

1 until long after his Nevada trial. Petitioner claims
2 that Las Vegas homicide detectives worked hand-in-hand
3 with both the FBI and the Los Angeles Police
4 Department to develop evidence against petitioner in
5 the Nevada murders as well as the California cases.
6 In particular, petitioner claims that evidence
7 developed by the prosecution about Art Taylor's
8 meeting with petitioner was critical to the theory of
9 defense. The Taylor evidence could have supported
10 petitioner's alibi that he was chauffeuring Hines and
11 Ettinger around Las Vegas at the time of the Tipton
12 murders.

13
14 Claim #8. That petitioner's conviction and sentence violate his
15 5th and 14th Amendment rights to the presumption of
16 innocence and due process, and his right to a
17 fundamentally fair trial. In petitioner's view, the
18 state failed to prove his guilt beyond a reasonable
19 doubt. Circumstantial evidence presented by the state,
20 in petitioner's view, was more consistent with his
21 innocence than with this guilt. There were no
22 eyewitnesses to the murders, and no murder weapon was
23 ever recovered. Further, nothing discovered at the
24 Tipton residence or observed outside of the Tipton
25 home directly linked the petitioner to the murders.
26 If anything, petitioner claims the evidence arguably

1 pointed to Michael Dominguez, not him. Petitioner
2 observes that the only evidence tied him to the
3 homicides was that of accomplice turned informant
4 Michael Dominguez and petitioner's alleged confession
5 as recollected by Catt.

6
7 Claim #9. That petitioner's conviction and sentence violate his
8 14th Amendment right to due process and a fair trial.
9 In this regard, petitioner claims improper and
10 prejudicial evidence was introduced during trial.
11 Among the illegal evidence improperly permitted by the
12 trial court was the following:

13
14 (A) in July, 1985, Michael Dominguez attempted to
15 kill Craig Maraldo and Cheryl McDowell, allegedly
16 at the petitioner's request. Ballistics results
17 showed that same .22 caliber shots fired in the
18 Maraldo crime matched those found at the Tipton
19 residence;

20 (B) petitioner had sold an ounce of cocaine to
21 Dominguez in the past, and Dominguez attempted to
22 kill Maraldo in order to pay off his cocaine debt
23 to petitioner;

24 (C) petitioner's participation in a burglary and
25 robbery of Mr. Godfrey included torture by
26 applying pliers to the victim's fingernails, and

1 dunking him into a tub of water to get him to
2 disclose where his money was kept; and

3 (D) petitioner threatened Timothy Catt and his
4 girlfriend to refrain from cooperating with the
5 authorities about the jewelry in the petitioner's
6 possession.

7 In the petitioner's view, the incidents detailed above
8 were evidence of other bad acts, and failed to meet
9 the test of admissibility. Petitioner claims his
10 conviction was infected with constitutional error, as
11 such "character" evidence prevents adequate cross-
12 examination of witnesses to the prior events.

13
14 Claim #10. That petitioner's conviction and sentence
15 violate his 5th and 14th Amendment right to the
16 presumption of innocence, due process of law, and a
17 fair trial, in that the state intentionally violated
18 a pretrial ruling and elicited evidence of the Woodman
19 murders in California. Before trial commenced, the
20 court made specific rulings that the state could not
21 introduce testimony concerning the Woodman murders
22 against the petitioner during the guilt phase of the
23 trial. The prosecution intentionally violated this
24 action by eliciting from detective Dillard evidence
25 that the petitioner was under suspicion for the
26 Woodman murderers in California.

1 Claim #11. That petitioner's conviction and sentence
2 violate his 14th Amendment right to due process and a
3 fair trial, because the trial court refused
4 petitioner's request for continuances. Petitioner
5 argued that he was being denied discovery and that
6 witnesses, that he had previously located and
7 interviewed, had recently become unavailable to him.
8 As result, petitioner argued for continuances of trial
9 which the state trial court denied.

10
11 Claim #12. That petitioner's conviction and sentence
12 violate his 8th and 14th Amendment rights to due process
13 and freedom from the arbitrary imposition of the death
14 penalty, because improper evidence was admitted during
15 the petitioner's penalty phase. The state introduced
16 considerable testimony concerning the charges pending
17 against petitioner in California. This testimony was
18 elicited from Los Angeles County Police Department
19 Detective Holder and consisted of hearsay and
20 secondhand information gathered during his
21 investigation.

22
23 Claim #13. That petitioner's conviction and sentence
24 violate his 5th and 14th Amendments rights to due
25 process and a fair trial by the continued concealment
26 of exculpatory evidence. In particular, the

1 petitioner argued that the veracity of informant
2 Steward Siegel was crucial to numerous search warrants
3 and wiretaps that were secured by the prosecution.
4 Petitioner has uncovered evidence suggesting that
5 Steward Siegel's reliability is subject to question.
6 If reliance upon Siegel could be shown to be
7 unfounded, the evidence From Siegel used to convict
8 petitioner could arguably be considered unreliable.
9

10 Claim #14. That petitioner's conviction and sentence
11 violate his 4th Amendment rights to be free from
12 unreasonable search and seizure. Petitioner argues
13 that the evidence seized in violation of his fourth
14 amendment rights with respect to the pen registers
15 constitutes constitutional error and should result in
16 the granting of the writ of habeas corpus.
17

18 **4. Discussion of Specific Requests**

19 With these principles in mind, the Court has reviewed each
20 of the petitioner's specific discovery requests. In addition, the
21 Court has reviewed all of the exhibits petitioner has supplied in
22 support of his motion for leave to conduct discovery. Based upon that
23 review, the Court shall grant and the deny the requests as set forth
24 below.
25
26

1
2 A. Norma Thompson Interview and FBI Informant
3 Reports.

4 Petitioner first seeks interview and FBI informant reports
5 for Norma Thompson, a friend of the petitioner who lives in New
6 Jersey.

7 At trial, the prosecution introduced the testimony of
8 Timothy Catt. Catt testified that during the second week of January,
9 1986, petitioner came to his house, showed him the Tipton jewelry and
10 threatened him into silence. Catt also testified that petitioner
11 admitted to the Tipton homicides while they sat in Catt's car outside
12 of the Town Pump Liquor Store in Las Vegas on January 28th or 29th.

13 Petitioner claims Catt's testimony was false, for FBI
14 reports establish that petitioner was on the East coast in January,
15 1986. On March 18th, 1986, FBI agents interviewed Norma Thompson.
16 During her interview, Ms. Thompson advised the FBI that petitioner was
17 in New Jersey and Philadelphia between January 1st through January
18 12th, and in New Jersey again from January 28th through January 30th.
19 In petitioner's view, these reports are Brady material, and ought to
20 have been produced to the petitioner as part of any "open file"
21 proceeding.

22 In addition, petitioner claims that his presence in New
23 Jersey and Philadelphia during the critical time periods is further
24 corroborated by informant interview reports, all of which were
25 withheld from petitioner during the Nevada proceedings. Each of these
26 documents is a report prepared by FBI Agent Livingston from the

1 Newark, New Jersey field office. In these reports, Livingston reports
2 the petitioner's location during the critical time frames in January,
3 1986 as either Newark, New Jersey, or Philadelphia. Petitioner
4 maintains that none of these documents was produced to him during
5 "open file" proceedings.

6 These documents consist of *Brady* material in petitioner's
7 view, for, if petitioner was in Newark or Philadelphia as the
8 Livingston reports suggest, it is unlikely that he could also have
9 been in Las Vegas during the second week of January, 1986 threatening
10 Catt and confessing murder to him. The documents also consist of
11 *Giglio* material, for Catt's testimony could have been effectively
12 cross-examined if petitioner's counsel had possession of the documents
13 during trial.

14 It appears that this evidence passes all three of the *Brady*
15 tests. First, it seems that the prosecution has, either willfully or
16 inadvertently, suppressed this information, which otherwise ought to
17 have been produced to petitioner. Further, the evidence was certainly
18 favorable to petitioner, for it tends to show that he was not in Las
19 Vegas during the critical time periods in question, and could
20 therefore not have committed the Tipton murders. Likewise, this
21 evidence was material to petitioner's case, for he raised an alibi
22 defense, and the suppressed evidence related directly to his alibi
23 claim. As such, this evidence ought to have been produced under
24 *Brady*.

25 Unfortunately for petitioner, none of this requested
26 discovery relates directly to an exhausted claim in the petition.

1 Although there are claims in the petition which are founded upon
2 *Brady, Giglio and Kyles*, none of those claims mentions even remotely
3 the facts set forth above. These fact issues cannot be "exhausted,"
4 for they have yet to be "fairly presented" to the state supreme court
5 for its decision. Exhaustion is an element of the "good cause"
6 analysis, for, if the claim to which the discovery relates is not
7 exhausted, it is not a claim for which relief could be granted, and,
8 therefore, cannot give rise to "good cause" under either Rule 6 or
9 *Bracy*. Because this discovery fails to relate to an exhausted claim,
10 the discovery shall not be allowed.

11 **B. Art Taylor Interview Reports and Raw Notes.**

12 At trial, petitioner sought to establish an alibi based upon
13 his driving Ettinger and Hines to and from a meeting with attorney
14 Stewart Bell. The prosecution made a two-pronged attack on the alibi.
15 First, the prosecution contended that petitioner did not drive on the
16 day of the Tipton murders, since the only proof that he did came from
17 Susan Hines. The prosecution strongly suggested Hines was lying to
18 protect petitioner because she was his paramour. Second, the
19 prosecution also attacked the timing of the proposed alibi. If
20 petitioner drove Hines and Ettinger to the meeting as suggested, they
21 left Bell's office no later than 10:30 a.m. Even if this were true,
22 according to the prosecution, petitioner then still had plenty of time
23 to drive to Ettinger's house, get a cup of coffee, and then make it
24 to the Tipton house to commit the murders at 11:00 a.m.

25 Both arguments could be attacked by the information provided
26 by a paid government informant, Art Taylor. Taylor reported to FBI

1 Agent Livingston that petitioner was with him on the morning of the
2 Tipton murders. Taylor reported that petitioner was driving
3 Ettinger's Cadillac and that they went together to a bank to cash a
4 check. While at the bank, Taylor reported that petitioner received
5 a telephonic page to return to a lawyer's office to pick up Hines and
6 Ettinger. After he received the page, Taylor said, petitioner drove
7 him back to Taylor's shop and then left for the lawyer's office.
8 Taylor testified in the California proceedings that it would have
9 taken 15-20 minutes to drive to Bell's office after petitioner
10 received the page.

11 This information was never disclosed to petitioner during
12 the "open file" proceedings prior to trial. Petitioner received some
13 of the information post-conviction, during petitioner's federal RICO
14 prosecution. According to petitioner, certain "raw notes" were even
15 more explicit regarding Taylor's comments about petitioner's
16 activities.

17 This requested discovery passes all three of the *Brady*
18 tests. There seems no doubt that the prosecution has, either
19 willfully or inadvertently, refused to produce this information, which
20 otherwise ought to have been produced to petitioner. The evidence was
21 certainly favorable to petitioner, for it tends to support his alibi
22 claim. If the jury had believed petitioner's alibi, it may have found
23 that he was physically unable to have committed the Tipton murders.
24 Furthermore, petitioner's defense rested partly on an alibi, and the
25 suppressed evidence was material to his defense. As such, this
26 evidence ought to have been produced under *Brady*.

1 This evidence also relates directly to exhausted claims in
2 the petition. Specifically, in Claims Three and Seven of the
3 petition, petitioner argues that the prosecution had evidence from Art
4 Taylor which related to petitioner's contacts with Susan Hines and
5 Larry Ettinger on the day of the Tipton murders. That this evidence
6 was withheld, petitioner further claims, amounts to error of
7 constitutional magnitude. The discovery which petitioner now seeks
8 is related directly to an exhausted claim for relief, and petitioner
9 ought to be allowed the discovery which he seeks.

10 **C. Records of Payments to Art Taylor.**

11 During the penalty phase of the Nevada murder trial,
12 prosecutors called LAPD Detective Jack Holder to provide a hearsay
13 summary of the California Woodman murder investigations. In that
14 testimony, Holder offered the hearsay statement of Art Taylor to place
15 petitioner in Los Angeles on the afternoon and evening of the Woodman
16 killings. Petitioner's attorneys introduced evidence that placed
17 petitioner in a divorce hearing in Las Vegas on that same morning, but
18 that information could not directly rebut Taylor's statements about
19 petitioner's whereabouts in the afternoon and evening of the same day.
20 Despite petitioner's presence in Las Vegas in the morning, it still
21 would have been possible for him to have traveled to Los Angeles in
22 the afternoon.

23 Apparently, Art Taylor had been paid \$10,000 for the
24 information which he had provided against petitioner. Petitioner
25 claims that his attorneys were unaware at trial of the fact that
26 Taylor had received any money at all, much less an amount such as

1 \$10,000. By virtue of the substantial bias which could have arisen
2 from payments of such size to Taylor, petitioner claims that this
3 *Giglio* material ought to have been disclosed prior to trial.

4 As with the previous discovery regarding Art Taylor, this
5 evidence also constitutes *Brady* and *Giglio* material. Petitioner was
6 not informed of the existence of payments to Taylor, nor their amount,
7 prior to trial. Without question, counsel would have used this
8 information to impeach Taylor's statements regarding petitioner's
9 whereabouts on the date of the murder. And, it seems to the Court
10 that a payment of \$10,000 to any witness for his testimony could have
11 a substantial impact on the believability of that witness.

12 As the with note of the Taylor interviews, these requests
13 also relate to claims Three and Seven of the petition. These claims
14 all deal with petitioner's alibi, and this evidence would have a
15 significant impact on petitioner's alibi claims. These requests
16 relate to an exhausted claim, and shall be allowed.

17 D. *Giglio* Material Regarding Michael Dominguez'
18 Testimony.

19 Dominguez testified that at approximately 1:30 p.m. on the
20 day of the Tipton murders, he saw a .22 caliber weapon on the
21 floorboard of petitioner's car. Dominguez also testified that this
22 was the same weapon that he had personally used in a burglary and
23 attempted homicide of Craig Maraldo and Cheryl McDowell, which he had
24 committed months earlier. Cartridges removed from the scene of the
25 Maraldo attempted homicide matched those recovered from the Tipton
26 murders. Petitioner's attorneys attempted to diffuse Dominguez'

1 testimony, arguing that he was lying, and that he was the actual
2 perpetrator of the Tipton murders because he had admitted possession
3 and prior use of the apparent murder weapon during the
4 Maraldo/McDowell crimes.

5 In efforts to corroborate statements made by Dominguez
6 during their investigations, the FBI investigated these and other
7 claims which Dominguez had made. Specifically, Dominguez claimed that
8 he had committed an arson in Texas at the petitioner's direction.
9 Although this claims was investigated, the FBI never uncovered any
10 evidence which corroborated this claim in any significant detail. None
11 of this evidence was ever provided to petitioner during or prior to
12 trial.

13 This evidence does not qualify as *Brady* material. It
14 appears that the FBI may never have told the CCDA or Metro about the
15 existence of the evidence, which would qualify as inadvertent
16 suppression of the material under *Brady*. As noted herein, the court
17 agrees with petitioner that the FBI, Los Angeles County Police and Las
18 Vegas authorities were a "joint" team, at least for purposes of
19 prosecution. Much inculpatory evidence which the CCDA used to convict
20 petitioner was provided by either the FBI or the Los Angeles
21 authorities; the same ought to have been true of any exculpatory
22 evidence in the possession of those parties as well.

23 In this case, however, the court is at a loss to understand
24 why the possibility that Dominguez may have lied about having
25 committed an arson in Texas is of substantial materiality in this
26 case. That Dominguez may have misrepresented the truth to the FBI

1 about an arson unrelated to the facts of this case simply does not
2 rise to the level of materiality required by *Brady*. If, for example,
3 the arson had been that which petitioner allegedly solicited in Maui
4 (and which was a predicate act in his RICO trial), Dominguez' alleged
5 lack of truthfulness may have had some degree of materiality to this
6 case. That he may have lied to the FBI about an unrelated arson in
7 Texas, however, does not provide sufficient grist for the *Brady* mill
8 here. The Court will therefore deny petitioner's motion with respect
9 to this discovery request.

10 E. Giglio Material Regarding LAPD Detective Jack
11 Holder.

12 Detective Holder was the conduit through which much of the
13 evidence of the California Woodman murders was introduced in the
14 Nevada case. His hearsay summary was offered during the Nevada
15 penalty phase, but petitioner claims his cross examination was
16 substantially hindered because Holder could not recall inconsistencies
17 within the hearsay declarants' statements, or he minimized those
18 inconsistencies to fit his testimony. In addition, petitioner alleges
19 that the day before the Nevada trial began, Holder signed a book
20 contract with an author for the purposes of writing about his
21 involvement in the Woodman murder case. As part of that deal, Holder
22 received a \$500 advance and a promise of future royalties. The
23 existence of this contract and its benefits were not disclosed to the
24 defense during or prior to trial. As a result, petitioner never had
25 an opportunity to examine Holder on any bias he might have developed
26 and the motive for making the case against petitioner appear stronger

1 than the available evidence.

2 This appears to be *Brady* material. There seems no dispute
3 that this material was not provided to petitioner until well after the
4 trial was complete. Certainly, the fact that a crucial witness was
5 authoring a book about the subject matter of his testimony would be
6 useful to the petitioner as impeachment material, as a jury could find
7 that the witness had shaded his testimony in order to make the book
8 more interesting and saleable. Moreover, the subject matter of
9 Holder's testimony was of great significance. In the penalty phase
10 of a capital murder trial, evidence that the defendant had only
11 recently committed another murder (and a murder for hire, at that)
12 could have a substantial impact on the jury's sentencing decisions.

13 Once again, however, this evidence does not relate directly
14 to an exhausted claim in the petition. The closest claim in the
15 petition is Claim 12. There, petitioner alleges that his sentence of
16 death was based upon Holder's uncorroborated hearsay testimony of the
17 California Woodman homicides. Because this was evidence of prior "bad
18 acts" was complete hearsay, petitioner had no means of challenging the
19 evidence as it related to the detective. Nowhere in this claim,
20 however, does petitioner mention the fact that Holder had signed a
21 book deal prior to his trial. Likewise, allegations regarding
22 Holder's book deal are absent from the remainder of the petition.
23 This discovery request therefore fails for lack of association with
24 a claim exhausted in state court.

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26 ///

1 **F. FBI Surveillance Records.**

2 As the Nevada trial progressed, FBI Special Agent Donn Owens
3 testified that he personally tracked petitioner at least 200 times
4 between March 1985 and March 1986. Based upon this pattern of
5 surveillance, Owens testified regarding certain driving patterns of
6 the petitioner, such as his tendency to speed and run red lights,
7 which allegedly made possible petitioner's trip to the Tipton house
8 at the alleged murder time (11:00 a.m.) on December 11th, 1985. The
9 prosecution did not produce records for all of the 200 or more days
10 on which Owens had "staked-out" petitioner. Petitioner's counsel
11 requested production of all of these surveillance records, but the
12 trial court denied the request.

13 As of this date, petitioner still has not received any
14 information regarding Owen's surveillance of petitioner. Petitioner
15 has managed to garner from all pertinent sources (the Nevada and
16 California cases, the ongoing FOIA litigation and the RICO
17 prosecutions), the fact that Owens was positioned to observe
18 petitioner's driving habits for a total of only five days. Either a
19 significant amount of surveillance information was withheld from
20 petitioner prior to and during trial, or Owens' testimony regarding
21 the number of times which he had tracked petitioner itself was false.

22 As with the previous request, this discovery material cannot
23 be associated with a claim which has been exhausted in state court.
24 There is no claim in the petition to which Owen's surveillance itself
25 is directly related. Likewise, the fact that Owen himself may have
26 misrepresented the actual number of time he observed petitioner does

1 not appear in the current variant of the habeas corpus petition. This
2 claim therefore also fails for lack of exhaustion in state court.

3 **G. Impeachment Evidence regarding Steward Siegel.**

4 Prior to trial, prosecutors represented that Steward Siegel
5 was a government informant that had supplied information in the case.
6 During the penalty phase, Detective Holder of the LAPD testified
7 regarding certain hearsay statements of Siegel. Holder either failed
8 to relate, or the prosecutor failed to elicit certain critical
9 impeachment evidence regarding Siegel's testimony.

10 For example, during the FOIA litigation, petitioner
11 uncovered an FBI teletype, dated October 4th, 1985, in which Siegel
12 was described as a "man without integrity which reflects upon his
13 morals." This document was located in Siegel's FBI file, and was
14 produced in redacted form as a result of the FOIA litigation.

15 Also located in Siegel's FBI file, and produced in redacted
16 form to petitioner in the FOIA litigation, was an FBI teletype dated
17 September 10th, 1985. The document relates that

18 "[i]n view of the past prior difficulties involved
19 in the operation of captioned individual (Siegel)
20 as an informant for the Tampa Division and also in
21 view of the current investigation being conducted
22 into alleged illegal activities concerning his
23 association with Bingo games in the San Diego
24 Division, FBIHQ [Headquarters] denies Las Vegas
25 request to utilize captioned individual as an
26 informant."

23 A further FBI memo, dated August 31st, 1977, reveals that
24 "Atlantic City had no interest in Siegel and that in [the FBI's]
25 opinion he was possibly using the Bureau for his own interests." This
26

1 redacted document was also revealed to petitioner during the FOIA
2 litigation. Yet another such FBI memo, dated January 1st, 1976,
3 uncovered during the FOIA litigation, stated that "Siegel is so
4 unreliable and would do or say anything to weasel out of appearing in
5 court or going to trial in any matter."

6 This is Brady material. For whatever reason, the federal
7 authorities suppressed this evidence until the petitioner himself
8 uncovered it during the course of the FOIA litigation. This material
9 would have been of significant use to petitioner during trial, for he
10 could have used it to attack Holder's testimony during the penalty
11 phase. At a minimum, petitioner could have shown the jury that the
12 FBI believed Siegel to be highly untrustworthy, and that he was using
13 the FBI for his own purposes. Such evidence could have had a
14 significant impact on the jury, for they might have then disregarded
15 at least that portion of Holder's testimony which related to Siegel.
16 Accordingly, this material ought to have been produced to petitioner
17 prior to trial.

18 This discovery request relates directly to two fully
19 exhausted claim in the petition. As noted above, claim 12 presents
20 petitioners's argument that Holder's testimony is constitutionally
21 infirm because he could not cross-examine any of the hearsay
22 declarants, such as Siegel. In claim 13, petitioner claims that the
23 truthfulness of Siegel was critical to numerous warrants and wiretaps
24 in the case, and that much of the evidence used to convict petitioner
25 could be found inadmissible if the truth regarding Siegel's lack of
26 reliability had been known. Petitioner shall therefore be allowed to

1 serve these discovery requests.

2 **H. Additional Discovery Requests**

3 In addition to these requests petitioner has made further
4 additional requests that may be grouped into three major areas: the
5 depositions of all prosecutors in the case; records from third parties
6 concerning petitioner's alibi; and records from third parties
7 concerning alternative suspects.

8 **i. Law Enforcement Depos.**

9 As to the first of these requests, petitioner seeks leave
10 to conduct depositions of the prosecutors who tried the case against
11 him, as well as the lead law enforcement officers from Metro, the FBI
12 and LAPD. These individuals are: Mel Harmon; Brad Jerbic; James
13 Livingston; Jerome Doherty; Tom Dillard; Robert Leonard; Jack Holder;
14 and Richard Crotsley. Petitioner claims that "good cause" has been
15 established to depose these individuals based upon the status of the
16 "open file" dispute in Clark County.

17 The court does not consider the "open file" controversy
18 alone to be sufficient to give rise to good cause in and of itself.
19 Certainly, the CCDA's, the FBI's and the LAPD's alleged failure to
20 coordinate documents and provide *Brady* or *Giglio* material to the
21 petitioner is evidence which suggests the existence of good cause.
22 But, as in the *Bracy* case, evidence of generalized malfeasance alone
23 is not sufficient. The petitioner must show exactly how that
24 malfeasance has negatively affected his client. Thus, in this case,
25 petitioner has demonstrated that evidence regarding Art Taylor has
26 been withheld from him, and that that evidence relates to an exhausted

1 claim in the petition. As such, he shall be allowed to serve the
2 subpoenas regarding the Art Taylor discovery.

3 With respect to these depositions, however, petitioner has
4 not limited their scope in any way. He claims that the "open file"
5 controversy establishes good cause, and that he should be allowed to
6 depose these law enforcement officials without limitation. This
7 argument is unavailing for several reasons. First, there is no
8 indication that the proposed examination relates in any way to an
9 exhausted claim in the petition. As noted above, all discovery must
10 relate to an exhausted claim, or it cannot qualify as having qualified
11 for "good cause." With respect to these depositions, none of them is
12 related specifically to any claim in the petition, and they cannot
13 therefore be considered to be exhausted.

14 Moreover, these depositions do not appear to be related to
15 any specific items of evidence or claim in the petition. The court
16 has consented to allow petitioner's request to subpoena the CCDA's
17 "open file" records to determine the exact contents of the CCDA files.
18 That discovery is, by its very nature, limited to that which is
19 present in the CCDA files. All that the district attorney must do is
20 make its files (as they currently exist) available to petitioner for
21 inspection and copying. With respect to these depositions, petitioner
22 has not limited the scope or nature of the proposed examination. This
23 sort of wide-open discovery was specifically discounted in the *Bracy*
24 case, in which the Court declared that, among other things, discovery
25 requests had to be narrowly tailored to obtain specific, identifiable
26 things. *Bracy, supra*, 520 U.S. at 909. These depositions will

1 therefore not be allowed.

2 ii. Third Party Alibi Evidence

3 Petitioner next seeks leave to conduct discovery of certain
4 third parties as to any evidence they may have that supports
5 petitioner's alibi claim. First, petitioner seeks leave to subpoena
6 Michael's Gourmet Steaks and Fine Seafood (Exhibit 351), seeking
7 employment records regarding the victim, James Meyers. Petitioner
8 seeks records relating to other deliveries that Meyers may have made
9 the morning of the murder, as well as for the purpose of further
10 refining the exact time of the murders.

11 Petitioner also seeks to subpoena telephone records from
12 Sprint Telephone (Exhibit 350), seeking the records of David Tipton,
13 the husband of the victim, Bobbi Tipton, for calls made to the Tipton
14 residence on the date of the murder.

15 Also sought is a subpoena for Wells Fargo Bank (Exhibit
16 349), the successor bank to First Interstate Bank, the institution in
17 which petitioner alleged cashed a check for petitioner or Mr. Taylor
18 on the morning of the murders. To the extent that documents still
19 exist, a time stamp may further define the time when petitioner and
20 Taylor were in the bank. Wells Fargo is also the successor
21 institution to Continental Bank, the bank in which Hines, Ettinger and
22 petitioner allegedly stopped on their way to the meeting at the
23 attorney's office. Again, petitioner hopes that a time stamp may
24 exist, which may further define the exact time when these individuals
25 were at the bank.

26 Petitioner also seeks information regarding Bill Keeton, a

1 former Metro police officer who issued the check cashed by Mr. Taylor
2 and petitioner on the morning of the Tipton murders, December 11th,
3 1985. Keeton was disciplined by Metro for his conduct involving
4 petitioner, and it is possible that the bank's and/or Metro's records
5 may contain information regarding the check which was cashed.

6 It appears to the court that all of this discovery should
7 be allowed. First, the material relates directly to exhausted claims
8 in the petition. Specifically, issues regarding petitioner's
9 whereabouts on the day of the Tipton murder, the cashing of checks and
10 banks, and telephone calls were raised in claims Three, Six and Seven
11 of the petition. The proposed discovery thus relates to exhausted
12 claims in the petition and is not subject to fault on that count.

13 Likewise, there is independent "good cause" to allow this
14 discovery to go forward. Although the material in this case does not
15 appear to have been withheld by the prosecution, either intentionally
16 or negligently, and would therefore not qualify as *Brady* evidence, it
17 nonetheless all falls within the *Bracy* guidelines for "good cause"
18 discovery.

19 First, the discovery requested is grounded in specific and
20 demonstrable facts. The material sought generally consists of banking
21 records which, in all likelihood, have been transferred to either
22 microfilm or computer records and archived. As such, the material is
23 very identifiable and demonstrable. Second, there is a logical and
24 direct nexus between the discovery sought and the pending claims. If
25 petitioner can locate any of the documents which he seeks, they may
26 very well help establish his alibi claim to a degree greater than has

1 been before demonstrated. Moreover, these claims do not appear to
2 be purely speculative. Although the prosecution successfully defeated
3 the alibi claim at trial, there was a least "some evidence" supporting
4 the alibi claim, and it therefore cannot be said to be purely
5 speculative. Finally, these specific discovery requests have been
6 narrowly tailored to obtain specific, identifiable things. As opposed
7 to many of the petitioner's other discovery requests (more about this
8 later), these four claims are narrowly tailored to seek out specific
9 items, and will therefore be allowed.

10 **iii. Third Party Alternative Suspect Records**

11 Petitioner here seeks leave to subpoena the Department of
12 the Interior, Steve Stein and Stuart Bell for information relating to
13 alternative suspects. The Department of the Interior investigated a
14 boating accident which allegedly occurred on January 31st, 1986,
15 involving Kelly Danielson and Laurence O'Dell. These men were
16 associates of Mr. Dominguez, and someone fitting the description of
17 Mr. Danielson was seen in the vicinity of the Tipton home on the
18 morning of the murders (December 11th, 1985). Further, Danielson paid
19 a visit to District Attorney Rex Bell in January sometime prior to the
20 marine incident, ostensibly for social purposes.

21 This material relates only very tangentially to one of the
22 exhausted claims in the petition. In claim Six, petitioner accuses
23 his trial counsel of ineffectively representing him during the guilt
24 and penalty phases of trial. Petitioner alleges that his lawyers
25 ought to have explored more deeply the existence of other potential
26 suspects, such as Dominguez and Danielson. But this claim makes no

1 mention of a boating accident or of a social call by Danielson to Rex
2 Bell. Yet, giving the petitioner the benefit of the doubt, it would
3 seem that these discovery requests could relate to this claim in the
4 petition.

5 The requests do not, however, pass muster under the *Bracy*
6 "good cause" analysis. First, although the requests are grounded in
7 specific and demonstrable facts, there does not appear to be a logical
8 and direct nexus between the discovery regarding the boating accident
9 sought and the pending claims. Whether O'Dell and Danielson were
10 involved in a boating accident of January 31st, 1986 seems to have
11 little to do with their location on the morning of December 11th,
12 1985. Likewise, whether Danielson visited Rex Bell during January,
13 1986, does not have any impact on his potential as an alternative
14 suspect in the Tipton murder. Accordingly, the court concludes that
15 these requests fail to establish "good cause" under *Bracy*, and the
16 requests shall, for that reason, be denied.

17
18 **I. Identification and Formulation of Subpoenas.**

19 The court has concluded that petitioner ought to be allowed
20 to serve the discovery requests identified above as:

- 21 B. Art Taylor Interview Reports and Raw Notes;
22 C. Records of Payments to Art Taylor;
23 G. Impeachment Material of Steward Siegel; and
24 H(ii). Third Party Alibi Evidence.

25 Unfortunately, with the exception of category H(ii),
26 petitioner has failed to identify with any degree of reliable

1 specificity which of the dozens of subpoenas relate to these specific
2 discovery requests. In category H(ii), for example, petitioner has
3 identified Exhibit #351 to be served on Michael's Fine Steaks and
4 Seafoods. This discovery request and subpoena request employment and
5 delivery records of James Meyers regarding the date of the Tipton
6 murders, in order that petitioner might refine the exact time of the
7 murders on December 11th, 1985. The court has reviewed the subpoena,
8 and finds that it is acceptable in form and content.

9 Petitioner has failed to identify which proposed subpoenas
10 correspond with the discovery requests which the court has granted.
11 Until such time as petitioner can specifically pair a subpoena (and
12 its corresponding (Exhibit number) with the discovery which the court
13 has granted above, the court is unable to authorize the issuance of
14 any subpoenas for discovery. Accordingly, the court shall allow the
15 petitioner a short period of time within which to correlate the
16 existing exhibits/subpoenas with the allowed discovery. Petitioner
17 may do this by means of a short set of points and authorities, in
18 which the specific exhibit attached to the motion is associated by
19 exhibit number with discovery claims B, C, G and H(ii).

20 Respondent should be allowed a short period of time within
21 which to comment on the petitioner's filing, in order to point out to
22 the court any proposed subpoenas which do not readily relate to the
23 discovery requests which the court has actually authorized.

24 As a final matter, the court notes that petitioner's
25 subpoenas generally cast extremely broad nets. And, while Rule 26(b)
26 discovery generally tends to be inclusive, rather than exclusive,

1 petitioner must bear in mind that this discovery is borne out under
2 the auspices of Rule 6 of the Habeas Rules and the "good cause" case
3 law which *Bracy* begot. As such, petitioner's discovery requests ought
4 to be tailored as narrowly as possible to ferret out only those
5 specific items that petitioner seeks. Discovery requests which seek
6 out every possible document in the respondents' possession, and which
7 contain lengthy definitions of "document" and other such obvious terms
8 will fall under jaundiced eyes. The court has allowed specific
9 categories of discovery, and the petitioner's proposed subpoenas
10 should limit themselves as narrowly as possible to those documents,
11 items and things which fall into those categories. Therefore,
12 petitioner should use this opportunity to tailor the subpoenas as
13 narrowly as possible so as to comply with *Bracy's* requirement of
14 specificity.

15

16 5. Conclusion

17 Petitioner is entitled to some, but not all of the discovery
18 which he seeks. In addition, he is obliged to file a supplemental
19 document with the court in which he specifically identifies those
20 subpoenas and/or exhibits which he contends would be those served
21 pursuant to the court's order granting discovery. Concurrently with
22 that document, petitioner ought to utilize the opportunity to review
23 and review those subpoenas which are not specifically tailored enough
24 to pass muster under *Bracy's* requirement of specificity.

25 Respondents shall, of course, be given an suitable period
26 of time within which to file any appropriate opposing points and

1 authorities.

2 In addition, it should be apparent to all that the time for
3 collection of records and other documents is close to, if not already
4 at an end. Accordingly, the court wishes the petitioner and his
5 counsel to focus their next budget proposal on the discovery as
6 outlined in this order, and on the development of the amended
7 petition. It is fully the intention of the Court to enter a final
8 order regarding discovery before the end of September.

9 After the discovery order is entered, the scheduling order
10 will oblige petitioner to complete discovery within 120 days. That
11 order will require the petitioner to file and serve the amended
12 petition within 60 days of the termination of discovery. The Court
13 will hold all parties strictly to these time deadlines. Accordingly,
14 petitioner must draft his next budget proposal with these requirements
15 in mind.

16 **IT IS THEREFORE HEREBY ORDERED** that petitioner's motion for
17 leave to conduct discovery (Docket #73) is **GRANTED IN PART AND DENIED**
18 **IN PART**. The court finds that petitioner has demonstrated good cause
19 for the discovery requests identified as

20 B. Art Taylor Interview Reports and Raw Notes;
21 C. Records of Payments to Art Taylor;
22 G. Impeachment Material of Steward Siegel; and
23 H(ii). Third Party Alibi Evidence.

24
25 Petitioner and respondents have further stipulated to the discovery
26 of the CCDA's files regarding the petitioner's case, and petitioner

1 shall be allowed to conduct that discovery. Petitioner shall not,
2 however, be allowed to serve his discovery requests until further
3 ordered of the court.

4 **IT IS FURTHER ORDERED** that petitioner shall have ten days
5 from the date of the entry of this order on the record within which
6 to file and serve supplemental points and authorities in which he
7 specifically identifies those subpoenas and/or exhibits which would
8 be those served pursuant to the court's order granting discovery.
9 Concurrently with those points and authorities, petitioner shall
10 attach any and all subpoenas which have been specifically tailored
11 enough to pass muster under *Bracy's* requirement of specificity.

