESET.

CUSTODY

11-26-96 9:00 AM CALENDAR CALL

12-02-96 10:00 AM TRIAL BY JURY

11/26/96 09:00 AM 00 CALENDAR CALL

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
LAURIE WEBB, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004630	Hendricks, Craig L.	Y
001 D1	Thomas, Larry J	Y
PUBDEF	Public Defender	Y
004735	Roundtree, Stacey	Y

Both sides advised they are ready for trial, which should take one week. COURT ORDERED, matter TRANSFERRED to Overflow, as Dept. XIII has two trials set on December 2nd.

CUSTODY

12-02-96 10:00 A.M. TRIAL BY JURY - OVERFLOW DEPT.

CONTINUED ON PAGE: 020

PRINT DATE: 12/02/96

PAGE: 019

MINUTES DATE: 11/26/96

AA2849

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 019

12/02/96 10:00 AM 00 OVERFLOW TRIAL FROM DEPT XIII  
BERRETT & HENDRICKS/ROUNDTREE ONE WEEK

HEARD BY: JACK LEHMAN, Judge; Dept. 10

OFFICERS: NANCY NOBLE, Court Clerk  
SHARLEEN NICHOLSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
005107	Rojas, Luis	Y
001 D1	Thomas, Larry J	Y
PUBDEF	Public Defender	Y
003516	Jorgenson, Craig F.	Y

There being no courtrooms available, COURT ORDERED matter sent back to Dept. XIII for Trial Setting. Trial date VACATED.

## CUSTODY

12-05-96 9:00 AM TRIAL SETTING

12/05/96 09:00 AM 00 TRIAL SETTING

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: THERESA LEE, Court Clerk  
KAREN MELL, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004232	Carroll, Thomas M.	Y
001 D1	Thomas, Larry J	Y
PUBDEF	Public Defender	Y
003516	Jorgenson, Craig F.	Y

Mr. Jorgenson stated this is Stacey Roundtree's case, requested 1-21-97 trial date, COURT SO ORDERED.

## CUSTODY

1-16-97 9:00 A.M. CALENDAR CALL

1-21-97 10:00 A.M. JURY TRIAL



## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 020

01/16/97 09:00 AM 00 CALENDAR CALL

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: THERESA LEE, Court Clerk  
TERESA LYNN DEROSSETT, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000738	Berrett, Bill A.	Y
001 D1	Thomas, Larry J	Y
PUBDEF	Public Defender	Y
004735	Roundtree, Stacey	Y

Ms. Roundtree advised Court Larry Thomas has been in custody for two years, and answered ready for trial. Mr. Roundtree further advised Court deft will be represented by Charles Cano and herself. Mr. Berrett stated he will be trying this case for the State. Ms. Roundtree stated trial will take approximately seven days.

## CUSTODY

1-22-97 10:00 A.M. JURY TRIAL (7 DAYS)

01/22/97 10:00 AM 00 TRIAL BY JURY (#1 STACK)

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
MONICA COYLE, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000738	Berrett, Bill A.	Y
001 D1	Thomas, Larry J	Y
004735	Roundtree, Stacey	Y
005901	Cano, Charles A.	Y

Court convened at 10:46 A.M. Clerk administered Voir Dire Oath to Jury Panel. Roll call of panel by Clerk. Bill Berrett introduced himself, advised of deft's charges and provided names of witnesses. Ms. Roundtree introduced Mr. Cano and herself. Voir Dire of Panel commenced. Court reconvened after the lunch recess Outside the Presence of the Jury Panel with exception of eight members of the Panel. Court excused seven of the eight members; the majority of which stated they could not be fair and impartial because of sexual abuse. Inside Presence of Jury Panel: Roll call by Clerk...all present. Voir Dire of Panel continued. After a recess, Court reconvened Outside the Presence of the Jury Panel. State MOVED to endorse the name of Graham Lees, Physician's Assistant. No objection by

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PRINT DATE: 01/22/97

PAGE: 021

MINUTES DATE: 01/22/97

AA2851

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 021

Defense. COURT ORDERED, State's Motion to Endorse Name on Amended Information, GRANTED, provided any new and additional discovery is provided to defense. Inside Presence of Jury Panel: Voir Dire continued. Twelve Jurors and Two Alternates sworn. Court admonished and excused jurors. Court recessed at 5:10 P.M. until 10:15 A.M. tomorrow morning.

## TRIAL BY JURY

CONTINUED TO: 01/23/97 10:00 AM 01

01/23/97 10:00 AM 01 TRIAL BY JURY (#1 STACK)

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
SHERRI MALOOF/THERESA LANZA, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000738	Berrett, Bill A.	Y
001 D1	Thomas, Larry J	Y
004735	Roundtree, Stacey	Y
005901	Cano, Charles A.	Y

Court convened Outside the Presence of the Jury at 11:06 A.M. Mr. Berrett and Ms. Roundtree stipulated that the Clerk did not have to read the entire Amended Information...just the charges. Court noted deft's sixth Peremptory Challenge was an African American; defense counsel chose to exercise the Challenge. Court further stated the State's third Peremptory Challenge was an African American. State explained the prospective juror was per-empted because he indicated he knew Dr. Brown and may have had a problem with Graham Lees, a witness. He further stated the mother of the prospective juror was a victim of sexual assault, and the prospective juror said he did not feel good about this case. Mr. Berrett also stated that when the prospective juror was asked about being accused of a crime, he said he was arrested for disorderly conduct; however, when Court questioned prospective juror, he avoided Court's question. Ms. Roundtree stipulated that Mr. Berrett had no race reason to perempt the African American prospective juror. Ms. Roundtree stated she perempted an African American prospective juror because she had a relative who was murdered; the trial was conducted in this Department XIII, and she seemed upset the deft in that case did not have to serve the full sentence. Mr. Berrett stipulated to Ms. Roundtree's representations. Inside the Presence of the Jury: Court advised the Jury that another Prosecutor present in Court for the morning calendar said he mentioned something about this case in the hallway outside the Courtroom. Court questioned the jurors if any of them had heard anything. Juror Number Three advised he heard something. Court, deft, counsel and Juror No. Three adjourned to Chambers. LATER: Court read Instructions to Jury. Amended Information read by the Clerk. Ms. Roundtree invoked the Exclusionary Rule.

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PRINT DATE: 01/24/97

PAGE: 022

MINUTES DATE: 01/23/97

AA2852

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 022

Opening Statements by Mr. Berrett and Mr. Cano. Testimony, as per worksheet. After Lunch Recess, Theresa Lanza, came in as Court Reporter. Testimony continued, as per worksheet. Court certified Dr. Olson as an expert in Forensic Pediatrics Sexual Abuse. Outside the Presence of the Jury: Court advised it has been informed that someone had intimidated the last witness. Deft's supporters were summoned into the Courtroom and admonished by the Court. Court ORDERED one of the supporters out the the Courtroom and Building. Mr. Cano requested that Court instruct jurors that the previous incident does not reflect on the deft. Inside the Presence of the Jury: Court admonished jurors not to draw any negative inferences on either side with respect to the prior incident. Testimony resumed. Court admonished and excused jurors and recessed at 4:30 P.M. Jurors instructed to return at 10:00 A.M. tomorrow morning.

## CUSTODY

## TRIAL BY JURY

CONTINUED TO: 01/24/97 10:00 AM 02

01/24/97 10:00 AM 02 TRIAL BY JURY (#1 STACK)

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
KAREN MELL, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000738	Berrett, Bill A.	Y
001 D1	Thomas, Larry J	Y
PUBDEF	Public Defender	Y
004735	Roundtree, Stacey	Y

Court convened Outside the Presence of the Jury: Court advised that deft's co-counsel's (Thomas Cano's) brother was killed in an automobile accident today; he will not be present today. Court stated testimony of out-of-State witness will be taken and then Court will recess. Inside Presence of Jury: Court advised Jury of the death in Mr. Cano's family. Testimony continued. Ms. Knight certified as expert in field of Child Sexual Assault. Colloquy as to whether to proceed with trial, with Ms. Roundtree stating she will have to prepare for witnesses. It was agreed to take the testimony of one of the alleged victims after the lunch recess. Inside Presence of the Jury: Testimony, as per worksheet. Outside Presence of Jury: Colloquy as to how to bring in evidence without the witness having to read her diary. State and Ms. Roundtree went over pages of the diary to which they will refer. Inside Presence of Jury: Testimony resumed. Court advised Jurors trial will not go forward on Monday, due to the death of Mr. Cano's brother. Court admonished and excused jurors and instructed them to return on Tuesday.

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PRINT DATE: 01/28/97

PAGE: 023

MINUTES DATE: 01/24/97

AA2853

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 023

Court recessed at 4:31 P.M.

CUSTODY

TRIAL BY JURY

CONTINUED TO: 01/28/97 10:30 AM 03

01/28/97 10:30 AM 03 TRIAL BY JURY (#1 STACK)

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
TERESA DEROSSETT, Reporter/RecorderPARTIES: STATE OF NEVADA  
000738 Berrett, Bill A.001 D1 Thomas, Larry J  
PUBDEF Public Defender  
004735 Roundtree, StaceyY  
Y  
Y  
Y  
Y

Court convened Outside the Presence of the Jury at 11:02 AM: Ms. Roundtree Moved to admit Roshanda Turner's diary (State's Exhibit #1). Admitted. Ms. Roundtree stated Court previously Denied State's Motion to Admit Prior Bad Acts and MOVED for Motion in Limine to exclude two witnesses referred to in that motion. State requested that Court reconsider its previous ruling, as deft has created an atmosphere of seduction. COURT ORDERED, State's Motion to Reconsider, DENIED; Defendant's Motion in Limine, GRANTED. Court stated it is not depriving the theory as to atmosphere. Inside the Presence of the Jury: All present. Testimony continued, Exhibits marked and admitted, as per worksheet. Court admonished and excused jurors for the day at 4:12 P.M. Outside Presence of the Jury: Mr. Berrett stated defense counsel intentionally made a remark about a polygraph, which was crossed out on report, and is trying to gain favor with the jury by doing this. He further stated that is unprofessional; and he suggested sanctions. Ms. Roundtree responded the full context of the interview should be admitted. Court stated it will not sanction Ms. Roundtree; but statement was inappropriate. Court feels statement was not deliberate. Colloquy by State and defense counsel regarding prior bad acts, with Ms. Roundtree stating Petrocelli Hearing is necessary. Court responded that it is standing by its previous ruling regarding prior bad acts. Court further stated Mr. Berrett has to be given leeway as to why others did not come forward about the deft. Further colloquy by State and defense counsel, with Ms. Roundtree stating the alleged victims' credibility is at issue. Mr. Berrett stated that either he gets into prior bad acts or the detective's testimony has to be retracted. Court stated testimony has to be limited; giving leeway on closing argument. COURT ORDERED, trial in recess until tomorrow morning.

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PRINT DATE: 01/29/97

PAGE: 024

MINUTES DATE: 01/28/97

AA2854

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 024

CUSTODY

TRIAL BY JURY

CONTINUED TO: 01/29/97 10:00 AM 04

01/29/97 10:00 AM 04 TRIAL BY JURY (#1 STACK)

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
SHERRI MALOOF, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000738	Berrett, Bill A.	Y
001 D1	Thomas, Larry J	Y
PUBDEF	Public Defender	Y
004735	Roundtree, Stacey	Y

Court convened Inside the Presence of the Jury at 10:45 A.M. Both sides stipulated to the presence of the Jury and two alternates. State Rested. Testimony presented, as per worksheet. After lunch recess, Court convened Inside the Presence of the Jury. Testimony presented. Outside the Presence of the Jury: Court advised deft of his right to remain silent. Colloquy as to polygraph with Ms. Roundtree stating deft did not have the opportunity to take a polygraph. She further stated she advised deft, if he testifies, not to mention about a polygraph. Court responded that if polygraph is mentioned by deft, it will result in a mistrial. Inside Presence of Jury: Court admonished and excused jurors at 2:57 PM and recessed for the day.

CUSTODY

TRIAL BY JURY

CONTINUED TO: 01/30/97 10:00 AM 05

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 025

01/30/97 10:00 AM 05 TRIAL BY JURY (#1 STACK)

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
MONICA COYLE, Reporter/Recorder

PARTIES: STATE OF NEVADA  
000738 Berrett, Bill A.  
  
001 D1 Thomas, Larry J  
PUBDEF Public Defender  
004735 Roundtree, Stacey

Y  
Y  
  
Y  
Y  
Y

Court convened Inside the Presence of the Jury at 11:00 A.M. Both sides stipulated to the presence of the jury and two alternates. Testimony presented, as per worksheet. Outside the Presence of the Jury: Colloquy as to bringing in testimony that deft bought gifts for several people other than just one person and the State bringing in a witness who can testify to seeing the deft with another person in a compromising situation. Court instructed Ms. Roundtree to speak to the two witnesses she is planning to bring in this afternoon and recessed for lunch. Court reconvened Outside the Presence of the Jury. Court and counsel went over some of the jury instructions. No objection to verdict forms by Ms. Roundtree. Colloquy as to extrinsic impeachment. Court read from California Trial Objections regarding cross examination and scope. Inside the Presence of the Jury: Testimony resumed. Outside the Presence of the Jury: Ms. Roundtree advised Court the deft will not testify. She stated she will have to rethink her closing argument in light of what happened in Court today. Court stated Ms. Roundtree did not know she could not bring in the lack of prior bad acts; she disagrees with the application of the Rape Shield Law. Inside the Presence of the Jury: Defense rested. State advised it has no rebuttal witnesses. Court read Jury Instructions to the Jury. Closing statement by Mr. Berrett. Court admonished and excused jurors at 4:02 P.M. Outside of the Presence of the Jury: Court noted that during presentation of evidence there was a difference of interpretation of the Rape Shield Law between Ms. Roundtree and the Court. NRS 50.090 cited. Statement by Ms. Roundtree as to impeaching the credibility of the alleged victims. Mr. Berrett stated he requested offer of proof from counsel, and received nothing. He further stated that as to legal requirements, he provided Court with the provisions of Statute of Opinion evidence; NRS 50.085 controls. Court cited the Cox case and NRS 48.069, which states written offer of proof required. Court stated it stands by the Rape Shield Law. Ms. Roundtree stated that impeaching credibility is the threshold of her defense; she cannot present a defense if she cannot do that. After further argument by counsel, Court stated this case deals with a twelve-year old and two fourteen-year old girls, and believes that bringing in other young men's testimony to attack their credibility is not proper. Statement by Defendant. Court recessed at 4:30 P.M.

CONTINUED ON PAGE: 027

PRINT DATE: 01/31/97

PAGE: 026

MINUTES DATE: 01/30/97

AA2856

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 026

CUSTODY

TRIAL BY JURY

CONTINUED TO: 01/31/97 09:00 AM 06

01/31/97 09:00 AM 06 TRIAL BY JURY (#1 STACK)

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
THERESA LEE, Relief Clerk  
MARIA WOOLEY, Reporter/Recorder

PARTIES: STATE OF NEVADA  
000738 Berrett, Bill A.  
  
001 D1 Thomas, Larry J  
004735 Roundtree, Stacey  
005901 Cano, Charles A.

Y  
Y  
  
Y  
Y  
Y

Court convened Outside the Presence of the Jury at 9:02 AM: Argument by Mr. Cano, who cited Cox vs State (102NV253) and Summit vs State (101NV159). He stated that bringing in evidence goes to voracity of victim's statements. Argument by State, who cited NRS 50.085, and stated defense attempted to attack the credibility of the three victims; defense was attempting to impeach victim with prior incidents. Further argument by State and defense counsel. Court stated that as to prior incidents, it does not accept defense counsel's theory. Mr. Cano stated the defense feels the deft's constitutional rights have been infringed. Inside Presence of Jury: Both sides stipulated to presence of the Jury and two Alternates. Closing argument by Ms. Roundtree. (Court Clerk, Teri Lee, replaced Clerk, Dorothy Kelly.) Rebuttal Argument by Mr. Berrett. Court retired to deliberate at 11:50 A.M. and returned at 5:28 P.M. with verdicts as follows: Guilty of Statutory Sexual Seduction...Counts I, IV, VI through XII. Deft Found Not Guilty of Ct. II-Sexual Assault. Jury polled. COURT ORDERED, Bail STANDS at \$55,000. Court thanked and excused jury and ORDERED, matter set for sentencing. Court adjourned at 5:50 P.M.

CUSTODY

03-18-97 9:00 A.M. SENTENCING

CONTINUED ON PAGE: 028

PRINT DATE: 03/21/97

PAGE: 027

MINUTES DATE: 01/31/97

AA2857

## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 027

03/18/97 09:00 AM 00 SENTENCING

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: DOROTHY KELLY, Court Clerk  
KEN ISERI, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004232	Carroll, Thomas M.	Y
001 D1	Thomas, Larry J	Y
PUBDEF	Public Defender	Y
004735	Roundtree, Stacey	Y

Peggy Coleman of the Division of Parole & Probation present. Ms. Roundtree advised Court she just received the Pre-Sentence Report yesterday. She requested a continuance to go over the Report with the deft, and by the COURT, SO ORDERED.

CUSTODY

SENTENCING

CONTINUED TO: 04/08/97 09:00 AM 01

04/08/97 09:00 AM 01 SENTENCING

HEARD BY: DON P. CHAIREZ, Judge; Dept. 13

OFFICERS: THERESA LEE /GEORGETTE SHAW/GS, Relief Clerk  
KAREN MELL, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000738	Berrett, Bill A.	Y
001 D1	Thomas, Larry J	Y
005901	Cano, Charles A.	Y
004735	Roundtree, Stacey	Y

Mr. Robert Lawson of the Division of Parole & Probation present. Colloquy between Court and State. Arguments of Counsel. DEFT THOMAS ADJUDGED GUILTY OF CTS I, IV, AND VI through XII of STATUTORY SEXUAL SEDUCTION By virtue of JURY VERDICT. COURT ORDERED, in addition to the \$25.00 Administrative Assessment Fee, DEFT THOMAS SENTENCED to NEVADA DEPARTMENT OF PRISONS as follows; CT I TEN (10) YEARS Nevada Dept of Prisons, RESTITUTION \$210; CT IV TEN (10) YEARS NDP to run CONSECUTIVE WITH CT I; CT VI TEN (10) YEARS NDP to run CONSECUTIVE with CT IV; CT VII TEN (10) YEARS NDP to run CONCURRENT with CTS I, IV & VI; CT VIII TEN (10) YEARS NDP to run CONCURRENT with all other counts; CT IX TEN (10) YEARS NDP to run CONCURRENT with all other counts; CT

CONTINUED ON PAGE: 029

PRINT DATE: 04/30/97

PAGE: 028

MINUTES DATE: 04/08/97

AA2858



## CRIMINAL COURT MINUTES

95-C-125353-C STATE OF NEVADA

vs Thomas, Larry J

CONTINUED FROM PAGE: 028

X TEN (10) YEARS NDP to run CONCURRENT with all other counts; CT XI TEN (10) YEARS NDP to run CONCURRENT with all other counts; CT XII TEN (10) YEARS NDP to run CONCURRENT with all other counts; debt to receive 853 DAYS Credit for Time Served.

NDP

EXHIBIT 61

EXHIBIT 61

NAME OF STUDENT

Thomas, Georgia Ann

SEX Female

CLARK COUNTY SCHOOL DISTRICT  
POST OFFICE BOX 351  
LAS VEGAS, NEVADA

## STUDENT ACADEMIC PERMANENT RECORD

SEVENTH GRADE 19..... 19.....  
JUN. OR HIGH SCHOOL ATTENDED1st Sem.  
2nd Sem.

DAYS PRESENT DAYS ABSENT

SUBJECT 1st 2nd CR. TEACHER

Language Arts

Arithmetic

History

P.E.-Health

Shop-House Ec.

Science

EIGHTH GRADE 19..... 19.....  
JUNIOR HIGH SCHOOL ATTENDED1st Sem.  
2nd Sem.

DAYS PRESENT DAYS ABSENT

SUBJECT 1st 2nd CR. TEACHER

Language Arts

Arithmetic

History

P.E.-Health

Science

NINTH GRADE 19..... 19..... 65  
JUNIOR HIGH SCHOOL ATTENDED1st Sem. Nevada Girls Training  
2nd Sem.

DAYS PRESENT DAYS ABSENT

SUBJECT 1st 2nd CR. TEACHER

English

World History

P.E.-Health

Fam. Health D D 1 1/2

Science

Math

PROMOTED ☐RETAINED ☐

EXTRA CLASS ACTIVITIES

PROMOTED ☐RETAINED ☐

EXTRA CLASS ACTIVITIES

TOTAL CREDIT 4 1/2

EXTRA CLASS ACTIVITIES

TENTH GRADE 19..... 19.....  
HIGH SCHOOL ATTENDED1st Sem. 1-29-66  
2nd Sem.

DAYS PRESENT 6 DAYS ABSENT 2-1/2

SUBJECT 1st 2nd CR. TEACHER

English

Phys. Ed.

ELEVENTH GRADE 19..... 19.....  
HIGH SCHOOL ATTENDED1st Sem.  
2nd Sem.

DAYS PRESENT DAYS ABSENT

SUBJECT 1st 2nd CR. TEACHER

English

Amer. History

TWELFTH GRADE 19..... 19.....  
HIGH SCHOOL ATTENDED1st Sem.  
2nd Sem.

DAYS PRESENT DAYS ABSENT

SUBJECT 1st 2nd CR. TEACHER

Amer. Gov't.

TOTAL CREDIT

EXTRA CLASS ACTIVITIES

Excellent 1-29-66  
W/D 3-8-66 D/g.

TOTAL CREDIT

EXTRA CLASS ACTIVITIES

TOTAL CREDIT

EXTRA CLASS ACTIVITIES

PARENT OR GUARDIAN J.J. Thomas

STUDENT'S BIRTH DATE -50

STUDENT'S BIRTH PLACE Tallulah, La

STUDENT'S DATE OF GRADUATION

RANKS IN CLASS OF TOTAL HIGH SCHOOL CREDITS EARNED

GRADING SCHEDULE

GRADE POINT AVERAGE

\* Denotes Honors Class  
 Passing Grade 'D'  
 Recommend to College 'B'  
 Recitation Period 55 Minutes  
 3ds/mt-Unless otherwise noted  
 A-94-100-Excellent  
 B-86-93-Above Average  
 C-77-85-Average  
 D-70-76-Below Average  
 F-Below 70-Unsatisfactory  
 Not Passing

COMMENTS:

PHOTO

(Do not staple or paste  
 photo here. Use rubber  
 cement only !!!)

TRANSCRIPT

This transcript issued this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

I certify that the above information is correct.

(Signed)

High School

TITLE

CCSD0031

AA2861

CC-133

NAME OF STUDENT

Thomas, Georgia Ann

LAST

FIRST

MIDDLE

SEX

RACE

CLARK COUNTY SCHOOL DISTRICT

POST OFFICE BOX 351  
LAS VEGAS, NEVADA

## STUDENT AND FAMILY IDENTIFICATION DATA

PUPIL BIRTH DATE

50

PUPIL BIRTH PLACE

Tallulah, La.

## CHECK AUTHORITY OF BIRTH CERTIFICATION

☐ Birth Certificate  
☐ Passport☐ Parent's Statement  
☐ School Transcript☐ B/b's  
☐ Oath☐ Church Record  
☐ Hospital RecordFULL NAME OF FATHER  
MAIDEN NAME OF MOTHER

J.J. Thomas

Jesse Thomas

RACE

LIVING?

## ENTRANCE DATA

NAME AND LOCATION OF SCHOOL LAST ATTENDED  
N.Y.T.C.CLARK COUNTY SCHOOL ENTERED  
Western H.S.

DATE

GR.

CODE

DATE

GR.

WITHDRAWAL REASON OR DESTINATION

CODE

1-28-66

10

R4

3-8-66

10

Withdrawal

W-5

## WITHDRAWAL DATA

## INTELLIGENCE TEST DATA

Date Grade Name of Test and Form

Total Score

## CUMULATIVE TEST RECORD

## SUPPLEMENTARY TEST DATA (Aptitude, Personality, Interest, etc.)

Date Grade

Name of Test and Form used

AREA MEASURED

(Title Columns)

## ACADEMIC RECORD

KIDN. TO GRADE 5

## ACHIEVEMENT TEST DATA

Date Grade Name of Test and Form

Math Reading Spelling Language Arts Social Studies

SUBJECT

ARITHMETIC

ART

COOPERATION

ENGLISH

HEALTH

MUSIC

PHY. ED.

READING

SCIENCE

SOCIAL STUDIES

GEOGRAPHY

HISTORY

SPELLING

WRITING

DAYS PRESENT

DAYS ABSENT

PROMOTED TO

SCHOOL YEAR

TEACHER'S NAME

AND

SCHOOL

## KINDERGARTEN

## GRADING SCHEDULE

## GRADES 1 THRU 6

NO GRADES "PROMOTED" OR  
"MORE RINGS TO ARTEN"  
RECOMMENDED SHOULD BE  
RECORDED WITH ATTENDANCE  
DATAA 95-100% EXCELLENT  
B 85-95% ABOVE AVERAGE  
C 75-85% AVERAGE  
D 65-75% BELOW AVERAGE-PASSING  
F BELOW 65% UNSATISFACTORY  
NOT PASSING

CCSD0032

AA2862

EXHIBIT 62

EXHIBIT 62

### Declaration of Johnny Hudson

I, Johnny Hudson, hereby declare as follows:

1. I am fifty-five years old. I currently reside in Clark County, Nevada. I am Marlo Thomas's cousin. His maternal aunt, Emma Nash, is my mother. I am about ten years older than Marlo.
2. Growing up, I visited my aunt Georgia's home every day. I spent the night sometimes. Georgia and my aunt Shirley lived together up the street from me and my parents. Marlo also spent a lot of time at my house, and at our uncle John's house.
3. Shirley had six children, my mom had six, and Georgia had four. It was a struggle for everybody. Many times there was nothing to eat and we all went to bed hungry, including Marlo and his brothers. The following day somebody would always find food from somewhere. We went from house to house sharing food. We sometimes ate sugar bread, which is bread with mayonnaise sprinkled with sugar for energy.
4. Larry, Darrell, and Marlo were whipped with switches, extension cords, water hoses, hot wheel tracks, plastic bats, and broomsticks. All the cousins got beatings from our mothers and aunts. When I did something bad, Shirley would let days pass where I thought she forgot about it, then she would appear at night and wake me up to whelp me. She did the same thing to Marlo. You could tell when someone got a whipping. Sometimes Marlo had bruises and

marks on his body. Larry and Darrell had bruises too. We all got our share of whippings. I remember an incident where Marlo's entire eye was bloody red and the white couldn't be seen. He was around seven or eight.

5. Bobby Lewis was in and out of Georgia's home. Bobby was illiterate and didn't know how to express himself. I was able to talk to Uncle Bobby because he liked doing tricks on me. He'd take a shot glass of his favorite drink—Jim Beam, Seagram's, or Canadian Mist—and tell me to taste it to put hair on my chest.
6. Bobby was abusive; emotionally, psychologically, and physically. I saw Bobby pick Marlo up and throw him into a wall. Marlo was about eight at the time. His imprint was left in the wall where the sheetrock busted. Marlo got up real slow. I also saw Bobby knock the hell out of Marlo with his fist, sending him over Georgia's couch.
7. Bobby beat the crap out of Georgia. They were always fighting. I saw Bobby hit Georgia, Georgia hit back, him hit her again, then Georgia go get a skillet and knock the mess out of him. When I was ten years old, I walked into Georgia's house and she was beating the crap out of Bobby with a metal broomstick. She beat him silly. Later that day Georgia had a black eye. Georgia yelled, screamed, and threw bottles, ashtrays, and perfume bottles at Bobby. Sometimes they fought in front of the kids, including Marlo; they saw and heard it.

8. The whole family saw Bobby get arrested for his last charge. Bobby came to my house to see my stepfather, Robert Nash. Larry, Darrell, Marlo, and I were there playing with some of my other cousins. Georgia, Shirley and other aunts were there. I saw police all around the block. Shortly afterwards, police stormed the house. They had guns drawn at the front and back door waiting on Bobby to surrender. Marlo cried as they put Bobby in the Car. When Bobby went to prison, it had a deep impact on Marlo.
9. When Marlo was sent to Southern Desert Correctional Center, Bobby and I were there. Marlo saw his dad every day and they spent time together. Bobby sent for me to write his letters for him. Bobby dictated and I wrote them.
10. Marlo experienced other traumas in his life. When he was around fifteen, his best friend died in front of him. They were walking up Lake Mead back when it was a two lane street. There were no streetlights on that stretch, other than light from an apartment complex. The streets were dark and the friend was hit by a truck. The boy was dragged down the street until the truck eventually stopped. Marlo watched as it happened then held his friend in his arms while he died. Marlo told me the skin on the boy's chest, back, and legs were gone. He could see his friend's heart beating because his skin and chest were ripped open.
11. Marlo was shot at by the Donna Street Crips. The DSC boys went to Gerson Park, drove up the main drag, and did a drive by shooting. Several people were



injured and killed. Marlo was in his late teens at the time and had a good partner killed.

12. When I was a young man, my aunts Georgia and Rebecca gave me a brief family history. They told me about the incest in my family. Georgia said she had been sexually abused by her dad and was lucky she didn't get pregnant.
13. My big sister, Barbara, and I also talked about things that happened in my family. We shared with each other that we had both been sexually abused by our brother, Matthew's, father, Ike, and also by our cousin Michael Thomas. Michael was the son of our uncle, JT. Barbara was also sexually abused by our stepfather, Robert Nash. All the molestation happened here in Las Vegas.
14. I was between the ages of five and seven when I was molested. Ike molested me in abandoned buildings or any other place we could stop on our way to ~~my~~ <sup>his</sup> ~~mom's~~ <sup>JH</sup> house. He tried to penetrate me but it was impossible because it hurt too badly. Ike made me perform oral sex on him, and so did Michael. ~~Michael~~ <sup>Ike</sup> ~~abused~~ <sup>JH</sup> me at home, in the bathroom. I'm not sure where Barbara was abused.
15. Ike was a creep. I know Georgia didn't like him. I once heard him rape my mother. I was around seven years old and outside playing with my brother David. I heard my mom tell Ike, "No, no, please stop."
16. I was once at my aunt Shirley's house and I watched her beat my cousin John from one end of the house to the other because she walked in on him messing around with his sister, Sabrina.

17. Cassie Ragsdale is the first person from Marlo's defense team to ever contact me. If I had been asked to testify at Marlo's original trial in 1997, or his resentencing in 2005, I would have agreed and told the jurors the things in this declaration.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in Clark County, Nevada, on June 29, 2017.

