

200 South Third Street
P. O. Box 551601
Las Vegas NV 89155-1601
(702) 455-3156 -- Day Telephone
(702) 455-4415 -- Night Telephone
(702) 455-4929 -- Fax

May 27, 2004

Janette Bloom
Clerk of the Supreme Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: STATE OF NEVADA vs. DALE E. FLANAGAN
S.C. CASE: 40232
D.C. CASE: C69269

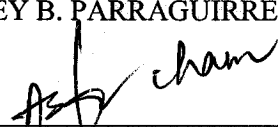
Dear Ms. Bloom:

On March 2, 2004, the Supreme Court order the district court to file an order setting forth its findings regarding any missing portions of the record and the steps taken to reconstruct, settle and approve the record for the above mentioned case.

The District Attorney's office has filed a memorandum regarding settlement of record with the clerk's office on May 17, 2004. Enclosed please find a certified copy of the memorandum as well as the minutes for the hearing held on May 27, 2004 for this case.

We apologize for any inconvenience may have caused your office due to the delay of the transmissal of these documents. If you have any questions or concerns, please feel free to call us at (702) 455-4409.

Sincerely,
SHIRLEY B. PARRAGUIRRE, COUNTY CLERK



Astor Cham, Deputy Clerk

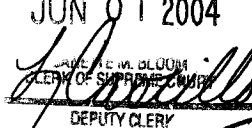
Office of the County Clerk

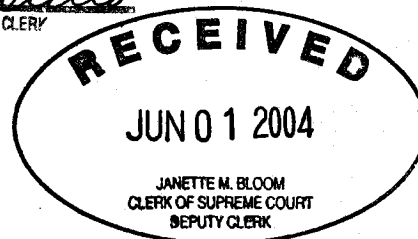
Shirley B. Parraguirre
County Clerk
Commissioner of Civil Marriages

FILED

Diana Alba
Assistant County Clerk

JUN 01 2004


JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK



Ex-Officio Clerk of:
Eighth Judicial District Court • Board of County Commissioners • Board of Equalization
Clark County Liquor and Gaming Board • Mt. Charleston Fire Protection District
Clark County Sanitation District • Clark County Debt Management Commission

04-09968

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA

vs Flanagan, Dale E

CONTINUED FROM PAGE: 055

05/27/04 09:15 AM 00 HEARING: SUPREME COURT'S ORDER

HEARD BY: Michelle Leavitt, Judge; Dept. 12

OFFICERS: Sue Deaton/sd, Court Clerk
Kristen Brown, Relief Clerk
Tessa Heishman, Reporter/Recorder

PARTIES: STATE OF NEVADA

004352 Owens, Steven S.

0001 D1 Flanagan, Dale E

001988 Potter, III, Cal J.

Y
Y
N
Y

Mr. Potter noted his co-counsel, Robert D. Newell of Davis Wright Tremaine LLP of Portland, Oregon, was left off service list and did not receive a copy of the Supreme Court's Order. Mr. Potter said Mr. Newell has contacted the Clerk's Office and intends to come down here to Las Vegas within the next three (3) weeks to go through the Clerk's Office file and the District Attorney's file on this case. Mr. Potter said he understands there is privileged information in the District Attorney's file and part of the problem with the delay in responding to Order is the District Attorney's office moved and their file was unavailable for a period of time.

Mr. Potter indicated he will contact Mr. Newell and he will ask the Supreme Court for a continuance. Mr. Potter suggested setting matter for a Status Check in four (4) weeks, so he can advise if a continuance was granted. Mr. Owens represented he talked to Mr. Newell yesterday, there are volumes of material on this case and District Attorney's office presented a list attached to their Memorandum and believe they have now produced what they have. Court noted it had the Clerk's Office file brought down to Chambers, there are four (4) or five (5) banker's boxes and it would take Mr. Newell weeks to get through files. Mr. Owens suggested Mr. Newell could provide a list of transcripts he believes he needs, the particular date in question and the State can verify whether such a transcript exists or not; the issues could be narrowed down. Mr. Potter responded he believes Mr. Newell has an idea what he is looking for and he is ready to come down and look at Clerk's Office file. Mr. Potter noted all of the file has to be gone through and supplied to the Federal system at some point. Counsel agreed they would need at least a sixty (60) day continuance. COURT ORDERED matter SET for STATUS CHECK in two weeks to see if a continuance was granted by the Supreme Court.

NDC

6-10-04, 9:15 AM, STATUS CHECK: SUPREME COURT CONTINUANCE

RECEIVED

JUN 01 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT

ORIGINAL

11

MEMO
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
200 South Third Street
Las Vegas, Nevada 89155-2212
(702) 455-4711
Attorney for Plaintiff

FILED

MAY 17 3 01 PM '04

Shirley E. Pungione
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DALE EDWARD FLANAGAN,
#0737065

Defendant.

CASE NO: C69269

DEPT NO: XII

STATE'S MEMORANDUM REGARDING SETTLEMENT
OF RECORD

DATE OF HEARING:
TIME OF HEARING:

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
STEVEN S. OWENS, Chief Deputy District Attorney, and hereby submits the State's
Memorandum Regarding Settlement Of Record.

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

DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY OF
THE ORIGINAL, OR ELECTRONICALLY
FILED BY THE CLERK.

2004 MAY 27 P 3: 16

RECEIVED

MAY 17 2004

COUNTY CLERK

RECEIVED

JUN 01 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

CLERK

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM

Dale Flanagan, hereinafter "Petitioner" has made various attempts with the District Court to reconstruct an adequate record for purposes of post-conviction relief. As of this date, the District Court has been unable to comply with all of Petitioner's requests for transcripts and other documentation. On March 2, 2004, Petitioner was ordered to prepare, file and serve a memorandum specifying which transcripts or other parts of the record were needed to prepare for the imminent appeal. Once Petitioner filed the required documentation, the State was to prepare, file and serve a memorandum indicating whether the State was in possession of any of the required documentation. After all papers were filed the District Court would conduct proceedings to determine which documentation was still missing and determine the best means to reconstruct the missing portions of the record.

On March 16, 2004, Petitioner filed with the District Court a memorandum regarding settlement of record along with a chart outlining which portions of the record were unrecovered as of that date. The chart appeared to simply be a regurgitation of the case history from "Blackstone," including court dates which were vacated or continued. The District Attorney's Office contacted both attorney's of record, Cal Potter and Robert Newell, in an attempt to clarify what was being requested. Attorney Robert Newell responded that because the record is so incomplete that he would like anything that the State could provide regarding any of the referenced court dates.

After an extensive search of the records maintained by the District Attorney's Office a compilation of documentation has been prepared for Petitioner. However, much of the requested information did not have associated transcripts for the limited hearings that were held. Attached are Exhibits 1 and 2. Exhibit 1 is a chart outlining the documentation requested by Petitioner and what was actually provided by the State. The first three columns of Exhibit 1 are a duplicate of the first three columns of Petitioner's Exhibit A. The final (fourth) column depicts the information that was provided. In only a few situations were transcripts located for a particular court date, in all other cases, where available, a copy of the court minutes was provided. Exhibit 2 is the entire compilation of the documentation

1 provided to Petitioner by State. The numbered references in Exhibit 2 directly correspond to
2 the numbered references in Exhibit 1.

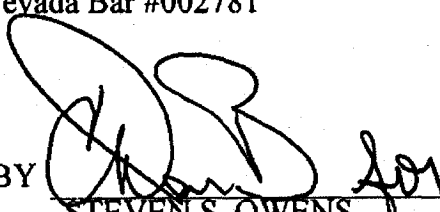
3 On April 23, 2004, the District Court ordered the State to produce its file for
4 inspection by Petitioner and that the Clerk of the District Court gather and make available to
5 petitioner the entirety of the trial court record. The State has gathered all of the materials
6 relevant to this case in one central location and will make it available to the Petitioner, so
7 long as inspection takes place within the timeframe set out by the order. It should be made
8 clear that the State will not be making available any privileged work-product materials for
9 inspection.

10 DATED this 17 day of May, 2004.

11 Respectfully submitted,


12 DAVID ROGER
13 Clark County District Attorney
14 Nevada Bar #002781

15
16 BY


17 STEVEN S. OWENS
18 Chief Deputy District Attorney
19 Nevada Bar #004352
20
21
22
23

24 CERTIFIED COPY
25 DOCUMENT ATTACHED IS A
26 TRUE AND CORRECT COPY OF
27 THE ORIGINAL OR ELECTRONICALLY
28 FILED ACCORDING TO RULE

2004 MAY 25 A 10:46

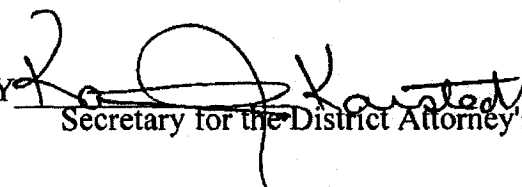

CLERK

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 17th day of May, 2004, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

CAL J. POTTER III, ESQ.
1125 SHADOW LANE
LAS VEGAS, NV 89102

ROBERT D. NEWELL, ESQ.
DAVIS WRIGHT TREMAINE LLP
1300 S.W. FIFTH AVENUE, STE. 2300
PORTLAND, OR 97201

BY 
Secretary for the District Attorney's Office

kjk

EXHIBIT "2"

#	Date	Hearing/Pleading	Provided
18	06/03/91	Motion for fees in excess of statutory allowance (<i>For Δ Moore</i>)	- Minutes - Δ motion
19	07/10/91	Motion for stay of execution (<i>For Δ Moore</i>)	- Minutes - Δ motion
20	11/04/92	All pending motions; (1) Proper person motion to proceed in forma pauperis; (2) Proper person motion to release trial transcripts (<i>For Δ McDowell</i>)	- Minutes - Affidavit in support
21	02/24/93	All pending motions; Oral request of DA; Scheduling of penalty hearing for Flanagan & Moore	- Minutes - Order appointing counsel
22	03/01/93	All pending motions; (1) Scheduling of new penalty hearing by Request of DA; (2) LE McMahon motion to withdraw as attorney of record and appoint counsel for representation of defendant Flanagan in death penalty hearing	- Minutes - Δ motion - Order
23	03/10/93	All pending motions; Confirmation of counsel for defendant Flanagan; Schedule New penalty hearing for Flanagan & Moore	- Minutes
24	03/22/93	All pending motions; Confirmation of counsel for Defendant Flanagan; At request of DA schedule new penalty hearing for Flanagan & Moore	- Minutes
25	04/19/93	Transcript of evidentiary hearing (<i>no information found</i>)	
26	05/03/93	Motion for order for payment of fees	- Minutes - Δ motion
27	07/14/93	Minute Order re: Reset 9-1-93 hearing	- Minutes
28	08/18/93	Motion for fees in excess of statutory allowance	- Minutes - Δ motion
29	02/08/94	Proper person petition for appointment of counsel	- Δ motion
30	02/17/94	Defendant's proper person motion for appointment of counsel on appeal (<i>For Δ Lockett</i>)	- Minutes
31	03/30/94 (Vacated)	Calendar call	- Minutes
32	04/04/94 (Vacated)	Penalty phase	- Minutes
33	06/09/94 (Vacated)	All pending motions; Status check for defendants Flanagan & Moore	

34	09/22/94	Further proceedings (<i>For Δ Lockett</i>)	- Minutes - Amended Judgment of Conviction
35	10/03/94 (Vacated)	All pending motions; Penalty hearing for defendant's Flanagan & Moore	
36	12/15/94	All pending motions	- Minutes - Δ waiver - Transcript
37	12/15/94 (Resolved)	Status Check: Waiver	
38	12/29/94 (Vacated)	Calendar call	
39	01/03/95 (Vacated)	Penalty hearing	
40	05/25/95	Minute order re: Hearing motions	- Minutes - Δ motions - Order
41	08/15/95	All pending motions; Status check: Credit for time served & perfection of appeal	- Minutes - Transcript
42	06/04/98	All pending motions; (1) Defendant Flanagan's request for appointment of counsel for post-conviction relief; (2) Defendant Moore's petition for writ of habeas corpus	- Minutes - Δ motion - Transcript
43	12/20/99	Status check; Briefing schedule	- Minutes
44	03/09/00 (Vacated)	Argument: Defendant petition for writ of habeas corpus	
45	05/18/00	Defendant's motions (<i>no information found</i>)	
46	06/06/00	Minute order re: Disqualification of Judge Hardcastle	
47	06/13/00	Minute order re: Recusal VI	
48	06/15/00	Defendant's motion for disqualification of judge	- Δ motion

49	12/18/00	All pending motions: (1) Defendant's motion to clarify and expand scope of evidentiary hearing; (2) Defendant's motion to seal order	- Minutes - Δ motion - State opposition - Order
50	04/17/01	Status check: Reassignment/Evidentiary hearing schedule	- Minutes - Transcript
51	08/28/01	Order re: Petition for writ of habeas corpus – Hearing set <i>(no information found)</i>	
52	09/12/01	Evidentiary hearing (Remaining issues on writ)	- Order

18

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle	Dept.	12
Continuance			
Minutes			
Parties			
Def. Detail	Event 06/03/1991 at 09:00 AM	MOTION FOR FEES IN EXCESS OF	
Next Co-Def.		STATUTORY ALLOWANCE	
Charges	Heard By Mosley, Donald M.	for <i>Δ Moore</i>	
Sentencing	Officers LOIS BAZAR, Court Clerk		
Bail Bond	CONNIE MC CARTHY, Reporter/Recorder		
Judgments			
District Case	Parties 0000 - State of Nevada		No
Party Search	S1		
Corp. Search	002028 Booker, Gary R.		Yes
Atty. Search	0001 - Flanagan, Dale E		No
Bar# Search	D1		
ID Search	0002 - D Moore, Randolph		No
	000824 Schieck, David M.		Yes
Calendar Day			
Holidays			
Help	Mr. Schieck requested leave to submit billings in excess of the statutory		
Comments &	amount. State advised Karen Grant, DDA, Civil Division, advised she was not		
Feedback	going to oppose the motion. COURT ORDERED. motion granted.		
Legal Notice	CUSTODY (NSP)		

Due to time restraints and individual case loads, the above case record may not reflect all information to date.

Top Of Page

Generated on 5/11/2004 at 9:34:00 AM

EXHIBIT "2"

SCHIECK & DERKE
302 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

SCHIECK & DERKE
DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
302 E. Carson, #918
Las Vegas, NV 89101
702-382-1844

MAY 17 3 25 PM '91

Attorneys for Defendant MOORE

COPY

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

THE STATE OF NEVADA,

Plaintiff,

vs.

RANDOLPH MOORE,

Defendant.

CASE NO. C 69269
DEPT. NO. XIV
DOCKET NO. T

MOTION FOR FEES IN EXCESS OF STATUTORY ALLOWANCE

DATE: 6.3, 1991
TIME: 9 a.m.

COMES NOW DAVID M. SCHIECK, ESQUIRE, of SCHIECK & DERKE,
and moves this Honorable Court pursuant to N.R.S. 7.125 and
7.145 for an Order granting attorney's fees in excess of the
statutory allowance.

This Motion is supported by the Affidavit of Counsel and
the Points and Authorities attached hereto, as well as the
voucher attached hereto.

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff herein

PLEASE TAKE NOTICE that the undersigned will bring the

CE¹

CE03

1038

R

1 above and foregoing Motion on for hearing on the 3 day of
2 June, 1991, at the hour of 9 a.m.,
3 before the above entitled Court, at the Clark County
4 Courthouse, or as soon thereafter as counsel can be heard.

5 POINTS AND AUTHORITIES

6 Statement of the Case

7 On , an Order was entered appointed DAVID M.
8 SCHIECK, ESQ. to represent RANDOLPH MOORE with respect to his
9 appeal to the Nevada Supreme Court from his remanded penalty
10 hearing. The appeal was heard by the Nevada Supreme Court and
11 was denied on . The statutory maximum for
12 felony appeals is \$2,500.00 with no additional amounts approved
13 without motion even in capital cases such as the one at bar.

14 ARGUMENT

15 Pursuant to N.R.S. 7.125, an attorney appointed by a
16 magistrate to represent an indigent defendant is limited in the
17 amount of compensation allowable for such representation (See
18 N.R.S. 7.125(2)(a-e)).

19 However, subsection (4) of N.R.S. 7.125 states in per-
20 tinent part:

21 "4. If the appointing court because of:

22 a. The complexity of the case or the number
23 of its factual or legal issues;

24 b. The severity of the offense;

25 c. The time necessary to provide an adequate
26 defense; or

27 d. Other special circumstances, deems it
28 appropriate to grant a fee in excess of the
applicable maximum, the payment must be made,
but only if the court in which the representation

1 was rendered certifies that the amount of
2 the excess payment is both reasonable and
3 necessary and the payment is approved by
4 the presiding judge of the judicial district
5 in which the attorney was appointed, or if
6 there is no such presiding judge or if he
7 presided over the court in which the
8 representation was rendered, then by the
9 district judge who holds seniority in years
10 of service of office."

11 The Nevada Court has interpreted this statute in Daines v.
12 Markoff, 92 Nev. 582, 555 P.2d 490 (1962), citing, Brown v.
13 Board of County Commissioners, 85 Nev. 149, 451 P.2d 708
14 (1969), where the Court reasoned that:

15 "In the absence of extraordinary circumstances,
16 a court is without power to direct compensation
17 for professional services beyond limits
18 legislatively imposed. We there noted that
19 in the absence of statute an attorney would
20 be obliged to honor the court appointment
21 and to defend without compensation; that
22 such duty is an incident of the license to
23 practice law; and that a permanent solution
24 of the problem must rest with the legislative
25 branch . . ."

26 In addition, the Court dispelled any notices that counsel
27 might have that the statute in question allowed a taking of an
28 attorney's services for public use without just compensation,
denies equal protection of the law; and permits the taking of
property without due process, (citing, Nev. Const., Art. 1-8;
U.S. Const., Amend. V and Amend. XIV).

The Court further summarized that, "Neither our state
constitution nor the federal constitution precludes service to
indigents without 'full' compensation." The Court reiterated
that the professional obligation to respond to the call of the
court is an incident of the privilege to practice law, and does
not offend constitutional commands. United States v. Dillon,

1 346 F.2d 633 (9th Cir. 1965).

2 In Markoff, supra, the Court had consolidated three
3 separate cases involving court appointed counsel. In the first
4 case, the charge was non-capital murder and attempted murder.
5 The second case was a capital case, and the third case involved
6 a ten count charge where the Court had compensated on a per
7 count basis instead of a per case basis. In all of the above
8 cases, that Court found that extraordinary circumstances did
9 not exist.

10 The Court chose not to look to the nature, or complexity
11 of the cases for their finding. However, Chief Justice
12 Gunderson in his concurring opinion stated that if the record
13 reflected a case of truly extraordinary proportions or com-
14 plexity, making fees in excess of statutory amount clearly
15 necessary in order to avoid inordinate hardship upon counsel,
16 than an award in excess of the statutory limit would be proper.
17 (Emphasis added).

18 More recently, the Nevada Supreme Court has again ad-
19 dressed the issue of excess fees and the necessity for showing
20 of extraordinary circumstances in Count of Clark v. Smith, 96
21 Nev. 854, 619 P.2d 1217 (1980). In Smith, supra, the facts of
22 the case show that the Defendant was charged with first degree
23 murder and four other felony offenses. The Defendant was
24 allowed to plead guilty of first degree murder without going to
25 trial.

26 The Court held that the trial Court that hears the defense
27 presented and can assess the difficulty of the case, is in best
28

1 position to gauge the reasonableness of the fees claimed.

2 In addition, the Court examined the Federal standard for
3 justifying "extraordinary circumstances" which includes the
4 following:

5 "The amount, character, and complexity of
6 the work required; the responsibilities
7 involved; the manner in which the necessary
8 duties were performed, and the amount of
9 knowledge, skill, and judgment displayed
10 by counsel; and the professional standing
11 of counsel." United States v. James, 301
12 F. Supp. 107 (W.D. Tenn. 1969).

13 Likewise, the Court also looked to the financial hardship
14 to the attorney in rendering his defense in the matter, as
15 further evidence to sustain the trial court's decision.

16 In Lueck v. State, 99 Nev. 717, 669 P.2d 719 (1983), the
17 Court embraced the factors codified by N.R.S. 7.125 in 1983, to
18 wit: the responsibilities involved complexity, amount and
19 character of the work and the responsibilities involved, the
20 amount of knowledge, skill and judgment displayed by counsel,
21 and the professional standing of counsel.

22 The instant capital case involved complex issues, issues
23 of first impression and issues requiring reversal of previous
24 decision by the court which necessitated numerous hours of
25 research and in preparing the briefs.

26 CONCLUSION

27 The affidavit of counsel attached to this Motion indicates
28 that the number of hours expended on the appeal exceeded an
amount in excess of the allowable statutory amount when
converted to a monetary value.

As stated above, counsel submits that the facts of this

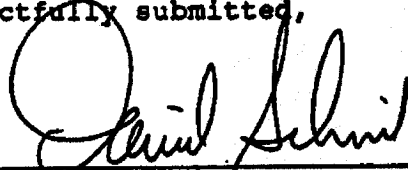
SCHIECK & DERKE
302 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

1 case show the complex nature of the matter and the necessity to
2 provide a defense that would protect the Defendant's substan-
3 tive and procedural constitutional rights.

4 Counsel, therefore, submits that this case is an ap-
5 propriate one for the award of fees in excess of the statutory
6 guidelines.

7 Respectfully submitted,

8
9 By:


DAVID M. SCHIECK, ESQUIRE

10 AFFIDAVIT

11 STATE OF NEVADA)
12) ss:
13 COUNTY OF CLARK)

14 DAVID M. SCHIECK, being first duly sworn, deposes and
15 says:

16 That your Affiant is an attorney duly licensed to practice
17 law in the State of Nevada and court appointed to handle the
18 appeal of Randy Moore from his remanded penalty hearing.

19 That statutory guidelines proscribe a cap of \$2,400.00 in
20 fees for such representation, however, Affiant has total fees
21 of \$2,900.00 in this matter.

22 That Affiant has previously handled numerous death penalty
23 cases and avers that the issues herein were of significant
24 proportion and necessitated considerable research and prepara-
25 tion.

26 That the Nevada Supreme Court took over 11 months to issue
27 a written opinion after oral arguments. The delay in a
28

SCHIECK & DERKE
302 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

1 decision increased the amount of attorneys fees as communica-
2 tions between client and counsel continued while waiting for
3 the decision.

4 That the time and expenses contained in the voucher of
5 counsel attached hereto totalling \$3,289.44 truly and accurate-
6 ly reflect the time and expense of counsel and counsel requests
7 that this Motion be granted in total.

8 Further Affiant sayeth naught.

9
10 
DAVID M. SCHIECK

11 SUBSCRIBED and SWORN to before me
12 this 17th day of May, 1990.

13 
14 NOTARY PUBLIC



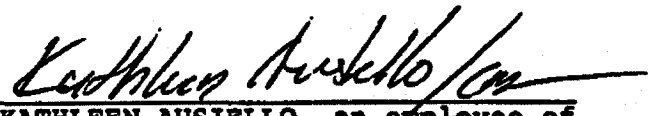
Kathleen Fitzgerald
Notary Public - State of Nevada
CLARK COUNTY
My Appointment Expires Jan. 1, 1992

CERTIFICATE OF MAILING

I, KATHLEEN AUSIELLO, do hereby certify that on the _____ day of May, 1990, I did deposit in the United States Post Office at Las Vegas, Nevada, a copy of the above and foregoing Motion for Extraordinary Fees, enclosed in a sealed envelope, first class postage prepaid, addressed as follows:

ROBERT BORK, ESQUIRE
STATE PUBLIC DEFENDER
308 N. Curry, Room 200
Carson City, Nevada 89710

DISTRICT ATTORNEY'S OFFICE
CIVIL DIVISION
225 E. Bridger Ave., 8th Fl.
Las Vegas, Nevada 89155


KATHLEEN AUSIELLO, an employee of
SCHIECK & DERKE

SCHIECK & DERKE
302 E. Carson Ave.
Suite 918
Las Vegas , NV 89101

RANDOLPH MOORE

May 17, 1991
CRIMINAL - APPOINTED
APPEAL

ITEMIZED STATEMENT

PREVIOUS BALANCE \$0.00

PROFESSIONAL SERVICES RENDERED

October, 1989

13	TELEPHONE CALL TO LINDY AND COURT REPORTER	0.40 hours	16.00
13	PREPARE MOTION TO EXTEND	1.00 hours	40.00

November, 1989

10	PREPARE DOCKETING STATEMENT	0.30 hours	12.00
20	PREPARE OBJECTION AND MOTION FOR EXTENSION	1.50 hours	60.00
20	CONFERENCE WITH CLERK'S OFFICE	0.20 hours	8.00
26	PREPARE OBJECTION TO ORDER EXPEDITING	1.00 hours	40.00
30	TELEPHONE CALL FROM CLIENT	0.20 hours	8.00

December, 1989

9	PREPARE MOTION TO EXTEND	1.00 hours	40.00
9	RESEARCH OPENING BRIEF	3.00 hours	120.00
15	CONF WITH CLIENT		

1046

SCHIECK & DERKE

RANDOLPH MOORE

May 17, 1991

APPEAL

Page 2

PROFESSIONAL SERVICES RENDERED (Continued)

		1.00 hours	40.00
21	PREPARE OPENING BRIEF	3.00 hours	120.00
22	PREPARE OPENING BRIEF	3.00 hours	120.00
29	PREPARE OPENING BRIEF	3.00 hours	120.00
30	PREPARE OPENING BRIEF	1.50 hours	60.00
30	PREPARE OPENING BRIEF	1.50 hours	60.00
31	PREPARE OPENING BRIEF	4.00 hours	160.00

January, 1990

1	PREPARE OPENING BRIEF	2.50 hours	100.00
1	PREPARE OPENING BRIEF	2.50 hours	100.00
3	RESEARCH OPENING BRIEF	2.00 hours	80.00
6	PREPARE OPENING BRIEF	2.50 hours	100.00
9	TELEPHONE CALL FROM LINDY MOORE	0.20 hours	8.00
9	PREPARE OPENING BRIEF	2.00 hours	80.00
12	PREPARE OPENING BRIEF	3.00 hours	120.00
13	PREPARE OPENING BRIEF	2.50 hours	100.00
13	RESEARCH	2.50 hours	100.00
17	PREPARE OPENING BRIEF		

1047

SCHIECK & DERKE

RANDOLPH MOORE

May 17, 1991

APPEAL

Page 3

PROFESSIONAL SERVICES RENDERED (Continued)

		1.00 hours	40.00
17	PREPARE MOTION FOR EXTRA LENGTH		
		1.00 hours	40.00
29	TELEPHONE CALL FROM L. MOORE		
		0.20 hours	8.00

February, 1990

6	TELEPHONE CALL FROM L. MOORE		
		0.20 hours	8.00
9	TELEPHONE CALL FROM CLIENT		
		0.20 hours	8.00
12	TELEPHONE CALL FROM CLIENT		
		0.20 hours	8.00
17	LETTER TO MC MAHAN		
		0.20 hours	8.00
17	LETTER TO CLIENT		
		0.20 hours	8.00
17	REVIEW OPENING BRIEF		
		0.50 hours	20.00

March, 1990

6	PREPARE REPLY BRIEF		
		2.00 hours	80.00
7	PREPARE REPLY BRIEF		
		2.00 hours	80.00
8	PREPARE REPLY BRIEF		
		1.50 hours	60.00
9	RESEARCH REPLY BRIEF		
		1.50 hours	60.00
12	REVIEW DOCUMENTS FOR REPLY BRIEF		
		1.50 hours	60.00
13	PREPARE REPLY BRIEF		

SCHIECK & DERKE

RANDOLPH MOORE

May 17, 1991

APPEAL

Page 4

PROFESSIONAL SERVICES RENDERED (Continued)

16	PREPARE REPLY BRIEF	3.00 hours	120.00
		1.00 hours	40.00
April, 1990			
2	LETTER TO CLIENT	0.20 hours	8.00
May, 1990			
17	PREPARE FOR ORAL ARGUMENT	3.00 hours	120.00
18	COURT APPEARANCE RE ORAL ARGUMENT	1.00 hours	60.00
June, 1990			
12	TELEPHONE CALL FROM L. MOORE	0.20 hours	8.00
18	CONFERENCE WITH L. MOORE	1.00 hours	40.00
18	CONFERENCE WITH L. MOORE	0.50 hours	20.00
21	CONF WITH CLIENT	1.50 hours	60.00
25	TELEPHONE CALL FROM L. MOORE	0.20 hours	8.00
29	TELEPHONE CALL FROM L. MOORE	0.20 hours	8.00
September, 1990			
6	TELEPHONE CALL FROM L. MOORE	0.20 hours	8.00

1049

SCHIECK & DERKE

RANDOLPH MOORE

May 17, 1991

APPEAL

Page 5

PROFESSIONAL SERVICES RENDERED (Continued)

October, 1990

2	TELEPHONE CALL FROM L. MOORE	0.20 hours	8.00
21	LETTER TO CLIENT	0.20 hours	8.00

November, 1990

29	CONF WITH CLIENT	1.00 hours	40.00
----	------------------	------------	-------

January, 1991

22	LETTER TO CLIENT	0.20 hours	8.00
----	------------------	------------	------

March, 1991

3	TELEPHONE CALL TO L. MOORE	0.20 hours	8.00
---	----------------------------	------------	------

May, 1991

2	REVIEW DOCUMENTS (OPINION)	0.30 hours	12.00
2	LETTER TO CLIENT	0.20 hours	8.00
3	TELEPHONE CALL FROM L. MOORE	0.20 hours	8.00

TOTAL SERVICES			----- \$2900.00
----------------	--	--	--------------------

SCHIECK & DERKE

RANDOLPH MOORE

May 17, 1991

APPEAL

Page 6

DISBURSEMENTS

October, 1989

13	PHOTOCOPYING 12 @ \$.10	1.20
----	-------------------------	------

January, 1990

17	PHOTOCOPYING OPEN. BRIEF 1681 COPIES @ \$.10	168.10
----	--	--------

February, 1990

1	POSTAGE - FEDERAL EXPRESS 4681387034	28.75
9	TOLL CALLS	5.23
21	PHOTOCOPYING 96 COPIES @ \$.10	9.60
26	PHOTOCOPYING 25 COPIES @ \$.10	2.50

March, 1990

16	PHOTOCOPYING	
	270 COPIES AT .10 EACH	27.00
16	FEDERAL EXPRESS	
	REPLY BRIEF	13.00
20	PHOTOCOPYING	
	27 COPIES AT .10 EACH	2.70

June, 1990

18	TOLL CALLS	0.48
18	TOLL CALLS	1.28
21	TRAVEL (MILEAGE TO AND FROM ELY - 270 MILES)	129.60

1051

SCHIECK & DERKE

RANDOLPH MOORE

May 17, 1991

APPEAL

Page 7

DISBURSEMENTS (Continued)

TOTAL DISBURSEMENTS	\$389.44
---------------------	----------

BALANCE DUE	----- \$3289.44 -----
-------------	-----------------------------

DMS/dr

1052

19

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle		Dept. 12
Continuance			
Minutes			
Parties	Event 07/10/1991 at 09:00 AM	MOTION FOR STAY OF EXECUTION	
Def. Detail	Heard By Mosley, Donald M.	for A Moore	
Next Co-Def.	Officers TINA HURD, Relief Clerk		
Charges	DONNA LITTLE, Reporter/Recorder		
Sentencing	Parties 0000 - State of Nevada		Yes
Bail Bond	S1		
Judgments	001802 Jorgenson, Eric G.		Yes
District Case	0001 - Flanagan, Dale E		No
Party Search	D1		
Corp. Search	0002 - D Moore, Randolph		No
Atty. Search	000824 Schieck, David M.		Yes
Bar# Search			
ID Search			
Calendar Day	Court stated a Petition for Post-Conviction Relief is attached to this		
Holidays	motion as an exhibit. State had no opposition. COURT ORDERED, stay		
Help	granted. Order signed in open court.		
Comments &	CUSTODY (NSP)		
Feedback			
Legal Notice			
	Due to time restraints and individual case loads, the above case record may not reflect all		
	information to date.		

Top Of Page

Generated on 5/11/2004 at 9:34:54 AM

SCHIECK & DERKE
302 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

SCHIECK & DERKE
DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
302 E. Carson, #918
Las Vegas, NV 89101
702-382-1844

Attorney for Defendant MOORE

FILED

JUN 3 3 55 PM '91

CLERK

21
COPY

COPY

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

THE STATE OF NEVADA,

Plaintiff,

vs.

RANDOLPH MOORE,

Defendant.

CASE NO. 669269
DEPT. NO. XIV

MOTION FOR
STAY OF EXECUTION
AND ORDER SHORTENING
TIME

DATE:

TIME:

7-10-91
JUN

COMES NOW, Defendant RANDOLPH MOORE, by and through his attorney, DAVID SCHIECK, ESQ. and moves this Honorable Court for a Stay of Execution pursuant to NRS 176.487.

This motion is filed concurrently with the petition for post conviction relief and all the pleadings, papers and documents that comprise the file herein.

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff; and

TO: THE DISTRICT ATTORNEYS OFFICE, its attorney:

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing on the 10 day of July, 1991, at the hour of 9 a.m. in XIV of the Clark

CE

1141

SCHIECK & DERKE
302 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

1 County Courthouse, Las Vegas, Nevada, or as soon thereafter as
2 counsel may be heard.

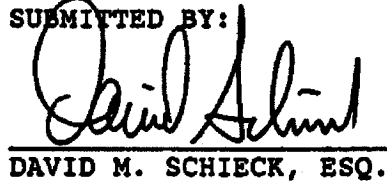
3 ORDER SHORTENING TIME

4 It appearing to the satisfaction of the Court, and good
5 cause appearing therefor,

6 IT IS HEREBY ORDERED that the Motion shall be heard on
7 the 10th day of July, 1991, at the hour of 9:00 A.m. in
8 Department No. XIV.

9
10 
DISTRICT JUDGE

11 SUBMITTED BY:

12 
13
14 DAVID M. SCHIECK, ESQ.

15 POINTS AND AUTHORITIES

16 On June 24, 1991 this Court entered a second supplemental
17 warrant of execution setting the execution of RANDOLPH MOORE for
18 the week of July 15, 1991. In that regard MOORE'S direct appeal
19 was denied on April 30, 1991 and MOORE therefore has until April
20 30, 1992 to file for Post Conviction Relief.

21 The expedited issuance of the second supplemental warrant of
22 execution has forced the hurried preparation of the Petition for
23 Post Conviction, necessitating that additional time will undoubt-
24 ably lapse prior to a full presentation of the claims for relief
25 that are to be properly raised.

26 N.R.S. 176.487 provides in relevant portion as follows:
27
28

SCHIECK & DERKE
302 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

1 "When a person under a sentence of death
2 files a proper petition for post-conviction
3 relief pursuant to chapter 34 or 177 of NRS,
4 a district court or the supreme court on a
5 subsequent appeal shall enter a stay of exe-
6 cution if the court finds a stay necessary
7 for a proper consideration of the claims for
8 relief. In making this determination, the
9 court shall consider whether:

6 1. The petition is the first effort by the
7 petitioner to raise constitutional claims for
8 relief after a direct appeal from his convic-
9 tion and the petition raises claims other
10 than those which could have been raised at
11 trial or on direct appeal.

12 2. The petition is timely filed and juris-
13 dictionally appropriate and does now set
14 forth conclusory claims only.

15 3. If the petition is not the first petition
16 for post-conviction relief, it raises consti-
17 tutional claims which are not procedurally
18 barred by laches, the law of the case, the
19 doctrines of abuse of the writ or successive
20 petition or any other procedural default.

21 The Petition herein, a copy of which is attached is the
22 first filed by MOORE and meets all of the requirements of NRS
23 177.487(1) and (2).

24 WHEREFORE, it is respectfully prayed that this Court issue a
25 Stay of Execution pending the attached Post Conviction proceed-
26 ings.

27 DATED this 3rd day of July, 1991.

28 SUBMITTED BY:


DAVID M. SCHIECK, ESQUIRE

SCHIECK & DERKE
302 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

naught.

David M. Schieck

DAVID M. SCHIECK

Kathleen G. L. Amick
NOTARY PUBLIC

Kathleen Fitzgerald
Notary Public - State of Nevada
CLARK COUNTY
 My Appointment Expires Jan. 1, 1992

SCHIECK & DERKE
302 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

1 DAVID M. SCHIECK, ESQ.
2 SCHIECK & DERKE
3 NV BAR NO. 0824
4 302 E. CARSON, #918
5 LAS VEGAS, NV 89101
6 702-382-1844

7 ATTORNEY FOR PETITIONER MOORE

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 * * *

11 RANDOLPH MOORE,

12 Petitioner,

13 vs.

14 RON ANGELONE, DIRECTOR, STATE
15 OF NEVADA; STATE OF NEVADA,

16 Respondent.

CASE NO. 069269
DEPT. NO. XIV
DOCKET NO.

DATE: N/A
TIME: N/A

17 PETITION FOR POST-CONVICTION RELIEF AND STAY OF EXECUTION
18 (NRS 177.315 ET SEQ.)

19 TO: FRANKIE SUE DEL PAPA, Attorney General of the
20 State of Nevada;

21 TO: REX BELL, District Attorney of Clark County,
22 Nevada;

23 TO: RON ANGELONE, Director, State of Nevada,
24 Department of Prisons:

25 GREETINGS:

26 The Petition of RANDOLPH MOORE, by and through his
27 attorney DAVID M. SCHIECK, ESQ., respectfully alleges:

28 1. That your Petitioner makes application herein for
Post-Conviction Relief pursuant to N.R.S 177.315 et seq. from
a Judgment of Conviction and Sentence of First Degree Murder
entered by this Court upon which Defendant was sentenced to

SCHIECK & DERKE
302 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

1 death by lethal injection. That your Petitioner is improperly
2 and illegally imprisoned and restrained of his liberty by the
3 Nevada Department of Prisons at Ely State Prison in Ely, Nevada
4 pursuant to this Court's Judgment of Conviction and Sentence.

5 2. That Petitioner was convicted after a jury trial on
6 October 11, 1985 and sentenced to death on October 17, 1985 by
7 the same jury. Petitioner was represented at trial by Murray
8 Posin, Esq., and on direct appeal by Tom Leeds, Esq.

9 3. Petitioner timely pursued a direct appeal to the
10 Nevada Supreme Court from his conviction and sentence and the
11 conviction was affirmed, however the penalty was reversed and
12 remanded for new proceedings due to prosecutorial misconduct
13 during the penalty hearing.

14 4. A second remanded penalty hearing was held on July 12,
15 1989 and Petitioner was represented by David Schieck, Esq., and
16 again received a sentence of death.

17 5. An appeal from the second penalty hearing was pursued
18 to the Nevada Supreme Court and on April 30, 1991 the Court
19 affirmed the death penalty imposed by the second penalty
20 hearing jury.

21 6. That on June 24, 1991 a second supplemental warrant of
22 execution was issued by the Court setting an execution date for
23 the week of July 15, 1991. The issuance of the said second
24 supplemental warrant of execution was made over the objection
25 of counsel for Petitioner expressly noting to the Court that
26 setting an execution date so extremely quickly after the
27 issuance of the remittitur denied Petitioner the ability to
28

1 properly research and prepare this Petition and other forms of
2 relief available to the Petitioner.

3 7. That Petitioner is indigent and has been continually
4 incarcerated since 1985 and does not have any resources to
5 retain counsel. That this is so proven by the fact that
6 Petitioner has been represented by court appointed counsel
7 throughout these proceedings. Petitioner therefore requests
8 that this Court pursuant to NRS 177.345 appoint counsel to
9 represent him within 10 days of the filing of this Petition.

10 8. NRS 177.345 provides that in making the determination
11 whether to appoint counsel, the Court may consider whether:

12 (a) The issues presented by the Petitioner are
13 difficult;

14 (b) The Petitioner is unable to comprehend the
15 proceedings; and

16 (c) Counsel is necessary to proceed with discover.
17 All these factors are present in this case.

18 9. That the imprisonment and restraint of Petitioner, and
19 the Judgment of Convictionn and Sentence of death are unlawful,
20 illegal, and unconstitutional in violation of the State of
21 Nevada and federal Constitutions, as set forth herein below.

22 10. It is Petitioner's belief that appointed counsel at
23 trial failed to render reasonably effective assistance of
24 counsel at trial thereby violating Petitioner's Sixth Amendment
25 right to representation of counsel Strickland v. Washington,
26 466 U.S. 668 (1984); Warden v. Lyon, 100 Nev. 430, 683 P.2d 504
27 (1984), Sanborn v. State, 107 Nev. Ad.Op. 65 (1991). Due to
28

1 the time constraints imposed by this Court expediting the
2 second supplemental warrant of execution Petitioner alleges the
3 following specific instances of ineffective assistance of
4 counsel and specifically reserves the right to supplement these
5 allegations at a later date:

6 (a) Failed to timely object and prevent numerous
7 instances of improper argument by the prosecution;

8 (b) Failed to file pre-trial motions seeking:

9 1. severance of MOORE on his unique situation.

10 2. change of venue.

11 3. preclusion of devil worship allegations.

12 4. discovery all exculpatory evidence.

13 5. limitation on introduction of Melea Moore's
14 alleged involvement.

15 6. limitation on inflammatory and prejudicial media
16 exposure during the trial.

17 (c) Failed to communication with MOORE and prepare an
18 adequate defense for trial as evidenced by the Motion to
19 Dismiss Counsel and appoint different counsel filed September
20 9, 1985, alleging failure to interview witnesses, to meet with
21 MOORE and to present defense desired by MOORE.

22 (d) Failed to move to recuse the Court when obvious bias
23 toward the defendants and their defense was demonstrated
24 throughout the trial.

25 11. Petitioner's appointed counsel on direct appeal from
26 the conviction and sentence failed to render reasonably

SCHIECK & DERKE
302 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

1 effective assistance of counsel thereby violating the Sixth and
2 Fourteenth Amendment. See Evitts v. Lucey, 469 U.S. 387, 105
3 S.Ct 830, 83 L. Ed.2d 821 (1985) wherein the Court held that a
4 Defendant has the right to effective assistance of counsel on
5 first appeal as of right.

6 12. Petitioner's appointed counsel failed to render
7 reasonably effective assistance of counsel at the remanded
8 penalty hearing and on the direct appeal from the sentence of
9 death imposed at the second penalty hearing.

10 13. Petitioner was denied a fundamentally fair trial
11 required by the Due Process Clause of the Fourteenth Amendment
12 of the United States Constitution.

13 14. The Nevada death penalty statute as written and as
14 applied is unconstitutional under the Fourth, Fifth and
15 Fourteenth Amendments as it shifts the burden of proof to the
16 Defendant to prove mitigation outweighs aggravation and the
17 procedure on remand denied Petitioner a fair penalty hearing in
18 contravention of the Fourteenth Amendment and constituted
19 imposition of cruel and unusual punishment prohibited by the
20 Eighth Amendment of the United States Constitution and Article
21 1, Section 6 of the Nevada Constitution.

22 15. That the Nevada capital statutory scheme is
23 unconstitutional as on remand a Defendant is denied a
24 fundamentally fair trial and due process of law in being forced
25 to try the penalty hearing before a jury that had not found
26 Defendant guilty of First Degree Murder.

SCHIECK & DERKE
302 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

1 16. Petitioner has filed no previous petition for Post-
2 Conviction Relief in this case.

3 17. Petitioner requests that this Court require that the
4 State of Nevada file an Answer and Return to this Petition and
5 that thereafter the Court place this matter on calendar to set
6 a briefing schedule, to replace counsel to pursue this matter,
7 to schedule an evidentiary hearing on the Petition and that a
8 stay of execution be entered forthwith.

9 18. The above matters have not been determined in any
10 prior evidentiary hearing in State or Federal Court.

11 19. Petitioner further seeks leave of the Court to file
12 a supplemental petition should additional matters be discovered
13 which fall within the guidelines of Chapter 177 of the Nevada
14 Revised Statutes, and to state specific matters.

15 WHEREFORE, Petitioner prays that the Court order the State
16 of Nevada to file an Answer and Return hereto and set the
17 matter for an evidentiary hearing to consider the issues
18 presented herein.

19 DATED this 3 day of July, 1991.

20 Respectfully submitted,

21 By:

22 
23 DAVID M. SCHIECK, ESQ.
24
25
26
27
28

SCHIECK & DERKE
3002 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

Pursuant to NRS 15.010, under penalties of perjury, the undersigned declares that he is the Attorney for Petitioner, named in the foregoing Petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes them to be true.

DATED this 3rd day of July 1991

DAVID M. SCHIECK, ESQ.

SUBSCRIBED AND SWORN to before me
this 3rd day of July, 1991.

NOTARY PUBLIC



Kathleen Fitzgerald
Notary Public - State of Nevada
CLARK COUNTY
My Appointment Expires Jan. 1, 2002

20

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle		Dept. 12
Continuance			
Minutes			
Parties	Event 11/04/1992 at 09:00 AM	ALL PENDING MOTIONS (11-4-92)	
Def. Detail	Heard By Mosley, Donald M.	for A McDowell	
Next Co-Def.	Officers PAULETTE TAYLOR, Relief Clerk		
Charges	DONNA LITTLE, Reporter/Recorder		
Sentencing	Parties 0000 - State of Nevada		Yes
Bail Bond	S1		
Judgments	003186 James, Karen M.		Yes
	0001 - Flanagan, Dale E		No
	D1		
	0002 - D Moore, Randolph		No
	0003 - D McDowell, Roy		No
District Case			
Party Search			
Corp. Search			
Atty. Search			
Bar# Search			
ID Search			
Calendar Day	DEFENDANT'S PRO PER MOTION TO RELEASE TRIAL TRANSCRIPTS...DEFENDANT'S		
Holidays	PRO		
Help	PER MOTION FORE LEAVE TO PROCEED IN FORMA PAUPERIS		
Comments &	Court stated the deft. is making a motion for release of trial transcripts		
Feedback	for a civil case. Apparently, the deft. has not been apprised there is a		
Legal Notice	cost for the transcripts which the deft. would have to pay if he wants them.		
	COURT ORDERED, the motion to proceed in forma pauperis is granted.		
	NSP		
	Due to time restraints and individual case loads, the above case record may not reflect all		
	information to date.		

