

5-21-2009

Hall v. State Clerk's Record v. 5 Dckt. 35055

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

ERICK VIRGIL HALL,
PETITIONER-APPELLANT,

vs.

STATE OF IDAHO,
RESPONDENT.

*Appealed from the District Court of the Fourth Judicial
District of the State of Idaho, in and for ADA County*

Hon THOMAS F. NEVILLE, District Judge

MOLLY HUSKEY
State Appellate Public Defender

Attorney for Appellant

LAWRENCE G. WASDEN
Attorney General

Attorney for Respondent

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THOMAS F. NEVILLE, JUDGE
JANET ELLIS DEPUTY CLERK

January 11, 2007

MINUTE ENTRY

THE STATE OF IDAHO,)	
PLAINTIFF/Respondant)	
)	
	)	SPOT0500155D
vs.)	
)	
ERICK VIRGIL HALL,)	
Defendant/Petitioner,)	

Tape #1 Judge Neville 01/11/2007 0035 – 7132

Tape #2 Judge Neville 01/11/2007 0001- 6766

Tape #3 Judge Neville 01/11/2007 0001- 1615

035 The Court notes for record, the Court Flow Recording Device is down and the Court is using backup recording the Court Reporter Record.

The Court will go through point by point. Inquires if Mr. Ackley would add anything beyond what is filed on the Lewis, Hill & Hoffert point.

318 Mr. Ackley stated would like to tie exhibits, as co or alternate perpetrator, or some residual doubt of the actual criminal act.

412 Mr. Bourne responded to information provided by Lisa Lewis and Peggy Hill. State chose not to put those witnesses on.

666 Mr. Ackley responded regarding putting evidence into record not able to examine on this. Reasoning not reflected in the underlying record. Have not requested work product or thought process. Objectionable and raises red flags. State putting themselves in a witness position

801. Mr. Bourne restates. Defense after interviewing them did not call them either.

1523 State objecting to releasing prosecutor file and some statements, notes, reports from Scott Birch or Officer Barker.

1587 Mr. Bourne responded. Appellate P.D. needs to be able to tell the Court evidence is admissible.

1704 Mr. Ackley responded. Argues Discovery in Post Conviction mandatory.

2693 The Court with respect to prosecutor files, Court will deny request, with respect to statements made to law enforcement by Lewis & Hill, Court will grant, to extent statements made to Officer Barker and only as far as if they exist in the

State's file or in officer's possession and they can provide, Court will allow.
 RE Hofart,

3227 Mr. Ackley responded re: Det. Allen, no police reports.

3603 Mr. Bourne stated he will make request of Det. Allen's supplement and if any recordings not released and if there is a notebook from Hoffert.

3682 Court

3700 Mr. Bourne will include what can find.

3778 Mr. Ackley responded.

3849 Court will grant to extent they exist and can be obtained by Mr. Bourne through Garden City. Court

4014 Mr. Ackley stated Mr. Hoffert may be under control of Ada Co. Coroner regarding the death. Garden City closed and passed on to Ada County.

4131 Mr. Bourne asked if can call coroner and see if anything else exists.

4208 Court believes that would be sufficient.

4274 Mr. Ackley responded.

4321 RE: Chris Hall

4350 Mr. Ackley Will withdraw that claim

4351 Court will note that withdrawn. Going to Christian Johnson.

4403 Mr. Ackley responded. Regarding complete NCIC check.
 If constructive possession of the prosecutor would request.

5701 Court inquired of State, NCIC criminal records check of Christian Johnson

5737 Mr. Bourne stated obligation is to notify if any felony conviction. Can't recall of a search warrant,

6354 Mr. Ackley stated will try to sift out and clear up further, will defer this until have had opportunity to work with state further on this subject.

6450 Court re: incentives to testify.

6505 Mr. Bourne stated no incentives given to Mr. Johnson. Complied with discovery and provided to trial counsel, should be available to Mr. Ackley.

6648 Court will deny Roman 1-e1, e2, e3 denied, e4, will grant as far as NCIC without juvenile. With respect to 5, denied, 7 state will check on, #8 withdrawn, going back to #5,

6838 Mr. Ackley stated will withdraw

6876 Court going to #6.

6984 Mr. Ackley stated will search further

7014 Court regarding #2 all statements of Ms. Cologne, do not see how relates to claim

7132 Tape Ends

New Tape #2 Court cont'd to claim

01 Mr. Ackley responded. Would like to have the raw notes.

243 Mr. Bourne stated it is his practice to go through the file and look for notes, will call Detective and confirm.

433 Court will request Mr. Bourne confirm with Detective Smith if any notes that were not covered in the file. Going to Norma Jean Oliver.

503 The Court will take recess

516 The Court takes up issue of Norma Jean Oliver. The Court regarding prior conviction, do not know how this is relevant here.

659 Mr. Ackley will not undermine conviction. Significance was that 13 years later
Ms. Oliver state's was not consensual sex, as it was at the time of plea bargain.
1562 Mr. Bourne had no general response.
1584 The Court re: prosecuting documents
1679 Mr. Ackley stated rely on memorandum of law. Prosecutor's notes not
protected from discovery from the defense.
1884 Court response re: old file of Norma Jean
1907 Mr. Bourne stated not clear
2036 The Court mental health history
2052 Mr. Ackley responded
2063 The Court responded regarding brady material.
2087 Mr. Ackley responded.
2336 Mr. Bourne stated nothing about Sivak case heard today that would change
what is happening in this case.
2637 Mr. Ackley responded.
2831 Court will rule to extent add'l notes not previously provided that refer to
defendant's mental health status. Court
3080 Mr. Bourne asking if Court is saying Mr. Rosenthal's notes
3123 Court states if Mr. Rosenthal has notes on mental health and not previously
covered by prior notes, reports, anything not originally provided as long as it is
towards her mental health.
3196 Mr. Bourne responded
3225 Court would prefer not to have to review State's file.
3254 Mr. Ackley responded
3388 The Court goes to next point.
3401 Mr. Ackley responded. May be tape recording by Det. Hess.
3539 Mr. Bourne responded
3647 Mr. Ackley responded.
3772 Mr. Bourne requested Court find that statutory requirements with getting
witness here is not an incentive. No incentive ever offered.
3881 Court stated required to pay air fare. Court will deny as this is an incentive.
3974 Mr. Ackley responded.
4066 Court will grant #4. Court cont'd to #5, Norma Jean NCIC record
4101 Mr. Bourne stated do not believe she ever had a felony.
4125 Court inquired if could run NCIC absent any juvenile.
4201 Mr. Bourne stated have to have some basis, if can show she had something,
would be glad to run.
4255 Mr. Ackley responded.
4358 Mr. Bourne stated if there is request for runaway record, can call payette co to
see if there is a record.
4551 The Court
4567 Mr. Ackley stated content with records from runaway, but would like more
than phone call.
4619 The Court is not sure that can get more than that.
4667 Mr. Bourne states believe #6 is same thing
4694 Court will grant #6 as well as portion of #5. Going to #7,

4731 Mr. Bourne responded.
 4747 Mr. Ackley stated intended to go to actual documentation.
 5034 Court denied, improper, turns respondent's counsel into witnesses.
 5071 Mr. Ackley responded
 5235 Court comfortable with denying. Court goes to #8 Granted as already
 complied with. Court goes to negatives
 5378 Mr. Bourne stated complied with, no negatives exist any longer.
 5433 Court inquired about color copies of Ms. Oliver.
 5462 Mr. Bourne stated wanted photos beyond those used at trial. Will do that.
 5545 Court will grant so far as what exists. Going to subpart d.
 5744 Mr. Ackley responded
 5874 Mr. Bourne stated have viewed Mr. Rosenthals file and did not find reference
 to anyone from Sands Hotel.
 5924 Mr. Ackley stated page 3 of report of Det. Hess.
 6046 Court not sure how much more the State could do on this, court denied subpart
 D. Going to subpart E, Court unclear on what claim relates to and how
 material.
 6120 Mr. Ackley responded
 6366 Mr. Bourne stated appears Mr. Ackley fishing again.
 6429 Mr. Ackley stated work product doctrine waived when Mr. Rosenthal took the
 stand.
 6486 Mr. Bourne stated fishing, no claim here
 6576 Court denied, does not relate to anything.
 6715 Court goes to F
 6730 Mr. Ackley stated already responded too, file can't be located.
 6766 END TAPE
 ..01 TAPE 3
 Court goes to G, should have already been provided.
 ..32 Mr. Ackley stated told they do not have that file any longer. It was re-created
 according to Mr. Myshin.
 ..52 Mr. Bourne stated he will be on the phone already with Garden City will ask on
 that as well.
 .170 Court grants #G. Continue to #I. Inquires States position.
 .215 Mr. Bourne responded.
 .302 Mr. Ackley stated will confer with Mr. Bourne on that.
 .360 The Court defers I. The Court goes to J.
 Mr. Ackley stated thought needed a subpoena duces tecum to get those records.
 The Court requested that Mr. Ackley try to go through in house counsel on that at the
 hospital and then if need court order. Court going to DNA swabs.
 .580 Mr. Bourne stated no DNA done during that time. No indication that any DNA
 testing was done at that time.
 .620 Mr. Ackley stated went further than just wanting DNA.
 .664 Court is existed in State's file.
 .677 Mr. Ackley stated there were vaginal and anal according to the report.
 .720 Mr. Bourne stated will view file.

.728 Court will grant and request State search file for Anal swab in the 1991 case file.
Going to K,

.792 Mr. Ackley responded.

.805 Court denied reasons stated on earlier, overbroad, potential of getting into prosecutor's mental impressions and work product. Going to "L", records on Ms. Oliver.

.938 Mr. Ackley requested State view file, if they don't exist may need court order to subpoena those records.

.937 Court will grant, Mr. Ackley to inquire of medical providers, then if order needed.

1009 Mr. Ackley responded would like to hold off on next one, social security.

1010 The Court goes to Det. Hess, prosecutor's file, records, reports

1117 Mr. Bourne stated unclear what Mr. Ackley wants and what relevance, have already given police report, will check further on Norma Jean Oliver.

1185 Mr. Ackley responded, will withdraw without prejudice.

1220 Mr. Bourne responded regarding medical health records, Ms. Oliver has substantial privacy rights regarding these records. Records from 1991 would have been relevant, and records should be reviewed in camera

1345 Mr. Ackley responded.

1451 Court would agree to review those in camera.

1468 Mr. Ackley responded, in going to Jay Rosenthal, would withdraw.

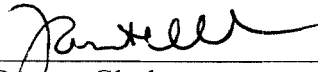
1585 The Court up to people who testified at sentencing

1596 The Court will resume at 9:30 tomorrow morning.

1615 FINISH

DAWNELL ROBERTSON
COURT REPORTER

APPROVED BY:


Deputy Clerk

00804

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

NO. _____ FILED P.M. 1:41

JAN 11 2007

ERICK VIRGIL HALL,

Petitioner,

v.

THE STATE OF IDAHO,

Respondent.

Case No. SPOT0500155

ORDER TO VACATE

NONE PRO TUNE

J. DAVID NAVARRO, Clerk

DEPUTY

This matter having come before the Court, and good cause appearing therefore:

It is hereby ordered that the hearing set for the 9th day of November, 2006, shall be
vacated, effective November 8, 2006, none pro tune.

IT IS SO ORDERED.

Dated this 10th day of January, 2007.

Thomas F. Neville
District Judge

ORDER TO VACATE

00805¹

CERTIFICATE OF SERVICE

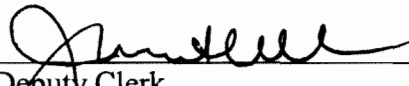
I HEREBY CERTIFY that on this 11 day of January, 2009, I served a true and correct copy of the foregoing ORDER TO VACATE by method indicated below to:

MARK ACKLEY
STATE APPELLATE PUBLIC DEFENDER
3647 LAKE HARBOR LANE
BOISE ID 83703

☐ U.S. Mail
☐ Statehouse Mail
☐ Facsimile
☒ Hand Delivery

ROGER BOURNE
ADA COUNTY PROSECUTOR'S OFFICE
200 W. FRONT, SUITE 3191
BOISE ID 83702

☐ U.S. Mail
☐ Statehouse Mail
☐ Facsimile
☒ Hand Delivery


Deputy Clerk

Session: Neville011207
Session Date: 2007/01/12
Judge: Neville, Thomas F.
Reporter: Dawnell, Robertson

Division: DC
Session Time: 08:56

Courtroom: CR501

Clerk(s):
Ellis, Janet

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case Number: SPOT0500155D
Plaintiff: HALL, ERICK VIRGIL
Plaintiff Attorney: SWENSON, PAULA
Defendant: STATE OF IDAHO
Additional audio and annotations can be found in case: 0003.
Co-Defendant(s):
Pers. Attorney:
State Attorney: BOURNE, ROGER
Public Defender:

2007/01/12

09:59:49 - Operator
Recording:
09:59:49 - New case
, STATE OF IDAHO
10:00:25 - Other: Ackley, Mark
present on behalf of Mr. Hall as well
10:00:38 - Judge: Neville, Thomas F.
The Court continues to April Sebastian
10:02:36 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated H0400228, case represented by Mr. Myshin
on april
10:03:13 - Plaintiff Attorney: SWENSON, PAULA
Sebastian, would like the APSI
10:03:19 - State Attorney: BOURNE, ROGER

00807

Mr. Bourne responded just PSI & APSI, but not items 1 & 2 under J

10:03:47 - Judge: Neville, Thomas F.
Court responded.