  
\_\_\_\_\_  
Johnny Hudson

EXHIBIT 63

EXHIBIT 63

### Declaration of Matthew Young

I, Matthew Young, hereby declare as follows:

1. I am fifty years old. I currently reside in Clark County, Nevada. I am Marlo Thomas's cousin. His maternal aunt, Emma Nash, is my mother. My mother was the second oldest of her siblings. She died in 1999.
2. My biological father was Ike Gordon Young. I never knew him; he died in a car crash when I was less than seven years old. I heard that Ike molested some of my siblings. My stepfather, Robert Nash, became a father figure to me by the time I was five.
3. Marlo's mother, Georgia, was like a second mother to me. We were very close. When I was older, she cosigned on a car loan for me. I never stayed overnight at Georgia's but I spent a lot of time at her house. Georgia was a hard worker and tried to make a living. She worked evenings in the school district. Georgia was going to work as the kids came home from school. When she got home from work, the kids were in bed.
4. Marlo's family went through tough times growing up. Georgia was on food stamps and towards the end of the month there was no food in the house. When I was over at the house, we ate whatever was available: cheese sandwiches, sugar sandwiches, syrup sandwiches, and cereal. We added water to the milk for cereal to make it go further. When the first person finished their bowl of cereal, the second person used the same bowl so as not to waste the left over

milk, and so no one had to eat dry cereal. The bowl was passed from person to person. The cereal wasn't sugar coated so it was hard to eat without having sugar to put on it.

5. When I was around eleven years old, I remember Georgia got a red eviction notice taped to her door so she and her three sons came to live with my family for almost two years. Larry is six months older than me and Darrell is a year younger than me. Marlo was younger so I didn't spend as much time with him. I was closest to Larry.
6. Georgia was strict. The boys got whippings and had to pick their own switches. The whippings left marks on their bodies. Georgia grabbed them by the collar and got in their faces to get their attention. Out of all Georgia's boys, Marlo was beaten the most. Georgia grabbed him and punched him, her fist landing on his chest, face, anywhere.
7. Georgia was always aggressive with my brother Johnny. She went to town beating Johnny; she threw knuckles at him. Johnny was the black sheep of our family. One time, she grabbed Johnny and called him a son of a bitch. Johnny didn't understand it was an expression and thought she was calling our mother a bitch. Georgia and Johnny got into it. I remember her grabbing him by the neck.
8. When we were grown, Marlo and I talked about how he didn't get the attention he should have gotten from Georgia. Marlo acted out because he felt she

treated his older brothers better than him: he wanted attention and tried to get it. Georgia looked at me as her son more than she did Marlo. She always did things for me but told Marlo no.

9. Even when my mom said no, Georgia went behind her back and made things happen for me. One time, Georgia gave me twenty dollars for a show and tell project at school because I didn't have anything to take. I went to school and purchased an ice cream as my show and tell. A black teacher, Ms. Taylor, accused me of stealing the ice cream. I called my home several times until Georgia answered the phone so I could tell her what happened. The following day during recess, I saw Georgia walking in the field with both her fists balled up. She confronted Ms. Taylor and told her never to accuse me of stealing again. Her fists were balled up to Ms. Taylor's face but she never hit her. Each time Georgia got mad, you saw her bite the inside of her jaws and raise her fist, and you knew to leave her alone. Afterwards, Ms. Taylor apologized to me. She knew how poor my family was and that I couldn't afford the ice cream so she thought I stole it.
10. Every year, the Thomas family had a big fish fry. It rotated from house to house, but was mainly at my aunt Jonnie's. Jonnie, her husband Eddie, and my uncle John went overnight fishing. When they returned, the women cleaned and fried the fish. Most of the family attended the cookout. Children played all kinds of games in the yard while the adults cooked, played cards and

dominos, and drank. Eddie drank Coors light while Georgia and her sisters drank wine coolers.

11. I didn't spend much time around Marlo's dad, Bobby Lewis, but I heard my aunts talk about how he physically abused Georgia and talked down to her. The police were called a couple of times on Bobby for beating Georgia. Bobby called Georgia a fat bitch and told her she would never amount to anything. Marlo told me he was angry with Bobby for saying those things to his mom.
12. When Bobby got out of prison, Darrell was happy to have him back because he didn't have any other father figures. Larry never knew his father. PJ's dad, Paul Sr., was a decent man but Georgia was just mean. When Georgia got to the point of anger, she became aggressive. There was no settling her down once she was mad. Of all my aunts and uncles, you didn't mess with Georgia.
13. Incest was a big thing in my mother's family. It ran through several generations. Many of my aunts were molested by their dad. People also talked about my cousin John molesting his neighbor's daughter. John was arrested and went to a juvenile facility for a while. When I was around ten, I was molested by my sister Barbara's girlfriends.
14. Even though my mom was in the home, Barbara was more of a mother figure to me. My mom and Robert mainly stayed in their bedroom. Barbara worked at a seed program and bought things like clothes and underwear for me and my brother Ronnie. After Barbara took us to church, she made me and Ronnie

take naps on the pallets in her bedroom where we slept. Barbara allowed her girlfriends to come over and abuse us. Things always happened to me in Barbara's room and they took Ronnie to another part of the house. Two or three of Barbara's friends performed oral sex on me and made me perform oral sex on them. They also made me penetrate them. The girls were from the neighborhood and church. One of them was called Tammy. Barbara knew what was happening to us. She sometimes asked me what Tammy had done and told me what Tammy had said she was going to do to me. The abuse lasted two or three years, until I was around thirteen. At that time, we moved to another house and Barbara moved in with her boyfriend. It was really tough for me for a while, it made me feel crazy. Ronnie never talked about what happened to him.

15. I believe the sexual abuse I experienced caused me to act out towards other kids. When I was around thirteen, I was in a church van with another girl my age. I rubbed up against her and made sexual advances. We were caught messing around in the van. My mom and Barbara were told about the incident and the girl and I were kept apart.
16. When I was twenty, I had my own apartment. I lived beside a family with a daughter, Janie Allen, who was fifteen. I began a sexual relationship with Janie and she became pregnant. Janie's mother was heavy into church and made us get married. We went on to have four children together.



17. While married to Janie, I worked at Cheyenne High School as a custodian. A young girl, Sylvia, who was around fourteen, worked in the custodian department summer program, along with her brother, George. I met their mother, Clara, when she picked up the children. I started doing work around their home like cutting grass. The following year when Sylvia worked in the summer program, I started messing with her. We had sex everywhere: around the high school, in my car, at Clara's home, and in my home when my wife wasn't there. Sylvia became pregnant and the news spread throughout the school that I was the father. I was arrested and lost my job. I was charged with sexual seduction and sentenced to five years. I served two years and eight months.
18. Janie and I divorced while I was in prison. Sylvia had her baby and reached out to me. We kept in touch and six months after my release we were married and she was pregnant again. I received counseling and worked programs to help me with the sexual abuse case. If I had received the proper counseling after I was molested, my life would have been different. Things wouldn't have turned out the way they did with the young girls.
19. I believe what happened with Barbara's friends was her way of acting out from the sexual abuse she experienced as a child. I know our older brother Johnny acted out from his sexual abuse as a child by sexually abusing young girls in the neighborhood. The girls were usually about seven years younger than Johnny. My brother David wasn't subjected to any abuse because he was

looked at as the golden child in our family. My sister Victoria stayed to herself and probably escaped any abuse.

20. Cassie Ragsdale is the first person from Marlo's defense team to ever contact me. If I had been asked to testify at Marlo's original trial in 1997, or his resentencing in 2005, I would have agreed and told the jurors the things in this declaration.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in Clark County, Nevada, on July ~~30~~, 2017.

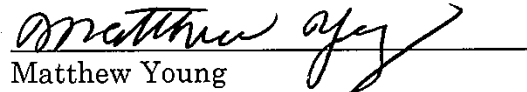
  
Matthew Young

EXHIBIT 64

EXHIBIT 64



AA2878

EXHIBIT 65

EXHIBIT 65

MTThomas SPD02137

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT**  
**Detention Services Division**  
**Information Report**

**Thomas, Marlow Demetrius (01060797)**

**Notification To:** Classification Group  
**CC To:** ; Fifth Floor, Sergeant

**Inmate(s):** ☒ Thomas, Marlow Demetrius

<b>Incident Date:</b>	07/17/97	<b>Incident Time:</b>	1440
<b>Reporting Officer's P#:</b>	4679	<b>Reporting Officer's Name:</b>	Coker, H. B.
<b>Housing Unit:</b>	5D07	<b>Report Date/Time:</b>	07/17/97 04:59 PM
<b>Post ID:</b>	Post0050 Security/CCDC		

**Short Description:** Disrespect.

**Full Description:**

On the above date and approx. time, I/M Thomas yelled at me you Opie taylor looking ass hole suck my dick and called me a punk ass mother fucker. I told I/M Thomas that he had lost his next free time.

**Action Taken:**

Loss of free time on 07/26/97

SPD02137

AA2880

MTThomas SPD02139

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT**  
**Detention Services Division**  
**Information Report**

**Thomas, Marlow Demetrius (01060797)**

**Notification To:** Classification Group  
**CC To:** ; Fifth Floor, Sergeant

---

**Inmate(s):** ☒ Thomas, Marlow Demetrius -

---

---

<b>Incident Date:</b>	07/17/97	<b>Incident Time:</b>	1400
<b>Reporting Officer's P#:</b>	4679	<b>Reporting Officer's Name:</b>	Coker, H. B.
<b>Housing Unit:</b>	5D07	<b>Report Date/Time:</b>	07/17/97 04:50 PM
<b>Post ID:</b>	Post0050 Security/CCDC		

**Short Description:** Disrespect.

**Full Description:**

On the above date and approx. time, I was giving another I/M his property when I/M Thomas yelled at me to suck his dick and called me a punk ass mother fucker. I told I/M Thomas that he had lost his next free time. When I did this Thomas said I'm going to fuck you in your ass.

**Action Taken:**

Loss of free time on 07/23/97

SPD02139

AA2881

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT**  
**Detention Services Division**  
**Information Report**

**Thomas, Marlow Demetrius (01060797)**

**Notification To:** Classification Group  
**CC To:** ; Fifth Floor, Sergeant

**Inmate(s):** ☒ Thomas, Marlow Demetrius -

<b>Incident Date:</b>	07/17/97	<b>Incident Time:</b>	1345
<b>Reporting Officer's P#:</b>	4679	<b>Reporting Officer's Name:</b>	Coker, H. B.
<b>Housing Unit:</b>	5D07	<b>Report Date/Time:</b>	07/17/97 04:48 PM
<b>Post ID:</b>	Post0050 Security/CCDC		

**Short Description:** Disrespect.

**Full Description:**

On the above date and approx. time, I/M Thomas yelled at me to suck his dick and called me a punk ass mother fucker. I told I/M Thomas that he had lost his next free time. He told me I could go fuck my self.

**Action Taken:**

Loss of free time on 07/21/97



Thomas #57582

6. PRISON PRESENTATION

EN Endo's report states while she was making rounds  
 in Thomas was masturbating. He was told it is  
 inappropriate behavior.

EVIDENCE RELIED UPON: EN Endo report is clear that Thomas was  
 masturbating while making rounds, plea by Jm

CONFIDENTIAL INFORMATION (CI) CHECKLIST (BOTH A & B MUST BE "YES" TO RELY ON CI)

- A. CI RELIABLE: ☐ YES ☐ NO ☒ N/A  
 CHECK AT LEAST ONE BOX BELOW  
☐ INVESTIGATING OFFICER TESTIFIES PERSONALLY AS TO THE TRUTHFULNESS OF THE CONFIDENTIAL INFORMATION IN HIS REPORT  
☐ CORROBORATING TESTIMONY  
☐ DISCIPLINARY CHAIR HAS FIRST HAND KNOWLEDGE OF SOURCE AND SOURCE HAS BEEN RELIABLE IN PAST  
☐ IN-CAMERA REVIEW OF DOCUMENTS; FOUND RELIABLE

B. STATEMENT BY PRISON OFFICIAL: SAFETY PREVENTS DISCLOSURE OF CI ☐ YES ☒ NO

7. FINDINGS

COUNT/CHARGE	REDUCE TO:	GUILTY	NOT GUILTY	DISMISS	COUNT/CHARGE	REDUCE TO:	GUILTY	NOT GUILTY	DISMISS
I M130	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	V	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
II 61	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	VI	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
III	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	VII	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
IV	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	VIII	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OTHER; SPECIFY:

8. SANCTIONS

SANCTION	# OF DAYS	BEGIN DATE	END DATE
A. D.S.	90	7-8-01	12-10-01
B.			
C.			
D.			
E.			

STAT FORFEITURE REFERRAL: ☐ YES ☒ NO RECOMMENDED CATEGORY: ☐ A ☐ B ☐ C

ADMINISTRATIVE ASSESSMENT AMOUNT: \$

OTHER; SPECIFY:

9. ANCILLARY INFORMATION/INSTRUCTIONS

- REFER TO PAROLE BOARD AS VIOLATION OF PAROLE: ☐ YES ☒ NO  
 - POST DISCIPLINARY CLASSIFICATION: ☐ YES ☒ NO DATE: 6-19-00  
 - DISC/BEG SANCTION REQUIRES REVIEW BY DIRECTOR: ☐ YES ☒ NO  
 - ICIS RECORD COMPLETED: DATE: May 19, 2000 BY WHOM: L. Puerer

10. SIGNATURE OF COMMITTEE

CHAIRMAN: ADAM ENDO, CCWST (Adam Endo)  
 MEMBER: (Signature)  
 MEMBER: (Signature)  
 MEMBER: (Signature)

11. DISTRIBUTION INSTRUCTIONS

ORIGINAL - I-FILE COPY - INMATE COPY - CHARGING EMPLOYEE

MTThomas SPD03495



Chief/SDAG, CJD

Traci Dory, Legal Secretary, CJD

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717

Telephone (702) 687-4170  
Fax (702) 687-5798

Website: <http://www.state.nv.us/ag/>

E-mail: [aginfo@govmail.state.nv.us](mailto:aginfo@govmail.state.nv.us)  
PRISON CRIMINAL REFERRAL MEMORANDUM

FRANKIE SUE DEL PAPA  
Attorney General

BROOKE A. NIELSEN  
Assistant Attorney General

TO: Adam Endel, CCWS III  
Ely State Prison

SUBMISSION DATE: December 1, 1999  
COMPLETED REVIEW DATE: 1-28-00

FROM: \_\_\_\_\_  
(1st Reviewing Deputy)

*Traci Dory*  
\_\_\_\_\_  
(2nd Reviewing Deputy)

CRIMINAL JUSTICE DIVISION AG REFERRAL NO. ESP-99-26-AG

-----  
We have received a criminal prosecution referral, your control number 99-0022, dated November 5, 1999, with regard to suspect(s) Marlo Thomas, NDOP #50682, for the crime(s) of Indecent or Obscene Exposure, allegedly committed at Ely State Prison, Ely, Nevada, on or about September 11, 1999.

We have considered the material you sent to us. Our disposition is as follows:

1. ☐ A criminal prosecution will be initiated by the attorney general.
2. ☒ A criminal prosecution will not be initiated by the attorney general.
  - A. ☐ Reasons for declining criminal prosecution:
  - B. ☒ No reason for declining criminal prosecution will be documented here.
3. ☐ No decision can be made because other information is needed. (See attached explanatory memo).
4. ☐ Comments

cc: ☒ Bill Donat AWP, ☒ ESP ("I" File)  
☒ Traci Dory, Legal Secretary, Criminal Justice Division  
☒ Rod Countryman, Inspector General, NDOP  
☒ Shannon Moyle, Acting Warrant Coordinator, NDOP  
☐ Other

MTThomas SPD03496



Chief/SDAG, CJD

Traci Dory, Legal Secretary, CJD

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (775) 684-1100  
Fax (775) 684-1108

Website: <http://www.state.nv.us/ag/>

FRANKIE SUE DEL PAPA  
Attorney General

PRISON CRIMINAL REFERRAL MEMORANDUM

THOMAS M. PATTON  
Assistant Attorney General

TO: Adam Endel, CCWS III  
Ely State Prison

SUBMISSION DATE: January 10, 2000  
COMPLETED REVIEW DATE: 1-28-00

FROM: \_\_\_\_\_  
(1st Reviewing Deputy)

*Traci Dory*  
(2nd Reviewing Deputy)

CRIMINAL JUSTICE DIVISION AG REFERRAL NO. ESP-00-02-AG

-----  
We have received a criminal prosecution referral, your control number 99-0035, dated December 17, 1999, with regard to suspect(s) Marlo Thomas, NDOP #50682, for the crime(s) of Indecent or Obscene Exposure, allegedly committed at Ely State Prison, Ely, Nevada, on or about October 21, 1999.

We have considered the material you sent to us. Our disposition is as follows:

1. ☐ A criminal prosecution will be initiated by the attorney general.
2. ☒ A criminal prosecution will not be initiated by the attorney general.
  - A. ☐ Reasons for declining criminal prosecution:
  - B. ☒ No reason for declining criminal prosecution will be documented here.
3. ☐ No decision can be made because other information is needed. (See attached explanatory memo).
4. ☐ Comments

cc: ☒ Bill Donat AWP, ☒ ESP ("I" File)  
☒ Traci Dory, Legal Secretary, Criminal Justice Division  
☒ Rod Countryman, Inspector General, NDOP  
☒ Shannon Moyle, Acting Warrant Coordinator, NDOP  
☐ Other

"Protecting Citizens, Solving Problems, Making Government Work"

40x 3352C

SPD03496

AA2885

MTThomas SPD03497



Chief/SDAG, CJD

Traci Dory, Legal Secretary, CJD

635

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

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Fax (775) 684-1108

Website: <http://www.state.nv.us/ag/>

FRANKIE SUE DEL PAPA  
Attorney General

E-mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)  
PRISON CRIMINAL REFERRAL MEMORANDUM

THOMAS M. PATTON  
Assistant Attorney General

TO: Adam Endel, CCWS III  
Ely State Prison

SUBMISSION DATE: February 4, 2000

COMPLETED REVIEW DATE: 3-6-00

FROM: R. R. Bings  
(1st Reviewing Deputy)

Robert E. Wieland  
(2nd Reviewing Deputy)

CRIMINAL JUSTICE DIVISION AG REFERRAL NO. ESP-00-04-AG

-----  
We have received a criminal prosecution referral, your control number 99-0044, dated January 4, 2000, with regard to suspect(s) Marlo Thomas, NDOP #50682, for the crime(s) of Indecent or Obscene Exposure, allegedly committed at Ely State Prison, Ely, Nevada, on or about November 26, 1999.

We have considered the material you sent to us. Our disposition is as follows:

1. ☐ A criminal prosecution will be initiated by the attorney general.
2. ☒ A criminal prosecution will not be initiated by the attorney general.
  - A. ☐ Reasons for declining criminal prosecution:
  - B. ☒ No reason for declining criminal prosecution will be documented here.
3. ☐ No decision can be made because other information is needed. (See attached explanatory memo).
4. ☐ Comments

cc: ☒ Bill Donat ANP, ☒ ESP ("I" File)  
☒ Traci Dory, Legal Secretary, Criminal Justice Division  
☒ Rod Countryman, Inspector General, NDOP  
☒ Shannon Moyle, Acting Warrant Coordinator, NDOP  
☐ Other

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(0) 3352C

SPD03497

AA2886

MTThomas SPD03498



Chief/SDAG, CJD

Eva Crouch, Legal Secretary, CJD

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

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E-mail: [aginfo@govmail.state.nv.us](mailto:aginfo@govmail.state.nv.us)

FRANKIE SUE DEL PAPA  
Attorney General

THOMAS M. PATTON  
Assistant Attorney General

PRISON CRIMINAL REFERRAL MEMORANDUM

TO: Adam Endel, CCWS III  
Ely State Prison

SUBMISSION DATE: 07/07/00

COMPLETED REVIEW DATE: 8/17/01

FROM: R. Briggs  
(1st Reviewing Deputy)

L. J. [Signature]  
(2nd Reviewing Deputy)

CRIMINAL JUSTICE DIVISION AG REFERRAL NO. ESP-00-30-AG

-----  
We have received a criminal prosecution referral, your control number 00-0019, dated June 20, 2000, with regard to suspect(s) Marlo Thomas, NDOP #50682, for the crime(s) of Indecent or Obscene Exposure, allegedly committed at Ely State Prison, Ely, Nevada, on or about April 30, 2000.

We have considered the material you sent to us. Our disposition is as follows:

1. ☐ A criminal prosecution will be initiated by the attorney general.
2. ☒ A criminal prosecution will not be initiated by the attorney general.
  - A. ☐ Reasons for declining criminal prosecution:
  - B. ☐ No reason for declining criminal prosecution will be documented here.
3. ☐ No decision can be made because other information is needed. (See attached explanatory memo).
4. ☐ Comments

cc: ☒ Bill Donat AWP, ESP("I" File)  
☒ Eva Crouch, Legal Secretary, Criminal Justice Division  
☒ Rod Countryman, Inspector General, NDOP  
☒ Shannon Moyle, Acting Warrant Coordinator, NDOP  
☐ Other

"Protecting Citizens, Solving Problems, Making Government Work"

(0) 3352C

SPD03498

AA2887

MTThomas SPD05086

ADMINISTRATIVE SEGREGATION  
CLASSIFICATION RESULTS NOTICE

TO: Thomas, Marlow 32824 DATE: 2-12-93  
(inmate's name and number)

FROM: CLASSIFICATION COMMITTEE

INSTITUTION: ESP

Your request to be classified from Administrative Segregation to the General Population has been considered with the following results:

1. ☐ Your request has been approved.
- ☐ a. Re-integration can take place now.
- ☐ b. Re-integration is subject to 60 day plan.  
        (see reverse side).
2. ☒ Your request has been disapproved based upon the following consideration(s).  
    (see reverse side for protracted goals).
- ☐ a. History of repetitive institutional violence, assaults, fights.
- ☐ b. Repetitive involvement in controlled substance abuse.
- ☐ c. Sexually assaultive behavior.
- ☐ d. Escape or recent attempted escape.
- ☐ e. Prison gang affiliation.
- ☒ f. Other.

Explanation of above (required):

Pend. Invest. -  
victim of assault. Placed on  
Unit Alone

3. ☐ Your request has been deferred for        days, for the following reason(s):
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Your next review before the Classification Committee is: 3-12-93

[Signature]  
ASSOCIATE WARDEN OPERATIONS

[Signature]  
ASSOCIATE WARDEN PROGRAMS

cc: I-file; C-file

SPD05086

AA2888

② 8B 48A clb PH

*1/19/93  
Remain Ad Seg  
for own safety  
Kubham/T Johnson  
Barnett*

ADMINISTRATIVE SEGREGATION  
NOTICE OF CLASSIFICATION HEARING

INMATE'S NAME: THOMAS, MARLOW NUMBER: 33824 DATE: 01/16/93

You have been moved to a lock-up area of FSP  
(institution)

You will appear before an Administrative Segregation Classification Committee on:

01/19/93 10:00 UNIT 9  
(date) (approximate time) (location)

REASON: SAFETY & SECURITY

\* SEE ATTACHED

PROVISIONS

1. You may have the assistance of inmate substitute counsel or a staff member in preparing for the meeting. The substitute counsel or staff member may attend the meeting with you. You shall be expected to be responsible for your own presentation except in those situations where assistance is necessary to an adequate presentation of your case due to your illiteracy, complexity of the issues involved, or other reason deemed sufficient by the Committee.

INMATE SUBSTITUTE COUNSEL/STAFF ASSISTANCE REQUESTED: ( ) YES ( ) NO

NAME: \_\_\_\_\_

2. You may present witnesses and written statements to the Committee and you or your substitute counsel/staff member assisting may ask questions of persons participating in the meeting unless doing so would be redundant, irrelevant, or unduly hazardous to the institution's security or correctional goals. Witnesses may be excluded if their testimony is irrelevant, redundant or otherwise unnecessary or would jeopardize security.

WITNESSES REQUESTED: ( ) YES ( ) NO

NAMES: \_\_\_\_\_

3. In the event that the Committee is concerned with your alleged involvement in an incident for which you could face criminal charges, you have the right to remain silent at the meeting and to know that anything you say at the meeting may be used against you in a criminal prosecution.
4. In addition to the specific reasons for which the meeting is being conducted, the Committee may consider your past and present institutional attitude, adjustment and record and criminal record.
5. This Notice is only required at the initial Administrative Segregation Classification Committee Hearing. Subsequent hearings, if required, are set forth by Departmental regulations.
6. If the Warden/designee has reasonable cause to believe that you are an immediate danger to yourself or to others or to the security of the institution, he may place you in Administrative Segregation prior to an Administrative Segregation meeting. In such an event, the meeting shall be held within three (3) working days after you are placed in Segregation. This period may be extended by special approval of the Warden. You shall be notified, in writing, of any such extensions and the reasons therefor.

*for Sgt C. M. ...*  
CORRECTIONAL CASEWORKER SPECIALIST

*Marlo Thomas*

cc: I-file  
C-file

DOP-2003 (9/91)

SPD05092

AA2889

6. PRISON PRESENTATION

Off Tom Drabas' written report that Thomas pulled his penis out of his pants and began masturbating standing in his cell window, so as to be seen through his cell window. Thomas uttered abusive language, pushing his cell window call button drawing attention to himself.

EVIDENCE RELIED UPON: Drabas' written report & during deliberation she was contacted and Thomas was uttering abusive language and masturbating in his cell window.

CONFIDENTIAL INFORMATION (CI) CHECKLIST (BOTH A & B MUST BY "YES" TO RELY ON CI)

- A. CI RELIABLE: ☐ YES ☒ NO ☐ N/A  
 CHECK AT LEAST ONE BOX BELOW  
☐ INVESTIGATING OFFICER TESTIFIES PERSONALLY AS TO THE TRUTHFULNESS OF THE CONFIDENTIAL INFORMATION IN HIS REPORT  
☐ CORROBORATING TESTIMONY  
☐ DISCIPLINARY CHAIR HAS FIRST HAND KNOWLEDGE OF SOURCE AND SOURCE HAS BEEN RELIABLE IN PAST  
☐ IN-CAMERA REVIEW OF DOCUMENTS; FOUND RELIABLE

B. STATEMENT BY PRISON OFFICIAL: SAFETY PREVENTS DISCLOSURE OF CI ☐ YES ☒ NO

7. FINDINGS

COUNT/CHARGE	REDUCE TO:	GUILTY	NOT GUILTY	DISMISS	COUNT/CHARGE	REDUCE TO:	GUILTY	NOT GUILTY	DISMISS
I <u>69</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	V	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
II <u>MD</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	VI	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
III	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	VII	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
IV	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	VIII	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OTHER; SPECIFY:

8. SANCTIONS

A. SANCTION Disciplinary Detention # OF DAYS 5 BEGIN DATE Suspended END DATE for 30  
 B. days  
 C. conduct  
 D. conduct  
 E. conduct

STAT FORFEITURE REFERRAL: ☐ YES ☒ NO RECOMMENDED CATEGORY: ☐ A ☐ B ☐ C

ADMINISTRATIVE ASSESSMENT AMOUNT: \$

OTHER; SPECIFY: Thomps already sanctioned DS, DD, Detention, Cat A status referred, loss of Electrical Appliances.

9. ANCILLARY INFORMATION/INSTRUCTIONS

- REFER TO PAROLE BOARD AS VIOLATION OF PAROLE: ☐ YES ☒ NO  
 - POST DISCIPLINARY CLASSIFICATION: ☐ YES ☒ NO DATE: As scheduled  
 - DISC/SEQ SANCTION REQUIRES REVIEW BY DIRECTOR: ☐ YES ☒ NO  
 - NCIS RECORD COMPLETED: DATE: 4-29-94 BY WHOM: Donna W. Ward

10. SIGNATURE OF COMMITTEE

CHAIRMAN: William Boat AWP Bill Boat  
 MEMBER: Becky Messick AWST Becky Messick  
 MEMBER: Mark Drabin SC/O 5/1/94

11. DISTRIBUTION INSTRUCTIONS

ORIGINAL - I-FILE COPY - INMATE COPY - CHARGING EMPLOYEE

DOP #3019 (04/93)

SPD05172

AA2890



NEVADA DEPARTMENT OF PRISONS  
CODE OF PENAL DISCIPLINE  
DISCIPLINARY FORM I  
"NOTICE OF CHARGES"

APR 21 1994

1. INMATE INFORMATION (PRINT)

LAST NAME: Thomas FIRST NAME: Marlow  
ID#: 32824 CURRENT LOCATION: 3B29

2. VIOLATION INFORMATION (PRINT)

CHARGING EMPLOYEE NAME: Jon Drahos TITLE: Senior Correctional Officer  
DATE OF INCIDENT: April 19, 1994 DATE CHARGES WRITTEN: April 19, 1994  
EVIDENCE COLLECTED: ☐ YES ☐ NO EVIDENCE HELD BY: \_\_\_\_\_  
CHARGES: (List by Number Only; Definitions are listed on reverse side of this form.)  
I 6-9 II Mt-30 III \_\_\_\_\_ IV \_\_\_\_\_ V \_\_\_\_\_  
VI \_\_\_\_\_ VII \_\_\_\_\_ VIII \_\_\_\_\_

3. REPORT OF VIOLATION: (If additional space is required, use and attach supplemental pages, DOP 3016)

On April 19, 1994, Senior Correctional Officer J. Drahos while working assigned post of Unit Three Senior ON TWO Separate Occasions, Inmate M. Thomas #32824 pushed the Button on the Speaker. Due to privacy, I did not respond. At approximately 12:59 p.m. Inmate Thomas #32824 pushed Button again and he hooked up from Belling Courtial Panel. Inmate Thomas #32824 either standing on toilet stool or Reo pulled his penis out of his pants and began masturbating in the cell through the cell window or visible. At approximately 1:25 p.m. Inmate Thomas began to holler drawing attention and again was participating in his own sexually stimulating activities visible through the cell window.

4. SIGNATURE OF CHARGING EMPLOYEE AND SUPERVISOR

SIGNATURE OF CHARGING EMPLOYEE: Senior J. Drahos 246  
SIGNATURE OF SHIFT SUPERVISOR: Sgt. Harry Sande  
(Denotes Review/Approval of Completed Notice; Confirms Initiation of Record in NCIS)

5. SERVICE OF NOTICE (To Be Completed by Hearing Officer)

DATE OF SERVICE: 4-24-94 TIME OF SERVICE: 11:10 p.m.  
PRINTED NAME OF HEARING OFFICER: Sgt. Zoetta Waggener  
SIGNATURE OF HEARING OFFICER: Sgt. Zoetta Waggener  
INMATE SIGNATURE: Inmate refused to sign  
(Signature indicates receipt of notice only; if it is not a plea; refusal to sign should be noted.)

6. DISTRIBUTION INSTRUCTIONS

ORIGINAL - CHAIRMAN OF DISCIPLINARY COMMITTEE  
COPY - INMATE  
COPY - CHARGING EMPLOYEE

AND 47017 (04/01)

SPD05174

AA2891

1. INMATE INFORMATION (Please Print) <small>LAST NAME FIRST</small>	
LAST NAME: <u>Thomas</u>	FIRST: <u>Mark</u>
ID#: <u>50682</u>	COMPLETION DATE: <u>8-2-96</u>
CURRENT LOCATION: <u>SDCC</u>	

2. MENTAL HEALTH CLASSIFICATION (Definitions Listed Below)	
IUD Category (Check One Only) <small>Category</small> I <input checked="" type="checkbox"/> II <input type="checkbox"/> III <input type="checkbox"/> IV <input type="checkbox"/>	Restrictions (Check All That Apply) <small>Restrictions</small> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/>
Interim Reclassification Indicated: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> DATE (Month/Year): _____	
PROVIDER SIGNATURE: <u>[Signature]</u> TITLE: <u>Supervising Psychologist</u>	

3. NARRATIVE <small>Write reports that he is very down but he appears to be attempting to manipulate his situation so he won't have to return to Elly State Prison due to his pending charges &amp; case.</small>	
4. DEFINITION OF MENTAL HEALTH CLASSIFICATION <small>FUNCTIONAL CATEGORIES</small> I. No current impairment. No restrictions. II. Mild impairment; needs mental health services. Limited to facilities with mental health up to 24 hours. No restrictions. III. Moderate impairment; of fairly stable; needs up to 24 hours. Assign to Extended Care Unit (ECU). IV. Severe impairment; needs special housing and/or services. Assign to Mental Health Unit (MHU). V. On psychotropic medication; requires monitoring by psychiatrist. Cleared for local camp only.	