Top Of Page

Generated on 5/11/2004 at 9:35:28 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

OCT 20 3 05 PM '92

CLERK

ROY McDOWELL

Plaintiff,

-vs-

STATE OF NEVADA

Defendant.

Case No. C69269
Dept. No. XIV
Docket

Set 11-4-92

AFFIDAVIT IN SUPPORT OF MOTION FOR
LEAVE TO PROCEED IN FORMA PAUPERIS

STATE OF NEVADA)
COUNTY OF CLARK) ss.

I, ROY McDOWELL, being first duly sworn according to
law, on his oath, deposes and says:

1. That I am the Plaintiff in the above-entitled action
and that I have personal knowledge of the facts set forth in this
affidavit.

2. That this affidavit is made in support of the motion of
Plaintiff requesting leave to proceed in forma pauperis in the
above-entitled action, without being required to pay or provide
security for the payment of costs and official fees therefore,
including service of process, and the costs of prosecuting this
action.

3. I swear that the statements I have made below and here-
after concerning my financial statue and inability to pay or
provid security for payment of costs and official fees including
service of process, and the costs of prosecuting this action,

1 are true.

2 4. That I further state that because of my poverty, I am
3 unable to pay the costs of these proceedings or give security
4 therefore; and that I am entitled to the relief sought by the
5 complaint rendered herewith.

6 5. That I am unemployed and confined in prison, and have
7 been so unemployed since my confinement in the Nevada State
8 Prison.

9 6. That during the past twelve (12) months I have not
10 received money from any business, profession, self employment,
11 rent payments or inheritances; and that during the past twelve
12 (12) months I have not received money in the form of gifts or
13 from any other source such as family and friends.

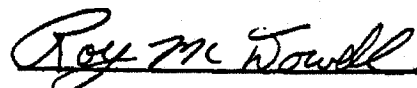
14 7. That I own no cash, nor do I have any money in any
15 checking or savings account, except those funds deposited to my
16 credit at the prison as set forth by the attached certificate
17 of the records custodian of the prison, which is herein by
18 reference thereto.

19 8. That I own no real estate, stocks, bonds, notes, auto-
20 mobiles or other valuable property.

21 9. That I have no one dependant upon me for their support.

22 10. That I understand that a false statement in this
23 Affidavit will subject me to the penalties for perjury.

24 DATED this 21 day of JULY, 1992.

25
26 

27 P.O. F x 208, S.D.C.C.
28 Indian Springs, Nevada 89070

Plaintiff-In Propria Persona

1162

DISTRICT COURT
CLARK COUNTY, NEVADA

OCT 23 3 05 PM '92

ROY McDOWELL

Plaintiff,

-vs-

STATE OF NEVADA

Defendant.

Case No. C69269
Dept. No XIV
Docket

set 11-4-92

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

COMES NOW, the Plaintiff, ROY McDOWELL, in propria persona, and respectfully moves this Honorable Court, pursuant to NRS 12.015, to issue an ORDER granting the Plaintiff leave to proceed in forma pauperis in the above-entitled civil action, without requiring the prepayment of costs or provision of security for costs and official fees, including the service of process, and any and all costs of prosecuting this action.

This Motion is made and based upon the attached Certificate, Affidavit of Plaintiff and the above referenced Statute.

DATED this 9th day of SEPTEMBER, 1992

Respectfully submitted,

Roy McDowell

P.O. Box 208, S.D.C.C.
Indian Springs, Nevada 89070

Plaintiff-In Propria Persona

1163



DISTRICT COURT
CLARK COUNTY NEVADA

Oct 20 3 05 PM '92

ROY McDOWELL
PLAINTIFF
vs
STATE OF NEVADA
DEFENDANT

Case No. C69269
Dept. No. XIV
Docket

Set/67 11-4-92

MOTION TO RELEASE TRIAL TRANSCRIPTS

Comes now the Plaintiff Roy McDowell in Propria Persona, and respectfully moves this Honorable Court, to issue an order granting the Plaintiff leave to Petition for and recieve copies of Trial Transcripts from the Plaintiffs Case no. C69269 in Dept XIV.

The Plaintiff prays the Court grant this motion as the Plaintiff is currently not represented by Counsel and is also unable to pay Court costs as the Plaintiff is indigent.

The Trial Transcripts are needed to further allow the Plaintiff to prepare for Civil action in the above mentioned Case.

The Plaintiff Prays that an Order be granted in this Motion before this Honorable Court.

Dated this 9th Day of September 1992

Respectfully Submitted

Roy McDowell
P.O. Box 208
Indian Springs Nevada, 89070
Plaintiff in propria Persona

1164

DISTRICT COURT

CLARK COUNTY, NEVADA

3 05 PM '92

COPY

ROY McDOWELL :

Plaintiff,

-vs-

STATE OF NEVADA

Defendant.

Case No. C69269

Dept. No. XIV

Docket

Set for 11-4-92

CERTIFICATE

I hereby certify that the Plaintiff, Roy McDowell #21823,
has the sum of \$2.20 on account to his credit at the Southern
Desert Correctional Center, Indian Springs, Nevada, where he is
confined. I further certify that said Plaintiff has NO
securities to his credit according to the records of said
institution.

DATED this 27 day of July, 1992

[Signature]
Institutional Officer's signature
and Title
Southern Desert Correctional
Center
Post Office Box 208
Indian Springs, Nevada 89070

RECEIVED

1992

COUNTY CLERK

1160

21

District Case Inquiry - Minutes

[Home](#)[Summary](#)
[Case Activity](#)
[Calendar](#)
[Continuance](#)
[Minutes](#)

Case 85-C-069269-C

Just Ct. 85-F -00653
Case#

Status ACTIVE

Plaintiff State of Nevada
Defendant Flanagan, Dale E
Judge Leavitt, MichelleAttorney Roger, David J.
Attorney Potter, III, Cal J.
Dept. 12[Parties](#)[Def. Detail](#)
[Next Co-Def.](#)
[Charges](#)
[Sentencing](#)
[Bail Bond](#)
[Judgments](#)

Event 02/24/1993 at 09:00 AM

ALL PENDING MOTIONS (2/24/93)

Heard By Mosley, Donald M.

Officers LOIS BAZAR, Court Clerk
DONNA LITTLE, Reporter/Recorder

Parties 0000 -	State of Nevada	Yes
S1		
004312	Ledebohm, Karl M.	Yes
0001 -	Flanagan, Dale E	No
D1		
0002 - D	Moore, Randolph	No
000824	Schieck, David M.	Yes
0003 - D	McDowell, Roy	No

[Calendar Day](#)
[Holidays](#)[Help](#)
[Comments &](#)
[Feedback](#)
[Legal Notice](#)ORAL REQUEST OF DISTRICT ATTORNEY: SCHEDULE NEW PENALTY HEARING
(FLANAGAN
AND MOORE).....

Mr.Schieck advised Ms. McMahon had filed a motion to withdraw which was set on March 1, 1993. State requested matter be taken off calendar, because they hadn't received a copy of the remittitur. Court advised it had. Mr. Schieck advised he would be willing to accept reappointment. There being no objection, COURT ORDERED, Mr. Schieck is reappointed. This matter is continued to Monday.

CUSTODY (NSP) (BOTH) ...3/01/93 @ 9:00 A.M. AT ORAL REQUEST OF DISTRICT
ATTORNEY: SCHEDULE NEW PENALTY HEARING (FLANAGAN AND MOORE)

Due to time restraints and individual case loads, the above case record may not reflect all
information to date.

[Top Of Page](#)

Generated on 5/11/2004 at 9:36:12 AM

SCHIECK & DERKE
302 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

SCHIECK & DERKE
DAVID M. SCHIECK, ESQ.
Nevada Bar No. 0824
302 E. Carson, #918
Las Vegas, NV 89101
702-382-1844

FEB 25 11 24 PM '93

Loretta Bosman
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

THE STATE OF NEVADA,

Plaintiff,

vs.

RANDOLPH MOORE,

Defendant.

CASE NO. C 69269
DEPT. NO. XIV

ORDER APPOINTING COUNSEL

DATE: February 24, 1993
TIME: 9:00 a.m.

The above entitled matter having come before the Court on the 24th day of February, 1993, DAVID M. SCHIECK, ESQ. of the law firm SCHIECK & DERKE appearing and a representative of the District Attorney's office appearing on behalf of The State of Nevada, the Court being fully advised in the premises, and good cause appearing therefor,

IT IS HEREBY ORDERED that DAVID M. SCHIECK, ESQ., of the law firm SCHIECK & DERKE, be appointed to represent RANDOLPH MOORE on his new penalty hearing.

DATED AND DONE: February 24, 1993

Donald S. Sweeney
DISTRICT COURT JUDGE

SUBMITTED BY:

By:

David M. Schieck
DAVID M. SCHIECK, ESQ.

1173

R2

CE14

65

1 LEE ELIZABETH MC MAHON, ESQ.
Nevada Bar No. 001765
2 612 E. Carson Avenue
Las Vegas, Nevada 89101
3 (702) 382-2741
Attorney for Defendant
4 DALE EDWARD FLANAGAN

FILED

MAR 2 11 24 AM '93

DISTRICT COURT
Joetta Dorman
CLARK COUNTY, NEVADA CLERK

7 THE STATE OF NEVADA,)
8 Plaintiff,)
9 vs)
10 DALE EDWARD FLANAGAN,)
11 Defendant.)

Case No. C 69269
Dept. No. XIV
Docket No. T

12 ORDER ALLOWING COUNSEL TO WITHDRAW AS ATTORNEY OF RECORD

13 Appointed Counsel's Motion to Withdraw as Attorney of
14 Record, having come on regularly for hearing on the 1st day
15 of March, 1993, in Department XIV, the Honorable Judge DONALD
16 M. MOSLEY presiding, LEE ELIZABETH MC MAHON, ESQ., Counsel
17 for the Defendant DALE EDWARD FLANAGAN appearing, and the Of-
18 fice of the District Attorney presenting no opposition to the
19 Motion, the Court being fully advised in the premises, and
20 good cause appearing therefore,

21 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plain-
22 tiff Counsel's Motion to Withdraw as Attorney of Record is
23 granted.

24 DATED THIS 1st day of March, 1993

Donald M. Mosley
THE HONORABLE DONALD M. MOSLEY
District Court Judge

27 Respectfully submitted by
28 LEE ELIZABETH MC MAHON, ESQ.

1174

CE14

86

1 LEE ELIZABETH MC MAHON, ESQ.
2 Nevada Bar No. 001765
3 612 Carson Avenue
4 (702) 382-2741
5 Las Vegas, Nevada 89101
6 Attorney for Defendant
7 DALE EDWARD FLANAGAN

FILED

DISTRICT COURT

MAR 3 2 22 PM '93

CLARK COUNTY, NEVADA

Loretta L. Luman
CLERK

7 THE STATE OF NEVADA,)
8)
9 Plaintiff,)
10 vs.)
11 DALE EDWARD FLANAGAN,)
12 Defendant.)

Case No. C69269
Dept. No. XIV
Docket No. T

RECEIPT OF COPY

14 RECEIPT OF COPY of the foregoing ORDER ALLOWING COUNSEL
15 TO WITHDRAW AS ATTORNEY OF RECORD hereby acknowledged this
16 3rd day of March, 1993.

18 for *Carol J. Bell*
19 REX BELL, ESQ.
20 District Attorney

1175 CE14

1 LEE ELIZABETH MC MAHON, ESQ.
Nevada Bar No. 001765
2 612 E. Carson Avenue
Las Vegas, Nevada 89101
3 (702) 382-2741
Attorney for Defendant
4 DALE EDWARD FLANAGAN

FILED

MAR 5 2 04 PM '93

DISTRICT COURT *Justin L. Lerman*
CLARK COUNTY, NEVADA CLERK

8 THE STATE OF NEVADA,)
9 Plaintiff,)
10 vs.)
11 DALE EDWARD FLANAGAN,)
12 Defendant.)

Case No. C 89269
Dept. No. XVI
Docket No. T

14 CERTIFICATE OF MAILING

15 I certify that I am an employee of LEE ELIZABETH MC
16 MAHON, ESQ., and on this 4th day of March, 1993, I mailed a
17 copy of the ORDER ALLOWING COUNSEL TO WITHDRAW AS ATTORNEY OF
18 RECORD, by posting in the United States mail, postpaid, ad-
19 dressed to:

20 DALE EDWARD FLANAGAN, No. 21853
21 P.O. BOX 1989
Ely, Nevada 89301

22
23 *David M. Grubbe*
24 An Employee of
25 LEE ELIZABETH MC MAHON, ESQ.
26
27
28

1176

CE14

22

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Case#		
Case Activity	Plaintiff State of Nevada	Attorney Roger, David J.	
Calendar	Defendant Flanagan, Dale E	Attorney Potter, III, Cal J.	
Continuance	Judge Leavitt, Michelle	Dept. 12	
Minutes			
Parties			
Def. Detail	Event 03/01/1993 at 09:00 AM	ALL PENDING MOTIONS (3/01/93) (1 & 2)	
Next Co-Def.	Heard By Mosley, Donald M.		
Charges	Officers LOIS BAZAR, Court Clerk		
Sentencing	DONNA LITTLE, Reporter/Recorder		
Bail Bond			
Judgments	Parties 0000 - State of Nevada	Yes	
	S1		
District Case	000862	Harmon, Melvyn T.	Yes
Party Search	0001 -	Flanagan, Dale E	No
Corp. Search	D1		
Atty. Search	001765	McMahon, Lee E.	Yes
Bar# Search	0002 - D	Moore, Randolph	No
ID Search	000824	Schieck, David M.	Yes
Calendar Day	0003 - D	McDowell, Roy	No
Holidays			
Help	AT ORAL REQUEST OF DISTRICT ATTORNEY: SCHEDULE NEW PENALTY HEARING...LEE		
Comments &	ELIZABETH MCMAHON, ESQ.'S MOTION TO WITHDRAW AS ATTORNEY OF RECORD AND		
Feedback	APPOINT COUNSEL FOR REPRESENTATION OF DEFENDANT IN THE DEATH PENALTY		
Legal Notice	HEARING		

Court inquired if there was an objection to Ms. McMahon's motion to withdraw as counsel of record for defendant Flanagan. Mr. Harmon he had no objection. COURT ORDERED, motion granted. Court inquired if Stephen Dahl, DPD, had represented defendant Flanagan prior. Ms. McMahon concurred. Court asked if it would not be appropriate to ask Mr. Dahl to resume the responsibility in this new penalty phase. Mr. Schieck advised he had no objection. Court advised it would take it up with Mr. Dahl. COURT ORDERED, matter is continued for confirmation of counsel and to set the penalty hearing.

CUSTODY (NSP) (BOTH) ...3/10/93 @ 9:00 A.M. CONFIRMATION OF COUNSEL (FLANAGAN)...SCHEDULE NEW PENALTY HEARING (FLANAGAN AND MOORE)

Due to time restraints and individual case loads, the above case record may not reflect all information to date.

Top Of Page

Generated on 5/11/2004 at 9:37:32 AM

FILED

FEB 18 11 26 AM '93

COPY *Patricia J. ...*
CLERK

LEE ELIZABETH MC MAHON, ESQ.
Nevada Bar No. 001765
612 E. Carson Avenue
Las Vegas, Nevada 89101
(702) 382-2741
Attorney for Defendant
DALE EDWARD FLANAGAN

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
DALE EDWARD FLANAGAN,)
)
Defendant.)

Case No. C 69269
Dept. No. XIV
Docket No. T

MOTION TO WITHDRAW AS ATTORNEY OF RECORD
AND APPOINT COUNSEL FOR REPRESENTATION OF
DEFENDANT IN THE DEATH PENALTY HEARING

HEARING DATE: 2-1-93
HEARING TIME: _____

COMES NOW, LEE ELIZABETH MC MAHON, ESQ. counsel for Defendant DALE EDWARD FLANAGAN and moves this Honorable Court, pursuant to E.D.C.R. 7.40 for an Order allowing her to withdraw as Counsel of Record for the Defendant.

This Motion is made and based upon the records and pleadings on file herein, Points and Authorities and Affidavit of Counsel attached hereto, and upon oral Argument of Counsel, if any, adduced at the time of the hearing of this motion.

DATED this 18th day of February, 1993.

Respectfully submitted,

[Signature]
LEE ELIZABETH MC MAHON, ESQ.
Nevada Bar No. 001765

CE11

1165

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

POINTS AND AUTHORITIES

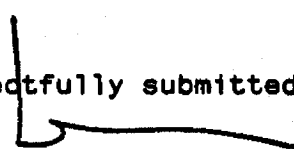
E.D.C.R. 7.40 states in its relevant points:

"(b) Counsel in any case may be changed only:

(2) when no attorney has been retained to replace the attorney withdrawing only by order of the court at such time as may be fixed by the hearing of the motion, and,

(i) If application is made by the attorney, he shall include in an affidavit, the address or last known address at which the client may be served with notice of further proceeding taken in the case in the event the applications for withdrawal is granted, and he shall serve a copy of the application upon the client and all other parties to the action of their attorneys....."

Respectfully submitted by:


LEE ELIZABETH MC MAHON, ESQ.
Nevada Bar No. 001765
612 East Carson Avenue
Las Vegas, Nevada 89101

1 AFFIDAVIT OF LEE ELIZABETH MC MAHON, ESQ.

2 STATE OF NEVADA,)
3) ss.
4 COUNTY OF CLARK,)

5 LEE ELIZABETH MC MAHON, ESQ. first duly Sworn Deposes
6 and says:

7 1. That Affiant is an Attorney at Law duly licensed to
8 practice in the State of Nevada and Court-appointed Attorney
9 of Record for DALE EDWARD FLANAGAN, Defendant, herein,

10 2. That on or about October 12, 1989, Affiant was
11 Court-appointed as Attorney of Record,

12 3. That on or about February 11, 1993, the Nevada Su-
13 preme Court reversed the Death Penalty and remanded the case
14 for a new Penalty Hearing,

15 4. That Affiant is very mindful of the necessary time
16 required of Death Penalty Hearing representation not only in
17 terms of communication time with Defendant but also the nec-
18 essary investigatory time and preparation of witnesses,

19 5. That your Affiant is a URESA Hearing Master, a re-
20 sponsibility she does not take lightly, and sits two (2) af-
21 ternoons a week which mandates an approximate expenditure of
22 eight (8) hours per week in review and memoranda writing for
23 the presiding judge,

24 6. That Affiant is and has been for several years a
25 Track Attorney for the County and has currently six (6) tri-
26 als scheduled between the current date and August, 1993,


27 7. Further, that Affiant is a sole practitioner with-
28 out the resources for a multi-attorney firm, Given the above
factors Affiant requests this Honorable Court to allow her to

NOTICE OF MOTION

TO: DANIEL M. SEATON, ESQ.

CLARK COUNTY DEPUTY DISTRICT ATTORNEY

YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing MOTION on for hearing before this Court, in the above entitled Court in Dept. XIV, therefore, on the 1 day of March, 1993, at the hour of 9 A.M. or as soon thereafter as counsel may be heard.


LEE ELIZABETH MC MAHON, ESQ.
Nevada Bar No. 001765
612 Carson Ave.
Las Vegas, Nevada 89101

1 LEE ELIZABETH MC MAHON, ESQ.
Nevada Bar No. 001765
2 612 E. Carson Avenue
Las Vegas, Nevada 89101
3 (702) 382-2741
Attorney for Defendant
4 DALE EDWARD FLANAGAN

COPY 1

FEB 19 9 24 AM '93
COPY

DISTRICT COURT
CLARK COUNTY, NEVADA

John
CLERK

8 THE STATE OF NEVADA,)
9 Plaintiff,)
10 vs.)
11 DALE EDWARD FLANAGAN,)
12 Defendant.)

Case No. C 69269
Dept. No. XIV
Docket No. B

14 CERTIFICATE OF MAILING

15 I certify that I am an employee of LEE ELIZABETH MC
16 MAHON, ESQ., and on this 18th day of February, 1993, I
17 mailed a copy of the MOTION TO WITHDRAW AS ATTORNEY OF RECORD
18 AND APPOINT COUNSEL FOR REPRESENTATION OF DEFENDANT IN THE
19 DEATH PENALTY HEARING by posting same in the United States
20 mail, postpaid, addressed to:

DALE EDWARD FLANAGAN
Inmate No. 21853
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

Linda M. Gambale
An Employee of
LEE ELIZABETH MC MAHON, ESQ.

1 LEE ELIZABETH MC MAHON, ESQ.
2 Nevada Bar No. 001765
3 612 E. Carson Avenue
4 Las Vegas, Nevada 89101
5 (702) 382-2741
6 Attorney for Defendant
7 DALE EDWARD FLANAGAN

FILED

DISTRICT COURT FEB 13 9 24 AM '93
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)
8 Plaintiff,)
9 vs.)
10 DALE EDWARD FLANAGAN,)
11 Defendant.)

Christine L. ...
CLERK

Case No. C 69269
Dept. No. XIV
Docket No. B

CERTIFICATE OF MAILING

14 I certify that I am an employee of LEE ELIZABETH MC
15 MAHON, ESQ., and on this 18th day of February, 1993, I
16 mailed a copy of the MOTION TO WITHDRAW AS ATTORNEY OF RECORD
17 AND APPOINT COUNSEL FOR REPRESENTATION OF DEFENDANT IN THE
18 DEATH PENALTY HEARING by posting same in the United States
19 mail, postpaid, addressed to:

20 JAMES N. TUFTELAND, ESQ. DAVID M. SCHIECK, ESQ.
21 District Attorney's Office 302 Carson, Suite 918
22 200 S. Third Street Las Vegas, NV 89101
23 Las Vegas, NV 89155

MICHAEL LAURENCE, ESQ., ACLU
1663 Mission Street
San Francisco, CA 94103

Linda M. Gamble
An Employee of
LEE ELIZABETH MC MAHON, ESQ.

CE14

DISTRICT ATTORNEY
CLARK COUNTY

MAR 3 2 24 PM '93

1 LEE ELIZABETH MC MAHON, ESQ.
2 Nevada Bar No. 001765
3 612 Carson Avenue
4 (702) 382-2741
5 Las Vegas, Nevada 89101
6 Attorney for Defendant
7 DALE EDWARD FLANAGAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)

Plaintiff,)

vs.)

DALE EDWARD FLANAGAN,)

Defendant.)

Case No. C69269
Dept. No. XIV
Docket No. T

RECEIPT OF COPY

RECEIPT OF COPY of the foregoing ORDER ALLOWING COUNSEL
TO WITHDRAW AS ATTORNEY OF RECORD hereby acknowledged this
3rd day of March, 1993.

Carol Vessella

for: _____

REX BELL, ESQ.
District Attorney

1 LEE ELIZABETH MC MAHON, ESQ.
2 Nevada Bar No. 001765
3 612 E. Carson Avenue
4 Las Vegas, Nevada 89101
5 (702) 382-2741
6 Attorney for Defendant
7 DALE EDWARD FLANAGAN

FILED

MAR 2 11 24 AM '93

Freddie L. Luman
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 vs)

10 DALE EDWARD FLANAGAN,)

11 Defendant.)

Case No. C 69269
Dept. No. XIV
Docket No. T

12 ORDER ALLOWING COUNSEL TO WITHDRAW AS ATTORNEY OF RECORD

13 Appointed Counsel's Motion to Withdraw as Attorney of
14 Record, having come on regularly for hearing on the 15th day
15 of March, 1993, in Department XIV, the Honorable Judge DONALD
16 M. MOSLEY presiding, LEE ELIZABETH MC MAHON, ESQ., Counsel
17 for the Defendant DALE EDWARD FLANAGAN appearing, and the Of-
18 fice of the District Attorney presenting no opposition to the
19 Motion, the Court being fully advised in the premises, and
20 good cause appearing therefore,

21 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plain-
22 tiff Counsel's Motion to Withdraw as Attorney of Record is
23 granted.

24 DATED THIS 15th day of March, 1993

25 *Donald M. Mosley*
26 THE HONORABLE DONALD M. MOSLEY
27 District Court Judge

27 Respectfully submitted by

28 LEE ELIZABETH MC MAHON, ESQ.

23

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle		Dept. 12
Continuance			
Minutes			
Parties	Event 03/10/1993 at 09:00 AM	ALL PENDING MOTIONS (3/10/93) (1 & 2)	
Def. Detail	Heard By Mosley, Donald M.		
Next Co-Def.	Officers LOIS BAZAR, Court Clerk		
Charges	DONNA LITTLE, Reporter/Recorder		
Sentencing	Parties 0000 - State of Nevada	Yes	
Bail Bond	S1		
Judgments	004288 Hill, Steven	Yes	
	0001 - Flanagan, Dale E	No	
	D1		
	0002 - D Moore, Randolph	No	
	000824 Schieck, David M.	Yes	
	0003 - D McDowell, Roy	No	
District Case	CONFIRMATION OF COUNSEL (FLANAGAN)...SCHEDULE NEW PENALTY HEARING		
Party Search	(FLANAGAN		
Corp. Search	AND MOORE)		
Atty. Search	Stephen Dahl, DPD, present. Court asked Mr. Dahl if he confirmed as counsel.		
Bar# Search	Mr. Dahl advised at the end of the last penalty hearing defendant Flanagan		
ID Search	expressed unhappiness with the representation. He thought it would be best		
Calendar Day	to have Mr. Flanagan present. COURT ORDERED, this Court is going to have to		
Holidays	pass the setting of the penalty hearing. The D.A. for the State would have		
Help	to approve. It looked like Mr. Harmon would be the prosecutor. Both		
Comments &	defendants' are being held in Ely State Prison. Upon Court's inquiry,		
Feedback	counsel advised they transported prisoners every other week. COURT ORDERED,		
Legal Notice	this Court will have the secretary call the state prison and find out and		
	will set the matter on next Monday, or a week from next Wednesday and		
	counsel will be noticed. Mr. Schieck suggested his client, defendant Moore		
	also being transported. COURT ORDERED, under the circumstances, this Court		
	will order both defendant Moore and defendant Flanagan be transported. The		
	D.A. and counsel will be contacted on the date.		
	1:20 P.M. - Secretary having contacted Ely State Prison and having been		
	apprised that next transport date would be March 18, 1993, COURT ORDERED,		
	the hearing date would be set March 22, 1993. Court clerk contacted D.A.		
	and P.D. Records and Mr. Schieck.		
	CUSTODY (NSP)(BOTH)...3/22/93 @ 9:00 A.M. CONFIRMATION OF COUNSEL (FLANAGAN)		
	...SCHEDULE NEW PENALTY HEARING (FLANAGAN AND MOORE)		

Due to time restraints and individual case loads, the above case record may not reflect all information to date.

24

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle		Dept. 12
Continuance			
Minutes			
Parties	Event 03/22/1993 at 09:00 AM	ALL PENDING MOTIONS (3/22/93) (1 & 2)	
Def. Detail	Heard By Mosley, Donald M.		
Next Co-Def.	Officers LOIS BAZAR, Court Clerk		
Charges	SHARON THIELMAN, Reporter/Recorder		
Sentencing	Parties 0000 - State of Nevada	Yes	
Bail Bond	S1		
Judgments	000346 Mitchell, Scott S.	Yes	
	0001 - Flanagan, Dale E	Yes	
	D1		
District Case	PUBDEF Public Defender	Yes	
Party Search	001069 Dahl, Stephen J.	Yes	
Corp. Search	0002 - D Moore, Randolph	Yes	
Atty. Search	000824 Schieck, David M.	Yes	
Bar# Search	0003 - D McDowell, Roy	No	
ID Search			
Calendar Day			
Holidays			
Help	CONFIRMATION OF COUNSEL (FLANAGAN)...SCHEDULE NEW PENALTY PHASE		
Comments & Feedback	(FLANAGAN		
Legal Notice	AND MOORE)		

Mr. Mitchell advised he had been provided with a copy of Mr. Harmon's schedule for the year. Court asked defendant Flanagan if he had a problem with Mr. Dahl handling the responsibility of his case. Defendant Flanagan stated he had none. After consulting counsel concerning their court schedules, COURT ORDERED, date for the penalty hearing is confirmed for September 7, 1993 at 10:00 A.M.

CUSTODY (NSP)(BOTH) ...PENALTY HEARING 9/07/93 @ 10:00 A.M./C.C. 9/01/93 @ 9:30 A.M.

Due to time restraints and individual case loads, the above case record may not reflect all information to date.

Top Of Page

Generated on 5/11/2004 at 9:38:52 AM

See #27

9-1-93 date vacated

reset for 8-31-93

24a

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle	Dept.	12
Continuance			
Minutes			
Parties	Event 08/31/1993 at 09:30 AM	ALL PENDING MOTIONS (8/31/93) (1 & 2)	
Def. Detail	Heard By Mosley, Donald M.		
Next Co-Def.	Officers LOIS BAZAR, Court Clerk		
Charges	RUSSELL GARCIA, Reporter/Recorder		
Sentencing	Parties 0000 -	State of Nevada	Yes
Bail Bond	S1		
Judgments	000862	Harmon, Melvyn T.	Yes
	0001 -	Flanagan, Dale E	No
	D1		
District Case	PUBDEF	Public Defender	Yes
Party Search	001069	Dahl, Stephen J.	Yes
Corp. Search	0002 - D	Moore, Randolph	No
Atty. Search	000824	Schieck, David M.	Yes
Bar# Search	0003 - D	McDowell, Roy	No
ID Search			
Calendar Day			
Holidays			
Help	CALENDAR CALL (PENALTY PHASE 9/07/93)...DEFENDANT FLANAGAN'S MOTION TO		
Comments &	CONTINUE TRIAL DATE		
Feedback			
Legal Notice			

Upon Court's inquiry, Mr. Dahl advised he had called to stop transportation of the defendants from Nevada State Prison because they were continuing the trial date. Defense counsel waived the presence of defendants Flanagan and Moore for the purpose of the hearing. Court noted it was a motion to continue the setting of the penalty phase. Mr. Schieck acquiesced. Mr. Harmon advised he had no objection. Court noted the date of April 4, 1994 had been suggested. Mr. Dahl concurred. Court inquired if that was agreed universally. Counsel concurred. COURT ORDERED, motion granted.

CUSTODY (NSP) (BOTH) ...PENALTY PHASE 4/04/94 @ 10:00 A.M./C.C. 3/30/94 @ 9:30 A.M.

Due to time restraints and individual case loads, the above case record may not reflect all information to date.

Top Of Page

Generated on 5/11/2004 at 10:27:21 AM

District Case Inquiry - Minutes

26

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle		Dept. 12
Continuance			
Minutes			
Parties			
Def. Detail	Event 05/03/1993 at 09:00 AM	MOTION FOR ORDER FOR PAYMENT OF	
Next Co-Def.		FEES	
Charges	Heard By Mosley, Donald M.		
Sentencing	Officers LOIS BAZAR, Court Clerk		
Bail Bond	Parties 0000 - State of Nevada		Yes
Judgments	S1		
District Case	004312 Ledebohm, Karl M.		Yes
Party Search	0001 - Flanagan, Dale E		No
Corp. Search	D1		
Atty. Search	0002 - D Moore, Randolph		No
Bar# Search	0003 - D McDowell, Roy		No
ID Search			
Calendar Day	Court advised it was Ms. McMahon's motion and was somewhat unnecessary since		
Holidays	a stipulation had been sent over and signed. In any case, her request had		
Help	been agreed to and the Court signed the order reflecting that. COURT		
Comments &	ORDERED, motion granted.		
Feedback	CUSTODY (NSP) (BOTH)		
Legal Notice	Due to time restraints and individual case loads, the above case record may not reflect all		
	information to date.		

Top Of Page

Generated on 5/11/2004 at 9:39:27 AM

FILED

MAY 22 9 22 AM '93

COPY

LEE ELIZABETH MC MAHON, ESQ.
Nevada Bar No. 001765
612 E. Carson Avenue
Las Vegas, Nevada 89101
(702) 382-2741
Attorney for Defendant
DALE EDWARD FLANAGAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

DALE EDWARD FLANAGAN,
Defendant.

Case No. C69269
Dept. No. XIV
Docket No. T

MOTION FOR ORDER FOR PAYMENT OF FEES IN EXCESS OF
STATUTORY AMOUNT AS CERTIFIED BY NEVADA SUPREME COURT
AND ORDER FOR APPROVAL AND PAYMENT OF TRAVEL EXPENSES
INCURRED IN REPRESENTING APPELLANT BEFORE THE
NEVADA SUPREME COURT IN CARSON CITY, NEVADA

DATE OF HEARING: 5-3-93
TIME OF HEARING: _____

COMES NOW LEE ELIZABETH MC MAHON, ESQ. and moves this
Honorable Court pursuant to N.R.S. 7.125, 7.135 and 7.145 for
an Order granting attorney's fees in excess of the statutory
allowance in the amount of \$15,430.00 and travel expenses to
Carson City, Nevada, for Oral Argument before the Nevada Su-
preme Court in the amount of \$ 333.05.

.....

.....

CE11

1201 RP

1 This motion is supported by the Affidavit of Counsel,
2 the Points and Authorities, itemized list of expenses and
3 the Nevada Supreme Court Order of April 14, 1993, attached
4 hereto.

5 DATED this 19 day of April, 1993.

6 Respectfully submitted,
7
8

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LEE ELIZABETH MC MAHON, ESQ.
Nevada Bar No. 001785

POINTS AND AUTHORITIES

Statement of the Case

On October 12, 1989, an Order was entered appointing LEE ELIZABETH MC MAHON, ESQ. to represent DALE EDWARD FLANAGAN, in order to review the validity of Defendant's waiver of appeal. Counsel has represented Defendant in two appeals to the Nevada Supreme Court on imposition of the Death Penalty with the necessary briefs and oral arguments, the second appeal being on remand from the United States Supreme Court. On February 10, 1993, the Death Sentence was reversed and remanded by the Nevada Supreme Court for a new penalty phase in district court.. The statutory maximum for Appeal of Judgment of Conviction is \$2500.00 with no additional amounts approved without motion. Application for Certification of Excess Fees was made to the Nevada Supreme Court and granted by order on April 14, 1993, for the amount the amount of legal fees, \$15,430.00 with the approval for expenses, \$333.05, being left to the discretion of the District Court.

ARGUMENT

Pursuant to N.R.S. 7.125, an attorney appointed by a magistrate to represent an indigent defendant is limited in the amount of compensation allowable for such representation (See N.R.S. 7.125(3).

However, subsection (4) of N.R.S. 7.125 states in pertinent part:

"4. If the appointing court because of:

a. The complexity of the case or the number of its factual or legal issues;

b. The severity of the offense;

- 1203

1 c. The time necessary to provide an adequate
2 defense; or

3 d. Other special circumstances, deems it
4 appropriate to grant a fee in excess of the
5 applicable maximum, the payment must be made,
6 but only if the court in which the representa-
7 tion was rendered certifies that the amount of
8 the excess payment is both reasonable and
9 necessary and the payment is approved by
the presiding judge of the judicial district
in which the attorney was appointed, or if
there is not such presiding judge or if he
presided over the court in which the
representation was rendered, then by the
district judge who holds seniority in years
of service of office."

10 The Nevada Supreme Court in its order filed April 14,
11 1993, has certified the legal fees in the amount of
12 \$15,430.00.

13 NRS 7.135 Reimbursement of expenses; employment of in-
14 vestigative, expert or other services. (In pertinent part.)

15 The attorney appointe by a magistrate or
16 district court to represent a defendant is en-
17 titled, in addition to the fee provided by NRS
18 7.125 for his services, to be reimbursed for
expenses reasonably incurred by him in repre-
senting the defendant....

19 Travel expenses to Carson City, Nevada, for Nevada Su-
20 preme Court ordered Oral Arguments are such reasonable ex-
21 penses in the amount of \$333.05.

22 NRS 7.145 Claims for compensation and expenses.

23 1. Claims for compensation and expenses
24 shall be made to: (a) The magistrate in
25 cases in which the representation was rendered
26 exclusively before him; and (b) The district
27 court in all other cases. 2. Each claim
28 shall be supported by a sworn statement
specifying the time expended in court, the
services rendered out of court and the time
expended therein, the expenses incurred while
the case was pending and the compensation and
reimbursement applied for or received in the
same case from any other source. Except as

1 otherwise provided for the approval of pay-
2 ments in excess of the statutory limit, the
3 magistrate or the court to which the claim is
4 submitted shall fix and certify the compensa-
tion and expenses to be paid, and the amounts
so certified shall be paid in accordance with
NRS 7.155.

5 Counsel traveled to and from Carson City, Nevada, via
6 Reno, Nevada, on America West three years ago when the air
7 fares were considerably higher than they have become in re-
8 cent past. She had to rent an automobile so as to drive to
9 Carson City, Nevada, and due to the time of the argument an
10 overnight stay was necessary. The total expenses incurred
11 were \$333.05.

12 CONCLUSION

13 The affidavit of counsel attached to this Motion indi-
14 cates that the number of hours expended on the Appeal of the
15 Death Penalty. Also attached is the itemized list of ex-
16 penses as submitted to the Nevada Supreme Court and the Ne-
17 vada Supreme Court Order of April 14, 1993.

18 Respectfully submitted,
19
20

21 
22 LEE ELIZABETH MC MAHON, ESQ.
Nevada Bar #001765
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

SS:

61

71

11

16

20


22

23

25

26

27


NOTARY PUBLIC
 State of Nevada
WILLIAM D. CLUMP
 My Appointment Expires Jan. 26, 1994

1206

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TO: CHARLES PAINE, Deputy District Attorney, Civil Div.

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion on for hearing on the 3 day of May, 1993, at the hour of 9 A.M., before the above entitled Court, at the Clark County Courthouse, or as soon thereafter as counsel can be heard.

DATED this 19 day of April, 1993.

Respectfully submitted,

LEE ELIZABETH MC MAHON, ESQ.
Nevada Bar #001765

27

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle	Dept.	12
Continuance			
Minutes			
Parties			
Def. Detail	Event 07/14/1993 at 09:00 AM	MINUTE ORDER RE: RESET 9/01/93	
Next Co-Def.		HEARING (1 & 2)	
Charges	Heard By Mosley, Donald M.		
Sentencing	Officers LOIS BAZAR, Court Clerk		
Bail Bond	Parties 0000 - State of Nevada	No	
Judgments	S1	No	
District Case	0001 - Flanagan, Dale E	No	
Party Search	D1	No	
Corp. Search	0002 - D Moore, Randolph	No	
Atty. Search	0003 - D McDowell, Roy	No	
Bar# Search			
ID Search			
Calendar Day	COURT ORDERED, due to this Court's absence, the hearing set on September 1,		
Holidays	1993 is hereby vacated and reset on August 31, 1993 at 9:30 A.M. Court		
	clerk noticed D.A. Records, P.D. Records, and counsel.		
Help	Due to time restraints and individual case loads, the above case record may not reflect all		
Comments &	information to date.		
Feedback			
Legal Notice			

Top Of Page

Generated on 5/11/2004 at 9:40:31 AM

28

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle		Dept. 12
Continuance			
Minutes			
Parties			
Def. Detail	Event 08/18/1993 at 09:00 AM	MOTION FOR FEES IN EXCESS OF	
Next Co-Def.		STATUTORY ALLOWANCE	
Charges	Heard By Mosley, Donald M.		
Sentencing	Officers LOIS BAZAR, Court Clerk		
Bail Bond	DONNA LITTLE, Reporter/Recorder		
Judgments			
District Case	Parties 0000 - State of Nevada		Yes
Party Search	S1		
Corp. Search	000360 Paine, Charles A.		Yes
Atty. Search	0001 - Flanagan, Dale E		No
Bar# Search	D1		
ID Search	001104 Austin, Victor J.		Yes
	0002 - D Moore, Randolph		No
Calendar Day	000824 Schieck, David M.		Yes
Holidays	0003 - D McDowell, Roy		No
Help			
Comments &	State advised there was no objection to the motion. They had reviewed it		
Feedback	and seen no error. COURT ORDERED, motion granted. LATER: Mr. Schieck		
Legal Notice	appeared and was advised he prevailed.		

CUSTODY (NSP) (BOTH)

Due to time restraints and individual case loads, the above case record may not reflect all information to date.

Top Of Page

Generated on 5/11/2004 at 9:41:05 AM

SCHIECK & DERKE
302 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

CMC

1 DAVID M. SCHIECK, ESQ.
2 Nevada Bar No. 0824
3 302 E. Carson, #918
4 Las Vegas, NV 89101
5 702-382-1844

6 Attorneys for Defendant

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 * * *

10 THE STATE OF NEVADA,

11 Plaintiff,

12 vs.

13 RANDOLPH MOORE, et al.,

14 Defendant.

COPY
15 CASE NO. C69269
16 DEPT. NO. XIV
17 DOCKET NO.

18 DATE: 8-18-93
19 TIME: 9am

20 MOTION FOR FEES IN EXCESS OF STATUTORY ALLOWANCE

21 COMES NOW DAVID M. SCHIECK, ESQ., and moves this Honorable
22 Court pursuant to N.R.S. 7.125 and 7.145 for an Order granting
23 attorney's fees in excess of the statutory allowance.

24 This Motion is supported by the Affidavit of Counsel, the
25 Points and Authorities and the voucher attached hereto.

26 NOTICE OF MOTION

27 TO: THE STATE OF NEVADA, Plaintiff herein

28 PLEASE TAKE NOTICE that the undersigned will bring the above
and foregoing Motion on for hearing on the 18 day of August
1993, at the hour of 9a.m., before the above entitled
Court, at the Clark County Courthouse, or as soon thereafter as

counsel can be heard.

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On August 9, 1989, DAVID M. SCHIECK, ESQ. was appointed to represent RANDOLPH MOORE (MOORE) on the direct appeal from his sentence of death arising from a remanded penalty hearing. The Nevada Supreme Court denied the appeal and a Petition for Writ of Certiorari was filed with the United States Supreme Court. On March 23, 1992 the United States Supreme Court vacated the judgment and remanded the matter to the Nevada Supreme Court for further consideration.

After the issuance of the remand, the Nevada Supreme Court issued an Order requiring the filing of additional briefs on the issues addressed by the remand. Thereafter briefs were filed and oral argument conducted on October 16, 1992. The Nevada Supreme Court on February 10, 1993 reversed the sentence of MOORE and remanded the case for a third penalty hearing. Remittitur issued on March 2, 1993.

Total attorneys fees for DAVID M. SCHIECK, ESQ. for the United States Supreme Court Writ and remanded briefing and argument are \$4,180.00 with costs incurred of \$1,070.55. The statutory limit for felony appeals is \$2,500.00 regardless of whether the appeal is a capital case.

ARGUMENT

Pursuant to N.R.S. 7.125, an attorney appointed by a magistrate to represent an indigent defendant is limited in the

1 amount of compensation allowable for such representation (See
2 N.R.S. 7.125(2)(a-e)).

3 However, subsection (4) of N.R.S. 7.125 states in pertinent
4 part:

5 "4. If the appointing court because of:

6 a. The complexity of the case or the number of its
7 factual or legal issues;

8 b. The severity of the offense;

9 c. The time necessary to provide an adequate defense;
or

10 d. Other special circumstances, deems it appropriate
11 to grant a fee in excess of the applicable maximum, the
12 payment must be made, but only if the court in which
13 the representation was rendered certifies that the
14 amount of the excess payment is both reasonable and
15 necessary and the payment is approved by the presiding
judge of the judicial district in which the attorney
was appointed, or if there is no such presiding judge
or if he presided over the court in which the
representation was rendered, then by the district judge
who holds seniority in years of service of office."

16 The Nevada Court has interpreted this statute in Daines v.
17 Markoff, 92 Nev. 582, 555 P.2d 490 (1962), citing, Brown v. Board
18 of County Commissioners, 85 Nev. 149, 451 P.2d 708 (1969), where
19 the Court reasoned that:

20 "In the absence of extraordinary circumstances,
21 a court is without power to direct compensation
22 for professional services beyond limits
23 legislatively imposed. We there noted that
24 in the absence of statute an attorney would
25 be obliged to honor the court appointment
and to defend without compensation; that
such duty is an incident of the license to
practice law; and that a permanent solution
of the problem must rest with the legislative
branch . . ."

26 In addition, the Court dispelled any notices that counsel
27
28

1 might have that the statute in question allowed a taking of an
2 attorney's services for public use without just compensation,
3 denies equal protection of the law; and permits the taking of
4 property without due process, (citing, Nev. Const., Art. 1-8;
5 U.S. Const., Amend. V and Amend. XIV).

6 The Court further summarized that, "Neither our state
7 constitution nor the federal constitution precludes service to
8 indigents without 'full' compensation." The Court reiterated
9 that the professional obligation to respond to the call of the
10 court is an incident of the privilege to practice law, and does
11 not offend constitutional commands. United States v. Dillon, 346
12 F.2d 633 (9th Cir. 1965).

13 In Markoff, supra, the Court had consolidated three separate
14 cases involving court appointed counsel. In the first case, the
15 charge was non-capital murder and attempted murder. The second
16 case was a capital case, and the third case involved a ten count
17 charge where the Court had compensated on a per count basis
18 instead of a per case basis. In all of the above cases, that
19 Court found that extraordinary circumstances did not exist.

20 The Court chose not to look to the nature, or complexity of
21 the cases for their finding. However, Chief Justice Gunderson in
22 his concurring opinion stated that if the record reflected a case
23 of truly extraordinary proportions or complexity, making fees in
24 excess of statutory amount clearly necessary in order to avoid
25 inordinate hardship upon counsel, than an award in excess of the
26 statutory limit would be proper. (Emphasis added).

1 More recently, the Nevada Supreme Court has again addressed
2 the issue of excess fees and the necessity for showing of
3 extraordinary circumstances in Count of Clark v. Smith, 96 Nev.
4 854, 619 P.2d 1217 (1980). In Smith, supra, the facts of the
5 case show that the Defendant was charged with first degree murder
6 and four other felony offenses. The Defendant was allowed to
7 plead guilty of first degree murder without going to trial.