10:03:54 - State Attorney: BOURNE, ROGER
Mr. Bourne objected to prosecutor documents.

10:04:26 - State Attorney: BOURNE, ROGER
No incentives given to April Sebastian, objects not relevant to claim

10:07:17 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded.

10:11:20 - Judge: Neville, Thomas F.
Court inquires how this relates to this claim

10:11:46 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded

10:12:36 - Judge: Neville, Thomas F.
The Court states that Mr. Myshin's affection for clients could have been a

10:13:07 - Judge: Neville, Thomas F.
tactical reason before the jury

10:13:24 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded

10:14:30 - Judge: Neville, Thomas F.
Court notes typically a Motion and Order before handling judge to release PSI

10:14:49 - Judge: Neville, Thomas F.
is appropriate before the handling judge. What would be intentions for use

10:15:50 - Judge: Neville, Thomas F.
of report if permission given for release

10:16:13 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated it would be strictly used for this case and if anything

10:16:35 - Plaintiff Attorney: SWENSON, PAULA
found would bring back to this Court.

10:16:44 - Judge: Neville, Thomas F.
Court will grant under specific conditions, deny parts, 1,2, 5,6,& 7, 3

10:17:03 - Judge: Neville, Thomas F.
withdrawn. Court will grant copy of PSI and APSI on condition that seek

10:17:27 - Judge: Neville, Thomas F.
permission of Judge Wilper to have copy of that PSI & APSI.
Judge Wilper can

10:18:18 - Judge: Neville, Thomas F.
be advised that this Court grants under conditions I-J-4 set out by this

10:19:04 - Judge: Neville, Thomas F.

Court for limited use. Cannot be left with the defendant or copied. Court

10:20:10 - Judge: Neville, Thomas F.
cont'd to Michelle Deen in H0301398 before Judge Horton

10:22:49 - Judge: Neville, Thomas F.
H0200584 is before Judge Wetherell

10:23:05 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded

10:25:06 - Judge: Neville, Thomas F.
The Court will deny in H0200584. RE; H0301398,

10:28:45 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson requested to withdraw temporarily to research further.

10:29:08 - Judge: Neville, Thomas F.
Court will deny other portion of requestion IKI, 2,3,4,5,6,7, withdraw 8 and

10:29:46 - Judge: Neville, Thomas F.
deny 9. Court continues to Evelyn Dunaway

10:32:34 - Judge: Neville, Thomas F.
How relates to claim

10:32:43 - Plaintiff Attorney: SWENSON, PAULA
Withdraws claim without prejudice regarding criminal records check

10:34:10 - Plaintiff Attorney: SWENSON, PAULA
Want statements made to the State and law enforcement

10:35:37 - Judge: Neville, Thomas F.
Ineffective assistance of counsel. Court would be more comfortable to

10:37:20 - Judge: Neville, Thomas F.
reconsider after speaking with investigator of public defender's office to

10:37:37 - Judge: Neville, Thomas F.
see if there was an interview done. Court denies requests I LI-IL6 without

10:38:30 - Judge: Neville, Thomas F.
prejudice to come back

10:38:37 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded regarding prosecutor incentive.

10:39:46 - State Attorney: BOURNE, ROGER
Mr. Bourne stated no grounds shown that would support the claim. There were

10:41:36 - State Attorney: BOURNE, ROGER
no incentives given.

10:41:48 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded.

10:42:50 - Judge: Neville, Thomas F.
The Court underwhelmed by a witness after the fact. Court denies without

10:43:54 - Judge: Neville, Thomas F.
prejudice. Talk to p.d. investigators and see what was done
and what was not

10:44:09 - Judge: Neville, Thomas F.
done. Discovery not mandatory to protect petitioner's sub.
rights. Court

10:45:13 - Judge: Neville, Thomas F.
denied without prejudice.

10:45:26 - Other: Ackley, Mark
Mr. Ackley responded doing order noting 4 & 6 withdrawn with
out prejudice.

10:46:13 - Judge: Neville, Thomas F.
IL1,2,3,5 denied. Court cont'd to Rebecca MccUsker

10:48:34 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated ineffective assistance counsel. Would ha
ve been powerful

10:49:00 - Plaintiff Attorney: SWENSON, PAULA
impeachment.

10:49:27 - State Attorney: BOURNE, ROGER
Mr. Bourne responded, defendant would have been in custody i
n spring 2003

10:51:03 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated will withdraw that item at this time

10:51:20 - Judge: Neville, Thomas F.
Court cont'd to Dr. Groben and coroner's office, inquired if
State assisting

10:51:41 - Judge: Neville, Thomas F.
i any of these

10:51:45 - State Attorney: BOURNE, ROGER
Mr. Bourne stated autopsy, bench notes

10:52:03 - Judge: Neville, Thomas F.
Request I,

10:52:11 - State Attorney: BOURNE, ROGER
Concurs, per review if in a report and 3 would be yes, from
autopsy file,

10:52:42 - State Attorney: BOURNE, ROGER
have agreed on #5, x-rays if exhist and toxology report if e
xhists in #6.

10:53:27 - State Attorney: BOURNE, ROGER
Have not agreed on 7, 8, 9, 10. Believe photographs in 11
provided on C.D.

10:54:09 - Plaintiff Attorney: SWENSON, PAULA
Have C.D. some files will not open

10:54:19 - State Attorney: BOURNE, ROGER
Will make sure have photo. Going go #12, slides.

10:55:21 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated need slides themselves for Dr. Sally Aike
n, pathologist

10:55:51 - Plaintiff Attorney: SWENSON, PAULA
from Spokane

10:56:01 - State Attorney: BOURNE, ROGER
Will have to find out how many slides there are. Will try to work something

10:56:33 - State Attorney: BOURNE, ROGER
out.

10:56:41 - Plaintiff Attorney: SWENSON, PAULA
Will comply with any order and check to see if Dr. Aiken can view slides here

10:57:00 - Plaintiff Attorney: SWENSON, PAULA
in Boise.

10:57:05 - Judge: Neville, Thomas F.
Court regarding the report

10:57:19 - Plaintiff Attorney: SWENSON, PAULA
Would like to see that as well.

10:57:27 - Judge: Neville, Thomas F.
Court responds. Going to sex crimes kit

10:58:27 - State Attorney: BOURNE, ROGER
Will inquire, do not know if one exists.

10:58:41 - Judge: Neville, Thomas F.
Court grants if exists.

10:58:52 - State Attorney: BOURNE, ROGER
#14 is part of the other notes

10:59:23 - Judge: Neville, Thomas F.
Court will put down comply, if there are notes. Going to #15, videos of Dr.

11:00:00 - Judge: Neville, Thomas F.
Groben watched

11:00:07 - State Attorney: BOURNE, ROGER
Have not agreed to any of 15-20. Will agree on 21, #22.

11:00:46 - Judge: Neville, Thomas F.
Court will recess from this for a moment to recess to take up other matter

11:01:12 - Operator
Stop recording:

Case ID: 0003

Case Number: SPOT0500155D
Plaintiff: HALL, ERICK VIRGIL
Plaintiff Attorney: SWENSON, PAULA
Defendant: STATE OF IDAHO
Previous audio and annotations can be found in case: 0001.
Additional audio and annotations can be found in case: 0005.
Co-Defendant(s):
Pers. Attorney:

00811

State Attorney: BOURNE, ROGER
Public Defender:

11:25:23 - Operator
Recording:
11:25:23 - Recall
STATE OF IDAHO
11:25:29 - Judge: Neville, Thomas F.
The Court cont'd to Dr. Groben
11:26:30 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded regarding procedures for body removal,
manual requested
11:27:05 - Plaintiff Attorney: SWENSON, PAULA
or general protocol
11:27:27 - State Attorney: BOURNE, ROGER
Mr. Bourne stated no allegation or claim made the body was i
mproperly
11:27:58 - State Attorney: BOURNE, ROGER
removed.
11:29:23 - Judge: Neville, Thomas F.
Court responded
11:29:32 - Plaintiff Attorney: SWENSON, PAULA
Believe there is a procedure and would like to view to see i
f evidence
11:30:14 - Plaintiff Attorney: SWENSON, PAULA
preserved.
11:30:17 - Judge: Neville, Thomas F.
Court denied, there is no claim made. Court cont'd to #7, l
ist of all cases
11:30:42 - Judge: Neville, Thomas F.
Dr. Groben worked on.
11:31:08 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson withdraws #7 & #9 without prejudice. More inter
ested in cases
11:31:30 - Plaintiff Attorney: SWENSON, PAULA
that Dr. Groben testified in, in #8.
11:32:25 - State Attorney: BOURNE, ROGER
Object, Dr. Groben testified in three different states
11:34:37 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated just want a list.
11:35:21 - Judge: Neville, Thomas F.
Court thinks overbroad, not specific to a claim. Dr. Groben
served in a
11:37:40 - Judge: Neville, Thomas F.
number of other jurisdictions
11:37:55 - Judge: Neville, Thomas F.

Court denied #8. Going to #10
11:38:36 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded, valuable impeachment material
11:39:04 - State Attorney: BOURNE, ROGER
Mr. Bourne stated complaint only is not valuable impeachment
. Overbroad,
11:39:34 - State Attorney: BOURNE, ROGER
doesn't go to a claim.
11:39:43 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated request is for professional duties,
11:40:21 - Judge: Neville, Thomas F.
Court states is overbroad, does not state a claim. Court will deny #10.
11:42:56 - Judge: Neville, Thomas F.
Going to #15, list of videos
11:43:09 - Plaintiff Attorney: SWENSON, PAULA
Withdraws request as to #15
11:43:36 - Plaintiff Attorney: SWENSON, PAULA
RE; #16,
11:46:06 - State Attorney: BOURNE, ROGER
Mr. Bourne responded
11:46:13 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded regarding protocol for removing ligatures.
11:47:03 - Judge: Neville, Thomas F.
Court will deny as this not apply to a claim and they did not follow the
11:47:29 - Judge: Neville, Thomas F.
procedure. Going to #17, powerpoint slides
11:48:02 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated withdraw claim #17 at this time
11:48:27 - Judge: Neville, Thomas F.
Court goes to #18
11:48:48 - Plaintiff Attorney: SWENSON, PAULA
Withdraw #18.
11:48:57 - Judge: Neville, Thomas F.
Court goes to #19
11:49:11 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated Kaylin Jackson unsolved, could have perpetrator related
11:50:15 - State Attorney: BOURNE, ROGER
Mr. Bourne stated unsolved case, does not relate.
11:51:03 - Judge: Neville, Thomas F.
The Court stated wanting to explore an alternate perpetrator or cop perpetrator
11:51:34 - Judge: Neville, Thomas F.
does not relate to a claim here, Nothing specific that relates that case to

11:52:21 - Judge: Neville, Thomas F.
this case. Court denied regarding #19. Discovery not mandatory and to

11:53:21 - Judge: Neville, Thomas F.
protect petitioner's sub. rights. Going to #20, Dr. Groben and Irwin

11:54:04 - Judge: Neville, Thomas F.
Sonnenberg's correspondence

11:54:17 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated notes, letters that go back and forth, may be covered in

11:54:46 - Plaintiff Attorney: SWENSON, PAULA
prosecutor's offer to find notes.

11:55:32 - State Attorney: BOURNE, ROGER
Do not believe relates to a claim, overbroad, agreed to give notes that go

11:55:53 - State Attorney: BOURNE, ROGER
specifically to autopsy and case itself.

11:56:02 - Judge: Neville, Thomas F.
Court denied. Going to #22, Court denied, no billing records. Going to #23

11:57:08 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded.

11:58:06 - State Attorney: BOURNE, ROGER
Mr. Bourne responded

11:58:18 - Other: Ackley, Mark
Mr. Ackley responded.

12:00:02 - State Attorney: BOURNE, ROGER
Mr. Bourne responded.

12:01:18 - Judge: Neville, Thomas F.
Court denied, does not relate to specific request except that the Coroner

12:02:02 - Judge: Neville, Thomas F.
shall stay whether or not its organization accredited by any

12:02:41 - Judge: Neville, Thomas F.
Going to Dr. Estess & Dr. Engle

12:04:21 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson argued,

12:10:52 - Plaintiff Attorney: SWENSON, PAULA
Rely on briefing and argument.