12 **IT IS FURTHER ORDERED** that respondent shall have ten days
13 from the filing and service of the petitioner supplemental document
14 within which to file and serve any opposing points and authorities.

15 Dated, this 1stth day of September, 2004.


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19 UNITED STATES DISTRICT JUDGE
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EXHIBIT U

EXHIBIT U

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DISTRICT COURT
CLARK COUNTY, NEVADA

JUN 10 2 01 PM '93

STATE OF NEVADA,
Plaintiff,
VS.
VICTOR MAXIMILIAN JIMINEZ
aka VICTOR DINO JIMINEZ,
Defendant.

Loretta Doorman
CLERK

Case No. C77955
Dept. No. I
Docket J

BEFORE THE HONORABLE J. CHARLES THOMPSON, DISTRICT JUDGE

RECORDER'S TRANSCRIPT RE:
EVIDENTIARY HEARING
MONDAY, APRIL 19, 1993

APPEARANCES:

For the Plaintiff: MELVYN T. HARMON, ESQ.
Chief Deputy District Attorney
For the Defendant: LAURA FITZSIMMONS, ESQ.
302 East Carson Avenue, #622
Las Vegas, Nevada 89101
(702) 388-9111

Recorded by: JANICE LISTON, Special Recorder/Transcriber

1 MONDAY, APRIL 19, 1993; 2:20 P.M.

2
3 THE COURT: All right. State of Nevada versus Victor
4 Jiminez. The record will reflect the absence of the
5 defendant, the presence of counsel for the defendant and the
6 district attorney.

7 This is the time we had set for arguments on the
8 defendant's petition.

9 MS. FITZSIMMONS: Thank you, your Honor. I will be very
10 brief, and I will argue only the two issues upon which we
11 presented evidence here in the course of these proceedings.

12 The first issue upon which evidence was heard was
13 the nondisclosure to the defense of certain information in
14 various forms which we view as being material and exculpatory
15 to the defense in this case.

16 Essentially, some of the forms that material took
17 were police reports, which have been identified in the record
18 and in the exhibits, reports which Mr. Weinstock stated that
19 he had never received, and which clearly are in the police
20 file. And information which went to Detective Harry from a
21 civilian, or citizen, to a woman who may have been a citizen,
22 may have been quasi -- some -- However, I don't think it
23 matters how she's characterized. She was a person who
24 reported to Detective Harry and to her supervisor at Metro

1 that she had some information which pointed to the guilt of at
2 least one and probably two other persons for the Gabe's Bar
3 murders.

4 Your Honor, what we -- so we have the oral
5 information going to Detective Harry, which, to my knowledge,
6 was never put in a written report. The fact that John Johnson
7 had identified one of these people as being the person whom he
8 overheard in the bar. And then we have the police reports
9 that are there, showing that one of the people who John
10 Johnson stated that was the person, the participant in the
11 conversation. The police reports involving the arrest of that
12 man and another man in the Metro jurisdiction, in the same
13 neighborhood. I said right by -- I still -- My view of
14 Las Vegas put the situs of the armed robbery with the bone-
15 inlaid knife and the situs of the Gabe's Bar murders and
16 indeed the situs of the Jack Daniels Bar conversation, in my
17 view of things, geographically are in the same neighborhood,
18 at a minimum.

19 But, in any event, none of that information came
20 forward to the defense. What came forward to the defense was
21 one report with two names, neither of which were ultimately
22 the names of the people who were involved in this conversation
23 or involved in this armed robbery. That one report, which is
24 also identified in the record, was disclosed to defense

1 MS. FITZSIMMONS: Yes. We've got knives aplenty here.
2 Knives-R-Us in this case. The serrated knife was in the
3 toilet tank.

4 THE COURT: That was the one in the toilet tank.

5 MS. FITZSIMMONS: Yeah. That's a different --

6 THE COURT: All right. Excuse me. I apologize.

7 MS. FITZSIMMONS: This knife, we have a little hand
8 rendering on a piece --

9 THE COURT: Oh, that's the one that looks like that.
10 Yes.

11 MS. FITZSIMMONS: Yeah. It's -- I don't --

12 THE COURT: I don't think that that would be consistent
13 with the knives that Nina Hollander described as being the
14 murder weapons in this case.

15 MS. FITZSIMMONS: Well, Nina Hollander described, and
16 I've read this carefully, of course, recently -- and obviously
17 both of you gentlemen sat through the trial, but I have read
18 this. Nina Hollander described -- Initially, Warner's knife
19 that was missing, the long bladed-knife, was described as a
20 dagger.

21 He then ultimately testified initially it was a
22 four-inch dagger. By the time of trial, it was between a six
23 and a half to an eight-inch dagger. He initially described it
24 as being sharp on both sides. By the time of trial, he said

1 he only kept one side sharp.

2 Nina Hollander --

3 THE COURT: But it had a hilt on it too, didn't it?

4 MS. FITZSIMMONS: Yeah. But there was no evidence of
5 hilt indentation in the wounds, according to the pathologist.

6 Nina Hollander's testimony at the trial was that
7 there was no hilt indentation. The knife needed to be at
8 least five and a half inches long -- five, five and a half
9 inches long, and that it was sharp on one side. That's what
10 her autopsy showed. That's what she testified to.

11 And, your Honor, obviously since we don't have the
12 knife for arguing, but the -- we're surmising -- But the
13 drawing rendered by Mr. Johnson is of a hunting knife, which
14 has both a curved angle and a one sharp side.

15 So -- And, again, your Honor, one of the things that
16 I have -- my position throughout these proceedings has been
17 that we have Nina Hollander's testimony. There was not a
18 defense pathologist. And, I think, clearly, if we had had a
19 knife at that time, Nina Hollander could have been asked, or
20 perhaps a defense witness could have presented evidence.

21 In any view, in light of my reading of the trial
22 transcript quite recently, this knife is not inconsistent with
23 the knife certainly that was described to be the cause of
24 death for Mr. Velasquez.

1 In any event, your Honor, that was one thing the
2 defense would have done. The next thing the defense would
3 have done, is the defense would have found John Johnson, a man
4 who was called by the State that same year to testify in the
5 penalty phase of the capital trial. And Mr. Johnson would
6 have testified before the jury.

7 The defense would have then -- see by going
8 backwards on this, have been able to call Sharon Lundy to
9 testify. I'm not sure particularly at that point it might
10 have been so important what she told Detective Harry, because
11 then we're getting into hearsay issues.

12 But, clearly, Mr. Johnson's testimony would have
13 been admissible and would have been exculpatory, in that Mr.
14 Johnson heard admissions, declarations in a certain
15 environment. And what he told the police -- That's what's so
16 wonderful --

17 THE COURT: Would those admissions that he heard, would
18 that have been admissible? Or, wouldn't that have been
19 hearsay?

20 MS. FITZSIMMONS: No. Your Honor, well, they would have
21 been -- Two things --

22 THE COURT: Because they're offered for the truth of it,
23 aren't they?

24 MS. FITZSIMMONS: Yes. If the defense had offered them

1 for the truth of the matter, rather than as an attack on
2 Detective Harry and the investigation.

3 THE COURT: It's offered for the truth of it.

4 MS. FITZSIMMONS: If they had offered it that way. And,
5 obviously, that is -- that's where the meat is initially in
6 this case. It would have been declarations against
7 interest -- admission declaration against interest by the
8 declarant, because what we see here is we have statements made
9 by people which are clearly against their penal interest.

10 And then what we see as things unfold in this
11 case --

12 THE COURT: I'm not in my courtroom. I thought I had
13 that statute here. I don't.

14 MR. HARMON: I have the statute available.

15 THE COURT: That's all right. I was just -- I haven't
16 looked at that declarations against interest statute for a
17 long time. But -- You read my mind, didn't you?

18 MR. HARMON: Well, it is not admissible.

19 THE COURT: Well, that's --

20 MR. HARMON: I differ with counsel.

21 THE COURT: -- that was my question is, if I grant a new
22 trial, is it going to come in, is really my question.

23 That's the one that has -- They added that in 1979.
24 A statement tending to expose the defendant -- declarant to

1 criminal liability. And offering to exculpate the accused in
2 a criminal case is not admissible unless corroborating
3 circumstances clearly indicate the trustworthiness of the
4 statement.

5 That's what I had in my mind.

6 MS. FITZSIMMONS: And that's what I think we all have now
7 in our -- I mean, I certainly have and Mr. Harmon has --
8 Clearly, we fall under one, so we have to -- I mean, this was
9 a statement against interest offered by the defense to
10 exculpate the defendant in the proceedings.

11 The corroborating circumstances, your Honor, in this
12 case are present. What we have is -- if you look at the times
13 here -- we have a report of two men -- I assume the declarant
14 that we're concerned about here -- I mean, then we end up with
15 other issues.

16 But what we have are a circumstance in which two men
17 are overheard in a bar, one is palming, essentially, a knife
18 to another, saying, you know, that they hope -- whatever the
19 words were. I hope he's dead. Did we get the bartender.
20 Whatever that is.

21 We have that reported to the police. And then we
22 have those same men within a matter of days after the report
23 and the description of the knife and the description of this
24 individual who Mr. Johnson could see. We have this man, and

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

MARLO THOMAS,

Appellant,

v.

WILLIAM GITTERE, et al.,

Respondents.

Electronically Filed
Jun 14 2019 03:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 77345

District Court Case No.
96C136862-1

(Death Penalty Case)

APPELLANT'S APPENDIX

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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

1 (2) When information subject to a subpoena is withheld on a claim that it is privileged or
2 subject to protection as trial preparation materials, the claim shall be made expressly and shall be
3 supported by a description of the nature of the documents, communications, or things not produced that is
4 sufficient to enable the demanding party to contest the claim.
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EXHIBIT F

EXHIBIT F

1 **CC03**

2 RENE L. VALLADARES

3 Federal Public Defender

4 Nevada State Bar No. 11479

5 JOANNE L. DIAMOND

6 Assistant Federal Public Defender

7 Nevada State Bar No. 14139C

8 Joanne_Diamond@fd.org

9 JOSE A. GERMAN

10 Assistant Federal Public Defender

11 Nevada Bar No. 14676C

12 Jose_German@fd.org

13 411 E. Bonneville, Ste. 250

14 Las Vegas, Nevada 89101

15 (702) 388-6577

16 (702) 388-5819 (Fax)

17 EIGHTH JUDICIAL DISTRICT COURT
18 CLARK COUNTY

19 MARLO THOMAS,

20 Petitioner,

21 v.

22 TIMOTHY FILSON, et. al.

23 Respondents.

Case No. 96C136862-1

Dept. No. XXIII

SUBPOENA DUCES TECUM-CIVIL

(For Personal Appearance at Trial or Hearing)

24 **THE STATE OF NEVADA TO**

25 Name: Custodian of Records

26 Confidential Informant Section

27 Las Vegas Metropolitan Police Department

28 Address: 3141 E. Sunrise, Las Vegas, Nevada

29 **YOU ARE HEREBY COMMANDED** that all and singular, business and excuses set
30 aside, you appear and attend on the ____ day of ____, at the hour of ____ in Department No.
31 23, of the District Court, Clark County, Nevada, *UNLESS you make an agreement with the*
32 *attorney or party submitting this Subpoena.* The address where you are required to appear
33 is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Your attendance is

1 required to give testimony and/or to produce and permit inspection and copying of designated
2 books, documents, or tangible things in your possession, custody or control, or to permit
3 inspection of premises. You are required to bring with you at the time of your appearance any
4 items set forth in the list below. Please see Exhibit "1" Attached hereto for information
5 regarding the rights of the person subject to this Subpoena.
6

(This Subpoena must be signed by the Clerk of the Court or an attorney.)

Lynn Goya, CLERK OF COURT

By: _____ (Signature)
Deputy Clerk Date:

Or

By: _____ (Signature)
Attorney Name: JOANNE L. DIAMOND
Attorney Bar Number: 14139C

Submitted by:
JOANNE L. DIAMOND
Assistant Federal Public Defender
Nevada State Bar No. 14139C
411 East Bonneville Avenue, Suite 250
Las Vegas, Nevada 89101
(702) 388-6577
(702) 388-5819 (FAX)
Joanne_diamond@fd.org

(Insert Name, Bar Number, Address, Phone, Fax and E-mail of Attorney or Party Submitting Subpoena)

Attorney for Petitioner

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I, *(insert name of person making service)* _____, being duly sworn, or
under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a
party to or interested in the proceedings in which this Affidavit/Declaration is made; that I
received a copy of the **SUBPOENA** on *(insert date person making service received Subpoena)*
_____; and that I served the same on *(insert date person making service served Subpoena)*
_____. by delivering and leaving a copy with *(insert name of witness)*

(insert address where witness was served) at _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

Executed on: _____
(Date) (Signature of Person Making Service)

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ITEMS TO BE PRODUCED

**TO: CUSTODIAN OF RECORDS, CONFIDENTIAL INFORMANT SECTION
LAS VEGAS METROPOLITAN POLICE DEPARTMENT
3141 E. Sunrise. Las Vegas, NV**

YOU ARE COMMANDED to produce and permit inspection and copying of the following designated books, documents or tangible things as (a) kept in the usual course of business, or (2) organized and labeled to correspond with the categories as set forth below. Nev. R. Civ. Pro. 45.

If any of the books, documents, records or tangible things listed below are not being produced by you based on a claim of privilege or any other reason, please expressly state the basis or privilege claimed and describe the nature of the documents, communications or other things sufficient to enable a contest of the claim. Nev. R. Civ. Pro. 45(d).

Please complete a "Certificate of Custodian of Records", in the form set forth in N.R.S. 52.260. Please produce or permit inspection and copying all sealed, unsealed, official and/or non official memoranda, correspondence, materials, files, tests, and/or documents of the following items and things concerning:

Information requested on the following individual:

**Marlo D. Thomas
DOB: 11/06/1972
SSN: 530-68-5216**

Please produce or permit inspection and copying of all sealed and/or unsealed, official and/or non official files, records, documents, investigative materials, microfiched logbooks, handwritten logbooks, and/or tangible things including, but not limited to, the following un-redacted items:

1. Any and all memoranda, notes, logs, correspondence and/or other forms of communication relating to Murder with Use of a Deadly Weapon (Open Murder) of Carl Dixon and Matthew Gianakis, Conspiracy to Commit Murder and/or Robbery, Robbery with Use of a Deadly Weapon, Burglary while in Possession of a Firearm, First Degree Kidnapping with use of a Deadly Weapon on or between April 14, 1996 and April 15, 1996;
2. Any and all files, notes and records relating to the above-named individual concerning confidential informants;
3. Records which indicate the procedures and policies for treatment of confidential informants including, but not limited to, any and all confidential and/or non-confidential reports, personal and/or criminal history profiles relating to informants;
4. Any and all communications and notes with confidential informants;
5. Any and all communications with any confidential informants in the subject investigations who are not specifically identified above;

- 1 6. Any and all documentation, memoranda, notes, files, logs, correspondence and/or
- 2 other forms of communication relating to confidential informant's role as an agent
- 3 of the Las Vegas Metropolitan Police Department;
- 4 7. All Las Vegas Metropolitan Police Department records related to the above-
- 5 named individuals including, but not limited to, DR Nos. 84-06040624; 87-
- 6 65834; 88-83051; 84-76992; 960415-04886;
- 7 8. All files, documents, records, notes, reports, investigation and/or correspondence
- 8 related to confidential informants referenced by any law enforcement agency
- 9 including, but not limited to, the Federal Bureau of Investigation
- 10 9. A list of any documents purged, destroyed, deleted, or transferred to storage;
- 11 10. Any and all microfilm, microfiche documents;
- 12 11. Electronic data regarding all above to include: voice mail messages and files;
- 13 back-up voice mail files; e-mail messages and files; back-up e-mail files; deleted
- 14 e-mails; data files; program files; backup and archival tapes; temporary files;
- 15 system history files; web site information stored in textual, graphical or audio
- 16 format; web site log files; cache files; cookies; and other electronically recorded
- 17 information. The disclosing party shall take reasonable steps to ensure that it
- 18 discloses any back-up copies of files or archival tapes that will provide
- 19 information about any "deleted" electronic data.

13 If you are claiming that any of the documents described above have been destroyed or purged,
14 please provide a copy of "Certificate of Destruction," evidencing what was destroyed and the
15 date, as set forth in your local rules and/or statutory codes.

EXHIBIT "1"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waive applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) *Duties in responding to subpoena.*

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

1 (2) When information subject to a subpoena is withheld on a claim that it is privileged or
2 subject to protection as trial preparation materials, the claim shall be made expressly and shall be
3 supported by a description of the nature of the documents, communications, or things not produced that is
4 sufficient to enable the demanding party to contest the claim.
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EXHIBIT G

EXHIBIT G

1 **CC03**

2 RENE L. VALLADARES

3 Federal Public Defender

4 Nevada State Bar No. 11479

5 JOANNE L. DIAMOND

6 Assistant Federal Public Defender

7 Nevada State Bar No. 14139C

8 Joanne_Diamond@fd.org

9 JOSE A. GERMAN

10 Assistant Federal Public Defender

11 Nevada Bar No. 14676C

12 Jose_German@fd.org

13 411 E. Bonneville, Ste. 250

14 Las Vegas, Nevada 89101

15 (702) 388-6577

16 (702) 388-5819 (Fax)

17 EIGHTH JUDICIAL DISTRICT COURT
18 CLARK COUNTY

19 MARLO THOMAS,

20 Petitioner,

21 v.

22 TIMOTHY FILSON, et. al.

23 Respondents.

Case No. 96C136862-1

Dept. No. XXIII

SUBPOENA DUCES TECUM-CIVIL

(For Personal Appearance at Trial or Hearing)

24 **THE STATE OF NEVADA TO**

25 Name: Custodian of Records

26 Fingerprint Bureau

27 Las Vegas Metropolitan Police Department

28 Address: 400 S. Martin L. King Blvd., Las Vegas, Nevada

29 **YOU ARE HEREBY COMMANDED** that all and singular, business and excuses set
30 aside, you appear and attend on the ____ day of ____, at the hour of ____ in Department No.
31 23, of the District Court, Clark County, Nevada, *UNLESS you make an agreement with the*
32 *attorney or party submitting this Subpoena.* The address where you are required to appear
33 is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Your attendance is

1 required to give testimony and/or to produce and permit inspection and copying of designated
2 books, documents, or tangible things in your possession, custody or control, or to permit
3 inspection of premises. You are required to bring with you at the time of your appearance any
4 items set forth in the list below. Please see Exhibit "1" Attached hereto for information
5 regarding the rights of the person subject to this Subpoena.
6

(This Subpoena must be signed by the Clerk of the Court or an attorney.)

Lynn Goya, CLERK OF COURT

By: _____ (Signature)
Deputy Clerk Date:

Or

By: _____ (Signature)
Attorney Name: JOANNE L. DIAMOND
Attorney Bar Number: 14139C

Submitted by:
JOANNE L. DIAMOND
Assistant Federal Public Defender
Nevada State Bar No. 14139C
411 East Bonneville Avenue, Suite 250
Las Vegas, Nevada 89101
(702) 388-6577
(702) 388-5819 (FAX)
Joanne_diamond@fd.org

(Insert Name, Bar Number, Address, Phone, Fax and E-mail of Attorney or Party Submitting Subpoena)

Attorney for Petitioner

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I, *(insert name of person making service)* _____, being duly sworn, or
under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a
party to or interested in the proceedings in which this Affidavit/Declaration is made; that I
received a copy of the **SUBPOENA** on *(insert date person making service received Subpoena)*
_____; and that I served the same on *(insert date person making service served Subpoena)*
_____. by delivering and leaving a copy with *(insert name of witness)*

(insert address where witness was served) at _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

Executed on: _____
(Date) (Signature of Person Making Service)

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ITEMS TO BE PRODUCED

**TO: CUSTODIAN OF RECORDS
FINGERPRINT BUREAU
LAS VEGAS METROPOLITAN POLICE DEPARTMENT
400 S. Martin L. King Blvd.
Las Vegas, NV**

YOU ARE COMMANDED to produce and permit inspection and copying of the following designated books, documents or tangible things as (a) kept in the usual course of business, or (2) organized and labeled to correspond with the categories as set forth below. Nev. R. Civ. Pro. 45.

If any of the books, documents, records or tangible things listed below are not being produced by you based on a claim of privilege or any other reason, please expressly state the basis or privilege claimed and describe the nature of the documents, communications or other things sufficient to enable a contest of the claim. Nev. R. Civ. Pro. 45(d).

Please complete a "Certificate of Custodian of Records", in the form set forth in N.R.S. 52.260. Please produce or permit inspection and copying all sealed, unsealed, official and/or non official memoranda, correspondence, materials, files, tests, and/or documents of the following items and things concerning:

Information requested on the following individual:

**Marlo D. Thomas
DOB: 11/06/1972
SSN: 530-68-5216**

Please produce or permit inspection and copying of all sealed and/or unsealed, official and/or non official files, records, documents, investigative materials, microfiched logbooks, handwritten logbooks, and/or tangible things including, but not limited to, the following un-redacted items:

1. Evidence impound reports, notes and test results;
2. Property impound reports, notes and test results;
3. Crime Scene Reports and notes;
4. All Las Vegas Metropolitan Police Department records related to the above-named individual including, but not limited to, (DR) including, but not limited to DR Nos. 84-06040624; 87-65834; 88-83051; 84-76992; 960415-04886
5. Photographs, notes, testing data, analysis and results regarding 3131 N. Rainbow Blvd., 2505 Raymond;
6. Sketches and notes;
7. Diagrams and notes;
8. Lab notes;
9. Bench notes;
10. Protocols employed for all tests and/or examinations;

11. Victim information reports and notes;
12. Identification specialists' work requests, notes and reports;
13. Newspaper articles, press reports, press releases;
14. Latent fingerprint section documents and notes;
15. All laboratory testing reports, notes and results;
16. All evidence testing reports, notes and results;
17. All physical evidence and notes;
18. All curriculum vitae, resumes, and any other documentation reflecting the qualifications, licensing, education, experience, training, and professional memberships or associations for all examiners involved in the Murder with Use of a Deadly Weapon (Open Murder) of Carl Dixon and Matthew Gianakis, Conspiracy to Commit Murder and/or Robbery, Robbery with Use of a Deadly Weapon, Burglary while in Possession of a Firearm, First Degree Kidnapping with use of a Deadly Weapon on or between April 14, 1996 and April 15, 1996;
19. Any and all other files, records and documents regarding the Murder with Use of a Deadly Weapon (Open Murder) of Carl Dixon and Matthew Gianakis, Conspiracy to Commit Murder and/or Robbery, Robbery with Use of a Deadly Weapon, Burglary while in Possession of a Firearm, First Degree Kidnapping with use of a Deadly Weapon on or between April 14, 1996 and April 15, 1996;
20. A list of any documents purged, destroyed, deleted, and/or transferred to storage;
21. Any and all microfilm, microfiche documents;
22. Electronic data regarding all above to include, but not limited to: voice mail messages and files; back-up voice mail files; e-mail messages and files; back-up e-mail files; deleted e-mails; data files; program files; backup and archival tapes; temporary files; system history files; web site information stored in textual, graphical or audio format; web site log files; cache files; cookies; and other electronically recorded information. The disclosing party shall take reasonable steps to ensure that it discloses any back-up copies of files or archival tapes that will provide information about any "deleted" electronic data. This list is not exhaustive.

If you are claiming that any of the documents described above have been destroyed or purged, please provide a copy of "Certificate of Destruction," evidencing what was destroyed and the date, as set forth in your local rules and/or statutory codes.

EXHIBIT "1"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waive applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) *Duties in responding to subpoena.*

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

1 (2) When information subject to a subpoena is withheld on a claim that it is privileged or
2 subject to protection as trial preparation materials, the claim shall be made expressly and shall be
3 supported by a description of the nature of the documents, communications, or things not produced that is
4 sufficient to enable the demanding party to contest the claim.
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EXHIBIT H

EXHIBIT H

1 **CC03**

2 RENE L. VALLADARES

3 Federal Public Defender

4 Nevada State Bar No. 11479

5 JOANNE L. DIAMOND

6 Assistant Federal Public Defender

7 Nevada State Bar No. 14139C

8 Joanne_Diamond@fd.org

9 JOSE A. GERMAN

10 Assistant Federal Public Defender

11 Nevada Bar No. 14676C

12 Jose_German@fd.org

13 411 E. Bonneville, Ste. 250

14 Las Vegas, Nevada 89101

15 (702) 388-6577

16 (702) 388-5819 (Fax)

17 EIGHTH JUDICIAL DISTRICT COURT
18 CLARK COUNTY

19 MARLO THOMAS,

20 Petitioner,

21 v.

22 TIMOTHY FILSON, et. al.

23 Respondents.

Case No. 96C136862-1

Dept. No. XXIII

SUBPOENA DUCES TECUM-CIVIL

(For Personal Appearance at Trial or Hearing)

24 **THE STATE OF NEVADA TO**

25 Name: Custodian of Records

26 Clark County Detention Center –Inmate Business Accounts

27 Address: 330 S. Casino Center Boulevard

28 Las Vegas, Nevada

29 **YOU ARE HEREBY COMMANDED** that all and singular, business and excuses set
30 aside, you appear and attend on the ____ day of ____, at the hour of ____ in Department No.
31 23, of the District Court, Clark County, Nevada, *UNLESS you make an agreement with the*
32 *attorney or party submitting this Subpoena.* The address where you are required to appear
33 is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Your attendance is

1 required to give testimony and/or to produce and permit inspection and copying of designated
2 books, documents, or tangible things in your possession, custody or control, or to permit
3 inspection of premises. You are required to bring with you at the time of your appearance any
4 items set forth in the list below. Please see Exhibit "1" Attached hereto for information
5 regarding the rights of the person subject to this Subpoena.
6

(This Subpoena must be signed by the Clerk of the Court or an attorney.)

Lynn Goya, CLERK OF COURT

By: _____ (Signature)
Deputy Clerk Date:

Or

By: _____ (Signature)
Attorney Name: JOANNE L. DIAMOND
Attorney Bar Number: 14139C

Submitted by:
JOANNE L. DIAMOND
Assistant Federal Public Defender
Nevada State Bar No. 14139C
411 East Bonneville Avenue, Suite 250
Las Vegas, Nevada 89101
(702) 388-6577
(702) 388-5819 (FAX)
Joanne_diamond@fd.org

(Insert Name, Bar Number, Address, Phone, Fax and E-mail of Attorney or Party Submitting Subpoena)

Attorney for Petitioner

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AFFIDAVIT/DECLARATION OF SERVICE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, *(insert name of person making service)* _____, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the **SUBPOENA** on *(insert date person making service received Subpoena)* _____; and that I served the same on *(insert date person making service served Subpoena)* _____, by delivering and leaving a copy with *(insert name of witness)* _____ *(insert address where witness was served)* at _____.

Executed on: _____
(Date) *(Signature of Person Making Service)*

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20_____.

NOTARY PUBLIC in and for the
County of _____, State of _____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

(a) If executed in the State of Nevada: "I declare under penalty of perjury that the foregoing is true and correct."

Executed on: _____
(Date) *(Signature of Person Making Service)*

(b) If executed outside of the State of Nevada: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on: _____
(Date) *(Signature of Person Making Service)*

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ITEMS TO BE PRODUCED

TO: CLARK COUNTY DETENTION CENTER-Inmate Business Account Records
330 S. CASINO CENTER BOULEVARD
LAS VEGAS, NEVADA

OR: PERSON(S) MOST KNOWLEDGEABLE with regard to records, documents and materials storage, retention, nature of and content of files of the *Inmate Business Account Records Division of the Clark County Detention Center*, pertaining to:

YOU ARE COMMANDED to produce and permit inspection and copying of the following designated books, documents or tangible things as (a) kept in the usual course of business, or (2) organized and labeled to correspond with the categories as set forth below. Nev. R. Civ. Pro. 45.

If any of the books, documents, records or tangible things listed below are not being produced by you based on a claim of privilege or any other reason, please expressly state the basis or privilege claimed and describe the nature of the documents, communications or other things sufficient to enable a contest of the claim. Nev. R. Civ. Pro. 45(d).

Please complete a "Certificate of Custodian of Records", in the form set forth in N.R.S. 52.260. Please produce or permit inspection and copying all sealed, unsealed, official and/or non official memoranda, correspondence, materials, files, tests, and/or documents of the following items and things concerning:

Information requested on the following individual:

Marlo D. Thomas
DOB: 11/06/1972
SSN: 530-68-5216

Please produce or permit inspection and copying of all sealed and/or unsealed, official and/or non official files, records, documents, investigative materials, microfiched logbooks, handwritten logbooks, and/or tangible things including, but not limited to, the following un-redacted items:

1. Accounting records
2. Billing records
3. Jail inmate funds
4. Inmate account file
5. Inmate business office file
6. Jail commissary records
7. Payables records
8. Receipts
9. Any other item not specifically delineated herein that comprise the business files, pertaining to Marlo D. Thomas of the Clark County Detention Center.
10. A list of any and all purged, deleted, destroyed, documents transferred to storage;
11. Any and all microfilm, microfiche documents;

1 Electronic data regarding all above to include: voice mail messages and files; back-up voice mail
2 files; e-mail messages and files; back-up e-mail files; deleted e-mails; data files; program files;
3 backup and archival tapes; temporary files; system history files; web site information stored in
4 textual, graphical or audio format; web site log files; cache files; cookies; and other
5 electronically recorded information. The disclosing party shall take reasonable steps to ensure
6 that it discloses any back-up copies of files or archival tapes that will provide information about
any "deleted" electronic data. This list is not exhaustive.

7 If you are claiming that any of the documents described above have been destroyed or purged,
8 please provide a copy of "Certificate of Destruction," evidencing what was destroyed and the
9 date, as set forth in your local rules and/or statutory codes.

EXHIBIT "1"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waive applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) *Duties in responding to subpoena.*

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

1 (2) When information subject to a subpoena is withheld on a claim that it is privileged or
2 subject to protection as trial preparation materials, the claim shall be made expressly and shall be
3 supported by a description of the nature of the documents, communications, or things not produced that is
4 sufficient to enable the demanding party to contest the claim.
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EXHIBIT I

EXHIBIT I

1 **CC03**

2 RENE L. VALLADARES

3 Federal Public Defender

4 Nevada State Bar No. 11479

5 JOANNE L. DIAMOND

6 Assistant Federal Public Defender

7 Nevada State Bar No. 14139C

8 Joanne_Diamond@fd.org

9 JOSE A. GERMAN

10 Assistant Federal Public Defender

11 Nevada Bar No. 14676C

12 Jose_German@fd.org

13 411 E. Bonneville, Ste. 250

14 Las Vegas, Nevada 89101

15 (702) 388-6577

16 (702) 388-5819 (Fax)

17 EIGHTH JUDICIAL DISTRICT COURT
18 CLARK COUNTY

19 MARLO THOMAS,

20 Petitioner,

21 v.

22 TIMOTHY FILSON, et. al.

23 Respondents.

Case No. 96C136862-1

Dept. No. XXIII

SUBPOENA DUCES TECUM-CIVIL

(For Personal Appearance at Trial or Hearing)

24 **THE STATE OF NEVADA TO**

25 Name: Custodian of Records

26 Classification Section

27 Clark County Detention Center

28 Address: 330 S. Casino Center Blvd., Las Vegas, Nevada

29 **YOU ARE HEREBY COMMANDED** that all and singular, business and excuses set
30 aside, you appear and attend on the ____ day of ____, at the hour of ____ in Department No.
31 23, of the District Court, Clark County, Nevada, *UNLESS you make an agreement with the*
32 *attorney or party submitting this Subpoena.* The address where you are required to appear
33 is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Your attendance is

1 required to give testimony and/or to produce and permit inspection and copying of designated
2 books, documents, or tangible things in your possession, custody or control, or to permit
3 inspection of premises. You are required to bring with you at the time of your appearance any
4 items set forth in the list below. Please see Exhibit "1" Attached hereto for information
5 regarding the rights of the person subject to this Subpoena.
6

(This Subpoena must be signed by the Clerk of the Court or an attorney.)

Lynn Goya, CLERK OF COURT

By: _____ (Signature)
Deputy Clerk Date:

Or

By: _____ (Signature)
Attorney Name: JOANNE L. DIAMOND
Attorney Bar Number: 14139C

Submitted by:
JOANNE L. DIAMOND
Assistant Federal Public Defender
Nevada State Bar No. 14139C
411 East Bonneville Avenue, Suite 250
Las Vegas, Nevada 89101
(702) 388-6577
(702) 388-5819 (FAX)
Joanne_diamond@fd.org

(Insert Name, Bar Number, Address, Phone, Fax and E-mail of Attorney or Party Submitting Subpoena)

Attorney for Petitioner

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I, *(insert name of person making service)* _____, being duly sworn, or
under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a
party to or interested in the proceedings in which this Affidavit/Declaration is made; that I
received a copy of the **SUBPOENA** on *(insert date person making service received Subpoena)*
_____; and that I served the same on *(insert date person making service served Subpoena)*
_____. by delivering and leaving a copy with *(insert name of witness)*

(insert address where witness was served) at _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

Executed on: _____
(Date) (Signature of Person Making Service)

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ITEMS TO BE PRODUCED

**TO: CUSTODIAN OF RECORDS, CLASSIFICATION SECTION
CLARK COUNTY DETENTION CENTER
330 S. CASINO CENTER BOULEVARD
LAS VEGAS, NEVADA**

OR: PERSON(S) MOST KNOWLEDGEABLE with regard to official and/or non-official records, documents and materials storage, retention, nature of and content of files of the *Classification Section of the Clark County Detention Center*

YOU ARE COMMANDED to produce and permit inspection and copying of the following designated books, documents or tangible things as (a) kept in the usual course of business, or (2) organized and labeled to correspond with the categories as set forth below. Nev. R. Civ. Pro. 45.

If any of the books, documents, records or tangible things listed below are not being produced by you based on a claim of privilege or any other reason, please expressly state the basis or privilege claimed and describe the nature of the documents, communications or other things sufficient to enable a contest of the claim. Nev. R. Civ. Pro. 45(d).

Please complete a "Certificate of Custodian of Records", in the form set forth in N.R.S. 52.260. Please produce or permit inspection and copying all sealed, unsealed, official and/or non official memoranda, correspondence, materials, files, tests, and/or documents of the following items and things concerning:

Information requested on the following individual:

**Marlo D. Thomas
DOB: 11/06/1972
SSN: 530-68-5216**

Please produce or permit inspection and copying of all sealed and/or unsealed, official and/or non official files, records, documents, investigative materials, microfiched logbooks, handwritten logbooks, and/or tangible things including, but not limited to, the following un-redacted items:

1. All arrest and booking records;
2. Booking classification questionnaires;
3. Classification entries;
4. Initial classification summaries;
5. Admission worksheet;
6. Institutional movement sheet;
7. Central file movement sheet;
8. Reclassification records;
9. Dispositions or other action taken;
10. Inmate interview request forms;
11. Any and all internal correspondence with inmate Marlo D. Thomas;
12. Attorney visit logs;

- 1 13. Investigator visit logs;
- 2 14. Interview visit logs;
- 3 15. Special visit memoranda and logs;
- 4 16. Application for visiting privileges;
- 5 17. Any and all other visiting records;
- 6 18. Suicide watch records;
- 7 19. Disciplinary and punishment records;
- 8 20. Handwritten incident reports
- 9 21. Any and all medical information that may be contained in the
10 classification files;
- 11 22. A list of any and all purged, deleted, destroyed, documents transferred to
12 storage;
- 13 23. Any and all microfilm, microfiche documents;
- 14 24. Electronic data regarding all above to include: voice mail messages and
15 files; back-up voice mail files; e-mail messages and files; back-up e-mail
16 files; deleted e-mails; data files; program files; backup and archival tapes;
17 temporary files; system history files; web site information stored in
18 textual, graphical or audio format; web site log files; cache files; cookies;
19 and other electronically recorded information. The disclosing party shall
20 take reasonable steps to ensure that it discloses any back-up copies of files
21 or archival tapes that will provide information about any "deleted"
22 electronic data. This list is not exhaustive.