8 The Court held that the trial Court that hears the defense
9 presented and can assess the difficulty of the case, is in best
10 position to gauge the reasonableness of the fees claimed.

11 In addition, the Court examined the Federal standard for
12 justifying "extraordinary circumstances" which includes the
13 following:

14 "The amount, character, and complexity of
15 the work required; the responsibilities
16 involved; the manner in which the necessary
17 duties were performed, and the amount of
18 knowledge, skill, and judgment displayed
19 by counsel; and the professional standing
20 of counsel." United States v. James, 301
21 F. Supp. 107 (W.D. Tenn. 1969).

22 Likewise, the Court also looked to the financial hardship to
23 the attorney in rendering his defense in the matter, as further
24 evidence to sustain the trial court's decision.

25 In Lueck v. State, 99 Nev. 717, 669 P.2d 719 (1983), the
26 Court embraced the factors codified by N.R.S. 7.125 in 1983, to
27 wit: the responsibilities involved complexity, amount and
28 character of the work and the responsibilities involved, the
amount of knowledge, skill and judgment displayed by counsel, and
the professional standing of counsel.

SCHIECK & DERKE
302 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

1 The instant case involved complex issues, issues of first
2 impression and issues requiring reversal of previous decision by
3 the court which necessitated numerous hours of research and in
4 preparing the briefs.

5 CONCLUSION

6 The affidavit of counsel attached to this Motion indicates
7 that the number of hours expended on the appeal, when converted
8 to a monetary value, exceed an amount in excess of the allowable
9 statutory amount.

10 As stated above, counsel submits that the facts of this case
11 show the complex nature of the matter and the necessity to
12 provide a defense that would protect the Defendant's substantive
13 and procedural constitutional rights, therefore, this case is an
14 appropriate one for the award of fees in excess of the statutory
15 guidelines.

16 DATED this 3 day of August, 1993.

17 By: 

18 DAVID M. SCHIECK, ESQ.

19 AFFIDAVIT

20 STATE OF NEVADA)
21) ss:
22 COUNTY OF CLARK)

23 DAVID M. SCHIECK, being first duly sworn, deposes and says:
24 That your Affiant is an attorney duly licensed to practice
25 law in the State of Nevada, and was appointed to represent MOORE
26 on appellate proceedings on August 9, 1989.

27 Affiant has handled numerous appeals to the Nevada Supreme
28

SCHIECK & DERKE
302 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

1 Court including at least five capital cases on direct appeal.
2 The issues in this case were of a major constitutional nature
3 that were considered and ruled upon by the United States Supreme
4 Court in favor of MOORE.

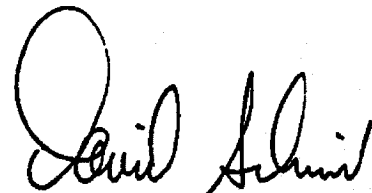
5 Affiant has diligently represented MOORE for over four years
6 and has only received interim compensation through the first
7 briefing and argument. Affiant in pursuit of representation of
8 MOORE has traveled from Las Vegas to Ely many times to consult
9 with MOORE.

10 Affiant verifies to this Court that this case meets not only
11 one, but all four of the factors detailed in NRS 7.125(4) for an
12 award of excess fees. Affiant assures this Court that the
13 complexity of this case when compared with others put this case
14 on par with the fees previously paid on other case.

15 That Affiant filed a Motion for Certification with the
16 Nevada Supreme Court and on July 30, 1993 an Order was filed
17 certifying the excess fees as reasonable and necessary.

18 Attached hereto is a complete breakdown of time and expenses
19 totalling \$5,250.55.

20 Further Affiant sayeth naught.

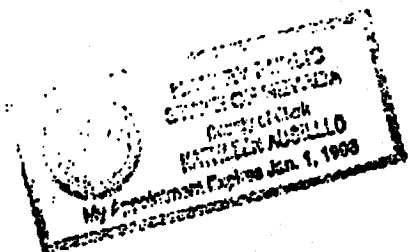


DAVID M. SCHIECK

23 SUBSCRIBED and SWORN to before me
24 this 3 day of August, 1993.

25 Kathleen Ausiello

26 NOTARY PUBLIC



DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

AUG 9 9 20 AM '89

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
RANDOLPH MOORE,)
)
Defendant.)

Case NO. C 69269
Dept. No. XIV
Docket No.

ORDER APPOINTING COUNSEL

This matter having come on for hearing on the 31st day of July, 1989, and it appearing that the Defendant is entitled to court appointed counsel, and good cause appearing

IT IS HEREBY ORDERED that DAVID M. SCHIECK, ESQUIRE of SCHIECK & DERKE be appointed as attorney of record for Defendant, RANDOLPH MOORE, on the appeal to the Nevada Supreme Court from the Judgement of Conviction and Sentence.

DATED this 7 day of August, 1989.


DONALD M. MOSLEY

DISTRICT JUDGE

Submitted By:

SCHIECK & DERKE

By:



DAVID M. SCHIECK, ESQUIRE
Attorneys for Defendant
302 East Carson Ave., #918
Las Vegas, Nevada 89101

SCHIECK & DERKE
302 E. Carson Ave.
Suite 918
Las Vegas , NV 89101

RANDOLPH MOORE

February 26, 1993
CRIMINAL - APPOINTED
V. STATE OF NEVADA
POST CONVICTION RELIEF

ITEMIZED STATEMENT

PREVIOUS BALANCE \$0.00

PROFESSIONAL SERVICES RENDERED

June, 1991

10	REVIEW MOT. SUPP. WARR. EX	0.30 hours	12.00
19	REVIEW FLANAGAN OPPOSITION	0.30 hours	12.00
20	REVIEW AMENDED OPPOSITION	0.20 hours	8.00

July, 1991

2	PREPARE PETITION FOR PCR	2.00 hours	80.00
3	PREPARE PCR AND MOTION TO STAY	3.00 hours	120.00
8	TELEPHONE CALL TO L. MOORE	0.20 hours	8.00
9	TELEPHONE CALL TO L. McMAHON	0.20 hours	8.00
10	PREPARE ORDER TO STAY EXECUTION	0.20 hours	8.00
10	COURT APPEARANCE--STAY OF EXECUTION	1.00 hours	60.00
11	TELEPHONE CALL TO D.O.P. RE: STAY	0.20 hours	8.00
12	TELEPHONE CALL TO OFFICE RE: STAY	0.60 hours	24.00
12	CONFERENCE WITH PRISON RE: STAY		

SCHIECK & DERKE

RANDOLPH MOORE

February 26, 1993

V. STATE OF NEVADA
POST CONVICTION RELIEF

Page 2

PROFESSIONAL SERVICES RENDERED (Continued)

15	TELEPHONE CALL TO DEPT. OF PRISONS	0.50 hours	20.00
25	PREPARE WRIT	0.80 hours	32.00
25	TELEPHONE CALL FROM M. LAURENCE	4.00 hours	160.00
26	PREPARE WRIT	0.20 hours	8.00
27	PREPARE WRIT	4.00 hours	160.00
29	REVIEW AND REVISE WRIT	2.00 hours	80.00
29	TELEPHONE CALL TO KEVIN KELLY RE: WRIT	2.00 hours	80.00
		0.20 hours	8.00

August, 1991

3	TELEPHONE CALL FROM CLERK OF U.S. SP/CT		
		0.20 hours	8.00
4	PREPARE AMENDED WRIT		
15	CONFERENCE WITH PRINTER RE: FORMAT	0.50 hours	20.00
		0.20 hours	8.00

September, 1991

5	REVIEW FINAL CORRECTED PETITION		
		0.30 hours	12.00
20	TELEPHONE CALL FROM MRS. MOORE		
		0.20 hours	8.00

October, 1991

15	TELEPHONE CALL FROM D/A RE: FORMA PAUPERIS		
----	---	--	--

SCHIECK & DERKE

RANDOLPH MOORE

February 26, 1993

V. STATE OF NEVADA
POST CONVICTION RELIEF

Page 3

PROFESSIONAL SERVICES RENDERED (Continued)

		0.20 hours	12.00
November, 1991			
7	REVIEW STATE'S REPLY TO WRIT		
		0.50 hours	30.00
December, 1991			
1	TELEPHONE CALL FROM M. LAURENCE		
		0.20 hours	12.00
9	LETTER TO LAURENCE RE: TRANSCRIPT		
		0.20 hours	12.00
March, 1992			
26	REVIEW SP/CT ORDER		
		0.20 hours	12.00
30	LETTER TO CLIENT		
		0.20 hours	12.00
April, 1992			
23	TELEPHONE CALL TO HEITBRINK		
		0.20 hours	12.00
May, 1992			
1	TELEPHONE CALL TO D/A		
		0.20 hours	12.00
1	LETTER TO D/A		
		0.20 hours	12.00
5	RESEARCH OPENING BRIEF		

SCHIECK & DERKE

RANDOLPH MOORE

February 26, 1993

V. STATE OF NEVADA
POST CONVICTION RELIEF

Page 4

PROFESSIONAL SERVICES RENDERED (Continued)

5	PREPARE OPENING BRIEF	0.50 hours	30.00
5	TELEPHONE CALL FROM L. MOORE	2.00 hours	120.00
5	LETTER TO CLIENT	0.20 hours	12.00
6	RESEARCH OPENING BRIEF	0.20 hours	12.00
6	PREPARE OPENING BRIEF	1.00 hours	60.00
11	TELEPHONE CALL FROM L. MOORE	3.00 hours	180.00
12	TELEPHONE CALL FROM L. MOORE	0.20 hours	12.00
12	PREPARE OPENING BRIEF	0.20 hours	12.00
13	RESEARCH OPENING BRIEF	3.00 hours	180.00
13	PREPARE OPENING BRIEF	1.00 hours	60.00
14	RESEARCH OPENING BRIEF	2.00 hours	120.00
14	PREPARE OPENING BRIEF	2.00 hours	120.00
15	RESEARCH OPENING BRIEF	2.00 hours	120.00
15	PREPARE OPENING BRIEF	1.00 hours	60.00
18	TELEPHONE CALL FROM LINDY MOORE	1.00 hours	60.00
18	RESEARCH OPENING BRIEF	0.20 hours	12.00
18	PREPARE OPENING BRIEF	1.50 hours	90.00

SCHIECK & DERKE

RANDOLPH MOORE

February 26, 1993

V. STATE OF NEVADA
POST CONVICTION RELIEF

Page 5

PROFESSIONAL SERVICES RENDERED (Continued)

18	PREPARE OPENING BRIEF	2.00 hours	120.00
19	PREPARE MOTION FOR ONE DAY EXTENSION	1.00 hours	60.00
19	PREPARE OPENING BRIEF	1.00 hours	60.00
29	LETTER TO CLIENT	1.00 hours	60.00
29	LETTER TO BRYAN	0.20 hours	12.00
		0.20 hours	12.00

June, 1992

1	TELEPHONE CALL FROM L. MOORE	0.20 hours	12.00
15	TELEPHONE CALL FROM L. MOORE	0.20 hours	12.00
18	CONF WITH CLIENT	2.00 hours	120.00
19	TELEPHONE CALL FROM TUFTLAND	0.20 hours	12.00
22	REVIEW ANSWERING BRIEF	1.00 hours	60.00
22	LETTER TO CLIENT	0.20 hours	12.00
29	TELEPHONE CALL FROM L. MOORE	0.20 hours	12.00

July, 1992

2	PREPARE OPENING BRIEF	2.00 hours	120.00
10	PREPARE REPLY BRIEF		

SCHIECK & DERKE

RANDOLPH MOORE

February 26, 1993

V. STATE OF NEVADA
POST CONVICTION RELIEF

Page 6

PROFESSIONAL SERVICES RENDERED (Continued)

11	PREPARE REPLY BRIEF	0.20 hours	12.00
15	RESEARCH REPLY BRIEF	1.00 hours	60.00
16	RESEARCH REPLY BRIEF	1.50 hours	90.00
16	PREPARE REPLY BRIEF	1.50 hours	90.00
17	PREPARE REPLY BRIEF	1.50 hours	90.00
22	LETTER TO CLIENT	2.00 hours	120.00
31	LETTER TO CLIENT	0.20 hours	12.00
		0.20 hours	12.00

August, 1992

4	TELEPHONE CALL FROM L. MOORE	0.20 hours	12.00
6	TELEPHONE CALL TO L. MOORE	0.20 hours	12.00
13	TELEPHONE CALL FROM LINDY MOORE	0.20 hours	12.00
24	LETTER TO CLIENT	0.20 hours	12.00

September, 1992

8	TELEPHONE CALL TO D/A	0.20 hours	12.00
---	-----------------------	------------	-------

October, 1992

5	TELEPHONE CALL FROM L. MOORE	0.20 hours	12.00
---	------------------------------	------------	-------

SCHIECK & DERKE

RANDOLPH MOORE

February 26, 1993

V. STATE OF NEVADA
POST CONVICTION RELIEF

Page 7

PROFESSIONAL SERVICES RENDERED (Continued)

14	RESEARCH ARGUMENT	1.00 hours	60.00
14	CONFERENCE WITH L. MCMAHON	0.20 hours	12.00
14	CONFERENCE WITH D/A	0.20 hours	12.00
15	REVIEW AND PREPARE	1.00 hours	60.00
16	PREPARE FOR ORAL ARGUMENT	2.00 hours	120.00
16	COURT APPEARANCE - ORAL ARGUMENT	1.50 hours	90.00
16	TELEPHONE CALL FROM L. MOORE	0.20 hours	12.00
December, 1992			
24	LETTER TO CLIENT	0.20 hours	12.00
January, 1993			
26	REVIEW FILE	0.20 hours	12.00
27	CONF WITH CLIENT	1.50 hours	90.00
29	TELEPHONE CALL FROM L. MOORE	0.20 hours	12.00
30	LETTER TO SUPREME COURT	0.20 hours	12.00
February, 1993			
12	LETTER TO CLIENT	0.20 hours	12.00
13	TELEPHONE CALL TO LINDY MOORE		

SCHIECK & DERKE

RANDOLPH MOORE

February 26, 1993

V. STATE OF NEVADA
POST CONVICTION RELIEF

Page 8

PROFESSIONAL SERVICES RENDERED (Continued)

13	LETTER TO CLIENT	0.20 hours	12.00
15	LETTER TO CLIENT	0.20 hours	12.00
15	REVIEW SP/CT DECISION	0.20 hours	12.00
19	TELEPHONE CALL FROM LINDY MOORE	0.20 hours	12.00
19	LETTER TO CLIENT	0.20 hours	12.00
19	REVIEW MOTION TO WITHDRAW	0.20 hours	12.00

	TOTAL SERVICES		\$4180.00

DISBURSEMENTS

July, 1991

8	TOLL CALLS	✓0.15
8	TOLL CALLS	✓1.18
10	TOLL CALLS	✓0.55
10	TOLL CALLS	✓0.37
11	TOLL CALLS	✓0.65
11	TOLL CALLS	✓0.09
11	TOLL CALLS	✓0.73
11	TOLL CALLS	✓0.22
12	TOLL CALLS	✓0.96
15	TOLL CALLS	✓0.22
15	TOLL CALLS	✓0.83

Disbursements
3252
PCA
928

SCHIECK & DERKE

RANDOLPH MOORE

February 26, 1993

V. STATE OF NEVADA
POST CONVICTION RELIEF

Page 9

DISBURSEMENTS (Continued)

24	TOLL CALLS	✓ 5.03
29	COST TO U.S. SUPREME COURT FOR PETITION	✓
	FOR WRIT OF CERTIORARI	300.00
29	COST TO U.S. POST OFFICE TO MAIL WRIT	✓ 25.30
August, 1991		
16	TOLL CALLS	0.30
September, 1991		
4	POSTAGE TO MAIL CORRECTED WRIT	✓ 38.40
4	COST FOR PDQ PRINTING	✓ 371.45
April, 1992		
23	TOLL CALLS	0.39
May, 1992		
14	TOLL CALLS	1.77
19	AIRBORNE EXPRESS (M/EXT TIME)	8.50
✓ 20	PHOTOCOPYING 340 PAGES	34.00
20	AIRBORNE EXPRESS (OPENING BRIEF)	16.78
June, 1992		
✓ 24	PHOTOCOPYING 28 PAGES	2.80
July, 1992		
✓ 17	PHOTOCOPYING 160 PAGES	16.00
17	AIRBORNE EXPRESS (REPLY BRIEF)	13.75

SCHIECK & DERKE

RANDOLPH MOORE

February 26, 1993

V. STATE OF NEVADA
POST CONVICTION RELIEF

Page 10

DISBURSEMENTS (Continued)

December, 1992

✓	21	PHOTOCOPYING 132 PAGES FOR NEVADA APPELLATE DIVISION	13.20
---	----	---	-------

January, 1993

✓	26	COST FOR MILEAGE TO ELY, NV (514 MILES @ .28)	143.92
✓	26	TRAVEL EXPENSE (MEAL)	12.00
✓	26	TRAVEL EXPENSE (ROOM)	41.01

February, 1993

✓	2	COST OF ORAL ARGUMENT TAPE	20.00
---	---	----------------------------	-------

TOTAL DISBURSEMENTS			----- \$1070.55
---------------------	--	--	--------------------

BALANCE DUE			----- \$5250.55 -----
-------------	--	--	-----------------------------

DMS/dr
MOORE 10002 4ABC

1259

Call Detail Report - Dial-1 Access

SCHIECK & DERKE
302 E. CARSON AVENUE, #918
LAS VEGAS NV 89101

BILLING PERIOD 07/08/91 THROUGH 08/07/91

INVOICE NUMBER 79878347
INVOICE DATE 08/08/91
PAGE NUMBER 3

CUSTOMER NUMBER 7V182070

DATE	TIME	NUMBER CALLED	PLACE CALLED	MIN- UTES	R A K T E Y	PRE- DISCOUNT AMOUNT	DATE	TIME	NUMBER CALLED	PLACE CALLED	MIN- UTES	R A K T E Y	PRE- DISCOUNT AMOUNT
07/08	10:50	213-939-3400	LOSANGELES CA	2.2	10/c	0.47	07/12	16:42	213-933-5100	LOSANGELES CA	0.4	10/kh	0.09
07/08	14:25	702-289-8800	ELY NV	0.8	10/kh	0.15	07/12	16:46	213-933-5100	LOSANGELES CA	0.1	1	0.02
07/08	14:26	702-289-8800	ELY NV	6.4	10/kh	1.18	07/15	08:06	213-933-5100	LOSANGELES CA	0.2	1	0.04
07/08	16:07	406-821-4564	DARBY MT	7.5	10/kh	1.78	07/15	08:08	213-933-5100	LOSANGELES CA	0.1	1	0.02
07/08	16:26	206-382-7900	SEATTLE WA	1.2	10/kh	0.29	07/15	08:13	213-933-5100	LOSANGELES CA	0.1	1	0.02
07/09	09:57	412-836-5737	GREENSBURG PA	11.3	10/kh	2.79	07/15	08:17	213-933-5100	LOSANGELES CA	0.1	10/kh	0.02
07/09	10:03	801-874-2056	HILDALE UT	3.6	10/kh	0.77	07/15	08:20	213-933-3847	LOSANGELES CA	0.1	10/kh	0.02
07/09	13:58	702-742-5557	RENO NV	0.6	10/kh	0.12	07/15	08:21	213-933-3847	LOSANGELES CA	0.1	1	0.02
07/09	14:30	405-751-5129	BRITTON OK	2.6	10/kh	0.64	07/15	08:25	213-933-3847	LOSANGELES CA	0.2	1	0.04
07/09	18:30	702-328-3494	RENO NV	0.5	1	0.10	07/15	09:59	702-742-5557	RENO NV	0.1	1	0.02
07/10	08:32	702-555-1212	DIR ASST NV	0.5	10/kh	0.55	07/15	10:04	702-289-8800	ELY NV	4.5	10/kh	0.83
07/10	08:33	702-289-3033	ELY NV	0.5	10/kh	0.09	07/15	10:09	702-887-3464	CARSONCITY NV	1.1	10/kh	0.22
07/10	09:43	702-555-1212	DIR ASST NV	0.4	10/kh	0.55	07/15	10:12	702-887-5545	CARSONCITY NV	4.9	10/kh	0.96
07/10	10:02	702-555-1212	DIR ASST NV	0.4	10/kh	0.55	07/15	10:13	412-836-5737	GREENSBURG PA	0.9	10/kh	0.22
07/10	10:03	702-738-5217	ELKO NV	0.3	10/kh	0.06	07/15	10:23	702-687-6532	CARSONCITY NV	4.9	10/kh	0.96
07/10	10:19	702-289-8800	ELY NV	2.0	10/kh	0.37	07/16	10:30	405-436-1234	ADA OK	0.2	10/kh	0.05
07/10	13:58	702-738-5217	ELKO NV	2.8	10/kh	0.55	07/16	10:33	405-436-7409	ADA OK	0.8	10/kh	0.20
07/11	08:25	702-289-3033	ELY NV	0.3	10/kh	0.06	07/16	10:49	405-436-7409	ADA OK	1.8	10/kh	0.44
07/11	13:13	702-887-3285	CARSONCITY NV	3.7	10/kh	0.73	07/16	15:45	714-335-3847	REDLANDS CA	1.4	10/kh	0.30
07/11	13:45	702-687-6715	CARSONCITY NV	3.3	10/kh	0.65	07/16	15:46	804-295-2444	CHARLOTSVL VA	4.7	10/kh	1.16
07/11	16:09	702-887-3285	CARSONCITY NV	1.1	10/kh	0.22	07/17	09:44	915-595-0993	EL PASO TX	1.7	10/kh	0.40
07/11	10:29	412-836-5737	GREENSBURG PA	1.8	10/kh	0.44	07/17	09:56	714-965-2173	HUNTITNBCH CA	0.4	10/kh	0.09
07/11	10:53	412-836-5737	GREENSBURG PA	9.7	10/kh	2.40	07/17	09:57	714-642-3578	NEWPORTBCH CA	1.0	10/kh	0.21
07/11	13:45	805-654-2292	VENTURA E CA	0.9	10/kh	0.19	07/17	10:48	714-642-3578	NEWPORTBCH CA	24.9	10/kh	5.35
07/12	15:03	702-887-3285	CARSONCITY NV	4.9	10/kh	0.96	07/17	13:24	406-821-3738	DARBY MT	5.6	10/kh	1.33
07/12	16:29	213-933-5100	LOSANGELES CA	0.8	10/kh	0.17	07/18	08:12	305-444-1400	MIAMI FL	7.6	10/kh	1.88
07/12	16:31	213-933-5100	LOSANGELES CA	0.4	1	0.09	07/19	08:53	303-388-6484	DENVER CO	10.4	10/kh	2.47
07/12	16:33	213-933-5100	LOSANGELES CA	0.4	1	0.09	07/19	10:35	216-663-9407	MAPLE HTS OH	8.5	10/kh	2.10
07/12	16:38	213-933-5100	LOSANGELES CA	1.1	1	0.24	07/19	15:23	714-965-2173	HUNTITNBCH CA	0.4	10/kh	0.09
07/12	16:40	213-933-5100	LOSANGELES CA	0.1	1	0.02	07/20	12:24	719-598-1331	COLORADO SPG CO	2.9	10/kh	0.39

1260

MCI

Prism Plus

000120002

CEN/TELCENTRAL TELEPHONE COMPANY
NEVADASECTION 2 OF 3 PAGE 1 OF 1
BILLIN D. 3 AUG 08, 1991
ACCOUNT NUMBER 024 0439904 7
TELEPHONE NUMBER 702 382-1844

SUMMARY OF SERVICE FOR AT&T

	AMOUNT
LONG DISTANCE SERVICE FOR AT&T	79.62
TAX: U.S. 2.39	2.39
TOTAL SERVICE FOR AT&T	82.01

LONG DISTANCE DETAIL FOR AT&T

ITEM	DATE	TIME	MIN	TYPE	PLACE	AREA-NUMBER	AMOUNT
BILLED TO 382-1844							
1	JUN 13	350P	6	COD	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1123	Fain 3.03
2	JUN 15	1113A	23	CON	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1115	H. Sanborn 4.09
3	JUN 15	201P	5	CON	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1137	Fain 2.29
4	JUN 24	441P	23	CON	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1122	Fain 6.23
5	JUN 24	507P	16	COE	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1114	Sanborn 4.21
6	JUN 26	241P	2	COD	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1122	Oms Little 2.23
7	JUN 26	244P	16	COD	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1122	Fain 5.03
8	JUN 26	402P	1	COD	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1122	Fain 2.03
9	JUN 27	1056A	9	CPD	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1123	Fain 5.38
10	JUL 03	422P	30	COD	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1114	Sanborn 7.83
11	JUL 05	1107A	24	COD	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1122	de Fain 6.63
12	JUL 05	1203P	7	COD	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1127	Sanborn 3.23
13	JUL 11	441P	1	COD	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1122	Fain 2.03
14	JUL 15	219P	1	COD	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1122	Fain 2.03
15	JUL 18	411P	16	COD	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1123	Fain 5.03
16	JUL 23	341P	4	COD	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1115	Sanborn 2.63
17	JUL 23	434P	26	COD	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1115	Sanborn 7.03
18	JUL 24	227P	16	COD	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1135	moore 5.03
19	JUL 24	358P	9	COD	LAS VEGAS	NV 702 382-1844	
				FROM	ELY	NV 702 289-1114	Sanborn 3.63

TOTAL ITEMIZED CALLS FOR AT&T

79.62

TYPE:	B-CALLING CARD	A-DIRECT DIAL	D-DAY
	C-COLLECT	O-OPERATOR	E-EVENING
	T-THIRD NUMBER	P-PERSON TO PERSON	N-NIGHT/WEEKEND
	S-SPECIAL COLLECT	I-OPERATOR IDENTIFY	M-MULTIPLE

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
478-3011

April 24, 1992

APR 30

Kevin M. Kelly, Esquire
302 E. Carson
Suite 600
Las Vegas, NV 89101

Re: 91-432 - Moore, Randolph
v. Nevada

Dear Mr. Kelly:

A certified copy of the mandate of this Court in the above-entitled case was mailed today to the Clerk of the Supreme Court of Nevada.

The petitioner is given recovery for costs in this Court as follows:

Clerk's costs: \$300.00

This amount may be collected through the Supreme Court of Nevada, or from opposing counsel or party.

Very truly yours,

WILLIAM K. SUTER, Clerk

By:



Theresa A. Haslip
Assistant Clerk

Enc:

cc: Frankie Sue Del Papa, Esquire
James Tuftland, Esquire

(with copy of mandate to each)

1st Writ

110 P O METER 25.30

TOTAL: \$ 25.30
CHECK TENDERED \$ 25.30

*** U.S. POSTAL SERVICE ***
DOWNTOWN
301 E. STEWART

CLERK #03
DATE: 07/29/91 04:12:01 PM

110 P O METER 25.30

TOTAL: \$ 25.30
CHECK TENDERED \$ 25.30

*** THANK YOU ***

more

Call Detail Report - Dial-T Access

SCHUECK & DERKE
302 E. CARSON AVENUE, #918
LAS VEGAS NV 89101

BILLING PERIOD 08/08/91 THROUGH 09/07/91

INVOICE NUMBER 79928691
INVOICE DATE 09/08/91
PAGE NUMBER 3

CUSTOMER NUMBER 7V182070

DATE	TIME	NUMBER CALLED	PLACE CALLED	MIN- UTES	R A K T E Y	PRE- DISCOUNT AMOUNT	DATE	TIME	NUMBER CALLED	PLACE CALLED	MIN- UTES	R A K T E Y	PRE- DISCOUNT AMOUNT
08/08	09:00	713-485-2473	PEARLAND TX	1.8	filler	0.44	08/29	15:05	213-826-8300	W ANGELES CA	1.5	filler	0.32
08/09	07:16	719-598-1331	COLORADO SPG CO	5.7	filler	0.76	08/29	17:36	714-951-9579	SADLECKVLY CA	2.5	filler	0.38
08/11	15:46	314-732-4626	BOURBON MO	11.4	filler	1.58	08/30	11:05	702-289-8800	ELY NV	0.7	filler	0.0
08/12	08:07	314-732-4451	BOURBON MO	2.0	filler	0.49	08/30	11:10	702-289-8800	ELY NV	1.9	filler	0.3
08/12	08:16	412-836-5735	GREENSBURG PA	1.4	filler	0.35	08/30	11:39	216-781-5245	CLEVELAND OH	3.5	filler	0.87
08/12	09:27	318-627-5157	COLFAX LA	2.8	filler	0.69	09/03	07:40	212-576-6637	NEW YORK NY	10.9	filler	1.51
08/12	09:36	318-627-5157	COLFAX LA	3.4	filler	0.84	09/03	11:00	206-253-2377	VANCOUVER WA	4.7	filler	1.12
08/12	10:18	414-546-1088	MILWAUKEE WI	2.6	filler	0.64	09/03	11:06	206-254-9512	VANCOUVER WA	2.9	filler	0.69
08/15	09:29	512-525-7697	SANANTONIO TX	2.3	filler	0.57	09/03	11:07	318-627-5157	COLFAX LA	0.6	filler	0.15
08/15	09:31	415-944-9015	WALNUT CRK CA	6.1	filler	1.40	09/03	14:38	213-826-8300	W ANGELES CA	3.0	filler	0.64
08/15	09:38	512-525-7414	SANANTONIO TX	3.1	filler	0.77	09/03	15:02	206-896-1755	VANCOUVER WA	11.7	filler	2.78
08/16	07:48	719-598-1331	COLORADO SPG CO	2.7	filler	0.36	09/03	15:14	206-253-2377	VANCOUVER WA	9.4	filler	2.23
08/16	09:39	202-479-3011	WASHINGTON DC	1.2	filler	0.30	09/03	15:38	818-609-8711	RESEDA CA	2.1	filler	0.45
08/16	10:06	602-437-0207	PHOENIX AZ	20.3	filler	4.36	09/03	16:07	206-896-1755	VANCOUVER WA	5.7	filler	1.35
08/16	15:26	213-659-4935	BEVERLYHLS CA	5.6	filler	1.20	09/04	08:18	412-836-5737	GREENSBURG PA	4.2	filler	1.04
08/19	09:02	206-694-1672	VANCOUVER WA	0.1	filler	0.02	09/04	13:04	702-687-4486	CARSONCITY NV	2.5	filler	0.49
08/19	09:07	503-644-2840	BEAVERTON OR	0.3	filler	0.07	09/06	11:51	216-781-5245	CLEVELAND OH	2.2	filler	0.54
08/19	09:07	702-555-1212	DIR ASST NV	0.2	filler	0.55	09/07	12:26	619-292-0543	LINDAVISTA CA	0.3	filler	0.04
08/19	09:08	206-555-1212	DIR ASST WA	0.5	filler	0.58	09/07	12:36	619-298-5171	SAN DIEGO CA	5.9	filler	0.69
08/19	09:03	206-694-1672	VANCOUVER WA	0.9	filler	0.21							
08/19	10:35	206-475-0337	TACOMA WA	0.7	filler	0.17							
08/19	12:08	206-475-0337	TACOMA WA	9.7	filler	2.31							
08/19	12:42	206-693-5883	VANCOUVER WA	0.6	filler	0.14							
08/19	13:11	619-446-7160	RIDGECREST CA	4.7	filler	1.01							
08/19	14:15	916-485-7206	SACRAMENTO CA	14.0	filler	3.22							
08/19	14:31	916-485-7206	SACRAMENTO CA	24.6	filler	5.66							
08/19	16:34	213-489-0637	LOSANGELES CA	3.7	filler	0.79							
08/20	10:19	206-694-1672	VANCOUVER WA	5.1	filler	1.21							
08/20	13:19	503-884-0448	KLAMATHFLS OR	3.6	filler	0.86							
08/26	08:41	517-773-5422	MTPLEASANT MI	1.1	filler	0.27							

TOTALS

CALLS:

48

MINUTES:

218.4

AMOUNT: \$

47.58

1264

Maie
Unit - corrected
posted 9-5-91

TOTAL: \$ 38.48
110 P O METER 5.80
110 P O METER 32.60

TOTAL: \$ 38.40
CHECK TENDERED \$ 38.40

*** U.S. POSTAL SERVICE ***
DOWNTOWN
301 E. STEWART

CLERK #03
DATE: 09/04/91 05:00:32 PM

110 P O METER 5.80
110 P O METER 32.60

TOTAL: \$ 38.40
CHECK TENDERED \$ 38.40

*** THANK YOU ***

1265

COPY ORDER

PDO
Printing

3820 S. Valley View
(next to Club Wholesale)
Las Vegas, Nevada 89103
876-3235

3901 West Charleston
at Valley View
Las Vegas, Nevada 89102
878-1701

☐ RUNG IN REGISTER

☐ INVOICED # _____

M T W T H F

NEVADA'S LARGEST COMMERCIAL QUICK PRINTER

C/W/R DELIVER TIME: _____

AMOUNTS

S O L D T O	NAME <u>Whit & Link</u>		PASTE-UP						
	ADDRESS <u>302 E Carson #918</u>		PERFECT BINDING		80.00				
	CITY <u>Las Vegas Nev 89101</u>		SPIRAL BINDING						
	PHONE <u>382-1844</u>		VELO BINDING						
	ORDERED BY <u>Kathleen</u>		COVERS						
	PURCHASE ORDER NO. _____		STAPLE / STITCH						
	DATE IN <u>8/30/91</u>		DATE DUE <u>9/15/91</u>		BY <u>Link</u>				
DATE IN		DATE DUE		BY					
QTY.	DESCRIPTION	ORIG.	SIDES	SIZE 11 14 17	UP /	TOTAL	STOCK / COLOR	WGT.	
40	Books -				1		White / Bond	349.60	
	More U. Nev				1				
					1				
					1				
					1				
					1				
					1				
					1				
					1				
					1				
SPECIAL INSTRUCTIONS							SUB-TOTAL		349.60
							SALES TAX		21.45
							TOTAL		371.45
							DEPOSIT		
							BALANCE DUE		371.45
							PLEASE PAY BY THIS INVOICE		

AGREE TO PAY C.O.D.:

RECEIVED BY:

Kathleen Casillo

☐ C.O.D.

☒ ON ACCOUNT

PLEASE INITIAL 1266

WEEK 8 DERKE
202 E. CARSON AVENUE, #918
LAS VEGAS NV 89101

BILLING PERIOD 04/08/92 THROUGH 05/07/92

INVOICE NUMBER 79474012
INVOICE DATE 05/08/92
PAGE NUMBER 4

CUSTOMER NUMBER 7V182070

MAY 18

1267

DATE	TIME	NUMMR CALLED	PLACE CALLED	MIN- UTES	R A K T E Y	PRE- DISCOUNT AMOUNT	DATE	TIME	NUMBER CALLED	PLACE CALLED	MIN- UTES	R A K T E Y	PRE- DISCOUNT AMOUNT	
04/08 09:45		714-633-3214	ORANGE	CA	f	0.3	1 Morrell	0.07	04/16 09:22	713-266-9876	LANGHAMCRK TX	2.3	1 Hummer	0.57
04/08 09:49		714-633-3214	ORANGE	CA	f	0.2	1 ✓	0.04	04/16 14:37	702-555-1212	DIR ASST NV	0.5	1 Compton	0.55
04/08 09:51		714-633-3214	ORANGE	CA	f	0.2	1 ✓	0.04	04/16 14:38	702-482-8116	TONOPAH NV	5.8	1 Compton	1.07
04/08 09:53		714-633-3214	ORANGE	CA	f	0.1	1 ✓	0.02	04/16 14:47	801-676-2824	PANGUITCH UT	0.3	1 Aladdin	0.07
04/08 09:56		714-633-3214	ORANGE	CA	f	0.4	1 ✓	0.09	04/16 15:37	503-230-8870	PORTLAND OR	1.0	1 Scott	0.24
04/08 10:00		717-633-3214	HANOVER	PA	f	2.0	1 ✓	0.50	04/17 11:23	717-633-3214	HANOVER PA	0.8	1 Morrell	0.20
04/08 16:04		714-640-4931	NEWPORTBCH	CA	f	0.9	1 Morrell	0.20	04/17 12:03	713-557-2455	BEVERLYHLS CA	0.5	1 Board	0.11
04/09 09:30		702-322-1170	RENO	NV		2.0	1 Scott/Aladdin	0.39	04/21 09:45	805-682-8393	SANBARBARA CA	0.8	1 Morrell	0.17
04/10 09:05		702-555-1212	DIR ASST	NV		0.8	1 Compton	0.55	04/21 10:26	507-451-6611	OWATONNA MN	0.8	1 Aladdin	0.20
04/10 09:06		702-482-8174	TONOPAH	NV		8.7	1 Compton	1.61	04/21 10:27	507-373-0608	ALBERT LEA MN	0.2	1 Aladdin	0.05
04/10 14:57		615-555-1212	DIR ASST	TN		0.6	1 Nixon	0.64	04/21 12:23	615-526-4368	COOKEVILLE TN	3.1	1 Nixon	0.77
04/10 14:58		615-526-7108	COOKEVILLE	TN		1.1	1 Nixon	0.27	04/21 13:39	507-451-6611	OWATONNA MN	0.7	1 Aladdin	0.17
04/13 09:29		615-555-1212	DIR ASST	TN		1.3	1 Nixon	0.64	04/21 15:43	602-258-9179	PHOENIX AZ	4.2	1 Nixon	0.91
04/13 10:30		213-688-7564	LOSANGELES	CA	f	2.7	1 Morrell	0.59	04/21 16:08	507-451-6611	OWATONNA MN	0.3	1 Aladdin	0.07
04/13 11:02		415-266-7368	SSNFRNCSCO	CA	f	0.1	1 Morrell	0.02	04/21 16:11	213-557-2455	BEVERLYHLS CA	4.3	1 Board	0.93
04/13 11:05		415-266-7368	SSNFRNCSCO	CA	f	0.1	1 ✓	0.02	04/21 16:11	507-451-6646	OWATONNA MN	0.8	1 Aladdin	0.20
04/13 11:10		415-296-7368	SAN FRAN	CA	f	3.3	1 ✓	0.77	04/22 11:34	507-451-6611	OWATONNA MN	0.6	1 Aladdin	0.12
04/13 11:25		805-682-8393	SANBARBARA	CA	f	2.5	1 Morrell	0.54	04/22 11:35	507-373-0608	ALBERT LEA MN	0.4	1 Aladdin	0.10
04/13 11:30		615-526-7101	COOKEVILLE	TN		1.0	1 Nixon	0.25	04/22 15:17	415-677-6511	SAN FRAN CA	1.4	1 Nixon	0.33
04/13 15:25		504-596-2800	NEWORLEANS	LA	f	0.6	1 Aladdin	0.15	04/22 16:00	801-625-7115	OGDEN UT	1.3	1 Nixon	0.30
04/13 15:58		208-693-5883	VANCOUVER	WA		2.0	1 Oldham	0.48	04/23 09:29	702-887-3472	CARSONCITY NV	1.6	1 Board	0.31
04/13 17:02		5262260919	MEXICO		f	1.0	1 Lew	1.10	04/23 09:31	702-887-9373	CARSONCITY NV	5.7	1 Board	1.12
04/13 17:07		5262260919	MEXICO		f	2.0	1 Lew	2.07	04/23 15:48	702-267-2203	GARDNER NV	1.6	1 Board	0.31
04/14 08:43		201-967-9400	ORADELL	NJ		0.7	1 Aladdin	0.17	04/23 15:51	213-557-2455	BEVERLYHLS CA	5.6	1 Board	1.21
04/14 09:24		201-967-9400	ORADELL	NJ		0.8	1 Aladdin	0.20	04/23 16:11	510-829-7463	DBLNSNRMON CA	3.8	1 Morrell	0.88
04/15 12:19		201-967-9400	ORADELL	NJ		2.4	1 Aladdin	0.60	04/23 16:29	510-829-7463	DBLNSNRMON CA	1.3	1 Morrell	0.30
04/15 14:42		208-693-5883	VANCOUVER	WA		7.7	1 Oldham	1.85	04/23 16:58	415-677-6515	SAN FRAN CA	1.7	1 Morrell	0.39
04/15 15:50		503-230-8870	PORTLAND	OR		0.7	1 Scott	0.17	04/24 09:24	702-882-2157	CARSONCITY NV	3.6	1 Board	0.71
04/16 09:15		303-337-1414	DENVERSLVN	CO		4.7	1 Camp	1.13	04/24 10:27	303-721-3222	LITTLETON CO	0.8	1 Morrell	0.19
04/16 09:17		702-687-5180	CARSONCITY	NV		1.0	1 Sterling	0.20	04/24 10:37	303-721-3222	LITTLETON CO	3.5	1 ✓	0.84

MCI

Prism Plus

000098215

PLEASE RETAIN THIS PORTION OF
THE INVOICE FOR YOUR RECORDS

ORIGINAL INVOICE

PAGE 1 OF 1

INVOICE DATE	CUSTOMER NUMBER	TOTAL AIRBILLS
5/29/92	54869102	3

REFER TO THIS NUMBER
WHEN REMITTING ----->

INVOICE NUMBER	PAYMENT DUE DATE
04407616	6/13/92

BILL TO: SCHIECK & DERKE
STE 918
302 E CARSON
LAS VEGAS

1115

SEND OTHER CORRESPONDENCE TO
P.O. BOX 662, SEATTLE, WA 98111
PHONE 1-800-722-0881 TELX 32-9543
IN WASHINGTON STATE 1-800-635-6686

INVOICE TOTAL
\$40.96

NV 89101

pd
6/8/92 ck. # 3744

AIRBILL NUMBER ORIGIN / DEST SHIP DATE YOU OWE AS DESCRIPTION	CUSTOMER NUMBER SENDER SENT BY REFERENCE NUMBER	CUSTOMER NUMBER RECEIVER ATTENTION	REC AT D PCS WEIGHT CHG WGT SCALE #	CHG TYPE	CHARGES	TOTAL AMOUNT
890215410 LAS / RHO 5/14/92 SENDER OPENING BRIEF	54869102 1115 SCHIECK & DERKE STE 918 302 E CARSON LAS VEGAS NV 89101 D SCHIECK 302-1844 PELLEGRINIOPBRF	SUPREME COURT OF NV CAPITOL COMPLEX CARSON CITY NV 89710 CLRKS OFC	SD 1 3 425	EXP	15.68	\$15.68
890215421 LAS / RHO 5/19/92 SENDER	54869102 1115 SCHIECK & DERKE STE 918 302 E CARSON LAS VEGAS NV 89101 MOORE EXT OP BRF NONE	SUPREME CRT CAPITOL COMPLEX CARSON CITY NV 89710 CLERK	SD 1 LX 425	EXP	8.50	\$8.50
890215432 LAS / RHO 5/20/92 SENDER OPENING BRIEF	54869102 1115 SCHIECK & DERKE STE 918 302 E CARSON LAS VEGAS NV 89101 D SCHIECK ESQ MOORE OP BRIF	SUPREME COURT CAPITOL COMPLEX CARSON CITY NV 89710 SUPREME COURT CLERK	SD 1 3 4R 425	EXP	16.78	\$16.78
TOTAL						\$40.96

CHG TYPE: EXP-FREIGHT CHARGE, DEL-DELIVERY, PICK-UP, INS-INSURANCE, DEC-DECLARED VALUE, COD-COD FEE, SAT-SATURDAY DELIVERY
NET GGL: D-DIMENSIONAL WEIGHT, P-POLYMER, L-LETTER
THANK YOU FOR SHIPPING WITH AIRBORNE EXPRESS

**AIRBORNE
EXPRESS**

1269

ORIGINAL INVOICE

PAGE 1 OF 1

INVOICE DATE	CUSTOMER NUMBER	TOTAL AIRBILLS
7/24/92	54869102	2

REFER TO THIS NUMBER
WHEN REMITTING

INVOICE NUMBER	PAYMENT DUE DATE
R2691743	8/08/92

BILL TO: SCHIECK & DERKE N15
STE 918
302 E CARSON
LAS VEGAS NV 89101

SEND OTHER CORRESPONDENCE TO
P.O. BOX 662, SEATTLE, WA 98111
PHONE 1-800-727-0001 TELX 32-9543
IN WASHINGTON STATE 1-800-635-6606

INVOICE TOTAL
\$30.53

AIRBILL NUMBER ORIGIN / DEST SHIP DATE YOU ONE AS DESCRIPTION	CUSTOMER NUMBER SENDER SENT BY REFERENCE NUMBER	CUSTOMER NUMBER RECEIVER ATTENTION	REC AT # PCS WEIGHT CHG WGT SCALE #	CHG TYPE	CHARGES	TOTAL AMOUNT
890215502 LAS / RND 7/14/92 SENDER REPLY BRIEF <i>Replied</i>	54869102 N15 SCHIECK & DERKE STE 918 302 E CARSON LAS VEGAS NV 89101 D SCHIECK 382-1844 RPIBRF	SUPREME COURT CLERK CAPITOL COMPLEX CARSON CITY NV 89710 CLERK	SD 1 5 4R 425	EXP	16.78	\$16.78
890215513 LAS / RND 7/17/92 SENDER REPLY BRIEF	54869102 N15 SCHIECK & DERKE STE 918 302 E CARSON LAS VEGAS NV 89101 D SCHEICK 382-1844 MOORE RPLYBRF	SUPREME COURT CAPITOL COMPLEX CARSON CITY NV 89710 CLERK	SD 1 3 2R 425	EXP	13.75	\$13.75
TOTAL						\$30.53

*PA 8/12/92
On # 3890*

29

Posted

CIG TYPE: EXP-FREIGHT CHARGE, DLV-DELIVERY, PKU-PICKUP, INS-INSURANCE, DCV-DECLARED VALUE, CDF-COD FEE, SAT-SATURDAY DELIVERY
NCT CODE: 0-DIMENSIONAL WEIGHT, R-REWEIGHTED, LN-LETTER
SCAC - AIRB
FED T.D. NO. 91-0037469

THANK YOU FOR SHIPPING WITH AIRBORNE EXPRESS

7/25/92 0007042 0015361
000001 0010000

**AIRBORNE
EXPRESS.**

1270

David

STREET ADDRESS

CITY & STATE ZIP CODE

CLERK P.S. NO. IN PARTY 1 RATE 36.00 DATE 1-26-73

37249

RECORD

DATE

No. of Persons

1-800-4-MEX
1-800-235-3750
1-800-535-4404

BALANCE FORWARD →		
1		1
2		2
3		3
4		4
5		5
6		6
7		7
8		8
9		9
10		10
11		11
12		12
13		13
14		14
15		15
16		16
17		17
18		18
19		19
20		20
21		21
22		22
23		23
24		24
25		25
26		26
27		27

8000120 1.00
 ROOM CHRG 30.00
 TAX 7.00
 Chg 42.00
 NEW BAL 42.00
 PAY 1027 12-26-73
 8000120 1.00
 Chg 42.00
 NEW BAL 84.00
 PAY 1027 12-26-73

2297934

GUEST RECEIPT

Fietside Inn - Dinner

DATE 1/26/73 AMOUNT 12.00

87410

Q 141 Check No. 800 42-00

THIS PROPERTY IS PRIVATELY OWNED AND THE MANAGEMENT RESERVES THE RIGHT TO REFUSE SERVICES TO ANYONE, AND WILL NOT BE RESPONSIBLE FOR ACCIDENTS OR INJURY TO GUESTS. THE MANAGEMENT PROVIDES A SAFE IN THE OFFICE AND CAN NOT BE RESPONSIBLE FOR VALUABLES UNLESS THE GUEST CHECKS THEM AT THE OFFICE.