12:11:17 - Judge: Neville, Thomas F.
The Court denied requests as pertaining to #101-6 and 1PI--5

12:13:49 - General:
Time stamp

12:13:49 - General:
Time stamp

12:13:51 - Judge: Neville, Thomas F.
Court will continue up at 2:30 today

00814

12:14:33 - Operator
Stop recording:

Case ID: 0005

Case Number: SPOT0500155D
Plaintiff: HALL, ERICK VIRGIL
Plaintiff Attorney: SWENSON, PAULA
Defendant: STATE OF IDAHO
Previous audio and annotations can be found in case: 0003.
Co-Defendant(s):
Pers. Attorney:
State Attorney: BOURNE, ROGER
Public Defender:

14:46:18 - Operator
Recording:
14:46:18 - Recall
, STATE OF IDAHO
14:46:22 - Judge: Neville, Thomas F.
The Court cont'd re: Discovery proceedings on non-lay and expert witnesses.
14:47:31 - Plaintiff Attorney: SWENSON, PAULA
Mr. Swenson requested any correspondence re: DNA evidence, re: second male
14:47:59 - Plaintiff Attorney: SWENSON, PAULA
contributor
14:48:13 - State Attorney: BOURNE, ROGER
Mr. Bourne stated believe petitioner just fishing. No evidence withheld.
14:48:42 - State Attorney: BOURNE, ROGER
DNA thoroughly examined at trial.
14:49:57 - Judge: Neville, Thomas F.
All materials submitted on DNA and defense experts looked at these as well,
14:50:23 - Judge: Neville, Thomas F.
can be gained by looking at correspondence. What evidence of the proposition
14:51:00 - Judge: Neville, Thomas F.
of an alternate contributor
14:51:12 - Plaintiff Attorney: SWENSON, PAULA
Dr. Hampeekian states there was a second male contributor.
Defense consulted
14:52:08 - Plaintiff Attorney: SWENSON, PAULA
with but never brought in an expert.

14:52:52 - Judge: Neville, Thomas F.
Dr. Hampeekian saying someone else raped

14:53:13 - Plaintiff Attorney: SWENSON, PAULA
says there is a second male contributor

14:53:27 - State Attorney: BOURNE, ROGER
Mr. Bourne

14:53:54 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded

14:54:34 - State Attorney: BOURNE, ROGER
Mr. Bourne stated defendant matched all 13 locations of areas tested. One

14:55:00 - State Attorney: BOURNE, ROGER
location is not in defendant's DNA profile, but to say it comes from another

14:55:22 - State Attorney: BOURNE, ROGER
contributor is without basis. A number of things that could attest for that

14:56:13 - State Attorney: BOURNE, ROGER
one different DNA artifact. That was argued and put before the jury.

14:57:51 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded.

14:59:11 - Plaintiff Attorney: SWENSON, PAULA
Will withdraw re: Shawna Hilliard, since she is finger print expert. Ms.

15:02:15 - Plaintiff Attorney: SWENSON, PAULA
Swenson cont'd

15:03:32 - Judge: Neville, Thomas F.
Court has viewed Dr. Hampeekian's affidavit. Court has to agree with the

15:06:23 - Judge: Neville, Thomas F.
State, this is fishing. Not specific enough to this claim.
The Court denied

15:07:17 - Judge: Neville, Thomas F.
request. The Court next goes to Jean McKracken

15:08:31 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson requested any notes or reports or interviews with Ms. McKracken.

15:09:36 - Judge: Neville, Thomas F.

15:10:40 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson request any interview notes,

15:11:08 - Judge: Neville, Thomas F.
The Court states sounds suspicious, never showed in courtroom one time

15:12:50 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded

15:13:12 - State Attorney: BOURNE, ROGER
Mr. Bourne responded

15:15:20 - Judge: Neville, Thomas F.
The Court responded. Issue not before Court that she was not allowed to

15:17:31 - Judge: Neville, Thomas F.
testified. Court denied this

15:17:53 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated will withdraw next two claims on Amanda & Kathy Stroud

15:18:11 - Plaintiff Attorney: SWENSON, PAULA
without prejudice.

15:18:18 - Judge: Neville, Thomas F.
Court notes withdrawn IS1 & T-1 & T-2

15:19:02 - Judge: Neville, Thomas F.
Court goes to next item

15:19:40 - State Attorney: BOURNE, ROGER
Mr. Bourne has agreed to #4

15:20:35 - Judge: Neville, Thomas F.
Court goes to illust. exhibits used during opening statement
. Will allow

15:24:44 - Judge: Neville, Thomas F.
that

15:24:48 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson cont'd to G/J

15:25:21 - Judge: Neville, Thomas F.
Court will grant motion impaneling that grand jury

15:26:09 - Judge: Neville, Thomas F.
Court cont'd to committee minutes

15:26:25 - Plaintiff Attorney: SWENSON, PAULA
Withdraw that portion

15:26:36 - Judge: Neville, Thomas F.
Court cont'd to part 5, interrogation

15:27:20 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated there were three interrogation videos, poor quality.

15:27:57 - Plaintiff Attorney: SWENSON, PAULA
Would like to send out to be professionally enhanced. Copies are bad.

15:28:36 - Plaintiff Attorney: SWENSON, PAULA
Videos shown in part to the jury, given a transcript for illustrative

15:28:54 - Plaintiff Attorney: SWENSON, PAULA
purposes.

15:29:15 - State Attorney: BOURNE, ROGER
Mr. Bourne stated no objection. will view if there are originals, but may

15:30:25 - State Attorney: BOURNE, ROGER
in evidence. Will work with counsel to try and agree on.

15:32:18 - Judge: Neville, Thomas F.

Court will order what ever counsel agree on re: II A-5
15:32:43 - Judge: Neville, Thomas F.
Going to #6.
15:38:04 - Judge: Neville, Thomas F.
The Court will have counsel work on the video issue and bring back to Court
15:39:52 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded regarding ineffective assistance in bringing change of
15:40:19 - Plaintiff Attorney: SWENSON, PAULA
venue motion.
15:41:09 - Judge: Neville, Thomas F.
The Court has always taken the approach to try and pick a jury first in Ada
15:41:33 - Judge: Neville, Thomas F.
County.
15:44:53 - Plaintiff Attorney: SWENSON, PAULA
Wanted to know if State contributed to venue
15:45:25 - Judge: Neville, Thomas F.
Court believes record will show what it was after weeks long of jury
15:46:00 - Judge: Neville, Thomas F.
selection. Court denied. Court cont'd
15:46:36 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson re: appendix B, police reports, can work out with the State
15:47:19 - State Attorney: BOURNE, ROGER
Mr. Bourne stated sometime information removed from police reports so they
15:47:43 - State Attorney: BOURNE, ROGER
are not passed around the jail.
15:48:44 - Judge: Neville, Thomas F.
15:48:52 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated some things may be missing from defense counsel's file
15:49:19 - State Attorney: BOURNE, ROGER
Will work on that
15:49:25 - Judge: Neville, Thomas F.
Court inclined to grant that.
15:49:46 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson withdrew electronic mail issue.
15:50:01 - Judge: Neville, Thomas F.
Court going to field notes and log books from law enforcement.
15:50:24 - State Attorney: BOURNE, ROGER
Mr. Bourne stated will check police file if any notes re: Henneman
15:51:25 - Plaintiff Attorney: SWENSON, PAULA

Ms. Swenson stated will work on just Henneman at this time.

Ms. Swenson

15:51:54 - Plaintiff Attorney: SWENSON, PAULA
stated would request a check on police reports

15:52:10 - State Attorney: BOURNE, ROGER

Mr. Bourne stated he complied with discovery and turned over

15:52:39 - Plaintiff Attorney: SWENSON, PAULA

Ms. Swenson stated problem is do not have all of trial counsel's file.

15:53:20 - Plaintiff Attorney: SWENSON, PAULA

Would specifically request those items listed. Mr. Bourne proposing to

15:54:26 - Plaintiff Attorney: SWENSON, PAULA

reprint addenda only and then will view if missing reports.

15:54:38 - Judge: Neville, Thomas F.

Court goes to correspondence.

15:54:57 - Plaintiff Attorney: SWENSON, PAULA

Ms. Swenson stated will renew request after reviewing discovery provided by

15:55:19 - Plaintiff Attorney: SWENSON, PAULA

Mr Bourne.

15:55:34 - Judge: Neville, Thomas F.

Court specific reports C" A-V

15:55:58 - State Attorney: BOURNE, ROGER

Mr. Bourne believes that is what will be provided

15:56:36 - Judge: Neville, Thomas F.

Court will ask Ms. Swenson to review the addendum and then come back on those

15:56:55 - Judge: Neville, Thomas F.

reports.

15:57:05 - Plaintiff Attorney: SWENSON, PAULA

Will agree with assurance that all were provided in original discovery.

15:57:25 - State Attorney: BOURNE, ROGER

Mr. Bourne responded

15:57:48 - Judge: Neville, Thomas F.

The Court will note Ms. Swenson to review addendum and then renew after

15:58:07 - Judge: Neville, Thomas F.

reviewing discovery. Court going to other reports. Court continued to I-Drive

16:01:57 - Plaintiff Attorney: SWENSON, PAULA

Specific type of drive kept by FBI agency, their investigative files.

16:03:22 - State Attorney: BOURNE, ROGER

Mr. Bourne stated no report came to Boise police department from the feds.

16:03:46 - Plaintiff Attorney: SWENSON, PAULA
If no reports were filed, there were none filed, but would request State ask

16:04:06 - Plaintiff Attorney: SWENSON, PAULA
FBI if they had any files.

16:04:16 - State Attorney: BOURNE, ROGER
Joint operation with Boise City who wrote report.

16:06:00 - Judge: Neville, Thomas F.
Court inquires if Ms. Swenson could inquire through public records request

16:06:34 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded

16:06:49 - Judge: Neville, Thomas F.
Court will deny request. Task force lead assignments

16:07:39 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded. Understood some 520 some leads.

16:09:19 - State Attorney: BOURNE, ROGER
Mr. Bourne responded, should be denied

16:12:53 - Plaintiff Attorney: SWENSON, PAULA
Post conviction has duty to make independent investigation.

16:14:20 - State Attorney: BOURNE, ROGER
Mr. Bourne requested that if the Court should grant this, that at petitioner's

16:14:52 - State Attorney: BOURNE, ROGER
counsel should have to go and make those copies and not use resources of

16:15:09 - State Attorney: BOURNE, ROGER
police department.

16:15:14 - Judge: Neville, Thomas F.
Court will deny in some part and allow investigator to go and examine those

16:15:38 - Judge: Neville, Thomas F.
with appointment in advance with Det. Smith.

16:16:05 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson requested to do a separate order.

16:16:28 - Judge: Neville, Thomas F.
Court believes that Mr. Bourne could call Det. Smith and if set up in advance

16:16:53 - Judge: Neville, Thomas F.
would accommodate.

16:17:44 - Judge: Neville, Thomas F.
Court denying III-E except to allowing petitioner's investigator to view the

16:18:05 - Judge: Neville, Thomas F.
lead sheets.

16:18:35 - Plaintiff Attorney: SWENSON, PAULA
Ms Swenson withdraws subclaim I.

16:18:51 - Judge: Neville, Thomas F.

Going to Subclaim II

- 16:19:01 - Plaintiff Attorney: SWENSON, PAULA
Will withdraw except as to extend of Kaylin Jackson
- 16:19:29 - State Attorney: BOURNE, ROGER
Same argument
- 16:19:34 - Judge: Neville, Thomas F.
Court would give same ruling. Denied. Court cont'd
- 16:20:12 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson re: April Sebastian making comments of Mr. Hall hitting people on
- 16:20:37 - Plaintiff Attorney: SWENSON, PAULA
head and robbed them, need to know if any reports made to th at effect, could
- 16:21:05 - Plaintiff Attorney: SWENSON, PAULA
limit if it had to to green belt.
- 16:21:22 - State Attorney: BOURNE, ROGER
Objects, 12 years of reports, if don't find any, wouldn't support claim.
- 16:21:56 - Judge: Neville, Thomas F.
Court does not believe practical, and will deny. Court going to FBI
- 16:23:14 - Judge: Neville, Thomas F.
profiling.
- 16:23:17 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated limit to Ms. Henneman.
- 16:24:19 - State Attorney: BOURNE, ROGER
Mr. Bourne responded.
- 16:26:05 - Judge: Neville, Thomas F.
- 16:26:09 - Plaintiff Attorney: SWENSON, PAULA
Supports claim that there is more than one perpetrator.
- 16:26:24 - Judge: Neville, Thomas F.
Court denied, this case solved on DNA evidence.
- 16:27:26 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson cont'd will withdraw, 5, 8, 9, 10 & 11 pending receipt of police
- 16:27:48 - Plaintiff Attorney: SWENSON, PAULA
reports.
- 16:27:58 - Judge: Neville, Thomas F.
Escape history
- 16:28:07 - State Attorney: BOURNE, ROGER
Will provide
- 16:28:11 - Judge: Neville, Thomas F.
Court understands State will provide some of these other things, will provide
- 16:29:14 - Judge: Neville, Thomas F.
report regarding failure to register and Ms. Henneman's cell phone usage
- 16:29:52 - State Attorney: BOURNE, ROGER

Mr. Bourne stated will provide but do not believe had a cell phone bill from

16:30:24 - State Attorney: BOURNE, ROGER
Ms. Henneman

16:30:29 - Plaintiff Attorney: SWENSON, PAULA
Have redacted copy

16:30:39 - State Attorney: BOURNE, ROGER
Believe that can find that has a discovery number on it.

16:30:55 - Judge: Neville, Thomas F.
Court will grant, State to search files. Going to #13, time and distance to

16:31:23 - Judge: Neville, Thomas F.
walk areas of green belt.

16:31:55 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson withdrew 13 & 14.

16:32:08 - Judge: Neville, Thomas F.
Court previously denied similar request on #15. Go to IV, documentation of

16:32:32 - Judge: Neville, Thomas F.
evidence.

16:32:41 - Plaintiff Attorney: SWENSON, PAULA
Believe #1 can be worked out.