23 If you are claiming that any of the documents described above have been destroyed or purged,
24 please provide a copy of "Certificate of Destruction," evidencing what was destroyed and the
25 date, as set forth in your local rules and/or statutory codes.
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EXHIBIT "1"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waive applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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2 subject to protection as trial preparation materials, the claim shall be made expressly and shall be
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EXHIBIT J

EXHIBIT J

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
* * * * *

WILLIAM WITTER,

Petitioner,

-vs-

E. K. McDANIEL, Warden, and FRANKIE)
SUE DEL PAPA, the Attorney General)
of the State of Nevada,

Respondents.

CASE NO.:
CV-S-01-1034
RLH(LRL)

DEPOSITION OF GARY GUYMON

Taken At Offices of the Federal Public Defender
330 South Third Street, Suite 700
Las Vegas, Nevada

On Friday, February 11, 2005
At 9:00 a.m.

Reported by: DiAnn Prock, C. C. R. Number 301

Page 2

1 Appearances:
2 For the Petitioner: RANDALL S. LOCKHART, ESQ.
3 Assistant Federal Public Defender
330 South Third Street
Suite 700
Las Vegas, Nevada 89101
4
5 For the Respondent: RENE L. HULSE, ESQ.
6 Senior Deputy Attorney General
555 East Washington Avenue
Suite 3900
Las Vegas, Nevada 89101
7
8 -and-
9 HEIDI ENAGEL, ESQ.
10 Deputy District Attorney
555 East Washington Avenue
Suite 3900
Las Vegas, Nevada 89101

INDEX

PAGE

16 GARY GUYMON
17 Examination by Mr. Lockhart: 4
18 Examination by Ms. Hulse: 63
19 Further Examination by Mr. Lockhart: 67

EXHIBITS MARKED FOR IDENTIFICATION

22 NO. DESCRIPTION PAGE
23 A Jury Selection Packet. 24
24 *****
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Page 4

EXAMINATION

2 BY MR. LOCKHART:

3 Q. Mr. Guymon, can you tell us what you do
4 for a living?

5 A. I'm an attorney right now employed with
6 the Clark County Public Defender's office.

7 Q. Can you tell me when you were admitted as
8 an attorney?

9 A. 1989.

10 Q. Okay.

11 A. In the State of Nevada.

12 Q. Are you admitted in any other states?

13 A. No.

14 Q. How long have you been employed with the
15 Clark County Public Defender's office?

16 A. About seven months now.

17 Q. Seven months?

18 A. (Nods head.)

19 Q. What are your current duties there as a
20 Deputy Public Defender?

21 A. Just to defend clients on anything from a
22 misdemeanor to felony charges.

23 Q. Okay. And your current position or title
24 there is as Deputy Public Defender?

25 A. Correct.

Page 3

1 WHEREUPON,
2 GARY GUYMON, having been first duly sworn
3 to tell the truth, the whole truth and nothing but the
4 truth, testified as follows:

6 MR. LOCKHART: We're now on the record.
7 My name is Randall Lockhart. I'm
8 Assistant Federal Public Defender for the District of
9 Nevada.

10 We're here in the matter of William
11 Witter.

12 I represent William Witter in his federal
13 capital habeas proceeding.

14 At this time we have the deponent present,
15 Gary Guymon. Also present Rene Hulse from the
16 Attorney General's office of the State of Nevada, as
17 well as -

18 MS. NAGEL: Heidi Nagel, Deputy District
19 Attorney.

20 MR. LOCKHART: Heidi Nagel, Deputy
21 District Attorney.

22 At this time, let's proceed. I'll shut
23 the door here.

24 (Pause in the proceedings.)
25 ...

Page 5

1 Q. Where were you employed before you were a
2 deputy public defender for Clark County?

3 A. I was employed at the Clark County
4 District Attorney's office for about fifteen years
5 prior to my employment now.

6 Q. Approximately what years would that be,
7 would that encompass?

8 A. 1990 until 1990 - excuse me, 2004.

9 Q. 1990 through 2004?

10 A. Correct.

11 Q. What was the last position that you held
12 at the district attorney's office?

13 A. I was - well, I was the trial training
14 supervisor, and also on - chief deputy district
15 attorney with the sexual assault unit.

16 Q. Did you work anywhere else prior to being
17 at the district attorney's office?

18 A. I did. I clerked one year as a law clerk
19 for Judge Jack Lehman here in the Eighth Judicial
20 District Court, Department Number 10.

21 Q. So your first real attorney job, I guess,
22 I say that with a smile, was working at the District
23 Attorney's office?

24 A. Sure.

25 Q. Okay. What different positions did you

2 (Pages 2 to 5)

Page 6

1 hold at the District Attorney's office over the time
2 frame between '90 and 2004?

3 A. For first three years of my employ I was
4 what they call line deputy which means that you just
5 cover general crimes and representing the state.

6 Thereafter, I went to the sexual assault
7 unit and spent two to three years in the sexual
8 assault unit followed by five years - four years to
9 five years on the major violators unit which covered
10 all homicide, not all homicides, but homicides,
11 capital cases, and repeat offender cases.

12 I left that assignment, became a
13 supervisor, what they call a team chief, for
14 approximately four years maybe towards five, between
15 four and five years, followed by being the trial
16 training supervisor and then back to the sexual
17 assault unit as a chief deputy with that unit.

18 Q. Okay. How would you characterize your
19 level of trial experience at the time that you started
20 at the District Attorney's office in 1990?

21 A. Oh, very low. I mean, I hadn't tried a
22 case at that point in time.

23 Q. Okay. Did the District Attorney's office
24 have any program in place at that time or an
25 orientation process whereby you basically learned the

Page 8

1 formal training, and then the informal training would
2 be just questions and answers through your, you know,
3 your superiors or your supervisor.

4 Q. And when you talk about the fact that you
5 were assigned to a team chief, did the team chief also
6 act as, say, a mentor or was it just a pure
7 supervisory role?

8 A. I think it's a little bit of both. I
9 think just because they are your supervisor they
10 become your mentor in many ways.

11 Q. Okay.

12 A. And as a deputy you sort of pick your
13 mentors, too. There's a personality you seem to cling
14 to or what have you, maybe that's the guy you go to as
15 well.

16 Q. Okay. Was there someone like that at the
17 D.A. offices when you first started?

18 A. I think I got my early advice from John
19 Lukens, Bill Berrett, Ron Bloxham, and David Schwartz.

20 Q. Okay. And while you were at the D.A.'s
21 office between 1990 and the time you became involved
22 in Mr. Witter's case, which we'll get to, did the
23 office have moot court training or anything like that
24 that you can remember?

25 A. I don't remember participating in moot

Page 7

1 tools of the trade as far as how to conduct yourself
2 in court and things like that?

3 A. They didn't have a formal training
4 process. You did, however, have a team chief that
5 supervised your work, and that work was primarily in
6 Justice Court.

7 And after you did somewhere between a
8 six-month and twelve-month stint in Justice Court you
9 typically began to make district court appearances and
10 that was still with the supervision of a team chief or
11 a senior deputy.

12 Q. Okay. How long - I may be jumping ahead
13 a little bit, but how long after you started at the
14 District Attorney's office would you have started to
15 actually try jury trials where you would be picking
16 juries?

17 A. I think I probably tried my first jury
18 trial about six months into my employ with the
19 District Attorney's office.

20 Q. Okay.

21 A. It may have been eight months, but it was
22 fairly rapid.

23 Q. All right. Prior to that time, had you
24 received any specific training on how to pick a jury?

25 A. There may have been an in-house CLE as

Page 9

1 court training type things.

2 Q. Would you characterize the training at the
3 D.A.'s office when you started up to the time you were
4 involved in Mr. Witter's case like stage-by-stage
5 training. For instance, would they start out where
6 you would start to do misdemeanors, and then you would
7 do - arraign felony arraignment, and then you would
8 do preliminary exams and things like that.

9 A. Yeah. I would say they start with baby
10 steps. I mean, you tend to do the piddly stuff when
11 you first get there. You do arraignments, and then
12 maybe you do preliminary hearings, and maybe you cover
13 a district court calendar, and it's done in stages.

14 Q. Okay.

15 A. I do recall having, you know, lectures, if
16 you will, by mentors or seniors in the office that
17 would, say, lecture you on preliminary hearing
18 procedures or district court calendar procedures and
19 things like that.

20 Q. I don't want to get into the specifics of
21 the cases that you tried, that would be beyond the
22 scope of the depo, however, just generally so that I
23 have some basis to know how experienced you were at
24 the time you were involved in Mr. Witter's case, can
25 you give me a rough estimate as to the number of jury

3 (Pages 6 to 9)

Page 10

1 trials you may have been involved in?
2 A. What year did I try the Witter case?
3 Q. I believe it was 1995.
4 A. By 1995, I probably had tried fifty jury
5 trials.
6 Q. How many of those fifty jury trials would
7 have been where you were first chair?
8 A. Forty-eight of them, maybe forty-seven.
9 Q. And just, again, as to rough numbers, how
10 many of those trials would have been capital trials
11 where the death penalty was at issue?
12 A. Up until William Witter's case, probably
13 only three or four.
14 Q. Do you recall which ones those were at
15 all?
16 A. I handled the Payne matter for penalty
17 phase. I believe the name was Frederick Payne. I
18 can't tell you whether Lawrence Caldwell's case came
19 before or after William Witter's cases, so I'm not
20 sure - I -
21 Q. Absolutely.
22 A. - don't want to misstate that. I'm not
23 sure Gregory Boland's case came before or after
24 Witter's case, but that one definitely sticks out in
25 my mind.

Page 11

1 Did I mention Lawrence Caldwell?
2 Q. Yeah.
3 A. And the Bridges case whether that was
4 before or after William Witter. That certainly comes
5 to mind. I'd have to pull out a chart.
6 Q. Just, again, very generally and separate
7 from the capital trials that you handled, the jury
8 trials that you handled, can you give me a rough
9 estimate between the time you started in '90 and the
10 time of the Witter trial in '95, just as a rough
11 estimate as to how many cases you would have handled
12 while at the D.A.'s office?
13 A. Thousands. I mean, I don't want to
14 overstate it, but it was certainly in the thousands if
15 you're referring to, say, arraignment and district
16 court appearances, preliminary hearings, and things of
17 that nature.
18 Q. Would you characterize the level of
19 training as trial by fire as opposed to any formal,
20 guided structure training?
21 A. It's definitely hands-on training. I
22 never really felt fire, but it was hands-on.
23 Q. Can you recall having received any
24 specific training before 1995 as to how to pick a
25 jury?

Page 12

1 A. Again, there would have been in-house
2 CLE's training, and I definitely recall getting
3 manuals on it. The manuals were not necessarily
4 published or issued by the Clark County District
5 Attorney's office, but rather manuals, prosecution
6 manuals, on picking a jury that I know I received.
7 Q. Okay. Do you know if the District
8 Attorney's office during that time had any policies or
9 procedures in place with regard to what prosecutors
10 were supposed to do when they were picking a jury?
11 A. I don't recall a formal manual on picking
12 a jury that the District Attorney's office published,
13 no. I don't believe there was one.
14 Q. Do you recall whether there were any
15 manuals or training associated with removing people
16 that were perceived to be disadvantageous to the
17 district attorney's case during jury selection?
18 A. There was not such a manual, and I know I
19 didn't attend any courses that would have focused on
20 that.
21 Q. Okay. And, again, just so that I'm clear
22 and the record's clear, you don't recall - is it true
23 that you don't recall any specific guidelines being in
24 place before Mr. Witter's case on that issue?
25 A. I don't recall any specific case.

Page 13

1 Q. Do you recall whether there were any
2 guidelines, policies or procedures in place with
3 regard to the conduct of district attorneys handling
4 capital cases?
5 A. Well, there were certainly prosecutorial
6 misconduct CLE's that we had attended and, in fact,
7 there was a prosecutorial misconduct handout, what
8 would you call it? - a notebook, if you will, that
9 talked about and outlined kind of the cases in here in
10 Nevada, and the, you know, the do's and the don'ts, if
11 you will.
12 I can also remember attending - at that
13 time it wasn't power point, it was a slide show that
14 they put together, the blurbs of, like, things that
15 you'd remember, like, not to talk about holiday - you
16 know, this Christmas so-and-so won't be home because
17 they got killed, that kind of thing. I can distinctly
18 remembering attending that CLE, if that answered the
19 question.
20 Q. Okay. Do you recall whether or not the
21 District Attorney's office between '90 and '95 had any
22 that centralized structure in place to review cases to
23 be sure that minorities were not being struck when
24 trials were being handled by district attorneys?
25 A. They did not have a structure in place. I

4 (Pages 10 to 13)

Page 14

1 don't think there was such a structure.
2 Q. So it's fair to say that there was no
3 centralized review as to what deputy district
4 attorney's were doing at voir dire -
5 A. No.
6 Q. - while you were there?
7 A. There was not such a review.
8 Q. So in other words, no one was supervising
9 your cases or looking back at the transcripts of the
10 jury selections you had done between '90 and '95?
11 A. Not that I'm aware of. The only time that
12 that would be would have been subject to review or
13 reviewed would have been if and when the case was
14 appealed. My guess that Jim Tuftland (phonetic) would
15 then look at those issues.
16 Q. Okay. Do you recall, and this will pretty
17 much wrap up this area, do you recall receiving any
18 specific training as to the case decision of Batson
19 versus Kentucky -
20 A. I don't -
21 Q. - which is a 1986 case?
22 A. I don't recall receiving particular
23 training. I do recall receiving, you know, a handout,
24 if you will, where it was discussed.
25 Q. Okay. Do you recall having received any

Page 15

1 specific training as to the three levels that are
2 associated with Batson challenges and reviews and how
3 the Court is supposed to handle those challenges?
4 A. Again, there was no training. It was more
5 on lines of the putting us on notice this was the
6 case, these are the guidelines, and this is the
7 structure and familiarize ourselves with that case and
8 the three-prong task.
9 Q. Okay. Can you tell us, to the best of
10 your recollection, how you started to become and how
11 you actually became involved in Mr. Witter's case?
12 A. Sure. I had a lot of admiration and
13 respect for Mel Harmon, and I had always wanted to try
14 a case with Mel, and indicated that I'd be available,
15 you know, to co-chair a case with Mel. I didn't give
16 him time.
17 Mel had indicated that - Mel Harmon had
18 indicated that he had the William Witter case coming
19 up, and it was my intention to try that case as the
20 second chair with Mel Harmon. And, unfortunately, Mel
21 Harmon was stuck in another trial when the William
22 Witter case came to trial, and so I, on very short
23 notice, became the first chair in that case.
24 Q. Okay. Do you recall at what specific
25 point in the proceedings that Mr. Harmon turned the

Page 16

1 case over to you?
2 A. I don't recall, specifically. I mean, the
3 case had certainly gone through prelim. It was
4 certainly in district court. I don't know how near it
5 was to trial. I felt it was very near to trial
6 probably because something so monumental was now going
7 to be given to me in the first chair as opposed to
8 sharing with somebody that I felt was such a seasoned,
9 trained lawyer.
10 Q. Do you recall if you were present at the
11 preliminary exam?
12 A. I really don't believe I was.
13 Q. Okay. And based on what you had indicated
14 earlier, is it fair to say that that would not have
15 been - that he turned the case over to you because he
16 thought you had sufficient experience to handle the
17 case basically by yourself?
18 A. I have no idea what Mel felt about me one
19 way or another.
20 Q. Did you feel that you were ready to or
21 adequately prepared to handle that case?
22 A. Yeah, absolutely.
23 Q. And that wasn't your first capital case
24 that you had tried.
25 A. I don't recall that being my first capital

Page 17

1 case. But, again, I can't give you specific names.
2 Certainly, seems to me that the Payne penalty hearing
3 is one that I had done. I certainly remember that
4 as - I hope I remember that as being before the
5 Witter case.
6 Q. Do you have a recollection of the notes
7 and materials that were sent to you with regard to the
8 fact that this deposition was going to be conducted
9 today?
10 A. Give me the - I'm sorry, do I have a
11 recollection of those?
12 Q. Do you have a recollection of materials
13 that were sent to you that pertain to your notes from
14 the district attorney's prosecution file which
15 pertains to this case?
16 A. I have reviewed them, absolutely.
17 Q. Okay. What I'm going to do is I'm going
18 to pass out a packet which I believe consists of your
19 notes from the District Attorney's office, and I just
20 want to go through them. Just let me establish for
21 the record what these actually consist of.
22 Basically, as a general overview, and for
23 the record these are the materials that we received
24 pursuant to formal discovery in this case, and by way
25 of background, this case has been in litigation for

5 (Pages 14 to 17)

Page 18

1 about a year with the District Attorney's office
2 surrounding what documents we're entitled to and not.
3 And, basically, at the end of the
4 litigation, everyone seems to be satisfied that these
5 are the complete materials that related to the jury
6 selection in the case that you handled as first chair?
7 A. Okay.
8 Q. And so, in essence, and as a summary,
9 we'll go into each and every document, there's
10 basically three different document types in here, from
11 what I can tell. There appears to be very generally
12 what looks like a juror grid that would be used for
13 your assistance; is that correct?
14 A. Yes.
15 Q. And that would comprise approximately the
16 first five pages?
17 A. That's fair.
18 Q. Okay. Do you recognize that?
19 A. Absolutely.
20 Q. Okay.
21 A. That's my draftsmanship.
22 Q. That is your handwriting, for instance, on
23 the second, third, and fourth pages?
24 A. It is.
25 Q. Okay. Following that we have what looks

Page 20

1 Q. Okay. Were you able to -- well, let me
2 back up.
3 Did you receive these materials from me on
4 the 20th of this year approximately?
5 A. Sure. Around about that.
6 Q. And did you review these materials?
7 A. I did.
8 Q. Okay. In your opinion do these materials
9 comprise everything in the District Attorney's office
10 prosecution file that pertains to this case?
11 A. As it relates to jury selection.
12 Q. That's related to jury selection.
13 A. Yes.
14 Q. Do you recall a woman named Elois Brown
15 from Mr. Witter's jury venire?
16 A. Not -- I don't recall her one way or
17 another other than having reviewed the notes and
18 identifying with the fact that a woman by the name of
19 Elois Brown was part of this case.
20 Q. In addition to the notes that were just
21 described, did you also receive a complete set of the
22 transcripts of jury selection in Mr. Witter's case?
23 A. I did.
24 Q. Were you able to review the pertinent
25 portions that pertain to Miss Brown?

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1 to be a Xerox of juror numbers and miscellaneous notes
2 associated with what may be -- well, let me back up.
3 Do you recognize that as your handwriting
4 of various juror numbers?
5 A. I do.
6 MS. HULSE: Are we talking about page
7 CC-2088?
8 MR. LOCKHART: That's correct.
9 MS. HULSE: Excuse me.
10 MR. LOCKHART: Thank you very much.
11 Q. (BY MR. LOCKHART:) Following that page
12 900786, do you see a page that contains the words
13 juror information?
14 A. Yes. That's my writing.
15 Q. Okay. Following that we have what appears
16 to be a packet of results from some kind of juror
17 questionnaire possibly, or from information that was
18 taken from juror rolls; is that correct?
19 A. That is correct. Pages 900787 through 900
20 and what appears to be 829 would be the district court
21 materials. They go through court administration,
22 district court administration.
23 Q. Okay.
24 A. And we received that in typed form, and
25 anything that's handwritten would be my writing.

Page 21

1 A. I read those portions that were earmarked,
2 yes.
3 Q. Okay. Do you recall if Miss Brown sat on
4 Mr. Witter's jury?
5 A. She did not sit on Mr. Witter's jury.
6 Q. Okay. Do you recall Miss Brown's race?
7 A. Based on reviewing the record, I recall
8 her race, yes.
9 Q. Okay. Do you recall why she didn't serve
10 on Mr. Witter's jury?
11 A. She was stricken by myself as one of my
12 peremptory challenges.
13 Q. Okay. Do you recall the specific reason
14 why you removed Miss Brown using peremptory challenge?
15 A. Not from my own personal knowledge now,
16 but having reviewed the record, it was my
17 representations then to the Court that I didn't feel
18 Mrs. Brown could make a decision in the case of this
19 nature.
20 Q. Okay. Do you recall Mr. Witter's defense
21 attorney, Phil Kohn, raising a Batson challenge?
22 A. I do recall.
23 Q. Is it fair to say that after he raised
24 that Batson challenge you provided your reasons as to
25 why you used the peremptory challenge as to

6 (Pages 18 to 21)

Page 22

1 Miss Brown?
2 A. Having read the transcript, I do recall
3 that, yes.
4 Q. Okay. And just so that the record's clear
5 one more time, what was that race neutral reason that
6 you opted for removal of Miss Brown?
7 A. I thought what I told the Court was that
8 my notes were devoid -- were void of any race
9 comments, that I had not recorded anything as it
10 related to her race itself, but rather I had related
11 that I didn't think that she could make a decision in
12 reviewing the notes and specifically page number
13 900791, I had put -- the only mark I had put next to
14 Mrs. Brown's -- Ms. Brown's name was a C, and if you
15 want to me to explain that, and I don't know if you
16 do, but....
17 Q. Okay. We can get to that.
18 A. Okay.
19 Q. As to page 900791, as you just testified,
20 is there any -- there is no other indication on that
21 page as to your notes other than the letter C next to
22 her name; is that correct?
23 A. Correct.
24 Q. And as to any of the preceding pages, 2083
25 through what appears to be 900786, which consists of

Page 24

1 A. No. I didn't write down anything next to
2 it.
3 Q. And just for the record, is there any
4 indication in the preceding pages, 2083 through 2087
5 that indicates that Miss Brown was hesitant about the
6 death penalty?
7 A. No.
8 Q. Okay. So for the record, between the
9 pages of CC-2083 and 900791, there's no indication in
10 your notes that she was hesitant about the death
11 penalty?
12 A. I have not written that down.
13 Q. And your testimony earlier was that these
14 documents comprise the entirety of your notes that
15 pertain to the voir dire of Mr. Witter's case?
16 A. True.
17 Q. All right.
18 MR. LOCKHART: We can mark the entire
19 packet as letter A.
20 (Deposition Exhibit A was
21 marked for identification.)
22 Q. (BY MR. LOCKHART:) Mr. Guymon, do you
23 recall prior to making the peremptory challenge
24 whether or not Miss Brown was African-American?
25 A. I don't have any personal knowledge of it

Page 23

1 the jury grid in your handwriting and then a sheet
2 called -- titled juror information on 900786, and then
3 a separate sheet of juror numbers in various
4 indications on CC-2088, do you see any other
5 indications there in those documents with regard to
6 Miss Brown?
7 A. No, I don't.
8 Q. Okay. On page -- specifically on page
9 CC-2088, the page that indicates the actual jury
10 numbers and has various indications?
11 A. I'm sorry, what number?
12 Q. CC-2088 looks like this.
13 A. Yes.
14 Q. Okay. Do you see anything specifically
15 next to the number eighty-seven?
16 A. Eighty-seven, the only thing I see next to
17 eighty-seven is an X over eighty-seven.
18 Q. Okay. And does that indicate -- what is
19 that indicative of, if anything?
20 A. To me that tells me that she was
21 stricken. I would have put an X through those that
22 were stricken.
23 Q. Do you see any indication next to number
24 eighty-seven that you removed Miss Brown because she
25 was hesitant about the death penalty.

Page 25

1 as I sit here today other than the record.
2 Q. Okay. Did you have any knowledge, to the
3 best of your memory, what the composition of the
4 jury -- the racial composition of the jury would be at
5 that time?
6 A. Not from personal memory now, no.
7 Having read the record, it's my belief
8 that there was another black male or female on the
9 jury at the time that I made the peremptory challenge.
10 Q. Did that play into your decision to use
11 the peremptory challenge against Miss Brown?
12 A. No.
13 Q. Do you recall that Mr. Kohn made a record
14 with regard to his Batson claim?
15 A. That's absolutely true. I recall it based
16 on reviewing the record.
17 Q. Do you recall that part of his record was
18 that there was no way to mistake Miss Brown's skin
19 color?
20 A. No. I don't recall that, but it may be
21 part of the record. I recall the Court saying
22 something about not realizing Mrs. Brown was
23 African-American.
24 Q. Do you recall that Mr. Kohn stated after
25 that time, after Judge Huffaker stated that there

7 (Pages 22 to 25)

Page 26

Page 28

1 was — that neither you nor the Court recognized that
2 she was African-American, do you recall that Mr. Kohn
3 indicated that there was no way to mistake Miss Brown
4 as African-American based upon her dark skin
5 pigmentation?

6 A. I don't recall Phil saying that, but if
7 it's in the record, that's absolutely true.

8 Q. Would you care to review the record with
9 regard to that matter?

10 A. I could take your word for it. I have no
11 reason to doubt that.

12 Q. Do you have any reason to doubt that
13 Miss Brown is not African-American?

14 A. No, I have no reason to doubt that.

15 Q. Were you aware of the Batson case at the
16 time you made that challenge?

17 A. Yes.

18 Q. Were you aware of the case Powers versus
19 Ohio when you made that challenge?

20 A. Yes.

21 Q. Were you aware when you made that
22 challenge that Mr. Witter did not have to be the same
23 race as the targeted juror in order to raise an equal
24 protection of the Batson claim?

25 A. Yes, I was aware of that.

1 questioning, would that be fair?

2 A. That's fair.

3 Q. And then there's another subsection where
4 she doesn't testify but peremptory challenges are
5 exercised; is that fair?

6 A. Sure.

7 Q. And then after that obviously she was
8 removed so she didn't testify.

9 A. Correct.

10 Q. Do you recall specifically Miss Brown's
11 testimony after she was death qualified?

12 A. I don't recall it specifically, no.

13 Q. Okay. Do you recall — I'll ask you some
14 specific questions, and if you don't recall, I can
15 show you the transcript and that will speed things
16 along.

17 A. And my apologies. I did not focus on that
18 part of the transcript. Perhaps I should have.

19 Q. No, you're all right. That's okay.

20 What I'm passing out is an excerpt of
21 Mrs. Brown's testimony which we indicated is basically
22 her for cause testimony from Tuesday, June 20th of
23 1995, and you'll notice that the title page is
24 attached.

25 And I just want to ask you just a few

Page 27

Page 29

1 Q. Were you aware when Judge Huffaker stated
2 that was not the case that that was inaccurate?

3 A. I believed it to be inaccurate at the
4 time, yes.

5 Q. Do you recall whether or not you told the
6 judge that his reasoning in that regard was
7 inaccurate?

8 A. No, I did not tell the judge that Batson
9 and its progeny applies for any and all races, and it
10 doesn't matter whether the defendant is of a
11 particular race. No, I did not make that statement.

12 Q. Okay. And you indicated earlier that you
13 had a chance to review Miss Brown's voir dire
14 testimony, the testimony basically that was contained
15 in the transcripts that you received on the 20th of
16 January of this year?

17 A. I did skim that. I don't think I focused
18 on that real well, to be quite honest with you.

19 Q. Just for the sake of the record, there
20 was — would you agree that there was basically three
21 areas of her testimony. There's an area where she
22 testifies as to death qualification.

23 A. Correct.

24 Q. And there's an area where she testifies in
25 relation to various questions, we'll call it for cause

1 questions about her testimony, and if you'd like, I
2 can actually — just because it's basically ten pages,
3 I can give you just a few minutes if you'd like to
4 read through it really quickly.

5 Would that help?

6 A. Sure. Do you also want me to read Phil
7 Kohn's questions?

8 Q. Yeah. Why don't you just go ahead and
9 skim it, and that way —

10 A. I've read it.

11 Q. Okay. Do you recall asking Miss Brown
12 what her feelings were about the criminal justice
13 system?

14 A. I do recall that having reviewed it, sure.

15 Q. And at page 452, lines eight through
16 fifteen, having reviewed that, would it be fair to say
17 that Miss Brown indicated that she had basically no
18 quarrel with the way that the criminal justice system
19 works?

20 A. I would say that's true based on her
21 answer.

22 Q. Do you have any recollections as to what
23 your impressions were when she replied to your
24 testimony in that regard?

25 A. I don't have any memory of —

8 (Pages 26 to 29)

Page 30

1 Q. You don't have any memory of forming any
2 specific impressions of that.
3 A. Of that question itself, no.
4 Q. Okay. That's fair enough.
5 Do you recall having asked Miss Brown
6 about holding individuals responsible and her opinions
7 with regard to that?
8 A. I do recall that.
9 Q. Okay. And, again, would it be fair to say
10 that at page 452, lines twenty through twenty-four,
11 that she responded that she believed that everyone was
12 responsible for their actions and that their -- people
13 have to understand that there's a reaction to every
14 action and they should be held accountable?
15 A. That is her quote, almost verbatim.
16 Q. Do you have any specific impressions as a
17 result of that testimony?
18 A. Not from just reading that, but rather
19 what I ultimately paraphrased to the Court in the end.
20 Q. Do you recall having asked Miss Brown how
21 she would feel sitting in judgment of someone in this
22 case?
23 A. I did ask her about passing judgment on
24 others, yes.
25 Q. Okay. And do you have any impressions

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1 Q. Okay. Do you recall asking Miss Brown
2 whether or not she was good at making decisions in
3 this case?
4 A. It sounds like a question I would ask.
5 Q. Okay. Is that a question you typically
6 ask?
7 A. Yes.
8 Q. Okay. Do you typically ask the same
9 questions of most jurors?
10 A. Depending on the case, yes. If it's a
11 certain type of case, absolutely. I'll ask them if
12 they're comfortable passing judgment, if they're good
13 making decisions, their thoughts about law
14 enforcement. Those are very standard questions for
15 me.
16 Q. Okay. So it's fair to say that insofar as
17 determining whether someone is hesitant with regard to
18 imposing the death penalty, you have a standard set of
19 questions, or at least some questions, that you tend
20 to use when you're engaged in that proceeding?
21 A. That's true.
22 Q. Okay. Would it be fair to say, then, that
23 it would be possible to look at the questions from --
24 that you asked others that sat on the jury and would
25 it be fair -- strike that.

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1 about her response in that regard?
2 A. Her --
3 Q. Which I believe, for the record, is at
4 453, lines six through eleven.
5 A. I believe what she said is that she was
6 uncomfortable doing it, but that she could do it.
7 Q. Okay. Could you indicate in the
8 transcript where she indicated that she was
9 uncomfortable about imposing judgment on others?
10 A. I thought at page 453, lines twenty-three,
11 twenty-four, and twenty-five. Specifically,
12 twenty-five, I asked her about it being an
13 uncomfortable thought to pass judgment on an
14 individual, and she then answered, quoting the
15 transcript, is it uncomfortable as a question. Her
16 answer being yes, but I would be open-minded to look
17 at both cases.
18 Q. Okay. And did you form any impressions as
19 a result of that testimony to your recollection?
20 A. I can't tell you what my specific
21 recollection was then. I can tell you what my --
22 reading this now, what my thoughts would have been
23 knowing my thoughts and having questioned so many
24 jurors when they tell me about being uncomfortable
25 about passing judgment.

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1 Would it be fair to say that those same
2 questions would appear in the voir dire transcripts of
3 those jurors that actually sat on Mr. Witter's case?
4 A. I think so. I think the topics that I
5 questioned each person on are pretty much the same
6 topics.
7 Q. All right. And just backing up a little
8 bit, did you indicate for the record that you do
9 remember asking Miss Brown whether or not she was good
10 at making decisions?
11 A. I'm sure I asked her that.
12 Q. Okay. And did you come away with any
13 specific impression --
14 A. I, again --
15 Q. -- as to her response in that regard?
16 A. My impression would be based on what I
17 told the Court. I would have to base my impression on
18 what I said then because I cannot remember now what my
19 impression was then.
20 Q. All right. Is it fair to say that
21 Miss Brown indicated that she has no problem making
22 decisions?
23 A. That's what she told me.
24 Q. Okay. And just for the record, you don't
25 have any specific impression at this time as to what

9 (Pages 30 to 33)

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1 you felt about that?
2 A. No.
3 Q. Okay.
4 A. Other than what I said.
5 Q. Do you recall asking Miss Brown whether or
6 not she could give equal consideration to all three
7 penalties?
8 A. I believe I asked her that question. In
9 fact, I know I asked her that question.
10 Q. Okay. Do you recall her answer in that
11 regard?
12 A. She did say that she could.
13 Q. Okay. And, once again, do you have any
14 impressions about her response as to that?
15 A. Not as I sit here other than having read
16 what I told the Court.
17 Q. Okay. Do you recall asking Miss Brown
18 whether or not she would have any problem telling
19 Mr. Witter to his face that if he deserved — that
20 basically he deserved to die if she felt that the
21 death penalty was warranted in that case?
22 A. I did ask her that question.
23 Q. Is that a standard question?
24 A. It is.
25 Q. Is asking jurors whether or not they could

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1 consider all three penalties, is that a standard
2 question?
3 A. It is.
4 Q. Is asking jurors whether or not they
5 could — they're good at making decisions, is that a
6 standard question?
7 A. It is. Of mine, yes.
8 Q. Asking them whether or not they consider
9 judgment, is that a standard question as well?
10 A. That I ask, yes.
11 Q. Do you recall Miss Brown's response to
12 your question as to whether or not she could tell
13 Mr. Witter to his face that he deserved to die if she
14 felt the death penalty was warranted?
15 A. She said she could. Excuse me, sorry.
16 Q. What was your impression with regard to
17 that?
18 A. Again, I can't tell you independent what
19 my thought was then other than what I told the Court.
20 Q. Okay. Do you have any opinion as to
21 whether or not her stating that she could look
22 Mr. Witter in the eye and tell him he deserved the
23 death penalty if it was warranted, do you believe that
24 that is inconsistent with her views on the death
25 penalty?

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1 A. Do I believe it's inconsistent or
2 consistent?
3 Q. Do you believe that her response would be
4 consistent with being hesitant with regard to imposing
5 the death penalty?
6 A. I had — if I'm understanding the
7 question, I had concluded that there was hesitation on
8 her ability to make that decision. I mean, that was
9 the — I was ultimately the judge of what my beliefs
10 were of her based on her responses. And I had
11 concluded, based on my representations to the Court,
12 that I thought she had an inability to truly make
13 those decisions despite her responses.
14 Q. Would you say — is it fair to say that
15 that was based on body language as well as the
16 responses to the questions that you asked in this
17 regard?
18 A. I based it on — that's very precise. I
19 mean, I based not only just what they tell me, but the
20 way they tell it to me, the tone at which they tell it
21 to me, the eye contact.
22 I mean, a lot of it is done just on the —
23 you know, the feel that you get from responses. It's
24 not so much what is said, but perhaps how it's said,
25 the tone in which it's said, the demeanor of the

Page 37

1 person.
2 There's a lot of other things that I am
3 trying to digest or consider when I'm speaking to a
4 jury.
5 Q. Okay. Is it fair — do you recollect as
6 to whether or not — strike that.
7 Do you have any recollection as to what
8 her body language was that contributed to your
9 decision?
10 A. I don't have any independent recollection
11 now, no.
12 Q. Are there cues that you look for having
13 been trained in how to select juries insofar as
14 gathering opinions about knowing whether someone is
15 hesitant about imposing the death penalty?
16 A. There's no cues that I was trained on. I
17 didn't answer your question. It's more of what I have
18 assimilated now.
19 Q. That's fair enough.
20 A. Through experience.
21 Q. Do you recall having reviewed Miss Brown's
22 testimony when you were questioning her with regard to
23 the — or the Court was questioning her with regard to
24 death qualification?
25 A. Yes, I recall.