Thank You

Trailhouse Motel
 8TH & HIGH STREET
 ELY, NEVADA 89301
 "YOUR KEY TO COMFORT"

THIS CHECK IS DELIVERED FOR PAYMENT ON THE FOLLOWING ACCOUNTS		SCHIECK & DERKE 11-88 A PROFESSIONAL CORPORATION ATTORNEYS AT LAW 302 E. CARSON AVE., STE. 918 382-1844 LAS VEGAS, NV 89101		4221	
NAME	ORAL ARGUMENT			94-15/1212	
	TARPE				
TOTAL		PAY TO THE ORDER OF		Feb 2 1993	
DISCOUNT		Supreme Court Clerk		\$ 20.00	
AMOUNT OF CHECK		Twenty AND 00/100		DOLLARS	

SECURITY PACIFIC BANK
LV Downtown Office #012
P.O. Box 18415, Las Vegas, NV 89114-8415

Shirley W. Derke

⑈004221⑈ ⑆121200158⑆121165389⑈

SCHIECK & DERKE
302 E. CARSON AVE., SUITE 918
LAS VEGAS, NV 89101
(702) 382-1844

1 DAVID M. SCHIECK, ESQ.
2 Nevada Bar No. 0824
3 302 E. Carson, #918
4 Las Vegas, NV 89101
5 702-382-1844

6 Attorneys for Defendant

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 * * *

10 THE STATE OF NEVADA,

11 Plaintiff,

12 vs.

13 RANDOLPH MOORE, et al.,

14 Defendant.

CASE NO. C69269
DEPT. NO. XIV
DOCKET NO.

DATE: 8-18-93
TIME: 9:00 a.m.

15 RECEIPT OF COPY

16 Receipt of a copy of the Motion for Fees in Excess of
17 Statutory Allowance is hereby acknowledged this 3rd of August,
18 1993.

19 DISTRICT ATTORNEYS OFFICE

20
21 BY *C. Nazzari*
22 200 S. THIRD STREET
23 LAS VEGAS, NV 89155
24
25
26
27
28

1

CEOS

273

14
AUG 3 4 08 PM '93
CLERK

David M. Schleck
302 E. Carson Ave., Ste. 918
Las Vegas, NV 89101
(702) 382-1844

1 DAVID M. SCHIECK, ESQ.
2 Nevada Bar No. 0824
3 302 E. Carson, #918
4 Las Vegas, NV 89101
5 702-382-1844

6 Attorneys for Defendant

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 * * *

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 vs.)

13 RANDOLPH MOORE, et al.,)

14 Defendant.)

CASE NO. C69269
DEPT. NO. XIV
DOCKET NO.

DATE: 8-18-93
TIME: 9:00 A.M.

15 RECEIPT OF COPY

16 Receipt of a copy of the Motion for Fees in Excess of
17 Statutory Allowance is hereby acknowledged this 5th day of
18 August, 1993.

19 DISTRICT ATTORNEYS OFFICE
20 CIVIL DIVISION

21 BY Chuck Paine
22 225 E. Bridger, 8th Floor
23 Las Vegas, NV 89155
24
25
26
27
28

FILED

AUG 5 1 53 PM '93

Lawrence
CLERK

David M. Schleck
302 E. Carson Ave., Ste. 918
Las Vegas, NV 89101
(702) 382-1844

DAVID M. SCHIECK, ESQ.
NEVADA BAR NO. 0824
302 East Carson, #918
Las Vegas, NV 89101
702-382-1844

Attorney for MOORE

FILED

AUG 25 1 54 PM '93

DISTRICT COURT
CLARK COUNTY, NEVADA

CLERK

THE STATE OF NEVADA,

Plaintiff,

vs.

RANDOLPH MOORE,

Defendant.

CASE NO. C69269
DEPT. NO. XIV
DOCKET NO.

DATE: 8-18-93
TIME: 9:00 AM

ORDER GRANTING MOTION FOR FEES
IN EXCESS OF STATUTORY ALLOWANCE

The above entitled matter having come on for hearing on the 18th day of August, 1993, DAVID M. SCHIECK, ESQ. appearing, the Court being fully advised in the premises, and good cause appearing

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion for Excess Fees in the amount of \$5,250.55 be granted.

DATED this 23rd day of August, 1993.

Donald L. Sweeney
DISTRICT COURT JUDGE

Submitted by:

David M. Schleck
DAVID M. SCHIECK, ESQ.

1275

6822

R

29

FILED

JAN 24 8 22 AM '94

Loretta Luman
CLERK

1 JOHNNY RAY LUCKETT
2 P.O. BOX 1989-21832
3 ELY, NEAVDA 89301

4 Defendant In Pro Se

5
6 DISTRICT COURT
7 CLARK COUNTY, NEVDA

8 * * * * *

9 THE STATE OF NEVADA,

Case No. C69269

10 Plaintiff,

Dept. No. ~~XIV~~ *24*

11 vs.

Docket No. _____

12 JOHNNY RAY LUCKETT,

13 Defendant. /

14 MOTION FOR APPOINTMENT OF COUNSEL ON APPEAL

15 TIME OF HEARING: 2-7-94
16 DATE OF HEARING: _____

17 COMES NOW, JOHNNY RAY LUCKETT, acting in pro se, to move this
18 Honorable Court for an order granting defendant's motion for the
19 appointment of counsel on appeal in the above-entitled action.
20 This motion is made and based upon the provision of Nevada Rules
21 of Appellate Procedure, and the fact that the defendant has been
22 acting in pro se. Moreover, do to the nature of the conviction
23 this Court should appointm counsel to represent this defendant on
24 direct appeal.

25 Dated this 11th day of January, 1994.

26 Respectfully submitted by,

27 *Johnny Ray Lockett*
28 _____

JOHNNY RAY LUCKETT



COUNTY CLERK

JAN 19 1994

RECEIVED

CE11

1317

RS

—FILED IN OPEN COURT—

DISTRICT COURT

JAN 21 1994

CLARK COUNTY, NEVADA

LORETTA BOWMAN CLARK

By

Lois Bryan

Deputy

THE STATE OF NEVADA,

Plaintiff,

VS.

RANDOLPH MOORE, et al.,

Defendant.

CASE NO. C 69269
DEPT. NO. XIV
DOCKET NO. T

AFFIDAVIT

DONALD M. MOSLEY, being first duly sworn, deposes and says:

That your affiant harbors no prejudice or bias against the named defendants nor is disposed to treat them any differently then any other defendant similarly situated.

That your affiant expressed on or about June 24, 1991, at page 8 of the transcript beginning at line 8, a frustration and general disgust with the seemingly never ending appellant process engaged in in such cases.

That the dissatisfaction with the status of the current appellant process in capitol cases goes equally to all convicted individuals and in no way would affect the individuals involved.

That your affiant has no unique or personal interest in the case at bar beyond that of any judicial officer reviewing any such case of its kind.

Donald M. Mosley
DONALD M. MOSLEY

SUBSCRIBED and SWORN to before
me this 20th day of January, 1994.

Karen Blanton
NOTARY PUBLIC



1316



30

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle		Dept. 12
Continuance			
Minutes			
Parties	Event 02/17/1994 at 09:00 AM	DEFENDANT'S PRO PER MOTION FOR	
Def. Detail	Heard By Guy, III, Addelliar D	APPT OF COUNSEL ON APPEAL	
Next Co-Def.	Officers TINA HURD, Court Clerk	for A Lockett	
Charges	PATRICIA LOFFT, Reporter/Recorder		
Sentencing	Parties 0000 - State of Nevada	Yes	
Bail Bond	S1		
Judgments	004610 Gardner, Gerald J.	Yes	
	0001 - Flanagan, Dale E	No	
	D1		
	0002 - D Moore, Randolph	No	
	0003 - D McDowell, Roy	No	
	0004 - D Lockett, Johnny R	No	
	004349 Oram, Christopher R.	Yes	
	0005 - D Walsh, Michael B	No	
	0006 - D Akers, Thomas	No	
District Case	Mr. Oram advised he is appearing for Ms. Melia who will confirm as counsel.		
Party Search	State advised they oppose the appointment of counsel as they believe the		
Corp. Search	time has passed for filing an appeal; Deft. was convicted 9 years ago.		
Atty. Search	COURT ORDERED, MATTER SET FOR STATUS CHECK IN 30 DAYS; MS. MELIA TO		
Bar# Search	INVESTIGATE AND SEE WHAT SHE CAN DO.		
ID Search	CUSTODY (NSP)		
Calendar Day	3-17-94 9:00 A.M. STATUS CHECK		
Holidays	Due to time restraints and individual case loads, the above case record may not reflect all		
Help	information to date.		
Comments &			
Feedback			
Legal Notice			

Top Of Page

Generated on 5/11/2004 at 9:43:47 AM

31 4 32

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Case#		
Case Activity	Plaintiff State of Nevada	Attorney Roger, David J.	
Calendar	Defendant Flanagan, Dale E	Attorney Potter, III, Cal J.	
Continuance	Judge Leavitt, Michelle	Dept. 12	
Minutes			
Parties			
Def. Detail	Event 02/03/1994 at 09:00 AM	ALL PENDING MOTIONS FOR 2-3-94	
Next Co-Def.	Heard By Guy, III, Addelmar D		
Charges	Officers TINA HURD, Court Clerk		
Sentencing	PATRICIA LOFFT, Reporter/Recorder		
Bail Bond	Parties 0000 -	State of Nevada	Yes
Judgments	S1		
District Case	000862	Harmon, Melvyn T.	Yes
Party Search	0001 -	Flanagan, Dale E	No
Corp. Search	D1		
Atty. Search	PUBDEF	Public Defender	Yes
Bar# Search	004065	Blaskey, Rebecca A.	Yes
ID Search	0002 - D	Moore, Randolph	No
Calendar Day	000824	Schieck, David M.	Yes
Holidays	000460	Wolfbrandt, William L.	Yes
Help	0003 - D	McDowell, Roy	No
Comments &	0004 - D	Luckett, Johnny R	No
Feedback	0005 - D	Walsh, Michael B	No
Legal Notice	0006 - D	Akers, Thomas	No

Court advised a penalty hearing has been previously set in April and this Court is not ready to hear it. Court advised it has received no order for a three-judge panel. State advised the hearing will take approximately one week. COURT ORDERED, MATTER SET FOR PENALTY HEARING ON OCTOBER 3 AND WILL HAVE A STATUS CHECK ON JUNE 9. APRIL 4 AND MARCH 30 DATES ARE VACATED. Conference at the bench.

CUSTODY (BOTH) .

6-9-94 9:00 A.M. STATUS CHECK

10-3-94 10:00 A.M. PENALTY HEARING

Due to time restraints and individual case loads, the above case record may not reflect all information to date.

Top Of Page

Generated on 5/11/2004 at 9:42:52 AM

District Case Inquiry - Minutes

34

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle	Dept.	12
Continuance			
Minutes			
Parties	Event 09/22/1994 at 09:00 AM	FURTHER PROCEEDINGS	
Def. Detail	Heard By Guy, III, Addelair D	for Δ Luckett	
Next Co-Def.	Officers TINA HURD, Court Clerk		
Charges	PATRICIA LOFFT, Reporter/Recorder		
Sentencing	Parties 0000 - State of Nevada	Yes	
Bail Bond	S1		
Judgments	004031 Porterfield Jr, Owen W.	Yes	
	0001 - Flanagan, Dale E	No	
	D1		
	0002 - D Moore, Randolph	No	
	0003 - D McDowell, Roy	No	
	0004 - D Luckett, Johnny R	Yes	
	004335 Melia, Laura L.	Yes	
	0005 - D Walsh, Michael B	No	
	0006 - D Akers, Thomas	No	
District Case			
Party Search			
Corp. Search			
Atty. Search			
Bar# Search			
ID Search			
Calendar Day			
Holidays			
Help			
Comments &			
Feedback			
Legal Notice			

Ms. Melia advised deft. LUCKETT is to be resentenced today due to a clerical error, the Judgment of Conviction being in error and the Clerk's minutes reflecting the correct sentence. State advised they have a Second Amended Judgment of Conviction to file with the Court. Court read same into the record and ORDERED, this sentence is NUNC PRO TUNC AS OF NOVEMBER 27, 1985. Court signed the Second Amended Judgment of Conviction in open court. Deft. LUCKETT having been previously ADJUDGED GUILTY of CT III-CONSPIRACY TO COMMIT MURDER (F), CT IV- BURGLARY (F) AND CTS VI & VII-MURDER WITH USE OF A DEADLY WEAPON (F), COURT ORDERED, in addition to the \$25.00 Administrative Assessment Fee, deft. sentenced to the Nevada Dept. of Prisons for SIX (6) YEARS for Count III; SIX (6) YEARS for Count IV; LIFE WITHOUT THE POSSIBILITY OF PAROLE AND A CONSECUTIVE LIFE WITHOUT THE POSSIBILITY OF PAROLE for Count VI; LIFE WITHOUT THE POSSIBILITY OF PAROLE AND A CONSECUTIVE LIFE WITHOUT THE POSSIBILITY OF PAROLE for Count VII. Counts III and IV to run concurrently and concurrently with Count VI; Count VII to run consecutively to Count VI. Deft. given 342 days Credit for Time Served. Said sentence is Nunc Pro Tunc as of November 27, 1985.

Due to time restraints and individual case loads, the above case record may not reflect all information to date.

Top Of Page

Generated on 5/11/2004 at 9:44:32 AM

1 REX BELL
2 DISTRICT ATTORNEY
3 Nevada Bar #001799
4 200 S. Third Street
5 Las Vegas, Nevada 89155
6 (702) 455-4711
7 Attorney for Plaintiff
8 THE STATE OF NEVADA

FILED IN OPEN COURT
SEP 22 1994 19

LORETTA BOWMAN CLERK

By

Lia Hurd
Deputy

DISTRICT COURT

CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,	)	CASE NO.	C69269
)		
10 Plaintiff,	)	DEPT. NO.	XIV
)		
11 -vs-	)	DOCKET NO.	T
)		
12 JOHNNY RAY LUCKETT,)		
13 #0640282)		
)		
14 Defendant.)		
)		
15)		

SECOND AMENDED

JUDGMENT OF CONVICTION (JURY TRIAL)

18 WHEREAS, on the 25th day of February, 1985, the defendant
19 JOHNNY RAY LUCKETT, entered a plea of not guilty to the crimes of
20 COUNT III - CONSPIRACY TO COMMIT MURDER (Felony); COUNT IV -
21 BURGLARY (Felony); COUNTS VI & VII - MURDER WITH USE OF A DEADLY
22 WEAPON (Felony) committed between November 5, 1984 and November 6,
23 1984, in violation of NRS 199.480, 205.060, 200.010, 200.030,
24 193.165, and the matter having been tried before a jury, and the
25 defendant being represented by counsel and having been found guilty
26 of the crimes of COUNT III - CONSPIRACY TO COMMIT MURDER (Felony);
27 COUNT IV - BURGLARY (Felony); and COUNTS VI & VII - MURDER OF THE
28 FIRST DEGREE WITH USE OF A DEADLY WEAPON (Felony); and

CEI


1366

(R)

1 WHEREAS, thereafter, on the 27th day of November, 1985, the
2 defendant being present in Court with his counsel, WILLIAM SMITH,
3 ESQ., and DAN M. SEATON, Chief Deputy District Attorney also being
4 present; the above entitled Court did adjudge defendant guilty
5 thereof by reason of said trial and verdict and sentenced defendant
6 to the Nevada State Prison on COUNT III - SIX (6) years for
7 CONSPIRACY TO COMMIT MURDER; on COUNT IV - SIX (6) years for
8 BURGLARY; on COUNT VI - LIFE WITHOUT THE POSSIBILITY OF PAROLE for
9 MURDER OF THE FIRST DEGREE plus a consecutive LIFE WITHOUT THE
10 POSSIBILITY OF PAROLE for USE OF A DEADLY WEAPON; and on COUNT VII
11 - LIFE WITHOUT THE POSSIBILITY OF PAROLE for MURDER OF THE FIRST
12 DEGREE plus a consecutive LIFE WITHOUT THE POSSIBILITY OF PAROLE
13 for USE OF A DEADLY WEAPON. COUNTS III & IV to run concurrently
14 and concurrently with COUNT VI; COUNT VII to run consecutive to
15 COUNT VI. Credit for time served 342 days.

16 THEREFORE, the Clerk of the above entitled Court is hereby
17 directed to enter this Judgment of Conviction as part of the
18 record in the above entitled matter.

19 DATED this 22 day of September, 1994, in the City of Las
20 Vegas, County of Clark, State of Nevada. *More per time*
21 *as of November 27th 1985 AM 4*

22 
23 DISTRICT JUDGE
24
25
26

26 85-69269C/kjh
27 LVMPD DR#84-85217
28 CONSP COMMIT MURDER;BURG;
MURDER W/WPN - F

36

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle	Dept.	12
Continuance			
Minutes			
Parties			
Def. Detail	Event 12/15/1994 at 09:00 AM	ALL PENDING MOTIONS	
Next Co-Def.	Heard By Guy, III, Addelior D		
Charges	Officers TINA HURD, Court Clerk		
Sentencing	ANITA SPRINGS-WALKER, Reporter/Recorder		
Bail Bond			
Judgments			
	Parties 0000 - State of Nevada		Yes
	S1		
District Case	004610	Gardner, Gerald J.	Yes
Party Search	0001 -	Flanagan, Dale E	No
Corp. Search	D1		
Atty. Search	PUBDEF	Public Defender	Yes
Bar# Search	004065	Blaskey, Rebecca A.	Yes
ID Search	0002 - D	Moore, Randolph	No
	000824	Schieck, David M.	Yes
Calendar Day	0003 - D	McDowell, Roy	No
Holidays	0004 - D	Lockett, Johnny R	No
Help	0005 - D	Walsh, Michael B	No
Comments &	0006 - D	Akers, Thomas	No
Feedback			
Legal Notice			

Deft. Flanagan's waiver FILED IN OPEN COURT. Mr. Schieck advised he has already filed a waiver with the Court for deft. Moore. COURT ORDERED, defts FLANAGAN and MOORE's presence will be waived today and at all hearings up to, but not including, the Calendar Call; January dates are VACATED and hearing date STANDS.

CUSTODY (BOTH)

Due to time restraints and individual case loads, the above case record may not reflect all information to date.

Top Of Page

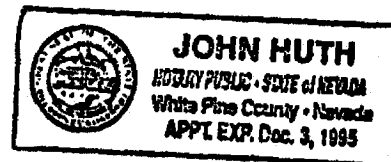
Generated on 5/11/2004 at 9:45:54 AM

1 I, DALE EDWARD FLANAGAN, request to have my appearance
2 waived in court on December 15, 1994 for purpose of resetting my
3 penalty hearing. I understand that the court has set a tentative
4 date of June 12, 1995. It is my further desire to waive all court
5 appearances prior to the June 8, 1995 calendar call.
6

7
8 *Dale E. Flanagan*
9 DALE EDWARD FLANAGAN

10 SUBSCRIBED and SWORN to before me
11 this 5 day of December, 1994.
12

13 *John Huth*
14 NOTARY PUBLIC



DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
SEP 27 1994

THE STATE OF NEVADA,
Plaintiff,
vs.
JOHNNY RAY LUCKETT,
Defendant.

LORETTA FOWLER, CLERK

By *Jay Braun* Deputy

CASE NO. C69269
DEPT. NO. XI
DOCKET NO. "S"

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE ADDELIAR D. GUY, III, DISTRICT JUDGE

STATUS CHECK: TRANSCRIPTS

THURSDAY, SEPTEMBER 15, 1994

APPEARANCES:

For the Plaintiff: MELANIE ANDRESS, DDA

For the Defendant: LAURA MELIA, ESQ

RECORDED BY: PATRICIA LOFFT, Reporter/Transcriber

CE

1 THURSDAY, SEPTEMBER 15, 1994; 9:00 A.M.

2 THE COURT: C69269, The State of Nevada versus Johnny
3 Ray Lockett.

4 Do we have all the transcripts in?

5 MS. MELIA: Yes, Your Honor, I filed a motion. A
6 courtesy copy was supposed to be delivered to you yesterday.

7 THE COURT: It may have, but I've been in trial until
8 like five and six every night and I only take home those things
9 which I really have to take home and read and requires my
10 signature.

11 MS. MELIA: The bottom line is, Your Honor, I've
12 attached to the motion exhibits that indicate that the
13 sentencing transcript indicates that the correct sentence was
14 four lifes without, so that which is reflected in the minute
15 order is correct. The only problem is the fact that in
16 December Judge Mosley resentenced Mr. Lockett outside of his
17 presence and I would move the Court to sentence him properly --
18 vacate that sentence and sentence him in his presence.

19 THE COURT: What is the difference whether Judge
20 Mosley sentences him in my absence or I sentence him? What's
21 the difference?

22 MS. MELIA: I'm sorry?

23 THE COURT: What difference does it make whether
24 Judge Mosley sentences him in my absence or I do?

25 MS. MELIA: I just think Mr. Lockett should be
26 present when his sentence is --

1 THE COURT: Oh, he was absent.

2 MS. MELIA: Right, he was absent.

3 THE COURT: Why don't you have a seat a second? Tell
4 me why I have this case instead of Judge Mosley? Wasn't it
5 originally assigned to Judge Mosley?

6 MS. MELIA: Yes, Your Honor, I don't know how it got
7 to this department.

8 THE COURT: I have what's been filed with the Court,
9 an order -- judgment of conviction was filed on January 29,
10 1986 concerning the State versus Johnny Ray Lockett, Case
11 Number C69269. It indicates that it says on line 25 "Whereas
12 thereafter the 22nd day of November, 1995 (sic), the defendant
13 being present in court with his counsel, William Smith, Esquire
14 and Dan H -- Daniel Seaton, Chief Deputy District Attorney,
15 also being present, the above entitled Court did adjudged the
16 defendant guilty thereof by reason of said trial and verdict
17 and sentenced the defendant to six years in Nevada State Prison
18 on Count III - Conspiracy to Commit Murder, six years in Nevada
19 Prison on Count IV - Burglary, life with possibility of parole,
20 plus on the enhancement a consecutive sentence of life without
21 possibility of parole -- These don't seem to make much sense.

22 I'll continue this matter for one week and give
23 me a chance to go through this because I'm looking at an order
24 which indicates he was present and we will see if we can't find
25 exactly what happened at that time.

26 THE CLERK: It will be September the 22nd at 9:00

1 a.m.

2 THE COURT: But my file does indicate that he was
3 present.

4 MS. MELIA: On December 22nd, 1993 is the date I'm
5 concerned about, Your Honor, before Judge Mosley. In my motion
6 it's listed as Exhibit C, the transcript of that proceeding.

7 THE COURT: I have January 29th that he was present
8 at that time, he was given -- May I see a copy of your motion?
9 I don't seem to have it.

10 Mr. Lockett, have a seat a second, please.

11 Counsel, come forth, please.

12 (Bench conference)

13 THE COURT: I have a letter for Mr. Lockett as it
14 concerns certain rights he has now accrued of being up in the
15 rank in the prison and loses it when he comes back down here
16 unless the Court gives an order to order the department to
17 reinstate him. If counsel will bring in that order next
18 Thursday, I will be happy to sign it.

19 MS. MELIA: Thank you, Your Honor.

20 THE COURT: Ms. Andress, on this last case, make sure
21 that all these are nunc pro tunc as the date they should have
22 been originally.

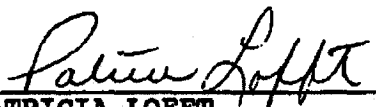
23 MS. ANDRESS: Pardon me?

24 THE COURT: Make sure the order reads nunc pro tunc
25 as the date they should have been originally.

26 (Proceedings concluded)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTEST: Full, true and accurate transcript of proceedings.


PATRICIA LOFFT
Reporter/Transcriber

40

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle	Dept.	12
Continuance			
Minutes			
Parties	Event 05/25/1995 at 09:00 AM	MINUTE ORDER RE: HEARING MOTIONS	
Def. Detail	Heard By Guy, III, Addelior D		
Next Co-Def.	Officers JOYCE BROWN, Court Clerk		
Charges	Parties 0000 - State of Nevada		Yes
Sentencing	S1		
Bail Bond	000862	Harmon, Melvyn T.	Yes
Judgments	002473	Seaton, Daniel M.	Yes
	0001 -	Flanagan, Dale E	No
	D1		
District Case	002805	Wall, David T.	Yes
Party Search	0002 - D	Moore, Randolph	No
Corp. Search	000824	Schieck, David M.	Yes
Atty. Search	0003 - D	McDowell, Roy	No
Bar# Search	0004 - D	Lockett, Johnny R	No
ID Search	0005 - D	Walsh, Michael B	No
	0006 - D	Akers, Thomas	No
Calendar Day			
Holidays			
Help			
Comments &			
Feedback			
Legal Notice			

Court met with Counsel in Chambers and advised motions will be heard on June 1, and June 6. Mr. Schieck moved to have all his motions heard on the same date. COURT ORDERED, motion GRANTED and Mr. Schieck chose June 6.

NDP (BOTH)

CLERK'S NOTE: After further consultation with the Court, Court advised to place ALL the motions to be heard prior to the penalty hearing on June 6.
th

Due to time restraints and individual case loads, the above case record may not reflect all information to date.

Top Of Page

Generated on 5/11/2004 at 9:47:24 AM

40a

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle	Dept.	12
Continuance			
Minutes			
Parties			
Def. Detail	Event 06/06/1995 at 09:00 AM	ALL PENDING MOTIONS 6-6-95	
Next Co-Def.	Heard By Guy, III, Addeliar D		
Charges	Officers JOYCE BROWN, Court Clerk		
Sentencing	ANITA SPRINGS-WALKER, Reporter/Recorder		
Bail Bond			
Judgments			
	Parties 0000 - State of Nevada		Yes
	S1		
District Case	000862	Harmon, Melvyn T.	Yes
Party Search	0001 -	Flanagan, Dale E	No
Corp. Search	D1		
Atty. Search	002805	Wall, David T.	Yes
Bar# Search	004065	Blaskey, Rebecca A.	Yes
ID Search	0002 - D	Moore, Randolph	No
	000824	Schieck, David M.	Yes
Calendar Day	000460	Wolfbrandt, William L.	Yes
Holidays	0003 - D	McDowell, Roy	No
Help	0004 - D	Luckett, Johnny R	No
Comments &	0005 - D	Walsh, Michael B	No
Feedback	0006 - D	Akers, Thomas	No
Legal Notice			

DEFT FLANAGAN'S MOTION FOR NEW TRIAL IN VIEW OF UNITED STATES SUPREME COURT

DECISION IN DAWSON V. DELAWARE...DEFT FLANAGAN'S MOTION FOR INDIVIDUALIZED VOIR DIRE AND FOR SUBMISSION OF JURY QUESTIONNAIRE...DEFT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS...DEFT MOORE'S MOTION TO STRIKE DEATH PENALTY...

DEFT MOORE'S MOTION TO DISCLOSE INDUCEMENTS, PROMISES, AND PAYMENTS TO PROSPECTIVE STATE WITNESSES AND MEMORANDUM IN SUPPORT THEREOF... DEFT MOORE'S MOTION IN LIMINE TO PRECLUDE REFERENCE TO THE SENTENCES OF THE CO-DEFENDANTS...DEFT FLANAGAN'S MOTION TO PROHIBIT TESTIMONY OF DISTRICT ATTORNEY TO SUMMARIZE WITNESS' PRIOR TESTIMONY OR IN THE ALTERNATIVE TO DISQUALIFY DISTRICT ATTORNEY'S OFFICE...DEFT FLANAGAN'S MOTION FOR DISCLOSURE TO INFORMATION REGARDING STATE WITNESS' EXPECTATIONS OF BENEFITS

OF TESTIMONY...DEFT FLANAGAN'S MOTION IN LIMINE TO PROHIBIT EVIDENCE OF DEVIL WORSHIP...DEFT FLANAGAN'S MOTION TO JOIN CO-DEFENDANT RANDOLPH MOORE'S

MOTION IN LIMINE TO PRECLUDE REFERENCE TO SENTENCES OF CO-DEFENDANTS... DEFT FLANAGAN'S MOTION TO AMEND DEFENDANT FLANAGAN'S PREVIOUSLY FILED MOTION

FOR NEW TRIAL TO REFLECT PETITION FOR WRIT OF HABEAS CORPUS, OR IN THE ALTERNATIVE MOTION TO JOIN DEFENDANT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS...DEFT FLANAGAN'S PETITION FOR WRIT OF HABEAS CORPUS... DEFT FLANAGAN'S MOTION TO STRIKE DEATH PENALTY...DEFT MOORE'S MOTION TO STRIKE

DEATH PENALTY

At Court's inquiry as to why the Defendants were not present, Schieck advised that throughout these proceedings, the Defendants have not desired to be present because of the housing situation at Ely. He further stated the Defendants always asked their presence be waived and is true of this proceeding. Mr. Wall stated the same on behalf of Mr. Moore. COURT ORDERED motion waiving Defendants' presence GRANTED. Court read entire list of motions. Mr. Wall advised four motions - DEFT FLANAGAN'S MOTION TO AMEND DEFENDANT FLANAGAN'S PREVIOUSLY FILED MOTION FOR NEW TRIAL TO REFLECT PETITION FOR WRIT OF HABEAS CORPUS, OR IN THE ALTERNATIVE MOTION TO JOIN DEFENDANT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS; DEFENDANT FLANAGAN'S PETITION FOR WRIT OF HABEAS CORPUS; DEFT FLANAGAN'S MOTION FOR NEW TRIAL IN VIEW OF UNITED STATES SUPREME COURT DECISION IN DAWSON V. DELAWARE; AND DEFT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS could be argued together if Deft Flanagan's Motion to Amend Deft Flanagan's Previously Filed Motion for New Trial is granted first. No objection by State. COURT ORDERED, motion GRANTED. Schieck advised he would be filing a Joinder in Motions later joining in all the motions. These four motions were argued together. COURT ORDERED Deft Flanagan's Motion For New Trial in View of United States Supreme Court Decision in Dawson V. Delaware DENIED; Deft Flanagan's Petition for Writ of Habeas Corpus DENIED; and Deft Moore's Petition for Writ of Habeas Corpus DENIED.

As to DEFT FLANAGAN'S MOTION FOR INDIVIDUALIZED VOIR DIRE AND FOR SUBMISSION OF JURY QUESTIONNAIRE, COURT ORDERED Individualized Voir Dire is DENIED, but Court will consider Mr. Harmon's questions of Jury as a whole. As to a Jury Questionnaire, Court has no problem with that and if all three parties come in with a stipulated set of questions by tomorrow or Thursday, it may be used. Court instructed Counsel to see Jury Services today about deadlines.

As to DEFT MOORE'S AND DEFT FLANAGAN'S MOTIONS TO STRIKE DEATH PENALTY, Argument by Counsel and COURT ORDERED both motions DENIED. As to DEFT MOORE'S MOTION TO DISCLOSE INDUCEMENTS, PROMISES AND PAYMENTS TO PROSPECTIVE STATE WITNESSES AND MEMORANDUM IN SUPPORT THEREOF and DEFT FLANAGAN'S MOTION FOR DISCLOSURE TO INFORMATION REGARDING STATE WITNESS' EXPECTATIONS OF BENEFITS OF TESTIMONY, Court advised Mr. Harmon says there are none. Court further advised there are always payments of travel and motel expenses for State witnesses. COURT ORDERED both motions DENIED, but will grant leeway in questioning at depth.

As to DEFT FLANAGAN'S MOTION TO JOIN CO-DEFENDANT RANDOLPH MOORE'S MOTION IN LIMINE TO PRECLUDE REFERENCE TO SENTENCES OF CO-DEFENDANTS, COURT ORDERED, motion GRANTED.

As to DEFT MOORE'S MOTION IN LIMINE TO PRECLUDE REFERENCE TO THE SENTENCES

OF THE CO-DEFENDANTS, argument by Harmon that Jury is asked to set punishment on two out of six Defendants and they need to help the Jury as much as possible. Argument by Schieck and Wall, who joined in the motion, that Co-Defendants' sentences bear no relevance as to what these two Defendants should receive. Court read from the Statutes and ORDERED motion DENIED.

As to DEFT FLANAGAN'S MOTION TO PROHIBIT TESTIMONY OF DISTRICT ATTORNEY TO SUMMARIZE WITNESS' PRIOR TESTIMONY OR IN THE ALTERNATIVE TO DISQUALIFY DISTRICT ATTORNEY'S OFFICE, Mr. Wall argued that Mr. Seaton will be prosecutor and Mr. Harmon will summarize the testimony of four or five witnesses and they object to having this done. Argument by Harmon. COURT ORDERED, this motion CONTINUED until Thursday morning and instructed Counsel to get together and stipulate to witnesses' testimony being summarized or else they would be reading testimony from transcripts. Wall asked to table this until Thursday. Court advised if Counsel are not able to stipulate, Court sees no other way but to read the trial testimony and extricate the unnecessary garbage; but that is time consuming. Harmon stated he did not feel the parties would be able to work out a stipulation. Court stated they could let him know Thursday morning.

As to DEFENDANT FLANAGAN'S MOTION IN LIMINE TO PROHIBIT EVIDENCE OF DEVIL WORSHIP, Schieck joined in the motion, Wall argued that the Coven was never involved in any way in the decision to commit the crime and is used as character evidence; and is not proper character evidence. He further argued the Defendants have been involved in Christian activities and Bible study classes since then. Harmon stated he did not intend to introduce this in their case in chief, but does not want State's hands tied. Court read his findings into the record and ORDERED motion DENIED WITHOUT PREJUDICE. Wall requested they revisit this motion on Thursday and COURT GRANTED the REQUEST.

The last motion, DEFT MOORE'S MOTION TO STRIKE DEATH PENALTY is a duplicate and already ruled upon.

Mr. Schieck presented a Joinder in Motions of Co-Defendant Flanagan to the Court. COURT ORDERED, motion GRANTED, and it was FILED IN OPEN COURT. Mr. Wall requested transcripts of today's proceedings by tomorrow. Request GRANTED and Court Recorder stated they would be ready. Counsel advised unfinished business consists of unavailability of witnesses and Devil worship in rebuttal.

NDP (BOTH)

6-8-95 9:00 AM DEFT FLANAGAN'S MOTION TO PROHIBIT TESTIMONY OF DISTRICT ATTORNEY TO SUMMARIZE WITNESS' PRIOR TESTIMONY OR IN THE ALTERNATIVE TO DISQUALIFY DISTRICT ATTORNEY'S OFFICE

FILED

MAY 19 10 09 AM '95

CLERK

MORGAN D. HARRIS
PUBLIC DEFENDER
Nevada Bar #1879
309 South Third Street
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DALE EDWARD FLANAGAN,
and RANDOLPH MOORE,

Defendants.

CASE NO. C 69269
DEPT. NO. XI

DATE OF HEARING: 6-1-95
TIME OF HEARING: 9:00 a.m.

MOTION FOR NEW TRIAL IN VIEW OF
UNITED STATES SUPREME COURT DECISION
IN DAWSON V. DELAWARE

COMES NOW the Defendant, DALE EDWARD FLANAGAN by and through his attorneys REBECCA A. MOUNTS and DAVID T. WALL, Deputy Public Defenders, and moves this Honorable Court for its order granting a new guilt phase of trial in the instant case.

Such Motion is based upon the Affidavit of counsel and any argument that may be entertained at the time of hearing of the matter.

DATED this 18th day of May, 1995.

Respectfully Submitted

CLARK COUNTY PUBLIC DEFENDER

By REBECCA A. MOUNTS
NEVADA BAR #4065
DEPUTY PUBLIC DEFENDER

CMC

CE11

PROCEDURAL HISTORY OF CASE

The instant case focuses on the November, 1984 shooting deaths of Carl and Colleen Gordon, the grandparents of Defendant DALE FLANAGAN.

In December of 1984, Defendant FLANAGAN was formally charged with Conspiracy to Commit Burglary, Conspiracy to Commit Robbery, Conspiracy to Commit Murder, Burglary, Robbery With Use of a Deadly Weapon, and two counts of Murder With Use of a Deadly Weapon in connection with the shootings. By way of information filed February 25, 1985, the State of Nevada alleged that Flanagan, together with five co-defendants, planned and carried out the November, 1984 murders of Flanagan's grandparents at their Las Vegas home. On October 11, 1985, the Defendant was convicted of the above-listed crimes following a jury trial. That same jury subsequently sentenced the Defendant to death on the murder counts.

Timely appeal was filed in the Nevada Supreme Court citing five assignments of error, including prosecutorial misconduct in both the guilt and penalty phases of trial.¹ Following direct appeal to the Nevada Supreme Court, Mr. Flanagan's penalty hearing was reversed and a new one ordered due to the cumulative effect of prosecutorial misconduct throughout the penalty phase. State of Nevada v. Flanagan, (hereinafter Flanagan I) 104 Nev. 105, 754 P.2d 836 (1988).

¹Areas of misconduct cited in the direct appeal included reference by the prosecutor in both phases of trial to "devil worship" on the part of the defendants.

1 On July 14, 1989, following a second penalty phase,
2 another jury again sentenced Mr. Flanagan to the death penalty.
3 The Nevada Supreme Court subsequently affirmed the sentences of
4 death. State of Nevada v. Flanagan, (hereinafter Flanagan II) 107
5 Nev. 243, 810 P.2d 759 (1991).

6 On Petition for Writ of Certiorari, the United States
7 Supreme Court vacated and remanded the sentences for
8 reconsideration in view of Its' decision in Dawson v. Delaware,
9 503 U.S. _____, 112 S. Ct. 1093, 117 L.Ed.2d 309, (1992)
10 attached hereto as Exhibit A. The Nevada Supreme Court
11 subsequently remanded the case to the Eighth Judicial District
12 Court for a third penalty hearing. State v. Flanagan,
13 (hereinafter Flanagan III) 109 Nev. 50, 846 P.2d 1053 (1993).
14 Such hearing is scheduled to commence in Department XI of the
15 Eighth Judicial District Court on June 12, 1995.

16 STATEMENT OF FACTS

17 On November 6, 1984, Carl and Colleen Gordon were found
18 dead in their residence at 5851 Washburn Road, Las Vegas, Nevada.
19 Carl Gordon, the grandfather of Defendant DALE FLANAGAN, had been
20 shot seven times in the back and chest. Colleen Gordon,
21 Flanagan's grandmother, had been shot three times in the head.

22 The State alleged by way of information that Flanagan
23 and five teenage companions together planned and committed the
24 murders of Flanagan's grandparents to receive insurance and
25 inheritance proceeds.

26 DALE EDWARD FLANAGAN was charged with the following
27 crimes: Count I, Conspiracy to Commit Burglary; Count II,
28 Conspiracy to Commit Robbery, Count III, Conspiracy to Commit

1 Murder; Count IV, Burglary; Count V, Robbery With Use of a Deadly
2 Weapon; Count VI, Murder with Use of a Deadly Weapon, Count VII,
3 Murder with Use of a Deadly Weapon. Also charged along with
4 Flanagan were Randolph Moore, Johnny Ray Lockett, Roy McDowell,
5 Michael Walsh and Thomas Akers.

6 Thomas Akers and Michael Walsh each pleaded guilty prior
7 to trial. Akers received five years probation, pursuant to his
8 plea to Voluntary Manslaughter. Co-Defendant Michael Walsh
9 received two life sentences with the possibility of parole,
10 consecutive; with the Murder counts to run concurrently with each
11 other. The remaining four defendants proceeded to trial on the
12 original charges.

13 On September 26, 1985, Defendant's jury trial began
14 before the Honorable Donald M. Mosley, District Judge in the
15 Eighth Judicial District Court. The Defendant was found guilty of
16 all seven counts in the Information and was sentenced along with
17 Randolph Moore to death on the two murder counts and to various
18 terms of imprisonment in the Nevada State Prison on the remaining
19 counts. Defendant McDowell received four consecutive sentences of
20 life with the possibility of parole. Defendant Lockett received
21 four consecutive sentences of life without the possibility of
22 parole.

23 During the 1985 trial, witness Wayne Wittig was called
24 to testify on behalf of co-defendant Johnny Ray Lockett. Over
25 other defense counsel's objections, and repeated motions for
26 severance and a mistrial, Wittig was permitted to testify that he
27 had participated in a "coven" with Defendant's Flanagan and Moore.
28 According to Wittig, Randolph Moore was the leader of the coven

1583

1 and was responsible for the "White Magic." Dale Flanagan was said
2 to be second in command of the coven and responsible for the
3 "Black Magic."²

4 Although the State indicated it had no intention of
5 admitting the devil worship evidence, District Attorney Dan Seaton
6 made the following references in his closing argument to the jury
7 during the guilt phase:

8 "Four men charged with these crimes. Four
9 men who had as their friends gang members.
10 These people were school dropouts. They were
11 drug users. They were devil worshipers.
12 And on November the 5th, 1984, as Carl and
13 Colleen Gordon were indeed going to bed,
14 these four and others were hatching a
15 diabolical plot, a diabolical plot to kill
16 two good human beings . . . (Vol. 6, First
17 Record on Appeal, p. 1955, l. 16-22.)"

18 "They didn't ask their grandson Dale to come
19 to them and kill them so they could give him
20 and his devil-worshipping buddies a piece of
21 their estate a little more quickly." (Id. at
22 1964, l. 12-15.)"

23 ". . . he is not so greedy. He was going to share
24 it with all of his friends. Probably divvy it up
25 in the middle of a coven proceeding or something.
26 That's the agreement. That's the conspiracy.
27 That's the dark and evil plan that was created
28 over a period of time and put into action . . .
(Id. at 1974, l. 1-6)."

"They didn't only lead the coven, they let
their black and their white magic spill over
into this conspiracy and it was they who did
all of the planning of the things that we
have talked about before. (Id. at 1982, l. 6-
9)."

²At the pre-trial hearing, Lockett's attorney, Bill Smith, indicated his intention to admit testimony of Flanagan and Moore's "devil worship" to attempt to lessen the degree of culpability of his own client in the murders of the Gordons, and to establish the other defendants "as, quite frankly, very savage, amoral individuals." (First Record on Appeal, Vol. II, p. 573). The State had indicated it had no desire to bring in the devil worship evidence. (Id. at p. 578)

1 ". . . they did everything together. They
2 shared drugs, they partied, they shared beer,
3 they shared witchcraft. (Id. at 2012, l. 22-
4 24)."

5 "When you combine all of that, all the devil
6 worship and the drugs and the gang and the
7 fighting and the guns and everything else, .
8 . . (Id. at 2017, 2018, l. 23, 1-4)."

9 In addition to the numerous other references by the
10 attorneys for co-defendants Lockett and McDowell to "covens" and
11 the "occult", Deputy District Attorney Mel Harmon made repeated
12 references in his guilt phase closing (rebuttal) to "wickedness,"
13 "deviance," and "evil" on the part of the defendants, then
14 questioned its relevance as follows:

15 "And then Mr. Lockett through his attorney
16 decided to project this notion of white and
17 black magic into the case. I don't know that
18 it has any relevance but it was projected
19 into this case for a reason." (Vol. 7, First
20 Record on Appeal, p. 2167).

21 Repeated references to devil worship, the occult and the like were
22 also made throughout the subsequent penalty phase.

23 At the second penalty hearing in July, 1989, the State
24 of Nevada introduced evidence of devil worship over defense
25 counsel's objection in an attempt to establish the character of
26 defendants Flanagan and Moore.

27 Although the Nevada Supreme Court affirmed the
28 convictions after appeal of the second penalty phase, the United
29 States Supreme Court granted certiorari and subsequently vacated
30 and remanded the case to the Nevada Supreme Court for
31 reconsideration in view of its decision in Dawson v. Delaware,
32 cited supra.

33 ...

34 ...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In Dawson v. Delaware, a Delaware jury had convicted Dawson, a white man, of first degree murder and other crimes in connection with the murder of Madeline Kisner, a white woman. At the penalty phase of Dawson's trial,³ the prosecution introduced evidence linking the defendant to a chapter of the racist extremist group the Aryan Brotherhood. The Delaware jury found that the aggravating factors outweighed the mitigating factors and recommended that the defendant be sentenced to death. The Delaware Supreme Court affirmed both the convictions and the death sentence citing the same reasoning employed by the Nevada Supreme Court in Flanagan II, that the evidence was relevant to the defendant's character. The United States Supreme Court vacated and remanded, citing that Dawson's First and Fourteenth Amendment rights were violated by the admission of the evidence, because it had no relevance to the issues being decided in the sentencing

27

28

1 | Flanagan's trial.

2 | DATED this 18th day of May, 1995.