5. INSTRUCTIONS	
Pursuant to AR 614 each inmate will have a classification for medical, dental and mental health which describes his or her functional capacity for work and housing assignments. The classification for each discipline will be established during the intake process. This form serves the dual purposes of documenting the results of the classification, and confirming that the evaluation was completed.	
The PULHED physical profile system (box 5 and 6) will be used as the means to arrive at an inmate's health classification.	
Initial Mental Health Classification is to be documented on this form and routed to the Intake Center data entry operator and the medical file within 14 calendar days of an inmate's arrival.	

NEVADA DEPARTMENT OF PRISONS INMATE HEALTH CLASSIFICATION SYSTEM INITIAL MENTAL HEALTH CLASSIFICATION	
DOP-2667 (9-96)	

2A 22

NEVADA DEPARTMENT OF PRISONS  
NOTICE OF CHARGES

RECEIVED  
SEP 24 1992

NAME: MARLOW THOMAS NUMBER: 32824 DATE: 23 SEPTEMBER 1992

1. You are hereby notified that a written complaint of institutional rule violations has been filed against you by: OFFICER PHYLIS LEANDER  
(PRINT) Charging Employee's Name
2. The Code of Penal Discipline provides that a notice of these charges will be given to you within 7 days of discovery of the violation, or completion of the investigation. This period can only be extended for Exceptional Circumstances. (See the Code of Penal Discipline for definition of Exceptional Circumstances). If this period is extended, a written notice will be given to you, explaining the delay.
3. The Hearing Officer may conduct Summary proceedings at his/her level on minor violations or general violations reduced to minor violations. All other cases must be referred to the Disciplinary Committee.
4. Cases referred to the Disciplinary Committee will be scheduled no less than 24 hours from the service of the Notice of Charges, unless waived by the inmate. The Disciplinary Hearing will be conducted within 30 days of the service of charges. This period can only be extended by Exceptional Circumstances as defined by the Code of Penal Discipline. If extended, a written notice is required.
5. If you are found guilty of a Major or Work Release violation, the Disciplinary Committee may consider referring the violation to the Director for possible forfeiture of all or part of your earned Statutory Time. This sanction is provided by NRS 209. 433, 209.443, and 209.451. The hearing regarding the possible forfeiture of statutory time shall be conducted at the time of the disciplinary hearing and the procedures provided in the Code of Penal Discipline shall apply.
6. If your charges involve a major or work release violation, you may obtain the assistance of an inmate council substitute or a staff advisor.
7. If the major or work release violation constitutes possible criminal misconduct, you have the right to remain silent. Silence shall be construed as a plea of not guilty. Anything you do say may be used against you in a criminal prosecution. You may consult with an Attorney before your disciplinary hearings, however, attorneys cannot represent you at Disciplinary Hearings.
8. Charges: G-1-DISOBEDIENCE OF AN ORDER FROM ANY STAFF MEMBER  
G-9-ABUSIVE LANGUAGE OR ACTIONS TOWARD ANOTHER PERSON  
G-14-FAILURE TO FOLLOW POSTED RULES AND REGULATIONS (E.I.D 7.18)  
INMATES WILL GO IMMEDIATELY TO THEIR CELLS AT COUNT TIME  
G-18-DEFAMING, HINDERING OR INTERFERING WITH A COOPERATING EMPLOYEE IN THE PERFORMANCE OF HIS OR HER DUTIES.

9. Reporting Employee Statement: ON SEPTEMBER 23, 1992 AT APPROXIMATELY 3:00 PM I  
OFFICER PHYLIS LEANDER WAS LOCKING UP THE UNIT 2A WING FOR COUNT.  
THE ORDER HAD BEEN GIVEN TO LOCK DOWN. INMATE MARLOW THOMAS  
WALKED UP TO THE CONTROL ROOM WINDOW DIRECTLY IN MY LINE OF  
SIGHT, GRABBED HIS CROTCH WITH HIS LEFT HAND AND YELLED  
REPEATEDLY IN A LOUD VOICE "GIVE ME SOME PUSSY LEANDER" I  
ORDERED HIM ONCE AGAIN TO LOCK DOWN AND HE THEN SLOWLY MADE  
IT TO HIS CELL.

(IF MORE SPACE IS REQUIRED, ATTACH SUPPLEMENTAL MISCONDUCT REPORT(S))

10. COP. LEANDER  
(PRINT) REPORTING EMPLOYEE'S NAME  
COP. Leander  
REPORTING EMPLOYEE'S SIGNATURE

11. [Signature]  
SHIFT SUPERVISOR'S SIGNATURE (denotes that report was reviewed)

12. Physical Evidence Collected: / /YES AND DESCRIBE: [Signature]

Evidence held for safekeeping by:

EVIDENCE OFFICER

13. Notice of Charges presented to above inmate by: SGT. M. NEASE  
HEARING OFFICER

14. Dated 9-26, 1992, Time: 7:05 PM. I hereby acknowledge receipt of a copy of the charge(s) specified above or attached hereto and a copy of the foregoing notice of charge(s). (Signature indicates receipt only and does not indicate a plea).

MARLOW THOMAS  
SIGNATURE OF INMATE

32824  
DOP NUMBER

Original Disciplinary Committee  
cc: Inmate at time of Notice of Charge(s)  
cc: Reporting Employee

DOJ 2017 (6/05)

SPD05519

AA2893

MTThomas SPD05577

NEVADA DEPARTMENT OF PRISONS

NOTICE OF CHARGES

MAY 28 1992

NAME: Thomas, M NUMBER: 32824 DATE: May 28, 1992

1. You are hereby notified that a written complaint of institutional rule violations has been filed against you by: Scot Babb  
(PRINT) Charging Employee's Name
2. The Code of Penal Discipline provides that a notice of these charges will be given to you within 7 days of discovery of the violation, or completion of the investigation. This period can only be extended for Exceptional Circumstances. (See the Code of Penal Discipline for definition of Exceptional Circumstances). If this period is extended, a written notice will be given to you, explaining the delay.
3. The Hearing Officer may conduct Summary proceedings at his/her level on minor violations or general violations reduced to minor violations. All other cases must be referred to the Disciplinary Committee.
4. Cases referred to the Disciplinary Committee will be scheduled no less than 24 hours from the service of the Notice of Charges, unless waived by the inmate. The Disciplinary Hearing will be conducted within 30 days of the service of charges. This period can only be extended by Exceptional Circumstances as defined by the Code of Penal Discipline. If extended, a written notice is required.
5. If you are found guilty of a Major or Work Release violation, the Disciplinary Committee may consider referring the violation to the Director for possible forfeiture of all or part of your earned Statutory Time. This sanction is provided by NRS 209.433, 209.443, and 209.251. The hearing regarding the possible forfeiture of statutory time shall be conducted at the time of the disciplinary hearing and the procedures provided in the Code of Penal Discipline shall apply.
6. If your charges involve a major or work release violation, you may obtain the assistance of an inmate council substitute or a staff advisor.
7. If the major or work release violation constitutes possible criminal misconduct, you have the right to remain silent. Silence shall be construed as a plea of not guilty. Anything you do say may be used against you in a criminal prosecution. You may consult with an Attorney before your disciplinary hearings, however, attorneys cannot represent you at Disciplinary Hearings.
8. Charges:

6-9 Abusive Language or actions  
toward another person

9. Reporting Employee Statement: On the above date at approximately 3:30 am this officer was walking the unit Four B wing tier. This officer walked in cell 4B32 inmate Thomas #32824 lives in cell 4B32. Inmate Thomas #32824 said "Hey, Bitch why don't you let me fuck you in your ass." On May 25, 1992 at approximately 3:30 am this officer was walking the unit Four B wing tier. Inmate Thomas said "Hey Bitch I want to tie you to a pole and fuck you in your ass." The officer told inmate Thomas #32824 that is his abusive language continued he would be written up.

(IF MORE SPACE IS REQUIRED, ATTACH SUPPLEMENTAL MISCONDUCT REPORT(S))

10. Scot Babb  
(PRINT) REPORTING EMPLOYEE'S NAME Scot Babb  
REPORTING EMPLOYEE'S SIGNATURE

11. Scot M. Neagle  
SHIFT SUPERVISOR'S SIGNATURE (denotes that report was reviewed)
12. Physical Evidence Collected: 1 /YES NO DESCRIBE: \_\_\_\_\_

Evidence held for safekeeping by: \_\_\_\_\_

13. Notice of Charges presented to above inmate by: Det. Ratnas  
EVIDENCE OFFICER

14. Dated 28 May, 1992 Time: 12:45 pm. I hereby acknowledge receipt of a copy of the charge(s) specified above or attached hereto and a copy of the foregoing notice of charge(s). (Signature indicates receipt only and does not indicate a plea).

Marlo Thomas  
SIGNATURE OF INMATE

32824  
DOP NUMBER

Original Disciplinary Committee  
cc: Inmate at time of Notice of Charge(s)  
cc: Reporting Employee

nm0-7017 (6/85)

SPD05577

AA2894

3B.39

144-1-42

NEVADA DEPARTMENT OF PRISONS  
NOTICE OF CHARGES

JAN 21 1992

NAME: THOMAS, MA.

NUMBER: 32824

DATE: January 19, 1992

1. You are hereby notified that a written complaint of institutional rule violations has been filed against you by: H. T. Nasseger  
(PRINT) Charging Employee's Name
2. The Code of Penal Discipline provides that a notice of these charges will be given to you within 7 days of discovery of the violation, or completion of the investigation. This period can only be extended for Exceptional Circumstances. (See the Code of Penal Discipline for definition of Exceptional Circumstances). If this period is extended, a written notice will be given to you, explaining the delay.
3. The Hearing Officer may conduct Summary proceedings at his/her level on minor violations or general violations reduced to minor violations. All other cases must be referred to the Disciplinary Committee.
4. Cases referred to the Disciplinary Committee will be scheduled no less than 24 hours from the service of the Notice of Charges, unless waived by the inmate. The Disciplinary Hearing will be conducted within 30 days of the service of charges. This period can only be extended by Exceptional Circumstances as defined by the Code of Penal Discipline. If extended, a written notice is required.
5. If you are found guilty of a Major or Work Release violation, the Disciplinary Committee may consider referring the violation to the Director for possible forfeiture of all or part of your earned Statutory Time. This sanction is provided by NRS 209. 433, 209.443, and 209.251. The hearing regarding the possible forfeiture of statutory time shall be conducted at the time of the disciplinary hearing and the procedures provided in the Code of Penal Discipline shall apply.
6. If your charges involve a major or work release violation, you may obtain the assistance of an inmate council substitute or a staff advisor.
7. If the major or work release violation constitutes possible criminal misconduct, you have the right to remain silent. Silence shall be construed as a plea of not guilty. Anything you do say may be used against you in a criminal prosecution. You may consult with an Attorney before your disciplinary hearings, however, attorneys cannot represent you at Disciplinary Hearings.
8. Charges: 67, ABUSE LANGUAGE TOWARD A STAFF MEMBER.

9. Reporting Employee Statement: AT APPROXIMATELY 9:37 PM. ON 1-19-92, INMATE THOMAS #32824, CALLED AT ME FROM HIS CELL #3137, THAT HE WAS GOING TO "FUCK MY WIFE" "BACK UP IN THE ASS" THAT I HAD A "HARD HEARD EIGHT OTHER FEMALE", "FAT ASS MULTIPLE FEMALE, SUCH MY DICK" AND AS AND OR.

(IF MORE SPACE IS REQUIRED, ATTACH SUPPLEMENTAL MISCONDUCT REPORT(S))

10. H. T. Nasseger  
(PRINT) REPORTING EMPLOYEE'S NAME [Signature] REPORTING EMPLOYEE'S SIGNATURE
11. [Signature] 1-19-92 9:45 PM.  
SHIFT SUPERVISOR'S SIGNATURE (denotes that report was reviewed)
12. Physical Evidence Collected: / YES / ☒ NO DESCRIBE: N/A

Evidence held for safekeeping by: \_\_\_\_\_

EVIDENCE OFFICER

13. Notice of Charges presented to above inmate by: Sgt. Cardo  
HEARING OFFICER
14. Dated 1/22, 1992 Time: 1:45 PM. I hereby acknowledge receipt of a copy of the charge(s) specified above or attached hereto and a copy of the foregoing notice of charge(s). (Signature indicates receipt only and does not indicate a plea).

X Mario Thomas  
SIGNATURE OF INMATE

32824  
DOP NUMBER

Original Disciplinary Committee  
cc: Inmate at time of Notice of Charge(s)

000-2017 (6/85)

SPD05589

AA2895

MThomas SPD05684

NEVADA DEPARTMENT OF PRISONS

"INMATE INTERVIEW REQUEST"

"LONG FORM"

DATE: 6/19/92

TITLE:

TO: Mr. Watson OWO

SUBJECT: For Visitation approval

DETAILED EXPLANATION

I am writing this in regards to obtaining visitation rights for me and my son. My son's name is Marlow Thomas. I would appreciate it if this matter could be taken into consideration at this time.

Thomas 32824  
ZASB

Thank You!

INMATE NAME: [REDACTED] DOP #: [REDACTED] LOCATION: 6A35

RESPONSE

7/3.

Bill Donald. -

Pls set up one-time visit  
on GP day - contact,

Bill

DATE: \_\_\_\_\_ SIGNED BY: \_\_\_\_\_

SPD05684

AA2896

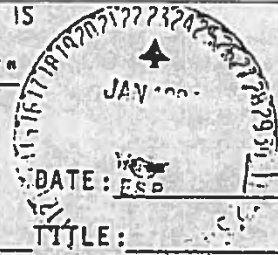


MThomas SPD05685

NEVADA DEPARTMENT OF PRISONS

"INMATE INTERVIEW REQUEST"

"LONG FORM"



TO: C.W. WOLF

SUBJECT: Seeing My father

DETAILED EXPLANATION

I AM writing this form to ask to see my father I have not seen him in 2 years he's been locked up for 12 years in down south for that time I AM locked up but I have been trying to do good for I can see him so I am letting you know what's up his name is Bobby Lewis

THANKS for your time!

INMATE NAME: BILLY THOMAS DOP # 32824 LOCATION: 2 R 29

RESPONSE

1-29-92  
Bill Donat

1-29-92

Your kite has been referred to me for response. Transfers south are not being considered at the present time due to the limited beds throughout the system. You need to contact your caseworker/classification at a later date, but I have no idea when it will actually be realistic to discuss a transfer south (if that is what you are asking).

Bill Donat  
Bill Donat, A/AWP Ely State Prison

DATE: \_\_\_\_\_ SIGNED BY: \_\_\_\_\_

... DOP-2049(10/89)

SPD05685

AA2897

3B-39

227-1-42

RECEIVED  
JAN 22 1992

NEVADA DEPARTMENT OF PRISONS  
NOTICE OF CHARGES

NAME: Thomas, M NUMBER: 32824 DATE: January 19, 1992

1. You are hereby notified that a written complaint of institutional rule violations has been filed against you by: C/O Leavitt  
(PRINT) Charging Employee's Name
2. The Code of Penal Discipline provides that a notice of these charges will be given to you within 7 days of discovery of the violation, or completion of the investigation. This period can only be extended for Exceptional Circumstances. (See the Code of Penal Discipline for definition of Exceptional Circumstances). If this period is extended, a written notice will be given to you, explaining the delay.
3. The Hearing Officer may conduct summary proceedings at his/her level on minor violations or general violations reduced to minor violations. All other cases must be referred to the Disciplinary Committee.
4. Cases referred to the Disciplinary Committee will be scheduled no less than 24 hours from the service of the Notice of Charges, unless waived by the inmate. The Disciplinary Hearing will be conducted within 30 days of the service of charges. This period can only be extended by Exceptional Circumstances as defined by the Code of Penal Discipline. If extended, a written notice is required.
5. If you are found guilty of a Major or Work Release violation, the Disciplinary Committee may consider referring the violation to the Director for possible forfeiture of all or part of your earned Statutory Time. This sanction is provided by NRS 209.433, 209.443, and 209.251. The hearing regarding the possible forfeiture of statutory time shall be conducted at the time of the disciplinary hearing and the procedures provided in the Code of Penal Discipline shall apply.
6. If your charges involve a major or work release violation, you may obtain the assistance of an inmate council substitute or a staff advisor.
7. If the major or work release violation constitutes possible criminal misconduct, you have the right to remain silent. Silence shall be construed as a plea of not guilty. Anything you do say may be used against you in a criminal prosecution. You may consult with an Attorney before your disciplinary hearings, however, attorneys cannot represent you at Disciplinary Hearings.
8. Charges: G1- Disobedience of an order from any staff member  
G9- Abusive language or actions toward another person  
G12- Delaying, hindering or interfering with a correctional employee in the performance of his/her duties.
9. Reporting Employee Statement: On January 19, 1992, at approximately 820 AM, Inmate Thomas, back number 32824, cell 3B39, asked for a roll of toilet paper. I, C/O Leavitt, took him the roll of toilet paper. When I opened the food slot, Inmate Thomas exposed his penis. I gave him a direct order to cover himself. Inmate Thomas didn't comply to the direct order. At approximately 1030 AM I opened Inmate Thomas's food slot to retrieve cleaning supplies, a sponge and a scrub brush. Inmate Thomas had his penis concealed under the scrub brush, on the food slot, in an attempt for me to grab it. I requested him to remove his penis to close the food slot and he did. At approximately 1130 AM Inmate Thomas called me on the intercom and inquired as to whether I liked the length of his penis.  
(IF MORE SPACE IS REQUIRED, ATTACH SUPPLEMENTAL MISCONDUCT REPORT(S))

10. C/O Leavitt  
(PRINT) REPORTING EMPLOYEE'S NAME C/O Leavitt  
REPORTING EMPLOYEE'S SIGNATURE
11. [Signature]  
SHIFT SUPERVISOR'S SIGNATURE (denotes that report was reviewed)
12. Physical Evidence Collected: 1 / YES 1 X / NO DESCRIBE: N/A  
Evidence held for safekeeping by: NONE  
EVIDENCE OFFICER
13. Notice of Charges presented to above inmate by: [Signature]  
HEARING OFFICER
14. Dated 1/25, 1992 Time: 12 PM. I hereby acknowledge receipt of a copy of the charge(s) specified above or attached hereto and a copy of the foregoing notice of charge(s). (Signature indicates receipt only and does not indicate a plea).  
MATO Thomas  
SIGNATURE OF INMATE 32824  
DOP NUMBER

Original Disciplinary Committee  
cc: Inmate at time of Notice of Charge(s)

MThomas SPD05608

SPD05608

AA2898



3B 39 30

228-1-42

NEVADA DEPARTMENT OF PRISONS  
NOTICE OF CHARGES

JAN 22 1992

NAME: Thomas, M NUMBER: 32824 DATE: January 20, 1992

1. You are hereby notified that a written complaint of institutional rule violations has been filed against you by: CLO LEAVITT  
(PRINT) Charging Employee's Name
2. The Code of Penal Discipline provides that a notice of these charges will be given to you within 7 days of discovery of the violation, or completion of the investigation. This period can only be extended for Exceptional Circumstances. (See the Code of Penal Discipline for definition of Exceptional Circumstances). If this period is extended, a written notice will be given to you, explaining the delay.
3. The Hearing Officer may conduct Summary proceedings at his/her level on minor violations or general violations reduced to minor violations. All other cases must be referred to the Disciplinary Committee.
4. Cases referred to the Disciplinary Committee will be scheduled no less than 24 hours from the service of the Notice of Charges, unless waived by the inmate. The Disciplinary Hearing will be conducted within 30 days of the service of charges. This period can only be extended by Exceptional Circumstances as defined by the Code of Penal Discipline. If extended, a written notice is required.
5. If you are found guilty of a Major or Work Release violation, the Disciplinary Committee may consider referring the violation to the Director for possible forfeiture of all or part of your earned Statutory Time. This sanction is provided by NRS 209. 433, 209.443, and 209.251. The hearing regarding the possible forfeiture of statutory time shall be conducted at the time of the disciplinary hearing and the procedures provided in the Code of Penal Discipline shall apply.
6. If your charges involve a major or work release violation, you may obtain the assistance of an inmate council substitute or a staff advisor.
7. If the major or work release violation constitutes possible criminal misconduct, you have the right to remain silent. Silence shall be construed as a plea of not guilty. Anything you do say may be used against you in a criminal prosecution. You may consult with an Attorney before your disciplinary hearings, however, attorneys cannot represent you at Disciplinary Hearings.
8. Charges: G9- Abusive language or actions toward another person  
G12- Interfering with the count  
G18- Delaying, hindering or interfering with a correctional employee in the performance of his/her duties.
9. Reporting Employee Statement: On January 20, 1992, at approximately 3:20 PM, during the 315 PM Institutional Count I, CLO LEAVITT was counting unit 3, B wing, inmate Thomas, back number 32824, cell 3 B39 had cardboard in his window. He removed it and said, "quote, 'do you like what you see? Suck my dick, unquote.' After count, while trying to perform my duties, on the tier inmate Thomas continually called my name called me a slut, and told me to 'suck his dick'."

(IF MORE SPACE IS REQUIRED, ATTACH SUPPLEMENTAL MISCONDUCT REPORT(S))

10. CLO LEAVITT CLO LEAVITT  
(PRINT) REPORTING EMPLOYEE'S NAME REPORTING EMPLOYEE'S SIGNATURE
11. [Signature]  
SHIFT SUPERVISOR'S SIGNATURE (denotes that report was reviewed)
12. Physical Evidence Collected: 1 /YES NO DESCRIBE: N/A  
Evidence held for safekeeping by: NONE
13. Notice of Charges presented to above inmate by: Sgt. [Signature]  
EVIDENCE OFFICER HEARING OFFICER
14. Dated 1/23, 1992 time: 11 AM. I hereby acknowledge receipt of a copy of the charge(s) specified above or attached hereto and a copy of the foregoing notice of charge(s). (Signature indicates receipt only and does not indicate a plea).  
MHO THOMAS 32824  
SIGNATURE OF INMATE DOP NUMBER

Original Disciplinary Committee  
cc: Inmate at time of Notice of Charge(s)

NEVADA DEPARTMENT OF CORRECTIONS  
CODE OF PENAL DISCIPLINE  
DISCIPLINARY FORM I  
"NOTICE OF CHARGES"

1. INMATE INFORMATION (PRINT)

LAST NAME: THOMAS FIRST NAME: MARLO  
ID#: 501682 CURRENT LOCATION: 4.A18

2. VIOLATION INFORMATION (PRINT)

CHARGING EMPLOYEE NAME: B. Atwood TITLE: Correctional Officer  
DATE OF INCIDENT: JANUARY 24, 2004 DATE CHARGES WRITTEN: JANUARY 24, 2004

EVIDENCE COLLECTED: YES ☐ NO ☒ EVIDENCE HELD BY \_\_\_\_\_

CHARGES: (Listed by Number Only, Definitions are listed on reverse side of this form.)

I MA 30 II ☐ III ☐ IV ☐ V ☐  
VI ☐ VII ☐ VIII ☐

3. REPORT OF VIOLATION: (If additional space is required, use and attach supplemental pages, DOC 3016)

ON JANUARY 24, 2004 I CORRECTIONAL OFFICER  
B. ATWOOD WAS ASSIGNED AND WORKING UNIT 4. AT  
APPROXIMATELY 10:50 AM I OBSERVED INMATE TH,  
THOMAS BACK # 501682 MASTERBATING IN HIS  
WINDOW SO I COULD SEE HIM, I ASKED SGT  
HINK TO LOOK AT INMATE TH, THOMAS SO HE  
COULD SEE HIM AND AS SOON AS SGT HINK  
LOOKED INMATE TH, THOMAS GOT DOWN OUT OF  
THE WINDOW QUICK. END OF REPORT

4. SIGNATURE OF CHARGING EMPLOYEE AND SUPERVISOR

SIGNATURE OF CHARGING EMPLOYEE: [Signature] ATWOOD

SIGNATURE OF SHIFT SUPERVISOR: \_\_\_\_\_

(Denotes Review/Approval of Completed Notice; Confirms Initiation of Record in NCIS)

5. SERVICE OF NOTICE (To be completed by Hearing Officer)

DATE OF SERVICE: January 27, 2004 TIME OF SERVICE: 7:05 am

PRINTED NAME OF HEARING OFFICER: Calvin Beck

SIGNATURE OF HEARING OFFICER: [Signature]

INMATE SIGNATURE: Refused

(Signature indicates receipt of notice only, it is not a plea; refusal to sign should be noted.)

6. DISTRIBUTION INSTRUCTIONS

ORIGINAL - CHAIRMAN OF JURY BOARD

8JDCEV020

AA2900

NEVADA DEPARTMENT OF CORRECTIONS  
CODE OF PENAL DISCIPLINE  
DISCIPLINARY FORM I  
"NOTICE OF CHARGES"

1. INMATE INFORMATION (PRINT)

LAST NAME: Thomas FIRST NAME: Marlo  
ID#: 50682 CURRENT LOCATION: ESP UNIT 3B17A

2. VIOLATION INFORMATION (PRINT)

CHARGING EMPLOYEE NAME: J. Drahas TITLE: SENIOR OFFICER  
DATE OF INCIDENT: JUNE 28, 2004 DATE CHARGES WRITTEN: JUNE 28, 2004

EVIDENCE COLLECTED: YES ☐ NO ☒ EVIDENCE HELD BY \_\_\_\_\_

CHARGES: (Listed by Number Only, Definitions are listed on reverse side of this form.)

I M530 II ☐ III ☐ IV ☐ V ☐  
VI ☐ VII ☐ VIII ☐

3. REPORT OF VIOLATION: (If additional space is required, use and attach supplemental pages, DOC 3016)

ON JUNE 28, 2004 at approximately 10:40 A.M. while my OFFICERS WERE escorting Medical STAFF off of the wing tier. I, SENIOR OFFICER, J. Drahas, SAW Inmate MARLO Thomas who lives in Cell 3B17A, STANDING on his METAL table in his cell, NAKED, with his what appears to be his penis in his hand which is moving in an UP AND DOWN MOTION, Attempting to ejaculate. This Inmate has been VERBALLY WARNED twice by me AND this Inmate made a promise to this OFFICER He would CURTAIL this ACTIVITY AS IT OFFENDS me. Hence this NOTICE OF CHARGES, As Sexual Stimulating Activities is a violation of the Code of Penal Discipline, AND it is OFFENSIVE to STAFF.

4. SIGNATURE OF CHARGING EMPLOYEE AND SUPERVISOR

SIGNATURE OF CHARGING EMPLOYEE: J. Drahas

SIGNATURE OF SHIFT SUPERVISOR: [Signature]

(Denotes Review/Approval of Completed Notice; Confirms Initiation of Record in NCIS)

5. SERVICE OF NOTICE (To be completed by Hearing Officer)

DATE OF SERVICE: JUNE 21, 2004 TIME OF SERVICE: 10:16 AM

PRINTED NAME OF HEARING OFFICER: Jerry Bamber

SIGNATURE OF HEARING OFFICER: [Signature]

INMATE SIGNATURE: MR. Marlo

(Signature indicates receipt of notice only, it is not a plea, refusal to sign should be noted.)

6. DISTRIBUTION INSTRUCTIONS

ORIGINAL - CHAIRMAN OF DISCIPLINARY COMMITTEE COPY - INMATE COPY - CHARGING EMPLOYEE

NEVADA DEPARTMENT OF PRISONS  
CODE OF PENAL DISCIPLINE  
DISCIPLINARY FORM I  
"NOTICE OF CHARGES"

1. INMATE INFORMATION (PRINT)

LAST NAME: THOMAS FIRST NAME: MARLOW  
IDS: 50682 CURRENT LOCATION: 2A17

2. VIOLATION INFORMATION (PRINT)

CHARGING EMPLOYEE NAME: CRANDALL DIANE TITLE: SENIOR CORRECTIONAL OFFICER  
DATE OF INCIDENT: FEBRUARY 04, 2000 DATE CHARGES WRITTEN: FEBRUARY 04, 2000  
EVIDENCE COLLECTED: ☐ YES ☒ NO EVIDENCE HELD BY: \_\_\_\_\_  
CHARGES: (List by Number Only; Definitions are listed on reverse side of this form.)  
I ☒ 69 II ☒ MJ25 III ☒ MJ28 IV ☐ V ☐  
VI ☐ VII ☐ VIII ☐

3. REPORT OF VIOLATION: (If additional space is required, use and attach supplemental pages, DOP 3018)

ON FEBRUARY 04, 2000, I OFFICER CRANDALL DIANE WAS ASSIGNED IN UNIT TWO CONTRA BUBBLE. APPROXIMATELY 5:48PM I WENT TO THE OPEN BUBBLE WINDOW ON A WING TO SPEAK WITH MY OFFICERS. DURING THIS TIME INMATE THOMAS, MARLOW #50682 BEGAN WITH KIDNEY FILTHY VERBAL SEXUAL ABUSE TOWARDS THIS OFFICER. HE WAS YELLING FROM HIS CELL VOICE BOX ACROSS THE TIER MAKING STATEMENTS AS, I KNOW YOU HAVE SOME GOOD ASS PUSSY CRANDALL I KNOW YOUR PUSSY IS GOOD DIANE. I KNOW YOUR PUSSY IS GOOD DIANE. I KNOW YOU HAVE A REAL JUICY PUSSY DIANE. YAHME LIKE IT TOO STAY COME OUT HERE ILL GIVE YOU A NICE BIG DICK. INMATE THOMAS CONTINUED THIS BEHAVIOR FOR NEARLY 30 MINUTES.

SEE ATTACHED

4. SIGNATURE OF CHARGING EMPLOYEE AND SUPERVISOR

SIGNATURE OF CHARGING EMPLOYEE: [Signature]  
SIGNATURE OF SHIFT SUPERVISOR: [Signature]  
(Denotes Review/Approval of Completed Notice; Confirms Initiation of Record in NCIS)

5. SERVICE OF NOTICE (To Be Completed by Hearing Officer)

DATE OF SERVICE: 2-10-00 TIME OF SERVICE: 8:20  
PRINTED NAME OF HEARING OFFICER: FALL  
SIGNATURE OF HEARING OFFICER: [Signature]  
INMATE SIGNATURE: [Signature]  
(Signature indicates receipt of notice only, it is not a plea; refusal to sign should be noted.)