10 (Pages 34 to 37)

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1 Q. Okay. And just to speed things up. Let
2 me pass that out to you so that we can take a quick
3 look at that. It's basically one small section.
4 And what I'm passing out is the transcript
5 of voir dire from Monday, June 19th of 1995,
6 pertaining to Miss Brown specifically, page 229, lines
7 five through -- well, I'm sorry, it continues on to
8 page 230, and I'll give you a minute just to look
9 through that.
10 A. I read this previously as well, and I do
11 recall it.
12 Q. Do you recall the Court asking Miss Brown
13 as to whether or not she could consider all three
14 penalties in this case?
15 A. I do recall that, yes, based on my
16 reading.
17 Q. Do you recall Miss Brown's answer in that
18 regard?
19 A. Yes. She said she could.
20 Q. Okay. Do you recall your impressions with
21 regard to that?
22 A. I don't have an independent recollection
23 as I sit here now, but rather again.
24 Q. Do you recall that there were other jurors
25 that indicated that they could not consider all three

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1 that were utilized by both yourself and Mr. Kohn?
2 A. Yes, it is a transcript.
3 Q. And is it fair to say that in your review
4 of it between pages 817 and 836 that there were
5 several peremptory challenges executed on each side?
6 A. There was, and I do remember actually
7 reading this now.
8 Q. Okay. Do you recall, having reviewed
9 that, whether or not Miss Brown was the first
10 peremptory that you exercised?
11 A. If that is, in fact, a fact, then, yes.
12 Q. I can represent to you that she was.
13 A. Yes.
14 MS. HULSE: Do you have that marked?
15 MR. LOCKHART: As to which peremptories?
16 MS. HULSE: His first peremptory as
17 number --
18 MR. LOCKHART: Yes.
19 MS. HULSE: She's badge number
20 eighty-seven, right?
21 Q. (BY MR. LOCKHART:) Okay. Yeah. Let me
22 see that. It looks like as to page 817, she -- that's
23 the beginning of the second peremptory, it looks
24 like. Mrs. Brown's -- I'll now pass out the earlier
25 portion of the transcript, pages 811 through 817. It

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1 penalties?
2 A. I recall that having read the transcript
3 and just out of experience, sure.
4 Q. Okay. Do you recall, and you may have
5 answered this, but just for the record, and I'll end
6 this line of inquiry: Do you recall anything about
7 Mrs. Brown's responses to the Court's questions in
8 this area other than what she said which was that she
9 could consider all three penalties?
10 A. I don't have any other recollection of
11 Mrs. Brown, for Miss Brown.
12 Q. Is it fair to say, having reviewed your
13 notes in this matter, that your notes do not indicate
14 how -- specifically why you believe that Miss Brown
15 was hesitant?
16 A. I did not note how or why I believe that,
17 no.
18 Q. Okay. Do you recall the order with regard
19 to the peremptory challenges that you exercised?
20 A. No, I don't recall.
21 Q. Let me, if I may, show you a transcript of
22 the peremptories that were executed, and this is a
23 transcript from Thursday, June 22nd of 1995.
24 Is it fair to say that this is, in
25 essence, a transcript of the peremptory challenges

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1 looks like Mrs. Brown's section of the peremptories
2 got cut off, so I apologize to that. I'll pass that
3 out.
4 This indicates that Miss Brown was struck
5 first by Mr. Guymon. And I'll just give you a second
6 to review that as well. 811 through 817, in essence,
7 comprises the Batson challenge and by Mr. Kohn and the
8 denial by Judge Huffaker beginning at page 811 and
9 concluding approximately at page 816, and you can see
10 that.
11 The next peremptory appears to have been
12 line thirteen on page 817.
13 A. I read this previously.
14 Q. Okay. So you agree that that's correct?
15 A. Yes.
16 Q. Okay. Do you prioritize the peremptories
17 that you exercise or -- strike that.
18 Did you prioritize the peremptories in
19 this case?
20 A. I would imagine I do because I typically
21 do that.
22 Q. Okay. What is the reason for that, just
23 in general?
24 A. Well, in general, I want to try to keep
25 the people that have -- that I believe are going to be

11 (Pages 38 to 41)

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1 the best from the state's perspective, and the people
2 that are going to be the worst from the state's
3 perspective I prioritize, because if I run out of
4 peremptory challenges, I want to get those that I
5 think are the least best -- the worst? -- first. I
6 want to get rid of them and work towards those that
7 are less questionable.
8 Q. Okay. So it's fair to say that it's a
9 strategic decision, you're making strategic decisions?
10 A. That's fair.
11 Q. And it's also fair to say that part of the
12 problem is that you don't know who the defense is
13 going to select?
14 A. Absolutely true.
15 Q. Okay. Do you recall your specific reason
16 for having struck Miss Brown first?
17 A. Other than the review of my notes, the
18 only basis I would have is the review of my notes.
19 Q. Okay. And having reviewed your notes, do
20 you have an opinion as to why you struck her first?
21 A. Well, the fact that I gave her a C as a
22 grade, and I do my grades on an A through F basis.
23 Very few people actually get an F as a
24 grade because the F's are typically already cancelled
25 by the Court. So if you really have D's through A's

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1 the names of potential jurors in those notes?
2 A. That is true as long as they were left, I
3 typically grade them.
4 Q. And is that something that you do in most
5 of the cases you handled while you were at the D.A.'s
6 office?
7 A. That's absolutely true.
8 Q. Is that something that you've always done
9 while you were at the District Attorney's office?
10 A. Absolutely. I mean, I may have not done
11 it my first case, but I quickly realized you have to
12 have some type of grading scale.
13 To be honest with you, I may have started
14 with numbers one through ten, but having formalized
15 schooling, grades seemed to be easier for me.
16 Q. Can you give me just basic -- you said you
17 rarely give anyone an F. Can you give me your basic
18 definitions for what made a D on your list?
19 A. Sure. An A to me is going to be someone
20 that, from the state's perspective now, an A is
21 someone that's going to be someone very strong in
22 their opinion, they're going to be very favorable
23 towards law enforcement, very favorable towards
24 prosecution, very strong on punishment, very strong on
25 accountability. I mean, they are going to be your pro

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1 left, at least the way I do a grading system.
2 Because she said that she was
3 uncomfortable passing judgment on a person, and I have
4 concluded based on my experience that in death cases
5 it is the most difficult time for a person to pass
6 judgment on a person, hands down the most difficult
7 time.
8 If they say that they are uncomfortable
9 and it's going to be difficult, I'm left with that
10 impression from what they say and from their body
11 language that I'm left with uneasiness of having them
12 sit in judgment of a case.
13 Q. Okay.
14 A. Because I gave her that grade of a C and
15 because of her comments, it would have put her as an
16 early strike.
17 Q. Okay. Let me back up and ask you just a
18 little bit about the grading. It's fair to say that
19 in Exhibit A, which is a packet of juror information
20 wherein there are two jurors per page --
21 A. Yes.
22 Q. -- that your handwritten notes indicate as
23 to almost every single juror, not every juror because
24 some were removed for various reasons, conflicts,
25 et cetera, but there are general grades as to most of

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1 law enforcement kind of people.
2 Q. Okay.
3 A. You know, if the police say it, darn it,
4 it must be true. That's your A kind of person from a
5 from my perspective as a prosecutor.
6 A B person is going to be someone that
7 again -- and the A people, by the way, are typically
8 going to be the leaders, people I think are going to
9 be a leader in the jury, that are going to sort of
10 direct deliberations, if you will.
11 Q. Okay.
12 A. A B is also going to be a leader, perhaps
13 less strong in their voicing of their opinions, but
14 they, too, are going to be strong on accountability,
15 strong on law enforcement.
16 They are typically going to be up on
17 community news and what's happening in our criminal
18 justice system. They're also going to be typically
19 employed. I like, as A's and B's, people with
20 children, family members, life's -- a broad life's
21 experience. When I say "broad," perhaps broad on the
22 law enforcement broad side of things.
23 A C is getting much more neutral perhaps I
24 refer to them as two scoops of vanilla. What I mean
25 by that is just kind of plain, just bland. They're

12 (Pages 42 to 45)

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1 neutral in their positions. They're neutral in their
2 assertions.

3 You know, there is a question mark, you
4 know. I put a question to them as a C.

5 A D is going to be someone that I am
6 absolutely going to strike. A D is going to be
7 someone that from a prosecutor's perspective probably
8 subscribes to High Time Magazine, probably has had bad
9 experiences with law enforcement, doesn't like the
10 police, doesn't like authority, is very rebellious.
11 Sort of, you know, anti-government. That's going to
12 be a D.

13 Q. Okay.

14 A. And an F is going to be a guy that flips
15 me off when I stand up to introduce myself. That's my
16 F. And the reason I say there's no F's, typically, is
17 because an F doesn't make it to the grading scale
18 because they've been stricken because they've already
19 said to the Court basically by their -- by their F
20 that they can't be there that day.

21 Q. Okay.

22 A. I mean, I don't mean to make light of the
23 way I strike it, but that's the best description I can
24 give you.

25 Q. Do you use the grading system to decide

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1 in the proceedings do you really start to formulate
2 who you want to remove?

3 A. Well, I get an impression, and I speak to
4 them right off the bat, and based on our voir dire and
5 that's when I grade them.

6 And I should probably say that I grade
7 them sort of as -- I mean, I grade them independently,
8 but collectively. In other words, if my pool is so
9 thick with A's and my pool is so strong, then perhaps
10 a person that becomes a B in this pool might have been
11 an A in the last pool, but this pool is so strong that
12 they're now B's.

13 Does that make sense?

14 Q. Yes.

15 A. So and when I review my notes in this
16 case, quite honestly, it looks like identifies a very,
17 very strong prosecution pool because I see where I had
18 an awful lot of A's and an awful lot of B's.

19 I've had lots of cases where I keep my C
20 jurors because I have so many D's. But in this case I
21 had so many A's and I had so many B's that my C's are
22 the ones that I got rid of.

23 Q. Is it fair to say that you keep some kind
24 of mental tally as to the people that, aside from your
25 notes, you want to be concerned about insofar as

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1 who you're going to strike, use it at that point in
2 time in which it's time to exercise your peremptories?

3 A. Yeah. At the conclusion, what I'll do, if
4 I don't do it actually on paper, it's certainly a
5 fixed idea my mind and that is this: Those with the
6 lowest grades are going to go first, and I'm going to
7 work.

8 So let's say I have two D's, three C's,
9 six B's, and ten A's. Those two D's I'm getting rid
10 of first. The two C's I'm getting rid of next then,
11 if I'm still -- you know, if I'm going down my list
12 and typically once I get to my B's and my A's, I'm
13 done. I'm not going to strike anyone else. I can
14 live with B's and A's as a prosecutor.

15 But if I have so many A's and I'm so fat
16 on my peremptory challenges, and I still have
17 peremptory challenges, I might strike the B's and say,
18 look, I got a whole bunch of A's left.

19 Now, my experience, though, the defense is
20 going to get rid of my A's anyway, it's not like I
21 don't have a bunch of B's in the pool, depending on my
22 pool.

23 Q. Do you look for -- as part of selecting a
24 jury, based on your training and the way you do that
25 as a prosecutor, do you start to try -- at what point

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1 ultimately exercising peremptory changes at the end of
2 the jury selection?

3 A. Absolutely true.

4 Q. So is it fair to say that as soon as the
5 jury is released, you don't just forget everything
6 that you've been thinking about since the beginning of
7 the jury selection?

8 A. No. I will, throughout the course of a
9 trial, I'll still have a recollection of what a juror
10 specifically said or didn't say, and quite honestly, I
11 mean, having that specific recollection, you now know
12 what to weave into perhaps a closing argument even.

13 Q. Okay. Do you, and I may have asked this
14 and I apologize this I did. Do you remember -- how
15 did you learn about the grading system?

16 A. I created that. I mean --

17 Q. Okay.

18 A. I created it as relates to my work. Maybe
19 other people created what they do, but for my work, it
20 fit.

21 Q. Okay. Do you recall a potential juror, in
22 your review of the materials, named Mary Phillips?

23 A. Not specifically, no.

24 Q. Okay. Let me see -- let me just have a
25 moment here. I want to find a specific page for you

13 (Pages 46 to 49)

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1 so you don't have to go page by page.
2 Could you look at your notes at 900814 for
3 me?
4 A. Certainly. Got it.
5 Q. And I'll give you a second just to look
6 that section over. She's basically at the bottom of
7 the page, badge number one thirty-four.
8 A. Got it.
9 MR. LOCKHART: Okay. I'm sorry. Can I
10 have just one second.
11 (Pause in the proceedings.)
12 Q. (BY MR. LOCKHART:) Do you see a grade on
13 that page, Mr. Guymon?
14 A. Yeah. She failed my test miserably.
15 Q. Do you have any recollection as to why she
16 failed that test, your test?
17 A. Well, in reading my notes, I wrote down
18 passing judgment, doesn't like to, but understands the
19 need under the law.
20 So again, this would be, to me, a person
21 that's uncomfortable passing judgment, which is a
22 strong concern as a prosecutor.
23 Q. Okay.
24 A. I put there: Disinclined to choose, or
25 choice, death penalty.

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1 So, obviously, she didn't favor the death
2 penalty, and she wasn't inclined to choose it, and
3 then couldn't weigh them equally or equal. So to me,
4 that meant that she would not give the same amount of
5 consideration to the death penalty as to the other
6 choices, and that's why she would be a D minus.
7 Q. Okay. Do you recall having used up
8 peremptory challenges with regard to Miss Phillips?
9 A. I didn't have any independent recollection
10 of it other than to turn to the other pages,
11 specifically page CC-2088 where I was an X under her
12 number which would tell me that the X's are the
13 strikes of the state, and the circles are probably the
14 strikes of the defense, using, you know, kind of just
15 my analogies here.
16 I would think that I -- when you direct my
17 attention to one thirty-four, I said, geez, I better
18 strike this woman based on my notes, and when I look
19 at my strike chart, sure enough, I have.
20 Q. So it's fair to say that based on your
21 earlier testimony someone with a D would be somebody
22 that you would be targeting basically from the moment
23 that you wrote that letter down on the page.
24 A. Absolutely. This woman I'm going to have
25 focused as this woman -- not only this woman, but this

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1 person. I guess in this case it was a woman.
2 Q. Right.
3 A. I think.
4 Q. Okay.
5 A. And I was going to strike this person.
6 Q. Okay. And, again, just for the record at
7 900814, your notes indicate that she was disinclined
8 to choose death penalty. Couldn't weigh equal. Does
9 that --
10 A. Yes.
11 Q. Is that accurate?
12 A. Yes.
13 Q. And what would that mean, couldn't weigh
14 equal?
15 A. Couldn't -- I put them couldn't weigh
16 equal, which means that she wouldn't -- to me and you
17 have to understand, I think I'm a fairly bright guy,
18 and I think I even know how to write sentences, but we
19 write down things very, very quickly because I don't
20 want my head to be down in my notes, so I'm just
21 making the cryptic note that's going to trigger in my
22 mind, and what couldn't weigh them equal would mean to
23 me would be that this individual, Mary Phillips,
24 couldn't give equal consideration to the death
25 penalty, life without, life with, or a term of years.

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1 Q. Okay.
2 A. And if she couldn't weigh them equally and
3 was given stronger weight to life without, life with,
4 or a term of years, then she was never truly going to
5 consider the death penalty, in my opinion.
6 Q. Okay. I understand. Do you also see on
7 that same page where you have written down has a
8 pressing matter?
9 A. Yes.
10 Q. What would that -- what does that mean to
11 you?
12 A. Has a pressing matter means that based on
13 her answers there was something pressing to her in her
14 life. Maybe she has a sick mother or father, a sick
15 child, she's having problems at work, she had health
16 concerns. There's something that's going to have her
17 focus on something other than our trial.
18 Q. Okay. Do you also see on that same page
19 where you have written down passing judgment, doesn't
20 like to, but understands need under the law?
21 A. Yes.
22 Q. Okay. Based upon the notes that you made
23 at 900814, can you tell me -- do you have -- well,
24 back up.
25 Can you tell me whether or not you have

14 (Pages 50 to 53)

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1 any recollection as to what order you struck
2 Miss Phillips?
3 A. I have no idea when I struck her.
4 Q. Looking back at the transcript from
5 Thursday, June 22nd of 1995, at page 818?
6 A. Yes.
7 Q. And I can represent to you that the lines
8 eight -- basically at line eight?
9 A. Okay.
10 Q. She was -- is it fair to say that she was
11 removed fourth in order?
12 A. Randall, if you tell me it's fourth, then
13 it's fourth.
14 Q. Can you explain why she was removed fourth
15 in order as opposed to first given that she got
16 a grade of D minus?
17 A. Sure. Her grade is certainly worse than
18 a C, the other woman, I believe, is Brown, but, again,
19 this pool was so heavy on A's and B's, I keep wanting
20 to use the word fat, it was so dense with
21 pro-prosecution jurors that I had a very small number
22 of people that fit into the people that I needed to
23 get rid. So whether I got rid of the C first or the D
24 first, I was going to get to my bad choices.
25 Q. Okay.

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1 A. She was probably after, even though she
2 had a worse number, and, typically, if I had a lot of
3 bad grades, I'd get rid of the worst grade first.
4 Q. Okay.
5 A. But because I didn't have a lot of bad
6 grades, I could -- I didn't have to get rid of the
7 worst first because she was seated later on down the
8 road, I probably got to her later.
9 Q. Okay.
10 A. Because you begin to fixate or focus on
11 the bad ones first because they left the first
12 impressions.
13 Q. Okay.
14 A. And I had room to move in this case.
15 Q. Is it fair to say that there were other
16 people, other potential jurors, who indicated, like
17 Miss Brown, that they were hesitant about or that
18 they -- strike that.
19 Is it true that there were -- or do you
20 have any recollection of other jurors who at one point
21 or another indicated something other than that they
22 were absolutely okay with imposing the death penalty?
23 A. I don't have an independent recollection,
24 but I can tell you that you always have people that
25 have hesitation.

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1 Q. So it's fair to say that it's not unusual
2 for people at some point in their testimony to say:
3 Well, it's difficult, or I would have to reflect on
4 it, but then proceed in their testimony to the point
5 to where you were absolutely certain that they would
6 impose the death penalty if they thought it was
7 warranted, and that would merit a grade of A from you?
8 A. That's probably true, but if I could --
9 Q. Okay.
10 A. -- I'm never certain that a person is
11 going to be able to give the death penalty.
12 Q. Okay.
13 A. I think I've had that so very seldom in my
14 career. It's never a certain, but you're left with
15 the impression that this person has the fortitude, if
16 you will, has the intensity to get there.
17 Q. Okay. Just as an example and this will
18 close out my line of question, I want to show a
19 transcript of the voir dire with regard to an
20 individual that actually sat on Mr. Witter's jury.
21 His name is Robert Allan Yale.
22 Do you have any recollection of that
23 individual?
24 A. Not at all.
25 Q. The transcript is from June 21st of 1995,

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1 and I'm going to pass it to counsel first. I don't
2 have multiple copies, and for that I apologize, but
3 what I want to do is just have you look briefly at one
4 section of Mr. Yale's testimony, and if you'd like I
5 can give you time to read the whole thing because what
6 I want to do is I just want to ask you some questions
7 about Mr. Yale's responses to your question as to
8 what -- how he felt about imposing the death penalty.
9 And let me at this time show that to
10 counsel, and then I will show it to you.
11 A. Sure.
12 Q. And from that I'll take it back, and then
13 I'll ask you some questions about that. I'll give you
14 all the time you need to review this.
15 This is basically Robert Allan Yale. He
16 sat on Mr. Witter's jury, as you can see right here.
17 And this is -- this is the date of the proceeding.
18 Here's the pages, and here's the beginning.
19 (Discussion off the record.)
20 THE WITNESS: Would you like me to also
21 read Mr. Kohn's?
22 MR. LOCKHART: Please.
23 THE WITNESS: No problem. Thank you.
24 Q. (BY MR. LOCKHART:) You bet. Is it fair
25 to say, having reviewed Mr. Yale's testimony, is it

15 (Pages 54 to 57)

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1 fair to say that Mr. Yale's testimony is consistent
2 with what you were saying just a moment ago about how
3 even jurors that make the jury indicate that the
4 decision requires an amount of reflection? Let's put
5 it that way.

6 Is that fair to say?

7 A. I'm sorry?

8 Q. Is it fair to say that, as you indicated
9 earlier -- well, let me back up.

10 Did you indicate earlier that there were
11 even individuals that actually sat on Mr. Witter's
12 jury would indicate that this decision to impose death
13 was not an easy one, for example?

14 A. Absolutely true. And I hope that to be
15 the case of the jurors actually.

16 Q. Okay. Would you indicate or would you
17 agree that Mr. Yale's voir dire testimony reflect that
18 as an example?

19 A. Yes, very much so.

20 Q. Okay. Would you agree that as a result of
21 the fact that there are a lot of jurors that indicate
22 at times that the death penalty requires reflection
23 before it can be imposed -- strike that.

24 Having looked at Mr. Yale's testimony, is
25 it fair to say that you can't or you normally would

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1 those two --

2 Q. Okay.

3 A. -- in their further dialogue.

4 Q. Okay. And what's your recollection with
5 regard to that?

6 A. Well, my recollection is this: One of the
7 things that I would have had concern about Miss Brown
8 is the fact that we had taken a break and came back
9 the next day and then when I said: Hey, by the way,
10 did you think about the death penalty, and she says:
11 No, I haven't thought about it.

12 I mean, I have an expectation that this
13 subject matter weigh heavily upon jurors' minds. If
14 it doesn't, then they really aren't fit people to be
15 on the jury, in my opinion.

16 Because, again, that's one of the things
17 that I tell you if a guy says: I'm pro death penalty,
18 but I've never thought about it. I say to you this
19 person hasn't challenged in their mind the thought
20 processes that they're now going to be challenged with
21 in deliberations.

22 And where Miss Brown told me no, I didn't
23 really think about it overnight, to me, I have an
24 expectation that the jurors go home and that they're
25 troubled by this, they're burdened by it. Because

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1 not look at one portion of a juror's testimony in
2 deciding whether or not they're hesitant about
3 imposing a death penalty?

4 A. I look at the totality. I don't -- I
5 mean, in answer to the question, I don't give a grade
6 until the conclusion of the questioning of that juror
7 because they may have, out of the chute, their first
8 response, I might think, you know, we just hit pay
9 dirt. This person is pro law enforcement, and at the
10 third question, they may be saying, you know, but I
11 subscribe to High Times Magazine and, you know, I've
12 got a kid that's been arrested sixteen times, and it's
13 been unfair.

14 Q. Is it fair to state, as an example, using
15 Mr. Yale's testimony, is it accurate to state that
16 Mr. Yale, for instance, indicates that he is bothered
17 by the death penalty at page 656?

18 Do you recall him stating that he was
19 bothered by the death penalty?

20 A. He absolutely said that.

21 Q. Would you agree that that's a more
22 affirmative statement with regard to his -- with
23 regard to hesitancy about imposing the death penalty
24 than Ms. Brown's statement?

25 A. Yea, but there's a big difference between

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1 they're going to be burdened in deliberations. Trust
2 me, I've watched these people walk out crying.

3 Q. Out of jurors --

4 A. -- and this man, to me, left me with the
5 impression that this has weighed heavily on my mind,
6 and I've given it thought. And because I've given it
7 thought, I can now give you answers, Mr. Guymon.

8 Q. Okay. Can you look at Miss Brown's
9 testimony of the questioning during cause on Tuesday,
10 June 20th, 1995? Do you have that in front of you
11 still?

12 A. Yeah. Which, sure. Got it.

13 Q. Okay. And that's at page 450 and 451.

14 A. Yes.

15 Q. Is it accurate to represent that you asked
16 her at line twenty, this is right at the time that --
17 this is right at the beginning of her questioning.

18 A. Yes.

19 Q. And you say to her: As you left this
20 courtroom yesterday what were your thoughts? Can you
21 share those with me? Is that accurate?

22 A. Yeah.

23 Q. That's on page 450?

24 A. It is.

25 Q. And she replies: It was a lot to absorb,

16 (Pages 58 to 61)

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1 the nature of everything that was going on here today,
2 but I felt as a citizen it was my duty to be as fair
3 as possible if I was selected as a juror on this case.
4 Is that accurate?

5 A. Yes.

6 Q. Can you tell me where in Miss Brown's voir
7 dire testimony she indicates that she didn't give any
8 thought during the break as to having imposed the
9 death penalty?

10 A. I was left with the impression when I read
11 it that I had asked her the question had she thought
12 about the death penalty, and I thought that what she
13 had said is she hadn't given it — she hadn't thought
14 about it.

15 Q. Okay.

16 A. And perhaps I'm looking at 454 where I
17 say: can you share your thoughts about the death
18 penalty as you thought about it as you reflect upon
19 it?

20 I know it's one of the penalties imposed,
21 but I gave it just as much thought as I gave the other
22 two penalties given to us as a crime.

23 Q. Is it fair to state that that passage does
24 not reflect that she did not give any considerations
25 to the death penalty during the break?

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1 me, and I can trust them. So that's — that would be
2 a body language or eye contact tone, of voice strength
3 of their comment. Their voice inflection
4 (phonetic) is something I'm going to look at.

5 I might even watch kind of their
6 interaction with the other jurors. I mean, if other
7 jurors are laughing at appropriate times and they're
8 not, or they're frowning throughout the course of
9 these events or if they're reading a book throughout
10 the course of the events, which is not unusual, I've
11 seen it happen. Those are all things that I'm looking
12 for and watching for.

13 If they roll their eyes at, you know, a
14 comment by the Court or a comment by the prosecution,
15 I'm going to be concerned. If they roll their eyes at
16 the defense, as a prosecutor, I'm not going to worry
17 about it. But those are the things I watch.

18 Q. Do those things also factor into the
19 grading system that you use?

20 A. Yes, absolutely.

21 Q. So a C grade would include if you thought
22 a person was displaying such poor body language or
23 perhaps that that's sort of mental impression, a poor
24 mental impression on your part?

25 A. Yeah. I don't want to say poor body

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1 A. It doesn't say that she did not, no.
2 MR. LOCKHART: I don't have any further
3 questions at this time.

4 EXAMINATION

5 BY MS. HULSE:

6 Q. If I may, I think I just have a few little
7 questions.

8 You had indicated that when you consider a
9 juror that there were other things that you consider
10 other than their answers to the questions, certain
11 mental impressions or things of that nature that you
12 take into account when you evaluate a juror.

13 Can you expand upon that a little bit?

14 A. Sure. I mean, you know, from a
15 prosecutor's prospective, you try to size people up in
16 the way they say things, the strength in which they
17 say it. Their body language by which they say it. If
18 they're talking to me like this and they're closed, at
19 lot of times I'm feeling like they're not going to be
20 warm and receptive to me when I'm having this
21 conversation, or if they're making eye contact with
22 me.

23 If they're making eye contact with me, I
24 feel like I'm reaching them and that they can trust

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1 language because, you know.

2 Q. How you read it?

3 A. Sure. I mean —

4 Q. Excuse me for interrupting.

5 A. And I probably have poor body language
6 now, but —

7 Q. I think the only other thing I would like
8 to know about is the list that you have that appears
9 at CC-2088?

10 A. Yes.

11 Q. This has a list of numbers on it that
12 equal about thirty-one people, I believe, as my
13 count. These jurors are the persons that passed the
14 first wave of questioning, is that correct, that you
15 said was death qualified? Can you explain that to me?

16 A. Here's what I believe of this list.

17 Q. Okay.

18 A. I believe what happened is that after the
19 Court had canvassed the jurors and we had questioned
20 the jurors, these are the people that now are left as
21 prospective jurors that have now been questioned.

22 They've gone through the cause challenges,
23 and now it's time to exercise our peremptory
24 challenges.

25 Q. All right.

17 (Pages 62 to 65)

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1 A. Does that answer it --
2 Q. I believe so.
3 A. -- for you?
4 Q. Would this sheet probably have been in
5 front of you as you exercised your challenges on, I
6 think it was, June 22nd?
7 A. Yes. I would have definitely had this
8 sheet in front of me along with the Court
9 administration's typed juror information sheet.
10 Q. All right. And do you have any idea what
11 these marks may be indicative of over here that have
12 four strikes and one strike through it that would be
13 basically a total of seven and then below that a total
14 of five? Do you have any idea what that might be
15 representative of?
16 A. Yes. This is a guess, but my guess is
17 that the seven, that the five and the two strikes that
18 you're seeing --
19 Q. Those are strikes then?
20 A. Those are strikes. That would be the
21 state's peremptory challenges, I would think, would be
22 the top one. Typically, the state goes first.
23 And the bottom, which is five strikes
24 would have been the defendant's peremptory
25 challenges.

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1 On the alternates, perhaps that's two is a
2 total of two strikes, meaning I struck someone and the
3 defense struck someone is what I'm gathering there by
4 a total of two.
5 Now, perhaps I was the one that struck
6 two, or perhaps Mr. Phil Kohn was the only one who
7 struck two. I don't know who exercised those two
8 strikes. I'd have to read the record for that. But
9 that's what I'm gathering from those marks.
10 Q. And other than that, you have very few
11 notes on here other than a few names to match up to
12 the jurors, correct?
13 A. Correct.
14 Q. And as you noted, the circles indicated
15 strikes by the defense?
16 A. That is correct.
17 Q. Has it ever been your practice to strike a
18 juror for an improper racial purpose?
19 A. No, not that I know of.
20 MS. HULSE: I have no further questions.
21
22 FURTHER EXAMINATION
23 BY MR. LOCKHART:
24 Q. I just have two or three short questions
25 as to the exact same notes. I'm sorry.

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1 A. Sure. No problem.
2 Q. At the same page, CC-2088, could you look
3 at the numbers as they go down the left-hand side of
4 the page, and to the point to where you have a
5 ninety-eight circled?
6 A. Yes.
7 Q. And do you see where it says -- I believe
8 it says Esteban?
9 A. Yes.
10 Q. And then next to that it appears the word
11 Hispanic.
12 Can you explain what that would designate?
13 A. Sure. Once Phil Kohn had indicated that
14 somehow I was striking -- had stricken someone for
15 race, then I -- and I know how that would have
16 affected me then, too, as a person. To be honest with
17 you, I was sort of taken offense to it. Because as I
18 sit here because I think I'm a man of integrity, no
19 matter what side I'm on.
20 I'm a lawyer -- I'm a person first with a
21 integrity woven in, and whether I'm a prosecutor or a
22 defense attorney now, I still want to play by the
23 rules. And so I know I would have sort of taken
24 offense, even though I knew Phil then, and I liked
25 Phil then. I would have certainly taken personal

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1 umbrage with it, offense, and I would have said: Gee,
2 that's a shot on my ethics, and I would have noted
3 when he struck Esteban that Esteban was a Hispanic
4 person, a person of color.
5 So where he's now made an issue of it, I
6 would have put in a note to myself to make a record of
7 that. I guess in a small way to say: Touche, Phil,
8 and I say that with a smile. This is not a game. But
9 to sort of say, you know, if we're making these
10 records and taking these shots, I need to make note to
11 myself to make a record and my guess is I probably
12 made a report of that as well.
13 Q. And so basically that notation would
14 reflect that Mr. Kohn struck someone who you believe
15 would have been removed based on race?
16 A. No, no, no. I do not want to accuse Phil
17 of a race reason, but what I'm saying is: If he was
18 saying I struck somebody on a race, then I was going
19 to make a note on the record that he struck somebody
20 as race. I'm not accusing him of striking someone for
21 race reasons, but I would want to make a record that
22 he had stricken a person that had a racial issue. I'm
23 not saying he did it for race issues.
24 Q. I absolutely understand.
25 A. I don't want to make that accusation.

18 (Pages 66 to 69)

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1 Q. Is it fair to say that you do not consider
2 race at all during the periods of jury selection and
3 during the period in which you exercise jury
4 peremptories in any case you try?
5 A. I don't. I will say there are concerns on
6 occasion about for race reasons, but I know the rules,
7 and so I have to leave that issue alone.
8 Q. Okay. So it's fair to say, then, that
9 you're not oblivious to race as you conduct your
10 questioning of potential jurors in any case?
11 A. I'm not oblivious, no. I'm not oblivious
12 to it.
13 Q. Can you give me an example of a situation
14 where a race would be a concern to you while selecting
15 a jury in a case?
16 A. If there are race issues in the case, for
17 instance, if I have a — as a prosecutor now, when I
18 was a prosecutor, if I have a black — excuse me, a
19 white victim that has made racial comments, for
20 instance, let's say the fact pattern is that a white
21 guy in a bar calls a person a racial name, racial
22 epithet, and the defendant is, in fact, a person of
23 race, and he reacts and, say, cracks them with the
24 butt of a gun, now I'm going to have concerns that I
25 have to sell this, for instance, a white victim, to a

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1 straight, that you do not — in considering who to
2 remove or during you're questioning of potential
3 jurors, have that — strike that.
4 While your questioning potential jurors in
5 a case that doesn't involve race, is it fair to say
6 that you keep the totality of your interaction with
7 them in your mind to the best of your ability as you
8 go through and you conduct the questioning?
9 A. As race neutral?
10 Q. Just when you're questioning jurors in a
11 case that doesn't involve race, is it fair to say that
12 you want to take everything into account so that you
13 can make the most educated decision possible when
14 you're ultimately using peremptories later?
15 A. That's true.
16 Q. And is it fair to say, then, that it's
17 almost impossible to exclude race from that equation
18 because that is part of the totality of the
19 impressions and the reality of, you know, if you're
20 questioning certain individuals, you're going to take
21 certain things away from them; is that correct?
22 I guess what — strike that.
23 What I'm trying to say is: Is it true
24 that you can't always exclude race as a consideration
25 when you're questioning certain individuals in a

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1 black juror or black jurors, then I have concerns
2 about that.
3 I mean, I have to have concerns of can we
4 do this, but I also know I can't strike these — this
5 juror or jurors on their race. I mean, I'm very aware
6 of the rules.
7 Q. Is it fair to say that when you're in the
8 role of a prosecutor in a case where race is not a
9 specific issue, that race is still relevant to you
10 while you're selecting a jury to some degree?
11 A. I really don't think it is at that point.
12 Q. Okay.
13 A. It only becomes an issue when I have that
14 kind of fact pattern as I described it.
15 Q. Your testimony then would be in
16 situations —
17 MR. HULSE: Objection.
18 Q. (BY MR. LOCKHART:) — where you're
19 selecting a jury in a nonrace-based case that the
20 consideration of race and potential jurors would be
21 irrelevant?
22 A. I think as I've picked jurors, I do
23 believe that.
24 Q. And would that also be consistent with
25 your testimony? I just want to make sure I have it

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1 nonrace-based case?
2 A. All right. In a nonrace-based case, do
3 I —
4 Q. Is it fair to say that race is part of the
5 calculus, of the impressions that you get when you're
6 talking to someone?
7 A. I don't think it is fair to say that.
8 Q. Okay.
9 A. I think it's the opposite, actually. In a
10 race neutral case. In other words, unless I have the
11 fact pattern I give you, then to me, I have, you know,
12 twelve persons up there, and I am race neutral.
13 In fact, if anything, I'm a little bit
14 sensitive about the Batson issues and, you know, try
15 to subscribe even more so —
16 Q. Right.
17 A. — if that makes sense.
18 Q. It does. If you're questioning a juror,
19 for instance, is it fair to reflect on what clothing
20 they were wearing?
21 A. Clothing may be an impression I get. I
22 mean, I'll smile about that because I had a not guilty
23 verdict as a prosecutor once where the one person that
24 was most difficult is a male that had multiple
25 earrings. And so just from a personal perspective, I

19 (Pages 70 to 73)

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1 sort of say: Look, I'm not crazy about multiple
2 earrings in men, from a prosecutor's perspective.
3 So I'm not going to say that I'm clothing
4 indifferent or hair style indifferent as a prosecutor.
5 Perhaps those are things that I will consider just
6 like with the keeping of a person, like, today I come
7 in like a vagrant and I get judged based on the fact
8 that I'm dressed like a vagrant today.
9 But, yeah, I guess those are
10 considerations I think about.
11 Q. Okay. Is it fair to say that a similar
12 consideration in selecting a jury -- potential jurors
13 and talking to them and taking away from it would be
14 would be hair style?
15 MS. HULSE: Objection.
16 Q. (BY MR. LOCKHART:) No more than jewelry,
17 correct?
18 A. Yes. I mean, they'd have to have a really
19 way out hair style to say this guy or this woman is
20 goofy.
21 Q. Well, I guess the point is would you not
22 agree that when you're questioning a potential juror,
23 you try to take in everything about that person so as
24 to make the most educated decision when you're
25 ultimately exercising your peremptories?