3 | Respectfully Submitted

4 | CLARK COUNTY PUBLIC DEFENDER

5 |

6 |

7 |

By 

REBECCA A. MOUNTS

NEVADA BAR #4065

DEPUTY PUBLIC DEFENDER

8 |

9 |

10 |

11 |

12 |

13 |

14 |

15 |

16 |

17 |

18 |

19 |

20 |

21 |

22 |

23 |

24 |

25 |

26 |

27 |

28 |

- 1388

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

YOU WILL PLEASE TAKE NOTICE that the Clark County Public Defender has set the foregoing MOTION FOR NEW TRIAL IN VIEW OF UNITED STATES SUPREME COURT DECISION IN DAWSON V. DELAWARE on for hearing on June 1, 1995, 9:00 a.m. in District Court, Department XI of District Court.

CLARK COUNTY PUBLIC DEFENDER

RECEIPT OF COPY

DAVID M. SCHIECK
302 E. Carson #918
Las Vegas NV 89101

By David M. Schieck *MS*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECEIPT OF COPY

RECEIPT OF COPY of the foregoing MOTION FOR NEW TRIAL IN
VIEW OF UNITED STATES SUPREME COURT DECISION IN DAWSON V. DELAWARE
is acknowledged this 19 day of May, 1995.

WILLIAM 'LEW' WOLFBRANDT
302 E. Carson #918
Las Vegas NV 89101

By William Lewis Wolfbrandt Z

RECEIPT OF COPY

RECEIPT OF COPY of the foregoing MOTION FOR NEW TRIAL IN
VIEW OF UNITED STATES SUPREME COURT DECISION IN DAWSON V. DELAWARE
is acknowledged this 19 day of May, 1995.

CLARK COUNTY DISTRICT ATTORNEY

By 

RAM:FM

- 1390

edure here was toward the principal claims for money by General's personal dispute resolved itself into a more edure that might an administrative o a court action. free to design or administrative pro-exhaust his claim an without further o not foreclose the u itself may adopt trative procedure ional intent.

court of Appeals is

2, with whom
ices THOMAS join,
ent.

t's holding that a
t exhaust the pro-
the Federal Bu-
view, however, is
ct that the griev-
does not provide
ry damages. As a
s this one where
y relief, the Bu-
nedy furnishes no
and it is therefore
xhaustion require-

Board of Edu-
Unit School Dist.
3 S.Ct. 1433, 1437,
Montana Bank v.
3 U.S. 499, 505, 48
673 (1928).

he decision on this
Court's extensive
I principles of ex-
with the implica-
I principles apply
the context of a
icular, I disagree

with the Court's reliance on the grievance procedure's filing deadlines as a basis for excusing exhaustion. As the majority observes, *ante*, at 1087-1088, we have previously refused to require exhaustion of administrative remedies where the administrative process subjects plaintiffs to unreasonable delay or to an indefinite timeframe for decision. See *Coit Independence Joint Venture v. FSLIC*, 489 U.S. 561, 587, 109 S.Ct. 1361, 1376, 103 L.Ed.2d 602 (1989); *Gibson v. Berryhill*, 411 U.S. 564, 575, n. 14, 93 S.Ct. 1689, 1696, n. 14, 36 L.Ed.2d 488 (1973); *Walker v. Southern R. Co.*, 385 U.S. 196, 198, 87 S.Ct. 365, 366, 17 L.Ed.2d 294 (1966); *Smith v. Illinois Bell Telephone Co.*, 270 U.S. 587, 591-592, 46 S.Ct. 408, 410, 70 L.Ed. 747 (1926). This principle rests on our belief that when a plaintiff might have to wait seemingly forever for an agency decision, agency procedures are "inadequate" and therefore need not be exhausted. *Coit Independence Joint Venture v. FSLIC*, *supra*, 489 U.S., at 587, 109 S.Ct., at 1376.

But the Court makes strange use of this principle in holding that filing deadlines imposed by agency procedures may provide a basis for finding that those procedures need not be exhausted. *Ante*, at 1090-1091. Whereas before we have held that procedures without "reasonable time limit[s]" may be inadequate because they make a plaintiff wait too long, *Coit Independence Joint Venture v. FSLIC*, *supra*, at 587, 109 S.Ct., at 1376, today the majority concludes that strict filing deadlines might also contribute to a finding of inadequacy because they make a plaintiff move too quickly. But surely the second proposition does not follow from the first. In fact, short filing deadlines will almost always promote quick decisionmaking by an agency, the very result that we have advocated repeatedly in the cases cited above. So long as there is an escape clause, as there is here, and the time limit is within a zone of reasonableness, as I believe it is here, the length of the period should not be a

factor in deciding the adequacy of the remedy.



David DAWSON, Petitioner,

v.

DELAWARE.

No. 90-6704.

Argued Nov. 12, 1991.

Decided March 9, 1992.

Defendant was convicted in a Delaware Superior Court of first-degree murder and sentenced to death, and he appealed. The Delaware Supreme Court affirmed, 581 A.2d 1078, and certiorari was granted. The Supreme Court, Chief Justice Rehnquist, held that it was constitutional error to admit stipulation of defendant's membership in white racist prison gang where that evidence was not relevant to any issue being decided at the punishment phase.

Vacated and remanded.

Justice Blackmun filed a concurring opinion.

Justice Thomas filed a dissenting opinion.

1. Constitutional Law ¶91

First Amendment protects individual's right to join groups and associate with others holding similar beliefs. U.S.C.A. Const.Amend. 1.

2. Constitutional Law ¶91

First Amendment does not erect a per se barrier to admission of evidence concerning one's beliefs and associations at sentencing simply because his beliefs and associations are protected by the First Amendment. U.S.C.A. Const.Amend. 1.

3. Constitutional Law ¶91

Homicide ¶343, 353(1)

Receipt into evidence at sentencing phase of capital murder prosecution of stipulation regarding defendant's membership in Aryan Brotherhood, a white racist prison gang, was constitutional error where his membership was not relevant to any of the issues being decided in the proceeding. U.S.C.A. Const. Amend. 1.

4. Homicide ¶353(1)

Defendant's membership in alleged white racist prison gang was not relevant to sentencing proceeding where the evidence was not tied in any way to the murder of the victim, who was white, and there was no showing that the organization committed any unlawful or violent acts or even endorsed those acts.

5. Homicide ¶353(1)

Evidence that defendant belonged to alleged white racist prison gang was not relevant to rebut any mitigating evidence offered at sentencing phase of capital murder prosecution where his mitigating evidence consisted of testimony about his kindness to family members as well as evidence regarding good time credits he earned in prison for enrolling in various drug and alcohol programs.

6. Homicide ¶353(1)

Just as defendant has right to introduce any sort of relevant mitigating evidence at punishment phase of capital murder prosecution, state is entitled to rebut that evidence with proof of its own.

*Syllabus**

A Delaware jury convicted petitioner Dawson of first-degree murder and other crimes. At the penalty hearing, the prosecution, *inter alia*, read a stipulation—"The Aryan Brotherhood refers to a white racist prison gang that began ... in California in response to other gangs of racial

minorities. Separate gangs calling themselves the Aryan Brotherhood now exist in many state prisons including Delaware"—despite Dawson's assertion that the admission of the stipulated facts violated his First and Fourteenth Amendment rights, and introduced evidence that he had the words "Aryan Brotherhood" tattooed on his hand. The jury found that the aggravating circumstances—that the murder was committed by an escaped prisoner, during the commission of a burglary, and for pecuniary gain—outweighed Dawson's mitigating evidence—that he had shown kindness to family members and had earned good time credits in prison—and made a binding recommendation to the court that he be sentenced to death. The State Supreme Court affirmed.

Held:

1. Dawson's First and Fourteenth Amendment rights were violated by the admission of the Aryan Brotherhood evidence in this case, because the evidence had no relevance to the issues being decided in the proceeding. The Constitution does not erect a *per se* barrier to the admission of evidence concerning one's beliefs and associations at sentencing simply because those beliefs and associations are protected by the First Amendment. See, e.g., *Barclay v. Florida*, 463 U.S. 939, 103 S.Ct. 8418, 77 L.Ed.2d 1184. However, the narrowness of the stipulation admitted here left the evidence totally without relevance to the sentencing proceeding. The stipulation says nothing about the beliefs of the Delaware prison's chapter of the Aryan Brotherhood. Any racist beliefs the group might hold were not tied in any way to the murder, because Dawson's victim was white, as is Dawson. The evidence proved only the group's and Dawson's abstract beliefs, not that the group had committed or endorsed any unlawful or violent acts. Thus, it was not relevant to help prove any aggravating circumstance. Cf.

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the

reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

is calling them-
ood now exist in
ng Delaware"—
that the admis-
cts violated his
endment rights,
hat he had the
id" tattooed on
that the aggra-
st the murder
caped prisoner,
a burglary, and
ighed Dawson's
he had shown
ibers and had
in prison—and
adation to the
to death. The
med.

nd Fourteenth
iolated by the
rotherhood evi-
e the evidence
es being decid-
e Constitution
er to the admis-
g one's beliefs
ing simply be-
associations are
endment. See,
3 U.S. 939, 103.

However, the
ation admitted
y without rele-
ceeding. The
out the beliefs
chapter of the
icist beliefs the
ied in any way
awson's victim

The evidence
Dawson's ab-
group had com-
wful or violent
levant to help
amstance. Cf.

Smith Lumber Co.,
12, 287, 50 L.Ed.

Texas v. Johnson, 491 U.S. 397, 414, 109 S.Ct. 2533, 2544, 105 L.Ed.2d 342. Nor was the evidence relevant to rebut any mitigating evidence, since, while the State was entitled to introduce "bad" character evidence to rebut Dawson's "good" character evidence, see *Payne v. Tennessee*, 501 U.S. —, —, 111 S.Ct. 2597, —, 115 L.Ed.2d 720, the Aryan Brotherhood evidence cannot be viewed as relevant "bad" character evidence in its own right. Pp. 1096-1099.

2. The question whether the wrongful admission of the Aryan Brotherhood evidence was harmless error is left open for consideration by the State Supreme Court on remand. P. 1099.

581 A.2d 1078, vacated and remanded.

REHNQUIST, C.J., delivered the opinion of the Court, in which WHITE, BLACKMUN, STEVENS, O'CONNOR, SCALIA, KENNEDY, and SOUTER, JJ., joined. BLACKMUN, J., filed a concurring opinion. THOMAS, J., filed a dissenting opinion.

Bernard J. O'Donnell, Wilmington, Del., for petitioner.

Richard E. Fairbanks, Jr., Wilmington, Del., for respondent.

THE CHIEF JUSTICE delivered the opinion of the Court.

The question presented in this case is whether the First and Fourteenth Amendments prohibit the introduction in a capital sentencing proceeding of the fact that the defendant was a member of an organization called the Aryan Brotherhood, where the evidence has no relevance to the issues being decided in the proceeding. We hold that they do.

Shortly after midnight on December 1, 1986, petitioner David Dawson and three other inmates escaped from the Delaware Correctional Center near Smyrna, Delaware. Dawson stole a car and headed south, while the other three inmates stole another car and drove north. Early that

morning, Dawson burglarized a house near Kenton, Delaware, stealing a motorcycle jacket, several pocket watches, and containers of loose change. He then proceeded to the home of Richard and Madeline Kisner, located about half a mile from the burglary site. Mrs. Kisner was alone in the house, preparing to leave for work. Dawson brutally murdered Mrs. Kisner, stole the Kisners' car and some money, and fled further south.

He reappeared later that evening at the Zoo Bar in Milford, Delaware, wearing a motorcycle jacket that was too big for him. While at the bar, Dawson introduced himself to Patty Dennis, and told her that his name was "Abaddon," which he said meant "one of Satan's disciples." App. 80-81. Dawson was subsequently asked to leave the bar. Later that evening, a Delaware state police officer responded to a call to investigate a one-car accident. The car involved in the accident had been stolen from a location near the Zoo Bar and had been driven into a ditch, but the driver had left the scene. The police began a house-to-house search for Dawson, and found him at 5:25 the next morning, on the floor of a Cadillac parked about three-tenths of a mile from the accident site.

A jury convicted Dawson of first-degree murder, possession of a deadly weapon during the commission of a felony, and various other crimes. The trial court then conducted a penalty hearing before the jury to determine whether Dawson should be sentenced to death for the first-degree murder conviction. See Del.Code Ann., Tit. 11, § 4209 (1987). The prosecution gave notice that it intended to introduce (1) expert testimony regarding the origin and nature of the Aryan Brotherhood, as well as the fact that Dawson had the words "Aryan Brotherhood" tattooed on the back of his right hand, (2) testimony that Dawson referred to himself as "Abaddon" and had the name "Abaddon" tattooed in red letters across his stomach, and (3) photographs of multiple swastika tattoos on

Dawson's back and a picture of a swastika he had painted on the wall of his prison cell. Dawson argued that this evidence was inflammatory and irrelevant, and that its admission would violate his rights under the First and Fourteenth Amendments.

Before the penalty phase began, the parties agreed to a stipulation regarding the Aryan Brotherhood evidence. The stipulation provided that

"[t]he Aryan Brotherhood refers to a white racist prison gang that began in the 1960's in California in response to other gangs of racial minorities. Separate gangs calling themselves the Aryan Brotherhood now exist in many state prisons including Delaware." App. 132.

In return for Dawson's agreement to the stipulation, the prosecution agreed not to call any expert witnesses to testify about the Aryan Brotherhood. Although Dawson agreed to the stipulation in order to avoid presentation of this expert testimony, it is apparent from the record and from the opinion of the Supreme Court of Delaware that he continued to assert that the admission of the stipulated facts into evidence violated the Constitution. 581 A.2d 1078 (1990). At the penalty hearing, the prosecution read the stipulation to the jury and introduced evidence that Dawson had tattooed the words "Aryan Brotherhood" on his hand. The trial judge permitted the prosecution to present the evidence related to the name "Abaddon" as well, but excluded all of the swastika evidence. In addition, the prosecution submitted proof of Dawson's lengthy criminal record. Dawson, in turn, presented mitigating evidence based on the testimony of two family members and on the fact that he had earned good time credits in prison for enrolling in various drug and alcohol programs. The jury found three statutory aggravating circumstances, each making Dawson eligible for the death penalty under Delaware law; it determined (1) that the murder was committed by an escaped prisoner, (2) that the murder was committed during the commission of a burglary, and (3) that the murder

was committed for pecuniary gain. See *id.*, at 1102, and n. 27. The jury further concluded that the aggravating evidence outweighed the mitigating evidence, and recommended that Dawson be sentenced to death. The trial court, bound by that recommendation, imposed the death penalty.

The Supreme Court of Delaware affirmed the convictions and the death sentence. The court rejected Dawson's claim that the evidence concerning the Aryan Brotherhood and his use of the name "Abaddon" should have been excluded from the penalty hearing. It observed that having found at least one statutory aggravating factor, the jury was "required to make an individualized determination of whether Dawson should be executed or incarcerated for life, based upon Dawson's character, his record and the circumstances of the crime," and that it was desirable for the jury to have as much information before it as possible when making that decision. *Id.*, at 1102-1103 (emphasis in original). The court acknowledged that the Constitution would prohibit the consideration of certain irrelevant factors during the sentencing process, but stated that "[p]unishing a person for expressing his views or for associating with certain people is substantially different from allowing ... evidence of [the defendant's] character [to be considered] where that character is a relevant inquiry." *Id.*, at 1103. Because the evidence relating to the Aryan Brotherhood and the name "Abaddon" properly focused the jury's attention on Dawson's character, and did not appeal to the jury's prejudices concerning race, religion or political affiliation, the court upheld its introduction during the penalty phase. We granted certiorari, 499 U.S. —, 111 S.Ct. 1412, 118 L.Ed.2d 465 (1991), to consider whether the admission of this evidence was constitutional error. We hold that its admission in this case was error, and so reverse.

[1,2] We have held that the First Amendment protects an individual's right to join groups and associate with others holding similar beliefs. See *Aptheker v.*

[4] As an initial matter, the second sentence of the stipulation, when carefully parsed, says nothing about the beliefs of the Aryan Brotherhood "chapter" in the Delaware prisons. Prior to trial, the prosecution acknowledged that there are differences among the various offshoots of the Aryan Brotherhood, stating that "there are cells or specific off-shoots within various local jurisdictions that don't see eye to eye or share a union, if you will." App. 33. But the juxtaposition of the second sentence with the first sentence, which describes the Aryan Brotherhood in California prisons as a "white racist prison gang," invited the jury to infer that the beliefs of the Delaware chapter are identical to those of the California chapter.

Even if the Delaware group to which Dawson allegedly belongs is racist, those beliefs, so far as we can determine, had no relevance to the sentencing proceeding in this case. For example, the Aryan Brotherhood evidence was not tied in any way to the murder of Dawson's victim. In *Barclay*, on the contrary, the evidence showed that the defendant's membership in the Black Liberation Army, and his consequent desire to start a "racial war," were related to the murder of a white hitchhiker. See 463 U.S., at 942-944, 103 S.Ct., at 3420-3421 (plurality opinion). We concluded that it was most proper for the sentencing judge to "tak[e] into account the elements of racial hatred in this murder." *Id.*, at 949, 103 S.Ct., at 3424. In the present case, however, the murder victim was white, as is Dawson; elements of racial hatred were therefore not involved in the killing.

Because the prosecution did not prove that the Aryan Brotherhood had committed any unlawful or violent acts, or had even endorsed such acts, the Aryan Brotherhood evidence was also not relevant to help prove any aggravating circumstance. In many cases, for example, associational evidence might serve a legitimate purpose in showing that a defendant represents a future danger to society. A defendant's

membership in an organization that endorses the killing of any identifiable group, for example, might be relevant to a jury's inquiry into whether the defendant will be dangerous in the future. Other evidence concerning a defendant's associations might be relevant in proving other aggravating circumstances. But the inference which the jury was invited to draw in this case tended to prove nothing more than the abstract beliefs of the Delaware chapter. Delaware counters that even these abstract beliefs constitute a portion of Dawson's "character," and thus are admissible in their own right under Delaware law. Del. Code Ann., Tit. 11, § 4209(d) (1967). Whatever label is given to the evidence presented, however, we conclude that Dawson's First Amendment rights were violated by the admission of the Aryan Brotherhood evidence in this case, because the evidence proved nothing more than Dawson's abstract beliefs. Cf. *Texas v. Johnson*, 491 U.S. 397, 414, 109 S.Ct. 2533, 2544, 105 L.Ed.2d 842 (1989) ("[T]he government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable"). Delaware might have avoided this problem if it had presented evidence showing more than mere abstract beliefs on Dawson's part, but on the present record one is left with the feeling that the Aryan Brotherhood evidence was employed simply because the jury would find these beliefs morally reprehensible. Because Delaware failed to do more, we cannot find the evidence was properly admitted as relevant character evidence.

[5, 6] Nor was the Aryan Brotherhood evidence relevant to rebut any mitigating evidence offered by Dawson. We have held that a capital defendant is entitled to introduce any relevant mitigating evidence that he proffers in support of a sentence less than death. *Eddings v. Oklahoma*, 455 U.S. 104, 114, 102 S.Ct. 869, 876, 71 L.Ed.2d 1 (1982); *Lockett v. Ohio*, 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978) (plurality opinion). But just as the defen-

ganization that endorses identifiable group, for relevant to a jury's in the defendant will be stature. Other evidence defendant's associations in proving other aggravations. But the inference invited to draw in this nothing more than the the Delaware chapter. hat even these abstract portion of Dawson's nus are admissible in ar Delaware law. Del. 4209(d) (1987). What the evidence present include that Dawson's ghts were violated by e Aryan Brotherhood, because the evidence e than Dawson's ab- Texas v. Johnson, 491 S.Ct. 2538, 2544, 105 [The government may' session of an idea sim- finds the idea itself reeable"). Delaware this problem if it had showing more than 's on Dawson's part; econd one is left with : Aryan Brotherhood ed simply because the beliefs morally repre- Delaware failed to do ad the evidence was relevant character evi-

e Aryan Brotherhood rebut any mitigating Dawson. We have defendant is entitled to it mitigating evidence upport of a sentence idings v. Oklahoma, 92 S.Ct. 869, 876, 71 kett v. Ohio, 438 U.S. 7 L.Ed.2d 973 (1978) but just as the defen-

dant has the right to introduce any sort of relevant mitigating evidence, the State is entitled to rebut that evidence with proof of its own. See *Payne v. Tennessee*, 501 U.S., at —, 111 S.Ct., at 2608 ("The State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in") (quotation omitted); *id.*, at —, 111 S.Ct., at 2625 (STEVENS, J., dissenting). In this case, Dawson's mitigating evidence consisted of testimony about his kindness to family members, as well as evidence regarding good time credits he earned in prison for enrolling in various drug and alcohol programs. Delaware argues that because Dawson's evidence consisted of "good" character evidence, it was entitled to introduce any "bad" character evidence in rebuttal, including that concerning the Aryan Brotherhood. The principle of broad rebuttal asserted by Delaware is correct, but the argument misses the mark because, as stated above, the Aryan Brotherhood evidence presented in this case cannot be viewed as relevant "bad" character evidence in its own right.

The dissent takes us to task for failing to recognize the broader implications of membership in a prison gang, and for extending the protection of the First Amendment to evidence introduced at a sentencing hearing. The material adduced by the dissent as to the nature of prison gangs—similar to the evidence which the prosecution in this case at one time considered adducing by expert testimony, *supra*, at 1097-1098 would, if it had been presented to the jury, have made this a different case. But we do not have the same confidence as the dissent does that jurors would be familiar with the court decisions and studies upon which it relies. Regarding the reach of the First Amendment, the dissent correctly points out that it prevents the State from criminalizing certain conduct in the first instance. But it goes further than that. It prohibits a State from denying admission to the bar on the grounds of previous membership in the Communist Party, when

there is no connection between that membership and the "good moral character" required by the State to practice law. *Schwartz v. Board of Bar Examiners of N.M.*, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957). It prohibits the State from requiring information from an organization that would impinge on First Amendment associational rights if there is no connection between the information sought and the State's interest. *Bates v. Little Rock*, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480 (1960); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). We think that it similarly prevents Delaware here from employing evidence of a defendant's abstract beliefs at a sentencing hearing when those beliefs have no bearing on the issue being tried.

The question of whether the wrongful admission of the Aryan Brotherhood evidence at sentencing was harmless error is not before us at this time, and we therefore leave it open for consideration by the Supreme Court of Delaware on remand. See *Clemons v. Mississippi*, 494 U.S. 738, 110 S.Ct. 1441, 108 L.Ed.2d 725 (1990).

For the foregoing reasons, we vacate the judgment of the Supreme Court of Delaware, and remand for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice BLACKMUN, concurring.

I join the Court's opinion, but write separately to note my understanding that the Court, by the penultimate paragraph of its opinion, *ante*, at 1099, does not require application of harmless-error review on remand.

This Court previously has declined to apply harmless-error analysis to certain categories of constitutional error. See, e.g., *Batson v. Kentucky*, 476 U.S. 79, 100, 106 S.Ct. 1712, 1725, 90 L.Ed.2d 69 (1986) (racial discrimination in the selection of a petit jury); *Vasquez v. Hillery*, 474 U.S. 254, 261-262, 106 S.Ct. 617, 621, 88 L.Ed.2d 598

(1986) (racial discrimination in the selection of a grand jury); *Waller v. Georgia*, 467 U.S. 39, 49-50, and n. 9, 104 S.Ct. 2210, 2217, and n. 9, 81 L.Ed.2d 31 (1984) (right to a public trial); *Tumey v. Ohio*, 273 U.S. 510, 535, 47 S.Ct. 437, 445, 71 L.Ed. 749 (1927) (trial before an impartial judge). Because of the potential chilling effect that consideration of First Amendment activity at sentencing might have, there is a substantial argument that harmless-error analysis is not appropriate for the type of error before us today. See *Ross v. Clark*, 478 U.S. 570, 587, 106 S.Ct. 3101, 3111, 92 L.Ed.2d 460 (1986) (STEVENS, J., opinion concurring in the judgment) ("[V]iolations of certain constitutional rights are not, and should not be, subject to harmless-error analysis because those rights protect important values that are unrelated to the truth-seeking function of the trial"). The parties did not address this issue, and it is better left for the Supreme Court of Delaware on remand.

Justice THOMAS, dissenting.

To rebut mitigating character evidence introduced by petitioner Dawson at his capital sentencing hearing, the State of Delaware proved that Dawson belonged to the Aryan Brotherhood prison gang. The Court holds that the gang membership evidence "ha[d] no relevance to the issues being decided in the proceeding" and that admission of the evidence violated the First Amendment. *Ante*, at 1095. I respectfully dissent.

I

Dawson's membership in the Aryan Brotherhood prison gang had relevance at sentencing. Under Delaware law, after a jury finds a statutory aggravating factor, it may consider "all relevant evidence in aggravation or mitigation" relating to either the crime or the "character and propensities" of the defendant. Del.Code Ann., Tit. 11, § 4209(d)(1) (1987). Under this provision, Dawson's character became

an issue in determining whether he should receive the death penalty.

To prove his good character, as the Court observes, Dawson introduced evidence that he had acted kindly toward his family and that he had earned good time credits while in prison. *Ante*, at 1096. Dawson also introduced evidence of his membership and participation in various respectable organizations, including the Green Tree Program (described only as a "drug and alcohol program"), Alcoholics Anonymous (not described at all), and certain therapy and counseling groups (also not described at all). App. 79. Dawson did not call any expert witnesses to clarify the nature of these organizations or their activities.

The State attempted to rebut Dawson's mitigating character evidence in part by showing that Dawson also belonged to a prison gang called the Aryan Brotherhood. A stipulation read to the jury explained: "The Aryan Brotherhood refers to a white racist prison gang that began in the 1960's in California in response to other gangs of racial minorities. Separate gangs calling themselves the Aryan Brotherhood now exist in many state prisons including Delaware." *Id.*, at 182. I do not consider the evidence of Dawson's gang membership irrelevant to his character.

A

The Court asserts that the gang membership evidence had no relevance because it did nothing more than indicate Dawson's "abstract" racist "beliefs." *Ante*, at 1098. The Court suggests that Dawson's membership in a prison gang would be relevant if the gang had endorsed or committed "unlawful or violent acts" such as drug use, escape, or the murder of other inmates. *Ante*, at 1097-1098, 1098. Yet, because the State failed to prove the Aryan Brotherhood's activities, the Court reasons, the jury could do no more than infer that Dawson shared the gang's racist beliefs. *Ibid.* I disagree. In my judgment, a jury reasonably could conclude from Dawson's

The description of the Aryan Brotherhood as a "racist" prison gang conveyed additional information about Dawson's character. In *Barclay v. Florida*, 463 U.S. 939, 108 S.Ct. 3418, 77 L.Ed.2d 1134 (1983), the plurality found it relevant that a black gang conspired not merely to commit crimes, but to commit them against white persons out of racial hatred. See *id.*, at 949, 108 S.Ct., at 3424. Even if Dawson's white racist prison gang does not advocate "the murder of fellow inmates," *ante*, at 1097, a jury reasonably could infer that its members in one way or another act upon their racial prejudice. The stipulation itself makes clear that the Aryan Brotherhood does not exist merely to facilitate formulation of abstract racist thoughts, but to "respon[d]" to gangs of racial minorities. The evidence thus tends to establish that Dawson has not been "a well-behaved and well-adjusted prisoner," *Skipper v. South Carolina*, 476 U.S. 1, 4, 106 S.Ct. 1669, 1671, 90 L.Ed.2d 1 (1986), which itself is an indication of future dangerousness, see *Franklin v. Lynaugh*, 487 U.S. 164, 178, 108 S.Ct. 2320, 2328, 101 L.Ed.2d 155 (1988) (plurality opinion); *id.*, at 183, 108 S.Ct., at 2332 (O'CONNOR, J., concurring in judgment).

The stipulation also tends to rebut Dawson's evidence of good character. In capital cases, we have held that the sentence imposed should reflect a "reasoned moral response" not only to the crime, but also to the "background" and "character" of the defendant himself. See *Penry v. Lynaugh*, 492 U.S. 302, 328, 109 S.Ct. 2934, 2951, 106 L.Ed.2d 256 (1989) (quoting *California v. Brown*, 479 U.S. 538, 545, 107 S.Ct. 837, 841, 93 L.Ed.2d 934 (1987) (O'CONNOR, J., concurring)). In determining Dawson's "personal culpability," *Penry*, *supra*, 492 U.S., at 327, 109 S.Ct. at

2951, the jury surely would want to know about the various activities, traits, and tendencies that distinguish him as a "uniquely individual human being[ing]." *Woodson v. North Carolina*, 428 U.S. 280, 304, 96 S.Ct. 2978, 2991, 49 L.Ed.2d 944 (1976). Dawson introduced mitigating character evidence that he had acted kindly towards his family. The stipulation tended to undercut this showing by suggesting that Dawson's kindness did not extend to members of other racial groups. Although we do not sit in judgment of the morality of particular creeds, we cannot bend traditional concepts of relevance to exempt the antisocial.

B

The Court's opinion suggests that the Constitution now imposes a double standard for determining relevance: a standard easy for defendants to satisfy, but difficult for prosecutors. Under *Eddings v. Oklahoma*, 455 U.S. 104, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982), and *Lockett v. Ohio*, 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 978 (1978) (plurality opinion), a capital defendant has a right to introduce all relevant mitigating evidence. Capital defendants, as a result, regularly introduce character evidence that allows juries to consider their abstract beliefs and associational rights. Dawson, for example, introduced evidence that he associated with Alcoholics Anonymous and other groups. Other defendants have introduced comparable evidence regarding their religious practice and fraternal organizations. See, e.g., *Jordan v. State*, 518 So.2d 1186, 1188 (Miss.1987) (membership in a church); *Sivak v. State*, 112 Idaho 197, 236, 731 P.2d 192, 231 (1986) (same); *Deputy v. State*, 500 A.2d 581, 598 (Del.1985) (religious rebirth); *People v. Belmontes*, 45 Cal.3d 744, 797, 755 P.2d

Cellblocks, Time, Aug. 12, 1983, p. 20 (describing the Aryan Brotherhood's "inflexible ethic of vengeance"); J. Fox, Organizational and Racial Conflict in Maximum-Security Prisons 136 (1982) (identifying the Aryan Brotherhood as an "extremist" organization like the Ku Klux Klan); United States Dept. of Justice, Prison Gangs

Their Extent, Nature and Impact on Prisons 43-190 (1983) (discussing the activities of the Aryan Brotherhood in the prisons of fourteen States). Even if the jury were unaware of the Aryan Brotherhood in particular, it was surely aware of the nature of prison gangs generally.

want to know
traits, and
him as a
an being,"
428 U.S. 230,
L.Ed.2d 944
d mitigating
acted kindly
dation tended
y suggesting
not extend to
s. Although
the morality
it bend tradi-
o exempt the

sts that the
double stan-
: a standard
but difficult
ngs v. Okla-
Ct. 869, 71
v. Ohio, 438
L.Ed.2d 978
apital defen-
all relevant
defendants,
se character
onsider their
ional rights.
ced evidence
olice Anony-
r defendants
evidence re-
and frater-

Jordan v.

(Miss.1987)

ak v. State,

2, 231 (1986)

2d 581, 539

People v.

7, 755 P.2d

in Prisons 65-

s of the Aryan

utrian States).

of the Aryan

surely aware

erally.

310, 340 (1988) (same); *Evans v. McCotter*, 790 F.2d 1232, 1242, and n. 10 (CA5 1986) (conversion to Christianity); *State v. Bruke*, 38 Ohio St.3d 29, 43, 526 N.E.2d 274, 289 (1988) (former membership in the Cub Scouts). I see no way to hold that this evidence has relevance, but that Dawson's gang membership does not.

A double standard for determining relevance may distort the picture presented to the jury. In this case, Dawson himself chose to introduce evidence of certain good character traits. Unless the State had responded with evidence of other, bad traits, the jury could not possibly have made a fair and balanced determination. Membership in Alcoholics Anonymous might suggest a good character, but membership in the Aryan Brotherhood just as surely suggests a bad one. The jury could not have assessed Dawson's overall character without both.

Just last term, in *Payne v. Tennessee*, 501 U.S. —, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991), the Court condemned a similar distortion. Overruling *Booth v. Maryland*, 482 U.S. 496, 107 S.Ct. 2529, 96 L.Ed.2d 440 (1987), and *South Carolina v. Gathers*, 490 U.S. 805, 109 S.Ct. 2207, 104 L.Ed.2d 876 (1989), we held that the Eighth Amendment does not generally prohibit the introduction of victim impact evidence. See *Payne, supra*, at —, 111 S.Ct., at —. We reasoned that allowing the jury to consider the defendant, but not the victim, would create an unbalanced picture. Quoting a dissenting opinion in *Booth*, we stated: "[T]he State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in, by reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family." *Payne, supra*, at —, 111 S.Ct., at 2608 (quoting *Booth*, 482 U.S., at 517, 107 S.Ct., at 2540 (WHITE, J., dissenting)); see also 482 U.S., at 520, 107 S.Ct., at 2542 (SCALIA, J., dissenting) ("Many citizens have found one-

sided and hence unjust the criminal trial in which a parade of witnesses comes forth to testify to the pressures beyond normal human experience that drove the defendant to commit his crime.... Perhaps these sentiments do not sufficiently temper justice with mercy, but that is a question to be decided through the democratic processes of a free people, and not by the decrees of this Court"). Whatever distortion was produced in requiring an exclusive focus on the defendant's character, at least nothing in *Booth* prevented the jury—as does today's decision—from fairly and fully assessing that character.

II

The Court acknowledges that Delaware could have avoided any First Amendment problem simply by presenting evidence that proved something more than Dawson's abstract beliefs. *Ante*, at 1098-1099. For the reasons that I have stated, I believe that Delaware has made such a showing. I therefore see no First Amendment violation under the Court's analysis. The Court, however, goes on to make several further assertions about the First Amendment that I find troubling and unnecessary in this case.

A

Both Dawson and the State, as noted above, had a right to develop the issue of "character" at the sentencing proceeding. See Del.Code Ann., Tit. 11, § 4209(d)(1) (1987); *Eddings*, 455 U.S., at 113-114, 102 S.Ct., at 876. In applying the First Amendment, however, the Court declines to decide whether abstract beliefs may constitute a portion of character. "[W]hatever label is given to the evidence," the Court asserts, "we conclude that Dawson's First Amendment rights were violated ... in this case...." *Ante*, at 1098. As a consequence, to the extent that abstract beliefs make up part of a person's character, the decision today limits the aspects of character that sentencing authorities may consid-

We long have held that the Constitution permits courts and juries to consider character evidence in sentencing proceedings. See *Williams v. New York*, 337 U.S. 241, 247, 69 S.Ct. 1079, 1083, 93 L.Ed. 1337 (1949). Until today, we have never hinted that the First Amendment limits the aspects of a defendant's character that they may consider. To the contrary, we have emphasized that the sentencing authority "may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider, or the source from which it may come." *United States v. Tucker*, 404 U.S. 443, 446, 92 S.Ct. 589, 591, 30 L.Ed.2d 592 (1972).

In *Williams*, for example, we upheld a New York law that encouraged the sentencing judge to consider evidence about the defendant's "past life, health, habits, conduct, and mental and moral propensities," 337 U.S., at 245, 69 S.Ct., at 1082, a phrase easily broad enough to encompass a substantial amount of First Amendment activity. Writing for the Court, Justice Black specifically identified religion and interests as sentencing considerations that may "give the sentencing judge a composite picture of the defendant." *Id.*, at 250, n. 15, 69 S.Ct., at 1085, n. 15.

More recently, in *Franklin v. Lynaugh*, all five Members of the Court who addressed the issue agreed that religious activity may bear upon a defendant's character. See 487 U.S., at 186, 108 S.Ct., at 2382 (O'CONNOR, J., concurring in judgment) ("Evidence of ... religious devotion might demonstrate positive character traits"); *id.*, at 190, 108 S.Ct., at 2385 (STEVENS, J., dissenting) ("Evidence of ... regular

church attendance" is relevant to character).² Although the opinions in *Franklin* endorsed consideration of religious activity as a mitigating factor, the endorsement necessarily disfavors abstention from religious activity, which the First Amendment also protects.

The Court nowhere explains why courts and juries may consider some First Amendment protected activities when assessing character, but they cannot consider others. Today's decision, moreover, does not define the boundaries of permissible inquiry into character. If the Court means that no First Amendment protected activity "ca[n] be viewed as relevant 'bad' character evidence in its own right," *ante*, at 1099, then today's decision represents a dramatic shift in our sentencing jurisprudence.

B

Once the Court concludes that the gang membership evidence "has no relevance to the issues being decided in the [sentencing] proceeding," *ante*, at 1095, I also have difficulty seeing what the First Amendment adds to the analysis. If the Court considers the evidence irrelevant, the problem is not that Delaware law bases the sentencing decision on impermissible issues, but rather that Dawson may not have received a fair trial on the permissible issues in the proceeding. The Due Process Clause, not the First Amendment, traditionally has regulated questions about the improper admission of evidence.

As we stated in *Chambers v. Florida*, 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716 (1940), the requirement of Due Process al-

2. In federal court, Federal Rule of Criminal Procedure 32(c)(2)(A) permits the presentence report following a criminal conviction to contain "information about the history and characteristics of the defendant ... that may be helpful in imposing sentence." The Advisory Committee note to the original version of this rule refers to a report that we endorsed in *Williams v. New York*, 337 U.S. 241, 250, n. 15, 69 S.Ct. 1079, 1084, n. 15, 93 L.Ed. 1337 (1949): Administrative Office of the United States Courts, The Presentence Investigation Report, Pub. No. 101

(1943). This report explains: "Centuries of human experience have given testimony to the dynamic qualities of religion. Religion may be a significant, decisive factor in enabling an individual to overcome his difficulties." *Id.*, at 10. The report also suggests that courts consider the defendant's "fraternal and social organizations." *Ibid.* A more recent edition of this report retains comparable instructions. See Administrative Office of the United States Courts, The Presentence Investigation Report, Pub. No. 105 (1984).

ways has protected "the weak, or ... helpless political, religious, or racial minorities and those who differed" by ensuring that "no man's life, liberty or property be forfeited as criminal punishment for violation of [the] law until there ha[s] been a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement, and tyrannical power." *Id.*, at 236-237, 60 S.Ct., at 477. We have made clear, in particular, that when a state court admits evidence that is "so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief." *Payne v. Tennessee*, 501 U.S., at —, 111 S.Ct., at —; see *Darden v. Wainwright*, 477 U.S. 168, 179-183, 106 S.Ct. 2464, 2470-72, 91 L.Ed.2d 144 (1986).

Our decision in *Schwartz v. Board of Bar Examiners of N.M.*, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957), which the Court incorrectly cites, illustrates the point. In *Schwartz*, the New Mexico Supreme Court denied an applicant admission to the bar on grounds that he lacked good moral character. Evidence showed that the applicant had belonged to the Communist Party 15 years earlier. The Court erroneously states that *Schwartz* held that admitting proof of the applicant's membership in the Communist Party violated the First Amendment. *Ante*, at 1099. *Schwartz*, in fact, did not decide that admitting the Communist Party evidence abridged any right of free political association. See 353 U.S., at 243, n. 13, 77 S.Ct., at 759, n. 13. It held, instead, that the state court erred in admitting the Communist Party evidence because it had no relevance to the applicant's moral character after so many years. See *id.*, at 246, 77 S.Ct., at 760. Due process, the Court concluded, prohibited the state court to find the applicant morally unfit to practice law without any relevant evidence. See *id.*, at 247, 77 S.Ct., at 760.

Applying familiar evidentiary standards in Dawson's case, the trial judge recognized that the "real issue" in admitting the gang membership evidence was whether its

"probative value is outweighed by the danger of unfair prejudice." App. 52. The Delaware Supreme Court, likewise, examined the record to determine whether the gang membership evidence "improperly appeal[ed] to the juror's passions and prejudices concerning race, religion, or political affiliation." 581 A.2d 1078, 1108 (1990). The standards employed by these courts went further than the fundamental unfairness standard stated in *Payne* and therefore satisfied the requirements of Due Process. Dawson has presented no convincing argument, based on the record as a whole, that the courts misapplied these standards to the facts of his case. For these reasons, I would affirm.



GENERAL MOTORS CORPORATION,
et al., Petitioners,

v.

Evert ROMEIN et al.

No. 90-1390.

Argued Dec. 10, 1991.

Decided March 9, 1992.

Workers sought hearing after employers began coordinating workers' compensation benefits pursuant to 1981 Michigan statute passed after workers' injuries mandating coordination of benefits. Workers' Compensation Appeals Board entered judgments and appeals were consolidated. The Court of Appeals, 168 Mich.App. 444, 425 N.W.2d 174, held that 1987 statute prohibiting coordination of benefits for workers injured prior to 1981 statute was constitutional. Employers appealed. The Michigan Supreme Court, Cavanagh, J., 436 Mich. 515, 462 N.W.2d 555, affirmed. Certiorari was granted. The Supreme Court,

David M. Schieck
302 E. Carson Ave., Ste. 918
Las Vegas, NV 89101
(702) 382-1844

FILED

MAY 22 12 24 PM '95

CLERK

1 DAVID M. SCHIECK, ESQ.
2 NEVADA BAR NO. 0824
3 302 E. CARSON, #918
4 LAS VEGAS, NV 89101
5 702-382-1844

6 WILLIAM L. WOLFBRANDT, ESQ.
7 NEVADA BAR NO. 0460
8 302 E. CARSON, #918
9 LAS VEGAS, NV 89101
10 702-388-0545

11 ATTORNEYS FOR DEFENDANT MOORE

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 * * *

15 THE STATE OF NEVADA,

16 Plaintiff,

17 vs.

18 RANDOLPH MOORE, et al.,

19 Defendants.

) CASE NO. C 69269
)
) DEPT. NO. XI

) MOTION TO STRIKE
) DEATH PENALTY

) DATE: 6-1-95
) TIME: 9 AM

20 COMES NOW, Defendant RANDOLPH MOORE, by and through his
21 attorneys DAVID M. SCHIECK, ESQ. and WILLIAM L. WOLFBRANDT,
22 ESQ., and moves this Court to strike the death penalty as it is
23 impossible for MOORE to receive a fair penalty hearing.

24 This Motion is made and based on the papers and pleadings
25 on file herein, the Points and Authorities attached hereto, and
26 such argument as may be had at the hearing of the Motion.

27 . . .

. . .

JW2

David M. Schleck
302 E. Carson Ave., Ste. 918
Las Vegas, NV 89101
(702) 382-1844

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION

TO: THE STATE OF NEVADA; and

TO: THE DISTRICT ATTORNEYS OFFICE:

PLEASE TAKE NOTICE that the undersigned will bring this Motion on for hearing on the 1st day of JUNE, 1995 at the hour of 9 A.m., before the above entitled Court, at the Clark County Courthouse, or as soon thereafter as counsel can be heard.

STATEMENT OF FACTS

This case originally went to trial on September 27, 1985 and the Penalty hearing concluded on October 17, 1985. At the first penalty hearing MOORE called 5 witnesses to testify and gave an unsworn statement.

Mahlon Faust first met MOORE in 1980 and had contact with him in relation to horse shows and a charity trail ride (18 ROA 3838). He estimates that MOORE was 15 years old or so when he had discussions with him concerning his future ambition of attending the air force academy (18 ROA 3840).

Shelly Ballenger had known MOORE for three years and considered him to be a best friend (18 ROA 3842). She found him to be a kind, warm, sensitive person (18 ROA 3844).

Lindy Moore, Randy's mother, related his interests in music and school activities (18 ROA 3846). MOORE maintained a high grade point average and had received scholarship, citizenship and attendance certificates. He had his own horse when he was fifteen and was involved in the Nevada State Horse

David M. Schieck
302 E. Carson Ave., Ste. 918
Las Vegas, NV 89101
(702) 382-1844

1 Association. Lindy Moore also testified concerning MOORE'S
2 violent and abusive father when MOORE was very young. She also
3 related the family's involvement with magic and psychic
4 activities (18 ROA 3853-54).

5 William Spranger came into contact with MOORE through
6 horse organizations and at one time MOORE dated his daughter
7 (18 ROA 3858-59). He found MOORE to be a very mild young man,
8 very forthright, and never dishonest (18 ROA 3859).

9 Eighteen year old Connie Leavitt was engaged to MOORE and
10 had known him for two years and found him to be caring and
11 helpful to other people (18 ROA 3861). She also testified that
12 MOORE was a born again Christian and read the Bible every day
13 (18 ROA 3863).

14 MOORE himself rendered unsworn testimony and was 20 years
15 old at the time of trial having been born on March 5, 1965 (18
16 ROA 3865). MOORE then gave a short allocution to the jury (18
17 ROA 3866-68).

18 The second penalty hearing occurred in July, 1989 when
19 MOORE was twenty four (24) years old. At the second penalty
20 hearing MOORE called some of the same witnesses from the first
21 penalty hearing: Shelly Ballenger, William Spranger and Lindy
22 Moore who gave testimony similar to the first hearing as
23 described above. In addition MOORE called Bud Hlaverty, Gary
24 Hoffman, Andy Schroeder and Darla Newell.

25 Hlaverty was a supervising guard from Nevada State Prison
26 and characterized MOORE'S behavior as good, with no
27
28

David M. Schleck
302 E. Carson Ave., Ste. 918
Las Vegas, NV 89101
(702) 382-1844

1 disciplinary problems (23 ROA 4888-4891). MOORE was
2 cooperative and did whatever was asked of him (23 ROA 4891).

3 MOORE worked for Schroeder from age 14 to 17 taking care
4 of his horses (23 ROA 3901). MOORE was an all around good hand
5 and was trusted with the ranch and everything on it (23 ROA
6 4902).

7 Darla Newell went to junior high school with MOORE and had
8 stayed in contact with him, even after he went to prison (23
9 ROA 4905-07). MOORE was a good student and participated in the
10 school band (23 ROA 4906-08).

11 Hoffman was an ordained chaplain who helped publish a
12 magazine written by inmates (23 ROA 4935). MOORE had written a
13 number of articles and taken bible study courses (23 ROA 4936-
14 37).

15 MOORE is now 30 years of age and has been incarcerated on
16 death row by the Nevada Department of Prisons nearly ten full
17 years.