16:33:00 - State Attorney: BOURNE, ROGER
Mr. Bourne responded

16:40:17 - Judge: Neville, Thomas F.
Court will deny

16:42:10 - Judge: Neville, Thomas F.
Court cont'd

16:42:18 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded

16:44:12 - Judge: Neville, Thomas F.
Court inquired about where to break

16:44:23 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated will view further.

16:46:27 - Judge: Neville, Thomas F.
Court will set over to Tuesday, January 16 @ 1:30 p.m.

16:47:30 - Operator
Stop recording:

Session: Neville011607
Session Date: 2007/01/16
Judge: Neville, Thomas F.
Reporter: Chandler, Andrea

Division: DC
Session Time: 08:23

Courtroom: CR503

Clerk(s):
Ellis, Janet

State Attorneys:

Public Defender(s):
DeAngelo, Michael

Prob. Officer(s):

Court interpreter(s):

Case ID: 0010

Case Number: SPOT0500155D
Plaintiff: HALL, ERICK VIRGIL
Plaintiff Attorney: SWENSON, PAULA
Defendant: STATE OF IDAHO
Co-Defendant(s):
Pers. Attorney:
State Attorney: BOURNE, ROGER
Public Defender:

2007/01/16

13:37:49 - Operator
Recording:

13:37:49 - New case
, STATE OF IDAHO

13:38:12 - Judge: Neville, Thomas F.
Time as cont'd for further motions on post conviction.

13:39:53 - Judge: Neville, Thomas F.
RE: documentation relating to defendant's DNA into Idaho pro
file bank.

13:40:13 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson argued, need inform. on Mr. Hall's entry of DNA
into ID database.

13:43:15 - State Attorney: BOURNE, ROGER
Mr. Bourne responded

13:43:38 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded.

13:44:17 - State Attorney: BOURNE, ROGER
Mr. Bourne stated do not know if defendant had DNA done back in 1990's case

13:45:17 - Judge: Neville, Thomas F.
The Court does not recall but remembers that while investigating Hanlon case

13:45:55 - Judge: Neville, Thomas F.
DNA matched with Henneman case. If DNA had been done in 1990's case believe

13:46:19 - Judge: Neville, Thomas F.
Henneman case would have been solved earlier.

13:46:30 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded

13:47:45 - Plaintiff Attorney: SWENSON, PAULA
Looking for any paperwork stating that DNA profile was entered in the 1990's

13:48:17 - Plaintiff Attorney: SWENSON, PAULA
case

13:48:50 - Judge: Neville, Thomas F.
Court will grant request to give petitioner some peace of mind

13:50:09 - Judge: Neville, Thomas F.
Request IV, point 2. If FBI says nothing there, Court not sure what can do

13:50:49 - Judge: Neville, Thomas F.
at this time. Going to #4.

13:51:34 - Plaintiff Attorney: SWENSON, PAULA
Duplicative of previous request

13:51:45 - Judge: Neville, Thomas F.
Court denied for previous reasons stated. Going to #5.

13:52:02 - Plaintiff Attorney: SWENSON, PAULA
Would limit to request made in #2.

13:52:17 - Judge: Neville, Thomas F.
Court will deny #5 without prejudice. If can find something through #2, will

13:52:36 - Judge: Neville, Thomas F.
consider. Going to #6.

13:52:57 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson argues, alternate or co-conspirator theory.

13:53:32 - State Attorney: BOURNE, ROGER
Mr. Bourne does not know how the murder of Kaylin Jackson, how related to

13:54:14 - State Attorney: BOURNE, ROGER
this case.

13:54:28 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded.

13:54:53 - Judge: Neville, Thomas F.
Court will deny this for reasons given earlier. Going to #7
, death of Amanda

13:55:23 - Judge: Neville, Thomas F.
Stroud

13:55:28 - Plaintiff Attorney: SWENSON, PAULA
Petitioner withdraws that request.

13:55:54 - Judge: Neville, Thomas F.
Court cont'd to G, reward money, believe State made an offer
to inquire.

13:56:23 - State Attorney: BOURNE, ROGER
Mr. Bourne stated did inquire, found out no reward money paid
out. Request

13:57:09 - State Attorney: BOURNE, ROGER
was denied and none paid out, that relates to Henneman case,
in leading to

13:57:42 - State Attorney: BOURNE, ROGER
arrest in the Hanlon case and do not know if one paid out in
that.

13:58:43 - Plaintiff Attorney: SWENSON, PAULA
Would like to know who claimed or tried to claim that reward
money.

13:59:20 - Judge: Neville, Thomas F.
Court

13:59:43 - State Attorney: BOURNE, ROGER
Mr. Bourne stated he knows who made the claim and the admini
strator denied

14:00:10 - State Attorney: BOURNE, ROGER
the claim. Would that be far enough in answering that. Tha
t person was not

14:00:44 - State Attorney: BOURNE, ROGER
a witness.

14:00:51 - Plaintiff Attorney: SWENSON, PAULA
Would like to know who it was and why that claim was made.

14:01:04 - Judge: Neville, Thomas F.
Court will grant in limited fashion. Going to sex offender
registration

14:01:51 - Judge: Neville, Thomas F.
documents.

14:05:36 - Judge: Neville, Thomas F.
Court notes sex offender registration board separate entity

14:06:48 - Judge: Neville, Thomas F.
Court cont's to Tablerock Brewery receipt

14:07:09 - State Attorney: BOURNE, ROGER
Original provided in trial

14:07:32 - Judge: Neville, Thomas F.
Can acquire copy through appeals clerk. Court cont's to req
uests on Hanlon

14:08:19 - Judge: Neville, Thomas F.
case

14:08:22 - Plaintiff Attorney: SWENSON, PAULA
Will withdraw that request

14:08:36 - Judge: Neville, Thomas F.
Court cont'd to exhibits provided to G/J in the Henneman case.

14:09:15 - Judge: Neville, Thomas F.
Court does not know how that relates to ineffective assistance case. Defense

14:09:37 - Judge: Neville, Thomas F.
counsel not involved in G/J

14:09:50 - Plaintiff Attorney: SWENSON, PAULA
Looking for discrepancies between exhibits at G/J and those provided at trial

14:11:21 - State Attorney: BOURNE, ROGER
Mr. Bourne responded, Mr. Bourne stated will withdraw objection, G/J

14:11:55 - State Attorney: BOURNE, ROGER
transcript included exhibits.

14:12:02 - Judge: Neville, Thomas F.
Court will grant to extent State has them and will provide.
Going to inmate

14:12:27 - Judge: Neville, Thomas F.
classification manual. VI.1,

14:12:56 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated skipped or 5a, written questions from jury.

14:14:55 - Judge: Neville, Thomas F.
Court routinely makes record of all notes from jurors.

14:16:20 - State Attorney: BOURNE, ROGER
no objection

14:16:25 - Judge: Neville, Thomas F.
Court will grant.

14:16:47 - Judge: Neville, Thomas F.
RE; inmate classification manuals, Dennis Dean's testimony

14:17:45 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded.

14:18:02 - State Attorney: BOURNE, ROGER
Mr. Bourne responded. Does not have access to those records, and does not go

14:18:23 - State Attorney: BOURNE, ROGER
to a claim.

14:18:39 - Plaintiff Attorney: SWENSON, PAULA
Goes to claim E-1,

14:19:37 - Judge: Neville, Thomas F.
Court agrees goes to a claim, but should not make State go after it.

14:20:14 - Judge: Neville, Thomas F.
Investigator should be able to look at it.

14:20:31 - Plaintiff Attorney: SWENSON, PAULA

14:20:57 - Judge: Neville, Thomas F.
Court will deny.

14:22:17 - Judge: Neville, Thomas F.
Continues to Safety Practices Manual

14:22:42 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded

14:22:55 - State Attorney: BOURNE, ROGER
Mr. Bourne responded, don't have access

14:23:12 - Judge: Neville, Thomas F.
At this point not appropriate, deny in respects to State trying to get, if

14:23:40 - Judge: Neville, Thomas F.
investigator can't get, Court will enter order

14:25:38 - Judge: Neville, Thomas F.
Court continues

14:25:46 - Plaintiff Attorney: SWENSON, PAULA
Would like to depose Glen Elam, Roseanne Depkowski and Rolf Kehne.

14:26:11 - Judge: Neville, Thomas F.
Whats need for Mr. Elam if cooperating

14:26:22 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded.

14:27:49 - State Attorney: BOURNE, ROGER
Mr. Bourne responded. Could put it in an affidavit with question and answer

14:28:34 - State Attorney: BOURNE, ROGER
form to save all counsel time.

14:29:31 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson deposition critical, trial counsel's memory just wasn't there at

14:30:02 - Plaintiff Attorney: SWENSON, PAULA
times

14:30:05 - Judge: Neville, Thomas F.
Court will deny with respect to Glen Elam, he has been cooperative, would

14:30:25 - Judge: Neville, Thomas F.
result in further delay and there are other ways to deal with it. Regarding

14:32:04 - Judge: Neville, Thomas F.
Rolf Kehne do not believe would add anything and would deny allowing

14:32:25 - Judge: Neville, Thomas F.
deposition

14:32:55 - Plaintiff Attorney: SWENSON, PAULA
Responded re: Roseann Depkowski,

14:33:06 - Judge: Neville, Thomas F.
Court will deny asto Roseann Depkowski as well for same reasons, going to Dr.

14:33:22 - Judge: Neville, Thomas F.
Estess

14:33:26 - Plaintiff Attorney: SWENSON, PAULA
Withdraw that request

14:33:33 - Judge: Neville, Thomas F.
Court will show withdrawn

14:34:50 - Judge: Neville, Thomas F.
Court cont'd.

14:35:05 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded

14:35:46 - Judge: Neville, Thomas F.
How does it relate to claim

14:35:54 - Plaintiff Attorney: SWENSON, PAULA
Goes to inadequate claim for investigation in sentencing phase

14:36:50 - State Attorney: BOURNE, ROGER
Mr. Bourne responded

14:37:53 - Judge: Neville, Thomas F.

14:38:36 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson responded

14:38:50 - Judge: Neville, Thomas F.
Court will allow, not sure how it relates to a claim, but request specific

14:41:25 - Judge: Neville, Thomas F.
order.

14:42:10 - Judge: Neville, Thomas F.
Court goes to preservation of physical evidence

14:42:48 - Plaintiff Attorney: SWENSON, PAULA
Request forensic evidence be preserved

14:43:18 - State Attorney: BOURNE, ROGER
Can assure would be preserved as in all murder cases

14:44:19 - Judge: Neville, Thomas F.
Court will grant to extent Mr. Bourne can control it. Court goes to Hanlon

14:45:12 - Judge: Neville, Thomas F.
documents

14:45:16 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson will withdraw that request.

14:45:53 - Judge: Neville, Thomas F.
Court inquires about further deadlines/hearings

14:46:15 - State Attorney: BOURNE, ROGER
Need a deadline for final amended petition.

14:46:32 - Plaintiff Attorney: SWENSON, PAULA
Ms. Swenson stated reasonable to set status conferences to review discovery.

14:47:30 - Judge: Neville, Thomas F.
Court will set Feb. 16, 2007 @ 9:00 a.m. for further review
14:48:42 - Judge: Neville, Thomas F.
Inquires about order from last few days
14:48:58 - Plaintiff Attorney: SWENSON, PAULA
Will be a lengthy order and will provide to State for review
14:49:16 - Operator
Stop recording:

MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

MARK J. ACKLEY, I.S.B. # 6330
PAULA M. SWENSEN, I.S.B. # 6722
Deputy State Appellate Public Defenders
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

NO. _____
FILED _____
A.M. _____ P.M. 4:20
ORIGINAL
FEB 02 2007
J. DAVID N. WARREN, Clerk
By KATHY J. BIEHL
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERICK VIRGIL HALL,

Petitioner,

v.

STATE OF IDAHO,

Respondent.

CASE NO. SPOT0500155

**RENEWED MOTION FOR
ORDER TO CONDUCT
MEDICAL TESTING AND
ORDER FOR TRANSPORT**

(CAPITAL CASE)

COMES NOW the Petitioner, ERICK VIRGIL HALL, by and through his attorneys, and renews his motion to this Court for an Order transporting Petitioner to Intermountain Medical Imaging, Outpatient Radiology Clinic, 2929 E. Magic View Drive, Meridian, Idaho, for the purpose of conducting neurological and other medical testing. This Court previously denied Petitioner's original motion for testing filed June 7, 2006, without prejudice. The Court provided Petitioner the opportunity to renew his motion upon a greater showing of relevance and upon completion of trial counsels' depositions. *See* Order Denying Petitioner's Motion To Transport For Medical Testing, filed July 11, 2006 (setting forth various conditions necessary for reconsideration).

The basis for this motion will be set forth in a supporting brief to be filed on or about Tuesday February 6, 2007. The supporting brief will include the following: a

RENEWED MOTION FOR ORDER TO CONDUCT
MEDICAL TESTING AND ORDER FOR TRANSPORT

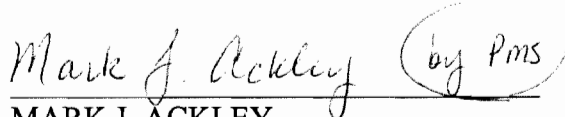
PAGE 1

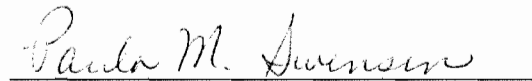
00830

second affidavit from Petitioner's neurologist, Dr. James Merikangas, providing further explanation of the requested testing; citation to relevant portions of the depositions of trial counsel; incorporation of Petitioner's prior motion; and reference to recent litigation involving a similar request for testing filed in State v. Erick Virgil Hall, Ada County No. H0300614.