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1 A. That's fair.
2 MR. LOCKHART: Okay. That's it. Thank
3 you.
4 THE COURT REPORTER: Counsel, do you need
5 a copy of the transcript?
6 MS. HULSE: Yes, we'll need a copy.
7 Probably sent to -- send it to my office.
8
9 (Whereupon, the deposition
10 concluded at 10:50 a.m.)
11
12 *****
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1 CERTIFICATE OF DEPONENT
2 PAGE LINE CHANGE
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16

17 ***
18 I, GARY GUYMON, deponent herein, do hereby
19 certify and declare the within and foregoing
20 transcription to be my deposition in said action; that
21 I have read, corrected, and do hereby affix my
22 signature to said deposition this _____ day of
23 _____, 2005.
24
25

GARY GUYMON
Deponent

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1 REPORTER'S CERTIFICATE
2 STATE OF NEVADA)
3) ss.
4 COUNTY OF CLARK)
5 I, DIANN PROCK, a duly commissioned Notary
6 Public, Clark County, State of Nevada, do hereby
7 certify:
8 That I reported the deposition of the
9 witness, GARY GUYMON, commencing on Friday,
10 February 11, 2005, at the hour of 9:00 o'clock a.m.;
11 That prior to being examined, the witness
12 was by me first duly sworn to testify to the truth,
13 the whole truth, and nothing but the truth.
14 That I thereafter transcribed my said
15 shorthand notes into typewriting and that the
16 typewritten transcript of said deposition is a
17 complete, true, and accurate transcription of my
18 shorthand notes taken down at said time.
19 I further certify that I am not a relative
20 or employee of an attorney or counsel of any of the
21 parties, nor a relative or employee of any attorney or
22 counsel involved in said action, nor a person
23 financially interested in the action.
24 IN WITNESS WHEREOF, I have hereunto set my
25 hand in my office in the County of Clark, State of
Nevada, this 14th day of February, 2005.

DIANN PROCK, CCR 301

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9:00 1:21 77:7 90 6:2 11:9 13:21 14:10 900 19:19 900786 19:12 22:25 23:2 900787 19:19 900791 22:13,19 24:9 900814 50:2 52:7 53:23 95 11:10 13:21 14:10				

EXHIBIT 4.6

EXHIBIT 4.6

B+
C+ / *Flat*

JUROR INFORMATION
061995

BADGE NUMBER: 079

JUROR NAME : HUTCHISON, ROBERT D

PRIOR JUROR : NO
YRS. EDUC. : 16
YRS. RESID. : 22
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: CONSULTANT
SP. OCCUP. : SINGLE
I.D. NUMBER : 766289
CITY/ST/ZIP : LAS VEGAS NV 89121

*children 29
grandchildren 63
prior prison
Believes a lot of
Shuttle & travel
eye for eye worked
well 2000 years*

BADGE NUMBER: 080

JUROR NAME : ALEJO, CANDY SUE

PRIOR JUROR : NO
YRS. EDUC. : 11
YRS. RESID. : 03
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: MAID
SP. OCCUP. : SEPARATED
I.D. NUMBER : 1395914
CITY/ST/ZIP : LAS VEGAS NV 89104

B+ / B
JUROR INFORMATION
061995
answer of you mind

BADGE NUMBER: 081

JUROR NAME : KING, JIMMY EARL

PRIOR JUROR : NO JUROR OCCUP.: AUTO MECHANIC
YRS. EDUC. : 12 SP. OCCUP. : HOUSEKEEPER
YRS. RESID. : 04
CITIZEN : YES I.D. NUMBER : 1386859
LANG. PROB. : NO
FELONY CONV.: NO CITY/ST/ZIP : LOGANDALE NV 89021

could not answer for details
B
BADGE NUMBER: 082

JUROR NAME : JONES, LENDA JOYCE

PRIOR JUROR : NO JUROR OCCUP.: TEACHER
YRS. EDUC. : 18 SP. OCCUP. : SINGLE
YRS. RESID. : 03
CITIZEN : YES I.D. NUMBER : 1341888
LANG. PROB. : NO
FELONY CONV.: NO CITY/ST/ZIP : N LAS VEGAS NV 89031

A-13
JUROR INFORMATION
061995
*James H. Blankman
@
with works @ home*

BADGE NUMBER: 083

JUROR NAME : BLANKMAN, EDITH KLANG

PRIOR JUROR : NO
YRS. EDUC. : 18
YRS. RESID. : 30
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: NURSE
SP. OCCUP. : SINGLE

I.D. NUMBER : 570376

CITY/ST/ZIP : LAS VEGAS NV 89110
Responsible w/ money

=====

BADGE NUMBER: 084

JUROR NAME : ROMERO, MICHAEL ANTHONY

PRIOR JUROR : NO
YRS. EDUC. : 16
YRS. RESID. : 04
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: MANAGER
SP. OCCUP. : COLLECTION AGENT

I.D. NUMBER : 1233984

CITY/ST/ZIP : LAS VEGAS NV 89122

JUROR INFORMATION
061995

A
BADGE NUMBER: 085

JUROR NAME : LAPUZ, ROQUE FRANCO JR

PRIOR JUROR : YES
YRS. EDUC. : 16
YRS. RESID. : 05
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

Row. KPI
JUROR OCCUP.: CLAIMS EXAMINER
SP. OCCUP. : CLAIMS ANALYST
I.D. NUMBER : 954485
CITY/ST/ZIP : LAS VEGAS NV

89117

A
BADGE NUMBER: 086

JUROR NAME : CLARK, MARK G

PRIOR JUROR : NO
YRS. EDUC. : 14
YRS. RESID. : 17
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

Knows use to Russell (juror) / hi
Wicks 18
Tends to know death
JUROR OCCUP.: RECEIVING CLERK
SP. OCCUP. : RETAIL CLERK
I.D. NUMBER : 213915
CITY/ST/ZIP : LAS VEGAS NV

89128

JUROR INFORMATION
061995

BADGE NUMBER: 087

JUROR NAME : BROWN, ELOIS KLINE *C*

PRIOR JUROR :	YES	JUROR OCCUP.:	CUSTOMER SERVICE REP
YRS. EDUC. :	12	SP. OCCUP. :	SINGLE
YRS. RESID. :	35		
CITIZEN :	YES	I.D. NUMBER :	57261
LANG. PROB. :	NO		
FELONY CONV.:	NO	CITY/ST/ZIP :	NORTH LAS VEGAS NV 89030

=====

BADGE NUMBER: 088

JUROR NAME : COBLE, JACK ALAN

/

PRIOR JUROR :	YES	JUROR OCCUP.:	SUPERVISOR
YRS. EDUC. :	14	SP. OCCUP. :	SINGLE
YRS. RESID. :	16		
CITIZEN :	YES	I.D. NUMBER :	985351
LANG. PROB. :	NO		
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV 89121

JUROR INFORMATION
.061995

BT
BADGE NUMBER: 089

JUROR NAME : DELONG, FRANK HENRY JR

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

JUROR OCCUP.: CUSTODIAN
SP. OCCUP. : CASHIER

I.D. NUMBER : 809636

CITY/ST/ZIP : LAS VEGAS NV

89108

provisional to the court
BADGE NUMBER: 090

JUROR NAME : LEWIS, MICHAEL D

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

JUROR OCCUP.: WELDER
SP. OCCUP. : SINGLE

I.D. NUMBER : 1401048

CITY/ST/ZIP : N LAS VEGAS NV

89030

JUROR INFORMATION
061995

C-10-
BADGE NUMBER: 091

JUROR NAME : HANSON, KARL JOHN

PRIOR JUROR : YES

YRS. EDUC. : 16

YRS. RESID. : 06

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: ~~UNEMPLOYED~~

SP. OCCUP. : SINGLE

I.D. NUMBER : 901848

CITY/ST/ZIP : HENDERSON NV

890141

BADGE NUMBER: 092

JUROR NAME : WATREE, LINDSEY EDWARD

PRIOR JUROR : YES

YRS. EDUC. : 15

YRS. RESID. : 35

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: ENGINEER

SP. OCCUP. : CLERK TYPIST

I.D. NUMBER : 1002491

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

JUROR INFORMATION
061995

BADGE NUMBER: 093

JUROR NAME : KING, LARRY JAMES

PRIOR JUROR : NO
YRS. EDUC. : 14
YRS. RESID. : 08
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: SLOT MECHANIC
SP. OCCUP. : TEACHER

I.D. NUMBER : 805911

CITY/ST/ZIP : NORTH LAS VEGAS 89030

*studied capital punishment
not capital and on case
punishment*

BADGE NUMBER: 094

JUROR NAME : WIECHOWSKI, BETH ANN

PRIOR JUROR : NO
YRS. EDUC. : 13
YRS. RESID. : 17
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: SUPERVISOR
SP. OCCUP. : SINGLE

I.D. NUMBER : 1367344

CITY/ST/ZIP : LAS VEGAS NV 89120

*13- he is a 13th grader
may be 13th grader
which was 13th grader
wants to be elementary school
9 now old child
Believe nothing's Black
and white*

JUROR INFORMATION
061995

13+

BADGE NUMBER: 095

200 Vacelli

JUROR NAME : VACELLI, SHARON RAE

PRIOR JUROR : YES
YRS. EDUC. : 13
YRS. RESID. : 16
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: HOUSEKEEPER
SP. OCCUP. : SECURITY GUARD
I.D. NUMBER : 173000
CITY/ST/ZIP : LAS VEGAS, NV

89121

13

BADGE NUMBER: 096

JUROR NAME : WONG, MEINA

PRIOR JUROR : NO
YRS. EDUC. : 17
YRS. RESID. : 26
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: HOSTESS
SP. OCCUP. : SINGLE
I.D. NUMBER : 818603
CITY/ST/ZIP : LAS VEGAS NV

89117

*Abbeying through
re: 1st Service
with of broken window
Tennessee Island
Accounting
Major*

JUROR INFORMATION
061995

B-

BADGE NUMBER: 097

JUROR NAME : REILLY, CLARA CONNOLLY

PRIOR JUROR : YES

YRS. EDUC. : 14

YRS. RESID. : 40

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: RESERVATION AGENT

SP. OCCUP. : CLERK

I.D. NUMBER : 297605

CITY/ST/ZIP : NORTH LAS VEGAS NV 89030

prosecutor to file

A-1/B

BADGE NUMBER: 098

JUROR NAME : ESTEBAN, JOSE

PRIOR JUROR : NO

YRS. EDUC. : 14

YRS. RESID. : 05

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: RETIRED

SP. OCCUP. : SALES CLERK

I.D. NUMBER : 1134904

CITY/ST/ZIP : LAS VEGAS NV 89103

*Spanish speaking individual
Diego Lopez*

JUROR INFORMATION
061995

BADGE NUMBER: 099

JUROR NAME : CORRELLI, JENNIFER SUZANNE

PRIOR JUROR : NO
YRS. EDUC. : 13
YRS. RESID. : 16
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: PHOTO LAB TECHNICIAN
SP. OCCUP. : SINGLE
I.D. NUMBER : 1371792
CITY/ST/ZIP : LAS VEGAS NV

89130

BADGE NUMBER: 100

JUROR NAME : BYRNES, FLORENCIA LOPEZ

PRIOR JUROR : NO
YRS. EDUC. : 04
YRS. RESID. : 40
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: MAID
SP. OCCUP. : RETIRED

I.D. NUMBER : 108760

CITY/ST/ZIP : LAS VEGAS NV

89104

JUROR INFORMATION
061995

A
BADGE NUMBER: 101 *2*
JUROR NAME : SERA, ELIZABETH

PRIOR JUROR : NO
YRS. EDUC. : 12
YRS. RESID. : 05
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: ADMINISTRATIVE ASST
SP. OCCUP. : SEPARATED

I.D. NUMBER : 1226465

CITY/ST/ZIP : HENDERSON NV 89014

*black hair / bad eye
flowered dress
yellowed over the line*

=====

BADGE NUMBER: 102 *2*
JUROR NAME : HON, GERALD FLOYD

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

JUROR OCCUP.: WAREHOUSE SUPERVISOR
SP. OCCUP. : SINGLE

I.D. NUMBER : 626677

CITY/ST/ZIP : LAS VEGAS NV 89109

*Can not consider
doesn't*

JUROR INFORMATION
061995

BADGE NUMBER: 103 ²

JUROR NAME : SOLOMON, JESSE A JR

PRIOR JUROR : NO
YRS. EDUC. : 16
YRS. RESID. : 04
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV. : NO

JUROR OCCUP. : RETIRED
SP. OCCUP. : SEPARATED

I.D. NUMBER : 1323015

CITY/ST/ZIP : LAS VEGAS NV 89102

BADGE NUMBER: 104 ²

JUROR NAME : COLLINS, DIANE LOUISE

PRIOR JUROR : NO
YRS. EDUC. : 16
YRS. RESID. : 07
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV. : NO

JUROR OCCUP. : EMPLOYMENT COORD
SP. OCCUP. : PROFESSOR

I.D. NUMBER : 954570

CITY/ST/ZIP : HENDERSON, NV 89014

JUROR INFORMATION
061995

BADGE NUMBER: 105 ②

JUROR NAME : GAMMAGE, LEROY

PRIOR JUROR : NO

YRS. EDUC. : 08

YRS. RESID. : 35

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: RETIRED

SP. OCCUP. : SECURITY GUARD

I.D. NUMBER : 253580

CITY/ST/ZIP : LAS VEGAS NV

89106

BADGE NUMBER: 106 ②

JUROR NAME : BOGGS, JENNIFER B

PRIOR JUROR : YES

YRS. EDUC. : 16

YRS. RESID. : 34

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: TELEPHONE OPERATOR

SP. OCCUP. : WAREHOUSE SUPERVIS

I.D. NUMBER : 284443

CITY/ST/ZIP : LAS VEGAS NV

89004

JUROR INFORMATION
061995

³⁺
BADGE NUMBER: 107 ②

JUROR NAME : KINGERY, JOHN D

PRIOR JUROR : NO
YRS. EDUC. : 14
YRS. RESID. : 15
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: SUPERINTENDENT
SP. OCCUP. : HOMEMAKER

I.D. NUMBER : 7690

CITY/ST/ZIP : HENDERSON NV 89015

=====

BADGE NUMBER: 108

JUROR NAME : MASCITELLI, ANGELA S

PRIOR JUROR : YES
YRS. EDUC. : 11
YRS. RESID. : 45
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: HOMEMAKER
SP. OCCUP. : RETIRED

I.D. NUMBER : 587974

CITY/ST/ZIP : LAS VEGAS NV 89107

JUROR INFORMATION
061995

BADGE NUMBER: 109 ^Q

JUROR NAME : STRICKLAND, CURTIS

PRIOR JUROR : NO JUROR OCCUP.: DISABLED
YRS. EDUC. : 14 SP. OCCUP. : SINGLE
YRS. RESID. : 03
CITIZEN : YES I.D. NUMBER : 1310081
LANG. PROB. : NO
FELONY CONV.: NO CITY/ST/ZIP : LAS VEGAS NV 89109

BADGE NUMBER: 110 ^Q

JUROR NAME : CHAVEZ, CARLOS CHRIS

PRIOR JUROR : NO JUROR OCCUP.: UNEMPLOYED
YRS. EDUC. : 11 SP. OCCUP. : SINGLE
YRS. RESID. : 03
CITIZEN : YES I.D. NUMBER : 1391991
LANG. PROB. : NO
FELONY CONV.: NO CITY/ST/ZIP : HENDERSON NV 89015

*late to court Q 2:00
6.19.95*

B+

JUROR INFORMATION
061995

BADGE NUMBER: 111

JUROR NAME : CONNELL, REGINA LIN

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

JUROR OCCUP.: CLAIM REPRESENTATIVE
SP. OCCUP. : SINGLE
I.D. NUMBER : 1109479
CITY/ST/ZIP : LAS VEGAS NV

5th / 8. P.
Believe instructions
it was read
show
us. co.
Burg. victim
childhood to some
extent affects who
we are

B+/A+

BADGE NUMBER: 112

JUROR NAME : FLEMING, ROBERT ALLAN

PRIOR JUROR : NO
YRS. EDUC. : 17
YRS. RESID. : 06
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: AIR TRAFFIC CONTROLL
SP. OCCUP. : HOMEMAKER
I.D. NUMBER : 922914
CITY/ST/ZIP : LAS VEGAS NV

89121

high stress job

JUROR INFORMATION
061995

A-
BADGE NUMBER: 113②

JUROR NAME : YALE, ROBERT ALLAN

PRIOR JUROR : YES
YRS. EDUC. : 14
YRS. RESID. : 17
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: RETIRED
SP. OCCUP. : DECEASED

I.D. NUMBER : 101229

CITY/ST/ZIP : LAS VEGAS NV 89122

*old guy. gets hair
10 min. yet so far*

*childhood cash source
reaffirms*

=====

BADGE NUMBER: 114②

JUROR NAME : SCHRADER, ROBERT G

PRIOR JUROR : NO
YRS. EDUC. : 14
YRS. RESID. : 08
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: CORRECTIONS OFFICER
SP. OCCUP. : HOUSEWIFE

I.D. NUMBER : 1159729

CITY/ST/ZIP : INDIAN SPRINGS NV 89018

strong voice - strong presence

JUROR INFORMATION
061995

B+
BADGE NUMBER: 115⁽⁶⁾

JUROR NAME : MCLELLAN, LORELIE A

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

JUROR OCCUP.: HOMEMAKER
SP. OCCUP. : SECURITY OFFICER

I.D. NUMBER : 1242738

CITY/ST/ZIP : LAS VEGAS NV 89102

B/C+
BADGE NUMBER: 116⁽⁶⁾

JUROR NAME : MCARTHUR, BARBARA TENNANT

PRIOR JUROR : NO
YRS. EDUC. : 13
YRS. RESID. : 36
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: ~~RETIRED~~
SP. OCCUP. : ~~RETIRED~~

I.D. NUMBER : 257608

CITY/ST/ZIP : LAS VEGAS NV 89107

JUROR INFORMATION
061995

BADGE NUMBER: 117

JUROR NAME : BRENSINGER, HAROLD KENNETH

PRIOR JUROR : NO

JUROR OCCUP.: CENTER COORDINATOR

YRS. EDUC. : 16

SP. OCCUP. : LEISURE ATTENDANT

YRS. RESID. : 20

CITIZEN : YES

I.D. NUMBER : 280007

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : HENDERSON NV

89015

=====

BADGE NUMBER: 118

JUROR NAME : NAGUIAT, CRISOSTOMO NAVARRO

PRIOR JUROR : NO

JUROR OCCUP.: KENO WRITER

YRS. EDUC. : 16

SP. OCCUP. : CHANGE PERSON

YRS. RESID. : 11

CITIZEN : YES

I.D. NUMBER : 691583

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89125

JUROR INFORMATION
061995

BADGE NUMBER: 119

JUROR NAME : SLATER, KEVIN LA MONT

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

JUROR OCCUP.: DISABLED
SP. OCCUP. : FOOD SERVER

I.D. NUMBER : 1292758

CITY/ST/ZIP : LAS VEGAS, NV 89121

=====

B+ / A+
BADGE NUMBER: 120 (3)

JUROR NAME : CLARK, MARSHA ANN

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

JUROR OCCUP.: PLANT CLERK
SP. OCCUP. : SINGLE

I.D. NUMBER : 1386352

CITY/ST/ZIP : LAS VEGAS NV 89103

*unpaid in '84
pushie suit swift
enough*

JUROR INFORMATION
061995

A+
BADGE NUMBER: 121^③

JUROR NAME : PURDY, WILLIAM JAMES

PRIOR JUROR : YES

YRS. EDUC. : 14

YRS. RESID. : 15

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: RETIRED

SP. OCCUP. : RETIRED

I.D. NUMBER : 630650

CITY/ST/ZIP : LAS VEGAS NV

89134

=====

BADGE NUMBER: 122^③

JUROR NAME : HORTIZUELA, SUSAN A

PRIOR JUROR : NO

YRS. EDUC. : 16

YRS. RESID. : 01

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: DATA ENTRY CLERK

SP. OCCUP. : SINGLE

I.D. NUMBER : 1102124

CITY/ST/ZIP : LAS VEGAS NV

89125

JUROR INFORMATION
061995

BADGE NUMBER: 123 ⁽³⁾ *Feb 11*

JUROR NAME : FEAZELL, LONNIE

PRIOR JUROR : NO
YRS. EDUC. : 10
YRS. RESID. : 31
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: BELLMAN
SP. OCCUP. : SECRETARY

I.D. NUMBER : 228113

CITY/ST/ZIP : LAS VEGAS NV 89107

BADGE NUMBER: 124 ⁽³⁾

JUROR NAME : YATES, TANDY RICHARD

PRIOR JUROR : NO
YRS. EDUC. : 12
YRS. RESID. : 09
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: CUSTODIAN
SP. OCCUP. : RETAIL SALES

I.D. NUMBER : 1260090

CITY/ST/ZIP : LAS VEGAS NV 89121

*doesn't want responsibility
to handle
can't handle
decision*

JUROR INFORMATION
061995

BADGE NUMBER: 125 (3)

JUROR NAME : GERMANY, CHARLIE MAE

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

JUROR OCCUP.: TEACHER
SP. OCCUP. : TEACHER

I.D. NUMBER : 278894

CITY/ST/ZIP : LAS VEGAS NV 89117

*could consider due
priorities persons*

BADGE NUMBER: 126 (3)

JUROR NAME : MARTINEZ, NERIZA

PRIOR JUROR : NO
YRS. EDUC. : 14
YRS. RESID. : 20
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: STUDENT
SP. OCCUP. : SINGLE

I.D. NUMBER : 1289987

CITY/ST/ZIP : LAS VEGAS NV 89107

problem w/ possibilities of prior

JUROR INFORMATION
061995

A
BADGE NUMBER: 127⁽³⁾

JUROR NAME : MILLER, EDWARD LAWRENCE

PRIOR JUROR : NO
YRS. EDUC. : 13
YRS. RESID. : 35
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: SECURITY OFFICER
SP. OCCUP. : RETAIL SALES CLERK

I.D. NUMBER : 278801

CITY/ST/ZIP : LAS VEGAS NV 89130

=====

BADGE NUMBER: 128

JUROR NAME : ALDER, SCOTT N

PRIOR JUROR : NO
YRS. EDUC. : 12
YRS. RESID. : 14
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: FIREFIGHTER
SP. OCCUP. : BANK TELLER

I.D. NUMBER : 326578

CITY/ST/ZIP : HENDERSON NV 89015

JUROR INFORMATION
061995

BADGE NUMBER: 129

JUROR NAME : UNDERWOOD, CASSANDRA J

PRIOR JUROR : NO
YRS. EDUC. : 12
YRS. RESID. : 10
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: BOOTH CASHIER
SP. OCCUP. : SINGLE

I.D. NUMBER : 704767

CITY/ST/ZIP : N LAS VEGAS NV 89030

=====

BADGE NUMBER: 130

JUROR NAME : KNAPP, PEGGY JOYCE

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

JUROR OCCUP.: SALES PERSON
SP. OCCUP. : SINGLE

I.D. NUMBER : 272229

CITY/ST/ZIP : LAS VEGAS NV 89121

Ct/B-

JUROR INFORMATION
061995

BADGE NUMBER: 131⁽³⁾

JUROR NAME : MITCHELL, EVELYN

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

JUROR OCCUP.: SALES ASSOCIATE
SP. OCCUP. : MAIL HANDLER

I.D. NUMBER : 660057

CITY/ST/ZIP : LAS VEGAS NV

89115

could think she would be responsible for death

women 4/conv to death

BADGE NUMBER: 132

JUROR NAME : WASHINGTON, STEVEN

PRIOR JUROR : NO
YRS. EDUC. : 12
YRS. RESID. : 23
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: UNEMPLOYED
SP. OCCUP. : SINGLE

I.D. NUMBER : 1006331

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

JUROR INFORMATION
061995

BADGE NUMBER: 133

JUROR NAME : RAMOS, TITA ALCOSEBA

PRIOR JUROR : NO
YRS. EDUC. : 16
YRS. RESID. : 06
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: PIT CLERK
SP. OCCUP. : CAGE CASHIER
I.D. NUMBER : 1039935
CITY/ST/ZIP : LAS VEGAS NV

89115

can't understand - judges

BADGE NUMBER: 134

JUROR NAME : PHILLIPS, MARY E

PRIOR JUROR : NO
YRS. EDUC. : 14
YRS. RESID. : 15
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: SIGN INTERPRETER
SP. OCCUP. : VALET PARKER

I.D. NUMBER : 564158

CITY/ST/ZIP : N. LAS VEGAS, NV 89031

*passing judgment but need order
for hands
this law*

*Disinclined to choose
death penalty for qual
couldn't weigh
for a passing matter*

JUROR INFORMATION
061995

BADGE NUMBER: 135

JUROR NAME : WIDNES, MARLENE M

PRIOR JUROR : YES
YRS. EDUC. : 12
YRS. RESID. : 40
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: RETIRED
SP. OCCUP. : SINGLE
I.D. NUMBER : 300302
CITY/ST/ZIP : LAS VEGAS NV 89120

*B-
1st 1/2 goodly eye of
had a computer
get with and get out
of line.*

*slight factor to child
considered*

BADGE NUMBER: 136

JUROR NAME : ARCHE, IAN PAGADUAN

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

JUROR OCCUP.: SALES ASSOCIATE
SP. OCCUP. : SINGLE
I.D. NUMBER : 1369908
CITY/ST/ZIP : LAS VEGAS NV 89128

*B-
B-
Phillipino*

*came to court late
2:30
I think I could
Gordon Graphics*

Calvin Klein

B+ / A

JUROR INFORMATION
061995

4/5

BADGE NUMBER: 137

JUROR NAME : DUDLEY, RUBY MAE

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

JUROR OCCUP.: NURSE
SP. OCCUP. : SINGLE

I.D. NUMBER : 809277

CITY/ST/ZIP : LAS VEGAS NV 89115

=====

B+

BADGE NUMBER: 138

W

JUROR NAME : ORCHARD, HEDY L

psych major

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

JUROR OCCUP.: STUDENT
SP. OCCUP. : SINGLE

I.D. NUMBER : 1287483

CITY/ST/ZIP : LAS VEGAS NV 89115

JUROR INFORMATION
061995

B+
BADGE NUMBER: 139

JUROR NAME : TRAM, RAYMOND JAMES

PRIOR JUROR : NO
YRS. EDUC. : 18
YRS. RESID. : 31
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

36
Strom
JUROR OCCUP.: AUDITOR
SP. OCCUP. : SINGLE

I.D. NUMBER : 93060

CITY/ST/ZIP : LAS VEGAS NV 89108

=====

BADGE NUMBER: 140

JUROR NAME : BARBER, DONNA STALEY

*could not consider
Donna Barber*
PRIOR JUROR : NO
YRS. EDUC. : 18
YRS. RESID. : 25
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: PRINCIPAL
SP. OCCUP. : SINGLE

I.D. NUMBER : 219200

CITY/ST/ZIP : LAS VEGAS NV 89108

JUROR INFORMATION
061995

BADGE NUMBER: 141

JUROR NAME : EILTS, WANDA LEE

PRIOR JUROR : NO JUROR OCCUP.: PURCHASING AGENT
YRS. EDUC. : 16 SP. OCCUP. : GENERAL MANAGER
YRS. RESID. : 07
CITIZEN : YES I.D. NUMBER : 942261
LANG. PROB. : NO
FELONY CONV.: NO CITY/ST/ZIP : COTTONWOOD COVE NV 89046

BADGE NUMBER: 142

JUROR NAME : GUSTAFSON, CHARLES EDMUND

PRIOR JUROR : YES JUROR OCCUP.: CUSTODIAN
YRS. EDUC. : 12 SP. OCCUP. : SECRETARY
YRS. RESID. : 08
CITIZEN : YES I.D. NUMBER : 810218
LANG. PROB. : NO
FELONY CONV.: NO CITY/ST/ZIP : LAS VEGAS NV 89107

JUROR INFORMATION
061995

BADGE NUMBER: 143

JUROR NAME : MC CLAFLIN, DONALD L

PRIOR JUROR : NO
YRS. EDUC. : 12
YRS. RESID. : 30
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: CONSTRUCTION
SP. OCCUP. : SINGLE

I.D. NUMBER : 416294

CITY/ST/ZIP : LAS VEGAS, NV 89121

*Under 143 and page 143
shook head no.
no head as expected
back still had a
the question*

BADGE NUMBER: 144

JUROR NAME : ~~SPLITTGERBER, BETTY ANN~~

PRIOR JUROR : YES
YRS. EDUC. : 15
YRS. RESID. : 16
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: NURSE
SP. OCCUP. : UNEMPLOYED

I.D. NUMBER : 287416

CITY/ST/ZIP : JEAN NV 89019

33

900819

AA8098

JUROR INFORMATION
061995

BADGE NUMBER: 145

JUROR NAME : MARCIANO, THOMAS JOSEPH

PRIOR JUROR : NO

YRS. EDUC. : 16

YRS. RESID. : 08

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: SALES MANAGER

SP. OCCUP. : MANAGER

I.D. NUMBER : 1247214

CITY/ST/ZIP : HENDERSON NV

89014

BADGE NUMBER: 146

JUROR NAME : SILCOX, JOHN ANTHONY

PRIOR JUROR : NO

YRS. EDUC. : 16

YRS. RESID. : 26

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: BUILDING ENGINEER

SP. OCCUP. : SINGLE

I.D. NUMBER : 822093

CITY/ST/ZIP : LAS VEGAS NV

89128

21
30
10
12

34

900820

AA8099

JUROR INFORMATION
061995

BADGE NUMBER: 147

JUROR NAME : REED-WATERS, DIANNA

PRIOR JUROR : NO

JUROR OCCUP.: TAX CONSULTANT

YRS. EDUC. : 18

SP. OCCUP. : SEPARATED

YRS. RESID. : 16

CITIZEN : YES

I.D. NUMBER : 763971

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89193

BADGE NUMBER: 148

JUROR NAME : ALBOTT, GERALD ROBERT

PRIOR JUROR : NO

JUROR OCCUP.: DRYWALL INSTALLER

YRS. EDUC. : 10

SP. OCCUP. : RETIRED

YRS. RESID. : 10

CITIZEN : YES

I.D. NUMBER : 1040686

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89122

*Shane is convicted felon
presented.*

JUROR INFORMATION
061995

BADGE NUMBER: 149

JUROR NAME : BECKER, NORMAN P

PRIOR JUROR : NO
YRS. EDUC. : 15
YRS. RESID. : 05
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: VICE PRESIDENT
SP. OCCUP. : HOMEMAKER
I.D. NUMBER : 1116144
CITY/ST/ZIP : LAS VEGAS NV

89128

BADGE NUMBER: 150

JUROR NAME : SMITH, KARREN LEAVITT

PRIOR JUROR : NO
YRS. EDUC. : 19
YRS. RESID. : 30
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: CONFERENCE PLANNER
SP. OCCUP. : CONSTRUCTION MANAG
I.D. NUMBER : 559139
CITY/ST/ZIP : LAS VEGAS NV

89107

36

900822

AA8101

JUROR INFORMATION
061995

BADGE NUMBER: 151

JUROR NAME : CONTRERAS, WILFREDO CRISPIN

PRIOR JUROR : YES
YRS. EDUC. : 14
YRS. RESID. : 06
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: RETIRED
SP. OCCUP. : RETIRED
I.D. NUMBER : 1133078
CITY/ST/ZIP : LAS VEGAS NV

89128

Printed with of number

BADGE NUMBER: 152

JUROR NAME : BROWNSTEIN, LENORE

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

JUROR OCCUP.: BUYER
SP. OCCUP. : SINGLE
I.D. NUMBER : 1322420

CITY/ST/ZIP : LAS VEGAS NV

89109

Printed with of number

JUROR INFORMATION
061995

BADGE NUMBER: 153

JUROR NAME : DORMAN, KAREN DIANE

PRIOR JUROR : NO

YRS. EDUC. : 12

YRS. RESID. : 17

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: SUPERVISOR

SP. OCCUP. : ELECTRICIAN

I.D. NUMBER : 1013818

CITY/ST/ZIP : LAS VEGAS NV

89014

*checks w/ criminals daily
immigration work*

BADGE NUMBER: 154

JUROR NAME : WINDER, FRANCY DRUMMONDS

PRIOR JUROR : NO

YRS. EDUC. : 11

YRS. RESID. : 27

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: FOOD HANDLER

SP. OCCUP. : SINGLE

I.D. NUMBER : 9805

CITY/ST/ZIP : LAS VEGAS, NV

89104

couldn't contact Jack

JUROR INFORMATION
061995

BADGE NUMBER: 155

JUROR NAME : SHAY, LYNNEDEE SHORTT

PRIOR JUROR : NO

JUROR OCCUP.: TEACHER

YRS. EDUC. : 25

SP. OCCUP. : TEACHER

YRS. RESID. : 25

CITIZEN : YES

I.D. NUMBER : 219014

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : BOULDER CITY NV 89005

couldn't consider death penalty

BADGE NUMBER: 156

JUROR NAME : GALLAGHER, RUSSELL JAMES

PRIOR JUROR : NO

JUROR OCCUP.: STOCK CLERK

YRS. EDUC. : 10

SP. OCCUP. : CAGE CASHIER

YRS. RESID. : 15

CITIZEN : YES

I.D. NUMBER : 360915

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV 89102

per. death

JUROR INFORMATION
061995

3
BADGE NUMBER: 157

JUROR NAME : HICKEY, DAVE CHARLES

PRIOR JUROR : NO
YRS. EDUC. : 20
YRS. RESID. : 04
CITIZEN : YES
LANG. PROB. : NO
FELONY CONV.: NO

JUROR OCCUP.: ~~PROFESSOR~~
SP. OCCUP. : ~~WRITER~~

I.D. NUMBER : 1269698

CITY/ST/ZIP : LAS VEGAS NV

89109

U²
BADGE NUMBER: 158

JUROR NAME : MURPHY, JANICE G

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

JUROR OCCUP.: HOMEMAKER
SP. OCCUP. : MINE ENGINEER

I.D. NUMBER : 814491

CITY/ST/ZIP : LAS VEGAS NV

89108

40

900826

AA8105

JUROR INFORMATION
061995

BADGE NUMBER: 159

JUROR NAME : EAST, DENNIS L

PRIOR JUROR : YES

YRS. EDUC. : 17

YRS. RESID. : 12

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: TEACHER

SP. OCCUP. : SINGLE

I.D. NUMBER : 647231

CITY/ST/ZIP : LAS VEGAS NV 89115

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BADGE NUMBER: 160

JUROR NAME : PLOURDE, RAYMOND J

PRIOR JUROR : NO

YRS. EDUC. : 12

YRS. RESID. : 08

CITIZEN : YES

LANG. PROB. : NO

FELONY CONV.: NO

JUROR OCCUP.: GENERATOR MECHANIC

SP. OCCUP. : TEACHER'S AIDE

I.D. NUMBER : 836858

CITY/ST/ZIP : LAS VEGAS NV 89115

41

900827

AA8106

JUROR INFORMATION
061995

BADGE NUMBER: 161

JUROR NAME : KENNEDY, JAMES F

PRIOR JUROR :	YES	JUROR OCCUP.:	TEACHER
YRS. EDUC. :	17	SP. OCCUP. :	MEDICAL BILLER
YRS. RESID. :	10		
CITIZEN :	YES	I.D. NUMBER :	1171731
LANG. PROB. :	NO		
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS, NV 89110