18 POINTS AND AUTHORITIES

19 The Eighth Amendment to the United States Constitution
20 requires that the sentence of death not be imposed in an
21 arbitrary and capricious manner. Gregg v. Georgia, 428 U.S.
22 153 (1976). The fundamental respect for humanity underlying
23 the Eighth Amendment requires consideration of the character
24 and record of the individual offender and the circumstances of
25 the particular offense as a constitutionally indispensable part
26 of the process of inflicting the penalty of death. Woodson v.
27

David M. Schleck
302 E. Carson Ave., Ste. 918
Las Vegas, NV 89101
(702) 382-1844

1 North Carolina, 428 U.S. 280 (1976). Evidence that is of a
2 dubious or tenuous nature should not be introduced at a penalty
3 hearing, and character evidence whose probative value is
4 outweighed by the danger of unfair prejudice, of confusion of
5 the issues or misleading the jury should not be introduced.

6 Allen v. State, 99 Nev. 485, 665 P.2d 238 (1983).

7 There is no evidence available to MOORE that is less than
8 ten (10) years old except for evidence relating to life on
9 death row. When the instant crime occurred MOORE was nineteen
10 years old, now he is thirty. Eleven out of twelve years of his
11 adult life have been spent in prison. There simply does not
12 exist any relevant testimony to be presented ten years later.

13 The State's response is sure to be that MOORE cannot be
14 heard to complain because it was his conviction that put him in
15 prison. While this may be true, the more significant fact is
16 that the misconduct of the prosecution has resulted in the ten
17 year delay that surrounds this penalty hearing. Lest we forget
18 the Supreme Court in reviewing the first penalty hearing stated
19

20 "We are compelled to conclude that the cumulative
21 effect of the prosecutor's extensive misconduct was
22 of such magnitude as to render Flanagan's sentencing
23 hearing fundamentally unfair."

24 Flanagan v. State, 104 Nev. 105, 112, 754 P.2d 836 (1988).

25 The second penalty hearing was reversed because:

26 "the prosecution submitted evidence of appellant's
27 religious beliefs in violation of the Constitution.
28 The prosecution used this evidence as a non-statutory
aggravating factor."

Flanagan v. State, 109 Nev. 50, 57, 846 P.2d 1053 (1993).

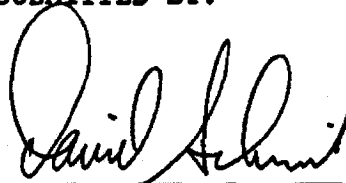
David M. Schieck

302 E. Carson Ave., Ste. 918
Las Vegas, NV 89101
(702) 382-1844

1 MOORE can no longer receive a fair penalty hearing due to
2 the improper conduct of the prosecutor. He is no longer a
3 fuzzy cheeked twenty year old but is now a man of thirty with
4 ten years of prison confinement under his belt. MOORE has been
5 forever deprived of the ability to present his individual
6 character to the jury in any relevant meaningful fashion. The
7 only appropriate remedy is to strike the death penalty.

8 DATED: May 22, 1995

SUBMITTED BY:

10
11
12 

13 DAVID M. SCHIECK, ESQ.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THE LAW OFFICES OF
WILLIAM LEWIS WOLFBRANDT, JR.
302 EAST CARSON AVENUE, SUITE 308
LAS VEGAS, NEVADA 89101
(702) 388-0545

William L. Wolfbrandt, Esq.
Nevada Bar No. 0460
302 E. Carson Ave., #918
Las Vegas, NV 89101
702-388-0545

DAVID M. SCHIECK, ESQ.
NEVADA BAR NO. 0824
302 E. CARSON AV, #918
LAS VEGAS, NEVADA 89101
702-382-1844

ATTORNEYS FOR DEFENDANT MOORE

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

THE STATE OF NEVADA,

Plaintiff,

vs.

RANDOLPH MOORE, et al.,

Defendants.

CASE NO: C69269
DEPT NO: XI
DOCKET: "S"

MOTION TO DISCLOSE INDUCEMENTS, PROMISES AND
PAYMENTS TO PROSPECTIVE STATE WITNESSES
AND MEMORANDUM IN SUPPORT THEREOF

Date of Hearing: 6-6, 1995
Time of Hearing: 9:00 a.m.

COMES NOW Defendant RANDOLPH MOORE, by and through his attorneys, WILLIAM L. WOLFBRANDT, ESQ. and DAVID M. SCHIECK, ESQ., and moves this Court to order the State to disclose to Defendant which prosecution witnesses, if any, and which confidential sources, if any, have been permitted, received or benefited, in any way from any immunity or favor granted or to be granted by the

FILED

MAY 23 12 31 PM '95

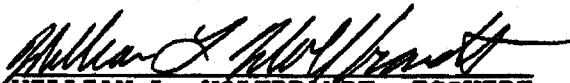
CLERK

THE LAW OFFICES OF
WILLIAM LEWIS WOLFBRANDT, JR.
302 EAST CARSON AVENUE, SUITE 508
LAS VEGAS, NEVADA 89101
(702) 388-0545

1 State of Nevada, its prosecutors, agencies or agents, and to
2 further state and describe the substance of said immunity and
3 favor, for example, refusal to prosecute, limited prosecution,
4 release on low bail, release on bail with security, recommendation
5 to courts for lesser punishment, rewards of any kind, including
6 financial, maintenance, protection payments to wives, sweethearts
7 or families, or for their maintenance or any other rewards of any
8 nature.

9 This Motion is made and based upon all of the records and
10 pleadings on file herein and upon the Memorandum of Points and
11 Authorities attached hereto and incorporated herein by reference.

12 DATED this 23 day of May, 1995.

13 
14 WILLIAM L. WOLFBRANDT, ESQUIRE
15 Nevada Bar Number 000460
16 302 East Carson Avenue, #918
17 Las Vegas, Nevada 89101
18
19
20
21
22
23
24
25
26
27
28


THE LAW OFFICES OF
WILLIAM LEWIS WOLFBRANDT, JR.
302 EAST CARSON AVENUE, SUITE 508
LAS VEGAS, NEVADA 89101
(702) 388-0545

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff; and

TO: STEWART BELL, District Attorney:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing MOTION TO DISCLOSE INDUCEMENTS, PROMISES AND PAYMENTS TO PROSPECTIVE STATE WITNESSES AND MEMORANDUM IN SUPPORT THEREOF on for hearing before the above-entitled Court on the 6 day of June, 1995, at 9:00 a.m., in Department XI of said Court, or as soon thereafter as counsel may be heard.


WILLIAM L. WOLFBRANDT, ESQUIRE
Nevada Bar Number 000460
302 East Carson Avenue, #918
Las Vegas, Nevada 89101


POINTS AND AUTHORITIES

This request to disclose any "inducements, promises and payments" was explicitly granted in United States v. Guerts, 53 FDR 25 (E.E. Wis. 1971). See also, United States v. Ahmad, 53 FDR 186-193-94 (MD. Pa. 1971), which would require the Government to disclose this information under Brady v. Maryland, 373 U.S. 83 (1963). The request to disclose any "Inducements, Promises and Payments" as to the confidential sources is predicated on the belief that these sources may have, in fact, engaged in illegal activities, for which they may have received "informal immunity" from Federal Investigative Authorities. Such a practice is common and frequent, and is discoverable under the principles of Brady v. Maryland, supra, and its progeny. This practice, if followed in

THE LAW OFFICES OF
WILLIAM LEWIS WOLFBRANDT, JR.
302 EAST CARSON AVENUE, SUITE 508
LAS VEGAS, NEVADA 89101
(702) 388-0545

1 the present case, certainly affects the reliability and credibility
2 which should be given to these sources; further, if this practice
3 occurred, it will substantially affect a motion to dismiss which
4 would be filed following evidentiary hearings on this matter, if
5 any.

6 DATED this 23 day of May, 1995.

7
8 
9 WILLIAM L. WOLFBRANDT, ESQUIRE
10 Nevada Bar Number 000460
11 302 East Carson Avenue, #918
12 Las Vegas, Nevada 89101
13 Attorney for Defendant
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

David M. Schieck
302 E. Carson Ave., Ste. 918
Las Vegas, NV 89101
(702) 382-1844

FILED

MAY 23 12 31 PM '95

1 DAVID M. SCHIECK, ESQ.
2 NEVADA BAR NO. 0824
3 302 E. CARSON, #918
4 LAS VEGAS, NV 89101
5 702-382-1844

6 WILLIAM L. WOLFBRANDT, ESQ.
7 NEVADA BAR NO. 0460
8 302 E. CARSON, #918
9 LAS VEGAS, NV 89101
10 702-388-0545

11 ATTORNEYS FOR DEFENDANT MOORE

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 * * *

15 THE STATE OF NEVADA,

16 Plaintiff,

17 vs.

18 RANDOLPH MOORE, et al.,

19 Defendants.

) CASE NO. C 69269
) DEPT. NO. XI

) MOTION IN LIMINE TO
) PRECLUDE REFERENCE
) TO THE SENTENCES
) OF THE CO-DEFENDANTS

) DATE:
) TIME:

6-6-95
9 AM

20 COMES NOW, Defendant RANDOLPH MOORE, by and through his
21 attorneys DAVID M. SCHIECK, ESQ. and WILLIAM L. WOLFBRANDT,
22 ESQ., and moves this Court to order that the State not be
23 allowed to introduce evidence of the sentences given to the co-
24 defendants at the penalty hearing.

25 This Motion is made and based on the papers and pleadings
26 on file, the Points and Authorities attached hereto, and such
27 argument as may occur at the time of the hearing of the Motion.
28 . . .

CE11

1487

David M. Schleck
302 E. Carson Ave., Ste. 916
Las Vegas, NV 89101
(702) 382-1844

1 NOTICE OF MOTION

2 TO: THE STATE OF NEVADA, Plaintiff herein; and

3 TO: THE DISTRICT ATTORNEYS OFFICE, its attorney:

4 PLEASE TAKE NOTICE that the undersigned will bring this
5 Motion on for hearing on the 6th day of JUNE, 1995
6 at the hour of 9 A.m., before the above entitled Court,
7 at the Clark County Courthouse, or as soon thereafter as
8 counsel can be heard.

9 STATEMENT OF FACTS

10 During the course of the second penalty hearing in this
11 matter the State, over defense, objection, was allowed to
12 introduce testimony of the sentences received by co-defendants
13 McDowell and Lockett (22 ROA 4837-4840). McDowell received
14 four consecutive sentences of life with the possibility of
15 parole and Lockett received four life sentences without the
16 possibility of parole. During closing argument the State
17 argued that the "equitable solution" was to impose the death
18 penalty to be sure that "everyone gets treated relatively
19 fairly within the confines of their case." (23 ROA 4992).

20 The issue of the admissibility of the sentences of the co-
21 defendants was raised on appeal from the second penalty hearing
22 and found not to be error.

23 POINTS AND AUTHORITIES

24 When the Nevada Supreme Court considered this issue in
25 1987 they stated:

26 "We conclude that the district court did not err
27 in allowing the testimony about the sentences of the
28

David M. Schleck
302 E. Carson Ave., Ste. 918
Las Vegas, NV 89101
(702) 382-1844

1 other co-defendants. The evidence was admissible
2 under NRS 175.552 as 'any other matter which the
3 court deems relevant....' Furthermore, the jury was
4 instructed that it was not bound by the previous
5 sentences. We believe it was proper and helpful for
6 the jury to consider the punishment imposed on the
7 co-defendants. See State v. McKinney, 687 P.2d 570
8 (Idaho 1984).

9 Flanagan v. State, 107 Nev. 243, 247-248, 810 P.2d 759 (1991).

10 The Court's reliance on McKinney, *supra* is somewhat
11 puzzling. The Court in McKinney was conducting a mandated
12 proportionality review and the defendant was claiming that his
13 sentence was too harsh when compared to the sentences given on
14 a less culpable co-defendant. McKinney, 687 P.2d at 576. The
15 question presented here is different: Should a sentencing jury
16 be entitled to consider the sentence given by another jury in
17 deciding the proper punishment for MOORE?

18 There are several reasons to deviate from the previous
19 holding in this case.

20 1. The sentencing jury in the first penalty hearing was
21 subjected to pervasive prosecutorial misconduct that
22 invalidated their sentences of MOORE and co-defendant Flanagan.

23 2. The sentencing jury in the first penalty hearing based
24 its sentence on the unconstitutional devil worship testimony
25 condemned by both the Nevada and United States Supreme Court
26 after the second penalty hearing.

27 3. The weight of the authority is that such evidence is
28 not admissible at a capital sentencing hearing. The United
States Supreme Court is clear that the proper consideration is
imposing the death penalty are "the character and record of the

David M. Schieck
302 E. Carson Ave., Ste. 918
Las Vegas, NV 89101
(702) 382-1844

1 individual offender and the circumstances of the particular
2 offense." Lockett v. Ohio, 438 U.S. 586, 604, 98 S.Ct. 2954,
3 2964 (1978); Woodson v. North Carolina, 428 U.S. 280, 304, 96
4 S.Ct. 2978, 2991 (1976); People v. Belmontes, 755 P.2d 310
5 (Cal. 1988); State v. Williams, 292 S.E.2d 243, cert. Den. 459
6 U.S. 1056, 103 S.Ct. 474 (1982); Coulter v. State, 438 So.2d
7 336 (Ala. 1982); Brogdon v. Blackburn, 790 F.2d 1164 (5th Cir.
8 1986).

9
10 CONCLUSION

11 It is therefore respectfully suggested that this Court
12 determine that the sentences imposed on the co-defendants be
13 inadmissible at this, the third penalty hearing.

14 SUBMITTED BY:

15 
16 DAVID M. SCHIECK, ESQ.

FILED

MAY 24 3 14 PM '95

CLERK

MORGAN D. HARRIS
PUBLIC DEFENDER
Nevada Bar #1879
309 S. Third Street
Las Vegas, NV 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DALE EDWARD FLANAGAN,
RANDOLPH MOORE,

Defendant.

CASE NO. C69269

DEPT. NO. XI

DATE OF HEARING: 6/6/95

TIME OF HEARING: 9:00 A.M.

MOTION TO PROHIBIT TESTIMONY OF
DISTRICT ATTORNEY TO SUMMARIZE WITNESS' PRIOR TESTIMONY
OR IN THE ALTERNATIVE TO DISQUALIFY DISTRICT ATTORNEY'S OFFICE

COMES NOW the Defendant, DALE EDWARD FLANAGAN, by and through his attorneys, DAVID T. WALL and REBECCA A. MOUNTS, Deputy Public Defenders, and hereby moves this Court for an Order prohibiting the State from presenting the testimony of a Deputy District Attorney to summarize prior testimony of State witnesses, or in the alternative to disqualify the District Attorney's Office or at least the particular deputies, from prosecuting this action.

...

...

...

...

...

1496

CE11

1 This Motion is based upon the pleadings and papers on
2 file herein, the Points and Authorities attached hereto and any
3 argument of counsel at the time of hearing.

4 DATED this 24th day of May, 1995.

5 Respectfully submitted,

6 CLARK COUNTY PUBLIC DEFENDER

7
8 By 

9 David T. Wall
10 Deputy Public Defender
11 Nevada Bar #2805

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 - 1497

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11 On appeal, the Nevada Supreme Court reversed the
12 finding of death based upon prosecutorial misconduct and remanded
13 the matter for a new penalty hearing. See State v. Flanagan, 104
14 Nev. 105, 754 P.2d 836 (1988).

28 in Dawson v. Delaware, 112 S.Ct. 1093 (1992). Upon

1 reconsideration, the Nevada Supreme Court remanded the matter
2 back to the District Court for a third penalty hearing. See
3 State v. Flanagan, 109 Nev. 50, 846 P.2d 1053 (1993).

4 In the matter sub judice, the undersigned counsel has
5 been informed that both Mr. Harmon and Mr. Seaton will be
6 prosecuting this matter for the State. Therefore, the instant
7 Motion seeks an Order from the Court prohibiting the District
8 Attorneys from acting as both prosecutor and witness in the same
9 proceeding, and further seeks an Order prohibiting the use of a
10 prosecutor as a witness to summarize prior testimony.
11 Alternatively, if the State intends to have counsel act as both
12 prosecutor and witness, then the instant Motion seeks the
13 disqualification of those individuals from prosecuting the case
14 or the vicarious disqualification of the entire District
15 Attorney's Office.

16 Although a member of the District Attorney's Office may
17 be competent to testify as a witness, Tomlin v. State, 81 Nev.
18 620, 623, 407 P.2d 1020 (1965), a prosecutor participating in a
19 trial ought not to be a testifying witness in that proceeding.

20 The practice of acting a prosecutor and
21 witness is not approved and should not be
22 indulged in except under most extraordinary
circumstances.

23 Tomlin, 81 Nev. at 624.

24 The Nevada Supreme Court in Tomlin went on to state
25 that if a prosecutor was aware prior to trial that his testimony
26 might be necessary at the proceeding, that prosecutor should
27 withdraw from the case and have other counsel prosecute. Id. at
28 623.

. . .

1 The practice of allowing an attorney to act as both
2 prosecutor and witness has consistently been strongly
3 discouraged. Tomlin, supra; United States v. Watson, 952 F.2d
4 982 (8th Cir.), cert. denied 112 S.Ct. 1694 (1991).

5 The general rule is that one should not act as an
6 advocate and a witness in the same proceeding. United States v.
7 Dupuy, 760 F.2d 1492 (9th Cir. 1985). This rule is reflected in
8 the ABA Code of Professional Responsibility which states as an
9 ethical consideration:

10 The roles of an advocate and of a witness
11 are inconsistent; the function of an
12 advocate is to advance or argue the cause of
another, while that of a witness is to state
the facts objectively.

13 American Bar Association, Code of Professional Responsibility, EC
14 5-9 (1978).

15 The application of these ethical rules is not limited
16 only to attorneys in the private practice of the law, but is also
17 applicable to government prosecutors. United States v. Johnston,
18 690 F.2d 638, 642 (7th Cir. 1982); See also, American Bar
19 Association, Code of Professional Responsibility, DR 5-101(B) and
20 5-102.

21 In Johnston, the United States Court of Appeals for the
22 Seventh Circuit identified four policies served by the advocate-
23 witness rule:

24 First, the rule eliminates the risk that a
25 testifying prosecutor will not be a fully
26 objective witness given his position as an
27 advocate for the government. Second, there
28 is fear that the prestige or prominence of
the government prosecutor's office will
artificially enhance his credibility as a
witness. Third, the performance of dual
roles by a prosecutor might create confusion
on the part of the trier of fact as to

1 whether the prosecutor is speaking in the
2 capacity of an advocate or of a witness,
3 thus raising the possibility of the trier
4 according testimonial credit to the
5 prosecutor's closing argument. Fourth, the
6 rule reflects a broader concern for public
7 confidence in the administration of justice,
8 and implements the maxim that "justice must
9 satisfy the appearance of justice."

10 Johnston, 690 F.2d at 643.

11 In the instant case, the considerations set forth above
12 apply directly to the testimony of a prosecutor in summary of the
13 testimony of other witnesses at other proceedings. At the 1989
14 penalty hearing, the prosecutor was not simply reading into the
15 record prior testimony of an unavailable witness, but rather was
16 called upon to summarize and paraphrase the testimony of critical
17 witnesses, including a Co-Defendant in the case.

18 The District Court has discretion to disqualify a
19 prosecutor or the entire office under certain circumstances.
20 Collier v. Legakes, 98 Nev. 307, 646 P.2d 1219 (1982); Trone v.
21 Smith, 621 F.2d 994 (9th Cir. 1980). In exercising its
22 discretion, the court must honor the defendant's rights under the
23 confrontation and compulsory process clauses of the Sixth
24 Amendment to the United States Constitution. United States v.
25 Prantl, 764 F.2d 548, 552 (1985).

26 In the instant case, the movants ask that the
27 prosecutors handling the case not double as summary witnesses
28 during the penalty phase. If the representatives of the District
29 Attorney's Office persist in desiring to act as testimonial
30 witnesses, then it is the request of the Defendant herein that
31 they be disqualified from prosecuting the action. Where the
32 issue arises as to the propriety of an individual acting as both

1 advocate and witness, doubts should be resolved in favor of the
2 lawyer testifying and against his continuing as an advocate.
3 Prantil, 764 F.2d at 553, fn 2; American Bar Association, Code of
4 Professional Responsibility, EC 5-10.

5 Based on the foregoing, it is respectfully requested
6 that the Court enter an Order prohibiting the State from calling
7 its own prosecutors as witnesses to summarize past testimony, or
8 alternatively that the Court disqualify as advocates those
9 prosecutors who intend to testify as a witness in the
10 proceedings.

11 DATED this 24th day of May, 1995.

12 Respectfully submitted,

13 CLARK COUNTY PUBLIC DEFENDER

14
15 By 

16 David T. Wall
17 Deputy Public Defender
18 Nevada Bar #2805
19
20
21
22
23
24
25
26
27
28

- 1502

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

YOU WILL PLEASE TAKE NOTICE that the Clark County Public Defender has set the foregoing MOTION TO PROHIBIT TESTIMONY OF DISTRICT ATTORNEY TO SUMMARIZE WITNESS' PRIOR TESTIMONY OR IN THE ALTERNATIVE TO DISQUALIFY DISTRICT ATTORNEY'S OFFICE for hearing on Tuesday, June 6, 1995, at 9 a.m., in Department XI of District Court.

CLARK COUNTY PUBLIC DEFENDER


Receipt of copy of the foregoing MOTION TO PROHIBIT
TESTIMONY OF DISTRICT ATTORNEY TO SUMMARIZE WITNESS' PRIOR
TESTIMONY OR IN THE ALTERNATIVE TO DISQUALIFY DISTRICT ATTORNEY'S
OFFICE is acknowledged this 24th day of May, 1995.

By Tanet Schaeff

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of May, 1995, I placed a true and correct copy of the foregoing MOTION TO PROHIBIT TESTIMONY OF DISTRICT ATTORNEY TO SUMMARIZE WITNESS' PRIOR TESTIMONY OR IN THE ALTERNATIVE TO DISQUALIFY DISTRICT ATTORNEY'S OFFICE in the United States mails, first class postage prepaid thereon by the Clark County Mail Room to:

David Schieck, Esq.
302 E. Carson Ave., #918
Las Vegas, NV 89101


An employee of the Clark County
Public Defender's Office

1504

FILED

MAY 26 3 28 PM '95

MORGAN D. HARRIS
PUBLIC DEFENDER
Nevada Bar #1879
309 S. Third Street
Las Vegas, NV 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DALE EDWARD FLANAGAN,
RANDOLPH MOORE,

Defendant.

CASE NO. C69269

DEPT. NO. XI

DATE OF HEARING: 6/6/95

TIME OF HEARING: 9:00 A.M.

**MOTION FOR DISCLOSURE TO
INFORMATION REGARDING STATE WITNESS'
EXPECTATIONS OF BENEFITS OF TESTIMONY**

COMES NOW the Defendant, DALE EDWARD FLANAGAN, by and through his attorneys, DAVID T. WALL and REBECCA A. MOUNTS, Deputy Public Defenders, and hereby moves this Court for an Order directing the prosecutor to exercise due diligence in searching for and disclosing to the defense the following:

1. Any materials and/or information indicating that any State witness has either received, directly or indirectly, or that a person of concern to him received at his request or direction, any money or other material consideration, any leniency or promises thereof, any promises with respect to future consideration, leniency, intercession, recommendations or benefits, or anything else that could be of value or use to the witness or a person of concern to the witness, including, but not

CE11

1505

1 limited to, formal or informal, direct or indirect immunity,
2 favorable treatment or recommendation or assistance with respect
3 to any pending or potential criminal, parole, probation, pardon,
4 clemency, civil, tax court, court of claims, administrative, or
5 other dispute with the government of the United States, or any
6 state or other authority (or with any other person's, criminal,
7 civil, or tax immunity grant), relief from forfeiture, payments
8 of money, reward or fees, witness fees, or the providing of food,
9 clothing, shelter, transportation, legal services or other
10 benefits, placement in a witness security program, or anything
11 else which arguably could reveal an interest, motive, or buys of
12 the witness in favor of the State or against the Defendant, or
13 act as an inducement to testify.

14 2. Any materials and/or information relating to any
15 statements, admissions, or confessions as to crimes not charged
16 which were made by any State witness to a state agent and which
17 relate to conduct which has not as yet been disposed of in the
18 criminal justice system by way of a sentence and which might
19 reasonably be construed to have been made in contemplation of
20 receiving some assistance from the prosecution relating to the
21 disposition thereof.

22 This Motion shall be deemed to include information
23 regarding any witness to be called by the State at the penalty
24 phase commencing on June 12, 1995, and shall be deemed to relate
25 to any benefit or promise of such benefit which was delivered or
26 promised to be delivered at any time from the original trial in
27 this matter in 1985 up to and including the date of the penalty
28 phase to be held before this Court in June of 1995.


1 This Motion is based upon the pleadings and papers on
2 file herein, the Points and Authorities set forth below, and any
3 argument of counsel at the time of hearing.

4 DATED this 26th day of May, 1995.

5 Respectfully submitted,

6 CLARK COUNTY PUBLIC DEFENDER

7
8 By


David T. Wall
Deputy Public Defender
Nevada Bar #2805

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
1507

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5

6
7

10
11
12
13

15
16
17
18
19
20
21
22
23
24
25

27
28

1 witness to recommend a reduction of sentence if the witness'
2 cooperation led to further indictments violated the requirements
3 of due process, and since testimony given pursuant to this
4 agreement was critical to support the defendant's conviction, the
5 defendant was entitled to have his sentence vacated and seek a
6 new trial.

7 Giglio really mandates that the government disclose
8 anything which may indicate that the witness expects to benefit
9 from his relationship with the prosecution. This is particularly
10 true where the witness believes that there is a relationship
11 between the amount of benefit which will inure to the witness and
12 how well he performs for the government. See United States v.
13 Daily, 589 F.Supp. 561 (D.Mass. 1984). The Nevada Supreme Court
14 has also recognized the inherent danger of such a situation.
15 Franklin v. State, 94 Nev. 220, 225 (1978).

16 Promises of leniency go directly to the weight of that
17 witness' testimony, Farmer v. State, 95 Nev. 849, 859 (1979), and
18 the defendant has a right to cross-examine a witness regarding
19 such possible bias. Yates v. State, 95 Nev. 446, 449 (1979);
20 Givens v. State, 99 Nev. 50 (1983).

21 CONCLUSION

22 It is respectfully submitted that in light of the
23 foregoing authority, this Motion should be granted in all
24 respects so as to afford the Defendant herein an opportunity to
25 receive a fair penalty hearing and to secure his rights under the
26 Fourth, Fifth, and Sixth Amendments to the Constitution of the
27 United States of America as applied to the states of the

28 . . .

1 Fourteenth Amendment and the Constitution of the State of Nevada,
2 Art. 1 §§ 1, 8 and 20.

3 DATED this 26th day of May, 1995.

4 Respectfully submitted,
5 CLARK COUNTY PUBLIC DEFENDER

6
7 By David T. Wall
8 David T. Wall
9 Deputy Public Defender
10 Nevada Bar #2805
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1510

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY

YOU WILL PLEASE TAKE NOTICE that the Clark County Public Defender has set the foregoing MOTION FOR DISCLOSURE FOR INFORMATION REGARDING STATE WITNESS' EXPECTATIONS OF BENEFITS OF TESTIMONY for hearing on Tuesday, June 6, 1995, at 9 a.m., in Department XI of District Court.

DATED this 26th day of May, 1995.

CLARK COUNTY PUBLIC DEFENDER

By David T. Wall
David T. Wall
Deputy Public Defender
Nevada Bar #2805

Receipt of copy of the foregoing MOTION FOR DISCLOSURE FOR INFORMATION REGARDING STATE WITNESS' EXPECTATIONS OF BENEFITS OF TESTIMONY is acknowledged this 26th day of May, 1995.

CLARK COUNTY DISTRICT ATTORNEY


By Pat Hoer

Flanagan, Jr.

CERTIFICATE OF MAILING

I hereby certify that on the 26th day of May, 1995, I placed a true and correct copy of the foregoing MOTION FOR DISCLOSURE FOR INFORMATION REGARDING STATE WITNESS' EXPECTATIONS OF BENEFITS OF TESTIMONY in the United States mails, first class postage prepaid thereon by the Clark County Mail Room to:

David Schieck, Esq.
302 E. Carson Ave., #918
Las Vegas, NV 89101


An employee of the Clark County
Public Defender's Office

1512

1 STEWART L. BELL
DISTRICT ATTORNEY
2 Nevada Bar #001799
200 S. Third Street
3 Las Vegas, Nevada 89155
(702) 455-4711
4 Attorney for Plaintiff
THE STATE OF NEVADA

FILED

JUL 28 10 00 AM '95

Latita L. Lamm
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

9	THE STATE OF NEVADA,	)	CASE NO.	C69269
)		
10	Plaintiff,	)	DEPT. NO.	XI
)		
11	-vs-	)	DOCKET NO.	S
)		
12	DALE EDWARD FLANAGAN,)		
)		
13	Defendant.)		
)		

ORDER

DATE OF HEARING: 06/06/95
TIME OF HEARING: 9:00 A.M.

17 THIS MATTER having come on for hearing before the above-
18 entitled Court on the 6th day of June, 1995, the Defendant DALE
19 EDWARD FLANAGAN not present, represented by DAVID T. WALL, Deputy
20 Public Defender and REBECCA A. MOUNTS, Deputy Public Defender, the
21 Plaintiff being represented by STEWART L. BELL, District Attorney,
22 through MELVYN T. HARMON, Chief Deputy District Attorney, and the

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Court having heard the arguments of counsel and good cause
2 appearing therefore,

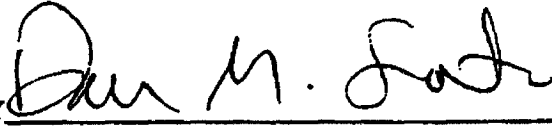
3 IT IS HEREBY ORDERED that the Defendant's PETITION FOR WRIT OF
4 HABEAS CORPUS shall be, and it is, hereby denied.

5 DATED this 8th day of July, 1995.

6
7 
8 DISTRICT JUDGE

ADDEHLAR D. GUY

9 STEWART L. BELL
10 DISTRICT ATTORNEY
11 Nevada Bar #000477

12 BY 
13 DAN M. SEATON
14 Chief Deputy District Attorney
15 Nevada Bar #002473
16
17
18
19
20
21
22
23
24
25
26
27

28 pce

41

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle	Dept.	12
Continuance			
Minutes			
Parties			
Def. Detail	Event 08/15/1995 at 09:00 AM	ALL PENDING MOTIONS 8-15-95	
Next Co-Def.	Heard By Brennan, James		
Charges	Officers JOYCE BROWN, Court Clerk		
Sentencing	DEBBIE WINN, Reporter/Recorder		
Bail Bond	Parties 0000 -	State of Nevada	Yes
Judgments	S1		
District Case	002473	Seaton, Daniel M.	Yes
Party Search	004352	Owens, Steven S.	Yes
Corp. Search	0001 -	Flanagan, Dale E	No
Atty. Search	D1		
Bar# Search	PUBDEF	Public Defender	Yes
ID Search	002805	Wall, David T.	Yes
Calendar Day	0002 - D	Moore, Randolph	No
Holidays	000824	Schieck, David M.	Yes
Help	0003 - D	McDowell, Roy	No
Comments &	0004 - D	Luckett, Johnny R	No
Feedback	0005 - D	Walsh, Michael B	No
Legal Notice	0006 - D	Akers, Thomas	No

STATUS CHECK: CREDIT FOR TIME SERVED...PERFECTION OF APPEAL (BOTH)

AS TO DEFENDANT FLANAGAN: Mr. Wall advised appearance of Defendant waived, both Defendants were sentenced to the death penalty on July 11, and execution set for the week of August 27. He further advised the notice of appeal was filed on August 9, the stay has been served, and he received a FAX that they had received the order for stay. Mr. Wall calculated the credit for time served as of July 11, to be 3,866 days that Defendant was in custody. Mr. Owens advised he had not tried to compute the days as he thought the Division of Parole and Probation would do that, and Mr. Seaton advised he would want P & P to do it.

AS TO DEFENDANT MOORE: Mr. Schieck advised he also thought P & P would do the calculating on credit for time served, and Mr. Moore would have thirty days less than Mr. Flanagan. Court read from the minutes that Defense was to figure the Credit For Time Served. Mr. Schieck stated it was his mistake and advised that the stay and appeal have been perfected. COURT ORDERED, matter CONTINUED and Counsel to have correct time calculated.

NCP (BOTH)

CONTINUED TO: 8-17-95 9:00 AM

41a

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Case#		
Case Activity	Plaintiff State of Nevada		Attorney Roger, David J.
Calendar	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Continuance	Judge Leavitt, Michelle		Dept. 12
Minutes			
Parties			
Def. Detail	Event 08/17/1995 at 09:00 AM		ALL PENDING MOTIONS 8-17-95
Next Co-Def.	Heard By Brennan, James		
Charges	Officers JOYCE BROWN, Court Clerk		
Sentencing	ANITA SPRINGS-WALKER, Reporter/Recorder		
Bail Bond			
Judgments			
District Case	Parties 0000 -	State of Nevada	Yes
Party Search	S1		
Corp. Search	004352	Owens, Steven S.	Yes
Atty. Search	0001 -	Flanagan, Dale E	No
Bar# Search	D1		
ID Search	PUBDEF	Public Defender	Yes
	004065	Blaskey, Rebecca A.	Yes
Calendar Day	0002 - D	Moore, Randolph	No
Holidays	0003 - D	McDowell, Roy	No
	0004 - D	Luckett, Johnny R	No
Help	0005 - D	Walsh, Michael B	No
Comments &	0006 - D	Akers, Thomas	No
Feedback			
Legal Notice			

STATUS CHECK: CREDIT FOR TIME SERVED AND PERFECTION OF APPEAL (FLANAGAN)...

STATUS CHECK: CREDIT FOR TIME SERVED AND PERFECTION OF APPEAL (MOORE)

AS TO DEFENDANT FLANAGAN: Ms. Mounts advised the perfection of appeal was taken care of at the last court date for both Defendants and the Credit For Time Served in the amount of 3,866 DAYS given by Mr. Wall was correct. State concurred. COURT SO ORDERED.

AS TO DEFENDANT MOORE: Mr. Owens stated they were in agreement with the number of days calculated and provided by Mr. Schieck, which is 3,853 DAYS. COURT SO ORDERED.

Presence of Defendants waived as they are in the Nevada Department of Prisons.

NDP

Due to time restraints and individual case loads, the above case record may not reflect all information to date.

Top Of Page

Generated on 5/11/2004 at 10:30:07 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

AUG 21 3 51 PM '95

THE STATE OF NEVADA,
Plaintiff,
vs.
DALE EDWARD FLANAGAN,
and
RANDOLPH MOORE,
Defendants.

Spetia Bowman
CLERK

Case No. C069269

Dept. No. XI

Docket No. "S"

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JAMES A. BRENNAN, DISTRICT JUDGE

STATUS CHECK: CREDIT FOR TIME SERVED
AND PERFECTION OF APPEAL AS TO BOTH DEFENDANT'S

THURSDAY, AUGUST 17, 1995

APPEARANCES:

For the Plaintiff:

STEVEN OWENS, ESQ
Deputy District Attorney
200 South Third Street
Las Vegas, Nevada 89155

For Defendant
Flanagan

REBECCA A. MOUNTS, ESQ
Deputy Public Defender's
309 South Third Street
Las Vegas, Nevada 89155

Recorded by: ANITA M. SPRINGS-WALKER
Reporter/Transcriber

1 THURSDAY, AUGUST 17, 1995; 9:00 a.m.

2 THE COURT: Case No. C69269, the State versus
3 Dale Edward Flanagan and Randolph Moore.

4 MS. MOUNTS: Your Honor, Rebecca Mounts from the
5 Public Defender's office on behalf of Defendant Flanagan.

6 Perhaps this was resolved last time as to the co-defendant
7 because uh, Mr. Schieck is not present this morning. But this
8 is on this morning for a status check on credit for time served
9 as to Mr. Flanagan.

10 It's my understanding that Mr. Wall presented figures on
11 Tuesday to Mr. Seaton, indicating that Mr. Flanagan was
12 entitled to 3,866 days, credit for time served. He's been in
13 custody for over 10 years, your Honor.

14 MR. OWENS: That's correct, your Honor. We've
15 reviewed those -- that uh, figure and we are in agreement with
16 that.

17 THE COURT: That's as to Mr. Flanagan?

18 MR. OWENS: Yes.

19 MS. MOUNTS: Yes, that's correct, your Honor.

20 THE COURT: Thirty-eight hundred and sixty-six
21 days?

22 MS. MOUNTS: That's my understanding, your
23 Honor.

24 THE COURT: What about Moore?

25 MR. OWENS: As to Moore; although David Schieck
26 is not present, I can represent that he has presented us with
27
28

1 uh, with his calculations as well, and we are in agreement with
2 his figure, which is 3,853 days.

3 THE COURT: All right, that will be the order.

4 MS. MOUNTS: Thank you, your Honor. And for the
5 record, I've asked the Court to waive Mr. Flanagan's presence
6 this morning; he's at Ely State Prison.

7 THE COURT: Fine.

8 MS. MOUNTS: Thank you.

9 THE COURT: Thank you.

10 (Proceedings concluded.)

11
12 ATTEST: Full, true, and accurate transcript of proceedings.

13
14 
15 ANITA M. SPRINGS-WALKER
16 Transcriber
17
18
19
20
21
22
23
24
25
26
27
28

42

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle		Dept. 12
Continuance			
Minutes			
Parties	Event 06/04/1998 at 09:00 AM	ALL PENDING MOTIONS 6-4-98	
Def. Detail	Heard By Leavitt, Myron E.		
Next Co-Def.	Officers JOYCE BROWN, Court Clerk		
Charges	SUZY NICHOLS, Reporter/Recorder		
Sentencing	Parties 0000 - State of Nevada		Yes
Bail Bond	S1		
Judgments	003813 Silver, Abbi		Yes
	0001 - Flanagan, Dale E		No
	D1		
	001988 Potter, III, Cal J.		Yes
	0002 - D Moore, Randolph		No
	000824 Schieck, David M.		Yes
	0003 - D McDowell, Roy		No
	0004 - D Luckett, Johnny R		No
	0005 - D Walsh, Michael B		No
	0006 - D Akers, Thomas		No
District Case	DEFT FLANAGAN'S REQUEST FOR APPOINTMENT OF COUNSEL FOR POST-CONVICTION		
Party Search	RELIEF...DEFT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS		
Corp. Search	Mr. Potter advised he had substituted into the case for Defendant Flanagan.		
Atty. Search	COURT ORDERED matter CONTINUED for Judge Douglas.		
Bar# Search	NDP (BOTH)		
ID Search	CONTINUED TO: 6-11-98 9:00 AM		
Calendar Day	Due to time restraints and individual case loads, the above case record may not reflect all information to date.		
Holidays			
Help			
Comments & Feedback			
Legal Notice			

Top Of Page

Generated on 5/11/2004 at 9:50:56 AM

42a

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle	Dept.	12
Continuance			
Minutes			
Parties			
Def. Detail	Event 06/11/1998 at 09:00 AM	ALL PENDING MOTIONS (06-11-98)	
Next Co-Def.	Heard By Douglas, Michael L		
Charges	Officers SUSAN BURDETTE/sb, Court Clerk		
Sentencing	DEBRA WINN, Reporter/Recorder		
Bail Bond	Parties 0000 - State of Nevada		Yes
Judgments	S1		
District Case	005927 De La Garza, Melisa		Yes
Party Search	0001 - Flanagan, Dale E		No
Corp. Search	D1		
Atty. Search	001988 Potter, III, Cal J.		Yes
Bar# Search	000836 Miller, Michael L.		Yes
ID Search	0002 - D Moore, Randolph		No
Calendar Day	000824 Schieck, David M.		Yes
Holidays	0003 - D McDowell, Roy		No
Help	0004 - D Luckett, Johnny R		No
Comments &	0005 - D Walsh, Michael B		No
Feedback	0006 - D Akers, Thomas		No
Legal Notice			

DEFT FLANAGAN'S REQUEST FOR APPOINTMENT OF COUNSEL FOR POST-CONVICTION

RELIEF ... DEFT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS

AS TO DEFT. FLANAGAN'S REQUEST FOR APPOINTMENT OF COUNSEL FOR POST-CONVICTION RELIEF: Deft. not present. David Newell, Esq., present. Mr. Potter stated Mr. Miller was previously counsel for Deft.; he was approached by Mr. Miller pursuant to an ABA Program to get involved in this case and noted David Newell from Oregon will be coming in. He further noted the guilt phase has never been challenged; there are about 25 boxes that counsel will need to go through; he requested six (6) months to review the boxes and file any necessary Petitions. Mr. Miller stated the Motion was filed May 25, and should be in the file. Upon Court's inquiry, Mr. Potter stated his request is only as to Deft. Flanagan. COURT ORDERED, Mr. Potter APPOINTED as COUNSEL for Deft. Flanagan based on representations there would not be a conflict; Mr. Miller RELIEVED as COUNSEL.

AS TO DEFT. MOORE: Mr. Schieck stated he has represented Deft. Moore since 1968; there have been three (3) penalty hearings in this case and three (3) adjudications of death in those penalty hearings; noted Deft. Moore is not concerned with challenging the penalty phase but what happened in the trial, and wishes for him to continue representing him. He further stated that six (6) months is not enough time to review and file Supplemental Petitions. Court found that based on the representations and number of times this

matter has gone to the Supreme Court, ORDERED, matter set for STATUS CHECK
as to all matters.

NDP (BOTH)

11-25-98 9:00 AM STATUS CHECK: SUPPLEMENTAL MOTIONS/PETITIONS ... DEFT
FLANAGAN'S PETITION FOR WRIT OF HABEAS CORPUS ... DEFT MOORE'S PETITION
FOR WRIT OF HABEAS CORPUS

Due to time restraints and individual case loads, the above case record may not reflect all
information to date.

Top Of Page

Generated on 5/11/2004 at 10:30:56 AM

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

ROC
DAVID M. SCHIECK, ESQ.
NV BAR NO. 0824
302 E. CARSON, STE. 600
LAS VEGAS, NEVADA 89101
702-382-1844

ATTORNEY FOR MOORE

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

RANDOLPH MOORE,

Petitioner,

vs.

WARDEN OF ELY STATE PRISON,
and THE STATE OF NEVADA,

Respondent.


CASE NO. C 69269
DEPT. NO. XI
DOCKET NO.

RECEIPT OF COPY

DATE OF HEARING: 6-4-98
TIME OF HEARING: 9:00 A.M.


RECEIPT OF A COPY of the Petition for Writ of Habeas
Corpus (Post Conviction) and Appointment of Counsel is hereby
acknowledged.

PUBLIC DEFENDER'S OFFICE


DISTRICT ATTORNEY'S OFFICE
200 S. THIRD ST.
LAS VEGAS, NV 89155
ATTORNEY FOR STATE

DATE:

6/3/98


MICHAEL MILLER, ESQ.
309 S. THIRD ST., #226
LAS VEGAS, NV 89155
ATTORNEY FOR FLANAGAN

DATE:

6/3/98

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

0014
DAVID M. SCHIECK, ESQ.
NV BAR NO. 0824
302 E. CARSON, STE. 600
LAS VEGAS, NEVADA 89101
702-382-1844

ATTORNEY FOR MOORE

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

RANDOLPH MOORE,

Petitioner,

vs.

WARDEN OF ELY STATE PRISON,
and THE STATE OF NEVADA,

Respondent.

CASE NO. C 69269
DEPT. NO. XI
DOCKET NO.

PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION)
AND APPOINTMENT OF COUNSEL

DATE OF HEARING: 6-4-98
TIME OF HEARING: 9:00 A.M.

1. Name of institution and county in which you are
presently imprisoned or where and how you are presently
restrained of your liberty: ELY STATE PRISON, WHITE PINE
COUNTY, NEVADA

2. Name and location of court which entered the judgment
of conviction under attack: EIGHTH JUDICIAL DISTRICT COURT,
CLARK COUNTY, NEVADA

3. Date of judgement of conviction: September, 1985

4. Case number: C 69269

5. (a) Length of sentence: DEATH

FILED
JUN 2 1 58 PM '98

Antonia L. Schieck
CLERK

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 (b) If sentence is death, state any date upon which
2 execution is scheduled: EXECUTION HAS BEEN STAYED

3 6. Are you presently serving a sentence for a conviction
4 other than the conviction under attack in this motion?

5 Yes _____ No XX

6 If "yes", list crime, case number and sentence being served
7 at this time: _____

8 7. Nature of offense involved in conviction being
9 challenged: FIRST DEGREE MURDER

10 8. What was your plea? (Check one)

11 (a) Not guilty XX

12 (b) Guilty _____

13 (c) Guilty but mentally ill _____

14 (d) Nolo contendere _____

15 9. If you entered a plea of guilty or guilty but mentally
16 ill to one count of an indictment or information, and a plea of
17 not guilty to another count of an indictment or information, or
18 if a plea of guilty or guilty but mentally ill was negotiated,
19 give details: N/A

20 10. If you were found guilty after a plea of not guilty,
21 was the finding made by: (check one)

22 (a) Jury XX

23 (b) Judge without a jury _____

24 11. Did you testify at the trial? Yes _____ No XX

25 12. Did you appeal from the judgement of conviction?

26 Yes XX No _____

27 13. If you did appeal, answer the following:
28

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 (a) Name of court: NEVADA SUPREME COURT

2 (b) Case number or citation: MOORE, 104 NEV 113 (1998)

3 (c) Result: CONVICTION AFFIRMED, DEATH PENALTY VACATED
4 AND REMANDED

5 (d) Date of result: MAY 18, 1988

6 14. If you did not appeal, explain briefly why you did
7 not: N/A

8 15. Other than a direct appeal from the judgement of
9 conviction and sentence, have you previously filed any
10 petitions, applications or motions with respect to this
11 judgement in any court, state or federal? Yes XX No

12 (ONLY DIRECT APPEALS ON REMANDED PENALTY HEARINGS.