6. DISTRIBUTION INSTRUCTIONS

ORIGINAL - CHAIRMAN OF DISCIPLINARY COMMITTEE  
COPY - INMATE  
COPY - CHARGING EMPLOYEE

3018

NEVADA DEPARTMENT OF PRISONS  
CODE OF PENAL DISCIPLINE  
DISCIPLINARY FORM I  
"NOTICE OF CHARGES"

1. INMATE INFORMATION (PRINT)

LAST NAME: Thomas FIRST NAME: Marlo  
ID#: 50682 CURRENT LOCATION: ESR Unit 2A17

2. VIOLATION INFORMATION (PRINT)

CHARGING EMPLOYEE NAME: Ms M. L. Bachmeier TITLE: Bilingual Teacher Aid  
DATE OF INCIDENT: 2/8/2000 DATE CHARGES WRITTEN: 2/8/2000

EVIDENCE COLLECTED: ☐ YES ☐ NO EVIDENCE HELD BY: none

CHARGES: (List by Number Only; Definitions are listed on reverse side of this form.)

I 7-9 II 1128 III        IV        V         
VI        VII        VIII       

3. REPORT OF VIOLATION: (If additional space is required, use and attach supplemental pages, DCP 3018)

On February 8, 2000 at 8:15 AM I went out to Unit 2A to administer the proficiency test. As I stepped out of the cello port Mr Thomas said, Ms Bachmeier you whore! Fucking cunt! Bitch! I know you do all the police! Old fat pussy! Come to the shower and suck me! Whore! Come to the shower and suck me off!  
On and on until I left. This kind of verbal abuse or harassment is making it hard for me to do my job. I spoke to Sr. Reed about the incident.  
Officers Allen Seely and Barkley also heard the comments

4. SIGNATURE OF CHARGING EMPLOYEE AND SUPERVISOR

SIGNATURE OF CHARGING EMPLOYEE: M. L. Bachmeier 2/8/00  
SIGNATURE OF SHIFT SUPERVISOR: [Signature]  
(Denotes Review/Approval of Completed Notice; Confirms Initiation of Record in NCIS)

5. SERVICE OF NOTICE (To Be Completed by Hearing Officer)

DATE OF SERVICE: 2-10-00 TIME OF SERVICE: 8:30 AM  
PRINTED NAME OF HEARING OFFICER: FARM  
SIGNATURE OF HEARING OFFICER: [Signature]  
INMATE SIGNATURE: [Signature]  
(Signature indicates receipt of notice only, it is not a plea; refusal to sign should be noted.)

6. DISTRIBUTION INSTRUCTIONS

ORIGINAL - CHAIRMAN OF DISCIPLINARY COMMITTEE  
COPY - INMATE  
COPY - CHARGING EMPLOYEE

NEVADA DEPARTMENT OF PRISONS  
CODE OF PENAL DISCIPLINE  
DISCIPLINARY FORM I  
"NOTICE OF CHARGES"

3818

1. INMATE INFORMATION (PRINT)

LAST NAME: Thomas FIRST NAME: Marlo  
ID#: 506R2 CURRENT LOCATION: Unit 2A17 ESP

2. VIOLATION INFORMATION (PRINT)

CHARGING EMPLOYEE NAME: Ms. M.L. Bachmeier TITLE: Behavioral Teacher Aid  
DATE OF INCIDENT: 2/8/00 @ 10:26 AM DATE CHARGES WRITTEN: 2/8/00  
EVIDENCE COLLECTED: ☐ YES ☐ NO EVIDENCE HELD BY: none

CHARGES: (List by Number Only; Definitions are listed on reverse side of this form.)

I 69 II M28 III        IV        V         
VI        VII        VIII       

3. REPORT OF VIOLATION: (If additional space is required, use and attach supplemental pages, DCP 301B)

This is the 2nd write up on this Inmate today.  
Upon returning to Unit 2 at 10:26 A.M., to check on inmate I was giving the proficiency test to. Again a repeat of earlier this morning Mr Thomas starts in again, the minute I walk through the cell port.  
Ms Bachmeier, come over here and suck my Dick! you whore! Bitch! Slut! on and on... Just because he knows I didn't care for his comments I said Not if you were the best man on earth and I don't like your comments. I consider this Sexual Harassment. I proceeded with my student and just ignored him from there on. This situation is affecting my work performance. I spoke with nose worker Waggoner when I was leaving as well as Sr Reed. Ms Waggoner mentioned last week Thomas spoke to her about when she was gonna mole him. So maybe Thomas is looking to get wrote up, to get mole. Please! don't give him his way. This man needs help.

4. SIGNATURE OF CHARGING EMPLOYEE AND SUPERVISOR

SIGNATURE OF CHARGING EMPLOYEE: M.L. Bachmeier 2/8/00  
SIGNATURE OF SHIFT SUPERVISOR: [Signature]  
(Denotes Review/Approval of Completed Notice; Confirms Initiation of Record in NCIS)

5. SERVICE OF NOTICE (To Be Completed by Hearing Officer)

DATE OF SERVICE:        TIME OF SERVICE:         
PRINTED NAME OF HEARING OFFICER:         
SIGNATURE OF HEARING OFFICER:         
INMATE SIGNATURE:         
(Signature indicates receipt of notice only, it is not a plea; refusal to sign should be noted.)

6. DISTRIBUTION INSTRUCTIONS

ORIGINAL - CHAIRMAN OF DISCIPLINARY COMMITTEE  
COPY - INMATE  
COPY - CHARGING EMPLOYEE

NEVADA DEPARTMENT OF PRISONS  
 CODE OF PENAL DISCIPLINE  
 DISCIPLINARY FORM I  
 "NOTICE OF CHARGES"

1. INMATE INFORMATION (PRINT)

LAST NAME: Thomas FIRST NAME: Marlo  
 ID#: 50682 CURRENT LOCATION: 4A-17A

2. VIOLATION INFORMATION (PRINT)

CHARGING EMPLOYEE NAME: Virginia Ditty TITLE: Correctional Officer  
 DATE OF INCIDENT: August 1, 1998 DATE CHARGES WRITTEN: August 1, 1998  
 EVIDENCE COLLECTED: ☐ YES ☒ NO EVIDENCE HELD BY: \_\_\_\_\_

CHARGES: (List by Number Only; Definitions are listed on reverse side of this form.)

I m330 II 61 III 618 IV m328 V \_\_\_\_\_  
 VI \_\_\_\_\_ VII \_\_\_\_\_ VIII \_\_\_\_\_

3. REPORT OF VIOLATION: (If additional space is required, use and attach supplemental pages, DOP 3016)

On August 1, 1998, at approximately 530pm and 900pm, I Correctional Officer Virginia Ditty, assigned to Unit 4, noticed inmate Marlo Thomas 50682 in cell 4A-17A, masturbating in the window. At approximately 530pm I verbally warned inmate Thomas. At approximately 900pm, I told inmate Thomas he is getting written up. At approximately 904pm, Sergeant Bushler called via Stenograph to report a fire alarm in cell 4A-17A. Officer M. Bird checked cell 4A-17A inmate Thomas's cell. Officer M. Bird reported the fire alarm code 4 at approximately 905pm and that inmate Thomas set the alarm on purpose to get the bubble officer's attention. At approximately 915pm, Sergeant D. Bushler called via telephone to warn inmate Thomas to stop setting off the fire alarm in his cell or officers would have to go in on him. At approximately 927pm Sergeant D. Bushler, officers M. Nustad, K. McLeod, A. Zimara and Carlyle, shook down cell 4A-17A, inmate Thomas's cell. As I was writing this report, at approximately 11:05pm, inmate Thomas was observed masturbating twice more and verbally warned.

*End of Report*

4. SIGNATURE OF CHARGING EMPLOYEE AND SUPERVISOR

SIGNATURE OF CHARGING EMPLOYEE: cl Virginia Ditty  
 SIGNATURE OF SHIFT SUPERVISOR: Sgt Jerry Bainbridge  
 (Denotes Review/Approval of Completed Notice; Confirms Initiation of Record in NCIS)

5. SERVICE OF NOTICE (To Be Completed by Hearing Officer)

DATE OF SERVICE: 8-4-98 TIME OF SERVICE: 1:35 PM  
 PRINTED NAME OF HEARING OFFICER: Sgt. Tony Jones  
 SIGNATURE OF HEARING OFFICER: Sgt. Tony Jones  
 INMATE SIGNATURE: Unable - Inmate in Restraints  
 (Signature indicates receipt of notice only, it is not a plea; refusal to sign should be noted.)

6. DISTRIBUTION INSTRUCTIONS

ORIGINAL - CHAIRMAN OF DISCIPLINARY COMMITTEE  
 COPY - INMATE  
 COPY - CHARGING EMPLOYEE



336  
THOMAS 8JDCEV181

NEVADA DEPARTMENT OF PRISONS  
CODE OF PENAL DISCIPLINE  
DISCIPLINARY FORM I  
"NOTICE OF CHARGES"

2A17A

1. INMATE INFORMATION (PRINT)

LAST NAME: Thomas FIRST NAME: Marlo  
ID#: 56682 CURRENT LOCATION: 2A18

2. VIOLATION INFORMATION (PRINT)

CHARGING EMPLOYEE NAME: Lopez Becci TITLE: Correctional Officer  
DATE OF INCIDENT: September 11, 1999 DATE CHARGES WRITTEN: September 11, 1999

EVIDENCE COLLECTED: ☐ YES ☒ NO EVIDENCE HELD BY: \_\_\_\_\_

CHARGES: (List by Number Only; Definitions are listed on reverse side of this form.)

I 11530 II 99 III 11125 IV \_\_\_\_\_ V \_\_\_\_\_  
VI \_\_\_\_\_ VII \_\_\_\_\_ VIII \_\_\_\_\_

3. REPORT OF VIOLATION: (If additional space is required, use and attach supplemental pages, DOP 3018)

On September 11, 1999 while feeding unit 2-A wing at approximately 4:40pm inmate Thomas Marlo #56682 began yelling you fat cow you must like golden showers you Bitch you better get use to more you ho! During sex rounds with nurse Smith inmate Thomas was stroking his penis with his right hand at this time I told him to put his penis away it was a male nurse and he was not interested so turn his light on. At this time he complied saying fuck cop.

4. SIGNATURE OF CHARGING EMPLOYEE AND SUPERVISOR

SIGNATURE OF CHARGING EMPLOYEE: [Signature]  
SIGNATURE OF SHIFT SUPERVISOR: [Signature]  
(Denotes Review/Approval of Completed Notice, confirms Initiation of Record in NCIS)

5. SERVICE OF NOTICE (To Be Completed by Hearing Officer)

DATE OF SERVICE: 9-12-99 TIME OF SERVICE: 12:40 pm  
PRINTED NAME OF HEARING OFFICER: Terry Bainbridge  
SIGNATURE OF HEARING OFFICER: [Signature]  
INMATE SIGNATURE: Marlo Thomas  
(Signature indicates receipt of notice only, if is not a plea; refusal to sign should be noted.)

6. DISTRIBUTION INSTRUCTIONS

ORIGINAL - CHAIRMAN OF DISCIPLINARY COMMITTEE  
COPY - INMATE  
COPY - CHARGING EMPLOYEE

8JDCEV181

AA2906



246

NEVADA DEPARTMENT OF PRISONS  
CODE OF PENAL DISCIPLINE  
DISCIPLINARY FORM I  
"NOTICE OF CHARGES"

1. INMATE INFORMATION (PRINT)

LAST NAME: Thomas FIRST NAME: Marco  
ID#: 50682 CURRENT LOCATION: ESP UNIT TWO Cell 17-A wing

2. VIOLATION INFORMATION (PRINT)

CHARGING EMPLOYEE NAME: Soni Drahos TITLE: senior officer  
DATE OF INCIDENT: October 21, 1999 DATE CHARGES WRITTEN: October 21, 1999  
EVIDENCE COLLECTED: ☐ YES ☒ NO EVIDENCE HELD BY: \_\_\_\_\_  
CHARGES: (List by Number Only; Definitions are listed on reverse side of this form.)  
I ART 30 II ☐ III ☐ IV ☐ V ☐  
VI ☐ VII ☐ VIII ☐

3. REPORT OF VIOLATION: (If additional space is required, use and attach supplemental pages, OCP 3018)

On October 21, 1999, AT Approximately 12:31 P.M. while working in the Control Room of Unit TWO I, Senior Officer Soni Drahos while observing Ainy's Sleeding at lunch. Meel Saw Inmate Marco Thomas, Back Number 50682 who is housed in Unit 2A17B. Tomate Thomas was on the Metal Affixed Table in his Cell. NAKED, MASTURBATING, Facing towards the Cell Door Window.

4. SIGNATURE OF CHARGING EMPLOYEE AND SUPERVISOR

SIGNATURE OF CHARGING EMPLOYEE: Soni Drahos  
SIGNATURE OF SHIFT SUPERVISOR: [Signature]  
(Denotes Review/Approval of Completed Notice; Confirms Initiation of Record in NCIS)

5. SERVICE OF NOTICE (To Be Completed by Hearing Officer)

DATE OF SERVICE: 10-25-99 TIME OF SERVICE: 9:15 AM  
PRINTED NAME OF HEARING OFFICER: Sgt. Tony Jones  
SIGNATURE OF HEARING OFFICER: [Signature]  
INMATE SIGNATURE: [Signature]  
(Signature indicates receipt of notice only, it is not a plea; refusal to sign should be noted.)

6. DISTRIBUTION INSTRUCTIONS

ORIGINAL - CHAIRMAN OF DISCIPLINARY COMMITTEE  
COPY - INMATE  
COPY - CHARGING EMPLOYEE

Thomas #50682

6. PRISON PRESENTATION 10:00 AM.

Inmate observed NAKED STANDING ON TABLE FONDLING HIMSELF.  
Inmate 20 minutes later observed straddling between  
in bed and cell table NAKED MA sexualizing. Approximate  
12 minutes later inmate observed standing on cell  
table, hands on his groin, rubbing his penis  
and masturbating on fondling himself.

EVIDENCE RELIED UPON:

Written Report clearly describing what was  
observed. Back up Report indicating the date as June 23  
2014 which would abate trial in court and removed from com  
puter. W/ Patrol Data was correct (Type - 0) accepted.

CONFIDENTIAL INFORMATION (CI) CHECKLIST (BOTH A & B MUST BE BY "YES" TO RELY ON CI)

A. CI RELIABLE: ☐ YES ☐ NO ☒ N/A  
CHECK AT LEAST ONE BOX BELOW

- ☐ INVESTIGATING OFFICER TESTIFIES PERSONALLY AS TO THE TRUTHFULNESS OF THE CONFIDENTIAL INFORMATION IN HIS REPORT
- ☐ CORROBORATING TESTIMONY
- ☐ DISCIPLINARY CHAIR HAS FIRST HAND KNOWLEDGE OF SOURCE AND SOURCE HAS BEEN RELIABLE IN PAST
- ☐ IN-CAMERA REVIEW OF DOCUMENTS: FOUND RELIABLE

B. STATEMENT BY CORRECTIONAL OFFICIAL: SAFETY PREVENTS DISCLOSURE OF CI ☐ YES ☐ NO

7. FINDINGS

*INFORMATIVE only - BACK UP TO ORIGINAL ON 6/25/14*

COUNT/CHARGE	REDUCE TO:	GUilty	NOT GUILTY	DISMISS	COUNT/CHARGE	REDUCE TO:	GUilty	NOT GUILTY	DISMISS
MSD	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	V	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
II	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	VI	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
III	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	VII	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
IV	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	VIII	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OTHER: SPECIFY: YOU WILL BE ASSESSED RESTITUTION FOR ANY COST ARISING FROM THIS  
INCIDENT UNTIL THE AMOUNT OF RESTITUTION IS DETERMINED.  
YOUR ACCOUNT WILL BE FROZEN.

8. SANCTIONS

SANCTION	# OF DAYS	BEGIN DATE	END DATE
A.			
B.			
C.			
D.			
E.			

STAT FORFEITURE REFERRAL: ☐ YES ☐ NO RECOMMENDED CATEGORY: ☐ A ☐ B ☐ C

ADMINISTRATIVE ASSESSMENT AMOUNT: \$

OTHER: SPECIFY: NO REST. F. in CW

9. ANCILLARY INFORMATION/INSTRUCTIONS

- REFER TO PAROLE BOARD AS VIOLATION OF PAROLE: ☐ YES ☐ NO
- POST DISCIPLINARY CLASSIFICATION: ☐ YES ☐ NO DATE: \_\_\_\_\_
- DISC/SEQ SANCTION REQUIRES REVIEW BY DIRECTOR: ☐ YES ☐ NO
- NCIS RECORD COMPLETED: DATE 06-23-2014 BY WHOM: [Signature]

10. SIGNATURE OF COMMITTEE

CHAIRMAN: [Signature] PRINTED NAME: [Signature]  
MEMBER: \_\_\_\_\_ PRINTED NAME: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_  
MEMBER: \_\_\_\_\_ PRINTED NAME: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

11. DISTRIBUTION INSTRUCTIONS

ORIGINAL - I-FILE COPY - INMATE COPY - CHARGING PMPI OVER

246  
Thomas 8JDCEV042

NEVADA DEPARTMENT OF CORRECTIONS  
CODE OF PENAL DISCIPLINE  
DISCIPLINARY FORM I  
"NOTICE OF CHARGES"

INFORMATIVE  
BACK-UP  
REPORT

1. INMATE INFORMATION (PRINT)

LAST NAME: Thomas FIRST NAME: MARLO  
ID# 50682 CURRENT LOCATION: ESP 3B17

2. VIOLATION INFORMATION (PRINT)

CHARGING EMPLOYEE NAME: J. Drahos TITLE: Senior Officer  
DATE OF INCIDENT: June 28, 2004 DATE CHARGES WRITTEN: June 28, 2004  
EVIDENCE COLLECTED: YES NO EVIDENCE HELD BY \_\_\_\_\_  
CHARGES: (Listed by Number Only, Definitions are listed on reverse side of this form.)  
I M53D II          III          IV          V           
VI          VII          VIII         

3. REPORT OF VIOLATION (If additional space is required, use and attach supplemental pages, DOC 3016)

ON JUNE 28, 2004 at 12:00 p.m. While performing my duties in the Unit Three Control Room. As Senior Officer Drahos while cycling door and watching the floor officer. Again see Inmate MARLO Thomas back number 50682 in Cell 3B17A, NAKED STANDING ON THE TABLE AT THE REAR OF CELL, WITH HIS HANDS FONDLING HIMSELF. As a floor officer start across the room and turned off his light. AT approximately 12:30 p.m. while the unit was operating with normal schedule. moving inmates forced showers to A wing. Again Inmate MARLO Thomas had turned on his light and was STRAPOLING between his Bed and the Rear table, NAKED AGAIN MASTURBATING. At approximately 1248 P.M. Letting my floor officers in to the Control Room for shift change and there was Inmate Thomas NAKED, LIGHT ON, his hands GRASPING his penis MASTURBATING or FONDLING himself. Officer Wade Robert Gardner coming up the stairs into the Control Room witnessed Inmate MARLO Thomas STANDING ON THE TABLE AT REAR OF CELL WITH HIS LIGHT ON, HANDS ON HIS GENITALS Rubbing IT. (His Penis)

4. SIGNATURE OF CHARGING EMPLOYEE AND SUPERVISOR

SIGNATURE OF CHARGING EMPLOYEE: J. Drahos #5429  
SIGNATURE OF SHIFT SUPERVISOR: Set Terry  
(Denotes Review/Approval of Completed Notice; Confirms Initiation of Record in NCIS)

5. SERVICE OF NOTICE (To be completed by Hearing Officer)

DATE OF SERVICE: JUNE 21, 2004 TIME OF SERVICE: 12:25 PM  
PRINTED NAME OF HEARING OFFICER: Terry Baudin  
SIGNATURE OF HEARING OFFICER: Set Terry Baudin  
INMATE SIGNATURE: Mr. MARLO Thomas  
(Signature indicates receipt of notice only, it is not a plea; refusal to sign should be noted.)

6. DISTRIBUTION INSTRUCTIONS

ORIGINAL - CHAIRMAN OF DISCIPLINARY COMMITTEE. COPY - INMATE COPY - CHARGING EMPLOYEE

8JDCEV042

AA2909

MThomas 8JDCEV043

NEVADA DEPARTMENT OF CORRECTIONS  
INCIDENT REPORT

PAGE \_\_\_\_ OF \_\_\_\_

INSTITUTION: ESP

TO: Sgt Hunt

VIA: \_\_\_\_\_

FROM: Sgt Robert W. Gardner

INCIDENT DATE: June 20, 2004

INMATE: Thomas, Mark #50682

RULE VIOLATION(S): \_\_\_\_\_

At approximately 12:48 P.M. I Sgt Robert Gardner assigned to unit 2 was entering unit 2 control room and witness inmate Thomas, Mark #50682 standing on the table in the back of his cell 3B17 have naked rubbing his penis

Sgt Robert W. Gardner

DOC.1559 (3/02)

8JDCEV043

AA2910

Thomas # 50682

6. PRISON PRESENTATION 11:45am

During Feeding Inmate Observed standing on top of his table facing the door window with hands on and hands around genital with back and teeth physical motion. As officer went to door he jumped off table.

EVIDENCE RELIED UPON:

written report detailing actual activity observed date 11/20/04 as inmate at this date in future as it occurred was turned in on 6-20-04 back up report also states 6-20-04 as date of incident. Inmate statement that this was a continuation of the original reason that Thomas as he never stopped his activity.

CONFIDENTIAL INFORMATION (CI) CHECKLIST (BOTH A & B MUST BE BY "YES" TO RELY ON CI)

A. CI RELIABLE: ☐ YES ☐ NO ☐ N/A  
CHECK AT LEAST ONE BOX BELOW

- ☐ INVESTIGATING OFFICER TESTIFIES PERSONALLY AS TO THE TRUTHFULNESS OF THE CONFIDENTIAL INFORMATION IN HIS REPORT
- ☐ CORROBORATING TESTIMONY
- ☐ DISCIPLINARY CHAIR HAS FIRST HAND KNOWLEDGE OF SOURCE AND SOURCE HAS BEEN RELIABLE IN PAST
- ☐ IN-CAMERA REVIEW OF DOCUMENTS FOUND RELIABLE

B. STATEMENT BY CORRECTIONAL OFFICIAL: SAFETY PREVENTS DISCLOSURE OF CI ☐ YES ☐ NO

7. FINDINGS

COUNT/CHARGE	REDUCE TO:	GUILTY	NOT GUILTY	DISMISS	COUNT/CHARGE	REDUCE TO:	GUILTY	NOT GUILTY	DISMISS
I <u>M330</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	V <u>Informative to Original incident</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
II <u></u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	VI <u></u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
III <u></u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	VII <u></u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
IV <u></u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	VIII <u></u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OTHER: SPECIFY: You will be assessed restitution for any cost arising from this incident. Until the amount of restitution is determined your account will be frozen.

8. SANCTIONS

SANCTION	# OF DAYS	BEGIN DATE	END DATE
A. <u></u>	<u></u>	<u></u>	<u></u>
B. <u></u>	<u></u>	<u></u>	<u></u>
C. <u></u>	<u></u>	<u></u>	<u></u>
D. <u></u>	<u></u>	<u></u>	<u></u>
E. <u></u>	<u></u>	<u></u>	<u></u>

STAT FORFEITURE REFERRAL: ☐ YES ☐ NO RECOMMENDED CATEGORY: ☒ A ☐ B ☐ C

ADMINISTRATIVE ASSESSMENT AMOUNT: \$

OTHER SPECIFY: NO REASON FOR  
CEW

9. ANCILLARY INFORMATION/INSTRUCTIONS

- REFER TO PAROLE BOARD AS VIOLATION OF PAROLE: ☐ YES ☐ NO
- POST DISCIPLINARY CLASSIFICATION: ☐ YES ☐ NO DATE:
- DISC/SEG SANCTION REQUIRES REVIEW BY DIRECTOR: ☐ YES ☐ NO
- NCIS RECORD COMPLETED: DATE 11/22/04 BY WHOM [Signature]

10. SIGNATURE OF COMMITTEE

CHAIRMAN: [Signature] PRINTED NAME: LT Brooks SIGNATURE: [Signature]

MEMBER:  PRINTED NAME:  SIGNATURE:

MEMBER:  PRINTED NAME:  SIGNATURE:

11. DISTRIBUTION INSTRUCTIONS

ORIGINAL - I-FILE COPY - INMATE COPY - CHARGES OUT COPY

# INFORMATIVE

BACKUP  
Report

## NEVADA DEPARTMENT OF CORRECTIONS CODE OF PENAL DISCIPLINE DISCIPLINARY FORM I "NOTICE OF CHARGES"

### 1. INMATE INFORMATION (PRINT)

LAST NAME: Thomas FIRST NAME: Marlo  
ID#: 50682 CURRENT LOCATION: ESP 3B17A

### 2. VIOLATION INFORMATION (PRINT)

CHARGING EMPLOYEE NAME: J. Drahos TITLE: SENIOR OFFICER  
DATE OF INCIDENT: JUNE 28, 2004 DATE CHARGES WRITTEN: JUNE 28, 2004

EVIDENCE COLLECTED: YES NO EVIDENCE HELD BY: \_\_\_\_\_

CHARGES: (Listed by Number Only, Definitions are listed on reverse side of this form.)

I MS30 II        III        IV        V         
VI        VII        VIII       

### 3. REPORT OF VIOLATION: (If additional space is required, use and attach supplemental pages, DOC 3016)

ON JUNE 28, 2004 AT APPROXIMATELY 11:45 A.M. WHEN I WENT TO THE BILING TO ASK MY FLOOR OFFICERS FOR MORE PICKLES DURING FEEDING; AS I, SENIOR OFFICER JONI DRAHOS APPROACHED THE WINDOW, INMATE MARLO THOMAS FOR THE 2ND (SECOND) TIME, IN LAST HAD AN HOUR. HE WAS STANDING ON HIS BACK TABLE BACK AGAINST THE WALL FACING TOWARDS THE DOOR WITH ABSOLUTELY NO CARESON WITH BOTH HANDS AROUND HIS GENITALS WITH PHYSICAL MOTION BACK AND FORTH. AS SENIOR OFFICER APPROACHED THE WINDOW WITH THE PICKLES HE JUMPED OFF THE TABLE.

### 4. SIGNATURE OF CHARGING EMPLOYEE AND SUPERVISOR

SIGNATURE OF CHARGING EMPLOYEE: J. Drahos DRAHOS #5429

SIGNATURE OF SHIFT SUPERVISOR: Sgt. Tom Jones  
(Denotes Review/Approval of Completed Notice; Confirms Initiation of Record in NCIS)

### 5. SERVICE OF NOTICE (To be completed by Hearing Officer)

DATE OF SERVICE: JUNE 21, 2004 TIME OF SERVICE: 10:22 AM

PRINTED NAME OF HEARING OFFICER: Terry Baurbridge

SIGNATURE OF HEARING OFFICER: Sgt. G. Baurbridge

INMATE SIGNATURE: x MARLO THOMAS

(Signature indicates receipt of notice only, it is not a plea; refusal to sign should be noted.)

### 6. DISTRIBUTION INSTRUCTIONS

ORIGINAL - CHAIRMAN OF DISCIPLINARY COMMITTEE COPY - INMATE COPY - CHARGING EMPLOYEE

8JDCEV048



4154

5268

NEVADA DEPARTMENT OF CORRECTIONS  
CODE OF PENAL DISCIPLINE  
DISCIPLINARY FORM I  
"NOTICE OF CHARGES"

1. INMATE INFORMATION (PRINT)

LAST NAME: Thomason

FIRST NAME: Marlo

ID#: 58082

CURRENT LOCATION: 3B18

2. VIOLATION INFORMATION (PRINT)

CHARGING EMPLOYEE NAME: Rebecca Montoya

TITLE: Correctional Officer

DATE OF INCIDENT: November 2, 2004

DATE CHARGES WRITTEN: November 2, 2004

EVIDENCE COLLECTED: YES ☐ NO ☒ EVIDENCE HELD BY \_\_\_\_\_

CHARGES: (Listed by Number Only, Definitions are listed on reverse side of this form.)

I MJ.30 II ☐ III ☐ IV ☐ V ☐  
VI ☐ VII ☐ VIII ☐

3. REPORT OF VIOLATION: (If additional space is required, use and attach supplemental pages, DOC 3016)

On Tuesday, November 2, 2004, I, Correctional Officer, Rebecca Montoya was assigned to the Unit 3B tier. While at 2<sup>pm</sup> conducting the 10 A.M. count, I was counting the lower 9B tier. When I looked in 3B18 which houses inmate Thomas, Marlo #58082 he was laying on his bed with his penis in his right hand masturbating.

4. SIGNATURE OF CHARGING EMPLOYEE AND SUPERVISOR

SIGNATURE OF CHARGING EMPLOYEE: Rebecca Montoya

SIGNATURE OF SHIFT SUPERVISOR: [Signature]

(Denotes Review/Approval of Completed Notice; Confirms Initiation of Record in NCIS)

5. SERVICE OF NOTICE (To be completed by Hearing Officer)

DATE OF SERVICE: November 3, 2004 TIME OF SERVICE: 9:40 am

PRINTED NAME OF HEARING OFFICER: Jerry Baird, dca

SIGNATURE OF HEARING OFFICER: Sgt Jerry Baird

INMATE SIGNATURE: [Signature]

(Signature indicates receipt of notice only, it is not a plea; refusal to sign should be noted.)

6. DISTRIBUTION INSTRUCTIONS

ORIGINAL - CHAIRMAN OF DISCIPLINARY COMMITTEE, COPY - INMATE, COPY - CHARGING EMPLOYEE

NEVADA DEPARTMENT OF CORRECTIONS  
CODE OF PENAL DISCIPLINE  
DISCIPLINARY FORM I  
"NOTICE OF CHARGES"

1. INMATE INFORMATION (PRINT)

LAST NAME: Thomas FIRST NAME: Marlo 4216  
ID#: 50682 CURRENT LOCATION: ESP - 3B17A HRP

2. VIOLATION INFORMATION (PRINT)

CHARGING EMPLOYEE NAME: Sgt J. Duhas TITLE: SENIOR  
DATE OF INCIDENT: November 4, 2004 DATE CHARGES WRITTEN: November 4, 2004

EVIDENCE COLLECTED: YES ☐ NO ☒ EVIDENCE HELD BY \_\_\_\_\_

CHARGES: (Listed by Number Only. Definitions are listed on reverse side of this form.)