BADGE NUMBER: 162

JUROR NAME : YORK, HEATHER

*couldn't consider that possible
couldn't make decision*

PRIOR JUROR :	NO	JUROR OCCUP.:	ACCOUNTS PAYABLE
YRS. EDUC. :	12	SP. OCCUP. :	SINGLE
YRS. RESID. :	14		
CITIZEN :	YES	I.D. NUMBER :	914219
LANG. PROB. :	NO		
FELONY CONV.:	NO	CITY/ST/ZIP :	LAS VEGAS NV 89128

42

900828

AA8107

JUROR INFORMATION
061995

BADGE NUMBER: 163

JUROR NAME : BARNSON, SHEILA WHISENHUNT *Sheila Whisenhunt*

PRIOR JUROR : YES

JUROR OCCUP.: DRIVER

YRS. EDUC. : 12

SP. OCCUP. : CARPENTER

YRS. RESID. : 35

CITIZEN : YES

I.D. NUMBER : 997585

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89130

=====

BADGE NUMBER: 164

JUROR NAME : BARTLEY, BARBARA *Barbara Bartley*

PRIOR JUROR : YES

JUROR OCCUP.: SALES EXECUTIVE

YRS. EDUC. : 16

SP. OCCUP. : SINGLE

YRS. RESID. : 10

CITIZEN : YES

I.D. NUMBER : 1246292

LANG. PROB. : NO

FELONY CONV.: NO

CITY/ST/ZIP : LAS VEGAS NV

89110

43

900829

AA8108

Don't know

100

Y. H. S.

2:30
C #

~~105~~

98

~~106~~

~~99~~

107

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~~109~~

101

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~~102~~

111

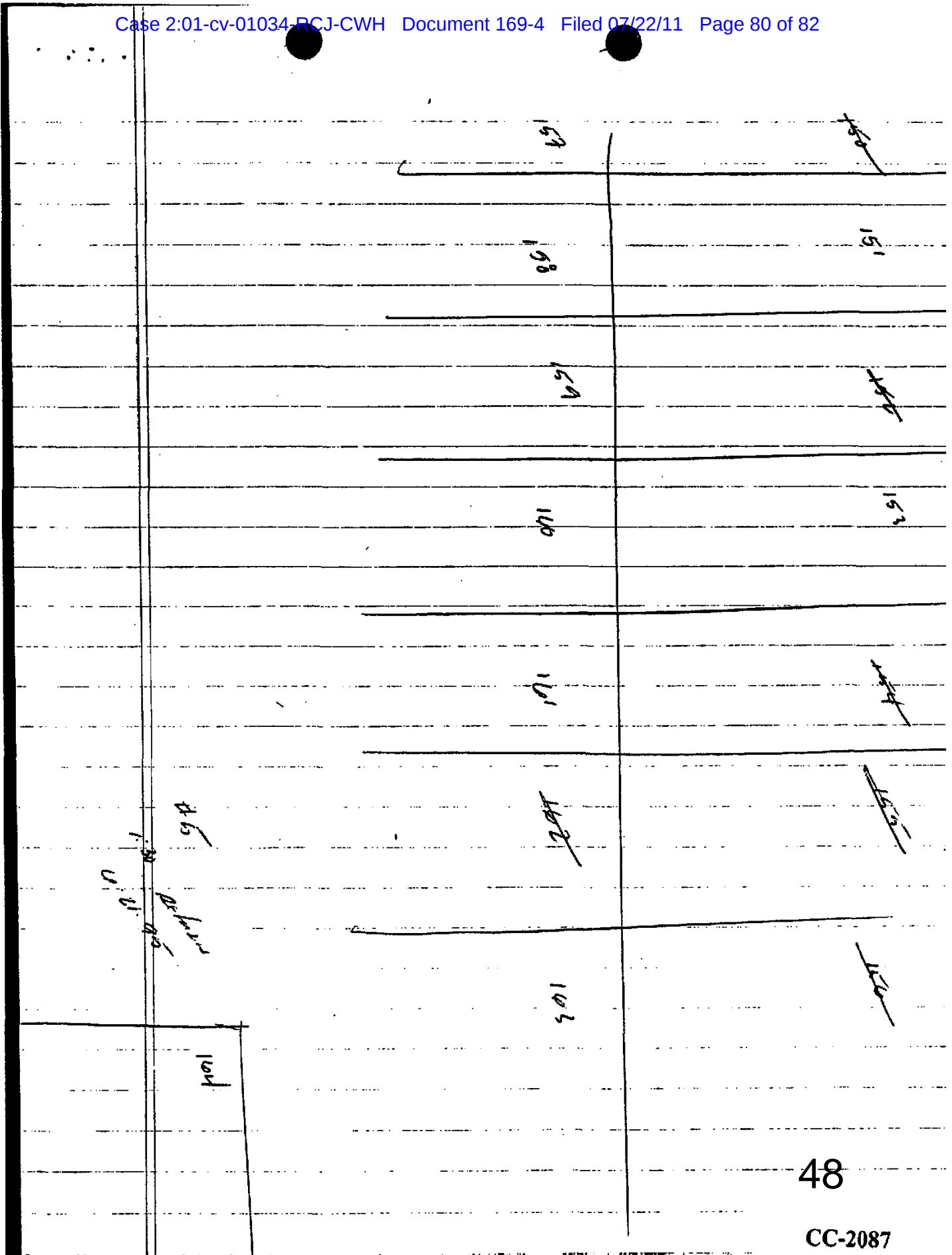
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112

104

123	113
124	114
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128	121
121	122

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CC-2087

AA8113

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REPLY

Estacion Hispania

101 8-24

107

10-10-68

112 Fleming

173



X-100

120

✓ 22

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149

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

JUN 23 8 43 AM '95

[Handwritten signature]

C.P.

STATE OF NEVADA

PLAINTIFF

VS.

WILLIAM LESTER WITTER

DEFENDANT

CASE NO. C117513
DEPARTMENT NINE
DOCKET "W"

J U R Y

- | | |
|----------------------------|-------------------------|
| 1. ROBERT D. HUTCHISON | 7. JOHN D. KINGERY |
| 2. JIMMY EARL KING | 8. REGINA LIN CONNELL |
| 3. EDITH KLANG BLANKMAN | 9. ROBERT ALLAN FLEMING |
| 4. FRANK HENRY DELONG, JR. | 10. ROBERT ALLAN YALE |
| 5. SHARON RAE VACELLI | 11. MARSHA ANN CLARK |
| 6. ELIZABETH SERA | 12. HEDY L. ORCHARD |

ALTERNATES: 1. RAYMOND JAMES TRAM
2. NORMAN P. BECKER

EXHIBIT K

EXHIBIT K

1 **CC03**

2 RENE L. VALLADARES

3 Federal Public Defender

4 Nevada State Bar No. 11479

5 JOANNE L. DIAMOND

6 Assistant Federal Public Defender

7 Nevada State Bar No. 14139C

8 Joanne_Diamond@fd.org

9 JOSE A. GERMAN

10 Assistant Federal Public Defender

11 Nevada Bar No. 14676C

12 Jose_German@fd.org

13 411 E. Bonneville, Ste. 250

14 Las Vegas, Nevada 89101

15 (702) 388-6577

16 (702) 388-5819 (Fax)

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY

MARLO THOMAS,

Petitioner,

v.

TIMOTHY FILSON, et. al.

Respondents.

Case No. 96C136862-1

Dept. No. XXIII

SUBPOENA DUCES TECUM-CIVIL
(For Personal Appearance at Trial or Hearing)

THE STATE OF NEVADA TO

Name: Custodian of Records

Federal Bureau of Investigation (FBI)

Record Information/Dissemination Section (RIDS)

Address: 935 Pennsylvania Ave., NW, Washington, D.C. 20535

YOU ARE HEREBY COMMANDED that all and singular, business and excuses set aside, you appear and attend on the ____ day of ____, at the hour of ____ in Department No. 23, of the District Court, Clark County, Nevada, *UNLESS you make an agreement with the attorney or party submitting this Subpoena.* The address where you are required to appear

1 is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Your attendance is
2 required to give testimony and/or to produce and permit inspection and copying of designated
3 books, documents, or tangible things in your possession, custody or control, or to permit
4 inspection of premises. You are required to bring with you at the time of your appearance any
5 items set forth in the list below. Please see Exhibit "1" Attached hereto for information
6 regarding the rights of the person subject to this Subpoena.
7

(This Subpoena must be signed by the Clerk of the Court or an attorney.)

Lynn Goya, CLERK OF COURT

By: _____ (Signature)
Deputy Clerk Date:

Or

By: _____ (Signature)
Attorney Name: JOANNE L. DIAMOND
Attorney Bar Number: 14139C

Submitted by:
JOANNE L. DIAMOND
Assistant Federal Public Defender
Nevada State Bar No. 14139C
411 East Bonneville Avenue, Suite 250
Las Vegas, Nevada 89101
(702) 388-6577
(702) 388-5819 (FAX)
Joanne_diamond@fd.org

(Insert Name, Bar Number, Address, Phone, Fax and E-mail of Attorney or Party Submitting Subpoena)

Attorney for Petitioner

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I, *(insert name of person making service)* _____, being duly sworn, or
under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a
party to or interested in the proceedings in which this Affidavit/Declaration is made; that I
received a copy of the **SUBPOENA** on *(insert date person making service received Subpoena)*
_____; and that I served the same on *(insert date person making service served Subpoena)*
_____. by delivering and leaving a copy with *(insert name of witness)*

(insert address where witness was served) at _____
_____.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

Executed on: _____
(Date) (Signature of Person Making Service)

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ITEMS TO BE PRODUCED

**TO: CUSTODIAN OF RECORDS, RECORD INFORMATION/DISSEMINATION
SECTION (RIDS)
FEDERAL BUREAU OF INVESTIGATION
935 PENNSYLVANIA AVE., NW
WASHINGTON, D.C. 20535**

OR: PERSON(S) MOST KNOWLEDGEABLE with regard to official and/or non-official records, documents and materials storage, retention, nature of and content of files of the ***Record Information/Dissemination Section***

YOU ARE COMMANDED to produce and permit inspection and copying of the following designated books, documents or tangible things as (a) kept in the usual course of business, or (2) organized and labeled to correspond with the categories as set forth below. Nev. R. Civ. Pro. 45.

If any of the books, documents, records or tangible things listed below are not being produced by you based on a claim of privilege or any other reason, please expressly state the basis or privilege claimed and describe the nature of the documents, communications or other things sufficient to enable a contest of the claim. Nev. R. Civ. Pro. 45(d).

Please complete a "Certificate of Custodian of Records", in the form set forth in N.R.S. 52.260. Please produce or permit inspection and copying all sealed, unsealed, official and/or non official memoranda, correspondence, materials, files, tests, and/or documents of the following items and things concerning:

Information requested on the following individual:

**Marlo D. Thomas
DOB: 11/06/1972
SSN: 530-68-5216**

Please produce or permit inspection and copying of all sealed and/or unsealed, official and/or non official files, records, documents, investigative materials, microfiched logbooks, handwritten logbooks, and/or tangible things including, but not limited to, the following un-redacted items:

1. Property impound reports and test results;
2. Evidence impound reports and test results;
3. Sketches;
4. Diagrams;
5. Blood samples;
6. Swab samples;
7. Toxicology reports and test results;
8. Forensic laboratory reports and test results;
9. Firearm comparison test protocols, reports and test results;
10. Blood spatter interpretation, test protocols, reports and test results.

- 1 11. Lab notes;
- 2 12. Bench notes;
- 3 13. All communications with Reno Police Department, Sparks Police Department and
any other law enforcement agencies involved in the Carl Dixon and Matthew
Gianakis homicides;
- 4 14. Protocol employed for all tests and/or examinations;
- 5 15. Victim information reports;
- 6 16. Identification specialists work requests and reports;
- 7 17. Newspaper articles, press reports, press releases;
- 8 18. Field identification section documents;
- 9 19. Latent fingerprint section documents;
- 10 20. Photographic laboratory section documents;
- 11 21. Photographic lineup documents;
- 12 22. All laboratory testing reports and results;
- 13 23. All evidence testing reports and results;
- 14 24. All physical evidence;
- 15 25. All curriculum vitae, resumes, and any other documentation reflecting the
qualifications, licensing, education, experience, training, and professional
memberships or associations for all examiners involved in the Carl Dixon and
Matthew Gianakis homicides.
- 16 26. Any and all other documents regarding the Carl Dixon and Matthew Gianakis
homicides in your possession;
- 17 27. A list of any and all purged, deleted or destroyed documents, or documents
transferred to storage;
- 18 28. Any and all microfilm, microfiche documents;
- 19 29. Electronic data regarding all above to include: voice mail messages and files;
back-up voice mail files; e-mail messages and files; back-up e-mail files; deleted
e-mails; data files; program files; backup and archival tapes; temporary files;
system history files; web site information stored in textual, graphical or audio
format; web site log files; cache files; cookies; and other electronically recorded
information. The disclosing party shall take reasonable steps to ensure that it
discloses any back-up copies of files or archival tapes that will provide
information about any "deleted electronic data." This list is not exhaustive.

If you are claiming that any of the documents described above have been destroyed or purged, please provide a copy of "Certificate of Destruction," evidencing what was destroyed and the date, as set forth in your local rules and/or statutory codes.

EXHIBIT "1"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) *Duties in responding to subpoena.*

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

1 (2) When information subject to a subpoena is withheld on a claim that it is privileged or
2 subject to protection as trial preparation materials, the claim shall be made expressly and shall be
3 supported by a description of the nature of the documents, communications, or things not produced that is
4 sufficient to enable the demanding party to contest the claim.
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EXHIBIT L

EXHIBIT L

1 **CC03**

2 **RENE L. VALLADARES**

3 Federal Public Defender

4 Nevada Bar No. 11479

5 **JOANNE L. DIAMOND**

6 Assistant Federal Public Defender

7 Nevada Bar No. 14139C

8 Joanne_Diamond@fd.org

9 **JOSE A. GERMAN**

10 Assistant Federal Public Defender

11 Nevada Bar No. 14676C

12 Jose_German@fd.org

13 411 E. Bonnevill, Ste. 250

14 Las Vegas, Nevada 89101

15 (702) 388-6577

16 (702) 388-5819 (Fax)

17 **EIGHTH JUDICIAL DISTRICT COURT**
18 **CLARK COUNTY**

19 **MARLO THOMAS,**

20 Petitioner,

21 v.

22 **TIMOTHY FILSON, et. al.**

23 Respondents.

Case No. 96C136862-1

Dept. No. XXIII

SUBPOENA DUCES TECUM-CIVIL

(For Personal Appearance at Trial or Hearing)

24 **THE STATE OF NEVADA TO**

25 Name: Custodian of Records

26 State of Nevada, Department of Corrections

27 Address: 5500 Snyder Ave., Bldg. 17

28 Carson City, Nevada 89701

29 **YOU ARE HEREBY COMMANDED** that all and singular, business and excuses set
30 aside, you appear and attend on the ____ day of ____, at the hour of ____ in Department No.
31 23, of the District Court, Clark County, Nevada, *UNLESS you make an agreement with the*

1
2 *attorney or party submitting this Subpoena.* The address where you are required to appear
3
4 is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Your attendance is
5 required to give testimony and/or to produce and permit inspection and copying of designated
6 books, documents, or tangible things in your possession, custody or control, or to permit
7 inspection of premises. You are required to bring with you at the time of your appearance any
8 items set forth in the list below. Please see Exhibit "1" Attached hereto for information
9
10 regarding the rights of the person subject to this Subpoena.

11 (This Subpoena must be signed by the Clerk of the Court or an attorney.)
12 Lynn Goya, CLERK OF COURT

13
14 By: _____ (Signature)
15 Deputy Clerk Date:

16 Or

17
18 By: _____ (Signature)
19 Attorney Name: JOANNE L. DIAMOND
20 Attorney Bar Number: 14139C

21 Submitted by:
22 JOANNE L. DIAMOND
23 Assistant Federal Public Defender
24 Nevada State Bar No. 14139C
25 411 East Bonneville Avenue, Suite 250
26 Las Vegas, Nevada 89101
27 (702) 388-6577
28 (702) 388-5819 (FAX)
Joanne_diamond@fd.org

(Insert Name, Bar Number, Address, Phone, Fax and E-mail of Attorney or Party Submitting Subpoena)

Attorney for Petitioner

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I, *(insert name of person making service)* _____, being duly sworn, or
under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a
party to or interested in the proceedings in which this Affidavit/Declaration is made; that I
received a copy of the **SUBPOENA** on *(insert date person making service received Subpoena)*
_____; and that I served the same on *(insert date person making service served Subpoena)*
_____. by delivering and leaving a copy with *(insert name of witness)*

(insert address where witness was served) at _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

Executed on: _____
(Date) (Signature of Person Making Service)

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ITEMS TO BE PRODUCED

TO: CUSTODIAN OF RECORDS
State of Nevada, Department of Corrections
5500 Snyder Ave., Bldg. 17
Carson City, Nevada 89701

OR: PERSON(S) MOST KNOWLEDGEABLE with regard to official and/or non-official records, documents and materials storage, retention, nature of and content of files of the *Inmate Records State of Nevada, Department of Corrections*

YOU ARE COMMANDED to produce and permit inspection and copying of the following designated books, documents or tangible things as (a) kept in the usual course of business, or (2) organized and labeled to correspond with the categories as set forth below. Nev. R. Civ. Pro. 45.

If any of the books, documents, records or tangible things listed below are not being produced by you based on a claim of privilege or any other reason, please expressly state the basis or privilege claimed and describe the nature of the documents, communications or other things sufficient to enable a contest of the claim. Nev. R. Civ. Pro. 45(d).

Please complete a "Certificate of Custodian of Records", in the form set forth in N.R.S. 52.260. Please produce or permit inspection and copying all sealed, unsealed, official and/or non official memoranda, correspondence, materials, files, tests, and/or documents of the following items and things concerning:

Information requested on the following individual:

Bobby L. Lewis (deceased)
DOB: 01/28/1949
SSN: 435-80-2616

Please produce or permit inspection and copying of all sealed and/or unsealed, official and/or non official files, records, documents, investigative materials, microfiched logbooks, handwritten logbooks, and/or tangible things including, but not limited to, the following un-redacted items:

This request includes, without limitation:

- 1. I-Files
- 2. C-Files
- 3. Culinary Logs/Files/Reports
- 4. CMU reports from Central Administration
- 5. Monthly CMU privileges report
- 6. Classification change sheets for classification hearings
- 7. Classification change sheets for housing/custody changes
- 8. Transportation:
 - a. Memoranda
 - b. Priority transfer list

- 1 c. Transportation manifest logs
- 2 d. Transportation Orders
- 3 e. Transportation check off list
- 4 9. Scheduling Records for local court/medical or teleconferences
- 5 10. Movement Logs for each designated location within the institution
- 6 11. Daily movement sheet
- 7 12. Unit Logs
- 8 13. Unit Shift Reports
- 9 14. Sergeant's Daily Shift Reports
- 10 15. Daily institutional report
- 11 16. Gatehouse logs (visitors)
- 12 17. Institutional count logs and records
- 13 18. Education Department logs and files
- 14 19. Chapel:
- 15 a. Chapel logs of attendance
- 16 b. Chapel monthly activity schedule/volunteer visits
- 17 20. Canteen:
- 18 a. Daily file on sales with the inmate receipt. This would have to be
- 19 coordinated with
- 20 b. Inmate Services/Central Administration
- 21 c. Inmate written correspondence forms (kites) specific to the canteen
- 22 d. Canteen research log specific to grievances
- 23 e. Canteen property log
- 24 21. Accounting office documents:
- 25 a. Inmate accounting file
- 26 b. Four brass slip logs
- 27 c. Incoming receipt logs
- 28 d. Tax refund files
- e. Legal copy work logs
- f. Monthly indigency log
21. Mail Room
- a. Legal mail log
- b. Unauthorized mail log
- c. Unauthorized package log
- d. Censorship log
- e. Certified mail log
- f. Outgoing package log
22. Property file
23. Inmate Grievances
- a. Inmate grievance log
- b. Inmate grievance file
24. Cell search logs/reports
25. Visiting files and logs
26. Disciplinary hearing logs (2)
27. Drug testing logs/reports

- 1 28. Incident files/reports
2 29. Law library
3 a. Copywork records
4 b. Supply issuance records
5 c. Issuance of legal materials
6 30. Unit logs (showers/exercise)
7 31. Unit Rosters
8 32. Any and all condition, care, confinement, custody and/or incarceration
9 documents generated by, received from and/or forwarded to or from any
10 law enforcement authorities
11 33. Any and all communications regarding care, confinement, custody and/or
12 incarceration for any individuals identified above
13 34. A list of any and all purged, deleted, or destroyed documents, and
14 documents transferred to storage;
15 35. Any and all microfilm, microfiche documents;
16 36. Electronic data regarding all above to include: voice mail messages and
17 files; back-up voice mail files; e-mail messages and files; back-up e-mail
18 files; deleted e-mails; data files; program files; backup and archival tapes;
19 temporary files; system history files; web site information stored in
20 textual, graphical or audio format; web site log files; cache files; cookies;
21 and other electronically recorded information. The disclosing party shall
22 take reasonable steps to ensure that it discloses any back-up copies of files
23 or archival tapes that will provide information about any "deleted"
24 electronic data. This list is not exhaustive.
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26 As to all prisoners, generally:
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28 37. All documents referring, relating, or reflecting conditions of confinement
as related to (future) dangerousness (as argued by the Clark County
District Attorney's Office at trials);
38. All documents and records relating, referring, or reflecting the relative
dangerousness of prisoners convicted of capital crimes to that of the
general population of inmates in the Nevada Department of Corrections
system;
39. Electronic data regarding requests 35 and 36 above to include: voice mail
messages and files; back-up voice mail files; e-mail messages and files;
back-up e-mail files; deleted e-mails; data files; program files; backup and
archival tapes; temporary files; system history files; web site information
stored in textual, graphical or audio format; web site log files; cache files;
cookies; and other electronically recorded information. The disclosing
party shall take reasonable steps to ensure that it discloses any back-up
copies of files or archival tapes that will provide information about any
"deleted" electronic data. This list is not exhaustive.

1 If you are claiming that any of the documents described above have been destroyed or purged,
2 please provide a copy of "Certificate of Destruction," evidencing what was destroyed and the
3 date, as set forth in your local rules and/or statutory codes.
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EXHIBIT "1"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waive applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) *Duties in responding to subpoena.*

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

1 (2) When information subject to a subpoena is withheld on a claim that it is privileged or
2 subject to protection as trial preparation materials, the claim shall be made expressly and shall be
3 supported by a description of the nature of the documents, communications, or things not produced that is
4 sufficient to enable the demanding party to contest the claim.
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EXHIBIT M

EXHIBIT M

1 **CC03**

2 RENE L. VALLADARES

3 Federal Public Defender

4 Nevada State Bar No. 11479

5 JOANNE L. DIAMOND

6 Assistant Federal Public Defender

7 Nevada State Bar No. 14139C

8 Joanne_Diamond@fd.org

9 JOSE A. GERMAN

10 Assistant Federal Public Defender

11 Nevada Bar No. 14676C

12 Jose_German@fd.org

13 411 E. Bonneville, Ste. 250

14 Las Vegas, Nevada 89101

15 (702) 388-6577

16 (702) 388-5819 (Fax)

17 EIGHTH JUDICIAL DISTRICT COURT
18 CLARK COUNTY

19 MARLO THOMAS,

20 Petitioner,

21 v.

22 TIMOTHY FILSON, et. al.

23 Respondents.

Case No. 96C136862-1

Dept. No. XXIII

SUBPOENA DUCES TECUM-CIVIL

(For Personal Appearance at Trial or Hearing)

24 **THE STATE OF NEVADA TO**

25 Name: Custodian of Records

26 Criminal History

27 Las Vegas Metropolitan Police Department

28 Address: 400 S. Martin L. King Blvd, Las Vegas, NV

29 **YOU ARE HEREBY COMMANDED** that all and singular, business and excuses set
30 aside, you appear and attend on the ____ day of ____, at the hour of ____ in Department No.
31 23, of the District Court, Clark County, Nevada, *UNLESS you make an agreement with the*
32 *attorney or party submitting this Subpoena.* The address where you are required to appear
33 is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Your attendance is

1 required to give testimony and/or to produce and permit inspection and copying of designated
2 books, documents, or tangible things in your possession, custody or control, or to permit
3 inspection of premises. You are required to bring with you at the time of your appearance any
4 items set forth in the list below. Please see Exhibit "1" Attached hereto for information
5 regarding the rights of the person subject to this Subpoena.
6

(This Subpoena must be signed by the Clerk of the Court or an attorney.)

Lynn Goya, CLERK OF COURT

By: _____ (Signature)
Deputy Clerk Date:

Or

By: _____ (Signature)
Attorney Name: JOANNE L. DIAMOND
Attorney Bar Number: 14139C

Submitted by:
JOANNE L. DIAMOND
Assistant Federal Public Defender
Nevada State Bar No. 14139C
411 East Bonneville Avenue, Suite 250
Las Vegas, Nevada 89101
(702) 388-6577
(702) 388-5819 (FAX)
Joanne_diamond@fd.org

(Insert Name, Bar Number, Address, Phone, Fax and E-mail of Attorney or Party Submitting Subpoena)

Attorney for Petitioner

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I, *(insert name of person making service)* _____, being duly sworn, or
under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a
party to or interested in the proceedings in which this Affidavit/Declaration is made; that I
received a copy of the **SUBPOENA** on *(insert date person making service received Subpoena)*
_____; and that I served the same on *(insert date person making service served Subpoena)*
_____. by delivering and leaving a copy with *(insert name of witness)*

(insert address where witness was served) at _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

Executed on: _____
(Date) (Signature of Person Making Service)

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ITEMS TO BE PRODUCED

**TO: CUSTODIAN OF RECORDS
CRIMINAL HISTORY
LAS VEGAS METROPOLITAN POLICE DEPARTMENT
400 S. Martin L. King Blvd., Las Vegas, NV 89106**

YOU ARE COMMANDED to produce and permit inspection and copying of the following designated books, documents or tangible things as (a) kept in the usual course of business, or (2) organized and labeled to correspond with the categories as set forth below. Nev. R. Civ. Pro. 45.

If any of the books, documents, records or tangible things listed below are not being produced by you based on a claim of privilege or any other reason, please expressly state the basis or privilege claimed and describe the nature of the documents, communications or other things sufficient to enable a contest of the claim. Nev. R. Civ. Pro. 45(d).

Please complete a "Certificate of Custodian of Records", in the form set forth in N.R.S. 52.260. Please produce or permit inspection and copying all sealed, unsealed, official and/or non official memoranda, correspondence, materials, files, tests, and/or documents of the following items and things concerning:

Information requested on the following individual:

**Marlo D. Thomas
DOB: 11/06/1972
SSN: 530-68-5216**

Please produce or permit inspection and copying of all sealed and/or unsealed, official and/or non official files, records, documents, investigative materials, microfiched logbooks, handwritten logbooks, and/or tangible things including, but not limited to, the following un-redacted items:

1. Evidence impound reports, notes and test results;
2. Property impound reports, notes and test results;
3. Crime Scene Reports and notes;
4. All Las Vegas Metropolitan Police Department records related to the above-named individual including, but not limited to, (DR) including, but not limited to DR Nos. 84-06040624; 87-65834; 88-83051; 84-76992; 960415-0488;
5. Photographs, notes, testing data, analysis and results regarding Lone Star Steak House, 3131 N. Rainbow Blvd., Las Vegas, NV
6. Sketches and notes;
7. Diagrams and notes;
8. Blood samples and notes;
9. Swab samples and notes;
10. Saliva samples and notes;
11. Hair samples and notes;
12. Toxicology reports, notes and test results;
13. Forensic laboratory reports, notes and test results;

14. Firearm comparison test protocols, notes reports and test results;
15. Blood spatter interpretation, notes, test protocols, reports and test results;
16. Lab notes;
17. Bench notes;
18. Protocols employed for all tests and/or examinations;
19. Victim information reports and notes;
20. Identification specialists' work requests, notes and reports;
21. Newspaper articles, press reports, press releases;
22. Field identification section documents and notes;
23. Latent fingerprint section documents and notes;
24. Photographic laboratory section documents and notes;
25. Photographic lineup documents and notes;
26. All laboratory testing reports, notes and results;
27. All evidence testing reports, notes and results;
28. All physical evidence and notes;
29. All curriculum vitae, resumes, and any other documentation reflecting the qualifications, licensing, education, experience, training, and professional memberships or associations for all examiners involved in the Murder with Use of a Deadly Weapon (Open Murder) of Carl Dixon and Matthew Gianakis, Conspiracy to Commit Murder and/or Robbery, Robbery with Use of a Deadly Weapon, Burglary while in Possession of a Firearm, First Degree Kidnapping with use of a Deadly Weapon on or between April 14, 1996 and April 15, 1996;
30. Any and all other files, records and documents regarding the Murder with Use of a Deadly Weapon (Open Murder) of Carl Dixon and Matthew Gianakis, Conspiracy to Commit Murder and/or Robbery, Robbery with Use of a Deadly Weapon, Burglary while in Possession of a Firearm, First Degree Kidnapping with use of a Deadly Weapon on or between April 14, 1996 and April 15, 1996;
31. A list of any documents purged, destroyed, deleted, and/or transferred to storage;
32. Any and all microfilm, microfiche documents;
33. Electronic data regarding all above to include: voice mail messages and files; back-up voice mail files; e-mail messages and files; back-up e-mail files; deleted e-mails; data files; program files; backup and archival tapes; temporary files; system history files; web site information stored in textual, graphical or audio format; web site log files; cache files; cookies; and other electronically recorded information. The disclosing party shall take reasonable steps to ensure that it discloses any back-up copies of files or archival tapes that will provide information about any "deleted" electronic data. This list is not exhaustive.

If you are claiming that any of the documents described above have been destroyed or purged, please provide a copy of "Certificate of Destruction," evidencing what was destroyed and the date, as set forth in your local rules and/or statutory codes.

EXHIBIT "1"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waive applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) *Duties in responding to subpoena.*

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

1 (2) When information subject to a subpoena is withheld on a claim that it is privileged or
2 subject to protection as trial preparation materials, the claim shall be made expressly and shall be
3 supported by a description of the nature of the documents, communications, or things not produced that is
4 sufficient to enable the demanding party to contest the claim.
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EXHIBIT N

EXHIBIT N

1 **CC03**

2 RENE L. VALLADARES

3 Federal Public Defender

4 Nevada State Bar No. 11479

5 JOANNE L. DIAMOND

6 Assistant Federal Public Defender

7 Nevada State Bar No. 14139C

8 Joanne_Diamond@fd.org

9 JOSE A. GERMAN

10 Assistant Federal Public Defender

11 Nevada Bar No. 14676C

12 Jose_German@fd.org

13 411 E. Bonneville, Ste. 250

14 Las Vegas, Nevada 89101

15 (702) 388-6577

16 (702) 388-5819 (Fax)

17 **EIGHTH JUDICIAL DISTRICT COURT**
18 **CLARK COUNTY**

19 MARLO THOMAS,

20 Petitioner,

21 v.

22 TIMOTHY FILSON, et. al.

23 Respondents.

Case No. 96C136862-1

Dept. No. XXIII

SUBPOENA DUCES TECUM-CIVIL

(For Personal Appearance at Trial or Hearing)

24 **THE STATE OF NEVADA TO**

25 Name: Custodian of Records

26 Clark County Coroner-Medical Examiner

27 Address: 1704 Pinto Lane, Las Vegas, Nevada

28 **YOU ARE HEREBY COMMANDED** that all and singular, business and excuses set
aside, you appear and attend on the ____ day of ____, at the hour of ____ in Department No.
23, of the District Court, Clark County, Nevada, *UNLESS you make an agreement with the*
attorney or party submitting this Subpoena. The address where you are required to appear
is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Your attendance is

1 required to give testimony and/or to produce and permit inspection and copying of designated
2 books, documents, or tangible things in your possession, custody or control, or to permit
3 inspection of premises. You are required to bring with you at the time of your appearance any
4 items set forth in the list below. Please see Exhibit "1" Attached hereto for information
5 regarding the rights of the person subject to this Subpoena.
6

7 (This Subpoena must be signed by the Clerk of the Court or an attorney.)
8 Lynn Goya, CLERK OF COURT
9

10 By: _____ (Signature)
11 Deputy Clerk Date:

12 Or

13
14 By: _____ (Signature)
15 Attorney Name: JOANNE L. DIAMOND
16 Attorney Bar Number: 14139C

16 Submitted by:
17 JOANNE L. DIAMOND
18 Assistant Federal Public Defender
19 Nevada State Bar No. 14139C
20 411 East Bonneville Avenue, Suite 250
21 Las Vegas, Nevada 89101
22 (702) 388-6577
(702) 388-5819 (FAX)
Joanne_diamond@fd.org

23 _____ (Signature)
24 (Insert Name, Bar Number, Address, Phone, Fax and E-mail of Attorney or Party Submitting Subpoena)

25 Attorney for Petitioner
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I, *(insert name of person making service)* _____, being duly sworn, or
under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a
party to or interested in the proceedings in which this Affidavit/Declaration is made; that I
received a copy of the **SUBPOENA** on *(insert date person making service received Subpoena)*
_____; and that I served the same on *(insert date person making service served Subpoena)*
_____. by delivering and leaving a copy with *(insert name of witness)*

(insert address where witness was served) at _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

Executed on: _____
(Date) (Signature of Person Making Service)

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ITEMS TO BE PRODUCED

**TO: CUSTODIAN OF RECORDS
CLARK COUNTY CORONER-MEDICAL EXAMINER
1704 PINTO LANE
Las Vegas, NV 89106**

YOU ARE COMMANDED to produce and permit inspection and copying of the following designated books, documents or tangible things as (a) kept in the usual course of business, or (2) organized and labeled to correspond with the categories as set forth below. Nev. R. Civ. Pro. 45.

If any of the books, documents, records or tangible things listed below are not being produced by you based on a claim of privilege or any other reason, please expressly state the basis or privilege claimed and describe the nature of the documents, communications or other things sufficient to enable a contest of the claim. Nev. R. Civ. Pro. 45(d).

Please complete a "Certificate of Custodian of Records", in the form set forth in N.R.S. 52.260. Please produce or permit inspection and copying all sealed, unsealed, official and/or non official memoranda, correspondence, materials, files, tests, and/or documents of the following items and things concerning:

Information requested on the following individual:

**Marlo D. Thomas
DOB: 11/06/1972
SSN: 530-68-5216**

Coroner's Case No: 96-1626; 96-1627

Please produce or permit inspection and copying of all sealed and/or unsealed, official and/or non official files, records, documents, investigative materials, microfiched logbooks, handwritten logbooks, and/or tangible things including, but not limited to, the following un-redacted items:

The complete coroner's file;

1. Autopsy report;
2. Coroner's notes;
3. Coroner's bench notes;
4. Coroner's investigation files, reports, notes;
5. Autopsy photographs;
6. Crime scene photographs;
7. Sketches;
8. Blood samples;
9. Swab samples;
10. Hair samples;
11. Semen samples;
12. Pathology reports;

- 1 13. Lab reports;
- 2 14. Lab notes;
- 3 15. Forensic testing reports;
- 4 16. Protocols employed for all examinations and testing;
- 5 17. Evidence recovered from the bodies of Carl Dixon and Matthew Gianakis;
- 6 18. Chemical analysis reports;
- 7 19. Toxicology reports;
- 8 20. Any other test results and/or reports;
- 9 21. Any other evidence recovered from any source for testing and/or comparison;
- 10 22. Any and all medical information that may be contained in the coroner's files;
- 11 23. All curriculum vitae, resumes, and any other documentation reflecting the
12 qualifications, licensing, education, experience, training, and professional
13 memberships or associations for all examiners involved in the Any and all other
14 documents regarding the Murder with Use of a Deadly Weapon (Open Murder) of
15 Carl Dixon and Matthew Gianakis, Conspiracy to Commit Murder and/or
16 Robbery, Robbery with Use of a Deadly Weapon, Burglary while in Possession of
17 a Firearm, First Degree Kidnapping with use of a Deadly Weapon on or between
18 April 14, 1996 and April 15, 1996, including without limitation, Dr. Sheldon
19 Green and Dr. Robert A. Jordan;
- 20 24. A list of any purged, destroyed, deleted documents, or documents transferred to
21 storage;
- 22 25. Any and all microfilm, microfiche documents;
- 23 26. Electronic data regarding all above to include: voice mail messages and files;
24 back-up voice mail files; e-mail messages and files; back-up e-mail files; deleted
25 e-mails; data files; program files; backup and archival tapes; temporary files;
26 system history files; web site information stored in textual, graphical or audio
27 format; web site log files; cache files; cookies; and other electronically recorded
28 information. The disclosing party shall take reasonable steps to ensure that it
discloses any back-up copies of files or archival tapes that will provide
information about any "deleted" electronic data." This list is not exhaustive.