13 NO POST CONVICTION PROCEEDINGS)

14 16. If your answer to No. 15 was "yes," give the following
15 information:

16 (a) (1) Name of court: NEVADA SUPREME COURT

17 (2) Nature of proceeding: 2ND DIRECT APPEAL FROM
18 REMANDED PENALTY HEARING

19 (3) Grounds raised: (i) IMPROPER ADMISSION OF SATANIC
20 EVIDENCE; (ii) IMPROPER USE OF CONSTITUTIONALLY PROTECTED
21 ACTIVITY IN SEEKING THE DEATH PENALTY; (iii) IMPROPER USE OF
22 SENTENCE OF CO-DEFENDANTS; (iv) IMPROPER ANTISYMPATHY
23 INSTRUCTION; (v) FAILURE TO INSTRUCT ON MITIGATING
24 CIRCUMSTANCES; (vi) INSTRUCTIONS THAT IMPERMISSIBLY SHIFT
25 BURDEN OF PROOF IN THE PENALTY HEARING; (vii) FAILURE TO SEVER
26 THE REMANDED PENALTY HEARINGS; and (viii) IMPOSITION OF THE
27 DEATH PENALTY WAS ARBITRARY AND CAPRICIOUS.
28

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 (4) Did you receive an evidentiary hearing on your
2 petition, application or motion? NO

3 (5) Result: SENTENCE AFFIRMED

4 (6) Date of result: APRIL 30, 1991

5 (7) If known, citations of any written opinion or date of
6 orders entered pursuant to such result: FLANAGAN V. STATE, 107
7 NEV. 250 (1991)

8 (b) as to any second petition, application or motion,
9 give the same information:

10 (1) Name of court: U.S. SUPREME COURT

11 (2) Nature of proceeding: WRIT OF CERTIORARI FROM 107
12 NEV. 250

13 (3) Grounds raised: UNCONDITIONAL USE OF DEFENDANTS'
14 BELIEFS TO OBTAIN THE DEATH PENALTY

15 (4) Did you receive an evidentiary hearing on your
16 petition, application or motion? NO

17 (5) Result: REMANDED TO NEVADA SUPREME COURT

18 (6) Date of result: MARCH 23, 1992

19 (7) If known, citations of any written opinion or date of
20 orders entered pursuant to such result: FLANAGAN V. NEVADA,
21 503 U.S. 931 (1992)

22 (c) As to any third or subsequent additional applications
23 or motions, give the same information as above:

24 (c-1) (1) Name of court: NEVADA SUPREME COURT

25 (2) Nature of proceeding: REMANDED FROM U.S. SUPREME
26 COURT

27 (3) Grounds raised: (i) IMPROPER ADMISSION OF EVIDENCE
28

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 REGARDING DEVIL WORSHIP; (ii) CONSTITUTIONAL ERROR WAS NOT
2 HARMLESS; (iii) IMPROPER TO ENGAGE IN REWEIGHING WHEN
3 CONSTITUTIONAL ERROR OCCURS; and (iv) THE SENTENCE SHOULD BE
4 COMMUTED TO A LIFE SENTENCE

5 (4) Did you receive an evidentiary hearing on your
6 petition, application or motion? NO

7 (5) Result: DEATH PENALTY VACATED AND REMANDED

8 (6) Date of result: FEBRUARY 10, 1993

9 (7) If known, citations of any written opinion or date of
10 orders entered pursuant to such result: FLANAGAN V. STATE, 109
11 NEV. 50 (1993)

12 (c-ii) (1) Name of court: NEVADA SUPREME COURT

13 (2) Nature of proceeding: 3RD DIRECT APPEAL FROM THIRD
14 PENALTY HEARING

15 (3) Grounds raised: (i) CONVICTION SHOULD BE REVERSED
16 DUE TO ADMISSION OF "COVEN" EVIDENCE; (ii) DISTRICT COURT DID
17 NOT HAVE JURISDICTION TO HEAR PENALTY HEARING; (iii) ERROR TO
18 ADMIT UNCONSTITUTIONAL EVIDENCE OF WITNESS INTIMIDATION; (iv)
19 EVIDENCE OF SENTENCE OF CO-DEFENDANTS SHOULD NOT HAVE BEEN
20 ADMITTED; (5) DENIAL OF DUE PROCESS TO HOLD PENALTY HEARING
21 AFTER TEN YEARS IN PRISON; (vi) REVERSIBLE ERROR TO GIVE ANTI-
22 SYMPATHY INSTRUCTION; (7) INSUFFICIENT EVIDENCE OF RISK OF
23 DEATH TO MORE THAN ONE PERSON; (8) IMPROPER JURY INSTRUCTION
24 REGARDING PARDON'S BOARD AND COMMUTATION OF SENTENCE

25 (4) Did you receive an evidentiary hearing on your
26 petition, application or motion? NO

27 (5) Result: SENTENCE AFFIRMED
28

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 800
Las Vegas, NV 89101
(702) 382-1844

1 (6) Date of result: DECEMBER 20, 1996

2 (7) If known, citations of any written opinion or date of
3 orders entered pursuant to such result: FLANAGAN V. STATE, 112
4 NEV. 1409 (1996)

5 (c-iii) (1) Name of court: U.S. SUPREME COURT

6 (2) Nature of proceeding: WRIT OF CERTIORARI

7 (3) Grounds raised: CONVICTION SHOULD HAVE BEEN REVERSED
8 FOR INTRODUCTION OF RELIGIOUS BELIEFS

9 (4) Did you receive an evidentiary hearing on your
10 petition, application or motion? NO

11 (5) Result: WRIT DENIED

12 (6) Date of result: APRIL 20, 1998

13 (7) If known, citations of any written opinion or date of
14 orders entered pursuant to such result: MOORE V. NEVADA,
15 97-8014

16 (d) Did you appeal to the highest state or federal court
17 having jurisdiction, the result or action taken on any
18 petition, application or motion? SEE NO. 16 ABOVE - ALL
19 APPEALS DESCRIBED

20 (1) First petition, application or motion?

21 Yes _____ No _____

22 Citation or date of decision: _____

23 (2) Second petition, application or motion?

24 Yes _____ No _____

25 Citation or date of decision: _____

26 (3) Third or subsequent petitions, applications or
27 motions? Yes _____ No _____
28

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 Citation or date of decision: _____

2 (e) If you did not appeal from the adverse action on any
3 petition, application or motion, explain briefly why you did
4 not. (You must relate specific facts in response to this
5 question. Your response may be included on paper which is 8 ½
6 by 11 inches attached to the petition. Your response may not
7 exceed five handwritten or typewritten pages in length.) N/A

8 17. Has any ground being raised in this petition been
9 previously presented to this or any other court by way of
10 petition for habeas corpus, motion, application or any other
11 post-conviction proceeding? If so, identify: NO

12 18. If any of the grounds listed in Nos. 23(a), (b), (c)
13 and (d), or listed on any additional pages you have attached,
14 were not previously presented in any other court, state or
15 federal, list briefly what grounds were not so presented, and
16 give your reasons for not presenting them. (You must relate
17 specific facts in response to this question. Your response may
18 be included on paper which is 8 ½ by 11 inches attached to the
19 petition. Your response may not exceed five handwritten or
20 typewritten pages in length.) INEFFECTIVE ASSISTANCE OF
21 COUNSEL AT TRIAL AND ON DIRECT APPEAL. THESE MATTERS ARE NOT
22 PROPERLY RAISED ON DIRECT APPEAL.

23 19. Are you filing this petition more than 1 year
24 following the filing of the judgement of conviction or the
25 filing of a decision on direct appeal? If so, state briefly
26 the reasons for the delay. (You must relate specific facts in
27 response to this question. Your response may be included on
28

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 paper which is 8 ½ by 11 inches attached to the petition. Your
2 response may not exceed five handwritten or typewritten pages
3 in length.) NO

4 20. Do you have any petition or appeal now pending in any
5 court, either state or federal, as to the judgement under
6 attack? Yes _____ No XX

7 If yes, state what court and the case number: N/A

8 21. Give the name of each attorney who represented you in
9 the proceeding resulting in your conviction and on direct
10 appeal:

11 TRIAL: MURRAY POSIN, ESQ.

12 DIRECT APPEAL: TOM LEEDS, ESQ.

13 2ND PENALTY HEARING: DAVID M. SCHIECK, ESQ.

14 2ND DIRECT APPEAL: DAVID M. SCHIECK, ESQ.

15 3RD PENALTY HEARING: DAVID M. SCHIECK, ESQ.

16 3RD DIRECT APPEAL: DAVID M. SCHIECK, ESQ.

17 22. Do you have any future sentences to serve after you
18 complete the sentence imposed by the judgement under attack?

19 Yes _____ No XX

20 If yes, specify where and when it is to be served, if you
21 know: N/A

22 23. State concisely every ground on which you claim that
23 you are being held unlawfully. Summarize briefly the facts
24 supporting each ground. If necessary you may attach pages
25 stating additional grounds and facts supporting same.

26 (a) Ground one: DENIED RIGHTS UNDER SIXTH AND FOURTEENTH
27 AMENDMENTS AS I DID NOT RECEIVE DUE PROCESS OF LAW OR EFFECTIVE
28

David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

1 ASSISTANCE OF COUNSEL AT TRIAL

2 Supporting FACTS (Tell your story briefly without citing
3 cases or law.): I AM INDIGENT AND DO NOT UNDERSTAND THE LAW
4 AND NEED COUNSEL APPOINTED TO HELP ME COMPLETE THIS PETITION
5 AND FILE A SUPPLEMENTAL PETITION

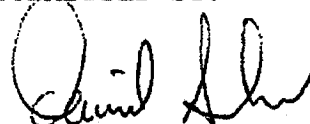
6 (b) Ground two: DENIED RIGHTS UNDER SIXTH AND FOURTEENTH
7 AMENDMENTS AS I DID NOT RECEIVE DUE PROCESS OF LAW OR EFFECTIVE
8 ASSISTANCE OF COUNSEL ON APPEAL

9 Supporting FACTS (Tell your story briefly without citing
10 cases or law.): I AM INDIGENT AND DO NOT UNDERSTAND THE LAW
11 AND NEED COUNSEL APPOINTED TO HELP ME COMPLETE THIS PETITION
12 AND FILE A SUPPLEMENTAL PETITION

13 WHEREFORE, Petitioner prays that the court grant
14 Petitioner relief to which he may be entitled in this
15 proceeding; and pursuant to NRS 34.820 appoint DAVID M.
16 SCHIECK, ESQ. to assist Petitioner in these proceedings.

17 DATED: June 2, 1998

18 SUBMITTED BY:

19 
20
21 DAVID M. SCHIECK, ESQ.
22
23
24
25
26
27
28

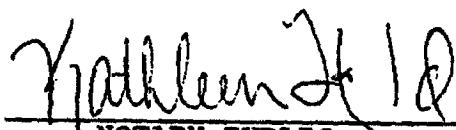
David M. Schieck
Attorney At Law
302 E. Carson Ave., Ste. 600
Las Vegas, NV 89101
(702) 382-1844

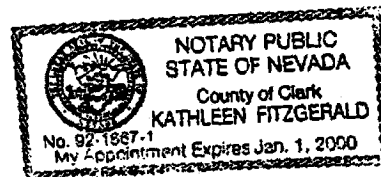
VERIFICATION

Under penalty of perjury, the undersigned declares that he is the court appointed counsel for the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.


DAVID M. SCHIECK

SUBSCRIBED AND SWORN to before me
this 2nd day of June, 1998.


NOTARY PUBLIC



COPY

RECEIVED

SEP 10 1998

APPELLATE DIVISION
FILED

SEP 2 3 37 PM '98

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**THE STATE OF NEVADA,
PLAINTIFF,
VS.
DALE EDWARD FLANAGAN AND
RANDOLPH MOORE,
DEFENDANT.**

**CASE NO.
DEPT. NO. XI
DOCKET NO. S**

C69269
C148936 *met* *DM*

**BEFORE THE HONORABLE MICHAEL L. DOUGLAS, DISTRICT JUDGE
THURSDAY, JUNE 11, 1998; 9:00 A.M.**

RECORDER'S TRANSCRIPT RE:

- 1) DEFENDANT FLANAGAN'S REQUEST FOR APPOINTMENT OF
COUNSEL FOR POST-CONVICTION RELIEF**
- 2) DEFENDANT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS**

**FOR THE STATE: MELISA DE LA GARZA, ESQ.
DEPUTY DISTRICT ATTORNEY**

**FOR DEFENSE: CAL POTTER, ESQ.
DAVID SCHIECK, ESQ.
MICHAEL L. MILLER, ESQ.
DEPUTY PUBLIC DEFENDER**

RECORDED BY: DEBRA WINN, COURT RECORDER

A P P E A L

1 **THURSDAY, JUNE 11, 1998; 9:00 A.M.**

2

3 **THE COURT: STATE OF NEVADA VERSUS DALE FLANAGAN AND**
4 **RANDOLPH MOORE, C69269. AS TO THIS MATTER BOTH MR. FLANAGAN**
5 **AND MR. MOORE HAVE PREVIOUSLY BEEN BEFORE THE COURT. THEY**
6 **HAVE BEEN ADJUDICATED. THEY HAVE FILED VARIOUS APPEALS. AT**
7 **THIS TIME MR. FLANAGAN IS REQUESTING APPOINTMENT OF COUNSEL**
8 **FOR POST CONVICTION RELIEF, WHICH FOR WHATEVER REASON THE**
9 **ACTUAL MOTION IS NOT IN MY FILE. I DON'T KNOW WHAT HIS GROUNDS**
10 **ARE, I PRESUME THEY MAY BE SIMILAR TO MR. MOORE'S PETITION FOR**
11 **WRIT OF HABEAS CORPUS AND REQUEST FOR APPOINTMENT OF**
12 **COUNSEL IN THIS MATTER. MR. SCHIECK AND MR. POTTER WERE**
13 **COUNSEL OF RECORD FOR BOTH PARTIES. ANY REPRESENTATIONS OR**
14 **JUST REFERENCE BEING RELIEVED AS COUNSEL OF RECORD.**

15 **MR. POTTER: YOUR HONOR, I HAVE NOT BEEN COUNSEL OF**
16 **RECORD IN THE CASE PREVIOUSLY. MR. MILLER HAS BEEN COUNSEL FOR**
17 **MR. FLANAGAN.**

18 **I WAS APPROACHED BY MR. MILLER PURSUANT TO ABA**
19 **PROGRAM TO GET INVOLVED IN THIS CASE. THERE IS AN ATTORNEY BY**
20 **THE NAME OF DAVID NEWELL OUT OF PORTLAND, OREGON THAT'S WITH**
21 **THE FIRM OF DAVIS, WRIGHT AND TRUMAINE, WHO WILL BE COMING IN,**
22 **ASSUMING THE COURT WOULD APPOINT ME AS COUNSEL FOR POST**
23 **CONVICTION.**

24 **THE COURT MAY BE AWARE THE CASE HAS A LONG HISTORY**
25

1 IN TERMS OF THE GUILT PHASE HAS NEVER BEEN CHALLENGED AND THE
2 PENALTY PHASE HAS BEEN REVERSED ON, I BELIEVE THREE OCCASIONS.
3 SO THAT THERE'S APPROXIMATELY TWENTY FIVE BOXES THAT COUNSEL
4 WOULD HAVE TO GO THROUGH. MR. NEWELL WAS ASKING ME IF I'M
5 APPOINTED TO BRING ON A MOTION TO ASSOCIATE HIM AS COUNSEL
6 PURSUANT TO THIS ABA PROGRAM. HE REQUESTED OF THE COURT, A SIX
7 MONTH PERIOD SO HE COULD GO THROUGH THE BOXES, GET PREPARED
8 AND FILE AN AMENDED PETITION. OUR PETITION WAS FILED BY MR.
9 FLANAGAN IN PRO PER. IT IS A PRETTY BARE BONES PETITION AND I
10 BELIEVE THE MOTION FOR APPOINTMENT OF COUNSEL IS WITHIN THAT
11 PETITION.

12 MR. MILLER: JUDGE, I BELIEVE THAT PETITION WAS FILED MAY
13 THE 25TH, SO THERE SHOULD BE SOMETHING SOMEWHERE IN THE COURT
14 FILE.

15 THE COURT: WE UNDERSTAND THERE'S SOMETHING
16 SOMEPLACE AND THAT'S THE WONDERFUL PART OF OUR SYSTEM. AS TO
17 THIS YOUR REQUEST IS AS TO MR. FLANAGAN ONLY, NOT AS TO MR.
18 MOORE?

19 MR. POTTER: NO. IT'S ONLY AS TO MR. FLANAGAN.

20 MR. SCHIECK: WOULD YOU LIKE ME TO ADDRESS MR. MOORE,
21 YOUR HONOR?

22 THE COURT: YES.

23 MR. SCHIECK: MR. MOORE ALSO HAS FILED A PETITION
24 REQUESTING COUNSEL BE APPOINTED AND I'VE REPRESENTED MR.
25

1 MOORE SINCE APPROXIMATELY SINCE 1988. WHEN MR. POTTER TALKS
2 ABOUT TWENTY FIVE BOXES, THAT'S A PRETTY ACCURATE FIGURE, THAT
3 I HAVE AND HAVE FAMILIARITY WITH. I HAVE TALKED WITH MR. MOORE,
4 IT'S HIS REQUEST THAT I CONTINUE ON FOR POST CONVICTION PURPOSES
5 TO CHALLENGE EFFECTIVENESS OF COUNSEL AT THE TRIAL STAGE OF
6 THE PROCEEDINGS AND THE COURT NEEDS TO UNDERSTAND THERE'S
7 BEEN THREE PENALTY HEARINGS IN THIS CASE. THERE'S BEEN THREE
8 ADJUDICATIONS OF DEATH IN THOSE PENALTY HEARINGS. MR. MOORE IS
9 REALLY NOT CONCERNED WITH CHALLENGING THE PENALTY PHASE AND
10 NEVER REALLY HAS BEEN. HAS ALWAYS WANTED TO GET TO THE POINT
11 THAT HE COULD CHALLENGE WHAT HAPPENED DURING THE TRIAL AND
12 IN TALKING WITH HIM IT'S HIS WISH THAT I CONTINUE ON. IF THE COURT
13 DESIRES TO APPOINT OTHER COUNSEL TO REPRESENT MR. MOORE
14 THAT'S FINE TOO. I'LL CERTAINLY OPERATE WITH WHOEVER THE COURT
15 APPOINTS.

16 THE COURT: I HAVE NO PROBLEM WITH APPOINTING YOU FOR
17 THE PURPOSES OF THE WRIT IN THIS MATTER BECAUSE OF YOUR
18 FAMILIARITY WITH THIS AND NOTING FOR THE RECORD, BASED ON YOUR
19 REPRESENTATIONS THERE WOULD NOT BE A CONFLICT AS TO THE
20 ISSUES THAT WOULD BE RAISED AS TO THE TRIAL PORTION ONLY.
21 ADDITIONALLY, MR. POTTER WOULD BE APPOINTED COUNSEL FOR MR.
22 FLANAGAN, UNDERSTANDING HE WOULD BE ASSOCIATING.

23 MR. SCHIECK: WITH RESPECT TO THE SIX MONTH REQUEST, YOUR
24 HONOR, THIS IS A QUITE UNUSUAL CASE BECAUSE OF THE TIME THAT HAS
25

1 PASSED AND WHAT HAS TO BE DONE CHALLENGING REALLY WHAT
2 HAPPENED IN THE YEARS OF 1984, 85, 86, GETTING UP THAT TRIAL. SO SIX
3 MONTHS IS NOT AN UNREASONABLE PERIOD OF TIME TO REQUEST FOR
4 OTHER COUNSEL TO GET UP TO SPEED AND FOR FILING A FULL AND
5 COMPLETE SUPPLEMENTAL PETITION FOR THESE TWO DEFENDANT'S.

6 THE COURT: BASED UPON THE POSITION PREVIOUSLY TAKEN
7 AND THE NUMBER OF TIMES THIS MATTER HAS GONE BACK TO THE
8 SUPREME COURT ON VARIOUS ISSUES, THAT SEEMS QUITE REASONABLE
9 UNDER THE CIRCUMSTANCES. WHAT WE NEED TO DO IS HAVE A STATUS
10 CHECK IN SIX MONTHS TO FIND OUT WHERE WE ARE AND WHAT'S GOING
11 ON WITH THIS AND MR. MILLER, I PRESUME WE NEED TO RELIEVE YOU AS
12 COUNSEL?

13 MR. MILLER: THAT'S CORRECT, JUDGE. THANK YOU.

14 THE COURT: THAT WILL BE SO DONE AND SO ORDERED.

15 MR. MILLER: THANK YOU.

16 THE CLERK: NOVEMBER 25 AT 9 AM FOR STATUS CHECK.

17 MR. POTTER: THANK YOU YOUR HONOR.

18 MR. SCHIECK: THANK YOU YOUR HONOR,

19 (WHEREUPON THE PROCEEDINGS WERE CONCLUDED)

20 *****

21 ATTEST: I DO HEREBY CERTIFY THAT I HAVE TRULY AND CORRECTLY
22 TRANSCRIBED THE SOUND RECORDING IN THE ABOVE-
23 ENTITLED CASE.

24 CATHY NELSON
25

43

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle	Dept.	12
Continuance			
Minutes			
Parties			
Def. Detail	Event 12/20/1999 at 09:00 AM	STATUS CHECK: BRIEFING SCHEDULE	
Next Co-Def.	Heard By Douglas, Michael L		
Charges	Officers JOYCE BROWN/JB, Court Clerk		
Sentencing	KATHY STAITE, Relief Clerk		
Bail Bond	CATHY NELSON, Reporter/Recorder		
Judgments			
District Case	Parties 0000 - State of Nevada		Yes
Party Search	S1		
Corp. Search	005056 Luzaich, Elissa		Yes
Atty. Search	0001 - Flanagan, Dale E		No
Bar# Search	D1		
ID Search	001988 Potter, III, Cal J.		Yes
	0002 - D Moore, Randolph		No
Calendar Day	000824 Schieck, David M.		Yes
Holidays	0003 - D McDowell, Roy		No
	0004 - D Luckett, Johnny R		No
Help	0005 - D Walsh, Michael B		No
Comments &	0006 - D Akers, Thomas		No
Feedback			
Legal Notice			

AS TO DEFENDANT FLANAGAN, Mr. Potter had filed a supplemental petition and requested a briefing schedule. COURT ORDERED briefing schedule as follows:

01-24-2000 State's Response

02-24-2000 Defendant's Reply

03-09-2000 Argument

Mr. Potter advised he was entitled to written Discovery. Court advised it was a matter of what was being looked at and whether or not an Evidentiary hearing was necessary.

AS TO DEFENDANT MOORE, Mr. Schieck advised he met with Defendant Moore at Ely State Prison and went over in detail the Writ filed by Mr. Flanagan; advised he represented Mr. Flanagan at the Preliminary Hearing; he is convinced he will be a witness in the Flanagan case and can not continue on the case because of this; he had just met with Mr. Moore on Thursday so had not had a chance to inform the Court; he did talk to Jo Nell Thomas; she does not want to take any more of these cases, but agreed to take it if the Court appointed her. He further advised she was familiar with the case. COURT ORDERED Mr. Schieck relieved; Ms. Thomas appointed; and matter CONTINUED for Confirmation of Counsel and a Status Check. At Counsel's inquiry, Court advised this was not a case this Court would be keeping.

NDP (BOTH)

12-22-99 9:00 AM CONFIRMATION OF COUNSEL (J THOMAS)...STATUS CHECK (MOORE)

1 0033
CAL J. POTTER III
 2 Nevada Bar No. 001988
POTTER LAW OFFICES
 3 1125 Shadow Lane
 Las Vegas, Nevada 89102
 4 Telephone (702) 385-1954

5 **ROBERT D. NEWELL**
DAVIS WRIGHT TREMAINE LLP
 6 1300 S.W. Fifth Avenue, Suite 2300
 Portland, Oregon 97201
 7 Telephone (503) 241-2300

8 Attorneys for Petitioner
 Dale Edward Flanagan
 9

10 EIGHTH JUDICIAL DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 DALE EDWARD FLANAGAN,

13 Petitioner,

14 v.

15 THE STATE OF NEVADA, and E.K.
 McDANIEL, Warden, Ely State Prison,

16 Respondents.
 17

DEATH PENALTY CASE

Case No. C69269

Dept. No. XI

Docket "S"

DATE:

TIME:

18
 19 **PETITIONER'S MOTION FOR DISQUALIFICATION OF JUDGE**

20 COMES NOW, Petitioner, DALE EDWARD FLANAGAN, by and through his
 21 attorneys, CAL J. POTTER, III of POTTER LAW OFFICES, and ROBERT D. NEWELL of
 22 DAVIS WRIGHT TREMAINE LLP, and moves this Honorable Court for an Order disqualifying
 23 Judge Kathy A. Hardcastle from further proceedings in this action.

24 ///

25 ///

26 ///

1 This Motion is made and based upon all the papers and pleadings on file herein,
2 as well as the affidavits filed herewith.

3 DATED this 5th day of June, 2000.

4 Respectfully Submitted,

5 DAVIS WRIGHT TREMAINE LLP

6
7 By 
8 ROBERT D. NEWELL
9 Of Attorneys for Petitioner Dale Edward Flanagan

10 NOTICE OF MOTION

11 TO: CLARK COUNTY DISTRICT ATTORNEY

12 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the
13 attached Motion for Disqualification of Judge on for hearing before the above-entitled Court on
14 the ____ day of June, 2000, at the hour of ____ a.m./p.m. or as soon thereafter as can be heard,
15 in Department IV, at the Clark County Courthouse.

16 DATED this 5th day of June, 2000.

17 DAVIS WRIGHT TREMAINE LLP

18
19 By 
20 ROBERT D. NEWELL
21 Of Attorneys for Petitioner Dale Edward Flanagan

1 of one of Petitioner's witnesses. Second, since Judge Hardcastle worked with both Ms. Blaskey
2 and Mr. Wall, and since those two now will be presenting conflicting evidence (based upon the
3 representation of the State as to the nature of Mr. Wall's testimony), Judge Hardcastle cannot
4 hear and decide that issue without calling upon her own personal knowledge of the
5 circumstances extant in the Clark County Public Defender's Office or upon her own opinions of
6 the witnesses. Third, because of Judge Hardcastle's personal knowledge, she may very well be a
7 witness, subject to being called by either side, to some of the factual issues which will flow from
8 the testimony of Blaskey and Wall. Fourth, Judge Hardcastle, because she worked in the Clark
9 County Public Defender's Office during the time that it represented Petitioner, was counsel to
10 Petitioner. She cannot now sit in judgment upon Petitioner's claims for habeas corpus relief.

11 **Actual Bias**

12 NRS § 1.230(1) requires that "A judge shall not act as such in an action or
13 proceeding when he entertains actual bias or prejudice or against one of the parties to the action."
14 By expressing her lack of regard for Ms. Blaskey's affidavit, Judge Hardcastle has made clear
15 that she "entertains actual bias or prejudice" in this case. Accordingly, she must be disqualified.
16 Also, Nevada Code of Judicial Conduct mandates that "A judge shall disqualify himself or
17 herself in a proceeding in which the judge's impartiality might reasonably be questioned. . ."
18 (Canon 3E(1) emphasis supplied). Judge Hardcastle's pre-judgment of Ms. Blaskey's evidence
19 certainly brings her impartiality into question and compels her disqualification.

20 **Personal Knowledge**

21 Canon 3 of the Nevada Code of Judicial Conduct requires mandatory recusal
22 where "(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or
23 personal knowledge of disputed evidentiary facts concerning the proceeding." This section E not
24 only bolsters the bias component by extending it to a party's lawyer, but also makes clear that
25 personal knowledge is grounds for disqualification. Both the record of Judge Hardcastle's
26 remarks and the Newell Affidavit make clear the judge's personal knowledge.

1 **Judge As Witness**

2 Canon 3, § E(d) also requires the judge to recuse herself when she "(iv) is to the
3 judge's knowledge likely to be a material witness in the proceeding." Given what Judge
4 Hardcastle has expressed on the record, it is now highly likely that one side or the other will seek
5 to call her to testify about conditions in the Clark County Public Defender's Office which are set
6 forth in Ms. Blaskey's affidavit. That likelihood compels Judge Hardcastle's disqualification.

7 **Judge As Attorney**

8 Canon 3, § E of the Nevada Code of Judicial Conduct also requires the judge to
9 recuse herself when:

10 (b) the judge served as a lawyer in the matter in controversy, or a
11 lawyer with whom the judge previously practiced law served
 during such association as a lawyer concerning the matter. . . .

12 NRS § 1.230, 2(c) also requires that a judge be disqualified "when he has been attorney or
13 counsel for either of the parties in the particular action or proceeding before the court." Under
14 the Nevada Rules of Professional Conduct, Rule 161, it is clear that the so-called "firm unit rule"
15 applies in Nevada such that by being a member of the Clark County Public Defender's Office
16 when Mr. Flanagan was a client of that office, Judge Hardcastle was in fact Mr. Flanagan's
17 attorney at the time. As a consequence, she cannot act as a judge in this case.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 **3. CONCLUSION**

2 The facts of this case present four separate compelling grounds for Judge
3 Hardcastle's disqualification in this matter. Taken together, they comprise overwhelming
4 reasons for the granting of this motion. When Petitioner's very life is at stake, not even the
5 appearance of impropriety should be allowed to stand, and here, the facts go far beyond
6 appearance to actual violation of several statutes and judicial canons. Due process compels
7 Judge Hardcastle's removal.

8 DATED this 5th day of June, 2000.

9 **DAVIS WRIGHT TREMAINE LLP**

10
11 By 
12 **ROBERT D. NEWELL**
 Of Attorneys for Petitioner Dale Edward Flanagan

1 AFFT
2 CAL J. POTTER, III
3 Nevada Bar No. 001988
4 POTTER LAW OFFICES
5 1125 Shadow Lane
6 Las Vegas, Nevada 89102
7 Telephone (702) 385-1954

8 ROBERT D. NEWELL
9 DAVIS WRIGHT TREMAINE LLP
10 1300 S.W. Fifth Avenue, Suite 2300
11 Portland, Oregon 97201
12 Telephone (503) 241-2300

13 Attorney for Petitioner
14 Dale Edward Flanagan
15

16 EIGHTH JUDICIAL DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 DALE EDWARD FLANAGAN,

19 Petitioner,

20 v.

21 THE STATE OF NEVADA, and E.K.
22 McDANIEL, Warden, Ely State Prison,

23 Respondents.
24

25 DEATH PENALTY CASE

26 Case No. C69269

Dept. No. XI

Docket "S"

AFFIDAVIT OF ROBERT D. NEWELL

27 STATE OF OREGON)

28 County of Multnomah)

29) ss.

30 I, Robert D. Newell, being first duly sworn, depose and say:

31 1. I am a partner in the law firm of Davis Wright Tremaine LLP. My firm
32 has been appointed by this Court to represent Petitioner in these habeas corpus proceedings. I
33 am admitted *pro hac vice* to practice before this Court.

34 2. On May 31, 2000, I appeared before District Court Judge Kathy A.
35 Hardcastle on Petitioner's Motion for Discovery and Motion for Evidentiary Hearing. That was
36 the first appearance either side had made in this case before any judge except on scheduling

1 matters.

2 3. At the May 31, 2000 hearing, Judge Hardcastle reviewed the Affidavit of
3 Rebecca Blaskey presented by Petitioner in support of his Supplemental Petition for Habeas
4 Corpus, Motion for Evidentiary Hearing and Motion for Discovery. After reading Ms. Blaskey's
5 affidavit, Judge Hardcastle said "I am well aware of Ms. Blaskey's personal opinion of the death
6 penalty and consequently I do not put much stock in this [her affidavit]" or words to that effect.
7 I have ordered the transcript of the hearing, but do not yet have it.

8 4. At the May 31, 2000 hearing, Judge Hardcastle also indicated on the
9 record that she had worked with Ms. Blaskey and Mr. Wall, Petitioner's co-counsel for the third
10 penalty hearing in this case at the Public Defender's Office. Prior to that hearing, I was aware
11 that Judge Hardcastle had worked for the Clark County Public Defender's Office, but was
12 unaware that she had worked with Ms. Blaskey or Mr. Wall.

13 5. At the May 31, 2000 hearing, the State stipulated to a limited evidentiary
14 hearing, which Judge Hardcastle indicated she would allow under certain conditions. The State
15 also indicated that it would call David Wall to rebut Ms. Blaskey's affidavit. Mr. Wall was
16 co-counsel with Ms. Blaskey's during Mr. Flanagan's third penalty hearing while both were
17 members of the Clark County Public Defender's Office. Before that hearing, the State had given
18 no indication that it intended to call Mr. Wall as a witness or that it would stipulate to a limited
19 evidentiary hearing. Because I was unaware of Judge Hardcastle's association with Ms. Blaskey
20 and Mr. Wall, it had not occurred to me that, and I had no factual basis for believing, Judge
21 Hardcastle could, under any circumstances, be a witness in this case. However, given her
22 personal knowledge of two principal witnesses in the limited evidentiary hearing she indicated
23 she would allow and given her statement about her knowledge of Ms. Blaskey's opinions and her
24 opinion of Ms. Blaskey's views, it is now likely that Judge Hardcastle may indeed be a witness
25 about the issues raised in Ms. Blaskey's affidavit.

26

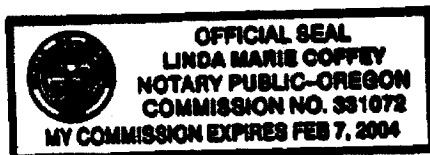
1 6. On June 1, 2000, I spoke to Ms. Blaskey about Judge Hardcastle's
2 comments. Ms. Blaskey advised me that Judge Hardcastle was well aware of the matters set
3 forth in her affidavit because Judge Hardcastle had been employed by the Clark County Public
4 Defender's Office at the time it was representing Mr. Flanagan. I was previously unaware of that
5 fact.

6 7. Because I had not been aware of Judge Hardcastle's association with the
7 Clark County Public Defender's Office at the time that it represented Mr. Flanagan, I was
8 unaware that she would be disqualified serving as a judge in this matter under the Nevada Code
9 of Judicial Conduct and the Nevada Rules of Professional Conduct.

10 8. I hereby certify that this affidavit is filed in good faith and not interposed
11 for purposes of delay. Indeed, I file this affidavit out of the belief that I am obligated to set these
12 facts upon the record and make the motion for recusal of Judge Hardcastle in the best interests of
13 my client.

14
15 
16 ROBERT D. NEWELL

17 SUBSCRIBED and SWORN to before me this 5th day of June, 2000.




NOTARY PUBLIC FOR OREGON
My Commission Expires: 2-7-2004

1 CERT
2 CAL J. POTTER III
3 Nevada Bar No. 001988
4 POTTER LAW OFFICES
5 1125 Shadow Lane
6 Las Vegas, Nevada 89102
7 Telephone (702) 385-1954
8
9 ROBERT D. NEWELL
10 DAVIS WRIGHT TREMAINE LLP
11 1300 S.W. Fifth Avenue, Suite 2300
12 Portland, Oregon 97201
13 Telephone (503) 241-2300
14
15 Attorney for Petitioner
16 Dale Edward Flanagan
17
18

19 EIGHTH JUDICIAL DISTRICT COURT

20 CLARK COUNTY, NEVADA

21 DALE EDWARD FLANAGAN,
22
23 Petitioner,
24
25 v.
26
27 THE STATE OF NEVADA, and E.K.
28 McDANIEL, Warden, Ely State Prison,
29
30 Respondents.

DEATH PENALTY CASE

Case No. C69269

Dept. No. XI

Docket "S"

Date: N/A

Time: N/A

31 CERTIFICATE OF MAILING

32 Pursuant to NRCP 5(b), I certify that I am an employee of Davis Wright Tremaine
33 LLP, and that, on this date, I deposited for mailing at Portland, Oregon, a complete copy of
34 PETITIONER'S MOTION FOR DISQUALIFICATION OF JUDGE together with the
35 supporting AFFIDAVIT OF ROBERT D. NEWELL addressed to:

36 Leon Simon
DISTRICT ATTORNEY'S OFFICE
200 South Third Street, 7th Floor
Las Vegas, Nevada 89155

1 Dated this 5th day of June, 2000.

2 
3 Linda Marie Coffey

4 Davis Wright Tremaine LLP
5 1300 SW Fifth Avenue, Suite 2300
6 Portland, Oregon 97201
7 503-241-2300

"same action or proceeding" as action for termination of parental rights for purposes of NRS 1.230, which prohibits judge from acting as such when he has been attorney for either party in action or proceeding before court. Judge, therefore, erred in denying parent's motion for disqualification. In re Parental Rights as to Oren, 113 Nev. 594, 939 P.2d 1039 (1997).

District court did not err in denying defendant's motion to disqualify judge who commented on reliability of defendant's evidence presented during penalty hearing. Where, during penalty hearing for defendant convicted of first degree murder, judge noted that defendant sought to introduce statements which were inconsistent with evidence admitted at codefendant's penalty hearing, defendant argued that district court's denial of his motion to disqualify judge violated defendant's due process rights and right to fair trial (see Nev. Art. 1, § 8). Supreme court disagreed, stating that generally what judge learns in his official capacity does not result in his disqualification and that judge's statements in instant case demonstrated legitimate concern for reliability of evidence brought before court. Therefore, because defendant failed to prove bias warranting dismissal of judge, district court's denial of motion to disqualify judge was proper. (See NRS 1.230.) Walker v. State, 113 Nev. 853, 944 P.2d 762 (1997).

Appeal based on claim that error occurred when judge did not recuse himself was dismissed where defendant's allegations of judge's impartiality were not supported by any evidence. Where judge was subject of investigation by federal grand jury, defendant argued on appeal that judge's failure to recuse himself was error on basis that potential conflict existed because media might pressure judge, thereby making it incumbent upon judge to show how tough he could be and how he could be favorable to state. Judge is presumed to be impartial and party asserting challenge carries burden of establishing sufficient factual grounds warranting disqualification (see NRS 1.230 and C.J.C. Canon 3E). However, defendant's conclusory allegations were not supported by any evidence. Therefore, because defendant failed to allege or establish legally cognizable grounds warranting disqualification of judge, appeal was dismissed. Rippo v. State, 113 Nev. 1239, 946 P.2d 1017 (1997).

VALIDITY OF ORDERS ENTERED BY DISQUALIFIED JUDGE

Order void. Where, after defendant filed and served notice of motion for new trial, plaintiff applied to judge, who was disqualified to try action

under sec. 45, ch. 19, Stats. 1865 (cf. NRS 1.230), for order granting additional time within which to prepare, file and serve amendments to statement on motion for new trial, the order, even if made, would have been void, because judge had no authority to act. Frevert v. Swift, 19 Nev. 363, 11 Pac. 273 (1886).

Objection to timeliness of motion, filed pursuant to invalid order, held not waived. Where order extending time within which defendant could file and serve statement on motion for new trial was invalid because judge who made order was disqualified to try action under sec. 45, ch. 19, Stats. 1865 (cf. NRS 1.230), plaintiff, by accepting statement, did not waive objection to fact that statement had not been timely filed, because without examining statement, plaintiff could not determine whether or not order extending time was made by judge who tried action, and objection could not be made until such fact was determined. Frevert v. Swift, 19 Nev. 363, 11 Pac. 273 (1886).

Untimely motion for new trial, filed pursuant to invalid order, held properly denied. Where, after defendant filed and served notice of motion for new trial, judge, who was disqualified to try action under sec. 45, ch. 19, Stats. 1865 (cf. NRS 1.230), made order extending time in which to file and serve statement on motion for new trial, order was invalid inasmuch as judge had no authority to act, and, because plaintiff did not waive objection to fact that statement had not been timely filed, trial court correctly denied new trial upon ground that no statement on motion for new trial had been filed within time required by law. Frevert v. Swift, 19 Nev. 363, 11 Pac. 273 (1886), cited, State ex rel. Schaw v. Noyes, 25 Nev. 31, at 49, 56 Pac. 946 (1899), State ex rel. Bullion & Exch. Bank v. Mack, 26 Nev. 430, at 442, 69 Pac. 862 (1902).

Order void. Under sec. 45, ch. 19, Stats. 1865 (cf. NRS 1.230), judgment rendered by judge who is interested in outcome of action is not only voidable, as at common law, but void. State ex rel. Schaw v. Noyes, 25 Nev. 31, 56 Pac. 946 (1899), cited, State ex rel. Bullion & Exch. Bank v. Mack, 26 Nev. 430, at 442, 69 Pac. 862 (1902).

Order void. Where, under sec. 45, ch. 19, Stats. 1865, as amended (cf. NRS 1.230), judge is disqualified to act as such in action or proceeding in which he is interested, action of such disqualified judge is void. State ex rel. Bullion & Exch. Bank v. Mack, 26 Nev. 430, 69 Pac. 862 (1902).

NRS 1.235 Procedure for disqualifying judges other than supreme court justices.

1. Any party to an action or proceeding pending in any court other than the supreme court, who seeks to disqualify a judge for actual or implied bias or prejudice

must file an affidavit specifying the facts upon which the disqualification is sought. The affidavit of a party represented by an attorney must be accompanied by a certificate of the attorney of record that the affidavit is filed in good faith and not interposed for delay. Except as provided in subsections 2 and 3, the affidavit must be filed:

- (a) Not less than 20 days before the date set for trial or hearing of the case; or
- (b) Not less than 3 days before the date set for the hearing of any pretrial matter.

2. Except as otherwise provided in this subsection and subsection 3, if a case is not assigned to a judge before the time required under subsection 1 for filing the affidavit, the affidavit must be filed:

- (a) Within 10 days after the party or his attorney is notified that the case has been assigned to a judge;
- (b) Before the hearing of any pretrial matter; or
- (c) Before the jury is empaneled, evidence taken or any ruling made in the trial or hearing,

whichever occurs first. If the facts upon which disqualification of the judge is sought are not known to the party before he is notified of the assignment of the judge or before any pretrial hearing is held, the affidavit may be filed not later than the commencement of the trial or hearing of the case.

3. If a case is reassigned to a new judge and the time for filing the affidavit under subsection 1 and paragraph (a) of subsection 2 has expired, the parties have 10 days after notice of the new assignment within which to file the affidavit, and the trial or hearing of the case must be rescheduled for a date after the expiration of the 10-day period unless the parties stipulate to an earlier date.

4. At the time the affidavit is filed, a copy must be served upon the judge sought to be disqualified. Service must be made by delivering the copy to the judge personally or by leaving it at his chambers with some person of suitable age and discretion employed therein.

5. The judge against whom an affidavit alleging bias or prejudice is filed shall proceed no further with the matter and shall:

- (a) Immediately transfer the case to another department of the court, if there is more than one department of the court in the district, or request the judge of another district court to preside at the trial or hearing of the matter; or
- (b) File a written answer with the clerk of the court within 2 days after the affidavit is filed, admitting or denying any or all of the allegations contained in the affidavit and setting forth any additional facts which bear on the question of his disqualification. The question of the judge's disqualification must thereupon be heard and determined by another judge agreed upon by the parties or, if they are unable to agree, by a judge appointed:

(1) By the presiding judge of the judicial district in judicial districts having more than one judge, or if the presiding judge of the judicial district is sought to be disqualified, by the judge having the greatest number of years of service.

(2) By the supreme court in judicial districts having only one judge.

(Added to NRS by 1977, 767; A 1979, 59, 393; 1981, 319, 872)

WEST PUBLISHING CO.

Judges ⇨ 51(1).
WESTLAW Topic No. 227.
C.J.S. Judges §§ 133, 134, 152.

NEVADA CASES.

GENERALLY

"Subsequent application" rule held not violated. Where privilege given under ch. 153, Stats. 1931 (cf. NRS 1.235), to disqualify judge

49

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Case Activity	Defendant Flanagan, Dale E		Attorney Potter, III, Cal J.
Calendar	Judge Leavitt, Michelle	Dept.	12
Continuance			
Minutes			
Parties			
Def. Detail	Event 12/18/2000 at 09:00 AM	ALL PENDING MOTIONS 12/18/00	
Next Co-Def.	Heard By Gibbons, Mark		
Charges	Officers AMBER FARLEY, Court Clerk		
Sentencing	RENEE SILVAGGIO, Reporter/Recorder		
Bail Bond			
Judgments	Parties 0000 - State of Nevada		Yes
	S1		
District Case	000411 Simon, H. L.		Yes
Party Search	0001 - Flanagan, Dale E		No
Corp. Search	D1		
Atty. Search	001988 Potter, III, Cal J.		Yes
Bar# Search	0002 - D Moore, Randolph		No
ID Search	0003 - D McDowell, Roy		No
	0004 - D Luckett, Johnny R		No
Calendar Day	0005 - D Walsh, Michael B		No
Holidays	0006 - D Akers, Thomas		No
Help			
Comments &			
Feedback			
Legal Notice			

DEFT'S MOTION TO SEAL ORDER...DEFT'S MOTION TO CLARIFY AND EXPAND SCOPE OF EVIDENTIARY HEARING

Mr. Potter argued the original Motions were sealed by Order of Judge Douglas, the original Judge hearing this case, and merely wants to ensure that order is continuing. Court stated it doesn't appear to be any statutory authority on this matter. Mr. Simon stated the State has no position, and stated all the State ever received were the Court's Orders, not the applications. Mr. Simon provided same to Mr. Potter in open court. COURT ORDERED, Motion GRANTED; Applications regarding payment of costs are to be SEALED.

Court stated Defendant's Motion to clarify is in essence a Motion for Rehearing. COURT ORDERED, Motion DENIED.

Regarding the 1/26/01 Evidentiary Hearing date, Court stated parties have stipulated to continue that matter to February 9, and COURT SO ORDERED.

NDP

Due to time restraints and individual case loads, the above case record may not reflect all information to date.

Top Of Page

Generated on 5/11/2004 at 10:08:22 AM

LOGG

FILED

6 2 59 PM '00

CLERK

0269

CAL J. POTTER, III, ESQ.

Nevada Bar No. 001988

POTTER LAW OFFICES

1125 Shadow Lane

Las Vegas, Nevada 89102

Telephone: (702) 385-1954

ROBERT D. NEWELL, ESQ.