I ☒ 6-9 II ☒ MJ-50 III ☐ IV ☐ V ☐  
VI ☐ VII ☐ VIII ☐

3. REPORT OF VIOLATION: (If additional space is required, use and attach supplemental pages, DOC 3016)

Inmate Marlo Thomas back number 50682 who lives in 3B17A, HAS BEEN HARASSING C/O Rebecca Montoya. He is being very UN-PROFESSIONAL AS AN INMATE - CALLING HER BARE/GIRL AND HOW HEY GONNA TAKE HIS "BIG" DICK AND PUT SOME WORK IN ON HER. "HEY BARE/GIRL ARE YOU GOING TO COME OUT AT 11:00 AM" I've got something big for you. THIS HARASSMENT HAS BEEN TAKING PLACE SINCE Inmate Thomas, Marlo 50682, WAS WRITTEN UP BY C/O R. Montoya for performing SEXUAL ACTS - MASTURBATING. He CONTINUALLY HAS TAUNTED HER SINCE 7:00 A.M. THIS DATE. He is using her FIRST NAME CONTINUALLY. "IT'S REAL Big Montoya... Yeah you WANT SOME OF THIS. You know I've GOT TO PUT SOME WORK IN ON YA BEFORE I LEAVE. You know you like it bitch you're my FAVORITE Bitch. OFFICER MONTAYA. IS NOT RESPONSIBLE FOR ANYTHING THAT INMATE THOMAS IS TAUNTING AND HARASSING HER WITH. END OF REPORT

4. SIGNATURE OF CHARGING EMPLOYEE AND SUPERVISOR

SIGNATURE OF CHARGING EMPLOYEE: Sgt J. Duhas

SIGNATURE OF SHIFT SUPERVISOR: \_\_\_\_\_

(Denotes Review/Approval of Completed Notice; Confirms Initiation of Record in NCIS)

5. SERVICE OF NOTICE (To be completed by Hearing Officer)

DATE OF SERVICE: November 8, 2004 TIME OF SERVICE: 12:25 PM

PRINTED NAME OF HEARING OFFICER: Jerry B. Ambrose

SIGNATURE OF HEARING OFFICER: Sgt Jerry Ambrose

INMATE SIGNATURE: Refused

(Signature indicates receipt of notice only; if it is not a plea, refusal to sign should be noted.)

6. DISTRIBUTION INSTRUCTIONS

ORIGINAL - CHAIRMAN OF DISCIPLINARY COMMITTEE, COPY - INMATE, COPY - CHARGING EMPLOYEE

DOC - 3017 (REV. 7/01)

8JDCEV056

AA2914



NEVADA DEPARTMENT OF PRISONS  
CODE OF PENAL DISCIPLINE  
DISCIPLINARY FORM I  
"NOTICE OF CHARGES"

1. INMATE INFORMATION (PRINT)

LAST NAME: Thomas FIRST NAME: marlo  
ID#: 50682 CURRENT LOCATION: 3B15A

2. VIOLATION INFORMATION (PRINT)

CHARGING EMPLOYEE NAME: Kathy Endo RN TITLE: weekend charge nurse  
DATE OF INCIDENT: 4/30/00 DATE CHARGES WRITTEN: 4/30/00

EVIDENCE COLLECTED: ☐ YES ☒ NO EVIDENCE HELD BY: \_\_\_\_\_

CHARGES: (List by Number Only; Definitions are listed on reverse side of this form.)

I MT30 II 31 III \_\_\_\_\_ IV \_\_\_\_\_ V \_\_\_\_\_  
VI \_\_\_\_\_ VII \_\_\_\_\_ VIII \_\_\_\_\_

3. REPORT OF VIOLATION: (If additional space is required, use and attach supplemental pages, DOP 3016)

On Health and Welfare rounds at 1830 clarrati Thomas # 50682 continues to masturbate and kiss Kathy Endo RN. This has been ongoing every weekend for the last month even though inmate Thomas # 50682 has been told this is inappropriate behavior etc to stop.

4. SIGNATURE OF CHARGING EMPLOYEE AND SUPERVISOR

SIGNATURE OF CHARGING EMPLOYEE: Kathy Endo RN  
SIGNATURE OF SHIFT SUPERVISOR: For [Signature]  
(Denotes Review/Approval of Completed Notice; Confirms Initiation of Record in NCIS)

5. SERVICE OF NOTICE (To Be Completed by Hearing Officer)

DATE OF SERVICE: 5-3-00 TIME OF SERVICE: 1125 Am  
PRINTED NAME OF HEARING OFFICER: ROBERT HENDRIX  
SIGNATURE OF HEARING OFFICER: For Robert Hendrix  
INMATE SIGNATURE: RECEIVED HEARING  
(Signature indicates receipt of notice only, it is not a plea; refusal to sign should be noted.)

6. DISTRIBUTION INSTRUCTIONS

ORIGINAL - CHAIRMAN OF DISCIPLINARY COMMITTEE  
COPY - INMATE  
COPY - CHARGING EMPLOYEE

NEVADA DEPARTMENT OF PRISONS  
CODE OF PENAL DISCIPLINE  
DISCIPLINARY FORM I  
"NOTICE OF CHARGES"

## 1. INMATE INFORMATION (PRINT)

LAST NAME: Thomas FIRST NAME: Marlo  
ID#: 50682 CURRENT LOCATION: 2B18B

## 2. VIOLATION INFORMATION (PRINT)

CHARGING EMPLOYEE NAME: Tali Vinson TITLE: teachers aide  
DATE OF INCIDENT: 2/6/98 DATE CHARGES WRITTEN: 2/6/98  
EVIDENCE COLLECTED: ☐ YES ☒ NO EVIDENCE HELD BY: \_\_\_\_\_  
CHARGES: (List by Number Only; Definitions are listed on reverse side of this form.)  
I G-9 II G-20 III MJ-25 IV        V         
VI        VII        VIII       

## 3. REPORT OF VIOLATION: (If additional space is required, use and attach supplemental pages, DOP 3016)

The inmate in cell 2B18 has been repeatedly verbally abusive to me while I've done deliveries in unit 2 over the last few weeks. On Monday 2/2/98 he called me to his cell under the pretense of having a book for me to pick up and said, "I want to have sex with you." As I walked away he said, "I wanna have sex with you bad. You need a real man, not that fat wimp husband you got."

Another day this week Mr. Thomas yelled, "Vinson I wanna have sex with you. Bring that pussy over here." As I walked past his cell.

I have repeatedly told this inmate that it is inappropriate to talk to me like this & that if it continues I would write him up. Nonetheless, on Friday 2/6/98 Mr. Thomas waved from his cell and yelled, "Vinson, I need some pussy over here. I wanna have sex with you. You need to try it with a man. I seen that fat faggot you call a husband" and other obscenities. I ignored him and continued delivering. When I walked by his cell Mr. Thomas said "Don't you believe me tho. I wanna have sex with you? I could rape you."

I considered Mr. Thomas's threat of rape very serious. Despite my verbal warnings, Mr. Thomas refuses to change his behavior.

## 4. SIGNATURE OF CHARGING EMPLOYEE AND SUPERVISOR

SIGNATURE OF CHARGING EMPLOYEE: Tali Vinson  
SIGNATURE OF SHIFT SUPERVISOR: [Signature]  
(Denotes Review/Approval of Completed Notice; Confirms Initiation of Record in NCIS)

## 5. SERVICE OF NOTICE (To Be Completed by Hearing Officer)

DATE OF SERVICE: 2-12-98 TIME OF SERVICE: 8:10 AM  
PRINTED NAME OF HEARING OFFICER: SET. LAWRENCE RODRIGUEZ  
SIGNATURE OF HEARING OFFICER: [Signature]  
INMATE SIGNATURE: REFUSED  
(Signature indicates receipt of notice only, it is not a plea; refusal to sign should be noted.)

## 6. DISTRIBUTION INSTRUCTIONS

ORIGINAL - CHAIRMAN OF DISCIPLINARY COMMITTEE  
COPY - INMATE  
COPY - CHARGING EMPLOYEE

EXHIBIT 66

EXHIBIT 66

**American Bar Association  
Guidelines for the  
Appointment and  
Performance of Counsel  
In Death Penalty Cases  
1989**

**(Note: This version has been superseded by a February, 2003 revision)**

**INTRODUCTION**

At its 1989 Midyear Meeting, the American Bar Association House of Delegates adopted Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases. These Guidelines amplify previously adopted Association positions on effective assistance of counsel in capital cases and the need for adequate compensation and support and provide a concrete procedure for the appointment of attorneys with appropriate experience and training to represent defendants in capital cases. In addition, they enumerate the minimal resources and practices necessary to provide effective assistance of counsel.

Some national standards have been written for appointment of counsel for eligible defendants generally; general standards for defense counsel have been established; and specific Performance Guidelines for Criminal Defense Representation exist in draft form. While some local standards may exist for capital representation, national guidelines on the assignment and performance of counsel in capital cases did not exist prior to these Guidelines.

Experience has demonstrated that capital trials and appeals are extremely specialized and demanding and that the appointment of unqualified, inexperienced counsel can be very costly in terms of delay and expense. These Guidelines will greatly assist jurisdictions planning for the handling of capital cases in a manner that does not clog their courts, while assuring effective assistance of counsel.

Background

With initial support from the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID), the National Legal Aid and Defender Association (NLADA) developed, over the course of several years, Standards for the Appointment and Performance of Counsel in Death Penalty Cases.

In February 1988, NLADA referred the Standards to SCLAID, which reviewed them and circulated them to appropriate ABA sections and committees. SCLAID incorporated the only substantive concerns expressed (by the Criminal Justice Section) and changed the nomenclature to "Guidelines" as more appropriate than "standards."

The Sections of Criminal Justice and of Litigation joined SCLAID in sponsoring the Guidelines for ABA adoption. The Guidelines were approved by the ABA's House of Delegates without change; however, the accompanying resolution recommending adoption by entities providing

counsel in death penalty cases was amended to allow for such exceptions to the Guidelines as may be appropriate in the military.

#### Guidelines

The Guidelines address eligibility, training, support services, trial preparation, the sentencing phase and appeals. Each black letter guideline is explained by a commentary, with reference to supporting authorities. "Should" is used throughout as a mandatory term and refers to activities which are minimum requirements.

### GUIDELINE 1.1 OBJECTIVE

The objective in providing counsel in cases in which the death penalty is sought should be to ensure that quality legal representation is afforded to defendants eligible for the appointment of counsel during all stages of the case.

### GUIDELINE 2.1 NUMBER OF ATTORNEYS PER CASE

In cases where the death penalty is sought, two qualified trial attorneys should be assigned to represent the defendant. In cases where the death penalty has been imposed, two qualified appellate attorneys should be assigned to represent the defendant. In cases where appellate proceedings have been completed or are not available and the death penalty has been imposed, two qualified postconviction attorneys should be assigned to represent the defendant.

### GUIDELINE 3.1 THE LEGAL REPRESENTATION PLAN

The legal representation plan for each jurisdiction should include: measures to formalize the process by which attorneys are assigned to represent capital defendants. To accomplish this goal, the plan should designate a body (appointing authority) within the jurisdiction which will be responsible for performing all duties in connection with the appointment of counsel as set forth by these Guidelines. This Guideline envisions two equally acceptable approaches for formalizing the process of appointment:

- a. The authority to recruit and select competent attorneys to provide representation in capital cases may be centralized in the defender office or assigned counsel program of the jurisdiction. The defender office or assigned counsel program should adopt standards and procedures for the appointment of counsel in capital cases consistent with these Guidelines, and perform all duties in connection with the appointment process as set forth in these Guidelines.
- b. In jurisdictions where it is not feasible to centralize the tasks of recruiting and selecting competent counsel for capital cases in a defender office or assigned counsel program, the legal representation plan should provide for a special appointments committee to consist of no fewer than five attorneys who:
  - i. are members of the bar admitted to practice in the jurisdiction;

- ii. have practiced law in the field of criminal defense for not less than five years;
- iii. have demonstrated knowledge of the specialized nature of practice involved in capital cases;
- iv. are knowledgeable about criminal defense practitioners in the jurisdiction; and
- v. are dedicated to quality legal representation in capital cases.

The committee should adopt standards and procedures for the appointment of counsel in capital cases, consistent with these Guidelines, and perform all duties in connection with the appointment process.

#### GUIDELINE 4.1 SELECTION OF COUNSEL

- A. The legal representation plan should provide for a systematic and publicized method for distributing assignments in capital cases as widely as possible among qualified members of the bar.
- B. The appointing authority should develop procedures to be used in establishing two rosters of attorneys who are competent and available to represent indigent capital defendants. The first roster should contain the names of attorneys eligible for appointment as lead defense counsel for trial, appeal or postconviction pursuant to the qualification requirements specified in Guideline 5.1; the second roster should contain the names of attorneys eligible for appointment as assistant defense counsel for trial, appeal or postconviction pursuant to the qualification requirements specified in the same Guideline.
- C. The appointing authority should review applications from attorneys concerning their placement on the roster of eligible attorneys from which assignments are made, as discussed in subsection (b). The review of an application should include a thorough investigation of the attorney's background, experience, and training, and an assessment of whether the attorney is competent to provide quality legal representation to the client pursuant to the qualification requirements specified in Guideline 5.1

and the performance standards established pursuant to Guidelines 11.1 and 11.2. An attorney's name should be placed on either roster upon a majority vote of the committee.

- D. Assignments should then be made in the sequence that the names appear on the roster of eligible attorneys. Departures from the practice of strict rotation of assignments may be made when such departure will protect the best interests of the client. A lawyer should never be assigned for reasons personal to the committee members making assignments.

In jurisdictions where a defender office or other entity by law receives a specific portion of or all assignments, the procedures in (b) through (d) above should be followed for cases which the defender office or other entity cannot accept due to conflicts of interest or other reasons.

#### GUIDELINE 5.1 ATTORNEY ELIGIBILITY

The appointing authority should distribute assignments to attorneys who qualify under either of the alternative procedures detailed below in paragraphs I. TRIAL; II. APPEAL; and III. POSTCONVICTION.

##### 1. TRIAL

- A. Lead trial counsel assignments should be distributed to attorneys who:
  - i. are members of the bar admitted to practice in the jurisdiction or admitted to practice pro hac vice; and
  - ii. are experienced and active trial practitioners with at least five years litigation experience in the field of criminal defense; and
  - iii. have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion, as well as prior experience as lead counsel or co-counsel in at least one case in which the death penalty was sought. In addition, of the nine jury trials which were tried to completion, the attorney should have been lead counsel in at least three cases in which the charge was murder or aggravated murder; or alternatively, of the nine jury trials, at least one was a murder or aggravated murder trial and an additional five were felony jury trials; and



- iv. are familiar with the practice and procedure of the criminal courts of the jurisdiction; and
- v. are familiar with and experienced in the utilization of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence; and
- vi. have attended and successfully completed, within one year of their appointment, a training or educational program on criminal advocacy which focused on the trial of cases in which the death penalty is sought; and
- vii. have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

B. Trial co-counsel assignments should be distributed to attorneys who:

- i. are members of the bar admitted to practice in the jurisdiction or admitted to practice pro hac vice; and
- ii. who qualify as lead counsel under paragraph (A) of this Guideline or meet the following requirements:
  - a. are experienced and active trial practitioners with at least three years litigation experience in the field of criminal defense; and
  - b. have prior experience as lead counsel or co-counsel in no fewer than three jury trials of serious and complex cases which were tried to completion, at least two of which were trials in which the charge was murder or aggravated murder; or alternatively, of the three jury trials, at least one was a murder or aggravated murder trial and one was a felony jury trial; and
  - c. are familiar with the practice and procedure of the criminal courts of the jurisdiction; and
  - d. have completed within one year of their appointment at least one training or educational program on criminal advocacy which focused on the trial of cases in which the death penalty is sought; and
  - e. have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

C. Alternate Procedures: Appointments for lead and co-counsel assignments may also be distributed to persons with extensive criminal trial experience or extensive civil litigation experience, if it is clearly demonstrated to the appointing authority that competent representation will be provided to the capital charged indigent defendant. Lawyers appointed under this paragraph shall meet one or more of the following qualifications:

- i. Experience in the trial of death penalty cases which does not meet the levels detailed in paragraphs A or B above;
- ii. Specialized post-graduate training in the defense of persons accused of capital crimes;
- iii. The availability of ongoing consultation support from experienced death penalty counsel.

Attorneys appointed under this paragraph should be prescreened by a panel of experienced death penalty attorneys (see Guideline 3.1) to ensure that they will provide competent representation.

## II. APPEAL

A. Lead appellate counsel assignments should be distributed to attorneys who:

- i. are members of the bar admitted to practice in the jurisdiction or admitted to practice pro hac vice; and
- ii. are experienced and active trial or appellate practitioners with at least three years experience in the field of criminal defense; and
- iii. have prior experience within the last three years as lead counsel or co-counsel in the appeal of at least one case where a sentence of death was imposed, as well as prior experience within the last three years as lead counsel in the appeal of no fewer than three felony convictions in federal or state court, at least one of which was an appeal of murder or aggravated murder conviction; or alternatively, have prior experience within the last three years as lead counsel in the appeal of no fewer than six felony convictions in federal or state court, at least two of which were appeals of a murder or aggravated murder conviction; and

- iv. are familiar with the practice and procedure of the appellate courts of the jurisdiction; and
  - v. have attended and successfully completed, within one year prior to their appointment, a training or educational program on criminal advocacy which focused on the appeal of cases in which a sentence of death was imposed; and
  - vi. have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.
- B Appellate co-counsel assignments may be distributed to attorneys who have less experience than attorneys who qualify as lead appellate counsel. At a minimum, however, appellate co-counsel candidates must demonstrate to the satisfaction of the appointing authority that they:
- i. are members of the bar admitted to practice in the jurisdiction or admitted to practice pro hac vice; and
  - ii. have demonstrated adequate proficiency in appellate advocacy in the field of felony defense; and
  - iii. are familiar with the practice and procedure of the appellate courts of the jurisdiction; and
  - iv. have attended and successfully completed within two years of their appointment training or educational program on criminal appellate advocacy.
- C. Alternate Procedures: Appointments for lead and co-counsel assignments may also be distributed to persons with extensive criminal trial and/or appellate experience or extensive civil litigation and/or appellate experience, if it is clearly demonstrated to the appointing authority that competent representation will be provided to the capitally charged indigent defendant. Lawyers appointed under this paragraph shall meet one or more of the following qualifications:
- i. Experience in the trial and/or appeal of death penalty cases which does not meet the levels detailed in paragraphs A or B above;
  - ii. Specialized post-graduate training in the defense of persons accused of capital crimes;

iii. The availability of ongoing consultation support from experienced death penalty counsel.

Attorneys appointed under this paragraph should be prescreened by a panel of experienced death penalty attorneys (see Guideline 3.1) to ensure that they will provide competent representation.

### III. POSTCONVICTION

Assignments to represent indigents in postconviction proceedings in capital cases should be distributed to attorneys who:

- i. are members of the bar admitted to practice in the jurisdiction or admitted to practice pro hac vice; and
- ii. are experienced and active trial practitioners with at least three years litigation experience in the field of criminal defense; and
- iii. have prior experience as counsel in no fewer than five jury or bench trials of serious and complex cases which were tried to completion, as well as prior experience as postconviction counsel in at least three cases in state or federal court. In addition, of the five jury or bench trials which were tried to completion, the attorney should have been counsel in at least three cases in which the charge was murder or aggravated murder; or alternatively, of the five trials, at least one was a murder or aggravated murder trial and an additional three were felony jury trials; and
- iv. are familiar with the practice and procedure of the appropriate courts of the jurisdiction; and
- v. have attended and successfully completed, within one year prior to their appointment, a training or educational program on criminal advocacy which focused on the postconviction phase of a criminal case, or alternatively, a program which focused on the trial of cases in which the death penalty is sought; and
- vi. have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

In addition to the experience level detailed above, it is desirable that at least one of the two postconviction attorneys also possesses appellate experience at the level described in 11.B. above (relating to appellate co-counsel).

- B. Alternate Procedures: Appointments for lead and co-counsel assignments may also be distributed to persons with extensive criminal trial, appellate and/or postconviction experience or extensive civil litigation and/or appellate experience, if it is clearly demonstrated to the appointing authority that competent representation will be provided to the capital charged indigent defendant. Lawyers appointed under this paragraph shall meet one or more of the following qualifications:
- i. Experience in trial, appeal and/or postconviction representation in death penalty cases which does not meet the levels detailed in paragraph A above;
  - ii. Specialized post-graduate training in the defense of persons accused of capital crimes;
  - iii. The availability of ongoing consultation support from experienced death penalty counsel.

Attorneys appointed under this paragraph should be prescreened by a panel of experienced death penalty attorneys (see Guideline 3.1) to ensure that they will provide competent representation.

#### GUIDELINE 6.1 WORKLOAD

Attorneys accepting appointments pursuant to these Guidelines should provide each client with quality representation in accordance with constitutional and professional standards. Capital counsel should not accept workloads which, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.

#### GUIDELINE 7.1 MONITORING; REMOVAL

- A. The appointing authority should monitor the performance of assigned counsel to ensure that the client is receiving quality representation. Where there is compelling evidence that an attorney has inexcusably ignored basic responsibilities of an effective lawyer, resulting in prejudice to the client's case, the attorney should not

receive additional appointments. Where there is compelling evidence that an unalterable systemic defect in a defender office has caused a default in the basic responsibilities of an effective lawyer, resulting in prejudice to a client's case, the office should not receive additional appointments. The appointing authority shall establish a procedure which gives written notice to counsel or a defender office whose removal is being sought, and an opportunity for counsel or the defender office to respond in writing.

- B. In fulfilling its monitoring function, however, the appointing authority should not attempt to interfere with the conduct of particular cases. Representation of an accused establishes an inviolable attorney-client relationship. In the context of a particular case, removal of counsel from representation should not occur over the objection of the client.
- C. No attorney or defender office should be readmitted to the appointment roster after removal under (a) above unless such removal is shown to have been erroneous or it is established by clear and convincing evidence that the cause of the failure to meet basic responsibilities has been identified and corrected.

#### GUIDELINE 8.1 SUPPORTING SERVICES

The legal representation plan for each jurisdiction should provide counsel appointed pursuant to these Guidelines with investigative, expert, and other services necessary to prepare and present an adequate defense. These should include not only those services and facilities needed for an effective defense at trial, but also those that are required for effective defense representation at every stage of the proceedings, including the sentencing phase.

#### GUIDELINE 9.1 TRAINING

Attorneys seeking eligibility to receive appointments pursuant to these Guidelines should have completed the training requirements specified in Guideline 5.1. Attorneys seeking to remain on the roster of attorneys from which assignments are made should continue, on a periodic basis, to attend and successfully complete training or educational programs which focus on advocacy in death penalty cases. The legal representation plan for each jurisdiction should include sufficient funding to enable adequate and frequent training programs to be conducted for counsel in capital cases and counsel who wish to be placed on the roster.

#### GUIDELINE 10.1 COMPENSATION

- A. Capital counsel should be compensated for actual time and service performed. The objective should be to provide a reasonable rate of hourly compensation which is commensurate with the provision of effective assistance of counsel and which reflects the extraordinary responsibilities inherent in death penalty litigation.
- B. Capital counsel should also be fully reimbursed for reasonable incidental expenses.
- C. Periodic billing and payment during the course of counsel's representation should be provided for in the representation plan.

#### GUIDELINE 11.1 ESTABLISHMENT OF PERFORMANCE STANDARDS

- A. The appointing authority should establish standards of performance for counsel appointed in death penalty cases.
- B. The standards of performance should include, but should not be limited to, the specific standards set out in Guidelines 11.3 through 11.9.
- C. The appointing authority should refer to the standards of performance when assessing the qualification of attorneys seeking to be placed on the roster from which appointments in death penalty cases are to be made (Guideline 4.1) and in monitoring the performance of attorneys to determine their continuing eligibility to remain on the roster (Guideline 7.1).

#### GUIDELINE 11.2 MINIMUM STANDARDS NOT SUFFICIENT

- A. Minimum standards that have been promulgated concerning representation of defendants in criminal cases generally, and the level of adherence to such standards required for non-capital cases, should not be adopted as sufficient for death penalty cases.
- B. Counsel in death penalty cases should be required to perform at the level of an attorney reasonably skilled in the specialized practice of capital representation, zealously committed to the capital case, who has had adequate time and resources for preparation.

### GUIDELINE 11.3 DETERMINING THAT DEATH PENALTY IS BEING SOUGHT

Counsel appointed in any case in which the death penalty is a possible punishment should, even if the prosecutor has not indicated that the death penalty will be sought, begin preparation for the case as one in which the death penalty will be sought while employing strategies to have the case designated by the prosecution as a non-capital one.

### GUIDELINE 11.4.1 INVESTIGATION

- A. Counsel should conduct independent investigations relating to the guilt/innocence phase and to the penalty phase of a capital trial. Both investigations should begin immediately upon counsel's entry into the case and should be pursued expeditiously.
- B. The investigation for preparation of the guilt/innocence phase of the trial should be conducted regardless of any admission or statement by the client concerning facts constituting guilt.
- C. The investigation for preparation of the sentencing phase should be conducted regardless of any initial assertion by the client that mitigation is not to be offered. This investigation should comprise efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor.
- D. Sources of investigative information may include the following:
  - 1. Charging Documents:

Copies of all charging documents in the case should be obtained and examined in the context of the applicable statutes and precedents, to identify (inter alia):

    - A. the elements of the charged offense(s), including the element(s) alleged to make the death penalty applicable;
    - B. the defenses, ordinary and affirmative, that may be available to the substantive charge and to the applicability of the death penalty;



- C. any issues, constitutional or otherwise, (such as statutes of limitations or double Jeopardy) which can be raised to attack the charging documents.

2. The Accused:

An interview of the client should be conducted within 24 hours of counsel's entry into the case, unless there is a good reason for counsel to postpone this interview. In that event, the interview should be conducted as soon as possible after counsel's appointment. As soon as is appropriate, counsel should cover A-E below (if this is not possible during the initial interview, these steps should be accomplished as soon as possible thereafter):

- A. seek information concerning the incident or events giving rise to the charge(s), and any improper police investigative practice or prosecutorial conduct which affects the client's rights;
- B. explore the existence of other potential sources of information relating to the offense, the client's mental state, and the presence or absence of any aggravating factors under the applicable death penalty statute and any mitigating factors;
- C. Collect information relevant to the sentencing phase of trial including, but not limited to: medical history, (mental and physical illness or injury of alcohol and drug use, birth trauma and developmental delays); educational history (achievement, performance and behavior) special educational needs including cognitive limitations and learning disabilities); military history (type and length of service, conduct, special training); employment and training history (including skills and performance, and barriers to employability); family and social history (including physical, sexual or emotional abuse); prior adult and Juvenile record; prior correctional experience (including conduct or supervision and in the institution/education or training/clinical services); and religious and cultural influences.
- D. seek necessary releases for securing confidential records relating to any of the relevant histories.
- E. Obtain names of collateral persons or sources to verify, corroborate, explain and expand upon information obtained in (c) above.

3. Potential Witnesses:

Counsel should consider interviewing potential witnesses, including:

- A. eyewitnesses or other witnesses having purported knowledge of events surrounding the offense itself;
- B. witnesses familiar with aspects of the client's life history that might affect the likelihood that the client committed the charged offense(s), possible mitigating reasons for the offense(s), and/or other mitigating evidence to show why the client should not be sentenced to death;
- C. members of the victim's family opposed to having the client killed. Counsel should attempt to conduct interviews of potential witnesses in the presence of a third person who will be available, if necessary, to testify as a defense witness at trial. Alternatively, counsel should have an investigator or mitigation specialist conduct the interviews.

4. The Police and Prosecution:

Counsel should make efforts to secure information in the possession of the prosecution or law enforcement authorities, including police reports. Where necessary, counsel should pursue such efforts through formal and informal discovery unless a sound tactical reason exists for not doing so.

5. Physical Evidence:

Where appropriate, counsel should make a prompt request to the police or investigative agency for any physical evidence or expert reports relevant to the offense or sentencing.

6. The Scene:

Where appropriate, counsel should attempt to view the scene of the alleged offense. This should be done under circumstances as similar as possible to those existing at the time of the alleged incident (e.g. weather, time of day, and lighting conditions).

7. Expert Assistance:

Counsel should secure the assistance of experts where it is necessary or appropriate for:

- A. preparation of the defense;
- B. adequate understanding of the prosecution's case;
- C. rebuttal of any portion of the prosecution's case at the guilt/innocence phase or the sentencing phase of the trial;
- D. presentation of mitigation. Experts assisting in investigation and other preparation of the defense should be independent and their work product should be confidential to the extent allowed by law. Counsel and support staff should use all available avenues including signed releases, subpoenas, and Freedom of Information Acts, to obtain all necessary information.

GUIDELINE 11.4.2 CLIENT CONTACT

Trial counsel should maintain close contact with the client throughout preparation of the case, discussing (*inter alia*) the investigation, potential legal issues that exist or develop, and the development of a defense theory.

GUIDELINE 11.5.1 THE DECISION TO FILE PRETRIAL MOTIONS

- A. Counsel should consider filing a pretrial motion whenever there exists reason to believe that applicable law may entitle the client to relief or that legal and/or policy arguments can be made that the law should provide the requested relief.
- B. Counsel should consider all pretrial motions potentially available, and should evaluate them in light of the unique circumstances of a capital case, including the potential impact of any pretrial motion or ruling on the strategy for the sentencing phase, and the likelihood that all available avenues of appellate and postconviction relief will be sought in the event of conviction and imposition of a death sentence. Among the issues that counsel should consider addressing in a pretrial motion are:

1. the pretrial custody of the accused;
2. the constitutionality of the implicated statute or statutes;
3. the potential defects in the charging process;
4. the sufficiency of the charging document;
5. the propriety and prejudice of any joinder of charges or defendants in the charging document;
6. the discovery obligations of the prosecution including disclosure of aggravating factors to be used in seeking the death penalty, and any reciprocal discovery obligations of the defense;
7. the suppression of evidence gathered as the result of violations of the Fourth, Fifth or Sixth Amendments to the United States Constitution, including:
  - a. the fruits of illegal searches or seizures;
  - b. involuntary statements or confessions; statements or confessions obtained in violation of the accused's right to counsel, or privilege against self-incrimination;
  - c. unreliable identification testimony which would give rise to a substantial likelihood of irreparable misidentification;
8. suppression of evidence gathered in violation of any right, duty or privilege arising out of state or local law;
9. access to resources which may be denied to the client because of indigency and which may be necessary in the case, including independent and confidential investigative resources, jury selection assistance, and expert witnesses concerning not only the charged offense(s) and the client's mental condition, but also the criminal justice system itself;
10. the defendant's right to a speedy trial;
11. the defendant's right to a continuance in order to adequately prepare his or her case;

12. matters of evidence or procedure at either the guilt/innocence or penalty phase of trial which may be appropriately litigated by means of a pretrial motion in limine, including requests for sequestered, individual voir dire as to the death qualification of jurors and any challenges to overly restrictive rules or procedures;
13. matters of trial or courtroom procedure;
14. change of venue;
15. abuse of prosecutorial discretion in seeking the death penalty;
16. challenges to the process of establishing the jury venire.

#### GUIDELINE 11.6.1 THE PLEA NEGOTIATION PROCESS

- A. Counsel should explore with the client the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to a trial. In so doing, counsel should fully explain the rights that would be waived by a decision to enter a plea instead of proceeding to trial, and should explain the legal and/or factual considerations that bear on the potential results of going to trial.
- B. Counsel should ordinarily obtain the consent of the client before entering into any plea negotiations.
- C. Counsel should keep the client fully informed of any continued plea discussion or negotiations, convey to the client any offers made by the prosecution for a negotiated settlement and discuss with the client possible strategies for obtaining an offer from the prosecution.
- D. Counsel should not accept any plea agreement without the client's express authorization.
- E. The existence of ongoing plea negotiations with the prosecution does not relieve counsel of the obligation to take steps necessary to prepare a defense. If a negotiated disposition would be in the best interest of the client, initial refusals by the prosecutor to negotiate should not prevent counsel from making further efforts to negotiate.