This motion will be formally noticed for a hearing that has already been scheduled for February 16, 2007.

Dated this 2nd day of February, 2007.


MARK J. ACKLEY
Deputy State Appellate Public Defender


PAULA M. SWENSEN
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that I have on this 2nd day of February, 2007, served a true and correct copy of the forgoing RENEWED MOTION FOR ORDER TO CONDUCT MEDICAL TESTING AND ORDER FOR TRANSPORT as indicated below:

ROGER BOURNE
ADA COUNTY PROSECUTOR'S OFFICE
200 W. FRONT, SUITE 3191
BOISE ID 83702

☐ Statehouse Mail
☐ U.S. Mail
☐ Facsimile
☒ Hand Delivery

ERICK VIRGIL HALL
INMATE # 33835
IMSI
PO BOX 51
BOISE ID 83707

☐ Statehouse Mail
☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery


BARBARA THOMAS
Administrative Assistant

ORIGINAL

MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

MARK J. ACKLEY, I.S.B. # 6330
PAULA M. SWENSEN, I.S.B. # 6722
Deputy State Appellate Public Defenders
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

NO. _____ FILED _____
AM _____ PM 4:20
FEB 02 2007
J. DAVID NAVARRO, Clerk
By KATHY J. DIEHL
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERICK VIRGIL HALL,
Petitioner,

v.

STATE OF IDAHO,
Respondent.

CASE NO. SPOT0500155

**MOTION FOR
JUROR CONTACT**

(CAPITAL CASE)

COMES NOW the Petitioner, ERICK VIRGIL HALL, by and through his attorneys, and moves this Court for permission for counsel to contact jurors and alternate jurors who sat in the underlying criminal matter, for the purpose of conducting post-conviction investigation. This Court indicated during hearings held in January and February, 2006, that it would require Petitioner to seek permission to contact jurors prior to Petitioner's counsel making such contact.

The basis for this motion will be set forth in a supporting brief to be filed on or about Tuesday February 6, 2007. Further, this motion will be formally noticed for a hearing that has already been scheduled for February 16, 2007.

Dated this 2nd day of February, 2007.

Mark J. Ackley (by Pms)
MARK J. ACKLEY
Deputy, State Appellate Public Defender

Paula M. Swensen
PAULA M. SWENSEN
Deputy, State Appellate Public Defender

CERTIFICATE OF SERVICE

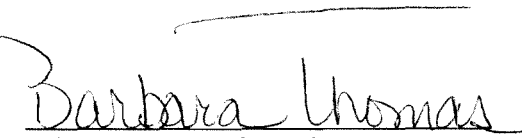
I HEREBY CERTIFY that I have on this 2nd day of February, 2007, served a true and correct copy of the forgoing MOTION FOR JUROR CONTACT as indicated below:

ROGER BOURNE
ADA COUNTY PROSECUTOR'S OFFICE
200 W. FRONT, SUITE 3191
BOISE ID 83702

☐ Statehouse Mail
☐ U.S. Mail
☐ Facsimile
☒ Hand Delivery

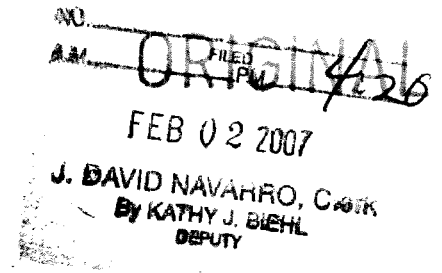
ERICK VIRGIL HALL
INMATE # 33835
IMSI
PO BOX 51
BOISE ID 83707

☐ Statehouse Mail
☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery


BARBARA THOMAS
Administrative Assistant

MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

MARK J. ACKLEY, I.S.B. # 6330
PAULA M. SWENSEN, I.S.B. # 6722
Deputy State Appellate Public Defenders
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712




**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERICK VIRGIL HALL,)	
	)	CASE NO. SPOT0500155
Petitioner,)	
)	
v.	)	NOTICE OF HEARING
)	
STATE OF IDAHO,)	
)	
Respondent.	)	(CAPITAL CASE)

COMES NOW, Erick Virgil Hall, Defendant-Appellant, and notices the following motions for a hearing on a date previously scheduled by this Court on the 16th day of February, 2007, at 9:00 a.m.: Renewed Motion For Order to Conduct Medical Testing and Order For Transport, and Motion For Juror Contact. The hearing will be held before the Honorable Thomas F. Neville at 200 West Front Street, Boise, Idaho.

DATED this 2nd day of February, 2007.

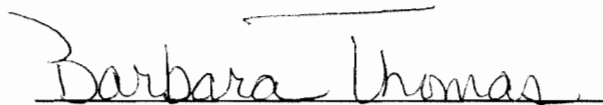


PAULA M. SWENSEN
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of February, 2007, served a true and correct copy of the attached NOTICE OF HEARING by the method indicated below:

ERICK VIRGIL HALL INMATE # 33835 IMSI PO BOX 51 BOISE ID 83707	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Statehouse Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery
ROGER BOURNE ADA COUNTY PROSECUTOR'S OFFICE 200 W. FRONT, SUITE 3191 BOISE ID 83702	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Statehouse Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> E-Mail
THOMAS F. NEVILLE DISTRICT JUDGE 200 W. FRONT BOISE ID 83702	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Statehouse Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> E-Mail


BARBARA THOMAS
CLU Administrative Assistant

2:19

FEB 09 2007

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
Idaho State Bar No. 2127
200 West Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERICK VIRGIL HALL,)	
)	
Petitioner,	)	Case No. SPOT0500155
vs.)	
	)	STATE'S MOTION TO
THE STATE OF IDAHO,	)	CLARIFY DISCOVERY ORDER
	)	AND/OR TO MODIFY
Respondent,	)	DISCOVERY ORDER
)	
_____)	

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, representing the State and moves this Court for clarification of the proposed discovery order and/or to modify some of the terms of the order as set out below.

The undersigned has had conversation with Paula Swenson of the State Appellate Public Defender's Office concerning the terms of subparagraph 5 and subparagraph 6 on page 5 of the proposed order. The undersigned believes that Ms. Swenson believes that the Ada County Prosecutor's Office, by the terms of the proposed order, has become a private investigator for the

km

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State Appellate Public Defender. Ms. Swenson believes that the prosecutor's office is required by the terms of the order to contact every law enforcement agency in Ada and Payette counties, including jail and juvenile authorities looking for any records or reports related to Norma Jean Oliver's runaway charge in December 1991.

The undersigned believes that it was the intention of the undersigned to check with the juvenile courts in Ada County and Payette County to determine if any records exist concerning that runaway. The undersigned agreed to make those inquiries and the Court agreed to grant the order to the extent that the prosecuting attorney agreed. The undersigned needs further clarification from the Court as to what the Court intends.

The State moves to modify the proposed order as it relates to April Sebastian's presentence investigation report, which is referred to in subparagraph 4 on page 8 of the proposed order. The State believes that April Sebastian's presentence report can only be relevant to the extent that it discusses her felony history; any statements that she may have made concerning Erick Hall; any inducements made by the Ada County Prosecutor's Office or other law enforcement authorities to her in return for her testimony, and any requests she makes for sentencing consideration in return for cooperation. The undersigned is not aware of the details in April Sebastian's presentence report, but believes that any other information in the presentence investigation, which may include medical history, employment history, sexual abuse history, or anything of that nature, is not relevant, is private and should not be disseminated to the defendant. The State recommends that the Court review the presentence report in camera and release any part that the Court feels is relevant to any claim made by the petitioner.

RESPECTFULLY SUBMITTED, this 9th day of February 2007.

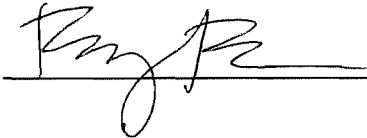
GREG H. BOWER
Ada County Prosecutor



Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I **HEREBY CERTIFY** that a true and correct copy of the foregoing document was delivered to the State Appellate Public Defender's Office, 3647 Lake Harbor Lane, Boise, Idaho 83703 through the United States Mail, this 9 day of February 2007.



GREG H. BOWER

Ada County Prosecuting Attorney

Roger Bourne

Deputy Prosecuting Attorney

Idaho State Bar No. 2127

200 W. Front Street, Room 3191

Boise, Id. 83702

Telephone: (208) 287-7700

279
FEB 09 2007

CLERK OF DISTRICT COURT, Clerk
By JAMES
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERICK VIRGIL HALL,

Petitioner,

vs.

THE STATE OF IDAHO,

Respondent.

)
)
)
)
)
)
)
)
)
)
)

Case No. SPOT0500155

NOTICE OF HEARING

TO: ERICK VIRGIL HALL, and STATE APPELLATE PUBLIC DEFENDER, his Attorney of Record, you will please take notice that on the 16th day of February 2007, at the hour of 9:00 of said day, or as soon thereafter as counsel can be heard, Deputy Prosecuting Attorney Roger Bourne will move this Honorable Court on the Amended State's Motion to Clarify Discovery and/or to Modify Discovery Order in the above-entitled action.

DATED this 9th day of February 2007.

GREG H. BOWER

Ada County Prosecuting Attorney

By: Roger Bourne
Roger Bourne

Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing Notice of Hearing to State Appellate Public Defender's Office, 3647 Lake Harbor Lane, Boise, Idaho 83703 by depositing the same in the Interoffice Mail, postage prepaid, this 1st day of February 2007.


A handwritten signature in black ink, appearing to be "Rory P.", is written over a horizontal line.

ORIGINAL

MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

MARK J. ACKLEY, I.S.B. # 6330
PAULA M. SWENSEN, I.S.B. # 6722
Deputy State Appellate Public Defenders
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

NO. _____
FILED PM. 4:22
A.M. _____

FEB 13 2007

J. DAVID NAVARRO, Clerk
By [Signature]
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERICK VIRGIL HALL,

Petitioner,

v.

STATE OF IDAHO,

Respondent.

CASE NO. SPOT0500155

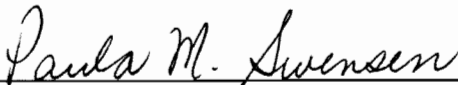
**WITHDRAWAL OF NOTICE
OF HEARING ON MOTION
FOR JUROR CONTACT**

(CAPITAL CASE)

COMES NOW, Erick Virgil Hall, Defendant-Appellant, and withdraws his "Notice of Hearing" regarding his "Motion for Juror Contact," filed on February 2, 2007.

Counsel noticed the Motion for Juror Contact for hearing to be held on Friday, February 16, 2007. Counsel has spent a significant amount of time preparing and is still preparing the memorandum in support of the motion, and realizes she will not be able to file the memorandum sooner than two days prior to the scheduled hearing. Further, the memorandum relies upon a substantial quantity of complex legal and factual authority. Thus, in order to provide the State a full opportunity to respond to the memorandum and so that a full and fair hearing may be conducted on the matter, counsel withdraws the Notice of Hearing, with the intent to refile for hearing on the motion at a later date.

DATED this 13th day of February, 2007.

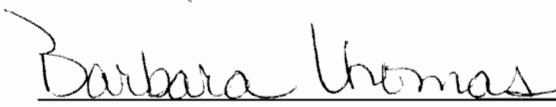


PAULA M. SWENSEN
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of February, 2007, served a true and correct copy of the attached WITHDRAWAL OF NOTICE OF HEARING ON MOTION FOR JUROR CONTACT by the method indicated below:

ERICK VIRGIL HALL INMATE # 33835 IMSI PO BOX 51 BOISE ID 83707	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Statehouse Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery
ROGER BOURNE ADA COUNTY PROSECUTOR'S OFFICE 200 W. FRONT, SUITE 3191 BOISE ID 83702	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Statehouse Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> E-Mail
THOMAS F. NEVILLE DISTRICT JUDGE 200 W. FRONT BOISE ID 83702	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Statehouse Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> E-Mail



BARBARA THOMAS
CLU Administrative Assistant

ORIGINAL

MOLLY J. HUSKEY, I.S.B. # 4843
State Appellate Public Defender
State of Idaho

MARK J. ACKLEY, I.S.B. #6330
PAULA M. SWENSEN, I.S.B. 6722
Deputy State Appellate Public Defenders
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

NO. _____ FILED _____
A.M. 8:50 P.M. _____

FEB 16 2007

J. DAVID NAVARRO, Clerk
By _____ DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY ADA**

ERICK VIRGIL HALL,

Petitioner,

v.

STATE OF IDAHO,

Respondent.

Case No. SPOT9500155

**RESPONSE TO STATE'S MOTION TO
CLARIFY DISCOVERY ORDER
AND/OR TO MODIFY DISCOVERY
ORDER**

COMES NOW the Petitioner, ERICK VIRGIL HALL, by and through his attorneys at the Office of the State Appellate Public Defender and responds to the State's "Motion To Clarify Discovery Order And/Or To Modify Discovery Order," dated February 9, 2007. The Court should deny the State's Motion.

ARGUMENT

I.