If you are claiming that any of the documents described above have been destroyed or purged, please provide a copy of "Certificate of Destruction," evidencing what was destroyed and the date, as set forth in your local rules and/or statutory codes.

EXHIBIT "1"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waive applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) *Duties in responding to subpoena.*

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

1 (2) When information subject to a subpoena is withheld on a claim that it is privileged or
2 subject to protection as trial preparation materials, the claim shall be made expressly and shall be
3 supported by a description of the nature of the documents, communications, or things not produced that is
4 sufficient to enable the demanding party to contest the claim.
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EXHIBIT O

EXHIBIT O

1 **CC03**

2 RENE L. VALLADARES

3 Federal Public Defender

4 Nevada State Bar No. 11479

5 JOANNE L. DIAMOND

6 Assistant Federal Public Defender

7 Nevada State Bar No. 14139C

8 Joanne_Diamond@fd.org

9 JOSE A. GERMAN

10 Assistant Federal Public Defender

11 Nevada Bar No. 14676C

12 Jose_German@fd.org

13 411 E. Bonneville, Ste. 250

14 Las Vegas, Nevada 89101

15 (702) 388-6577

16 (702) 388-5819 (Fax)

17 EIGHTH JUDICIAL DISTRICT COURT
18 CLARK COUNTY

19 MARLO THOMAS,

20 Petitioner,

21 v.

22 TIMOTHY FILSON, et. al.

23 Respondents.

Case No. 96C136862-1

Dept. No. XXIII

SUBPOENA DUCES TECUM-CIVIL

(For Personal Appearance at Trial or Hearing)

24 **THE STATE OF NEVADA TO**

25 Name: Custodian of Records

26 Jury Commissioner, Eighth Judicial District Court

27 Address: 200 Lewis Avenue, Third Floor, Las Vegas, Nevada

28 **YOU ARE HEREBY COMMANDED** that all and singular, business and excuses set
aside, you appear and attend on the ____ day of ____, at the hour of ____ in Department No.
23, of the District Court, Clark County, Nevada, *UNLESS you make an agreement with the*
attorney or party submitting this Subpoena. The address where you are required to appear
is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Your attendance is

1 required to give testimony and/or to produce and permit inspection and copying of designated
2 books, documents, or tangible things in your possession, custody or control, or to permit
3 inspection of premises. You are required to bring with you at the time of your appearance any
4 items set forth in the list below. Please see Exhibit "1" Attached hereto for information
5 regarding the rights of the person subject to this Subpoena.
6

7 (This Subpoena must be signed by the Clerk of the Court or an attorney.)
8 Lynn Goya, CLERK OF COURT
9

10 By: _____ (Signature)
11 Deputy Clerk Date:

12 Or
13

14 By: _____ (Signature)
15 Attorney Name: JOANNE L. DIAMOND
16 Attorney Bar Number: 14139C

16 Submitted by:
17 JOANNE L. DIAMOND
18 Assistant Federal Public Defender
19 Nevada State Bar No. 14139C
20 411 East Bonneville Avenue, Suite 250
21 Las Vegas, Nevada 89101
22 (702) 388-6577
(702) 388-5819 (FAX)
Joanne_diamond@fd.org

23 _____ (Signature)
24 (Insert Name, Bar Number, Address, Phone, Fax and E-mail of Attorney or Party Submitting Subpoena)

25 Attorney for Petitioner
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I, *(insert name of person making service)* _____, being duly sworn, or
under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a
party to or interested in the proceedings in which this Affidavit/Declaration is made; that I
received a copy of the **SUBPOENA** on *(insert date person making service received Subpoena)*
_____; and that I served the same on *(insert date person making service served Subpoena)*
_____. by delivering and leaving a copy with *(insert name of witness)*

(insert address where witness was served) at _____

Executed on: _____
(Date) (Signature of Person Making Service)

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ITEMS TO BE PRODUCED

**TO: CUSTODIAN OF RECORDS
JURY COMMISSIONER, EIGHTH JUDICIAL DISTRICT COURT
200 Lewis Avenue, Third Floor
Las Vegas, NV 89155**

YOU ARE COMMANDED to produce and permit inspection and copying of the following designated books, documents or tangible things as (a) kept in the usual course of business, or (2) organized and labeled to correspond with the categories as set forth below. Nev. R. Civ. Pro. 45.

If any of the books, documents, records or tangible things listed below are not being produced by you based on a claim of privilege or any other reason, please expressly state the basis or privilege claimed and describe the nature of the documents, communications or other things sufficient to enable a contest of the claim. Nev. R. Civ. Pro. 45(d).

Please complete a "Certificate of Custodian of Records", in the form set forth in N.R.S. 52.260. Please produce or permit inspection and copying all sealed, unsealed, official and/or non official memoranda, correspondence, materials, files, tests, and/or documents of the following items and things concerning:

Clark County Clerk Records

This request covers the period June 16, 1997 to October 5, 2005 and includes, without limitation:

1. All formal and/or informal policies, practices, guidelines, manuals, procedures, criteria, or any other records, regarding the selection process for grand jury venire and its individual members;
2. All formal and/or informal policies, practices, guidelines, manuals, procedures, criteria, or any other records, regarding the prevention of racial bias in comprising grand juries;
3. All formal and/or informal policies, practices, guidelines, manuals, procedures, criteria, or any other records, regarding the selection process for petit jury venire and its individual members;
4. All formal and/or informal policies, practices, guidelines, manuals, procedures, criteria, or any other records, regarding the prevention of racial bias in comprising petit juries;
5. All documents concerning the return of petit jury summons which are marked as under deliverable or simply not returned and the procedures, if any, for following up on the undeliverable or non-returned summons;

- 1 6. All documents and records in his/her possession concerning the Commissioner's
2 grant of excusal from petite jury duty for the years of June 16, 1997 through
3 October 5, 2005 and any documents or memorandum that may exist concerning
4 the criteria for the granting of those excusals;
5 7. All records in his/her possession concerning the assignment of prospective jurors
6 who appear for jury duty to individual cases including the questionnaires used for
7 such purposes and the criteria used when making those assignments; and
8 8. Electronic data regarding all above to include: voice mail messages and files;
9 back-up voice mail files; e-mail messages and files; back-up e-mail files; deleted
10 e-mails; data files; program files; backup and archival tapes; temporary files;
11 system history files; web site information stored in textual, graphical or audio
12 format; web site log files; cache files; cookies; and other electronically recorded
13 information. The disclosing party shall take reasonable steps to ensure that it
14 discloses any back-up copies of files or archival tapes that will provide
15 information about any "deleted" electronic data." This list is not exhaustive.

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If you are claiming that any of the documents described above have been destroyed or purged,
please provide a copy of "Certificate of Destruction," evidencing what was destroyed and the
date, as set forth in your local rules and/or statutory codes.

EXHIBIT "1"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waive applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) *Duties in responding to subpoena.*

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1 (2) When information subject to a subpoena is withheld on a claim that it is privileged or
2 subject to protection as trial preparation materials, the claim shall be made expressly and shall be
3 supported by a description of the nature of the documents, communications, or things not produced that is
4 sufficient to enable the demanding party to contest the claim.
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EXHIBIT P

EXHIBIT P

1 **CC03**

2 RENE L. VALLADARES

3 Federal Public Defender

4 Nevada State Bar No. 11479

5 JOANNE L. DIAMOND

6 Assistant Federal Public Defender

7 Nevada State Bar No. 14139C

8 Joanne_Diamond@fd.org

9 JOSE A. GERMAN

10 Assistant Federal Public Defender

11 Nevada Bar No. 14676C

12 Jose_German@fd.org

13 411 E. Bonneville, Ste. 250

14 Las Vegas, Nevada 89101

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY

MARLO THOMAS,

Petitioner,

v.

TIMOTHY FILSON, et. al.

Respondents.

Case No. 96C136862-1

Dept. No. XXIII

SUBPOENA DUCES TECUM-CIVIL

(For Personal Appearance at Trial or Hearing)

THE STATE OF NEVADA TO

Name: Custodian of Records

Nevada Board of Continuing Legal Education

Address: 457 Court Street, 2nd Floor, Reno, Nevada 89501

YOU ARE HEREBY COMMANDED that all and singular, business and excuses set aside, you appear and attend on the ____ day of ____, at the hour of ____ in Department No. 23, of the District Court, Clark County, Nevada, *UNLESS you make an agreement with the attorney or party submitting this Subpoena.* The address where you are required to appear is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Your attendance is

1 required to give testimony and/or to produce and permit inspection and copying of designated
2 books, documents, or tangible things in your possession, custody or control, or to permit
3 inspection of premises. You are required to bring with you at the time of your appearance any
4 items set forth in the list below. Please see Exhibit "1" Attached hereto for information
5 regarding the rights of the person subject to this Subpoena.
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8 (This Subpoena must be signed by the Clerk of the Court or an attorney.)
9 Lynn Goya, CLERK OF COURT

10
11 By: _____ (Signature)
12 Deputy Clerk Date:

13 Or

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15 By: _____ (Signature)
16 Attorney Name: JOANNE L. DIAMOND
Attorney Bar Number: 14139C

17 Submitted by:
18 JOANNE L. DIAMOND
19 Assistant Federal Public Defender
20 Nevada State Bar No. 14139C
411 East Bonneville Avenue, Suite 250
21 Las Vegas, Nevada 89101
(702) 388-6577
(702) 388-5819 (FAX)
22 Joanne_diamond@fd.org

23
24 _____ (Signature)
(Insert Name, Bar Number, Address, Phone, Fax and E-mail of Attorney or Party Submitting Subpoena)

25 Attorney for Petitioner
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I, *(insert name of person making service)* _____, being duly sworn, or
under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a
party to or interested in the proceedings in which this Affidavit/Declaration is made; that I
received a copy of the **SUBPOENA** on *(insert date person making service received Subpoena)*
_____; and that I served the same on *(insert date person making service served Subpoena)*
_____. by delivering and leaving a copy with *(insert name of witness)*
_____. *(insert address where witness was served)* at _____
_____.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

Executed on: _____
(Date) (Signature of Person Making Service)

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ITEMS TO BE PRODUCED

TO: CUSTODIAN OF RECORDS
NEVADA BOARD OF CONTINUING LEGAL EDUCATION
457 COURT STREET, 2ND FLOOR
RENO, NEVADA 89501

OR: PERSON(S) MOST KNOWLEDGEABLE with regard to official and/or non-official records, documents and materials storage, retention, nature of and content of files of the *Nevada Board of Continuing Legal Education*

YOU ARE COMMANDED to produce and permit inspection and copying of the following designated books, documents or tangible things as (a) kept in the usual course of business, or (2) organized and labeled to correspond with the categories as set forth below. Nev. R. Civ. Pro. 45.

If any of the books, documents, records or tangible things listed below are not being produced by you based on a claim of privilege or any other reason, please expressly state the basis or privilege claimed and describe the nature of the documents, communications or other things sufficient to enable a contest of the claim. Nev. R. Civ. Pro. 45(d).

Please complete a "Certificate of Custodian of Records", in the form set forth in N.R.S. 52.260. Please produce or permit inspection and copying all sealed, unsealed, official and/or non official memoranda, correspondence, materials, files, tests, and/or documents of the following items and things concerning:

Information requested on the following individuals:

- Peter LaPorta, Nevada Bar No. 3754 (deceased)**
- Lee-Elizabeth McMahon, Nevada Bar No. 1765 (deceased)**
- Mark Bailus, Nevada Bar No. 2284**
- David Schieck, Nevada Bar No. 824**
- Daniel Albregts, Nevada Bar No. 4435**
- Brett Whipple, Nevada Bar No. 6168**

Please produce or permit inspection and copying of all sealed and/or unsealed, official and/or non official files, records, documents, investigative materials, microfiched logbooks, handwritten logbooks, and/or tangible things including, but not limited to, the following un-redacted items:

- 1. Any and all records pertaining to the above referenced individuals which are or may be in the possession or control of your agency;
- 2. All course attended records;
- 3. All dates of attendance;

- 1 4. All correspondence;
- 2 5. All memoranda;
- 3 6. All notes;
- 4 7. All records retrievable in a search for files listed under the names of the above
- 5 listed individuals;
- 6 8. Any other documents in your possession regarding the above-named
- 7 individuals/actions;
- 8 9. A list of any purged, destroyed, deleted, transfer to storage documents; and
- 9 10. Any and all microfilm, microfiche documents.

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If you are claiming that any of the documents described above have been destroyed or purged, please provide a copy of "Certificate of Destruction," evidencing what was destroyed and the date, as set forth in your local rules and/or statutory codes.

EXHIBIT "1"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) *Duties in responding to subpoena.*

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

1 (2) When information subject to a subpoena is withheld on a claim that it is privileged or
2 subject to protection as trial preparation materials, the claim shall be made expressly and shall be
3 supported by a description of the nature of the documents, communications, or things not produced that is
4 sufficient to enable the demanding party to contest the claim.
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EXHIBIT Q

EXHIBIT Q

Declaration of Katrina Davidson

I, Katrina Davidson, hereby declare as follows:

1. I am a paralegal employed by the Office of the Federal Public Defender, District of Nevada. One of my assignments is to assist counsel in a federal habeas corpus case entitled *Thomas v. Filson*, 2:17-cv-00475-RFB-VCF.
2. On November 1, 2016, I sent a letter to the Las Vegas Metropolitan Police Department, Homicide Division, requesting records related to Mr. Thomas. As of the date of this Declaration, I have not heard back from this division of LVMPD.
3. On November 1, 2016, I sent a letter to the Las Vegas Metropolitan Police Department, Criminalistics Bureau, requesting records related to Mr. Thomas. I was informed that the records would not be released without a court order.
4. On November 1, 2016, I sent a letter to the Las Vegas Metropolitan Police Department, Patrol Division, requesting records related to Mr. Thomas. As of the date of this Declaration, I have not heard back from this division of LVMPD.
5. On November 1, 2016, I sent a letter to the Las Vegas Metropolitan Police Department, Technical Services Division, requesting records related to Mr. Thomas. As of the date of this Declaration, I have not heard back from this division of LVMPD.
6. On November 1, 2016, I sent a letter to the Las Vegas Metropolitan Police Department, Confidential Informant, requesting records related to Mr. Thomas. As of the date of this Declaration, I have not heard back from this division of LVMPD.
7. On November 1, 2016, I sent a letter to the Las Vegas Metropolitan Police

Department, Fingerprint Bureau, requesting records related to Mr. Thomas. As of the date of this Declaration, I have not heard back from this division of LVMPD.

8. On November 3, 2016, I sent a letter to the Clark County Detention Center/Inmate Business Accounts requesting all records related to Mr. Thomas. On November 16, 2016, I received a response from the Detention Center/Inmate Business Accounts informing me that no records would be provided without a subpoena.

9. On November 3, 2016, I sent a letter to the Clark County Detention Center/Classification Section requesting all records related to Mr. Thomas. On November 16, 2016, I received a response from the Detention Center/Inmate Business Accounts informing me that no records would be provided without a subpoena.

10. On November 23, 2016, I sent a letter to the Federal Bureau of Investigation ("FBI"), Record Information/Dissemination Section, requesting records related to Mr. Thomas. On January 9, 2017, I received a response from the FBI requiring current fingerprints of Mr. Thomas, which cannot be obtained with him currently housed at Ely State Prison.

11. On May 8, 2017, I sent a letter to the Nevada Department of Corrections ("NDOC"), requesting records related to Mr. Bobby Lewis, Mr. Thomas' father. On May 23, 2017, I received a response informing me that no records will be released without a subpoena.

12. On November 1, 2016, I sent a letter to the Las Vegas Metropolitan Police Department, Criminal History, requesting records related to Mr. Thomas. As of the date of this Declaration, I have not heard back from this division of LVMPD.

13. On November 7, 2016, I sent a letter to the Clark County Coroner, requesting records related to the April 14-15, 1996 homicides of Carl Dixon and Matthew Gianakis. On November 10, 2016, I received a telephonic response informing me that no records will be released without a subpoena.

14. On March 30, 2017, I sent a letter to the Jury Commissioner, requesting records relating to the selection of Thomas's October 5, 2005, jury and juror information. As of the date of this Declaration, I have not heard back from the Jury Commissioner.

15. On September 15, 2017, I sent a letter to the Clark County Finance Department, Comptroller, requesting all billing records for Mr. Thomas' prior state counsel. As of the date of this Declaration, I have not heard back from the Clark County Finance Department.

16. On November 3, 2016, I processed a letter from the Clark County District Attorney's Office declining to release any portions of its file.

17. On April 24, 2018, I processed an email from the Nevada Board of Continuing Legal Education indicating that records pertaining to Mr. Thomas's prior state counsel would be produced in response to a subpoena.

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, June 7, 2018.


Katrina Davidson

EXHIBIT R

EXHIBIT R

1 **CC03**

2 RENE L. VALLADARES

3 Federal Public Defender

4 Nevada State Bar No. 11479

5 JOANNE L. DIAMOND

6 Assistant Federal Public Defender

7 Nevada State Bar No. 14139C

8 Joanne_Diamond@fd.org

9 JOSE A. GERMAN

10 Assistant Federal Public Defender

11 Nevada Bar No. 14676C

12 Jose_German@fd.org

13 411 E. Bonneville, Ste. 250

14 Las Vegas, Nevada 89101

15 (702) 388-6577

16 (702) 388-5819 (Fax)

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY

MARLO THOMAS,

Petitioner,

v.

TIMOTHY FILSON, et. al.

Respondents.

Case No. 96C136862-1

Dept. No. XXIII

SUBPOENA DUCES TECUM-CIVIL

(For Personal Appearance at Trial or Hearing)

THE STATE OF NEVADA TO

Name: Custodian of Records

Clark County Finance Department

Address: 500 South Grand Central, 5th Floor, Las Vegas, NV 89106

YOU ARE HEREBY COMMANDED that all and singular, business and excuses set aside, you appear and attend on the ____ day of ____, at the hour of ____ in Department No. 23, of the District Court, Clark County, Nevada, *UNLESS you make an agreement with the attorney or party submitting this Subpoena.* The address where you are required to appear is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Your attendance is

1 required to give testimony and/or to produce and permit inspection and copying of designated
2 books, documents, or tangible things in your possession, custody or control, or to permit
3 inspection of premises. You are required to bring with you at the time of your appearance any
4 items set forth in the list below. Please see Exhibit "1" Attached hereto for information
5 regarding the rights of the person subject to this Subpoena.
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8 (This Subpoena must be signed by the Clerk of the Court or an attorney.)
9 Lynn Goya, CLERK OF COURT

10
11 By: _____ (Signature)
12 Deputy Clerk Date:

13 Or

14
15 By: _____ (Signature)
16 Attorney Name: JOANNE L. DIAMOND
Attorney Bar Number: 14139C

17 Submitted by:
18 JOANNE L. DIAMOND
19 Assistant Federal Public Defender
20 Nevada State Bar No. 14139C
411 East Bonneville Avenue, Suite 250
Las Vegas, Nevada 89101
(702) 388-6577
(702) 388-5819 (FAX)
Joanne_diamond@fd.org

23
24 _____ (Signature)
(Insert Name, Bar Number, Address, Phone, Fax and E-mail of Attorney or Party Submitting Subpoena)

25 Attorney for Petitioner
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STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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ITEMS TO BE PRODUCED

TO: CUSTODIAN OF RECORDS
Clark County Comptroller
500 South Grand Central, 5th Floor
Las Vegas, NV 89106

OR: PERSON(S) MOST KNOWLEDGEABLE with regard to official and/or non-official records, documents and materials storage, retention, nature of and content of files of the *Clark County Comptroller*

YOU ARE COMMANDED to produce and permit inspection and copying of the following designated books, documents or tangible things as (a) kept in the usual course of business, or (2) organized and labeled to correspond with the categories as set forth below. Nev. R. Civ. Pro. 45.

If any of the books, documents, records or tangible things listed below are not being produced by you based on a claim of privilege or any other reason, please expressly state the basis or privilege claimed and describe the nature of the documents, communications or other things sufficient to enable a contest of the claim. Nev. R. Civ. Pro. 45(d).

Please complete a "Certificate of Custodian of Records", in the form set forth in N.R.S. 52.260. Please produce or permit inspection and copying all sealed, unsealed, official and/or non official memoranda, correspondence, materials, files, tests, and/or documents of the following items and things concerning:

Information requested on the following individuals:

Elizabeth Lee McMahon	Retained 7/1996
Thomas Kinsora	Retained 12/1996
David Schieck	Retained 12/1999
Daniel Albregts	Retained 1/2005
Cynthia Dustin	Retained 10/2008
Bret Whipple	Retained 1/2009
Tena Francis	Retained 4/2005

Please produce or permit inspection and copying of all sealed and/or unsealed, official and/or non official files, records, documents, investigative materials, microfiched logbooks, handwritten logbooks, and/or tangible things including, but not limited to, the following un-redacted items:

1. Any and all records pertaining to the above referenced individuals which are or may be in the possession or control of your agency in relation to Marlo D. Thomas;
2. All billing records;
3. All payment vouchers;
4. All correspondence;

- 1 5. All memoranda;
- 2 6. All notes;
- 3 7. All court pleadings and/or filings;
- 4 8. All records retrievable in a search for files listed under the names of the above
- 5 listed individuals;
- 6 9. All communications and notes in any form with the above-listed
- 7 individuals/actions;
- 8 10. Any other documents in your possession regarding the above-named
- 9 individuals/actions;
- 10 11. A list of any purged, destroyed, deleted, transfer to storage documents; and
- 11 12. Any and all microfilm, microfiche documents.

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If you are claiming that any of the documents described above have been destroyed or purged, please provide a copy of "Certificate of Destruction," evidencing what was destroyed and the date, as set forth in your local rules and/or statutory codes.

EXHIBIT "1"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

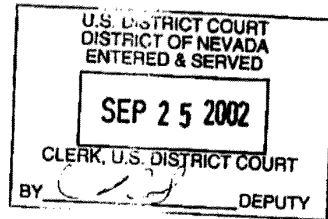
(d) *Duties in responding to subpoena.*

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

1 (2) When information subject to a subpoena is withheld on a claim that it is privileged or
2 subject to protection as trial preparation materials, the claim shall be made expressly and shall be
3 supported by a description of the nature of the documents, communications, or things not produced that is
4 sufficient to enable the demanding party to contest the claim.
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EXHIBIT S

EXHIBIT S



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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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ANTONIO LAVON DOYLE,

Petitioner,

v.

E. K. MCDANIEL, et al.,

Respondents.

Case No. CV-N-00-101-HDM(RAM)

ORDER REGARDING REMAINING
DISCOVERY ISSUES

On February 21, 2001, the Court entered an order granting in part petitioner's motion for leave to conduct discovery. Docket #26. In that order, the Court allowed petitioner to serve the discovery requests represented by Exhibits 1, 3, 5, 7, 8 and 10 attached to the discovery motion, provided that petitioner modify the subpoenas somewhat. *Id.* The Court reserved ruling with respect to petitioner's discovery requests represented by Exhibits 2, 4, 6, 9, and 11 through 36. *Id.* The Clerk has resubmitted the reserved discovery requests for consideration as directed by the Court, and the

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1 Court is prepared to enter such orders as it sees fit with respect to
2 those remaining discovery requests. They fall into two main
3 categories: the family and personal records; and the so-called "open-
4 file" documents.

5 **1. Family and personal historical records**

6 "Good cause" is the threshold a petitioner must meet to be
7 entitled to conduct discovery in a federal habeas corpus proceeding.
8 Rule 6, Rules Governing § 2254 Cases (herein the "Habeas Rules"); *Bracy*
9 *v. Gramley*, 520 U.S. 899, 908-909 (1997) (quoting *Harris v. Nelson*, 394
10 U.S. 286, 300 (1969)). Petitioner has already shown in his motion and
11 his petition for writ of habeas corpus that "good cause" exists for
12 leave to conduct some of the discovery he has requested. Before
13 delving deeply into the existence of good cause for the remaining
14 requests, however, the Court concludes that petitioner is not obliged
15 to show "good cause" in order to secure his own records (medical,
16 educational, previous incarcerations, etc.) or those of his family.
17 Petitioner contends that respondents lack standing to object to his
18 discovery requests for these documents, inasmuch as the requests are
19 sent to third parties not represented by the Attorney General of the
20 State of Nevada. Respondents argue, in contrast, that they do have
21 standing to object, and, moreover, that petitioner has failed to
22 demonstrate good cause to conduct the requested discovery. Neither
23 position is entirely correct, for the Court finds that petitioner is
24 entitled to secure these documents, and that a showing of good cause
25 should not be required for him to have access to his and his family's
26 own records.

1 Initially, the Court observes that its own standardized
2 scheduling orders entered in this case require counsel to assemble the
3 "record" of petitioner's previous litigation. See Dockets #7 and 9
4 (first and second standardized scheduling orders); see also Nevada
5 Supreme Court Rule 250(3)(a) and (b) (regarding duties of counsel to
6 gather and maintain petitioner's records). To the extent that
7 petitioner's own and his family's documents are part of the "official"
8 record in this case, the Court has ordered petitioner's counsel to
9 assemble them, and the Court will support that order with whatever
10 orders may be required to accomplish that task.

11 The documents comprising the "official" record are only a
12 portion of that which petitioner seeks, however. He also asks for
13 leave to conduct discovery into his own history: his medical and
14 psychiatric history; his educational background; and all similar
15 documents regarding his and his family's past. It appears that
16 petitioner ought to be able to secure all of these documents without
17 leave of Court. After all, they are his records, or those of his
18 family. As such, petitioner ought to be able to secure these
19 documents by means of a simple release, signed by him or an
20 appropriate family member. To the extent that petitioner is able to
21 secure the release of such documents in that manner, therefore, the
22 Court does not consider them to be "discovery," and, accordingly, no
23 showing of good cause is necessary on petitioner's part to secure
24 those documents.

25 The Court is aware that many, if not all, of the entities
26 from which petitioner's counsel will seek discovery are governed by

1 state statutes or their own internal rules. Those statutes or
2 internal rules (or, for that matter, an opinion of counsel) may
3 require a court order or subpoena in order for petitioner to have
4 access to the documents. Although the agencies may have such a
5 requirement, the Court's ruling herein nonetheless obliges petitioner
6 first to attempt to secure his own personal records and those of his
7 family by means of a signed release. If the documents are not
8 forthcoming following that procedure, petitioner should then apply to
9 the Court, by means of a motion, supported with an affidavit (as
10 petitioner has already provided here) specifying that the indicated
11 agency has refused to honor petitioner's (or his family's) request for
12 release of records, and that an order is needed in order to dislodge
13 the documents. Accordingly, the Court does not consider that a
14 showing of "good cause" is necessary for petitioner to have access to
15 his own records and documents, for they are the sort of documents to
16 which petitioner ought to have access without leave of Court.¹

17 The Court observes that it has already granted petitioner
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19 ¹ In the alternative, if these documents do reside within the ambit of
20 Habeas Rule 6, the Court concludes that petitioner has demonstrated "good cause" for
21 their discovery, and that he is entitled to have discovery of them. See discussion
22 if "good cause," *infra*. Petitioner claims that his trial counsel rendered him
23 ineffective assistance of counsel for, among other things, failing to prepare
24 adequately for the penalty phase of his trial. Part and parcel of any penalty phase
25 defense includes the assembly of all of petitioner's records: his educational
26 records (or lack thereof), records of previous arrests and incarcerations, family
history, medical and psychological/psychiatric records, and any other historical
data regarding petitioner which may have an impact on the jury's sentencing
decision. Whether trial counsel reviewed these records and what these records
contain is therefore a critical portion of any ineffective assistance of counsel
claim in a capital case. Thus, even if these documents were found to be the subject
of adverse discovery, petitioner in this case would have shown "good cause" to
conduct discovery of them. In either event, therefore, petitioner should have
access to the documents which he requests.

1 leave to serve one portion of the discovery requests. In particular,
2 the Court authorized the issuance of the discovery requests designated
3 as Exhibits 1, 3, 5, 7, 8 and 10. Each of these six initial discovery
4 requests sought the release of documents regarding petitioner's own
5 history within the state of Nevada. The next series of discovery
6 requests regarding petitioner's personal history differs to the degree
7 that those requests seek similar personal history of petitioner from
8 various state agencies in Louisiana. Exhibits 2, 4 and 6 purport to
9 be actual orders of this Court directing various state courts in
10 Louisiana to open their records to petitioner and his counsel. The
11 Court is disinclined to execute such orders, unless no other method
12 will secure the release of the desired documents. Moreover, it is
13 unclear that the Court has extra-territorial jurisdiction to order a
14 Louisiana state court to do anything, including the disclosure of the
15 documents which petitioner seeks. Petitioner should, and is hereby
16 authorized to draft an appropriate subpoena duces tecum for service
17 on the appropriate Louisiana state agencies, seeking the documents
18 identified in Exhibits 2, 4 and 6. If that process is unavailing,
19 petitioner should report that fact to the Court, which shall take the
20 issue under further consideration. The Court will not execute the
21 orders at Exhibits 2, 4 and 6 at this time, but will instead await the
22 report of petitioner regarding his success at securing the release of
23 documents by other means.

24 Exhibits 9 and 11 also evince problems regarding the breadth
25 of discovery which petitioner seeks. Petitioner has already been
26 allowed discovery into his and his family's records. In Exhibits 9

1 and 11, petitioner seeks records of the Clark County child and family
2 services division and the juvenile division of petitioner, his family
3 and siblings, but also of his co-defendants, and an apparent host of
4 other individuals, including (as far as the Court can tell) various
5 witnesses and other individuals implicated in this case. Good cause
6 for discovery exists in this arena only to the extent that counsel has
7 asserted a claim of ineffective assistance of counsel for failure to
8 conduct the exact investigation into petitioner's familial background
9 which petitioner now seeks to do. Had such an investigation been
10 conducted, according to petitioner's counsel, such information would
11 have been uncovered that would have aided petitioner's counsel in
12 asserting an effective penalty phase defense, based upon the
13 conditions to which petitioner and his siblings were allegedly
14 subjected in their formative years.

15 That the co-defendants and witnesses may have grown up in
16 similar conditions does not establish good cause or discovery.
17 Petitioner's good cause argument is premised around his trial
18 counsel's alleged failure to conduct adequate investigation into his
19 background, such that the circumstances of petitioner's youth might
20 be brought to the jury. Whether petitioner's co-defendants and
21 witnesses were subjected to the same conditions is simply of no
22 moment, and there is therefore no "good cause" to seek that discovery.
23 Petitioner shall be allowed to serve the subpoenas represented by
24 Exhibits 9 and 11, but only to the extent that petitioner revises the
25 subpoenas to seek documents related directly to himself or members of
26 his family. Petitioner may not seek the release of documents from

1 these state and county agencies to the extent the documents do not
2 relate to him or his family.

3 2. "Open File" Debate.

4 The remainder of the discovery requests in petitioner's
5 motion are part of that ongoing dispute between the Clark County
6 District Attorney/Las Vegas Metro and the Federal Public Defender
7 which the Court has chosen to call (for lack of a better alternative)
8 the "open file" debate. At the outset, the Court observes the fact
9 that the same discovery fight is being waged on four separate fronts:
10 in this case; in *McNelson v. McDaniel*, CV-S-00-284-LRH; in *Paine v.*
11 *McDaniel*, CV-S-00-1082-KJD; and in *Riley v. McDaniel*, CV-N-01-0096-
12 DWH². The issues and allegations in all four cases are virtually
13 identical. All that changes are the names of the litigants and those
14 of the witnesses, co-defendants and victims.

15 Petitioner's argument, in short, is as follows. The Clark
16 County District Attorney's (hereinafter the "CCDA") generally
17 maintains an "open file" policy with respect to all capital murder
18 cases. What this means precisely is not entirely clear, but
19 petitioner here contends that the term "open file" is meant to convey
20 to trial counsel that the CCDA's file is a complete representation of
21 law enforcement's files and documents regarding the petitioner and the
22

23 ² The Court takes judicial notice of its own docket and the records on
24 file in other capital habeas cases. Based upon that review, it is apparent that
25 this precise issue (i.e., the extent to which the CCDA's file is truly "open file")
26 will be litigated in several other capital habeas cases. While the Court will not
speculate regarding how many more cases there are in which the precise issue will
be at bar, there is no doubt that the issue will see the light of day in more than
just these four cases.

1 case against him. In other words, petitioner claims that because his
2 case was "open file," trial counsel was not obliged to look any
3 further than the CCDA's file for documents and evidence, the sort of
4 which a prosecutor is compelled by law to disclose to the accused.
5 Thus, all of the *Brady*, *Giglio* or *Kyles* material ought to reside in
6 the "open file," according to petitioner, and trial counsel ought to
7 have been able to rely on the completeness of that file.

8 That reliance may have been misplaced. Petitioner alleges
9 numerous ineffective assistance of counsel claims, based upon his
10 attorneys' failure to conduct adequate investigation into a vast
11 number of matters, including, but not limited to, mitigation evidence
12 available from county and state records, and potential *Brady*, *Giglio*
13 and *Kyles* material. The particular twist which makes all of this
14 difficult is as follows.

15 Because the petitioners' lawyers were constantly informed
16 that their cases were "open file," they may (or may not) have been
17 within their rights to assume that all of the information which law
18 enforcement officials should have disclosed to them (particularly
19 *Brady*, *Giglio* and *Kyles* material) would be located in the files of the
20 district attorney. The FPD has provided evidence that the "open file"
21 policy of the CCDA may not be a totally "open file," much to the
22 petitioner's detriment. This evidence consists of various other
23 capital cases from our district, in which Nevada courts have found
24 that the CCDA's office had failed to comply with its duties of
25 disclosure. For example, in *State v. Butler*, Case No. C155791, the
26 Eighth Judicial District Court vacated a capital sentence because of

1 a prosecution's failure to disclose evidence, following a previous
2 incident in which the state had deliberately failed to disclose,
3 despite a pending request for complete discovery. Petitioners have
4 cited almost ten other cases in which courts have either vacated
5 capital sentences for failure to disclose by the CCDA, or in which
6 members of the CCDA's office have admitted to serious defaults
7 regarding their obligations when it comes to disclosure of documents.
8 See e.g., *Jiminez v. State*, 112 Nev. 610, 620-21, 918 P.2d 687
9 (1996) (court finding that CCDA failed to comply with disclosure
10 obligations regarding Giglio material and exculpatory evidence;
11 *Miranda v. McDaniel*, Clark County Case No. C057788, Findings of fact
12 and Conclusions of Law (2/13/96) (finding ineffective assistance of
13 counsel for failure to investigate inconsistencies in testimony of key
14 prosecution witnesses, where inconsistencies known to prosecution and
15 information was disclosed partially by prosecution); *Haberstroh v.*
16 *McDaniel*, Clark County Case No. C076013 (prosecution devoted much of
17 the penalty phase in this death penalty case to the evidence
18 suggesting petitioner had made a "shank" [a jail made stabbing
19 weapon]; prosecution failed to disclose evidence in possession of
20 Clark County Detention Center that suggested the "shank" was in fact
21 a digging tool, used by another inmate in an escape attempt, and which
22 had then allegedly been hidden in petitioner's cell without his
23 knowledge; prosecutor did not disclose this evidence to defense,

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1 because he was himself unaware of it.)³

2 This particular alleged failing may have significant
3 consequences. The records custodians of the District Attorney's
4 office and of the LVMPD (herein "Metro") have given sworn testimony
5 in the *Haberstroh* case to the effect that no institutional procedure
6 exists by means of which Metro assures that all *Kyles* material in its
7 possession is forwarded to the DA's office for review. Further, the
8 CCDA's office also lacks an institutional procedure or policy by means
9 of which it may ensure that its "open file" contains everything which
10 it is required to disclose. This testimony is certainly relevant to
11 the issue at hand, insofar as it demonstrates a pattern of
12 organizational behavior under Fed. R. Evid. 406. See generally
13 *Bouchat v. Baltimore Ravens, Inc.*, 226 F.3d 489, 493 (4th Cir. 2000).
14 An "open file" which does not contain all of the material it is
15 supposed to have is not only misleading, it may also violate the
16 requirements of *Kyles* and its progeny. See generally *Smith v.*
17 *Secretary, New Mexico Dept. of Corrections*, 50 F. 3d 801, 828 (10th
18 Cir.), cert. denied, 516 U.S. 905 (1995).