#### GUIDELINE 11.6.2 THE CONTENTS OF PLEA NEGOTIATIONS

- A. In order to develop an overall negotiation plan, counsel should be fully aware of and make sure the client is fully aware of:
  - 1. the maximum penalty that may be imposed for the charged offense(s) and any possible lesser included offenses;
  - 2. where applicable, any collateral consequences of potential penalties less than death, such as forfeiture of assets, deportation and civil liabilities, as well as direct consequences of potential penalties less than death, such as the possibility and likelihood of parole, place of confinement and good-time credits;
  - 3. the general range of sentences for similar offenses committed by defendants with similar backgrounds, and the impact of any applicable sentencing guidelines or mandatory sentencing requirements.
- B. In developing a negotiation strategy, counsel should be completely familiar with, inter alia:
  - 1. concessions that the client might offer, such as:
    - a. an agreement not to proceed to trial on the merits of the charges;
    - b. an agreement not to assert or further litigate particular legal issues;
    - c. an agreement to provide the prosecution with assistance in investigating or prosecuting the present case or other alleged criminal activity;
    - d. an agreement to engage in or refrain from any other conduct, appropriate to the case.
  - 2. benefits the client might obtain from a negotiated settlement, including inter alia:
    - a. a guarantee that the death penalty will not be imposed;
    - b. an agreement that the defendant will receive, with the assent of the court, a specified sentence;

c. an agreement that the prosecutor will not advocate a certain sentence, will not present certain information to the court, or will engage in or refrain from engaging in other actions with regard to sentencing;

d. an agreement that one or more of multiple charges will be reduced or dismissed;

e. an agreement that the client will not be subject to further investigation or prosecution for uncharged alleged or suspected criminal conduct;

f. an agreement that the client may enter a conditional plea to preserve the right to further contest certain issues affecting the validity of the conviction.

C. In conducting plea negotiations, counsel should be familiar with:

1. the types of pleas that may be agreed to, such as a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere or other plea which does not require the client to personally acknowledge guilt;

2. the advantages and disadvantages of each available plea according to the circumstances of the case;

3. whether a plea agreement can be made binding on the court and on penal/parole authorities.

D. In conducting plea negotiations, counsel should attempt to become familiar with the practice and policies of the particular jurisdiction, the judge and prosecuting authority, the family of the alleged victim and any other persons or entities which may affect the content and likely results of plea negotiations.

#### GUIDELINE 11.6.3 THE DECISION TO ENTER A PLEA OF GUILTY

A. Counsel should inform the client of any tentative negotiated agreement reached with the prosecution, and explain to the client the full content of the agreement along with the advantages, disadvantages and potential consequences of the agreement.

- B. The decision to enter or to not enter a plea of guilty should be based solely on the client's best interest.

#### GUIDELINE 11.6.4 ENTRY OF THE PLEA BEFORE THE COURT

- A. Prior to the entry of the plea, counsel should:
  - 1. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;
  - 2. make certain that the client fully and completely understands the conditions and limits of the plea agreement and the maximum punishment, sanctions and other consequences the accused will be exposed to by entering a plea;
  - 3. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions from the judge and providing a statement concerning the offense.
- B. During entry of the plea, counsel should make sure that the full content and conditions of the plea agreement are placed on the record before the court.

#### GUIDELINE 11.7.1 GENERAL TRIAL PREPARATION

- A. As the investigations mandated by Guideline 11.4.1 produce information, counsel should formulate a defense theory. In doing so, counsel should consider both the guilt/innocence phase and the penalty phase, and seek a theory that will be effective through both phases.
- B. If inconsistencies between guilt/innocence and penalty phase defenses arise, counsel should seek to minimize them by procedural or substantive tactics.

#### GUIDELINE 11.7.2 VOIR DIRE AND JURY SELECTION

- A. Counsel should consider, along with potential legal challenges to the procedures for selecting the jury that would be available in any criminal case, whether any procedures have been instituted for selection of juries in capital cases that present potential legal bases for challenge.



- B. Counsel should be familiar with the precedents relating to questioning and challenging of potential jurors, including the procedures surrounding "death qualification" concerning any potential juror's beliefs about the death penalty. Counsel should be familiar with techniques for rehabilitating potential jurors whose initial indications of opposition to the death penalty make them possibly excludable.

#### GUIDELINE 11.7.3 OBJECTION TO ERROR AND PRESERVATION OF ISSUES FOR POST JUDGMENT REVIEW

Counsel should consider, when deciding whether to object to legal error and whether to assert on the record a position regarding any procedure or ruling, that post judgment review in the event of conviction and sentence is likely, and counsel should take steps where appropriate to preserve, on all applicable state and Federal grounds, any given question for review.

#### GUIDELINE 11.8.1 OBLIGATION OF COUNSEL AT THE SENTENCING PHASE OF DEATH PENALTY CASES

Counsel should be aware that the sentencing phase of a death penalty trial is constitutionally different from sentencing proceedings in other criminal cases.

#### GUIDELINE 11.8.2 DUTIES OF COUNSEL REGARDING SENTENCING OPTIONS. CONSEQUENCES AND PROCEDURES

- A. Counsel should be familiar with the procedures for capital sentencing in the given jurisdiction, with the prosecutor's practice in preparing for and presenting the prosecution's case at the sentencing phase, and with the case law and rules regarding what information may be presented to the sentencing entity or entities, and how that information may be presented. Counsel should insist that the prosecutor adhere to the applicable evidentiary rules unless a valid strategic reason exists for counsel not to insist.
- B. If the client has chosen not to proceed to trial and a plea of guilty or its equivalent has been negotiated and entered by counsel in accordance with Guidelines 11.6.1 through 11.6.4, counsel should seek to ensure compliance with all portions of the plea agreement beneficial to the client.

- C. Counsel should seek to ensure that the client is not harmed by improper, inaccurate or misleading information being considered by the sentencing entity or entities in determining the sentence to be imposed.
- D. Counsel should ensure that all reasonably available mitigating and favorable information consistent with the defense sentencing theory is presented to the sentencing entity or entities in the most effective possible way.

#### GUIDELINE 11.8.3 PREPARATION FOR THE SENTENCING PHASE

- A. As set out in Guideline 11.4.1, preparation for the sentencing phase, in the form of investigation, should begin immediately upon counsel's entry into the case. Counsel should seek information to present to the sentencing entity or entities in mitigation or explanation of the offense and to rebut the prosecution's sentencing case.
- B. Counsel should discuss with the client early in the case the sentencing alternatives available, and the relationship between strategy for the sentencing phase and for the guilt/innocence phase.
- C. Prior to the sentencing phase, counsel should discuss with the client the specific sentencing phase procedures of the jurisdiction and advise the client of steps being taken in preparation for sentencing. Counsel should discuss with the client the accuracy of any information known to counsel that will be presented to the sentencing entity or entities, and the strategy for meeting the prosecution's case.
- D. If the client will be interviewed by anyone other than people working with defense counsel, counsel should prepare the client for such interview(s). Counsel should discuss with the client the possible impact on the sentence and later potential proceedings (such as appeal, subsequent retrial or resentencing) of statements the client may give in the interviews.
- E. Counsel should consider, and discuss with the client, the possible consequences of having the client testify or make a statement to the sentencing entity or entities.
- F. In deciding which witnesses and evidence to prepare for presentation at the sentencing phase, counsel should consider the following:

1. Witnesses familiar with and evidence relating to the client's life and development, from birth to the time of sentencing, who would be favorable to the client, explicative of the offense(s) for which the client is being sentenced, or would contravene evidence presented by the prosecutor;
2. Expert witnesses to provide medical, psychological, sociological or other explanations for the offense(s) for which the client is being sentenced, to give a favorable opinion as to the client's capacity for rehabilitation, etc. and/or to rebut expert testimony presented by the prosecutor;
3. Witnesses with knowledge and opinions about the lack of effectiveness of the death penalty itself;
4. Witnesses drawn from the victim's family or intimates who are willing to speak against killing the client.

#### GUIDELINE 11.8.4 THE OFFICIAL PRESENTENCE REPORT

- A. If an official presentence report or similar document may or will be presented to the court at any time, counsel should consider:
  1. The strategic implications of requesting that an optional report be prepared;
  2. The value of providing to the report preparer information favorable to the client.
- B. Counsel should review any completed report and take appropriate steps to ensure that improper, incorrect or misleading information that may harm the client is deleted from the report.
- C. Counsel should take steps to preserve and protect the client's interest regarding material that has been challenged by the defense as improper, inaccurate or misleading.
- D. Counsel should consider whether the client should speak with the person preparing the report and, if so, whether counsel should be present.

#### GUIDELINE 11.8.5 THE PROSECUTOR'S CASE AT THE SENTENCING PHASE.

- A. Counsel should attempt to determine at the earliest possible time what aggravating factors the prosecution will rely on in seeking the death penalty and what evidence will be offered in support thereof (Guideline 11.3). If the Jurisdiction has rules regarding notification of these factors, counsel should object to any non-compliance, and if such rules are inadequate, should consider challenging the adequacy of the rules.
- B. If counsel determines that the prosecutor plans to rely on or offer arguably improper, inaccurate or misleading evidence in support of the request for the death penalty, counsel should consider appropriate pretrial or trial strategies in response.

#### GUIDELINE 11.8.6 THE DEFENSE CASE AT THE SENTENCING PHASE

- A. Counsel should present to the sentencing entity or entities all reasonably available evidence in mitigation unless there are strong strategic reasons to forego some portion of such evidence.
- B. Among the topics counsel should consider presenting is:
  - 1. Medical history (including mental and physical illness or injury, alcohol and drug use, birth trauma and developmental delays);
  - 2. Educational history (including achievement, performance and behavior, special educational needs including cognitive limitations and learning disabilities) and opportunity or lack thereof;
  - 3. Military service, (including length and type of service, conduct, and special training);
  - 4. Employment and training history (including skills and performance, and barriers to employability);
  - 5. Family, and social history (including physical, sexual or emotional abuse, neighborhood surroundings and peer influence); and other cultural or religion influence, professional intervention (by medical personnel, social workers, law enforcement personnel, clergy or others) or lack thereof; prior correctional experience (including conduct on supervision and in institutions, education or training, and clinical services);

6. Rehabilitative potential of the client.
  7. Record of prior offenses (adult and juvenile), especially where there is no record, a short record, or a record of non-violent offenses.
  8. Expert testimony concerning any of the above and the resulting impact on the client, relating to the offense and to the client's potential at the time of sentencing.
- C. Counsel should consider all potential methods for offering mitigating evidence to the sentencing entity or entities, including witnesses, affidavits, reports (including, if appropriate, a defense presentence report which could include challenges to inaccurate, misleading or incomplete information contained in the official presentence report and/or offered by the prosecution, as well as information favorable to the client), letters and public records.
- D. Counsel may consider having the client testify or speak during the closing argument of the sentencing phase.

#### GUIDELINE 11.9.1 DUTIES OF TRIAL COUNSEL IN POST JUDGMENT PROCEEDINGS

- A. Counsel should be familiar with all state and federal post judgment options available to the client. Counsel should consider and discuss with the client the post judgment procedures that will or may follow imposition of the death sentence.
- B. Counsel should take whatever action, such as filing a claim or notice of appeal, is necessary to preserve the client's right to post judgment review of the conviction and sentence. Counsel should consider what other post judgment action, if any, counsel could take to maximize the client's opportunity to seek appellate and postconviction relief.
- C. Trial counsel should not cease acting on the client's behalf until subsequent counsel has entered the case or trial counsel's representation has been formally terminated.
- D. Trial counsel should cooperate with subsequent counsel concerning information regarding trial-level proceedings and strategies.

#### GUIDELINE 11.9.2 DUTIES OF APPELLATE COUNSEL

- A. Appellate counsel should be familiar with all state and federal appellate and postconviction options available to the client, and should consider how any tactical decision might affect later options.
- B. Appellate counsel should interview the client, and trial counsel if possible, about the case, including any relevant matters that do not appear in the record. Counsel should consider whether any potential off-record matters should have an impact on how the appeal is pursued, and whether an investigation of any matter is warranted.
- C. Appellate counsel should communicate with the client concerning both the substance and procedural status of the appeal.
- D. Appellate counsel should seek, when perfecting the appeal, to present all arguably meritorious issues, including challenges to any overly restrictive appellate rules.
- E. Appellate counsel should cooperate with any subsequent counsel concerning information about the appellate proceedings and strategies, and about information obtained by appellate counsel concerning earlier stages of the case.

#### GUIDELINE 11.9.3 DUTIES OF POSTCONVICTION COUNSEL

- A. Postconviction counsel should be familiar with all state and federal postconviction remedies available to the client.
- B. Postconviction counsel should interview the client, and previous counsel if possible, about the case. Counsel should consider conducting a full investigation of the case, relating to both the guilt/innocence and sentencing phases. Postconviction counsel should obtain and review a complete record of all court proceedings relevant to the case. With the consent of the client, postconviction counsel should obtain and review all prior counsel's file(s).
- C. Postconviction counsel should seek to present to the appropriate court or courts all arguably meritorious issues, including challenges to overly restrictive rules governing postconviction proceedings.

#### GUIDELINE 11.9.4 DUTIES OF CLEMENCY COUNSEL

- A. Clemency counsel should be familiar with the procedures for and permissible substantive content of a request for clemency.
- B. Clemency counsel should interview the client, and any prior attorneys if possible, and conduct an investigation to discover information relevant to the clemency procedure applicable in the jurisdiction.
- C. Clemency counsel should take appropriate steps to ensure that clemency is sought in as timely and persuasive a manner as possible.

#### GUIDELINE 11.9 .5 DUTIES COMMON TO ALL POST JUDGMENT COUNSEL

- A. Counsel representing a capital client at any point after imposition of the death sentence should be familiar with the procedures by which execution dates are set and how notification of that date is made. Counsel should also be familiar with the procedures for seeking a stay of execution from all courts in which the case may be lodged when an execution date is set.
- B. Counsel should take immediate steps to seek a stay of execution, and to appeal from any denial of a stay, in any and all available courts when an execution date is set.
- C. Counsel should continually monitor the client's mental, physical and emotional condition to determine whether any deterioration in the client's condition warrants legal action.

## GUIDELINES WITH COMMENTARY



## GUIDELINE 1.1 OBJECTIVE

The objective in providing counsel in cases in which the death penalty is sought should be to ensure that quality legal representation is afforded to defendants eligible for the appointment of counsel during all stages of the case.

### Commentary:

In 1932, Mr. Justice Sutherland, writing for the United States Supreme Court in Powell v. Alabama, a death penalty case, said:

The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he may be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. **1**

Fifty-five years later, death penalty cases have become so specialized that defense counsel has duties and functions definably different from those of counsel in ordinary criminal cases. **2** The quality of counsel's "guiding hand" in modern capital cases is crucial. At every stage of a capital case, counsel must be aware of specialized and frequently changing legal principles and rules, and be able to develop strategies applying them in the pressure-filled environment of high-stakes, complex litigation.

Trial attorneys in death penalty cases must be able to apply sophisticated jury selection techniques, including attempted rehabilitation of venire members who initially state opposition to the death penalty. This is set out infra in Guideline 11.7.2 and accompanying commentary. Counsel must be experienced in the utilization of expert

witnesses and evidence, such as psychiatric and forensic evidence, Guidelines 11.4.1(d)(7), 11.8.6(b)(8), and must be able to zealously challenge the prosecution's evidence and experts through effective cross-examination. Utilization of experts has become the rule, rather than the exception, in proper preparation of capital cases. **3**

A capital trial is, in substance, two separate trials -- the guilt/not guilty trial and the penalty trial. **4** Investigation of and planning for both phases must begin immediately upon counsel's entry into the case, Guideline 11.4.1. Counsel must at that time attempt to obtain the investigative resources necessary to prepare for both phases, Guidelines 11.4.1; 11.5.1(b)(9). Substantial pretrial investigation is a necessary base for intelligent assessment of possibly conflicting options as to the defense. Trial counsel must coordinate and integrate the evidence presented during the guilt phase with the projected evidence supporting an affirmative case for life at the penalty phase. See Guideline 11.7.1 and Guideline 11.8.1

In many capital cases, no credible argument for innocence exists, so that the life or death issue of punishment is the real focus of the entire case. **5** The Constitution requires individualization of the capital sentencing process. A capital defendant has the right to present his or her sentencer with any mitigating evidence that might save his or her life. **6** Counsel should be aware of methods to effectively advocate for the life of the client, and should strive for an effective defense presentation in every case, Guideline 11.8.1 et seq.

Currently, many indigent capital defendants are not receiving the assistance of a lawyer sufficiently skilled in practice to render quality assistance. **7** The facts set out in many published opinions provide graphic examples of inadequate performance by defense lawyers and the need for greater quality control.

In a Mississippi case, counsel's failure to present evidence during the sentencing phase left the jury unaware that the defendant was mentally retarded. **8** In a Florida case, assigned counsel never discussed the defendant's background with him, did not investigate for helpful sentencing phase evidence, and made a closing argument in which he indicated to the jury that he was representing the defendant reluctantly. **9** In a Georgia case, the defendant was procedurally barred from raising a meritorious jury claim based on the discriminatory

selection method because his volunteer lawyer failed to raise the issue at trial, on appeal, or in initial postconviction proceedings. **10** In a California case, counsel's failure to introduce evidence of the defendant's life history, character, and mental condition was compounded by his closing argument characterization of the defendant -- his client -- as a "monster." **11**

Justice Marshall noted when dissenting from denial of a petition for certiorari in one case that the attorney had failed to investigate mitigating circumstances for his client, remaining ignorant of the potential testimony of many favorable witnesses including a city councilman, a former prosecutor, a professional football player, a bank vice-president and several teachers, coaches, friends and family members. Counsel's sole strategy to avoid the death penalty was to seek a bar to its imposition because the state had given only oral notice of the aggravating circumstances upon which it would rely. The notice statute in question did not specify written notice, and no state court had ever required written notice, yet counsel "was content to rest his entire defense, and the fate of his client, on an untried legal theory" **12** which was rejected. The client was sentenced to death.

In a Wyoming case in which defense counsel had competently conducted the guilt phase of a complex and lengthy capital case, Chief Justice Rose noted in a separate opinion in the state Supreme Court that the record revealed a serious problem at the penalty phase. When asked by the trial judge how much time he would need for the sentencing hearing, counsel had replied: "Two minutes. I'm serious. I have been in this position probably more than anybody in this room, multiplied by 5, okay, and there ain't nothing you can say. They (the jury) will do what they want and there is no point. **13**

These and many other examples of poor performance by trial counsel **14** cannot be ignored on the theory that appellate or postconviction review will cure trial level error; in several instances deficient performance has not led to reversal. Due to the significant burdens placed upon defendants who challenge the adequacy of trial counsel, **15** the reluctance of appellate courts to grant relief based on unfairness in jury selection, **16** and the limits placed on federal courts to review habeas corpus claims of constitutional error, **17** the trial of capital defendants has become "virtually the whole ball game." **18** While some clients in capital cases do obtain relief on direct appeal and in postconviction proceedings, **19** the

best way to ensure that effective assistance of counsel is being provided is to attain greater quality control at the trial level. Guideline 1.1 therefore mandates quality representation at the trial level of a capital case.

The importance of quality legal representation at the trial phase of a capital case does not, on the other hand, diminish the need for quality representation at the post judgment level. The Federal Constitution guarantees the right to effective assistance of counsel on an appeal by right, **20** and other post judgment procedures are equally important in capital cases. The guiding hand of counsel must lead the condemned client through all available avenues of review. Decisions of an exceedingly technical nature must be made (e.g. whether to raise all discernible issues or only the strong ones on appeal, see Guideline 11.9.2 and accompanying commentary, or whether to raise an issue of ineffective assistance of trial counsel on the direct appeal or wait until collateral proceedings). **21** Appellate counsel must be familiar with the procedures for post appellate challenges in order to avoid any inadvertent waiver on appeal of issues that should be raised later, Guideline 11.9.2 and commentary.

While the Federal Constitutional right to counsel has not been extended to collateral postconviction proceedings, **22** the need for quality postconviction representation is nonetheless vital. Death row inmates who have found counsel to represent them in postconviction proceedings in the federal courts have secured rulings that their constitutional rights have been violated in a much higher percentage of cases than is typical of criminal appeals generally. **23**

Collateral proceedings present yet another set of obstacles unique to capital cases. In addition to the general, often difficult procedural requirements common to all habeas corpus actions, death penalty cases may be subject to rules that provide less time for preparation than is available in non-capital cases. **24** Substantive pleadings may have to be prepared simultaneously with, or even be delayed for, pleadings to stay the client's execution, Guideline 11.9.5. Only quality legal representation can see a defendant fairly through the maze of post judgment proceedings.

At least one state already provides for the appointment of counsel for collateral proceedings. **25** Capital defendants should not be subject to a "luck of the draw" with respect to counsel following an unsuccessful

appeal. **26** Guideline 1.1 mandates quality representation for indigents in a capital case through postconviction proceedings.

A general statement of high purpose alone will not suffice to ensure high quality representation. Attorney error is often the result of systemic problems, not individual deficiency. The provision of counsel for indigent capital defendants (where counsel is provided at all) often incorporates the worst features of the universally condemned ad hoc system for assigning counsel, which is at odds with the notion of quality representation. **27** Defender offices generally have the experience and dedication to provide quality representation in capital cases, but some individual defenders and many assigned counsel lack sufficient experience and dedication. Those attorneys who have adequate experience are often overworked and inadequately funded. **28** Inexperienced attorneys operating without support or supervision may find themselves "in over their heads", unable to make up with devotion their insufficient training and lack of resources. The Guidelines that follow address not just the goal of quality representation, but also the systematic provision of guidelines and resources to ensure that the goal is reached. They are intended to apply to defender offices as well as to individual assigned counsel, i.e. to all provision of counsel to indigent capital defendants.

Counsel whose advocacy does not reflect the highest standards of competency at each level of a capital case increases the "risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty. **29** On the basis of the above practice norms and constitutional requirements, this Guideline urges each jurisdiction to ensure that quality legal representation is provided to indigent capital defendants at all stages of their cases.

#### FOOTNOTES:

1. Powell v. Alabama, 287 U.S. 45, 68-69; 53 S. Ct. 55; 77 L. Ed. 158 (1932).
2. See e.g., Marshall, Remarks on the Death Penalty Made At the Judicial Conference of the Second Circuit, 86 Columbia L. Rev. 1 (1986); Hengstler, Attorneys for the Damned, ABA J. 56, 57-59 (January 1, 1987).

3. For example, counsel should obtain an evaluation of the client by a psychiatrist and/or psychologist "for an expert account of who the defendant is and why he or she does what he (or she) does," Dept. of Public Advocacy, KENTUCKY PUBLIC ADVOCATE DEATH PENALTY MANUAL (3d ed.) p. 287. Counsel must be able to properly prepare the defendant and the expert for the examination and to correctly evaluate the strategic impact of the resulting expert opinion, whether or not the expert actually testifies.
4. See Bullington v. Missouri, 451 U.S. 430, 438-446, 101 S. Ct. 1852, 68 L. Ed. 2d 270 (1981).
5. Balske, The Penalty Phase Trial: a Practical Guide, The Champion, (March, 1984) p. 40, reprinted in California Attorneys for Criminal Justice and California Public Defenders Association, CALIFORNIA DEATH PENALTY DEFENSE MANUAL, Vol. II, p. H-6 (1986).
6. Lockett v. Ohio, 438 U.S. 586, 604, 98 S. Ct. 2954, 57 L. Ed. 2d 973 (1978); Woodson v. North Carolina, 428 U.S. 280, 305, 96 S. Ct. 2978, 49 L. Ed. 2d 944 (1976).
7. See generally. Marshall, supra note 2.
8. Jones v. Thigpen, 555 F. Supp. 870, 878-79 (S.D. Miss. 1983), modified, 741 F.2d 805 (5th Cir. 1984).
9. King v. Strickland, 748 F.2d 1462, 1464 (11th Cir. 1984), cert. denied, 105 S. Ct. 2020 (1985). The 11th Circuit held this behavior ineffective assistance of counsel under the test of Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).
10. Smith v. Kemp, 715 F.2d 1459 (11th Cir. 1983), cert denied, 464 U.S. 1003, 104 S. Ct. 510 (1983), discussed in Tabak, The Death of Fairness: The Arbitrary and Capricious Imposition of the Death Penalty in the 1980's. XIV N.Y.U. Rev. L. & Soc. Change 797, 840 (1986). The defendant's wife was convicted for the same offense. The same jury issue was raised on her behalf at initial postconviction proceedings and was ultimately successful, id.
11. People v. Jackson, 28 Cal. 3d 264, 618 P.2d 149, 168 Cal. Rptr. 603 (1980), cert. denied, 450 U.S. 1035 (1981). See also, Note, Effective Assistance of Counsel in Capital Cases, 58 N.Y.U. L. Rev. 299, 303

(1983), wherein the author compares Jackson with a factually similar California case in which the jury spared the defendant's life, and concludes that the difference in results depended upon the performance of counsel, particularly at the penalty phase of the trial.

12. Mitchell v. Kemp, U.S., 107 S. Ct. 3248, 97 L. Ed. 2d 774 (1987); (Marshall, J., dissenting from denial of certiorari).
13. Hopkinson v. State, 632 P.2d 79, 197 n. 13 (Wyo. 1981), (Rose, C.J., dissenting in part and concurring in part).
14. For a more complete listing of cases in which counsel apparently failed to put on a meaningful penalty trial, see Note, Effective Assistance of Counsel in Capital Cases, 58 N.Y.U. L. Rev. 299, n.151 (1983).
15. See Strickland v. Washington, *supra* note 9; Cronic v. United States, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984).
16. See Tabak, The Death of Fairness, *supra* note 10, at 811.
17. See Engle v. Issac, 456 U.S. 107; 102 S. Ct. 1558; 71 L. Ed. 2d 83 (1982); Wainwright v. Sykes, 433 U.S. 72; 97 S. Ct. 2497, 53 L. Ed. 2d 594 (1977); see also, Catz, Federal Habeas Corpus and the Death Penalty: Need for a Preclusion Doctrine Exception, 18 U.C. Davis L. Rev. 1177, 1180 (1985).
18. Geimer, Death at Any Cost: A Critique of the Supreme Court's Recent Retreat From Its Death Penalty Standards, 12 Fla. St. U. L. Rev. 737, 779 (1985).
19. See Tabak, The Death of Fairness, *supra* note 10, at 829-830.
20. Evitts v. Lucey, 469 U.S. 387; 105 S. Ct 830; 83 L. Ed. 2d 821 (1985).
21. See e.g. Indiana Public Defender Council, INDIANA DEATH PENALTY DEFENSE MANUAL, Vol. 111, p. 8-4 through 8-5 (1985).

22. Pennsylvania v. Finley, 481 U.S. \_\_: 107 S. Ct. 1990; 95 L. Ed. 2d 539 (1987). In Giarratano v. Murray, \_ F. 2d\_ (#87-7518, 6/3/88), the U.S. Court of Appeals for the Fourth Circuit en banc, affirmed the finding of the district court that death row inmates in Virginia are entitled to counsel in state postconviction proceedings. However, both the district court and Fourth Circuit opinions are based on the Fourteenth Amendment right of inmates to meaningful access to the courts as enunciated in Bounds v. Smith, 430 U.S. 817 (1977). The district court and the Fourth Circuit chose to ignore the Sixth Amendment claims raised by Giarratano.
23. Tabak, The Death of Fairness, *supra* note 10, at 830-831; See also American Bar Association Standing Committee on Legal Aid and Indigent Defendants, Bar Information Program (prepared by The Spangenberg Group), Caseload and Cost Projections for Federal Habeas Corpus Death Penalty Cases in FY 1988 and FY 1989 (1987), Introduction, quoting Judge Godbold of the Eleventh Circuit:
- "Is this review for constitutional error meaningful? It is. Of the death penalty cases receiving federal court review in this circuit, error of constitutional dimension is found in over half the cases."
24. Tabak, The Death of Fairness, *supra* note 10, at 835. See also Elvin, Where Are the Lawyers?, Journal of the National Prison Prospect, p. 3, Summer 1987, quoting testimony of capital attorney Jack Boger in the district court proceedings in Giarratano, *supra*: "A complete knowledge of federal constitutional criminal procedure law and state substantive criminal law is rudimentary for postconviction counsel (including)... federal habeas corpus procedural law, which is complicated by doctrines of law unique to those proceedings ... (#85-0655-R, E.D. Va. Dec. 1986).

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See also, American Bar Association Standing Committee on Legal Aid and Indigent Defendants, Bar Information Program (prepared by The Spangenberg Group), Time & Expense Analysis in Postconviction Death Penalty Cases (February, 1987) p. 22, quoted in part in Criminal Justice Newsletter, Vol. 18, #10, p. 4 (May 15, 1987). One attorney responding to the questionnaire used in that study said:



"I have been involved, both as plaintiff's counsel and defense counsel, in major, protracted litigation of several different types, particularly civil rights litigation. No case I have ever handled compares in complexity with my Florida death penalty case. The death penalty jurisprudence is unintelligible; it is inconsistent and, at times, irrational. In addition, it is evolving. It constantly changes. In short, there is nothing more difficult, more time consuming, more expensive, and more emotionally exhausting than handling a death penalty case after conviction."

25. Fla. Stat. Ann. 27.701 et seq., establishing the Office of the Capital Collateral Representative.
26. Tabak, The Death of Fairness, supra note 10, at 830.
27. The call for quality representation in capital cases is consistent with national guidelines which reject the ad hoc or informal assignment of criminal cases because that method frequently results in inexperienced counsel and overall lack of quality control. See American Bar Association, Standards For Criminal Justice (hereinafter ABA Standards), Providing Defense Services, Standard 5-2.1; NLADA National Study Commission on Defense Services, Guidelines for Legal Defense Systems, 2.3; NLADA, Standards for Defender Services, 1.2(b); National Advisory Commission, Courts 13.5.
28. Goodpaster, The Trial for Life: Effective Assistance of Counsel in Death Penalty Cases, 58 N.Y.U. L. Rev. 299, 356 (1983).
29. Lockett, supra note 6, 438 U.S. at 605.

## GUIDELINE 2.1 NUMBER OF ATTORNEYS PER CASE

In cases where the death penalty is sought, two qualified trial attorneys should be assigned to represent the defendant. In cases where the death penalty has been imposed, two qualified appellate attorneys should be assigned to represent the defendant. In cases where appellate proceedings have been completed or are not available and the death penalty has been imposed, two qualified postconviction attorneys should be assigned to represent the defendant.

### Commentary:

The appointment of two attorneys as trial counsel is designed to improve representation of indigent capital defendants and is consistent with the position adopted by the American Bar Association **1** as well as several states. **2**

As discussed in Guideline 1.1 and accompanying commentary, the defendant is constitutionally entitled to legal assistance of sufficient quality so as to prepare an adequate defense at trial and an adequate appeal. In the context of capital litigation, this mandate is difficult to fulfill where the heavy responsibilities of representation are placed in the hands of a single attorney.