A. Introduction.

A three-day hearing was held on Mr. Hall's motion for discovery before this Court between January 10 and January 12, 2007. Both parties had provided briefing prior to the hearing, and during the hearing, both parties were given the opportunity to make further argument in support of their respective positions. The Court ruled on each request from the bench. Nearly a month after the Court's rulings, the State filed a motion asking

this Court to reconsider two rulings reflected in the proposed order submitted by Mr. Hall.¹ First, implying that the Court effectively made the prosecutor's office a "private investigator" for Mr. Hall, the State seeks clarification and/or reconsideration of the ruling which requires the State to contact law enforcement agencies in Payette and Ada County to determine whether such agencies possess discoverable information regarding Norma Jean Oliver. Second, the State seeks clarification and/or reconsideration of this Court's ruling regarding Mr. Hall's discovery request for the release of April Sebastian's presentence investigation report (herein "PSI").

Mr. Hall respectfully asks the Court to deny the State's motion to reconsider. Mr. Hall's position is that the Court should not revisit this issue, or any other discovery issue, except insofar as there is disagreement concerning what the Court actually ordered.

B. The Court Should Not Reconsider Its Discovery Order And Should Deny The Motion Even If The Court Does Reconsider.

The hearing on Mr. Hall's Motion for Discovery lasted the better part of three (3) days, and, except as noted in the proposed Order, was fully litigated. The State had ample opportunity to present both written and oral argument on each and every discovery request, and there is no legitimate reason, such as a change in circumstances, or an additional showing of evidence by the State, for the Court to reconsider these requests.

Mr. Hall notes the following with respect to each of the disputed requests.

1. Request I.G.6.

The Court should not reconsider its order for the disclosure of the discovery items requested in discovery request I.G.6 pertaining to Norma Jean Oliver. Ms. Oliver was a critical witness in the State's case in aggravation, yet the record and trial counsels' files

¹ The proposed order was intended to simply memorialize the Court's rulings.

are notably sparse as to the circumstances involving and surrounding the alleged **forcible** rape to which she testified.² Moreover, the only police report regarding that incident currently within Mr. Hall's possession, includes circumstances which would undermine Ms. Oliver's version of events. Specifically, following the alleged forcible rape, Ms. Oliver—a runaway from Fruitland, Idaho (located in Payette County)—had the local connections and wherewithal to obtain lodging at a friend's motel room at the Sands Motel on State Street in Boise. *See* Report of Detective Daniel Hess, dated December 4, 1991 (Exhibit 2 to Amended Petition for Post-Conviction Relief), attached hereto as Attachment A. This friend is not identified by name within the police report. It appears that Ms. Oliver was arrested at the motel as a runaway and then taken to juvenile detention. It further appears that only after her detention did Ms. Oliver report the rape. She subsequently provided details of the rape to Dr. Lawrence Vickman, as well as information that she had had consensual sexual intercourse just days prior to the rape. Attachment A. Upon physical examination, Dr. Vickman found minimal bruising on the left cheek of Ms. Oliver's face, no choke marks to her neck, no external injuries to her hands, and no tearing or noted bruising of the vaginal canal. While there was some bruising just inside the anal canal, there was no evidence of anal bleeding. Mr. Hall has requested documents that would provide more detail on the circumstances leading up to, and following, the rape allegations by Ms. Oliver. For instance, it certainly seems that law enforcement, investigating a runaway, would have obtained a statement from Ms. Oliver upon her arrest and would have obtained statements from the friend with whom she shared the motel room. Once Ms. Oliver made the forcible rape allegations, it seems

² Mr. Hall recognized that he pleaded guilty to statutory rape, but has always maintained that he did not commit a forcible rape as described by Ms. Oliver in her testimony.

inconceivable that law enforcement investigating the rape, and the prosecutor preparing for a rape trial, would fail to obtain statements from Ms. Oliver's friend—a witness who could provide powerful testimony for either the prosecution or the defense depending on what he or she could relate regarding Ms. Oliver's mental and physical condition immediately following the rape. This same witness could have potentially provided evidence, or information leading to evidence, that could have been favorable to Mr. Hall at his capital sentencing. Accordingly, it was appropriate for the Court to order the prosecutor to not only search its files but the files of all other agencies reasonably likely to possess the requested material.

The Court's ruling ensures that Mr. Hall's due process rights described in *Brady v. Maryland*, 373 U.S. 83 (1963), are protected. The Court's ruling is consistent with the State's affirmative duty to disclose all evidence favorable to an accused. To satisfy his *Brady* obligation, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). This Court has not made the prosecutor Mr. Hall's "private investigator," but rather, this Court has simply followed the applicable law governing a prosecutor's discovery obligations. In *United States v. Blanco*, 392 F.3d 382 (9th Cir. 2004), the Ninth Circuit Court of Appeals described the prosecutor's obligation to disclose under *Brady* as "the obligation of the government, not just the obligation of the prosecutor." *Id.* at 393. Accordingly, a prosecutor's compliance with *Brady* necessarily requires the cooperation of other government agents who might possess *Brady* material. *Blanco*, 392 F.3d at 388. Courts throughout the country have read *Brady* and *Kyles* broadly, placing the burden on the prosecution to ensure that it

actively searches the records of relevant government agencies for favorable evidence. *See, e.g., Perez v. United States*, Slip Opinion, 2006 WL 2355868 at *6 (N.D.N.Y. 2006) (placing responsibility on the prosecutor—as the government’s agent—to seek and disclose *Brady* materials in the possession of other government agents and agencies because otherwise the “system would be manifestly unjust since exculpatory information possessed solely by a government agent or agency would never come to light.”)

Mr. Hall has not asked this Court to extend *Kyles* to all conceivable government agents or agencies but rather, as the Ninth Circuit has done, only to those agents or agencies that are sufficiently subject to the prosecutor’s access or control and those that are reasonably likely to possess relevant information, such as agents or agencies closely aligned with the prosecution. *Blanco*, 392 F.3d at 388; *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir.1989) (holding that the prosecutor’s disclosure obligation under *Brady* turns on “the extent to which the prosecutor has knowledge of and access to the documents sought”). The prosecuting attorney’s assertion that SAPD attorneys consider him a private investigator for them is ludicrous, and the characterization of the Court’s order with regard to this particular discovery request is nothing more than the prosecuting attorney’s dissatisfaction with the Court’s order. Moreover, the *limiting* language in the revised proposed Order submitted by Mr. Hall was added in direct response to the prosecuting attorney’s stated concern off the record to undersigned counsel that he would be expected to check with every county in the State of Idaho to satisfy the language of the proposed order originally submitted to the Court. Thus, Mr. Hall is willing to limit the Order to any agency reasonably likely to have the requested records, which would include law enforcement authorities in Ada and Payette Counties.

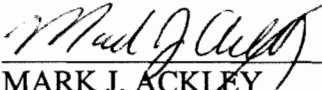
2. Request I.J.4.

Similarly, there is no reason to revisit the Court's order regarding the disclosure of the discovery requested in I.G.6 and pertaining to April Sebastian. As the proposed Order notes, the Court *denied* Petitioner's request and merely allowed Mr. Hall to move the Honorable R. Wilper for Ms. Sebastian's PSI and Addendum to the PSI, with its express permission to inform Judge Wilper that the Court did not object to the release of the PSI. The Court further implemented measures reasonable calculated to protect the information contained in the PSI by allowing Mr. Hall to view the material but not possess a copy of the PSI without the Court's approval. The in-camera review now requested by the prosecutor is simply unnecessary. Mr. Hall relies upon the law set forth in his Memorandum of Law in Support of Motion for Discovery, filed January 5, 2006, and specifically notes to the Court that Idaho Criminal Rule 32 permits access to a defendant's presentence report to a third party where the party has a legitimate professional interest in the information likely contained therein and it appears that such availability will further the plan or rehabilitation of the defendant or further the interests of public protection, so long as appropriate safeguards for confidentiality are observed. Because Mr. Hall's interests in investigating the witnesses who testified against him are literally life-and-death, because the particular witness at issue had an ongoing attorney-client relationship with Mr. Hall's trial counsel, and because the Court has implemented adequate safeguards for confidentiality, the Court should deny the State's attempt to impose additional and cumbersome restrictions.

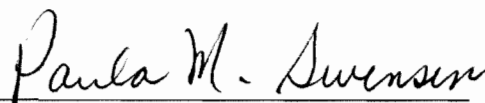
C. Conclusion.

Because the State has offered no legitimate reason, such as a change in circumstances, or an additional showing of evidence, for the Court to reconsider Mr. Hall's discovery requests, the Court should not do so. Moreover, Mr. Hall is entitled to the information he requested on Norma Jean Oliver, and entitled to move the Honorable R. Wilper for April Sebastian's PSI. The Court should deny the State's motion.

Dated this 16th day of February, 2007.



MARK J. ACKLEY
Lead Counsel, Capital Litigation Unit



PAULA M. SWENSEN
Co-Counsel, Capital Litigation Unit

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 11th day of February, 2007, served a true and correct copy of the forgoing RESPONSE TO STATE'S MOTION TO CLARIFY DISCOVERY ORDER AND/OR TO MODIFY DISCOVERY ORDER as indicated below:

ROGER BOURNE

ADA COUNTY PROSECUTOR'S OFFICE

200 W. FRONT, SUITE 3191

BOISE ID 83702

☐ Statehouse Mail

☐ U.S. Mail

☐ Facsimile

☒ Hand Delivery

ERICK VIRGIL HALL

INMATE # 33835

IMSI

PO BOX 51

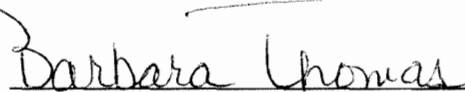
BOISE ID 83707

☐ Statehouse Mail

☐ U.S. Mail

☐ Facsimile

☒ Hand Delivery



BARBARA THOMAS

Administrative Assistant

ATTACHMENT A

00853

INVESTIGATION REPORT GARDEN CITY POLICE

1. R.D. 79 2. D.R. No. 91-2582

Charge (Include Degree) Rape (By Force)		4. Law Section No.		5. Custodial Hold <input type="checkbox"/> Felony <input checked="" type="checkbox"/>		Altercation <input type="checkbox"/> Misdemeanor <input type="checkbox"/>	
Time Occurred 12-3-91 0100-0300		7. Date & Time Reported 12-4-91		8. Location of Occurrence Garden City (Camper Tra			

1. Victim Name - Last, First, Middle (Firm if Business) O Norma Jean				10. Residence Address				11. Res. Phone	
12. Occupation Juv. Student				13. Race C		14. Sex F		15. Age 17	
16. D.O.B.				17. Business Address/School				18. Bus. Phone	
19. Victim Vehicle		20. Make		21. Model		22. Body Style		23. Color/Color	
24. License No.		25. State		26. Where Hospitalized		27. Date/Time		28. Attending Physician	
29. Nature of Injury		30. Complete if personal injury or rape		31. Date/Time		32. Attending Physician		33. Nature of Injury	

I: V - VICTIM W - WITNESS RP - REPORTING PARTY PG - PARENT/GUARDIAN

30. Code W				31. Name - Last, First, Middle (Firm if Business) Hess, Dan				32. Residence Address				33. Res. Phone			
34. Occupation Detective				35. Race C		36. Sex M		37. Age 44		38. D.O.B.		39. Business or Employer Address/School Garden City P D			
40. Bus. Phone 877-2018				41. Code W				42. Name - Last, First, Middle (Firm if Business) Dr. L. Vickman				43. Residence Address			
44. Res. Phone				45. Occupation Medical DR				46. Race C		47. Sex M		48. Age		49. D.O.B.	
50. Business or Employer Address/School St Alphonsus Hospital				51. Bus. Phone 378-2121				52. Code W				53. Name - Last, First, Middle (Firm if Business) Farmer, Margaret			
54. Residence Address				55. Res. Phone				56. Occupation Counselor				57. Race C		58. Sex F	
59. Age				60. D.O.B.		61. Business or Employer Address/School Intermountain Hospital				62. Bus. Phone 377-8400					

63. Suspect No. 1 (Last, First, Middle) Hall, Eric Virgil				64. Nickname/KA				65. Race C		66. Sex M		67. Age 20		68. D.O.B. 3-10-71		69. Ht. 5-10		70. Wt. 160		71. Bld. Med		72. Hair Brn		73. Eyes Hzl	
74. Suspect's Address 4304 Adams St Garden City				75. Clothing Description				76. Cited <input type="checkbox"/> Arrested <input type="checkbox"/>				77. Summons No.				78. Cited <input type="checkbox"/> Arrested <input type="checkbox"/>				79. Summons No.					
80. Suspect No. 2 (Last, First, Middle)				81. Nickname/KA				82. Race		83. Sex		84. Age		85. D.O.B.		86. Ht.		87. Wt.		88. Bld.		89. Hair		90. Eyes	
91. Suspect's Address				92. Clothing Description				93. Cited <input type="checkbox"/> Arrested <input type="checkbox"/>				94. Summons No.				95. Cited <input type="checkbox"/> Arrested <input type="checkbox"/>				96. Summons No.					