19 Petitioner has alleged in this case that his own counsel
20 rendered him constitutionally ineffective assistance of counsel,
21

22 ³ The Court is fully aware that the cases cited herein and by petitioner
23 in his brief are not reported authorities. As such, they may not be cited for their
24 precedential value. Petitioner has not cited them for that purpose, nor has
25 the Court relied on them in that role. Instead, petitioner has cited these cases
26 as evidence of the alleged problems in transmission of critical documents between
the outlying police enforcement agencies in Las Vegas and the Clark County District
Attorney's office. Insofar as the cases are cited as evidence, they are not
precedential, and do not violate any of the Court's or the Ninth Circuit's
proscriptions against citation of unpublished authorities.

1 because he was apparently unaware of the potential "open file." In
2 reality, counsel arguably ought to have conducted a more extensive
3 search of all of the various outlying law enforcement agencies in Las
4 Vegas. Because trial counsel did not make this exhaustive survey,
5 according to petitioner, there is simply no means by which he may be
6 assured that documents critical to the litigation of this case have
7 been found and reviewed by the petitioner's counsel. And, as a
8 result, petitioner claims that there is simply no way to tell whether
9 critical *Brady*, *Giglio* and *Kyles* material has gone unnoticed as in
10 *Haberstroh*.

11 Had counsel made such an exhaustive search (or, indeed, if
12 the "open file" policy had worked as represented), the following may
13 have been uncovered during trial. Petitioner has obtained a report
14 from the FBI, in which a certain statement was taken from Shawn
15 Atkins, petitioner's co-defendant.⁴ In this report, Atkins was
16 referred to as having prepared a diagram of the crime scene, along
17 with additional notes which he initialed. According to petitioner,
18 none of these documents can be found in the materials received by
19 current counsel from trial counsel, nor are they to be found in the
20 materials counsel has received directly from the CCDA. The absence
21 of potentially critical material from the files of the CCDA suggests
22 that petitioner's version of the facts is true, and that there is no
23 means by which petitioner or his counsel could have assured themselves
24 of *Kyles* compliance.

25
26 ⁴ The FBI worked this case along with the prosecution in the early phases.

1 In addition, certain *Giglio* material regarding a prosecution
2 expert was withheld or never delivered to trial counsel. Petitioner
3 contends that certain "confusing" testimony was related during the
4 case by a Dr. Jordan. Dr. Jordan's qualifications, and the
5 reliability of his examination was highly at issue during the
6 testimony. During the course of the preliminary hearing, the
7 prosecutor promised to provide a copy of the doctor's curriculum vitae
8 to defense counsel. Despite that promise, none of these materials are
9 contained within the documents which current counsel have received
10 from the CCDA.

11 Based upon the foregoing, petitioner argues that he has
12 demonstrated a case of good cause for discovery to be allowed. As
13 discussed above, the one question of relevance in resolving a habeas
14 corpus petitioner's discovery motion under Habeas Rule 6 is whether
15 petitioner has demonstrated "good cause" to conduct the requested
16 discovery. There is some judicial gloss establishing rules for the
17 manner in which the court's discretion is to be exercised on Rule 6
18 motions. The Supreme Court has found, for example, that if through
19 "specific allegations before the court," the petitioner can "show
20 reason to believe that the petitioner may, if the facts are fully
21 developed, be able to demonstrate that he is ... entitled to relief,
22 it is the duty of the court to provide the necessary facilities and
23 procedures for an adequate inquiry." *Bracy v. Gramley*, 520 U.S. 899,
24 908-909 (1997) (quoting *Harris v. Nelson*, 394 U.S. 286, 300, (1969)).
25 The Court further noted in *Bracy* that "habeas corpus Rule 6 is meant
26 to be 'consistent' with *Harris*." *Id*; (citing Advisory Committee's

1 Note on Habeas Corpus Rule 6, 28 U.S.C. § 2254, p. 479).

2 The Court's inquiry in determining whether good cause exists
3 for allowing discovery focuses upon whether the petitioner has
4 sufficiently alleged a constitutionally based claim which, if proven,
5 would entitle him to relief. That the claim may currently lack
6 complete factual support is not sufficient grounds to deny the
7 requested discovery. After all, the discovery process is designed to
8 allow the litigant to seek out the facts which support his claim. It
9 would make little sense to require the petitioner to have complete and
10 detailed knowledge of the facts proving his claim prior to the
11 institution of the discovery process. On the other hand, a purely
12 speculative claim, one without any legal or factual structure
13 whatever, cannot give rise to "good cause" for discovery. Therefore,
14 an unproven, yet plausible theory, which has been sufficiently
15 pleaded, and which would cause the petitioner to be retried if
16 factually proven, is sufficient for "good cause." C.f. *McDaniel v.*
17 *United States District Court (Jones)*, 127 F.3d 886, 888 (9th Cir.
18 1997) (court refusing to issue mandamus against district court order
19 allowing discovery, where claims were not purely speculative and had
20 basis in the record) (citing *Harris v. Nelson*, 394 U.S. 286, 299
21 (1969)).

22 Petitioner has made the required showing with respect to the
23 "open file" discovery. Petitioner has provided evidence that the CCDA
24 and the other "outlying" law enforcement agencies have routinely
25 failed to disclose these critical documents, and, indeed, even if
26 disclosure did take place, no means exists by which counsel may review

1 the record to assure themselves that all of the documents in any
2 particular given case have been identified, reviewed, and transmitted
3 to the appropriate entity. As such, not only does there appear to be
4 a potential claim for ineffective assistance of counsel for failure
5 to gather documents, it also appears as though a substantive claim for
6 the constitutional violations under the Fifth, Sixth and Fourteenth
7 Amendments may exist as well. Accordingly, the Court finds that "good
8 cause" exists to allow the discovery which petitioner desires.

9 Notwithstanding this finding, the Court is concerned about
10 the breadth of the discovery which petitioner now seeks. As noted
11 above, he seeks to conduct either document discovery or take the
12 depositions of virtually every law enforcement agency and sub-agency
13 in the greater Las Vegas metropolitan area. Such a request is too
14 broad. The Court will allow petitioner to conduct the discovery he
15 desires, but only after compliance with the following conditions.
16 First, petitioner must file and serve points and authorities in which
17 he describes in specific terms those documents which he has already
18 received from the district attorney through the "open file" procedure.
19 Then, he must describe in detail those documents and categories of
20 documents which he expects he ought to have received from the CCDA by
21 means of the "open file" policy. For example, if petitioner believes
22 that he ought to have received records from the Clark County Detention
23 Center, he must first state what records he has received through the
24 "open file" system which he believes came from the detention center.
25 Then, he must identify those records or categories of records which
26 he believes ought to have received from the detention center, but

1 which he has not found either in his file or from any other source.

2 The Court's goal in following this procedure is to minimize
3 the intrusion of the discovery process into the daily law enforcement
4 operations in Las Vegas, while, at the same time, conducting the
5 allowed discovery as quickly as possible. Therefore, petitioner
6 should do his best to identify with particularity those documents and
7 records which he believes he should have, but which he never received
8 through the "open file" process.

9 Following the filing and service of petitioner's brief,
10 respondents shall have an opportunity either to assist the petitioner
11 in procuring the identified records, or to file objections to the
12 production of the identified documents. Thus, if respondents concur
13 that petitioner is entitled to the documents he has identified in his
14 brief, they should contact the appropriate agency through appropriate
15 means, in an effort to dislodge the documents to petitioner for review
16 without further delay. In the alternative, respondents may object to
17 the disclosure of certain documents, but only on grounds other than
18 whether "good cause" exists to allow the discovery.

19 **IT IS THEREFORE ORDERED** that petitioner's motion for leave
20 to conduct discovery (Docket #13) is GRANTED. As to that discovery
21 which does not relate to the "open file" policy, petitioner may
22 proceed with discovery as set forth and limited in this order.

23 **IT IS FURTHER ORDERED** that petitioner's ability to conduct
24 the requested discovery in the "open file" materials shall be limited
25 as follows. Petitioner shall, within thirty days of the date of the
26 entry of this order on the record, provide the Court with a pleading

1 in which he sets forth in detail a description of all documents which
2 he believes that he has received by means of the "open file" policy
3 of the CCDA. He then also must set forth in detail those documents
4 and categories of documents which he expects he ought to have received
5 from the CCDA by means of the "open file" policy.

6 **IT IS FURTHER ORDERED** that respondents shall have thirty
7 days following the filing and service of petitioner's brief within
8 which to file any objections to the discovery requested by petitioner.
9 Specifically, respondents may object to the nature and scope of
10 discovery as irrelevant, overbroad, or as violative of the attorney
11 client privilege. Respondent shall not, however, be allowed to
12 reargue the Bracy issues which the Court has resolved herein.

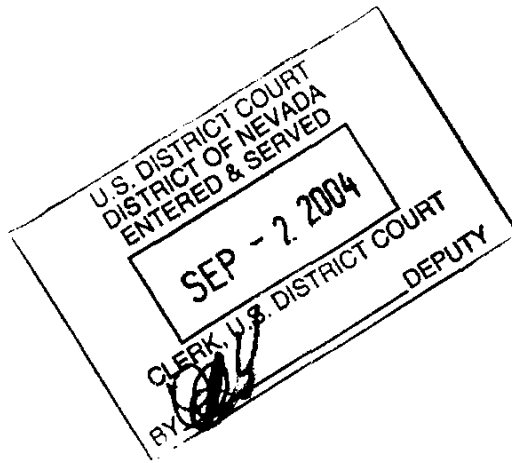
13 **IT IS FURTHER ORDERED** that upon the filing of the
14 respondents' brief, the discovery issue shall be resubmitted to the
15 Court for resolution. There shall be no reply points and authorities
16 allowed or considered.

17 Dated, this 22nd day of September, 2002.

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22 UNITED STATES DISTRICT JUDGE
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EXHIBIT T

EXHIBIT T



FILED
SEP - 1 PM 3:59
JAMES E. JASON
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEVEN M. HOMICK,

Petitioner,

v.

E. K. MCDANIEL, et al.,

Respondents.

Case No. CV-N-99-0299-DWH(RAM)

ORDER REGARDING REMAINING
DISCOVERY ISSUES

Petitioner has filed a motion for leave to conduct discovery. Docket #73. In support of the motion, petitioner has filed and served voluminous exhibits. Dockets #74 through #85, containing Exhibits #1 through #357. Respondents have filed and served their points and authorities in opposition to the petitioner's motion. Docket #99. Petitioner has tendered his reply points and authorities in support of his motion for leave to conduct discovery. Docket #106. Petitioner has also filed with his reply points and

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1 authorities supplemental exhibits in support of the motion for leave
2 to conduct discovery. These additional exhibits are attached to the
3 reply points and authorities themselves. The court has reviewed in
4 detail the petitioner's motion, the opposing points and authorities,
5 as well as the reply points and authorities. Furthermore, the court
6 has reviewed all exhibits tendered in support of the motion for leave
7 to conduct discovery. Based upon that review, and good cause
8 appearing, the court concludes that petitioner has demonstrated good
9 cause for leave to conduct some of the discovery he desires. Before
10 petitioner is allowed to serve his discovery requests, however, he
11 shall be required to file a supplemental brief in which he associates
12 the specific proposed discovery request (subpoena) by Exhibit number
13 with the allowed category of discovery.

14

15 **1. Good Cause Showing.**

16 As with all habeas corpus discovery questions, the court
17 must turn first to the analysis of the "good cause" requirement of
18 Rule 6, and as further defined in *Bracy v. Gramley*, 520 U.S. 899
19 (1997). In *Bracy*, case, the petitioner claimed that his trial judge,
20 Maloney, had been exposed in the infamous "Operation Greylord" FBI
21 sting and investigation in Chicago. "Greylord" revealed that Maloney
22 was sodden with corruption, and that he accepted money from defense
23 lawyers to "fix" all manner of criminal trials on his docket. So
24 pervasive was Maloney's corruption, according to *Bracy*, that a
25 criminal defendant such as he that did not (or could not afford to)
26 bribe the jurist faced a form of retaliatory action. Maloney would

1 demonstrate a "compensatory bias" (i.e., give harsher rulings than
2 warranted under the facts and law) against those criminal defendants
3 not bribing him in part to attempt to deflect charges of corruption,
4 but also to assure the future flow of depraved cash into his coffers
5 in other important matters. *Bracy, supra*, 520 U.S. at 907-909.

6 The Supreme Court ruled that Bracy's discovery request
7 established "good cause" based upon a number of specific factors: 1)
8 petitioner's request was grounded in specific and demonstrable facts;
9 2) the discovery request established a logical and direct nexus
10 between the discovery sought and the pending claims; 3) there was real
11 and factual evidence to which the petitioner could point in order to
12 establish that the claims had a factual basis and were not purely
13 speculative; and 4) the discovery request was narrowly tailored to
14 obtain specific, identifiable things. The Court specifically
15 emphasized

16 that petitioner supports his discovery request by
17 pointing not only to Maloney's [the judge's]
18 conviction for bribe taking in other cases, but
19 also to additional evidence ... that lends support
20 to his claim that Maloney was actually biased in
21 petitioner's own case. That is, he presents
22 "specific allegations" that his trial attorney, a
former associate of Maloney's in a law practice
that was familiar and comfortable with corruption,
may have agreed to take this capital case to trial
so quickly so that petitioner's conviction would
deflect any suspicion that rigged Rosario and Chow
cases might attract.

23 *Bracy*, 520 U.S., at 909 (emphasis in original).
24

25 The petitioner in *Bracy* could point to an actual parade of
26 horribles in terms of specific and detailed facts with direct nexus

1 to the claim before the court, including: 1) Judge Maloney's
2 conspiracy conviction; 2) the trial lawyer's having acted as Maloney's
3 "bag man"; 3) Maloney's having appointed that lawyer to represent
4 Bracy; 4) that lawyer's statement that he was ready to take the case
5 to trial after only a few week's appointment; 5) the lawyer's failure
6 to request a continuance to investigate any mitigation evidence for
7 the penalty phase; 6) the lawyer's failure to call any witnesses at
8 trial; 7) the fact that Bracy's trial was sandwiched in between two
9 other murder trials in which the defense actually had bribed Maloney;
10 and 8) a history of Maloney's having retaliated against those
11 defendants that did not bribe him. *Id.*, at 906-07.

12 In the case at bar, the petitioner has demonstrated the
13 required nexus in some of the discovery requests, particularly those
14 in which he seeks *Brady* material. In order to establish a *Brady*
15 claim, the petitioner must demonstrate: 1) that the state suppressed
16 evidence, either willfully or inadvertently; 2) that the evidence at
17 issue was favorable to the accused, either as exculpatory or
18 impeachment material; and 3) that the evidence was material to the
19 outcome such that the petitioner was prejudiced by the suppression.
20 *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

21 As set forth below, petitioner has made the required
22 showings for some of the discovery which he desires. In his motion,
23 petitioner seeks specific categories of discovery. These consist
24 almost exclusively of *Brady*, *Giglio* and *Kyles* material which
25 petitioner maintains he was denied prior to trial. Specifically,
26 petitioner seeks:

- 1 A. Norma Thompson Interview and FBI Informant Reports;
- 2 B. Art Taylor Interview Reports and Raw Notes;
- 3 C. Records of Payments to Art Taylor;
- 4 D. Impeachment Information Regarding the Testimony of
5 Michael Dominguez;
- 6 E. Impeachment Evidence regarding testimony of LAPD
7 Detective Jack Holder;
- 8 F. FBI Surveillance Records;
- 9 G. Impeachment Evidence regarding Stewart Siegel;
- 10 H. Depositions and Third Party Alibi Evidence.

11 Petitioner seeks much of this discovery from Las Vegas
12 police and law enforcement entities. The investigation of
13 petitioner's case, however, was conducted not only by Las Vegas
14 entities. In addition to the Las Vegas area police authorities,
15 petitioner was being investigated by both the Los Angeles Police
16 Department and the FBI for murder (in Nevada and California), arson
17 (in Hawaii), drug trafficking, and other crimes. Indeed, when
18 petitioner stood trial for the Nevada murders (the Tipton murders),
19 the Clark County District Attorney (herein "CCDA") introduced into
20 evidence during petitioner's penalty phase evidence tending to show
21 his culpability in the California murders (the "Ninja" or Woodman
22 murders), as well as various other facts which were the basis for
23 petitioner's federal RICO prosecution. Petitioner argues that all of
24 the various investigations are inextricably bound together, and that
25 all investigations up with the others.

26 As a result of the "cross-pollination" of the investigations
and trials involving petitioner, he sought informal discovery from

1 various divisions of the Las Vegas Metropolitan Police Department
2 (herein "Metro"), numerous field offices of the FBI, the Bureau of
3 Alcohol, Tobacco and Firearms, the Drug Enforcement Administration,
4 the U.S. Postal Service, and various divisions of the Los Angeles
5 District Attorney's Office.

6 Petitioner approached these entities in an informal manner,
7 insofar as this case was designated an "open file" case by the Clark
8 County District Attorney. As fully set forth below, the designation
9 of this case as an "open file" matter, together with the integration
10 of the California and federal prosecutions into the penalty phase,
11 have generated substantial debate whether petitioner should have been
12 given access to more documents.

13 14 **2. "Open File" Debate**

15 The Clark County District Attorney's generally maintains an
16 "open file" policy with respect to all capital murder cases, and this
17 case was no exception. Indeed, the state court trial judge in this
18 case entered an order directing that discovery should be given to the
19 defense under that policy. See Exhibit 38, attached to petitioner's
20 motion for leave to conduct discovery, Docket #73. What "open file"
21 means is not entirely clear, but petitioner here contends that the
22 term conveyed to his trial counsel that the CCDA's file was a complete
23 representation of law enforcement's files and documents regarding the
24 petitioner and the case against him, including all *Brady*, *Giglio* and
25 *Kyles* material. Petitioner claims that because his case was "open
26 file," his trial counsel was not obliged to look any further than the

1 CCDA's file for documents and evidence, the sort of which a prosecutor
2 is compelled by law to disclose to the accused. Thus, all of the
3 *Brady, Giglio* or *Kyles* material ought to reside in the "open file,"
4 according to petitioner, and trial counsel ought to have been able to
5 rely on the completeness of that file. In the alternative, those
6 documents which were not in the CCDA's file ought, in petitioner's
7 view, to have been provided to the defense without any further request
8 or demand by the petitioner's counsel.

9 Petitioner's reliance on the "open file" policy may have
10 been misplaced. Asserting numerous ineffective assistance of counsel
11 claims in the petition, petitioner claims that his lawyers failed to
12 conduct adequate investigation into a vast number of matters,
13 including, but not limited to, mitigation evidence available from
14 federal and state records, and potential *Brady, Giglio* and *Kyles*
15 material. The particular twist which makes all of this difficult is
16 as follows. Because the petitioners' lawyers were officially informed
17 that this case was "open file," they may (or may not) have been within
18 their rights to assume that all of the information which law
19 enforcement officials should have disclosed to them (particularly
20 *Brady, Giglio* and *Kyles* material) was actually located in the physical
21 files of the district attorney.

22 Petitioner has presented evidence that the "open file"
23 policy of the CCDA may have been neither "open" nor complete, much to
24 the petitioner's detriment. In particular, petitioner has provided
25 evidence from various other capital cases from our district, in which
26 Nevada courts have found that the CCDA's office has failed to comply

1 with its duties of disclosure in "open file" cases such as
2 petitioner's. For example, in *State v. Butler*, Case No. C155791, the
3 Eighth Judicial District Court vacated a capital sentence because of
4 the prosecution's failure to disclose evidence, following a previous
5 incident in which the state had deliberately failed to disclose,
6 despite a pending request for complete discovery. Petitioner has
7 cited almost ten other similar cases in which Nevada courts have
8 either vacated capital and length non-capital sentences for failure
9 to disclose by the CCDA, or in which members of the CCDA's office have
10 admitted to serious defaults regarding their obligations regarding
11 disclosure of documents in "open file" cases. See e.g., *Jiminez v.*
12 *State*, 112 Nev. 610, 620-21, 918 P.2d 687 (1996) (court finding that
13 CCDA failed to comply with disclosure obligations regarding *Giglio*
14 material and exculpatory evidence); *Miranda v. McDaniel*, Clark County
15 Case No. C057788, Findings of fact and Conclusions of Law
16 (2/13/96) (finding ineffective assistance of counsel for failure to
17 investigate inconsistencies in testimony of key prosecution witnesses,
18 where inconsistencies known to prosecution and information was
19 disclosed partially by prosecution); *Haberstroh v. McDaniel*, Clark
20 County Case No. C076013 (prosecution devoted much of the penalty phase
21 in this death penalty case to the evidence suggesting petitioner had
22 made a "shank" [a jail-made stabbing weapon]; prosecution failed to
23 disclose evidence in possession of Clark County Detention Center that
24 suggested the "shank" was in fact a digging tool, used by another
25 inmate in an escape attempt, and which had then allegedly been hidden
26 in petitioner's cell without his knowledge; prosecutor did not

1 disclose this evidence to defense, because he was himself unaware of
2 it.)¹

3 This particular alleged failing may have significant
4 consequences. The records custodians of the CCDA and of the LVMPD
5 (herein "Metro") have given sworn testimony in the *Haberstroh* case to
6 the effect that no institutional procedure exist by means of which
7 Metro assures that all Kyles material in its possession is forwarded
8 to the CCDA's office for review. Further, the CCDA's office
9 apparently lacks an institutional procedure or policy by means of
10 which it may ensure that its "open file" contains everything which it
11 is required to disclose. This testimony is certainly relevant to the
12 issue at hand, insofar as it demonstrates a pattern of organizational
13 behavior under Fed. R. Evid. 406. See generally *Bouchat v. Baltimore*
14 *Ravens, Inc.*, 226 F.3d 489, 493 (4th Cir. 2000). An "open file" case
15 which does not contain all of the material it is supposed to have is
16 not only misleading, it may also violate the requirements of *Kyles* and
17 its progeny. See generally *Smith v. Secretary, New Mexico Dept. of*
18 *Corrections*, 50 F. 3d 801, 828 (10th Cir.), cert. denied, 516 U.S. 905
19 (1995).

20 Petitioner has alleged in this case that his own counsel was
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23 brief are not reported authorities. As such, they may not be cited for their
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26 as evidence of the alleged problems in transmission of critical documents between
the outlying police enforcement agencies in Las Vegas and the Clark County District
Attorney's office. Insofar as the cases are cited as evidence, they are not
precedential, and do not violate any of the court's or the Ninth Circuit's
proscriptions against citation of unpublished authorities.

1 constitutionally ineffective, because he was apparently unaware that
2 large volumes of discoverable material, even though arguably "open
3 file," lay buried deep within the files of Metro, the LAPD or the FBI.
4 Petitioner claims that at least some of this evidence was employed at
5 trial to convict him, even though his counsel was previously unaware
6 of its existence. Because trial counsel was unaware of this evidence
7 prior to trial, there is simply no means by which petitioner may be
8 assured that documents critical to the litigation of this case have
9 been found. And, as a result, petitioner claims that there is simply
10 no way to tell whether critical *Brady*, *Giglio* and *Kyles* material has
11 been glossed over as in *Haberstroh*.

12 Adding to this problem, numerous documents and other
13 discovery in the possession the California and federal authorities was
14 never transmitted to the CCDA, nor placed in its "open file." Metro,
15 the Los Angeles Police and the FBI cooperated substantially with each
16 other throughout the investigation of petitioner. There are several
17 documents attached to petitioner's motion for leave to conduct
18 discovery in which the FBI officials in charge of their portion of the
19 investigation compliment the Nevada and California police and
20 prosecution agencies for their assistance in the "joint" investigation
21 of petitioner. Particularly telling is a series of letters from
22 William Webster, the Director of the FBI, to Metro detectives, in
23 which Webster compliments the individual detectives for their
24 outstanding work in this "joint" investigation. See, Exhibit #191-
25 198. Respondents claim that the FBI and the LAPD were independent of
26 the Nevada investigation, but these exhibits suggest the contrary.

1 Moreover, the sheer volume of documents and testimony introduced into
2 evidence in Nevada that came from FBI and California sources proves
3 that all three entities were operating as one, hybrid investigating
4 agency. Petitioner has provided charts in support of his motion which
5 detail the significant degree to which all of the evidence was used
6 by all three investigating agencies. See Exhibits #176-178; #233-236.

7 Petitioner claims that the status of the "open file"
8 material, and the degree to which documents were withheld alone
9 constitutes "good cause" for discovery. First, the case was
10 officially designated as an "open file" matter by the trial court.
11 Petitioner ought to have been provided with that information in the
12 possession of the prosecutor which was in their actual or constructive
13 possession. Moreover, petitioner has shown that the FBI and LAPD
14 investigations were part and parcel of the Nevada investigation, and
15 that evidence which the FBI and LAPD had also ought to have been
16 produced to petitioner.

17 Petitioner's first discovery request is that he be allowed
18 to copy all of the "open file" material in the possession of the CCDA.
19 Since this case was originally designated an "open file" matter by the
20 trial court, there seems to be no logical reason that the petitioner
21 should be prevented from having access to all of the "open file"
22 materials in the CCDA's possession. Indeed, the respondents do not
23 object to this request, and the court shall allow this discovery as
24
25
26

1 requested and stipulated to by respondents.²

2

3 **3. Lack of Exhaustion of Claims.**

4 Notwithstanding the showing of "good cause" which may be
 5 promoted by the "open file" evidence, it appears that discovery cannot
 6 be had for claims that do not relate to an exhausted claim for relief.
 7 *Calderon v. U.S. District Court (Nicolaus)*, 98 F.3d 1102, 1106-07 (9th
 8 Cir. 1997), cert. denied, 520 U.S. 1233 (1997); *McDaniel v. U.S.*
 9 *District Court, (Jones)*, 127 F.3d 886, 888 (9th Cir. 1997); *Calderon*
 10 *v. U.S. District Court (Hill)*, 120 F.3d 927, 928 (9th Cir. 1997). In
 11 *Nicolaus*, for example, the Circuit vacated by means of mandamus a
 12 district court's order granting a pre-petition discovery request.
 13 Noting specifically the impropriety of granting a discovery request
 14 upon unverified, unspecific allegations, the Circuit concluded that

15

16 . . . pre-petition discovery is impermissible
 17 for at least four reasons. First, a prisoner
 18 must outline *factual allegations in a petition*
 19 *before the district court will be able to*
 20 *determine the propriety of the discovery.* As
 21 the Supreme Court stated in *Harris v. Nelson*,
 22 394 U.S. 286 . . . (1969), which established
 23 the basis for Rule 6: "In appropriate
 24 circumstances, a district court, confronted by
 25 a petition for relief, may use or authorize
 26 the use of suitable discovery procedures." . . .
 In sum, we hold that the district court erred
 in granting Nicolaus' discovery request before
 Nicolaus presented specific allegations in the

24 ² The court emphasizes that all that is allowed under this request is an
 25 exact duplicate of that which existed in the CCDA's "open file." The CCDA is
 26 obliged under this request to make available for inspection and copying its entire
 and complete file as it exists today, and should make any changes from the file at
 the time of trial readily apparent.

1 *form of a verified petition.*

2
3 *Nicolaus, supra*, 98 F.3d at 1106-07 (emphasis added). If pre-petition
4 discovery is not allowable unless the petitioner has made specific
5 allegations by means of which the district court may judge the
6 propriety of the discovery, then surely post-petition discovery (such
7 as that requested here) is equally improper. Absent specific
8 allegations, the district court cannot determine whether the discovery
9 requests are the sort of "specific allegations before the court,"
10 which, "if the facts are fully developed, ... demonstrate that [the
11 petitioner] is ... entitled to relief... ." *Bracy*, 520 U.S. at 908-
12 909.

13 The court concludes that discovery in federal habeas cases
14 extends only to currently exhausted claims. As the Circuit noted in
15 *Hill*, "[u]ntil [a petitioner] has filed a federal habeas petition on
16 an exhausted claim, he cannot avail himself of Rule 6 discovery."
17 *Hill, supra*, 120 F.3d at 928 (quoting *Nicolaus*, 98 F.3d at 1109).
18 Aside from all of the obvious reasons of comity and federal-state
19 judicial balance for requiring exhaustion prior to granting Rule 6
20 discovery, it appears to the Court that *Bracy* and Rule 6 themselves
21 compel this result.

22 There is no dispute that "a habeas petitioner, unlike the
23 civil litigant in federal court, is not entitled to discovery as a
24 matter of ordinary course." *Bracy v. Gramley*, 520 U.S. *supra*, at 908
25 (1997). Only if a petitioner can demonstrate, by means of a showing
26 of "... specific allegations before the court ... that the petitioner

1 may, if the facts are fully developed, be able to demonstrate that he
2 is entitled to relief," is it "the duty of the courts to provide the
3 necessary facilities and procedures for an adequate inquiry." *Bracy*,
4 *supra*, and *Harris v. Nelson*, 394 U.S. 286, 299, (1969)) (emphasis
5 added).

6 This analysis raises the following question: "How is it
7 possible for a habeas petitioner to be entitled to relief on an
8 unexhausted claim?" The answer is that he is not. Perhaps the most
9 fundamental principle of habeas litigation is that all claims for
10 relief must be exhausted, or the federal courts cannot grant relief
11 on them. 28 U.S.C. 2254(b)(1)(A).³ So sacrosanct is this principle,
12 that the federal courts are obliged to dismiss an entire petition if
13 it contains even one unexhausted claim. *Id*; *Rose v. Lundy*, 455 U.S.
14 509 (1982). This being the case, can a federal court grant discovery
15 on a claim, for which the petitioner is not entitled to relief by
16 virtue of that claim's lack of exhaustion? The *Bracy* case itself
17 compels the answer: the court cannot allow discovery on an
18 unexhausted claim, for the petitioner cannot demonstrate that he is
19 entitled to relief on a claim that is not exhausted.

20 The court shall therefore not grant the wide-ranging
21 discovery sought by petitioner with respect to claims that he has not
22 exhausted in state court. To do so would undermine the exhaustion
23 requirement, which is based on the doctrine of federal-state comity,
24 and which is one of the foundational prerequisites of a federal habeas

25
26 ³The District Court may deny relief on an unexhausted claim. 28 U.S.C.
§2254(b)(2). It merely cannot grant relief on an unexhausted claim.

1 corpus petition. As the United States Supreme Court stated in *Keeney*
2 *v. Tamayo-Reyes*, 504 U.S. 1, 9 (1992), *superceded by statute as stated*
3 *in Williams v. Taylor*, 529 U.S. 362, 432-34 (2000): "The state court
4 is the appropriate forum for resolution of factual issues in the first
5 instance, and creating incentives for the deferral of fact-finding to
6 later federal-court proceedings can only degrade the accuracy and
7 efficiency of judicial proceedings."

8 The case law indicates that the question of exhaustion of
9 claims remains an important aspect of this court's discretion in
10 considering discovery requests under Rule 6. The court will exercise
11 that discretion to deny the discovery that petitioner seeks on claims
12 that he not yet exhausted in state court.

13 It is the intersection of the exhaustion principle with the
14 existing claims in this case which causes difficulties to arise. As
15 noted above, all of the existing claims in the petition are, in fact,
16 fully exhausted in state court. Only some of the discovery requests,
17 however, relate to one of the existing, exhausted claims in the
18 petition.

19 The current petition consists of the following, fully
20 exhausted claims:

21
22 Claim #1. That petitioner's conviction and sentence violate his
23 5th Amendment right against self-incrimination. In
24 specific, the petitioner contends that statements made
25 by the prosecutor implicated the petitioner's right to
26 remain silent. During closing argument, the

1 prosecution allegedly commented on the petitioner's
2 right to remain silent, observing that petitioner left
3 out of his allocution various critical facts. Because
4 petitioner did not testify in the merits of his guilt
5 phase, he claims that the prosecution's comment on his
6 allocution constitutes a violation of his right to
7 remain silent.
8

9 Claim #2. That petitioner's conviction and sentence violate his
10 8th and 14th Amendment due process of law and his rights
11 to be free of cruel and unusual punishment, because
12 his sentence was a result of arbitrary and capricious
13 standards. Petitioner contends here that the state
14 was allowed to utilize both burglary and robbery as
15 separate aggravating circumstances, despite the fact
16 that both crimes were based upon the same alleged
17 acts. In petitioner's view, such "stacking" of the
18 offenses results in the arbitrary and capricious
19 imposition of the death penalty.
20

21 Claim #3. That petitioner's conviction and sentence violate his
22 5th and 14th Amendment rights to due process of law, in
23 that the joint prosecution team failed to collect and
24 preserve specific, critical evidence, or intentionally
25 destroyed exculpatory evidence during the
26 investigation. A crucial aspect to the defense was

1 the alibi testimony of witnesses Susan Hines and
2 Lawrence Ettinger, specifically that on December 11,
3 1985, after leaving Stewart Bell's office, petitioner,
4 Ettinger and Hines had gone to the New York deli for
5 something to eat. If this evidence had been
6 sufficiently documented by the authorities, the
7 petitioner would have had much stronger alibi evidence
8 for the time during which the crimes were committed.

9
10
11 Claim #4. That petitioner's conviction and sentence violate his
12 8th and 14th Amendment rights in that he was prevented
13 from using residual doubt as a mitigating
14 circumstance. Petitioner submitted a jury instruction
15 on mitigating circumstances that included lingering or
16 residual doubt as mitigation. The trial court refused
17 this instruction, and instead instructed the jury
18 using the two statutory mitigating circumstances and
19 Nevada's "any other mitigating circumstances"
20 instruction.

21
22 Claim #5. That petitioner's conviction and sentence violate his
23 4th and 14th Amendment rights to be free from
24 unreasonable searches, seizures, intrusions and
25 invasions of privacy. In this claim, the petitioner
26 argues that numerous irregularities in the electronic

1 surveillance infected the conduct of the investigating
2 parties. The illegal conduct, which was known to
3 trial counsel, was raised on trial and on direct
4 appeal from the conviction and sentence.

5
6 Claim #6. That petitioner's conviction and sentence violate his
7 6th Amendment to reasonably effective assistance of
8 counsel at trial, as well as his 14th Amendment right
9 to a fair trial and due process of law. Petitioner
10 identifies two intertwined areas which consist of the
11 trial counsel's failures, specifically: the failure
12 to prepare for trial and present available evidence;
13 and the inability or failure to obtain evidence
14 necessary to prepare present a full and adequate
15 defense on petitioner's behalf. The errors of counsel
16 consist of the following: (a) the failure to call
17 Raymond Jackson; (b) the failure to identify Dominguez
18 as the Tipton murderer; (c) the failure to call
19 Dominguez's associates to identify him and Danielson
20 as the actual murderers; and (d) the failure to
21 contact witnesses in order to impeach Timothy Catt's
22 testimony.

23
24 Claim #7. That petitioner's conviction and sentence violate his
25 5th and 14th Amendment rights, based upon the
26 withholding of substantial exculpatory materials