As described in the commentary to Guideline 1.1 and in the performance Guidelines of section 11, counsel must be an advocate for life as well as a defensive tactician. Trial counsel must: obtain the investigative resources necessary to prepare thoroughly for both the guilt and penalty phases of trial, Guidelines 8.1; 11.4.1; and 11.5.1 (b) (9); conduct extensive research in search of precedent helpful to the client; conduct thorough crime and life-history investigations in preparation for both phases of trial, Guideline 11.4.1; integrate the defense theory and strategy used during the guilt phase with the projected affirmative case for life at the penalty phase, Guideline 11.7.1; prepare witnesses for both phases of trial; and present all reasonably available mitigating evidence helpful to the defendant for the purpose of convincing the judge or jury not to impose a sentence of death, Guideline 11.8. Preparation for the penalty phase, as well as the adjudication phase, must begin immediately after counsel has been appointed to represent the defendant.

Because many of the duties of defense counsel in capital cases are definably different from those performed by counsel in criminal cases generally, because there are many rapid developments in the complex body of law affecting death penalty cases, and especially because of the harsh and irrevocable nature of the potential penalty, the responsibilities of trial counsel are sufficiently onerous to require the appointment of two attorneys as trial counsel in order to ensure that the capital defendant receives the best possible representation. The appointment of co-counsel at trial is not only meant to provide lead counsel with assistance in the preparation of both trial and penalty phases of the case, but also to provide lead counsel with different perspectives on the issues inherent in each stage of the proceedings. The collegial atmosphere of a given defender office should not be viewed as a substitute for formal designation of at least two attorneys (within the office) as counsel in a capital case.

Similarly, the need to provide effective assistance of counsel on appeal requires the appointment of two competent appellate attorneys. The quality of appellate representation provided capital defendants is often in jeopardy where essential duties are borne by a single lawyer. Appellate work in a capital case is time-consuming and difficult:

. . . a typical death penalty appeal has a record of 5,000 pages and requires an expenditure of approximately 800-900 hours of attorney time over a two to three year period. A companion habeas corpus petition can add another 50 to 200 hours. The opening brief in a capital appeal can run to 200 pages, or more, and raise a wide variety of guilt and penalty issues. In contrast, the typical non-capital appeal or writ in which the Supreme Court grants hearing involves a much shorter record and focuses on fewer issues.

Attorneys with less appellate experience, or with less time available to devote to a case, may therefore wish to seek appointment in a non-capital appeal or writ instead of a capital appeal. **3**

Substantive work must often be done simultaneously with motions to stay the execution, etc., see Guideline 11.9.4, 11.9.5. Two attorneys, whether within an appellate defender office or appointed by the court, are required.

While provision of postconviction counsel to death-sentenced indigent defendants is not yet viewed as a Federal Constitutional requirement, **4** it is essential. The judiciary and the bar are recognizing this practical reality in jurisdictions across the country. See commentary to Guideline 1.1.

Representing a death-sentenced client in postconviction proceedings is as demanding as -- or, if that is possible, even more demanding than -- the tasks faced by other capital counsel. Especially when a death warrant has been signed, counsel is subjected to demands virtually impossible to meet physically, economically, temporally and emotionally. Seeking to ward off imminent execution while continuing to challenge the validity of the client's conviction and sentence may require filing pleadings almost simultaneously in several courts (often some distance apart). Investigation of factual issues may be necessary, and consultation with the client will require counsel's time and presence at yet another location. **5** Two attorneys should be provided at this stage. **6**

Pursuant to the qualification requirements specified in Guideline 5.1, one of the two attorneys at each stage should be designated and act as the lead counsel, and the other should be designated co-counsel.

#### FOOTNOTES:

1. ABA Criminal Justice Section Wins Approval for Two Resolutions. 36 Crim. L. Rep. (BNA) 2427 (March 6, 1985).
2. E.g., 111. Rev. Stat. Ch. 110A Sec. 607 (1978); N.C. Supreme Court Rules Article IV 4.9(a)(1986); Rule 65, Qualifications for Eligibility to be Court-Appointed Counsel for Indigent Capital Defendants in the Courts of Ohio. adopted by the Ohio Supreme Court on October 14, 1987.
3. This statement is made by Michael G. Millman, Executive Director of the California Appellate Prospect (CAP), in a standard letter sent to attorneys who are inquiring about appointments from the California Supreme Court in indigent criminal appeals. CAP is a non-profit corporation which assists the court in making appointments of counsel, and works with counsel -- particularly on death penalty appeals -- to assist in providing the requisite high quality of representation.

4. Pennsylvania v. Finley, 481 U.S. : 107 S. Ct. 1990; 95 L. Ed. 2d 539 (1987).
5. See e.g., American Bar Association, Standing Committee on Legal Aid and Indigent Defendants, Bar Information Program (prepared by The Spangenberg Group), Time & Expense Analysis in Postconviction Death Penalty Cases (February, 1987) p. 21-26.
6. ABA Standing Committee on Legal Aid and Indigent Defendants, Bar Information Program (prepared by The Spangenberg Group), Caseload and Cost Projections for Federal Habeas Corpus Death Penalty Cases in FY 1988 and FY 1989 (1987) p. 74.

### GUIDELINE 3. 1 THE LEGAL REPRESENTATION PLAN

The legal representation plan for each jurisdiction should include: measures to formalize the process by which attorneys are assigned to represent capital defendants. To accomplish this goal, the plan should designate a body (appointing authority) within the Jurisdiction which will be responsible for performing all duties in connection with the appointment of counsel as set forth by these Guidelines. This Guideline envisions two equally acceptable approaches for formalizing the process of appointment:

- a. The authority to recruit and select competent attorneys to provide representation in capital cases may be centralized in the defender office or assigned counsel program of the jurisdiction. The defender office or assigned counsel program should adopt standards and procedures for the appointment of counsel in capital cases consistent with these Guidelines, and perform all duties in connection with the appointment process as set forth in these Guidelines.
- b. In Jurisdictions where it is not feasible to centralize the tasks of recruiting and selecting competent counsel for capital cases in a defender office or assigned counsel program, the legal representation plan should provide for a special appointments committee to consist of no fewer than five attorneys who:
  - i. are members of the bar admitted to practice in the jurisdictions;
  - ii. have practiced law in the field of criminal defense for not less than five years;
  - iii. have demonstrated knowledge of the specialized nature of practice involved in capital cases;
  - iv. are knowledgeable about criminal defense practitioners in the jurisdiction; and
  - v. are dedicated to quality legal representation in capital cases.

The committee should adopt standards and procedures for the appointment of counsel in capital cases, consistent with these Guidelines, and perform all duties in connection with the appointment process.

### Commentary:

Each jurisdiction should take effective measures to formalize the process by which attorneys are assigned to represent capital defendants. This Guideline provides two approaches for accomplishing this goal. The appropriateness of either approach depends in large part upon the nature of the legal representation plan for each jurisdiction.

For example, this Guideline acknowledges that effective procedures for the recruitment, appointment, and monitoring of qualified attorneys in capital cases are already in place in some defender offices and assigned counsel programs or could be developed and implemented within these programs. Assuming these pre-existing or newly developed procedures are sufficient to ensure the appointment of qualified attorneys in capital cases, this Guideline -- in jurisdictions where the appointment function is centralized in a defender office or assigned counsel program -- does not call for the establishment of a special committee as described in subsection (b). This Guideline emphasizes, however, that defender offices and assigned counsel programs entrusted with the task of assigning qualified counsel in capital cases should perform their duties in a manner consistent with these Guidelines, particularly as regards the application of attorney eligibility criteria. See Guideline 5.1.

This Guideline also acknowledges those jurisdictions where it is not feasible or possible to centralize in a defender office or assigned counsel program the tasks of recruiting and selecting qualified attorneys in capital cases. The legal representation plan for these jurisdictions should include measures to centralize the authority to make such assignments in a committee composed of knowledgeable attorneys, who should devise standards and procedures for the provision of counsel as well as perform duties relating to the administration of the assignment system. These administrative tasks include: the establishment of performance standards, Guidelines 11.1 and 11.2; the collection of names of qualified members of the bar and the assignment of qualified attorneys to individual cases, Guidelines 4.1 and 5.1; the monitoring of attorney performance and workload, Guidelines 6.1 and 7.1; the acquisition of adequate resources for support services and the provision of training programs, Guidelines 8.1 and 9.1; and the approval of compensation vouchers submitted by appointed lawyers, Guideline 10.1.

An important function of the committee is to exercise general supervision over the administration of a program composed of lawyers performing professional work. **1** Accordingly, the members of the committee should also be members of the bar, since this tends "to assure a response to the needs and problems of the program grounded in an understanding of the lawyer's professional function and responsibility." **2** Similarly, because of the unique specialization of criminal defense practice involved in capital litigation, it is desirable for all of the attorney committee members to have not only a general background in criminal defense, but also a working knowledge of the issues involved in litigating a death penalty case. Possession of such knowledge has the additional advantage of enabling committee members, if requested by appointed counsel, to provide advice on the handling of specific cases, as well as provide information concerning recent criminal law and procedure developments, written materials on criminal defense, and appropriate training programs. **3**

An effective means of securing professional independence for assigned counsel is to place responsibility for the decisions concerning the assignment of counsel in a committee whose members are themselves free from conflicts-of-interest or partisanship and are able to act in an objective fashion as dictated by their best professional judgment. **4** Consequently, the membership of the committee on appointments should not include prosecutors or judges. This restriction is necessary in order to:

remove any implication that defense attorneys under the system are subject to the control of those who appear as their adversaries or before whom they must appear in the representation of defendants, except as judges are charged with the disciplinary supervision of all members of the bar. **5**

In order to preserve the integrity of the committee and the appointments process, a lawyer should never be assigned for reasons personal to the committee members making assignments, **6** Guideline 4.1. However, because most assignments in capital cases are to local counsel, it is desirable for committee members to be familiar with criminal lawyers practicing in the jurisdiction, **7** in order to make more informed decisions regarding an attorney's ability to provide quality representation.



Courtroom observation of a particular attorney, for example, may assist committee members in assessing the attorney's eligibility to represent capital clients pursuant to Guideline 5.1.

Where assignment by the court is made to a defender office, the office must ensure that the individual attorneys designated to handle capital cases are qualified under Guideline 5.1 and that the other Guidelines are adhered to.

FOOTNOTES:

1. See ABA Standards, Providing Defense Services, Standard 5-1.3 commentary.
2. Id.
3. See ABA Standards, Providing Defense Services, Standard 5-2.1 commentary.
4. See ABA Standards, Providing Defense Services, Standard 5-1.3 commentary.
5. Id. See also, California Standing Committee on Delivery of Legal Services to Criminal Defendants, Report on the Independence of the Criminal Defense Bar and Standards Relating to Professional competence of Appointed Counsel, 3-4 (1980).
6. ABA Standards, Providing Defense Services, Standard 5-2.1.
7. See North Carolina Supreme Court Rules, article IV 4.2(c) (1980).

#### GUIDELINE 4.1 SELECTION OF COUNSEL

- A. The legal representation plan should provide for a systematic and publicized method for distributing assignments in capital cases as widely as possible among qualified members of the bar.
- B. The appointing authority should develop procedures to be used in establishing two rosters of attorneys who are competent and available to represent indigent capital defendants. The first roster should contain the names of attorneys eligible for appointment as lead defense counsel for trial, appeal or postconviction pursuant to the qualification requirements specified in Guideline 5.1; the second roster should contain the names of attorneys eligible for appointment co-counsel for trial, appeal or postconviction pursuant to the qualification requirements specified in the same Guideline.
- C. The appointing authority should review applications from attorneys concerning their placement on the roster of eligible attorneys from which assignments are made, as discussed in subsection (b). The review of an application should include a thorough investigation of the attorney's background, experience, and training, and an assessment of whether the attorney is competent to provide quality legal representation to the client pursuant to the qualification requirements specified in Guideline 5.1 and the performance standards established pursuant to Guidelines 11.1 and 11.2. An attorney's name should be placed on either roster upon a majority vote of the committee.
- D. Assignments should then be made in the sequence that the names appear on the roster of eligible attorneys. Departures from the practice of strict rotation of assignments may be made when such departure will protect the best interests of the client. A lawyer should never be assigned for reasons personal to the committee members making assignments.

In jurisdictions where a defender office or other entity by law receives a specific portion of or all assignments, the procedures in (b) through (d) above should be followed for cases which the defender office or other entity cannot accept due to conflicts of interest or other reasons.

Commentary:

The importance of systematically assigning counsel in capital cases has been previously noted in the commentaries to Guidelines 1.1 and 3.1. Once the legal representation plan has been developed, the procedures for distributing assignments should be placed in writing and be publicized. Publicity is necessary to:

dispel doubts concerning the method by which defense of the accused is being achieved and fosters scrutiny of the plan by the bar and public. **1**

Publication of the terms of the plan:

ensures that the bar is aware of the process by which counsel is being provided and promotes public confidence in the defender and assigned counsel programs, which is essential if they are to be financed adequately and operate effectively. **2**

Moreover, since the overall goal of the legal representation plan should be to ensure the presence of sufficient numbers of attorneys capable of providing competent legal services to capital clients, the terms of the plan should be publicized in a manner which attracts participation from the largest possible number of qualified criminal practitioners in the jurisdiction. **3**

The appointing authority is charged with the task of assessing the qualifications of attorneys who wish to represent capital defendants. Consistent with Guideline 2.1, two qualified attorneys should be assigned to each case, one designated as the lead defense counsel and the other co-counsel.

It should be the responsibility of the appointing authority to devise separate lists of attorneys who are able and willing to provide such services. A meaningful review of each request for inclusion on the lists should include a careful matching of the attorney's qualifications with the eligibility criteria listed in Guideline 5.1. In order to make informed decisions on eligibility, the appointing authority should have sufficient flexibility to gather as much relevant information as possible to secure a fair picture of the applicant's ability and experience. The committee should utilize whatever sources of information it deems appropriate, including contact with the applicant, with

judges before whom the applicant has appeared, with others who are familiar with the applicant's professional abilities, in-court observations, writing samples and the like.

Reference should be made to the performance standards established pursuant to Guidelines 11.1 and 11.2 when evaluating information received as to the prior performance in a capital case of attorneys seeking to establish eligibility for placement on the roster. The review process should be conducted pursuant to Guideline 5.1 on attorney eligibility in order to ensure that appointments will be made on the basis of ability and not upon unrelated factors.

Simplicity and fairness in the allocation of cases to eligible attorneys are ensured by automatically rotating the names on each roster with limited exceptions for cause. This Guideline's rotation scheme parallels those recommended in other national standards relating to defense services. The ABA's Standards for Providing Defense Services state that "(o)rdinarily, assignments should be made in the sequence that the names appear on the roster of eligible lawyers" in order "to avoid patronage and its appearance, and to ensure fair distribution of assignments among all whose names appear on the roster of eligible lawyers." <sup>4</sup> A similar view is expressed by the National Study Commission on Defense Services: "Although methods of assigning cases may vary with local procedures and conditions, the administrator, in designing the systems and making assignments, should (distribute cases) in an equitable way among the panel members to ensure balanced workloads through a rotating system with allowances for variance when necessary." <sup>5</sup>

Consistent with these recommendations, Guideline 4.1 states that exceptions to strict rotation should be limited to instances where departure would serve the best interests of the client.

Three of these exceptions bear special mention. Where the rotational appointment of a designated lawyer is impossible due to a conflict of interest, the assignment should be distributed to the next eligible lawyer on the list. <sup>6</sup> A second exception should allow consideration of a defendant's preference for a particular attorney. While it is true that the indigent defendant does not enjoy the right to select the private lawyer of his choice, <sup>7</sup> "there is much to be said for allowing the (indigent)

defendant, when administratively feasible, the same freedom of action available to the defendant of means.: **8** Where the desired attorney is otherwise willing and eligible to accept the assignment, there is no reason not to accommodate the defendant's choice when possible. **9** A third exception should permit deviation from the established sequence where the nature of the charges or other circumstances requires the appointment of a lawyer possessing special qualifications to serve in the case. **10**

If applicable law provides that a defender office or other entity is to be assigned to a given portion of all indigent capital defendants, the rotation system should be followed to the extent possible. For example, if a defender office receives half of all assignments, the office name could alternate on the list with other eligible counsel. The rotation system should be used for all cases which the defender office or other entity cannot accept, subject to the caveats set out above.

#### FOOTNOTES:

1. ABA Standards, Providing Defense Services, Standard 5-2.1 commentary.
2. ABA Standards, Providing Defense Services, Standard 5-1.2 commentary.
3. ABA Standards, Providing Defense Services, Standard 5-2.2 commentary; see also, ABA Standards, The Defense Function, Standard 4-1.5 commentary.
4. ABA Standards, Providing Defense Services, Standard 5-2.3; see also, ABA Standards, Providing Defense Services, Standard 5-2.1.
5. NLADA, National Study Commission on Defense Services, Guidelines for Legal Defense Systems. 2.16 (1976).
6. See ABA Standards, Providing Defense Services, Standard 5-2.3 commentary.
7. Trial judges have absolute discretion in deciding whether to grant the request of an indigent defendant for a particular lawyer. E.g., Drumgo v. Superior Court. 8 Cal. 3d 930, 506 P.2d 1007, 106 Cal. Rptr. (1973).

8. ABA Standards, Providing Defense Services, Standard 5-2.3 commentary.
9. See NLADA, National Study Commission on Defense Services, Guidelines for Legal Defense Systems, 5.12. (1976).
10. ABA Standards, Providing Defense Services, Standard 5-2.3.

## GUIDELINE 5.1 ATTORNEY ELIGIBILITY

The appointing authority should distribute assignments in capital cases to attorneys who qualify under either of the alternative procedures detailed below in paragraphs I. TRIAL, II. APPEAL, and III. POSTCONVICTION.

### 1. TRIAL

- A. Lead trial counsel assignments should be distributed to attorneys who:
- i. are members of the bar admitted to practice in the jurisdiction or admitted to pro hac vice; and
  - ii. are experienced and active trial practitioners with at least five years litigation experience in the field of criminal defenses; and
  - iii. have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion, as well as prior experience as lead counsel or co-counsel in at least one case in which the death penalty was sought. In addition, of the nine jury trials which were tried to completion, the attorney should have been lead counsel in at least three cases in which the charge was murder or aggravated murder; or alternatively, of the nine jury trials, at least one was a murder or aggravated murder trial and an additional five were felony jury trials; and
  - iv. are familiar with the practice and procedure of the criminal courts of the jurisdiction; and
  - v. are familiar with and experienced in the utilization of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence; and
  - vi. have attended and successfully completed, within one year of their appointment, a training or educational program on criminal advocacy which focused on the trial of cases in which the death penalty is sought; and

vii. have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

B. Trial co-counsel assignments should be distributed to attorneys who:

- i. are members of the bar admitted to practice in the jurisdiction or admitted to practice pro hac vice; and
- ii. who qualify as lead counsel under paragraph(s) of this Guideline or meet the following requirements:
  - a. are experienced and active trial practitioners with at least three years litigation experience in the field of criminal defenses; and
  - b. have prior experience as lead counsel or co-counsel in no fewer than three jury trials of serious and complex cases which were tried to completion, at least two of which are trials in which the charge was murder or aggravated murder or alternatively, of the three jury trials, at least one was a murder or aggravated murder trial and one was a felony jury trial; and
  - c. are familiar with the practice and procedure of the criminal courts of the jurisdiction; and
  - d. have completed within one year of their appointment at least one training or educational program on criminal advocacy which focused on the trial of cases in which the death penalty is sought; and
  - e. have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.



C. Alternate Procedures: Appointments for lead and co-counsel assignments may also be distributed to persons with extensive criminal trial experience or extensive civil litigation experience, if it is clearly demonstrated to the appointing authority that competent representation will be provided to the capitally charged indigent defendant. Lawyers appointed under this paragraph shall meet one or more of the following qualifications:

- i. Experience in the trial of death penalty cases which does not meet the levels detailed in paragraphs A or B above;
- ii. Specialized post-graduate training in the defense of persons accused of capital crimes;
- iii. The availability of ongoing consultation support from experienced death penalty counsel.

Attorneys appointed under this paragraph should be prescreened by a panel of experienced death penalty attorneys (see Guideline 3.1) to ensure that they will provide competent representation.

## II. APPEAL

A. Lead appellate counsel assignments should be distributed to attorneys who:

- i. are members of the bar admitted to practice in the jurisdiction or admitted to practice pro hac vice; and
- ii. are experienced and active trial or appellate practitioners with at least three years experience in the field of criminal defense; and
- iii. have prior experience within the last three years as lead counsel or co-counsel in the appeal of at least one case where a sentence of death was imposed, as well as prior experience within the last three years as lead counsel in the appeal of no fewer than three felony convictions in federal or state court, at least one of which was an appeal of murder or aggravated

murder conviction; or alternatively, have prior experience within the last three years as lead counsel in the appeal of no fewer than six felony convictions in federal or state court, at least two of which were appeals of a murder or aggravated murder convictions; and

- iv. are familiar with the practice and procedure of the appellate courts of the jurisdiction; and
  - v. have attended and successfully completed, within one year prior to their appointment, a training or educational program on criminal advocacy which focused on the appeal of cases in which a sentence of death was imposed; and
  - vi. have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.
- B. Appellate co-counsel assignments may be distributed to attorneys who have less experience than attorneys who qualify as lead appellate counsel. At a minimum, however, appellate co-counsel candidates must demonstrate to the satisfaction of the appointing authority that they:
- i. are members of the bar admitted to practice in the jurisdiction or admitted to practice pro hac vice; and
  - ii. have demonstrated adequate proficiency in appellate advocacy in the field of felony defense; and
  - iii. are familiar with the practice and procedure of the appellate courts of the jurisdiction; and
  - iv. have attended and successfully completed within two years of their appointment a training or educational program on criminal appellate advocacy.

C. Alternate Procedures: Appointments for lead and co-counsel assignments may also be distributed to persons with extensive criminal trial and/or appellate experience or extensive civil litigation and/or appellate experience, if it is clearly demonstrated to the appointing authority that competent representation will be provided to the capital charged indigent defendant. Lawyers appointed under this paragraph shall meet one or more of the following qualifications:

- i. Experience in the trial and/or appeal of death penalty cases which does not meet the levels detailed in paragraphs A or B above;
- ii. Specialized post-graduate training in the defense of persons accused of capital crimes;
- iii. The availability of ongoing consultation support from experienced death penalty counsel.

Attorneys appointed under this paragraph should be prescreened by a panel of experienced death penalty attorneys (see Guideline 3.1) to ensure that they will provide competent representation.

### III. POSTCONVICTION

Assignments to represent indigents in postconviction proceedings in capital cases should be distributed to attorneys who:

- i. are members of the bar admitted to practice in the jurisdiction or admitted to practice pro hac vice; and
- ii. are experienced and active trial practitioners with at least three years litigation experience in the field of criminal defenses; and
- iii. have prior experience as counsel in no fewer than five jury or bench trials of serious and complex cases which were tried to completion, as well as prior experience as postconviction counsel in at least three cases in state or federal court. In

addition, of the five jury or bench trials which were tried to completion, the attorney should have been counsel in at least three cases in which the charge was murder or aggravated murders or alternatively, of the five trials, at least one was a murder or aggravated murder trial and an additional three were felony jury trials; and

- iv. are familiar with the practice and procedure of the appropriate courts of the jurisdiction; and
- v. have attended and successfully completed, within one year prior to their appointment, a training or educational program on criminal advocacy which focused on the postconviction phase of a criminal case, or alternatively, a program which focused on the trial of cases in which the death penalty is sought; and
- vi. have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

In addition to the experience level detailed above, it is desirable that at least one of the two postconviction attorneys also possesses appellate experience at the level described in 11.B. above (relating to appellate co-counsel).

B. Alternate Procedures: Appointments for lead and co-counsel assignments may also be distributed to persons with extensive criminal trial, appellate and/or postconviction experience or extensive civil litigation and/or appellate experience, if it is clearly demonstrated to the appointing authority that competent representation will be provided to the capitally charged indigent defendant. Lawyers appointed under this paragraph shall meet one or more of the following qualifications:

- i. Experience in trial, appeal and/or postconviction representation in death penalty cases which does not meet the levels detailed in paragraph A above;

- ii. Specialized post-graduate training in the defense of persons accused of capital crimes;
- iii. The availability of ongoing consultation support from experienced death penalty counsel.

Attorneys appointed under this paragraph should be prescreened by a panel of experienced death penalty attorneys (see Guideline 3.1) to ensure that they will provide competent representation.

Commentary:

Eligibility requirements for capital counsel are aimed at providing highly qualified and dedicated attorneys to defendants who face the most serious of consequences -death. Consequently, the appointing authority should adopt eligibility standards which reflect at least seven essential quality control criteria necessary for the selection of able counsel at all levels in capital cases:

- i. license or permission to practice in the jurisdiction;
- ii. general background in criminal defense work;
- iii. demonstrated experience in felony practice at the appropriate level (trial, appeals, postconviction);
- iv. demonstrated experience in death penalty litigations;
- v. familiarity with the requisite court system(s);
- vi. significant and continuous training in death penalty litigation; and
- vii. demonstrated proficiency and commitment to quality representation. Additionally, eligibility standards should require trial counsel to have demonstrated experience with expert witnesses and evidence. Drafters of local eligibility standards are encouraged to consider additional criteria which will enhance the quality of representation provided. See Guideline 11.1 et seq. and accompanying commentary. Once the standards have been developed, the objective of effective representation requires consistent and continuous application of the quality control criteria in order to ensure that defendants facing the prospect of death are not receiving inadequate representation.

The importance of distributing assignments to experienced attorneys possessing a substantial background in criminal defense practice has been previously noted. See commentaries to Guidelines 1.1, 2.1, and to the performance Guidelines in section 11. As in all criminal cases, it is elemental that assigned counsel be familiar with the practice and procedure of the courts where the client's case will be heard. **1**

As discussed in Guidelines 1.1, 11.4.1, 11.7.2 and 11.8, verdicts and sentencing decisions in capital cases often turn upon the submission by both the prosecution and defense of evidence from expert witnesses. Eligible trial attorneys should therefore be adept at using expert evidence to the advantage of the client, and at cross-examining prosecution witnesses.

All assigned counsel should be required to receive relevant training on a periodic basis in order to enhance their advocacy skills; the changing nature of capital jurisprudence **2** requires capital counsel to keep abreast of constantly changing legal developments relating to death penalty matters. At all levels of capital representation, counsel should have the necessary skill and knowledge to provide quality representation.

This Guideline recognizes that fulfillment of the experiential criteria or its equivalent is a necessary, but not a sufficient, prerequisite for attorney eligibility. There may be instances where an attorney's background objectively satisfies the experiential criteria, but his or her past performance did not represent the level of proficiency or commitment necessary for the adequate representation of a client in a capital case. Such an attorney should be excluded from the roster list. Consequently, before placing an attorney's name on a roster list, the appointing authority should make an initial determination regarding the attorney's ability to satisfy the experiential criteria. The appointing authority should then make a second determination that the attorney's past performance exemplifies the quality of representation appropriate to capital cases, utilizing the Guidelines established by the authority pursuant to Guideline 11.1. The application of this two-pronged eligibility test will help prevent the mechanical assignment of cases to experientially qualified attorneys who have not demonstrated the requisite skill, dedication, or commitment necessary for capital cases.

This Guideline acknowledges that there are many attorneys who do not possess the experiential criteria detailed in the Guideline, but who should receive appointments because they will provide competent representation at trial, appeal and/or postconviction. Such attorneys may have criminal law experience which does not meet the experiential criteria, may have attended training in death penalty defense representation or may have substantial experience in civil practice. These attorneys should receive appointments if the appointing authority is satisfied the defendant or inmate will be provided with the same quality of representation as clients represented by attorneys who met the experiential criteria. Attorneys who are appointed under the “Alternate Procedures” clauses of this Guideline obviously have an obligation to consult with other attorneys who are expert in death penalty defense, to attend specialized training and to do whatever else is necessary to allow them to provide competent representation to their clients.

Where the appointment of counsel is to a defender office, the appointing authority may permit both lead and co-counsel to be designated by the office, but should determine that these Guidelines are being used in making that designation.

The resources and experience of an office as a whole may be considered as one factor in determining the qualification of the individual attorneys within that office, but cannot substitute for the personal qualifications of the individual attorneys actually handling death penalty cases. For example, the resources and experience of the office might justify allowing an otherwise qualified attorney within that office to act as lead counsel after somewhat less than five years of personal litigation experience (Guideline 5.1.1.A (ii)) but could not justify allowing an attorney within that office to act as death penalty counsel after only minimal personal criminal litigation experience.

#### FOOTNOTES:

1. ABA Standards, Providing Defense Services, Standard 5-2.2 commentary.
2. See e.g., the quote of a capital postconviction attorney describing death penalty jurisprudence as "unintelligible," "inconsistent and at times, irrational" as well as "evolving... constantly

chang(ing)." American Bar Association, Standing Committee on Legal Aid and Indigent Defendants, Bar Information Program (prepared by The Spangenberg Group), Time & Expense Analysis in Postconviction Death Penalty Cases (February, 1987) p. 22, quoted in part in Criminal Justice Newsletter, Vol. 18, #10, p. 4 (May 15, 1987).



## GUIDELINE 6.1 WORKLOAD

Attorneys accepting appointments pursuant to these Guidelines should provide each client with quality representation in accordance with constitutional and professional standards. Capital counsel should not accept workloads which, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.

### Commentary:

The goal in providing defense services in capital cases should be to ensure high quality legal representation to persons unable to afford counsel. See Guideline 1.1. The caseload of an attorney receiving assignments pursuant to these Guidelines should, therefore, permit him or her to provide each client with the time and effort necessary to ensure effective representation. As the American Bar Association has noted:

One of the single most important impediments to the furnishing of quality defense services for the poor is the presence of excessive caseloads. All too often in defender organizations, attorneys are asked to provide representation in too many cases. Unfortunately, not even the most able and industrious lawyers can provide quality representation when their workloads are unmanageable. Excessive workloads, moreover, lead to attorney frustration, disillusionment by clients, and weakening of the adversary system. **1**

Assignments should be distributed in light of each attorney's duties under the Code of Professional Responsibility not to accept "employment...when he is unable to render competent service..." **2** or to handle cases "without preparation adequate in the circumstances." **3** Similarly, counsel -- including defender offices -- should be admonished not to accept more assignments than they can reasonably discharge **4** or to accept a client where the representation will be materially limited by the attorney's responsibilities to another client or to a third person.**5**

In accordance with these principles, the appointing authority is urged to assess the non-capital workload (including private practice, if any) as well as death penalty workloads of eligible attorneys to determine whether the workloads are excessive. To assist in

assessing workloads, some defender offices have established caseload guidelines which are useful in determining whether the workload of a particular attorney is excessive. **6** These guidelines may be consulted as one measure of appropriate workloads. Assignments per attorney should be limited to an appropriate level consistent with the lawyer's ability to provide each client with quality representation in accordance with constitutional and professional standards. This limitation is applicable to defender offices as well as to members of the private bar.

As stated in Guideline 4.1, exceptions to the practice of strict rotation of assignments should be permitted in instances where departure would serve the best interests of the client. This may require that some attorneys receive more assignments than other attorneys. The instant Guideline, therefore, should not be read as requiring identical caseloads among the attorneys who are qualified to receive appointments. Where a particular attorney is receiving additional assignments, the appointing authority should be especially diligent in ensuring that the caseload is consistent with the lawyer's ability to provide quality representation to each client.