DAVIS WRIGHT TREMAINE LLP

1300 S.W. Fifth Avenue, #2300

Portland, Oregon 97201

Telephone: (503) 241-2300

Attorneys for Petitioner

DALE EDWARD FLANAGAN

DISTRICT COURT

CLARK COUNTY, NEVADA

DALE EDWARD FLANAGAN,

Petitioner,

vs.

DEATH PENALTY CASE

CASE NO. C 69269

DEPT NO. VII

THE STATE OF NEVADA, and E.K.

McDANIEL, Warden, Ely State Prison,

Respondents.

DATE:

TIME:

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY:

YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the attached Motion to Seal Order on for hearing before the above-entitled Court on the 18


POTTER
LAW OFFICE
1125 Shadow Lane
Las Vegas, Nevada 89102
(702) 385-1954 • Fax (702) 385-9081

MC

1 day of December, 2000, at the hour of 9:00 a.m., or as soon thereafter as can be heard, in
2 Department VII, at the Clark County Courthouse.

3 DATED this 6th day of December, 2000.

4
5 POTTER LAW OFFICES

6
7 By 
8 CAL J. POTTER, III, ESQ.
9 Nevada Bar No. 001988
10 1125 Shadow Lane
11 Las Vegas, Nevada 89102
12 Attorneys for Defendant

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
POTTER
LAW OFFICE
1125 Shadow Lane
Las Vegas, Nevada 89102
(702) 385-1954 • Fax (702) 385-9081

FILED

DEC 6 2 59 PM '00

Shirley L. Duggins
CLERK

1 EXPT
2 CAL J. POTTER III
3 Nevada Bar No. 001988
4 POTTER LAW OFFICES
5 1125 Shadow Lane
6 Las Vegas, Nevada 89102
7 Telephone (702) 385-1954

8 ROBERT D. NEWELL
9 DAVIS WRIGHT TREMAINE LLP
10 1300 S.W. Fifth Avenue, Suite 2300
11 Portland, Oregon 97201
12 Telephone (503) 241-2300

13 Attorney for Petitioner
14 Dale Edward Flanagan
15

16 EIGHTH JUDICIAL DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 DALE EDWARD FLANAGAN,

19 Petitioner,

20 v.

21 THE STATE OF NEVADA, and E.K.
22 McDANIEL, Warden, Ely State Prison,

23 Respondents.
24

25 DEATH PENALTY CASE

26 Case No. C69269

Dept. No. VII

Docket "S"

MOTION TO SEAL ORDER

27
28 Petitioner Dale Edward Flanagan respectfully moves the Court for its order
29 sealing its order dated August 28, 2000 denying his request for funds and requiring the State to
30 return or destroy all copies of that order in its possession or control.

31 POINTS AND AUTHORITIES

32 Petitioner has filed motions for reimbursement of investigation, expert, and other
33 expenses and fees because he is indigent and cannot afford to pay for his own defense. Those
34 motions were filed *ex parte* under seal. The motions and requests contain specific information
35 regarding the nature of Petitioner's case. They justify the need for the expenses to the Court by
36 describing counsel's investigative strategy, experts and witnesses contacted, and the like. This

1 Court has protected Petitioner's constitutional rights by allowing these applications to be filed
2 *ex parte* and under seal. However, by serving its order on those motions on the State, the Court
3 could give an opening to the State or other members of the public to view these motions, and in
4 so doing the Court will expose Petitioner's case strategy and will eviscerate the constitutional
5 protection previously afforded to Petitioner.

6 ARGUMENT

7 1. State and federal law recognize the necessity of protecting an indigent's right to
8 non-disclosure.

9 The state of Nevada and this Court recognize the need to protect an indigent's
10 rights in pursuit of justice. The statute allowing reimbursement for expenses and employment of
11 investigative or other services, N.R.S. § 7.135, mandates that the court consider and approve
12 such reimbursement requests in an *ex parte* application.¹ *Ex parte* means "taken or granted at the
13 instance and for the benefit of one party only, and *without notice to, or contestation by, any*
14 *person adversely interested.*"² The plain language of the statute thus recognizes an indigent's
15 need to maintain the confidentiality of his requests for reimbursement. Moreover, the Nevada
16 Supreme Court has recognized the need for the court to conduct proceedings for reimbursement
17 of expenses *ex parte* and *in camera*. *Widdis v. Second Judicial Dist. Court of State In and For*
18 *County of Washoe*, 968 P.2d 1165, 1169 (Nev. 1998) (Young, J., dissenting) (noting that an *ex*
19 *parte* motion for necessary defense services should be considered *in camera*). The Court should
20 not contravene the express language of § 7.135, and the findings of the Nevada Supreme Court,
21 by *sua sponte* disclosing the details of petitioner's motions and requests through its order.

22 At least one state has recognized Nevada's consideration of an indigent's need for

23 ¹ "The attorney appointed . . . is entitled . . . to be reimbursed for expenses reasonably incurred
24 by him in representing the defendant and may employ, subject to the prior approval of the
25 magistrate or the district court in an *ex parte application*, such investigative, expert or other
services as may be necessary for an adequate defense." N.R.S. § 7.135 (emphasis added).

26 ² BLACK'S LAW DICTIONARY 576 (6th ed. 1990) (emphasis supplied).

1 confidentiality and has developed procedural protections of its own. The Supreme Court of
2 Louisiana noted that Nevada addressed the well-founded fear of unfair prosecutorial advantage
3 by allowing, via N.R.S. § 7.135, for *ex parte* application and hearing on requests for expert
4 services by indigent defendants. State v. Touchet, 642 So.2d 1213, 1218 (La. 1994). The
5 *Touchet* court developed a procedure that allows the indigent to file a request for funds *ex parte*
6 and that mandates the court to consider the request *in camera*. *Id.* at 1214.

7 Other states similarly have recognized the prejudice to an indigent in the event of
8 disclosure. The Supreme Court of Tennessee held that in the context of a request for a
9 psychiatric expert, an *ex parte* hearing is required because "[i]ndigent defendants who must seek
10 state-funding to hire a psychiatric expert should not be required to reveal their theory of defense
11 when their more affluent counterparts . . . are not required to reveal their theory of defense."
12 State v. Barnett, 909 S.W.2d 423, 428-29 (Tenn. 1995); see also Zant v. Brantley, 261 Ga. 817,
13 818-19 (Ga. 1992) (it is "important that the defendant's theory of his case not be revealed to the
14 prosecution" when determining that the prosecution was not entitled to be present at a hearing
15 where the trial court's grant of the defendant's *ex parte* request was at issue). The protections
16 this Court has thus far afforded Petitioner are consistent with this well-established law, and
17 should not be disturbed.

18 Finally, this Court should afford to Petitioner the same protection he would enjoy
19 under federal law. In a post-conviction proceeding pursuant to 28 U.S.C. § 2254, seeking to
20 vacate or set aside a death sentence, any defendant who is unable to obtain adequate
21 investigative, expert, or other reasonably necessary services shall be entitled to the services.
22 21 U.S.C. § 848(q)(4)(B). The defendant is entitled to an *ex parte* request where he makes a
23 proper showing for the need for confidentiality. 21 U.S.C. § 848(q)(9); see also Calderon v. U.S.
24 Dist. Court for the Eastern Dist. of California, 107 F.3d 756, 761 n.11 (9th Cir.), *cert. denied*, 522
25 U.S. 907 (1997) (noting that the *ex parte* requirement under the previous version of § 848(q)(9)
26 allowed a state prisoner to avoid state interference with or knowledge of the details of his fee

request); see, e.g., Smith v. McCormick, 914 F.2d 1153, 1159 (9th Cir. 1990) (indicating that full disclosure impermissibly compromises presentation of an effective defense in the collateral attack of a death sentence). Based on the foregoing, the Petitioner would clearly prevail in a request for a confidential *ex parte* application under federal law.

2. Disclosure of the contents of the motions and requests will violate the work-product doctrine and the attorney-client privilege.

The information that Petitioner has thus far provided to the Court is descriptive of the efforts counsel have undertaken to complete and file the habeas petition and is protected by the work-product doctrine and the attorney-client privilege. As this Court is aware, Petitioner's requests for reimbursement for investigative and expert assistance and ancillary litigation expenses include detailed discussions of the work performed or contemplated, the legal strategies considered, and potential evidence to be developed. The extensive detail contained in the motions and requests permitted this Court to evaluate the requests fully and determine whether they were justified. The information provided in the motions and requests is attorney work product, and as such is protected from disclosure.

Moreover, but for Petitioner's indigence, the information contained in his applications would not be available to the Court or to the State. Discussions about case strategy generally take place between the lawyer and the client only and are subject to the attorney-client privilege. Counsel in this case has documented the strategy for the Court, and the Court only, as a necessary step in pursuing an adequate defense for Petitioner. The information, although relayed to the Court, is protected by the attorney-client privilege. See In re Horn, 976 F.2d 1314, 1317 (9th Cir. 1992) (the attorney-client privilege protects the disclosure of information if disclosure would convey information that would ordinarily be conceded to be part of the usual privileged communication between attorney and client). Disclosure of this information will violate the attorney-client privilege.

///

1 **3. Public access to Petitioner's requests will violate the Constitution.**

2 Unsealing the motions for reimbursement will severely impact Petitioner's
3 constitutional right to equal protection of the law and to due process. The Fourteenth
4 Amendment to the United States Constitution provides that "[n]o State shall . . . deprive any
5 person of life, liberty, or property, without due process of law; nor deny to any person within its
6 jurisdiction the equal protection of the laws." In a prosecution against an indigent defendant,
7 justice cannot be equal where, simply as a result of his poverty, a defendant is denied the
8 opportunity to participate meaningfully in a judicial proceeding in which his life or liberty is at
9 stake. Ake v. Oklahoma, 470 U.S. 68, 77 (1985). A state is thus required, when it brings its
10 judicial powers to bear on an indigent defendant, to take steps to assure that the indigent has a
11 fair opportunity to present his defense. *Id.*

12 Petitioner will sustain substantial prejudice, in violation of equal protection, if the
13 Court allows public inspection of his applications. Where the indigent is subjected to a process
14 which is not required of a non-indigent, then the process becomes invidiously discriminatory and
15 violative of equal protection. See Long v. Iowa, 385 U.S. 192 (1966). Public disclosure of
16 Petitioner's sealed applications to the Court would announce Petitioner's case strategy to the
17 State. Petitioner's equal protection rights are implicated because Petitioner will have to reveal
18 his strategy only because he is indigent, while his non-indigent counterpart is under no obligation
19 to disclose to the State the details of his expenses and prison visits. Disclosure of the contents of
20 Petitioner's applications is discriminatory because if Petitioner were not indigent, the
21 information would not be available. Accordingly, the Court's different treatment of Petitioner
22 based on his indigent status violates the constitutional guarantee of equal protection.

23 In addition to violating equal protection of the laws, disclosure will extensively
24 impact Petitioner's case strategy, thereby denying him due process. Petitioner has entrusted the
25 Court, and the Court only, with the details of the preparation and investigation of his case. If the
26 State is allowed review of these applications, Petitioner's case strategy will be exposed. The

1 revelation to the State of the names, number, and expected testimony of Petitioner's expert and
2 other witnesses will give the State significant advantage over Petitioner. The more the State
3 knows about Petitioner's case, the better. For example, disclosure will allow the State to
4 emphasize or de-emphasize certain evidence. Petitioner thus will be denied his right to present
5 his case with the protections afforded by the Due Process Clause.

6 The constitutional protections described above are critical to a petitioner's pursuit
7 of habeas corpus relief, and are even more crucial to those petitioners facing death. The Court
8 has thus far protected these rights, and neither the State nor any member of the public has argued
9 that these protections be withdrawn. Accordingly, the Court should maintain the status quo by
10 sealing its August 28, 2000 order and requiring the State to return all copies of that order.

11 **CONCLUSION**

12 Petitioner has filed his requests for reimbursement and for prison access *ex parte*
13 and under seal, consistent with state law and the constitutional mandates of due process and of
14 equal protection. This Court should maintain the confidentiality of these requests, and should
15 seal its August 28, 2000 order and require the State to return all copies of that order.

16 DATED this 25th day of October, 2000

17 **DAVIS WRIGHT TREMAINE LLP**

18
19 By


ROBERT D. NEWELL

20 Of Attorneys for Petitioner Dale Edward Flanagan
21
22
23
24
25
26

POTTER
LAW OFFICE
1125 Shadow Lane
Las Vegas, Nevada 89102
(702) 385-1954 • Fax (702) 385-9081

1 ROC
2 CAL J. POTTER, III, ESQ.
Nevada Bar No. 001988
3 POTTER LAW OFFICES
1125 Shadow Lane
4 Las Vegas, Nevada 89102
5 Telephone: (702) 385-1954
6 Attorneys for Petitioner
7 DALE EDWARD FLANAGAN

8 **DISTRICT COURT**
9
10 **CLARK COUNTY, NEVADA**

11 * * * * *

12 DALE EDWARD FLANAGAN,

13
14 Petitioner,

15 vs.

DEATH PENALTY CASE
CASE NO. C 69269
DEPT. NO. VII

16 THE STATE OF NEVADA, and E.K.
17 McDANIEL, Warden, Ely State Prison,

18 Respondents..
19 _____

20 **RECEIPT OF COPY**

21 RECEIPT OF COPY of the Notice of Motion and Motion to Seal Order is
22 hereby acknowledged this 6 day of December, 2000.

23 DISTRICT ATTORNEY'S OFFICE

24
25
26 By Stewart L. Bell
STEWART L. BELL, ESQ.
Nevada Bar No. 000477
27 200 South Third Street
Las Vegas, Nevada 89155
28 Attorneys for Defendant

1 STEWART L. BELL
2 DISTRICT ATTORNEY
3 Nevada Bar #000477
4 200 S. Third Street
5 Las Vegas, Nevada 89155
6 (702) 455-4711
7 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 DALE EDWARD FLANAGAN,

14 Defendant.

Case No. C69269
Dept. No. VII
Docket P

15 OPPOSITION TO MOTION TO CLARIFY AND EXPAND SCOPE

16 DATE OF HEARING: 12-18-00
17 TIME OF HEARING: 9:00 A.M.

18 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
19 H. LEON SIMON, Deputy District Attorney, and files this Response to Defendant's Motion to
20 Clarify and Expand Scope of Evidentiary Hearing

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

24 ///

25 ///

26 ///

27 ///

28 ///

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 Subsequent to a remand to the District Court, Defendant faced his third penalty hearing
4 in June 1995, represented by Mr. David Wall and Ms. Rebecca Blaskey. On June 23, 1995, the
5 jury returned a sentence of death. The Judgment of Conviction was filed on July 11, 1995.

6 Defendant filed a timely notice of appeal. The Nevada Supreme Court affirmed
7 Defendant's death sentence. Flanagan v. State, 112 Nev. 1409, 930 P.2d 691 (1996); cert.
8 denied, 523 U.S. 1083, 118 S.Ct. 1534, 140 L.Ed.2d 684 (1998).

9 On May 28, 1998, Defendant filed a proper person Petition for Writ of Habeas Corpus
10 and request for counsel. Mr. Cal J. Potter, III, and Mr. Robert D. Newell were appointed to
11 represent Defendant. A Supplemental Petition for Writ of Habeas Corpus was filed on
12 November 30, 1999.

13 On August 16, 2000, the District Court granted Defendant's motion for an evidentiary
14 hearing as to the issue of Ms. Blaskey's affidavit and allegations regarding Mr. Wall's conduct.
15 The District Court specifically denied the motion for an evidentiary hearing as to the remaining
16 issues. The District Court further deferred ruling on claims pertaining to assertions by Ms.
17 Blaskey regarding the conduct of Mr. Wall, but denied the remaining claims.

18 On December 6, 2000, Defendant filed the instant motion requesting clarification and
19 expansion of the scope of the granted evidentiary hearing.

20 MEMORANDUM OF
21 POINTS AND AUTHORITIES

22 Defendant's motion acknowledges this Court's ruling on August 16, 2000, limiting the
23 scope of the granted evidentiary hearing to the alleged conflict between Ms. Blaskey and Mr.
24 Wall during the third penalty phase of the case. However, Defendant proceeds to renew his
25 motion requesting an evidentiary hearing on all of the claims in his Supplemental Petition
26 contending that counsel at the third penalty hearing were obligated to assert every flaw in each
27 prior proceeding in the case. In the alternative, Defendant requests this Court to expand the
28 evidentiary hearing to four weeks to include Claims 1, 2, 4, 5, 6, 7, 8, 10, 11, 20, 21, 25, 26, 29,

1 30, 31, 32, 33, and 36.

2 The State respectfully submits this Court has already denied all claims in Defendant's
3 Petition but those pertaining to assertions by Ms. Blaskey regarding the conduct of Mr. Wall.
4 Moreover, Defendant has cited no good cause for revisiting that decision. The State requests
5 this Court to stand by its initial ruling limiting the scope of the granted evidentiary hearing to the
6 alleged conflict between Ms. Blaskey and Mr. Wall as it relates to the claim of ineffective
7 assistance of counsel.

8 Claim One alleges numerous instances of prosecutorial misconduct during the *guilt phase*
9 of the trial. This claim was previously rejected by the Nevada Supreme Court in Flanagan v.
10 State, 104 Nev. 104, 755 P.2d 836 (1988) and was denied by the district court on August 16,
11 2000. This issue has no bearing on the ineffective assistance of counsel claim for which this
12 court has granted an evidentiary hearing. Defendant has offered no evidence of why this issue
13 should be revisited or how this claim relates to the narrow issue of Ms. Blaskey's allegations
14 regarding the conduct of Mr. Wall.

15 Claim Two alleges the State's payment of money to key witnesses violated his due
16 process rights. This claim was denied by the District Court on August 16, 2000. Defendant now
17 attempts to have this court revisit the issue; however, Defendant has offered no basis for such
18 a request other than his disagreement with the court's ruling. The State contends this court
19 should not expand the parameters of the evidentiary hearing to include this issue.

20 Claim Four alleges ineffective assistance of counsel, including claims against Defendant's
21 trial counsel at his first trial and each of the penalty phase hearings. To the extent this claim is
22 against Defendant's attorneys in either of his first two trials, these issues were denied by the
23 District Court on August 16, 2000. Defendant's request for this court to revisit that decision is
24 unsupported. To the extent the claim alleges ineffective assistance of either Ms. Blaskey or Mr.
25 Wall, the State contends these issues are the proper limited subject matter for the evidentiary
26 hearing.

27 Claim Five alleges Defendant was incompetent to stand trial. This issue was denied by
28 the district court on August 16, 2000. Defendant has asserted no valid reason as to why this

1 court should revisit this issue. The State would also note that the issue of Defendant's
2 competency was never raised in Ms. Blaskey's affidavit. While Ms. Blaskey mentioned having
3 inadequate time with a mental health expert, her allegation was inadequate time to develop
4 Defendant's life history and her and Mr. Wall's decision to turn over the raw data and materials
5 to the prosecution, not Defendant's competency. Defendant has asserted no reason why this
6 issue is relevant to the narrow focus of the evidentiary hearing granted.

7 Claim Six alleges that Ms. Blaskey and Mr. Wall should have moved for a change of
8 venue due to the prejudicial atmosphere of the jury. Once again, this allegation of
9 ineffectiveness is not mentioned in Ms. Blaskey's affidavit. Therefore, it does not appear to be
10 a point of contention that would properly fall within the scope of the evidentiary hearing.

11 Claim Seven alleges that blacks were improperly excluded from the jury. This issue was
12 denied by the District Court on August 16, 2000. Defendant has presented no valid reason for
13 readdressing this issue, nor has he indicated how this issue relates to the ineffective assistance
14 of counsel claim. The State contends the Court's ruling should stand. The State further notes
15 that Defendant, who is White, has not shown how the alleged exclusion of blacks from the jury
16 would have prejudiced him.

17 Claim Eight alleges that Defendant was denied the proper use of peremptory challenges
18 when he had to share the challenges with his co-defendant's. This issue was also denied by the
19 District Court on August 16, 2000. Defendant has failed to assert why this Court should revisit
20 this ruling. The State contends Defendant has not presented a valid basis for including this issue
21 within the limited evidentiary hearing.

22 Claim Ten alleges ineffective assistance of appellate counsel. This issue was denied by
23 the district court on August 16, 2000. Defendant now seeks this court to revisit the issue and to
24 expand the evidentiary hearing to include this claim. The State asserts there is no basis for the
25 district court to reconsider its prior ruling and asserts there is absolutely no connection between
26 a claim of ineffective assistance of appellate counsel and the conduct of Ms. Blaskey and Mr.
27 Wall in defending Defendant at his penalty hearing. As such, this court should decline to expand
28 the scope of the evidentiary hearing to include this issue.

1 Claim Eleven alleges inadequate review by the Supreme Court. The district court also
2 dismissed this claim for lack of merit. Defendant has presented no basis for reconsidering that
3 decision. The Nevada Supreme Court's review of Defendant's case is completely unrelated to
4 the limited issue of Ms. Blaskey's and Mr. Wall's representation of Defendant for which the
5 evidentiary hearing was granted. Defendant's request to expand the evidentiary hearing to
6 include this issue is baseless. Furthermore, the District Court does not have jurisdiction to
7 review actions of the Supreme Court.

8 Claim Twenty alleges Defendant was prejudiced by an impartial tribunal. The crux of
9 this allegation involves the alleged bias of Judge Mosley, who presided over Defendant's second
10 retrial of his sentence. This issue was denied by the District Court on August 16, 2000.
11 Defendant has failed to indicate how the alleged bias of Judge Mosley is related to the
12 ineffective assistance of counsel claim for which the evidentiary hearing was granted.
13 Specifically, during the third penalty hearing in which Ms. Blaskey and Mr. Wall represented
14 Defendant, the Honorable Addelair D. Guy, III, presided. As such, Defendant has presented an
15 insufficient basis to expand the scope of the evidentiary hearing.

16 Claim Twenty-Five alleges cumulative error by admission of evidence and instructions,
17 misconduct by state officials and witnesses, and deprivation of his right to effective assistance
18 of counsel. This claim was rejected by the district court on August 16, 2000. All but the claim
19 of ineffective assistance of counsel have been rejected. As such, this claim alone no longer has
20 any viability. Instead, the remaining issue of ineffective assistance of counsel is already properly
21 the subject of the evidentiary hearing and the Court has deferred ruling on this issue. There is
22 no reasons to expand the evidentiary hearing to consider evidence on cumulative error when no
23 individual error has been found.

24 Claim Twenty-Six alleges that execution by lethal injection is cruel and unusual
25 punishment. This claim was denied by the district court on August 16, 2000. This claim is
26 wholly unrelated to Ms. Blaskey's allegations regarding Mr. Wall's conduct and is not the proper
27 subject matter for this limited evidentiary hearing.

28 Claim Twenty-Nine alleges that the trial court erred by not severing Defendant's trial

1 from that of his co-defendant. This issue was denied by the district court on August 16, 2000.
2 To the extent that this claim was raised in Ms. Blaskey's affidavit, the State would concede that
3 the matter may be explored in the evidentiary hearing.

4 Claim Thirty alleges that Nevada does not have an effective clemency procedure. This
5 claim was denied by the district court on August 16, 2000. Once again, this claim attacks the
6 State's statutory procedures and bears no relevance to the question of ineffective assistance of
7 counsel or the allegations against Mr. Wall. Furthermore, the State submits this is not a proper
8 area for an evidentiary hearing as it strictly involves legal issues.

9 Claim Thirty-one alleges a violation of Defendant's due process based on the fact that he
10 was allegedly seen by jurors in shackles and because of the presence of armed guards in the
11 courtroom. The district court denied this issue on August 16, 2000. As with the other issues,
12 Defendant has failed to provide any basis for revisiting this ruling. Furthermore, this allegation
13 is unrelated to the ineffective assistance of counsel claim and is not part of Ms. Blaskey's
14 allegations against Mr. Wall. Therefore, the evidentiary hearing should not be expanded to
15 include this issue.

16 Claim Thirty-two alleges the judges are not impartial because they are elected. This claim
17 was denied by the district court on August 16, 2000. Once again, Defendant has presented no
18 valid basis for reconsidering this ruling and no valid basis for expanding the evidentiary hearing.

19 Claim Thirty-three alleges failure of Defendant's trial counsel to challenge for cause
20 jurors who did not meet constitutional standards of impartiality. Although this issue was denied
21 by the district court on August 16, 2000, is so much as this issue may be relevant to the
22 allegations of ineffective assistance of counsel in the third penalty hearing, it may be considered
23 at the evidentiary hearing.

24 Finally, Claim Thirty-six alleges that Defendant has suffered cruel and unusual
25 punishment in violation of the Eighth Amendment due to the State's misconduct causing him
26 to go through two trials and appeals and remain on death row for nearly fifteen years. This claim
27 was rejected by the District Court and should not be readdressed. Furthermore, Defendant has
28 presented no grounds for why this issue should be included in the limited evidentiary hearing as

1 it is unrelated to the claim of ineffective assistance of counsel.

2 **CONCLUSION**

3 Defendant's motion is merely an attempt for this Court to revisit rulings previously made.
4 Aside from Defendant's unhappiness with the rulings, Defendant has cited no further basis for
5 readdressing the previous rulings of this Court to deny the majority of the issues Defendant
6 presented in his Supplement Petition for Writ of Habeas Corpus. The State contends these
7 rulings should stand. The State further submits this Court's decision to limit the evidentiary
8 hearing to the claim of ineffective assistance of counsel and Ms. Blaskey's allegations against
9 Mr. Wall was proper. Defendant has presented no basis for expanding the scope of the hearing
10 to issues unrelated to ineffective assistance of counsel at the third penalty phase. The State
11 respectfully requests this Court to deny Defendant's motion.

12 DATED this _____ day of December, 2000.

13 Respectfully submitted,

14 STEWART L. BELL
15 DISTRICT ATTORNEY
Nevada Bar #000477

16
17 BY _____
18 H. LEON SIMON
19 Deputy District Attorney
20 Nevada Bar #000411
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Response to Defendant's Motion to Seal
Order is hereby acknowledged this _____ Day of December, 2000.

CAL J. POTTER, III, Esq.
ATTORNEY FOR DEFENDANT

BY _____
1125 Shadow Lane
Las Vegas, Nevada 89102

1 STEWART L. BELL
2 DISTRICT ATTORNEY
3 Nevada Bar #000477
4 200 S. Third Street
5 Las Vegas, Nevada 89155
6 (702) 455-4711
7 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 DALE EDWARD FLANAGAN,

14 Defendant.

Case No. C69269
Dept. No. VII
Docket P

15 RESPONSE TO DEFENDANT'S MOTION TO SEAL ORDER

16 DATE OF HEARING: 12-18-00
17 TIME OF HEARING: 9:00 A.M.

18 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
19 H. LEON SIMON, Deputy District Attorney, and files this Response to Defendant's Motion to
20 Seal Order.

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

24 ///

25 ///

26 ///

27 ///

28 ///

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On August 1, 2000, Dale Edward Flanagan, hereinafter "Defendant," filed and ex parte
4 motion for the reimbursement of investigation expenses. That motion was not served on the
5 State and was not provided to the State by the District Court. The District Court considered the
6 motion, the affidavits, and the points and authorities filed in support of the motion. Ultimately,
7 the District Court ordered that the Defendant's motion for investigative fees, in the total amount
8 of \$234,050.27, be granted in part, with the total allowance for reimbursement in the amount of
9 \$16,000.00. This order, dated August 29, 2000, was provided to the State.

10 Defendant now moves this Court to place the ex parte motion and the order under seal.

11 MEMORANDUM OF
12 POINTS AND AUTHORITIES

13 Defendant is requesting that his ex parte motion for reimbursement of expenses and fees
14 and the order be sealed. The basis for this request is that the motion and order allegedly contain
15 specific information regarding the Defendant's case strategy that if disclosed to the State would
16 put Defendant at a disadvantage. The State does not have and has never seen the motion and
17 therefore cannot comment on whether this allegation is founded.

18 NRS 7.135 provides that a court-appointed attorney may employ such investigative,
19 expert, or other services as may be necessary for an adequate defense, subject to prior approval
20 in an ex parte application. Nothing in this section or in NRS 7.145, covering claims for
21 compensation and expenses, provides any requirement for the district court judge to seal an order
22 granting or denying such reimbursement. A further review of the Rules of the District Courts
23 of the State of Nevada and the Rules of Practice for the Eighth Judicial District Court of the
24 State of Nevada also discloses no requirement of a district court judge to seal an order granting
25 or denying requested reimbursement of expenses or fees. As such, the State contends the district
26 court maintained the discretion to determine whether to place the document under seal.

27 The State does not disagree with the Defendant that a motion for reimbursement that
28 details defense strategy and outlines investigative efforts may be an appropriate document to

1 order sealed to avoid disclosing attorney work product and other privileged information.
2 However, it is important to point out that the State is not and never has been in possession of the
3 ex parte motion for reimbursement of investigation expenses; nor has it ever seen such
4 document. Moreover, the order complained of simply recites the applicable law and the
5 procedural history without detailing any of the areas of Defendant's concern. There is no
6 information in the order that would disclose Defendant's strategy or allow public access to
7 sealed documents.

8 The State submits the issue of whether to seal the order granting, in part, the
9 reimbursement of \$16,000.00 of investigative fees to the discretion of the district court.

10 **CONCLUSION**

11 Defendant has failed to demonstrate any error by the district court in disclosing the
12 order granting in part reimbursement of investigative fees to the State. The State further
13 leaves to the discretion of the district court the issue of whether to place order under seal at
14 this time.

15 DATED this _____ day of December, 2000.

16 Respectfully submitted,

17 STEWART L. BELL
18 DISTRICT ATTORNEY
19 Nevada Bar #000477

20 BY _____
21 H. LEON SIMON
22 Deputy District Attorney
23 Nevada Bar #000411
24
25
26
27

28 RECEIPT OF COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECEIPT OF COPY of the above and foregoing Response to Defendant's Motion to
Seal Order is hereby acknowledged this _____ Day of December, 2000.

CAL J. POTTER, III, Esq.
ATTORNEY FOR DEFENDANT

BY _____
1125 Shadow Lane
Las Vegas, Nevada 89102

1 **ORDR**
2 **STEWART L. BELL**
3 **DISTRICT ATTORNEY**
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

FILED
DEC 26 12 53 PM '00
Shirley L. Ruggione
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 **THE STATE OF NEVADA,**

9 Plaintiff,

10 -vs-

11 **DALE EDWARD FLANAGAN,**
12 **#737065**

13 Defendant.

Case No. C69269
Dept No. VII
Docket P

15 **ORDER DENYING DEFENDANT'S MOTION TO CLARIFY**
16 **AND EXPAND THE SCOPE OF THE EVIDENTIARY HEARING**
17 **AND ORDER GRANTING DEFENDANT'S MOTION TO SEAL ORDER**

18 **DATE OF HEARING: 12-18-00**
19 **TIME OF HEARING: 9:00 A.M.**

20 **THIS MATTER** having come on for hearing before the above entitled Court on the 18th
21 day of December, 2000, the Defendant not being present, represented by CAL POTTER, Esq.,
22 the Plaintiff being represented by STEWART L. BELL, District Attorney, through H. LEON
23 SIMON, Deputy District Attorney, and the Court having heard the arguments of counsel and
24 good cause appearing therefor,

25 //

26 //

27 //

28 //

//

1 IT IS HEREBY ORDERED that the Defendant's Motion to Clarify and Expand the Scope
2 of the Evidentiary Hearing, shall be, and it is denied;

3 IT IS HEREBY FURTHER ORDERED that Defendant's Motion to Seal Order, shall be,
4 and it is granted.

5 DATED this 22 day of December, 2000.

6 ~~REAR GIBBONS~~

7
8 DISTRICT JUDGE

9
10 STEWART L. BELL
11 DISTRICT ATTORNEY
12 Nevada Bar #000477

13 BY *M. Leon Simon*

14 M. LEON SIMON
15 Deputy District Attorney
16 Nevada Bar #000411
17
18
19
20
21
22
23
24
25
26
27

28 msf

50

District Case Inquiry - Minutes

Home	Case 85-C-069269-C	Just Ct. 85-F -00653	Status ACTIVE
Summary	Case#		
Case Activity	Plaintiff State of Nevada	Attorney Roger, David J.	
Calendar	Defendant Flanagan, Dale E	Attorney Potter, III, Cal J.	
Continuance	Judge Leavitt, Michelle	Dept. 12	
Minutes			
Parties			
Def. Detail	Event 04/17/2001 at 09:00 AM	STATUS CHECK: REASSIGNMENT/	
Next Co-Def.		EVIDENTIARY HEARING SCHEDULING	
Charges	Heard By Gibbons, Mark		
Sentencing	Officers TINA HURD, Court Clerk		
Bail Bond	GEORGETTE BYRD/GB, Relief Clerk		
Judgments	PATSY SMITH, Reporter/Recorder		
District Case	Parties 0000 - State of Nevada	Yes	
Party Search	S1		
Corp. Search	000411 Simon, H. L.	Yes	
Atty. Search	0001 - Flanagan, Dale E	No	
Bar# Search	D1		
ID Search	001988 Potter, III, Cal J.	Yes	
Calendar Day	0002 - D Moore, Randolph	No	
Holidays	0003 - D McDowell, Roy	No	
	0004 - D Lockett, Johnny R	No	
Help	0005 - D Walsh, Michael B	No	
Comments &	0006 - D Akers, Thomas	No	
Feedback			
Legal Notice			

COURT ORDERED, defendant's presence is waived. Court further noted it read the minutes and finds there would be a conflict and ORDERED, it will keep the case, and set the evidentiary hearing on remaining issues of the Writ.

NDP

09/12/01 10:00 AM EVIDENTIARY HEARING

Due to time restraints and individual case loads, the above case record may not reflect all information to date.

Top Of Page

Generated on 5/11/2004 at 10:08:46 AM

9-13-01
Jed Hogg

COPYED

MAY 3 2 41 PM '01

DISTRICT COURT
CLERK
CLARK COUNTY, NEVADA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRAN

THE STATE OF NEVADA,
PLAINTIFF,
VS.
DALE EDWARD FLANAGAN,
DEFENDANT.

CASE NO. C069269
DEPT. NO. XVIII

BEFORE THE HONORABLE NANCY M. SAITTA, DISTRICT JUDGE
FRIDAY, APRIL 13, 2001; 10:00 A.M.

RECORDER'S TRANSCRIPT RE:
EVIDENTIARY HEARING (REMAINING ISSUES ON WRIT)

APPEARANCES:

FOR THE STATE:	H. LEON SIMON, ESQ. Deputy District Attorney
FOR THE DEFENDANT:	CAL J. POTTER, III, ESQ. ROBERT D. NEWELL, ESQ.

RECORDED BY: KRISTINE CORNELIUS, COURT RECORDER

1 FRIDAY, APRIL 13, 2001; 10:00 A.M.

2
3 THE COURT: Let me begin by having all appearances please, if you
4 would, at least read for our recorded record or noted for the recorded record,
5 and then we can give those to our clerk when she arrives, if you would.

6 MR. SIMON: Okay. I'm H. Leon Simon, Deputy District Attorney.
7 I'm being assisted today by Susan Pate, deputized law clerk.

8 THE COURT: Welcome.

9 MR. NEWELL: Bob Newell, Davis Wright Tremaine, Portland --

10 THE COURT: Welcome, sir.

11 MR. NEWELL: Thank you. And Cal Potter.

12 THE COURT: Good morning, Mr. Potter.

13 I'm going to go ahead and make a record in this case,
14 because, first of all, I make this record first with an apology as to the time
15 that I'm going to be making this record, and you'll know why I issue a most
16 sincere apology.

17 First, this file has been around the courthouse for a very, very
18 long time, as you are all, I'm sure, aware. It took us a significant period of
19 time to track down all of the papers and files in this case. When, in fact, we
20 finally had a complete file in chambers and I began my review of it and had
21 an opportunity to truly understand the issues that are going to be before me,
22 I find that I believe I cannot properly hear this matter or rule on this matter,
23 because I now realize that I have a significant relationship with a key
24 witness. And, as if that is not enough, I believe, not only because of my
25 relationship with that key witness, but because that witness's testimony is

1 not only central to this cause of action, but, most importantly, that witness's
2 credibility and veracity, essentially, is going to be the sum and substance of
3 this proceeding, I do not believe that I could fairly or properly proceed.

4 Let me explain to you. David Wall is an attorney with whom I
5 worked in the Law Firm of Gentile & Porter approximately six years ago, six
6 and a half years ago actually. While neither David or I ever worked on a
7 case together, and, in fact, David was assigned to criminal matters within
8 that firm and I was assigned only to civil matters, we, nevertheless, worked
9 in a firm together. We did so for a period of approximately two and a half
10 years. We formed, obviously, a professional relationship as well as a
11 personal friendship.

12 I have the utmost of regard for all of the attorneys on this
13 case and most importantly for the nature of the very important work that I
14 believe everyone is doing in this case.

15 I realized only yesterday, quite frankly, the true extent to
16 which I would be called upon to hear matters that I believe impair my ability
17 as a judge, obviously, when I realized that the professional conduct and
18 integrity of Mr. Wall was going to be central to this cause. I have
19 necessarily formed opinions about his work ethic, his veracity. And while I
20 have had Mr. Wall in my courtroom acting as an attorney and intend to
21 continue to hear cases that he is involved with, because it is an entirely
22 different level of inquiry when one is appearing in front of me as an attorney
23 as opposed to someone who is going to appear not only as a witness, where
24 always the decision is based upon credibility of a witness, but in this case
25 where his credibility and his work ethic, his veracity as he worked through

1 that case is so significant, I think that the interest of justice and certainly the
2 interest of all parties would be best served by having this matter heard by
3 someone without such preconceptions.

4 I also want to note for the record that I believe the
5 determination of the outcome of this case will rest primarily upon the
6 credibility of at least one witness. And certainly giving consideration to the
7 seriousness and the finality of the ultimate outcome of this case or the
8 potential outcome of this case, I would not want to be responsible, in any
9 way, for feeling myself or allowing anyone in this proceeding to feel as if my
10 past working relationship or a friendship that I've had would cast some
11 shadow of a doubt upon the objectivity and fairness of this procedure.

12 Again, I should also note that I sincerely apologize for putting
13 you all in a position where you are here today proceeding -- or prepared to
14 proceed. I had intended -- I knew Mr. Wall was going to be a part of this
15 case, obviously, from the beginning and had intended certainly, as I do in
16 other cases, to disclose the fact that we had worked together. When I
17 began to seriously prepare for today's hearing, it became patently clear to
18 me that not only on the basis of his appearance but the appearance of other
19 witnesses in this case that it would be important for me to recuse myself.

20 The least of which is -- I think it should be known. Although I
21 understand Judge Dahl's role here in this case is somewhat limited to
22 procedures and policies as they existed in the Public Defender's Office at the
23 time that he was the team chief there, I too sit on a -- our Clark County
24 Board -- Clark County Bar Association Board with Judge Dahl.

25 And when I truly began to see how much or how close I

1 might be to people in this case, it became clear to me that for all the reasons
2 I've indicated to you here now the significant relationship that I might have,
3 not only to one but two and at least one very central witness, that I must
4 recuse myself in this case.

5 I would also like to make it as expeditious as possible. You
6 will recall that this case was originally assigned to Judge Gibbons, that it
7 came to me only after the random reassignment that we all went through.
8 I'm inclined, quite candidly, to give it back to Judge Gibbons. I think -- I've
9 also researched that since last -- yesterday afternoon to see what, if any,
10 possible relationship Judge Gibbons might have to any of the significant
11 individuals in this case, and it does not appear as if he has anywhere near
12 the relationship that I might have with some of these folks.

13 Oh, I should also add that I believe -- and this really the
14 utmost of caution. I believe that I may have also been sitting at a luncheon
15 where at least a part of this case had been discussed. Now, while I was in a
16 room of probably a hundred plus people, I was sitting at a table -- although I
17 was involved with another individual having a conversation, I do believe -- I
18 don't know for sure, and I did no inquiry, but I do believe that this
19 conversation that was going on next to me between Judge Dahl and another
20 individual may have had to do with this case. I don't even know that for
21 sure. But, for all of those reasons, I just think it is dangerous and
22 inappropriate for me to hear this case.

23 MR. SIMON: All right. Your Honor, I was going to suggest that we
24 might go back to Judge Gibbons, who's already familiar with the case. I
25 wonder if it would be possible to find out whether he could hear it this

1 afternoon, since Mr. Newell has come down from Portland for the case.

2 THE COURT: It's my intention to do so. Yes.

3 MR. SIMON: Thank you.

4 (Colloquy between the Court and clerk)

5 THE COURT: And I know this creates a tremendous hardship. And I
6 can only, again, most sincerely apologize. I don't often do that. I mean, I
7 don't often put all of you in a position like you are presently in is what I'm
8 saying. And if I'd had the opportunity to truly understand where this case
9 was going before late yesterday afternoon, I would have certainly tried to
10 call you off. The other thing I did not want to do was to make any calls to
11 anyone because of the serious nature of what I think my recusal entailed in
12 this case. I think there was some significant disclosures that I needed to
13 make that I felt that it needed to be done on the record in the courtroom.

14 And I suspect, sir, that you were well on your way here by
15 about 4:30 yesterday afternoon when we finally discovered the extent to
16 which my involvement would affect this case.

17 MR. NEWELL: Actually, I was already here, Judge, so it didn't
18 matter, but I do appreciate the Court's candor. And given the working
19 relationship that Mr. Simon and I have had, I don't think we'll have any
20 problem rescheduling. And the reassignment to Judge Gibbons, I think,
21 makes sense.

22 THE COURT: Well, you are clearly -- the luxury of what you have
23 here in this case should not go without saying is that you've got very
24 experienced, very competent counsel, not only in your opposition but as your
25 local counsel here. And so to the extent that any parties would be able to

1 realistically reset this, you're in very good hands.

2 And I know that Judge Gibbons and I actually made an
3 agreement many months ago when we were partnered together for this new
4 reassignment. We agreed that, to the extent that we were able, we would
5 try to help one another in these type of situations, where if a case really
6 needed to go back to him or to stay with me, we would attempt to
7 accommodate that on the already established schedule even. So this is
8 somewhat of an unusual situation. In most instances we've been able to
9 keep all dates and times set as the parties anticipated and just shovel in and
10 out, you know, one judge for the other.

11 So, while I certainly -- I'm not sure. Amber, do you have
12 enough of the Judge's schedule for us to determine whether or not the near
13 future is a possibility for resetting?

14 THE CLERK: We could set it on Tuesday just for a status check, and
15 at that point he could indicate --

16 THE COURT: I suspect, Mr. Potter, that you might be able to handle
17 that type of an appearance --

18 MR. POTTER: That's fine.

19 THE COURT: -- if you would.

20 MR. POTTER: Sure.

21 THE COURT: I think that's a good way for us to go.

22 THE CLERK: I'll set it on April 17th in Department VII at 9:00 a.m.

23 THE COURT: And, again, for those of you who appeared as
24 witnesses this morning and for those of you who I anticipate are still in the
25 wings waiting to be called as witnesses throughout the day, please all

1 counsel should feel free to blame this entirely upon me for the
2 inconvenience. And I do hope that this case can proceed quickly. It's a
3 very, very important case, and I want it to be resolved as best and
4 expeditiously as possible.

5 Having said that, I believe our proceeding for today is
6 complete.

7 (Whereupon the proceedings concluded)

8 * * * * *

9 ATTEST: I do hereby certify that I have truly and correctly transcribed the
10 sound recording of the proceedings in the above-entitled case.

11 
12 KRISTINE M. CORNELIUS
13 Court Recorder
14
15
16
17
18
19
20
21
22
23
24
25

FILED

SEP 21 8 03 AM '01

Shirley A. Kingma
CLERK

1 EXPT
2 **CAL J. POTTER III**
3 Nevada Bar No. 001988
4 **POTTER LAW OFFICES**
5 1125 Shadow Lane
6 Las Vegas, Nevada 89102
7 Telephone (702) 385-1954

8 **ROBERT D. NEWELL**
9 **DAVIS WRIGHT TREMAINE LLP**
10 1300 S.W. Fifth Avenue, Suite 2300
11 Portland, Oregon 97201
12 Telephone (503) 241-2300

13 Attorney for Petitioner
14 Dale Edward Flanagan

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

15 **DALE EDWARD FLANAGAN,**
16
17 Petitioner,
18
19 v.
20
21 **THE STATE OF NEVADA, and E.K.**
22 **McDANIEL, Warden, Ely State Prison,**
23
24 Respondents.

DEATH PENALTY CASE
Case No. C69269
Dept. No. VII
Docket "S"

ORDER

25 The Court scheduled the evidentiary hearing in this matter for September 12,
26 2001. Because of the shutdown of air travel in the United States on September 11, 2001, counsel
for Petitioner could not get to Las Vegas for that hearing and it was consequently rescheduled.

In preparation for the hearing, counsel discovered some disagreement about the
scope of the hearing, and a joint request for clarification of the scope was communicated to the
Court by Mr. Simon. A telephone conference with counsel was held on September 14, 2001,
attended by Leon Simon for the State and Robert Newell for Petitioner. Judge Gibbons
considered the comments of counsel and entered the following

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ORDER

The scope of the evidentiary hearing in this matter is limited to the issue of ineffective assistance of counsel resulting from the alleged conflict between counsel for Petitioner in the third penalty hearing, Rebecca Blaskey and David Wall. The Court will only consider evidence tending to prove or disprove ineffective assistance of counsel which was the result of any conflict between counsel for Petitioner. Evidence concerning other issues raised in the affidavit of Ms. Blaskey will not be considered.

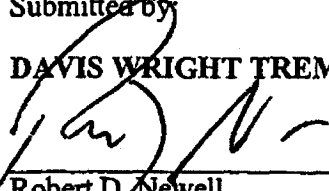
DATED this 26 day of September, 2001.

MARK GIBBONS

HON. MARK GIBBONS
District Court Judge

Submitted by

DAVIS WRIGHT TREMAINE LLP


Robert D. Newell
1300 S.W. 5th Avenue, Suite 2300
Portland, Oregon 97201
Tel 503.778.5234

Of Attorneys for Petitioner
Dale Edward Flanagan