93. Further Suspect Description (i.e. Glasses, Tattoos, Teeth, Birthmarks, Jewelry, Scars, Mannerisms, Weapons, Etc.)

94. Additional Suspects Listed Yes <input type="checkbox"/> No <input type="checkbox"/>				95. Suspect Vehicle Year				96. Make		97. Model		98. Body Style		99. Color/Color		100. License No.		101. State	
--	--	--	--	--------------------------	--	--	--	----------	--	-----------	--	----------------	--	-----------------	--	------------------	--	------------	--

102. Additional Vehicle Identifiers (Damage, Chrome Wheels, Vin, Etc.)

103. Probable Cause (Two or Three Sentences Briefly Outlining What Occurred and Establishing the Elements)

Suspect Hall forcefully raped the victim both Vaginally and Anally by tying her up and gagging her with her own clothing.

Further Hall injured the victim while fighting with her causing bruising on the face nose, arms and legs and scratches on her legs and arms.

Suspect Hall achieved this against her will and further committed this act on a 17 yr old minor. See supplemental report for details.

104. Describe Property Stolen				105. Removed From				106. Property Identification Information				107. Property			
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108. Damaged Property				109. Total Loss			
-----------------------	--	--	--	-----------------	--	--	--

110. Supervisor Review <input type="checkbox"/> File <input type="checkbox"/> Patrol FIU <input type="checkbox"/> Crime Prevention <input type="checkbox"/> Invest. FIU				111. Sup. Approving				112. <input type="checkbox"/> Field Rept. <input type="checkbox"/> Counter Rept. <input type="checkbox"/> Inv. Rept.				113. Copies To:				114. Copies For: <input type="checkbox"/> City Pros. <input type="checkbox"/> County Pros. <input type="checkbox"/> Patrol <input type="checkbox"/> Invest.				Copies M: <input type="checkbox"/> City Pr <input type="checkbox"/> County <input type="checkbox"/> Patrol <input type="checkbox"/> Invest.			
115. Officer(s) Reporting Det Dan Hess				Adm. No. 1110				116. Reporting Person's Signature				117. Date/Time				118. Date/Time							

05768

00854

CITY POLICE

Rape (BY FORCE)

2. Subject/Victim's Name

Hall/C

3. R.D.

9

4. D.R. No.

91-2582

5. Place

6. Page

1

12. Division

Det.

Trailer behind

St Garden City Id.

9. Time Occurred

0100-0300

10. Route to

Co P A for Warrant

☐ 11. File for Information
☐ 12. For Hot Sheet Entry
☐ 13. Extra Patrol

AMOUNT

ITEMIZE & DESCRIBE PROPERTY FULLY

ITEM SERIAL #

On 12-4-91 I was given a message to call Bonnie Pitman at the Intermountain

Hospital in ref to a Juvenile that had been raped.

Pitman explained the a Norma Jean Oliver was brought over from Juvenile detention

that had been a signed runaway from Fruitland Idaho. Oliver had revealed to

Pitman and Margaret Farmer that she was at a residence in Garden City and

was forcefully raped by a man named Eric, and that she did not know his last

name. I then made an appt. to go there and speak with the victim.

I responded on 12-4-91 at approx 1400 hrs and was met by Dr Lamar Heyrend.

Heyrend explained that she was reluctant to file the complaint against the suspect

because he had threatened to kill her if she told anyone. Heyrend then introduced

Oliver to me and I began my interview on Micro cassette tape. My interview

lasted approx 1 hr. with Oliver explaining that she met this suspect at Mtn.

Billiards and only knows him by the first name of Eric. She stated that she did

in fact runaway from home in Fruitland due to an extensive history of Family

problems and that she does not get along well with her father.

Oliver stated that she went to a residence on Adams st in Garden City to possibly

get a ride to California from a guy named Chuck. Oliver did not know his full

name only that his first name was really Charles. She states that while there at

this residence she again saw this subject by the name of Eric. Oliver described

the res. as a small camper that sat near some mobile homes/Trailer Houses on

Adams near 42nd st. She stated that there was a small shed nearby that and a blue

car that sat near the main mobile home. Oliver described Chuck as being short

with long hair to the shoulder and Eric as 20 yrs of age with short dark military

haircut Hazel eyes, approx 5-10 tall, with a slight mustache, med bld.

Oliver said that both Eric and Chuck room together in this camper and that Eric's

uncle lives just caddy corner from them in a mobile home. (CONFIDENTIAL) 05769

5. Reporting Officer

Serial

Date/Time

16. Supervisor Approving

Serial

Date/Time

00855

N CITY POLICE

1. Subject/Victim's Name Hali/O	3. R.D. 79	4. O.P. No. 91-2587
5. Rape (BY FORCE)	6. Phone	7. Page 2
8. Time Occurred 0100-0300	9. Route to Co P A for warrant	10. Division Det.
11. <input type="checkbox"/> File for Information <input type="checkbox"/> For Hot Sheet Entry <input type="checkbox"/> Extra Patrol		

AMOUNT	ITEMIZE & DESCRIBE PROPERTY FULLY	ITEM SERIAL #
OI	seemed very reluctant at first and appeared extremely embarrassed to talk to me in specifics about what had happened. She was also very afraid of this Eric and stated that he had told her that he was on probation for an attempted murder and that if she told anyone about what happened he would kill her. O said at first she did not want to have to face him in court and that he might have some one try and hurt her. I examined numerous bruises on the left side of her nose and face and some on her forearms and knees that could be consistent with defending yourself. Further there were a number of scratches on her arms and legs that were also fresh enough to have happened during the period of time indicated. O explained that Eric and Chuck had been drinking and on some kind of drugs and that Chuck had fallen asleep in the camper on the top bunk and that she was sitting in a chair near the outside door. She went on to explain she sat there for about an hour in which time Eric kept putting the moves on her and she was not interested. He then grabbed her by the throat just underneath the jaw line and began to choke her. O explained that she must have gone unconscious and only remembers parts of what was happening. She remembers being extremely frightened and thinking that he was trying to kill her. She explains that she was struggling to protect herself and remembers scratching his face and then waking up outside in the shed with no clothes on and that he had her tied up and gagged with her pants and shirt. She explained that he had vaginal and anal sex with her both in the shed and in the camper against her will and could not leave or stop him. O went on to explain that when she was taken back into the camper he tried to get her to perform oral sex on him and she convinced him that it wasn't possible being tied up so at that point he untied her and then suddenly seemed to snap out of it and stated "what have I done" and did not make her (CONT)	

13. Reporting Officer G. H. L. X	14. Supervisor Approving 11/10	15. Date/Time 05770	16. Date/Time 00856
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N. CITY POLICE

1. Subject/Victim's Name Hall/C	3. R.D. 79	4. U.N. No. 91-2587
5. Rape (BY FORCE)	6. Page 3	7. Division Det
8. Time Occurred 0100-0300	9. Route to Co P A for warrant	10. File for Information <input type="checkbox"/> For Hot Shot Entry <input type="checkbox"/> Extra Patrol

AMOUNT	ITEMIZE & DESCRIBE PROPERTY FULLY	ITEM SERIAL #
	continue the sexual activity. O' stated that this ended about 0300 hrs and that he still would not let her leave, and made her sleep in the bed with him until morn. She was unable to locate her clothing and indicated that she remembered him ripping them off of her and using them to gag and tie her. She indicated that she was wearing a purpleish colored T shirt with the Chow-Now logo on it and black stretch jeans, white bra, white string bikini panties with purple bows and poka dots. She had other clothes with her so she left and went to Eric's uncle's house just behind the camper and took a shower and stayed there most of the day until she left and went to her friends motel room at the Sands on state st. in Boise. She kept thinking about reporting the incident but was convinced that Eric would do her harm and only decided to tel some one when she got to the Intermountain Hospital. We discussed the location further and I felt that she was probably describing Rick Giambo's res. on Adams because of its location in the 4300 blk of Adams, the blue veh out front as well as the camper that sits out back. Further I felt that the Chuck she was talking about was Charles Barton due to his relationship to Rick Giambo. I then left and went to the Adams st area and found the camper, vehicle and Giambo's trailer house and that was all consistent with what she said. I further discussed this situation with Officer Mike Schneider and was advised that Patrol had received a call to respond to that area on a female that was being held against her will but they were unable to locate anything. I then found out that Probation and Parole had been to the residence several weeks earlier and completed a P.O. search and that Bob Lewis (P&P) knew what Eric's last name was. I then made contact with Bob Lewis and he and Lee Fuhman agreed to initiate another P.O. search on Eric's camper due to him being on current probation. Bob advised that Eric's last name was Hall and that he was currently on probation with Janice Lunger.	

15. Reporting Officer [Signature]	16. Supervisor Approving [Signature]
Serial #7110	Date/Time 05771 00857

N CITY POLICE

1. IC Rape (BY FORCE)	2. Subject/Victim's Name Hall/Ol	3. R.D. 9	4. File # 91-2582
5. Address er behind Garden	6. Page 4	7. Time Occurred 0100-0300	8. Route to Co P A for Warrant
11. <input type="checkbox"/> File for Information <input type="checkbox"/> For Hot Sheet Entry <input type="checkbox"/> Extra Patrol		12. Division Det	

AMOUNT	ITEMIZE & DESCRIBE PROPERTY FULLY	ITEM SERIAL #
	We then responded to the location and met with Rick Giambo who is the tenant at 4304 Adams St. Also in the res. was 2 of his children. Charles Barton, and Eric Hall. Lewis pointed out Hall to me and he fit the description as O had explained so at that point I asked Hall to step outside and talk to me. Lewis spoke to Barton briefly while I spoke to Hall on micro cassette tape. I advised Hall that he was not under arrest on my case, and was free to leave that this was an informal interview. I asked if he knew Norma Jean O' and he answered yes in a vague sort of way and stated that she had been at the residence of Giambos and had been staying with them. He said that they met at Billiards and that they were all down there together and that someone told him that she was 18 yoa and that he saw her drinking beer, and that later she just showed up there at their res. He went on to explain that she asked him if she could stay there and he said that he has a roommate and that they had been drinking beer and that there was some in the refrigerator and that she drank some. Further Hall stated that O' began messing around with everyone and then started grabbing his "parts" Hall said that he told her that she couldn't be doing that. He then said that she used his phone and that she was talking to a friend she would laugh then cry and stated that some one was messing with her and that the other party asked if it was Chuck and Eric and she said yes. I asked Hall how he knew all this and he said the calls are recorded and that both parties can be heard. I later asked for the person that would have the tapes to validate what he had said and he was unable to produce them. Further Hall said that they chased her away due to being a runaway that he did not want to get in trouble. (CONT NEXT PAGE)	

15. Reporting Officer <i>[Signature]</i>	Serial 1110	Date/Time	16. Supervisor Approving	Serial 00858	Date/Time
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05772

N. CITY POLICE

1. Subject/Victim's Name Rape (BY FORCE)	2. Subject/Victim's Name Hall/O'	3. R.D. 79	4. D.R. No. 91-2582
5. Time Occurred 0100-0300	6. Route to Co P A for warrant	7. Page 5	8. Division Det
9. Camper behind St G/City		10. File for Information <input type="checkbox"/> For Hot Sheet Entry <input type="checkbox"/> Extra Patrol	

AMOUNT	ITEMIZE & DESCRIBE PROPERTY FULLY	ITEM SERIAL #
	Further Hall stated that he called the Cops on her because of being a runaway and he knew she was going to the Sands Motel in Boise.	
	I then asked Hall how he got the scratches under his left eye and he said that it was a combination of his cat and people clawing at him.	
	He went on to say that she scratched him meaning Norma Jean on the nite in question and pointed to it and said that it was her claw mark.	
	He went on to say that he told her to quit playing around with his face and she further pulled the cats tail and it scratched him again on the face. I asked Hall how the victim got the bruises and scratches on her face, legs and arms and he said that he honestly didn't know.	
	I then advised Hall that she had filed a Rape charge against him and his response was Uh hun. I went on to explain that she was at St Al's having a sex crime kit completed and that she stating that he raped her in his camper, and that he choked her till she passed out and she began to fight back and at that point is when she was injured, and he got scratched.	
	He commented that no boby raped her. I then stated that I needed to hear his side of the story and to stop playing the word games and asked if they had sex and if so was it consensual. and she agreed and did she get mad or what?	
	And at that point he said that she had a few beers and kept playing with his parts and then layed down so they went ahead and had sexual intercourse.	
	When I explained that they had sex 3 different times he made no comment.	
	He denied any knowlege of the whereabouts of her clothes and siad that she took them with her. Hall denied any knowlege of ripping her clothes off and tying her up. He said that she put them in her bag. I asked him to show me where the clothes may be and he said that he did not know. He continued to say that she had them with her. (CONT NEXT PAGE)	

1110

05773

00859

I CITY POLICE

1. Subject/Victim's Name Rape (BY FORCE)		2. Subject/Victim's Name Hall	3. R.D. 9	4. D.R. No. 91-2582
5. Time Occurred 0100-0300		6. Phone	7. Page 6	8. Division Det
9. Route to Co P A for warrant		10. File for Information <input type="checkbox"/> For Hot Sheet Entry <input type="checkbox"/> Extra Patrol		

AMOUNT	ITEMIZE & DESCRIBE PROPERTY FULLY	ITEM SERIAL #
	He went on to say that they even had oral sex but denies having anal sex with her. I then went into the camper with Bob Lewis (P&P) and searched the interior. I located a soiled torn pair of black womens jeans and a white small bra tucked under the corner of the mattress of Halls bed. The pants appeared to be soiled with mud and possibly fecal matter and were torn completely open down the inside seam from the crotch down the leg. I then showed him the clothing and he said yes they are torn but still denies tearing them or rapeing her. Hall continued to try and talk about the injuries she had and that she was Ok when she left his place, but he had no comment when I explained that her injuries would not look like they do if she were hurt the nite before I interviewed. they would not have heaied that much. Hall said that he had witnesses that he did not force her to have sex. I then advised him that Chuck was asleep in his bed and Giambo's family were in the residence and couldn't have seen anything.	
	Bob Lewis then decided to file an Agents warrant on Hall and have him transported to the jail until the investigation could be completed. I retained the clothing for evidence and responded to the Hospital and picked up the sex crime kit from the Attending nurse who kept it in her possession.	
	The following morning I took the sexcrime kit to the Forensic lab where it was analized by Pam Marcum and the results showed Spermatazoa found on the vaginal swab from the rape kit.	
	I then met with Q again & showed her the clothing items.	
	She positively identified them as her clothes and said that Hall wrapped the pants around her face and neck and gagged her with them. And that he tore a piece of her shirt off and tied her hands with it. I was unable to locate any of the other clothing. (CONT NEXT PAGE)	

15. Reporting Officer <i>[Signature]</i>	Serial 1110	Date/Time	16. Supervisor Approving <i>[Signature]</i>	Serial 05774	Date/Time 00860
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CITY POLICE

Rape (BY FORCE)

2. Subject/Victim's Name

Hall/Q

3. R.D.

4. D.R. no.

91-2582

5. Phone

7. Page

7

12. Division

Det.