#### FOOTNOTES:

1. ABA Standards, Providing Defense Services, Standard 5-4.3 commentary.
2. ABA Model Code of Professional Responsibility EC 2-30; accord, ABA Model Rules of Professional Conduct, Rule 1.3 comment. "A lawyer's workload should be controlled so that each matter can be handled adequately."
3. ABA Model Code of Professional Responsibility, DR 6-101(A)(2).
4. ABA Standards, The Defense Function, Standard 4-1.2(d).
5. ABA Model Rules of Professional Conduct, Rule 1.7(b). The comment to that Rule says that "a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently." See also NLADA, Performance Guidelines for Criminal Defense Representation (Draft Guideline 1.3 (a)).

6. In determining maximum effective workloads for its staff attorneys, the District of Columbia Public Defender Service considers the following factors: quality of representation, speed of turnover of cases, percentage of cases tried, extent of support services available to staff attorneys, court procedures, and other activities or complex litigation. An Exemplary Prospect, 1 Law Enforcement Assistance Administration. 13-14 (1974).

See NLADA, National Study Commission on Defense Services, Guidelines for Legal Defense Systems, 5.1-5.3; NLADA Standards for Defender Services. IV.1; National Advisory Commission, Court 13.12. These standards all acknowledge the need to determine acceptable workloads, and all acknowledge within the standards themselves or in commentary the myriad factors that must be considered in weighing workload. Only the National Advisory Commission sets forth suggested numerical maximums for caseloads; those numbers are provided with the caveat "that particular local conditions -- such as travel time -- may mean that lower limits are essential." The NAC standard does not address death penalty workloads.

#### GUIDELINE 7.1 MONITORING; REMOVAL

- A. The appointing authority should monitor the performance of assigned counsel to ensure that the client is receiving quality representation. Where there is compelling evidence that an attorney has inexcusably ignored basic responsibilities of an effective lawyer, resulting in prejudice to the client's case, the attorney should not receive additional appointments. Where there is compelling evidence that an unalterable systemic defect in a defender office has caused a default in the basic responsibilities of an effective lawyer, resulting in prejudice to a client's case, the office should not receive additional appointments. The appointing authority shall establish a procedure which gives written notice to counsel or a defender office whose removal is being sought, and an opportunity for counsel or the defender office to respond in writing.
- B. In fulfilling its monitoring function, however, the appointing authority should not attempt to interfere with the conduct of particular cases. Representation of an accused establishes an inviolable attorney-client relationship. In the context of a particular case, removal of counsel from representation should not occur over the objection of the client.
- C. No attorney or defender office should be readmitted to the appointment roster after removal under (a) above unless such removal is shown to have been erroneous or it is established by clear and convincing evidence that the cause of the failure to meet basic responsibilities has been identified and corrected.

#### Commentary:

Consistent with its duty to ensure that quality legal assistance is afforded to indigent capital defendants, the appointing authority should make an effort to monitor the performance of assigned counsel, including defender offices. "Admittedly, this is not an easy task and there obviously are difficulties present in having third parties scrutinize the judgments of private counsel. On the other hand, the difficulty of the task should not be an excuse to do nothing". **1**

While the appointing authority, at a minimum, should investigate and keep track of any complaints made against assigned counsel by judges, clients and other attorneys, **2** an effective attorney-monitoring program in the

context of life and death matters should go considerably beyond these activities. The professional performance of each assigned lawyer should be subject to systematic review based upon publicized standards (see section 11) and procedures. Removal of an attorney's name from the list of attorneys eligible to receive appointments should not occur simply because members of the committee on appointments might have represented the client differently had they been assigned to the case. Rather, this Guideline adopts the position that counsel should be removed from the roster of eligible attorneys where, in the context of a particular case, counsel's inexcusable dereliction of duty has resulted in prejudice to the client's case. This test for removal is consistent with Guideline 5.1 which precludes assignments to experientially qualified attorneys who fail to demonstrate the sufficient skill, dedication, and commitment which exemplify the quality of representation appropriate to capital cases. **3**

In fulfilling its monitoring function, the appointing authority should not assume the task of overseeing the content of assigned counsel's work. **4** In order to preserve the nature of the attorney-client relationship, counsel for the accused must have total freedom to represent their clients as they deem professionally appropriate. Clients, moreover, should have the right to continue satisfactory relationships with their appointed lawyers in whom they have reposed their confidence and trust. Removal of counsel from representation therefore should not occur unless the client agrees to a substitute counsel. **5** Where the assigned lawyer is unable to provide affective representation due to a mental or physical impairment, **6** the Court may be forced to intervene, on its own motion or at the request of the client (in propria persona or through the appointing authority). In such cases, the Court's sole objective must be to protect the interests of the client.

Where cases are assigned to a defender office rather than an individual attorney, the appointing authority is not excused from the monitoring function. Procedures should be established for preventing a recurrence of any noted dereliction of duty. If the defender office administration is acting as the appointing authority or is permitted by the appointing authority to designate individual attorneys within the office as counsel for the death penalty cases assigned to the office, the individual attorneys within the office should be subject to removal from eligibility just as private attorneys are.

Where a dereliction of duty is noted following the appointment of a defender office, the appointing authority may act in ways short of removing the office as a whole from the appointment roster, if other steps are taken to ensure that there is no recurrence of the problem. If an office policy, the office workload, or other systemic problem has led to a dereliction of duty and is not corrected, the appointing authority should remove the office from the appointment roster.

Because of the unique and irrevocable nature of the death penalty, counsel who has been removed from the appointment roster should be readmitted only upon exceptional assurances that no further dereliction of duty will occur. Readmission to the roster should not be granted until the appointing authority determines that removal from the roster was improper, or determines by clear and convincing evidence that the cause of the dereliction of duty which led to the removal has been identified and corrected. Readmission may be conditioned on specific actions (e.g., proof of reduction in workload, proof of additional training and/or experience, substance abuse counseling, or correction of systemic defects in an office).

#### FOOTNOTES:

1. ABA Standards, Providing Defense Services, Standard 5-2.2 commentary
2. See Id.
3. The standard for denying additional appointments to death penalty lawyers should be more stringent than the standard for denying additional appointments in non-capital cases. The standard in non-capital criminal cases is that "where there is compelling evidence that an attorney consistently has ignored basic responsibilities . . . additional appointments to the panel member ought not be made by the assigned-counsel program." ABA Standards, Providing Defense Services, Standard 5-2.2 commentary (emphasis added).

As has been made plain throughout these Guidelines, the incompetent representation of capital defendants may have irrevocable life-or-death consequences. Accordingly, the appointing authority should not wait for an attorney to "consistently ignore basic responsibilities" or otherwise display a pattern of incompetence before denying additional appointments to that attorney.

4. ABA Standards, Providing Defense Services, 5-1.3 commentary; see also ABA Standards, Providing Defense Services, 5-5.3 and commentary.
5. Id. 5-5.3.
6. It cannot always be safely assumed that counsel who has been determined to be qualified based on past performance will represent current or future clients satisfactorily. Circumstances can change. For example, the attorney may begin suffering from illness, chemical dependency or other handicap unknown to the appointing authority, the court or the client. A Georgia man was executed despite the postconviction discovery that his trial counsel, who had failed to offer important mitigating evidence at the penalty phase, had been on drugs during the trial. Tabak, The Death of Fairness: The Arbitrary and Capricious Imposition of the Death Penalty, XIV N.Y.U. Rev. L. & Soc. Change 797, 841 (1986), discussing Young v. Kemp 758 F.2d 514 (11th Cir. 1985).

## GUIDELINE 8.1 SUPPORTING SERVICES

The legal representation plan for each jurisdiction should provide counsel appointed pursuant to these Guidelines with investigative, expert, and other services necessary to prepare and present an adequate defense. These should include not only those services and facilities needed for an effective defense at trial, but also those that are required for effective defense representation at every stage of the proceedings, including the sentencing phase.

### Commentary:

In a capital case reaffirming that fundamental fairness entitles indigent defendants to the "basic tools of an adequate defense," the United States Supreme Court stated that:

We recognized long ago that mere access to the courthouse doors does not by itself assure a proper functioning of the adversary process, and that a criminal trial is fundamentally unfair if the State proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense. **1**

The Court reiterates the proposition adopted by other national standards on defense services **2** that quality representation cannot be rendered by assigned counsel unless the lawyers have available for their use adequate supporting services. These services include:

...expert witnesses capable of testifying at trial and at other proceedings, personnel skilled in social work and related disciplines to provide assistance at pretrial release hearings and at sentencings, and trained investigators to interview witnesses and to assemble demonstrative evidence. **3**

As set out in the following Guidelines and/or commentary -- 1.1, 11.4.1, 11.5.1, 11.7.2 and 11.8, experts and other supporting services are frequently vital in capital cases.

Counsel assigned to represent defendants in capital cases must engage in ongoing research in order to keep abreast of the rapidly changing legal developments in the complex body of law surrounding death penalty issues. In order to make use of sophisticated jury selection techniques (discussed in commentaries to Guidelines 1.1 and 11.7.2),



for example, the defense requires access to social scientists and other experts who can assist in voir dire questioning and the profiling of prospective jurors. Since pretrial investigation and preparation are fundamental to attorney competence at trial. **4** (Guideline 11.4.1 and accompanying commentary), assigned counsel requires the services of trial assistants such as investigators to gather evidence and witnesses favorable to the client and to enable counsel to intelligently assess conflicting options. An adequate defense also requires the services of expert witnesses to testify on behalf of the client and to prepare defense counsel to effectively cross-examine the state's experts. **5** Additionally, counsel in a capital case is obligated to conduct a thorough investigation of the defendant's life history and background and, if it is in the best interest of the client, to present mitigating evidence uncovered during the course of that investigation at the penalty phase of the trial (Guideline 11.8.6). Counsel, whether practicing privately or within a defender office, cannot adequately perform these and other crucial penalty phase tasks without the assistance of investigators and other assistants.

It is critical, therefore, for each jurisdiction to authorize sufficient funds to enable counsel in capital cases to conduct a thorough investigation for trial, sentencing, appeal and postconviction and to procure the necessary expert witnesses and documentary evidence. **6** Assigned attorneys involved in capital cases are typically provided with few, if any, resources to fund this aspect of case preparation. **7** According to one source, the funds which states and counties provide for defense counsel are far below the amounts that would be needed even if capital trials had only one phase. **8** Furthermore, funds available to appointed defense counsel are substantially below those available to the prosecution. **9** This inequity is unconscionable.

#### FOOTNOTES:

1. Ake v. Oklahoma, 470 U.S. 68; 105 S. Ct. 1087, 84 L. Ed. 2d 53 (1985).
2. ABA Standards, Providing Defense Services, 5-1.4; National Advisory Commission, Courts, 13.14; NLADA, National Study Commission on Defense Services, Guidelines for Legal Defense Systems, 3.1, 3.4; NLADA, Standards for Defender Services 4.3. See also ABA Standards The Defense Function, Standard 4-4.1, 4-8.1.

3. ABA Standards, Providing Defense Services, Standard 5-1.4 commentary.
4. Goodpaster, Effective Assistance of Counsel in Capital Cases, 58 N.Y.U. L. Rev. 299, 344-5 (1983).
5. See Dept. of Public Advocacy, KENTUCKY PUBLIC ADVOCATE DEATH PENALTY MANUAL. Chapter XI, "Using Psychological Evidence in a Capital Case" (1983); Indiana Public Defender Council, INDIANA DEATH PENALTY DEFENSE MANUAL, Vol. 111, p. 10.5-2 through 10.5-3 (1985).
6. See ABA Standards, Providing Defense Services, Standard 5-1.4 commentary.
7. Goodpaster, Effective Assistance of Counsel, *supra* note 4, at 356; see also Tabak, The Death of Fairness: The Arbitrary and Capricious Imposition of the Death Penalty in the 1980's, XIV N.Y.U. Rev. L. & Soc. Change 797, 801 (1986) (defense counsel are not generally provided sufficient funds or staff to conduct investigations).
8. Tabak, The Death of Fairness, *supra*, note 7, at 804.
9. See e.g. Comment, The Cost of Taking a Life: Dollars and Sense of the Death Penalty, 18 U.C. Davis L. Rev. 1221, 1254 fn. 158 (1985).

## GUIDELINE 9.1 TRAINING

Attorneys seeking eligibility to receive appointments pursuant to these Guidelines should have completed the training requirements specified in Guideline 5.1. Attorneys seeking to remain on the roster of attorneys from which assignments are made should continue, on a periodic basis, to attend and successfully complete training or educational programs which focus on advocacy in death penalty cases. The legal representation plan for each jurisdiction should include sufficient funding to enable adequate and frequent training programs to be conducted for counsel in capital cases and counsel who wish to be placed on the roster.

### Commentary:

Criminal law in general is a complex and difficult legal area. The skills involved in death penalty litigation are even more highly specialized and must be carefully developed. Moreover, the consequences of mistakes by defense counsel in capital cases may be irrevocable, including wrongful conviction and the loss of life. **1** It is critical that each jurisdiction ensure that comprehensive training programs which focus on advocacy in capital cases be regularly offered to attorneys (including private counsel and defender office staff) who are eligible to receive appointments pursuant to these Guidelines or who are seeking to become eligible. **2** Many jurisdictions are not now providing the necessary training for local counsel. **3**

In addition to training within the jurisdiction, counsel's attendance at regional and national training programs should also be encouraged, if not required. **4** In recent years, intensive training for lawyers involved in capital cases has been provided by several different groups. **5**

This Guideline assumes that counsel seeking to maintain eligibility for appointment in death penalty cases will also work to hone general criminal defense skills by attending seminars on other aspects of criminal law and procedure.

### FOOTNOTES:

1. McNally, Death is Different: Your Approach to a Capital Case Must be Different Too, The Champion (March 1984) p. 10, reprinted in California Attorneys for Criminal Justice & California Public Defenders Association, CALIFORNIA DEATH PENALTY DEFENSE MANUAL. Vol. 1, p. A-29, A-30 (1986).

2. See ABA Standards, Providing Defense Services, Standard 5-1.4 and commentary.
3. Supreme Court Justice Thurgood Marshall recently urged bar associations to establish additional training programs for death penalty lawyers. See Marshall, Remarks on the Death Penalty Made at the Judicial Conference of the Second Circuit 86 Columbia L. Rev. 1 (1986).
4. Without specifying the location of training, the standards approved by the Indiana State Bar Association's Board of Managers and House of Delegates require attendance prior to trial at a "death penalty seminar." Res Gestae magazine (January 1985) p. 373.
5. E.g., NAACP Legal Defense and Educational Fund, Inc.; the California Public Defenders Association and California Attorneys For Criminal Justice; the Kentucky Department of Public Advocacy; and the Southern Poverty Law Center.

#### GUIDELINE 10.1 COMPENSATION

- A. Capital counsel should be compensated for actual time and service performed. The objective should be to provide a reasonable rate of hourly compensation which is commensurate with the provision of effective assistance of counsel and which reflects the extraordinary responsibilities inherent in death penalty litigation.
- B. Capital counsel should also be fully reimbursed for reasonable incidental expenses.
- C. Periodic billing and payment during the course of counsel's representation should be provided for in the representation plan.

#### Commentary:

This Guideline is rooted in the constitutional obligation of government to provide effective representation for poor people charged with crimes. **1** In order to fulfill that obligation, government is required to adequately compensate court-appointed counsel for the representation they provide. As the Florida Supreme Court has noted, the defendant's right to effective representation is "inextricably interlinked" with the attorney's right to fair compensation. **2**

Low fees make it economically unattractive for competent attorneys to seek assignments and to expend the time and effort a case may require. As of 1985, Virginia was paying defense lawyers in capital cases an average of \$687.00 per case -- an amount representing an hourly wage of \$1.00 in some cases. **3** Such token compensation is plainly insufficient to cover even overhead expenses of an attorney assigned to a capital case, much less to adequately reimburse the attorney for his or her time and skill. Florida's compensation scheme (permitting a maximum payment of \$3,500.00 per case as of 1985), while somewhat higher than Virginia's, must still be described as inadequate since there have been instances where the effective rate counsel received was close to the Federal minimum wage. **4** These are but two examples of drastic underfunding of capital representation.

In such situations, the temptation is too great for a lawyer to shortchange the client because he or she is not adequately being compensated for his or her time. For example, a study conducted by the National Legal Aid & Defender Association documents that in 1985, 36% of the

assigned counsel in Massachusetts who responded to a survey on the issue admitted they omitted some appropriate defense activity because of inadequate compensation. **5** Specific types of activities omitted included: interviewing the client; a full investigation of the facts; interviewing witnesses or the police; filing pretrial motions; and adequate research of the law. **6** Omissions of such critical activities, shocking in any case, would be unconscionable in cases involving defendants who face the prospect of death. For this reason alone, counsel in capital cases ought to receive adequate reimbursement for their services.

Unreasonably low fees not only deny the defendant the right to effective representation, however. They also place an unfair burden on skilled criminal defense lawyers, especially those skilled in the highly specialized capital area. These attorneys are forced to work for next to nothing after assuming the responsibility of representing someone who faces a possible sentence of death. Failure to provide appropriate compensation discourages experienced criminal defense practitioners from accepting assignments in capital cases (which require counsel to expend substantial amounts of time and effort). **7**

This Guideline provides for "reasonable" compensation, which should be distinguished from "token" compensation. In the words of one court: "The statute (imposing a fee cap upon attorney compensation in capital cases) as applied to many of today's cases, provides for only token compensation. The availability of effective counsel is therefore called into question in those cases when it is needed most." **8** The court concluded that attorney fees which are set at "confiscatory rates" in capital cases impermissibly interfere with the Sixth Amendment right to counsel. **9**

Some courts have argued that criminal defense lawyers have a pro bono obligation to provide free (or almost free, where fees are low) services to poor defendants. **10** This argument ignores the government's responsibility to provide effective, adequately funded representation in these cases. **11** Furthermore, prosecutors and judges are not required or asked to work for nothing or next to nothing. It is unconscionable to impose such a burden on defense lawyers: **12**

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No citizen can be expected to perform civilian services for the government when to do so is clearly confiscatory of his time, energy and skills, his

public service is inadequately compensated and his industry is unrewarded...I do not believe that good public conscience approves such shoddy, tawdry treatment of an attorney called upon by the courts to represent an indigent defendant in a capital case. **13** (Emphasis added).

It should be the responsibility of each jurisdiction to develop flexible standards for compensation which take into consideration the number of hours expended plus the effort, efficiency, and skill of capital counsel. **14** Among the criteria might be the role and experience of the attorney; less experienced co-counsel might be compensated at a lower rate than lead defense attorneys. **15** See Guidelines 4.1 and 5.1. Flat payment rates or arbitrary ceilings should be discouraged since they impact adversely upon vigorous defense. **16** Rather, assigned counsel should be provided a rate of hourly compensation which reflects the extraordinary responsibilities and commitment required of counsel in death penalty cases. It is also important that the compensation plan provide for extra payments to counsel when representation is provided in unusually protracted or extraordinary cases. **17**

Periodic billing and payment -- for example, monthly -- should be available to avoid hardship to sole practitioners, small firms and any other appointed counsel. **18** As the commentary to Guideline 1.1 and the Guidelines in section 11 make clear, extensive preparation and long hours characterize capital representation. Office overhead, the need for reimbursement for expenses incurred, and for compensation for time already worked do not stop during a capital case. Financial hardship imposed by a long delay before payment for time worked and expenses incurred may impact adversely upon counsel's ability to provide quality representation.

This Guideline acknowledges the strong tension which exists between the public treasury and the obligation to fund the often high cost of providing defense in capital cases, but asserts that the obligation to provide adequate and effective representation cannot be ignored or diminished. In order to safeguard the defendant's right to effective representation, "it is our duty to firmly and unhesitatingly resolve any conflicts between the treasury and the fundamental constitutional rights in favor of the latter." **19**

FOOTNOTES:

1. See Gideon v. Wainwright, 372 U.S. 335; 83 S. Ct. 792; 9 L. Ed. 2d 799 (1963); Powell v. Alabama, 287 U.S. 45; 53 S. Ct. 55; 77 L. Ed. 158 (1932).
2. Makemson v. Martin County, 491 So. 2d 1109, 1112 (Fla. 1986), cert. denied \_\_U.S.\_\_; 107 S. Ct. 908; 93 L. Ed. 2d 857 (1987).
3. Tabak, The Death of Fairness: The Arbitrary and Capricious Imposition of the Death Penalty in the 1980's, XIV N.Y.U. Rev. L. & Soc. Change, 797, 801 (1986).
4. Id. at 802.
5. NLADA, Statewide Evaluation of the Massachusetts Bar Advocate Program (1986), at 33.
6. Id. at 34.
7. The substantial amount of time required for postconviction representation alone is documented in American Bar Association Standing Committee on Legal Aid and Indigent Defendants, Bar Information Program (prepared by The Spangenberg Group), Time & Expense Analysis in Postconviction Death Penalty Cases (February 1987) p. 9.
8. Makemson v. Martin County, supra, note 2.
9. Id. at p. 1115.
10. See e.g., State ex rel. Wolff v. Ruddy, 617 S.W.2d 64 (Mo. 1981); People v. Harflinger, 359 N.E.2d 861 (111. 1977).
11. See cases cited supra note 1. The ABA has rejected the view that lawyers are required to provide pro bono legal services in criminal cases. See ABA Standards, Providing Defense Services, Standard 5-2.4 commentary.
12. ABA Standards, Providing Defense Services, Standard 5-2.4 commentary.
13. MacKensie v. Hillsborough County, 288 So. 2d 200, 202 (Fla. 1973)(dissenting opinion), quoted in Makemson v. Martin County, supra note 2, at p. 1114. See also. DeLisio v. Alaska Superior Court, 740 P.2d 437 (Alaska 1987).



14. ABA Standards, Providing Defense Services, Standard 5-2.4 commentary.
15. Id.
16. Id.
17. See Makemson v. Martin County, supra note 2.
18. See American Bar Association Standing Committee on Legal Aid and Indigent Defendants, Bar Information Program (Prepared by The Spangenberg Group), Caseload and Cost. 1: projections for Federal Habeas Corpus Death Penalty Cases in FY 1988 and FY 1989 (Sept. 1987) p. 74
19. See Makemson v. Martin County, supra, note 2.

#### GUIDELINE 11.1 ESTABLISHMENT OF PERFORMANCE STANDARDS

- A. The appointing authority should establish standards of performance for counsel appointed in death penalty cases.
- B. The standards of performance should include, but should not be limited to, the specific standards set out in Guidelines 11. 3 through 11. 9.
- C. The appointing authority should refer to the standards of performance when assessing the qualification of attorneys seeking to be placed on the roster from which appointments in death penalty cases are to be made (Guideline 4.1) and in monitoring the performance of attorneys to determine their continuing eligibility to remain on the roster (Guideline 7.1).

#### Commentary:

As set out in Guideline 5.1 and accompanying commentary, the appointing authority must determine whether attorneys seeking eligibility for appointment in death penalty cases have demonstrated the quality of representation appropriate to those cases. Written standards of attorney performance are intended to assist the appointing authority in making that determination, and to assist counsel in achieving and maintaining eligibility. The specific performance standards of this section address in addition to areas common to all criminal defense representation, those areas of representation in which death penalty cases differ from other types of criminal cases, as discussed in the Commentary to Guideline 1.1. These standards, which are enacted as minimal levels of performance in death penalty cases, are, where relevant, equally applicable to all areas of criminal practice.

Standards relating to attorney functions common to both capital and non-capital cases should also be included in the standards established by the appointing authority, with the understanding that in capital cases the level of adherence to such standards must be higher (see Guideline 11.2).

## GUIDELINE 11.2 MINIMUM STANDARDS NOT SUFFICIENT

- A. Minimum standards that have been promulgated concerning representation of defendants in criminal cases generally, and the level of adherence to such standards required for non-capital cases, should not be adopted as sufficient for death penalty cases.
- B. Counsel in death penalty cases should be required to perform at the level of an attorney reasonably skilled in the specialized practice of capital representation, zealously committed to the capital case, who has had adequate time and resources for preparation.

### Commentary:

"Death is different", **1** and all rules established for the protection of the capital defendant should be strictly enforced. The defense of death penalty cases is an evolving practice and counsel should refer to state and federal death penalty training and practice manuals for preparation and trial of death penalty cases. When the courts are not likely to provide the proper enforcement of the rules *sua sponte*, attorneys must seek to enforce the rules, or their clients will die. The minimal level of attorney competence that may be accepted as sufficient in some jurisdictions in non-capital cases can be fatally inadequate in death penalty cases. For example, attorney ignorance or oversight will not constitute cause for failure to meet the exhaustion requirements of federal habeas corpus, unless the attorney's failures have been so egregious as to meet the current standard of constitutionally ineffective assistance of counsel. **2** Under this rule, otherwise reversible error will be ignored by the court; the capital client, rather than serving an improperly imposed but unreviewable prison term because of counsel's error, will die. To ensure that indigent defendants will not die for, and their attorneys will not have to live with, such error, the standards of performance established by the appointing authority under Guideline 11.1 should include requirements that all aspects of representation be intensified in a capital case. **3**

Some national standards have been established concerning certain aspects of general representation of criminal defendants. **4** A set of complete standards is in the draft stage. **5** The appointing authority may wish to refer to existing standards when establishing the standards of performance for representation in death

penalty cases, but should not limit itself thereto. The standards to be established by the appointing authority should be defense standards, not minimum standards which the prosecution or even the courts might be willing to accept. **6**

Establishment of standards is intended to assist the appointing authority and counsel seeking to establish and maintain eligibility. Compliance with such standards is not intended to be used as the sole criteria for assessing questions of effective assistance of counsel in a particular case. **7**

The education, training and experience necessary for counsel to represent a capital client are inherent in the eligibility requirements of Guideline 5.1 and are not repeated in this section. For general standards regarding education, training and experience of criminal defense counsel, see NLADA, Performance Guidelines for Criminal Defense Representation, Draft Guideline 1.2. Other general standards contained in those Guidelines which may be relevant for consideration include:

Role of Defense Counsel (Draft Guideline 1.1) General Duties of Defense Counsel (Draft Guideline 1.3) Preliminary Proceedings (Draft Guidelines 3.1 through 3.3) Discovery (Draft Guideline 4.2) Opening Statement (Draft Guideline 7.3) Confronting the Prosecutor's Case (Draft Guideline 7.4) Closing Argument (Draft Guideline 7.6) Jury Instructions (Draft Guideline 7.7).

#### FOOTNOTES:

- 1     See e.g. Gardner v. Florida, 430 U.S. 349, 357-358; 97 S. Ct. 1197, 1204; 51 L. Ed. 2d 393, 402 (1977) (plurality opinion).
2.     Current minimum standards, according to capital attorney David Bruck, have been met if a mirror held under counsel's nose clouds up, For U.S. Death-Row Inmates, a Lawyer Often Isn't Enough. . . , Los Angeles Daily Journal, 9/30/86. (Discussing the test for effective assistance of counsel set out in Strickland v. Washington, 466 U.S. 668; 104 S. Ct. 2052; 80 L.Ed. 2d 674 (1984)). See also, Tabak, The Death of Fairness: The Arbitrary and Capricious Imposition of the Death Penalty in the 1980s, XIV N.Y.U. Rev. L. a Soc. Change 797, 805-807 (1986).

Murray v. Carrier, 477 U.S.\_\_\_\_; 106 S. Ct. 2639; 91 L.Ed. 2d 397 (1986) holds that ignorance or oversight of attorney does not equal "cause" unless external factors such as interference by government officials intervened in the defense, or unless counsel's representation amounted to constitutionally ineffective assistance.

3. The appointing authority should not limit itself to the view of those courts which state that while death is different, the same legal principles govern ineffective assistance of counsel claims in capital and non-capital cases, see e.g., Stanley v. Zant, 697 F.2d 955, 962-963 (11th Cir. 1983). The standards established by the appointing authority should clearly state that more is expected of capital counsel. Review by the appointing authority should likewise be intensified, compared to the scrutiny that might be given under a system to appoint counsel in non-capital cases. The instant Guidelines follow the logic of at least one court which recognized that courts "must strictly scrutinize counsel's conduct" in death penalty cases, Voyles v. Watkins, 489 F. Supp. 901, 910 (N.D. Miss. 1980), cited in Blake v. Zant, 513 F. Supp. 772 (S.D. Ga. 1981); contra. Washington v. Watkins, 655 F.2d 1346, 1356-1357 (5th Cir. 1981).
4. ABA Standards, The Defense Function; ABA Standards, Providing Defense Services; NLADA, Guidelines for Defender Services; National Study Commission on Defense Services, Guidelines for Legal Defense Systems in the United States.
5. NLADA Grant Award from the Bar Information Program of the ABA Standing Committee on Legal Aid and Indigent Defendants, August 22, 1985.
6. As noted above, some courts have held that the standard for ineffective assistance of counsel is not different in capital than in non-capital cases, Washington v. Watkins. 655 F.2d 1346, 1356-1357 (5th Cir. 1981).
7. For an example of standards for defense counsel that are intended for use in determining eligibility but not as the sole basis for examining claims of ineffective assistance of counsel, see Rule 65, Qualifications for Eligibility to be Court-Appointed Counsel for Indigent Capital Defendant in the Courts of Ohio, adopted by the Supreme Court of Ohio October 14, 1987, Subcommittee Comments to section 1.

### GUIDELINE 11.3 DETERMINING THAT DEATH PENALTY IS BEING SOUGHT

Counsel appointed in any case in which the death penalty is a possible punishment should, even if the prosecutor has not indicated that the death penalty will be sought, begin preparation for the case as one in which the death penalty will be sought while applying strategies to have the case designated by the prosecution as a non-capital one.

#### Commentary:

Jurisdictions may vary in how and when the prosecutor makes the determination of whether to request the death penalty. Jurisdictions vary significantly as to when the defense must be notified of the specific aggravating factors upon which the prosecution will rely in seeking the death penalty. **1** If there is any possibility that the death penalty will be sought, counsel should proceed as if it will be sought. As is set out in Guideline 11.4, early investigation is a necessity, and should not be put off on some possibility that the death penalty will not be requested, or that the request will be dropped at a later point. **2**

If required notice has not been given, counsel is "under no duty to invite a death penalty prosecution." **3** While preparing for a capital case when notice has not been given, counsel should also prepare to challenge at the sentencing phase any prosecution efforts that should be barred for failure to give notice. **4**

#### FOOTNOTES:

1. A list of cases from jurisdictions requiring specific aggravating factors to be disclosed prior to the guilt/innocence trial and from jurisdictions with no such requirement is found in Williams v. State, 445 So. 2d 798, 804-85 (Miss. 1984) cert. den. Sub nom Williams v. Mississippi, 469 U.S. 1117; 105 S. Ct. 803; 83 L. Ed. 2d 795 (1985). One of the cases cited is Sireci v. State, 399 So. 2d 964 (Fla. 1981). In rejecting the defendant's claim that aggravating circumstances had to be listed in the indictment, the court said that "when one is charged with murder in the first degree, he is well aware of the fact that it is a capital felony punishable by a maximum sentence of death....," 399 So. 2d at 970. Sireci has been cited in a later decision precluding the trial court from