Camper behind

8. Time Occurred

0100-0300

10. Route to

Co P A for Warrant

11. ☐ File for Information
☐ For Hot Sheet Entry
☐ Extra Patrol

AMOUNT

ITEMIZE & DESCRIBE PROPERTY FULLY

ITEM SERIAL #

I then met with Norma Jeans mother Carol, and obtained a signed release for medical records and picked them up from St. Al's records department. SEE DR VICKMANS REPORT ATTACHED FOR HIS INITIAL DIAGNOSIS.

I again spoke briefly with Hall at the jail on 12-5-91 and after miranda discussed the situation. He still maintained the fact that he did not commit the crime but did not appear to be that worried about it.

He did admitt to drinking beer and taking some illicit drugs but would say what it was.

With the content of this report I request a felony warrant be issued

on the charge of rape and be served as soon as possible on Hall.

He temporarily being held in custody at the Ada Co Jail on a probation violation.

It should be noted that I spoke to Hall's P.O. Janice Lunger and he met with her prior to my interview and indicated to her that Oliver was at his res and that he made her leave for being a runaway and when asked how he scratched his face he said that he got it working on a car.

That was totally inconsistant with what he told me. END OF REPORT.

13. Reporting Officer

Serial

Date/Time

14. Supervisor Approving

Serial

Date/Time

05775

00861



Saint Alphonsus Regional Medical Center

1055 North Curtis Road
Boise, Idaho 83706 - (208) 378-2121

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DK 717-02
ER120462

22

EMERGENCY ROOM REPORT

ALL EKG'S, X-RAY REPORTS AND LABORATORY TESTS NOTED IN DICTATION ARE THE INTERPRETATION OF THE DICTATING PHYSICIAN UNLESS SPECIFICALLY NOTED OTHERWISE. ALL CONSULTS WITH PHYSICIANS AS LISTED IN DICTATION ARE BY TELEPHONE UNLESS OTHERWISE SPECIFIED.

PATIENT	PHYSICIAN	DATE OF SERVICE
NORMA JEAN	LAWRENCE VICKMAN, M.D.	12/04/91

IDENTIFICATION: This 17-year-old, who had a reported sexual assault, between 1:00 and 3:00 AM Tuesday, now 36 hours ago. This patient states that she was choked around the neck and rendered almost unconscious and that subsequently the assailant performed oral, vaginal and anal intercourse on her. The patient had last menstrual period 11/20. The patient states she was threatened with a hammer and was told she would be killed if she did not cooperate. She showered times two, urinated, changed her clothes and brushed her teeth times one. She never had VD in the past, no birth control, voluntary coitus last 11/13 and on 11/28. The patient has been in good health. SHE HAS NO DRUG ALLERGIES. The initial specimens and evaluation have been performed by the nursing staff.

PHYSICAL EXAM:

VITAL SIGNS:	BP 118/70, temp 99.7°, pulse 72, respirations 20, weight 96 lbs.
GENERAL:	She is awake and oriented.
HEENT:	The patient has some tenderness, minimal bruising on the left cheek of her face.
NECK:	She has discomfort to palpation in and about the frontal part of her neck, without any choke marks. Also, discomfort to palpation in the back of the neck.
BACK:	She has tenderness to palpation of the muscles of the mid back, which are quite tense and tender, with no external sign of bruising. A few contusions which look fresh on both elbows.
EXTREMITIES:	She had discomfort in her hands as well. I could not see any sign of external injury.
CHEST:	Clear P&A.
HEART:	Heart tones normal.
ABDOMEN:	Benign.
PELVIC EXAM:	External genitalia clear. There was some tenderness at the lower part of the vaginal orifice, but no evidence of any tearing. There was evidence of bruising just inside the anal canal. No evidence of any bleeding there. The vagina was clear. The cervix was closed and clear and nulliparous. Bimanual exam revealed a tenderness in the

CONTINUED

05776

CONFIDENTIAL
TO BE RELEASED ONLY
WITH WRITTEN CONSENT
OF THE PATIENT.

00862



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ER120462
23

EMERGENCY ROOM REPORT

ALL EKG'S, X-RAY REPORTS AND LABORATORY TESTS NOTED IN DICTATION ARE THE INTERPRETATION OF THE DICTATING PHYSICIAN UNLESS SPECIFICALLY NOTED OTHERWISE. ALL CONSULTS WITH PHYSICIANS AS LISTED IN DICTATION ARE BY TELEPHONE UNLESS OTHERWISE SPECIFIED.

PATIENT	PHYSICIAN	DATE OF SERVICE
ORMA JEAN	LAWRENCE VICKMAN, M.D.	12/04/91

PAGE TWO

vaginal orifice only, but no other problems.
Digital rectal exam not performed.

Specimens taken were those requested by the nurse per protocol. Preparations for sperm from the vagina, a GC from vagina and rectum and sperm specimens from the rectum were all taken, and the appropriate additional specimens were taken, as per the protocol, including a pregnancy test and a VDRL. The patient will be followed-up then by the detective, will be referred to rape crisis.

FINAL DIAGNOSIS: SEXUAL ASSAULT BY HISTORY

LAWRENCE VICKMAN, M.D.

LV:dfp
d/t 12/04/91

05777

128A
CONFIDENTIAL
TO BE RELEASED ONLY
WITH WRITTEN CONSENT
OF THE PATIENT.
00863

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

NO. 22
FILED P.M.

FEB 16 2007

ERICK VIRGIL HALL,

Petitioner,

v.

THE STATE OF IDAHO,

Respondent.

J. DAVID NAVARRO, Clerk
Case No. SPOT0500155
DEPUTY

ORDER REGARDING DISCOVERY

(Capital Case)

Petitioner's Motion for Discovery, Memorandum in Support of Motion for Discovery, and Supplemental Memorandum in Support of Motion for Discovery having been filed, hearing having been held on January 10-12 and January 16, 2007, and the Court otherwise being fully informed, the Court hereby ORDERS as follows¹:

I. Witnesses, Prospective Witnesses, and Other Persons of Interest.

A. Lisa Manora Lewis.

1. Petitioner's request for "Prosecuting attorney documents" is DENIED.
2. Petitioner's request for "All statements and summaries of statements to law enforcement, including Scott Birch, either made by or attributed to Ms. Lewis, regardless of medium, and all reports and notes made by law enforcement about Ms. Lewis, including those made by Scott Birch" is GRANTED IN LIMITED PART. The prosecuting attorney shall disclose said statements, summaries, reports, and notes that either he possesses or Deputy Attorney General Birch possesses or has access to.
3. Petitioner's request for "All statements and summaries of statements to, and reports or notes by, SRO Mike Barker" is GRANTED IN LIMITED PART. The prosecuting attorney shall disclose said statements, summaries, reports, and notes that either he possesses or SRO Mike Barker possesses or has access to.

¹ For ease of reference, the Court uses the same numbering system used by Petitioner in his Motion for Discovery.

B. **Peggy Jean Colbert Hill.**

1. Petitioner's request for "Prosecuting attorney documents" is DENIED.
2. Petitioner's request for "All statements and summaries of statements to law enforcement, including to Scott Birch, either made by or attributed to Ms. Hill, regardless of medium, and reports and notes made by law enforcement about Ms. Hill, including those made by Scott Birch" is GRANTED IN LIMITED PART. The prosecuting attorney shall disclose said statements, summaries, reports, and notes that either he possesses or Deputy Attorney General Birch possesses or has access to.
3. Petitioner's request for "All statements and summaries of statements to, and reports or notes by, SRO Mike Barker" is GRANTED IN LIMITED PART. The prosecuting attorney shall disclose said statements, summaries, reports, and notes that either he possesses or SRO Mike Barker possesses or has access to.

C. **Patrick Bernard Hoffert.**

1. Petitioner's request for "All reports and investigative notes regarding the death of Patrick Bernard Hoffert, including but not limited to:
 - a. Law enforcement reports and notes related to Mr. Hoffert's suicide at 408 E. 51st St. #6, Garden City, Idaho, on September 25, 2000.
 - b. Law enforcement reports and notes related to Garden City PD Incident No. 01-2000-03006, whether generated by Garden City or other law enforcement agencies"is GRANTED IN LIMITED PART. The prosecuting attorney shall inquire of the Garden City Police Department and disclose any existing requested items.
2. Petitioner's request for "Copies of all audio and video-taped interviews conducted in connection with Mr. Hoffert's death, including but not limited to the interviews of Verdell Jean Stirm/Rugger and Deirdre Muncy" is GRANTED IN LIMITED PART. The prosecuting attorney shall inquire of the Garden City Police Department and disclose any existing requested items.
3. Petitioner's request for "Any writings attributed to Mr. Hoffert on the day of his suicide, including but not limited to property collected by Garden City Police Department...from the suicide investigation, including 'notebook w/ notes from Hoffert,' property no. 12448" is GRANTED IN

LIMITED PART. The prosecuting attorney shall inquire of the Garden City Police Department and disclose any existing requested items.

4. Petitioner's request for "Results of any forensic testing conducted upon the 1989 black Toyota, VIN JT4RN13P4K0005180, property no. 12455" IS GRANTED IN LIMITED PART. The prosecuting attorney shall inquire of the Garden City Police Department and disclose any existing requested items.
5. Petitioner's request for "Coroner/ pathology notes and reports regarding the death of Mr. Hoffert" is GRANTED IN LIMITED PART. The prosecuting attorney shall inquire of the Ada County Coroner's Office and disclose any existing requested items. The Court further ORDERS that said discovery includes any reports, notes or other documents forwarded to the Ada County Coroner's Office by the Garden City Police Department, including, but not limited to the "notebook" purportedly containing writings by Mr. Hoffert.
6. Petitioner's request for "Any DNA or other forensic profile developed on Mr. Hoffert" is GRANTED IN LIMITED PART. The prosecuting attorney shall inquire of the Garden City Police Department to determine whether such a profile/profiles were developed and, if so, shall disclose such profile(s).
7. Petitioner's request for "Detective Allen's supplemental report on the suicide scene" is GRANTED IN LIMITED PART. The prosecuting attorney shall inquire of the Garden City Police Department and disclose any existing requested items.

D. **Chris Hall.**

Petitioner's request for discovery regarding Chris Hall is WITHDRAWN without prejudice to renew the request upon further investigation.

E. **Christian Johnson.**

1. Petitioner's request for "Prosecuting attorney documents" is DENIED.
2. Petitioner's request for "Any and all incentives to testify against Erick Hall explicitly or implicitly offered to, or requested by, this witness" is DENIED.
3. Petitioner's request for "All statements and summaries of statements to law enforcement either made by or attributed to Mr. Johnson, regardless of medium, and all reports and notes made by law enforcement about Mr. Johnson" is DENIED.

4. Petitioner's request for "A complete NCIC criminal record check, including juvenile criminal records" is GRANTED IN PART. The prosecuting attorney shall run and disclose a NCIC criminal records check. Petitioner's request for juvenile criminal records is WITHDRAWN without prejudice to renew the request upon further investigation.
5. Petitioner's request for "Documentation or summaries of all off-record and/or ex parte conversations regarding Mr. Johnson's criminal history or ongoing criminal proceedings" is WITHDRAWN without prejudice to renew the request upon further investigation.
6. Petitioner's request for "Documents or summaries of plea negotiations related to the case for which Mr. Johnson made an appearance on or about 10/13/04" is WITHDRAWN without prejudice to renew the request upon further investigation.
7. Petitioner's request for "Any search warrant from any search and seizure of Mr. Johnson" is GRANTED.
8. Petitioner's request for "All reports and notes from Idaho Department of Corrections and Idaho Department of Probation and Parole..." is WITHDRAWN without prejudice to renew the request upon further investigation.

F. **Miriam Colon.**

1. Petitioner's request for "Prosecuting attorney documents" is DENIED.
2. Petitioner's request for "All statements and summaries of statements to law enforcement either made by or attributed to Ms. Colon, regardless of medium, and all reports and notes made by law enforcement about Ms. Colon" is GRANTED IN LIMITED PART. The prosecuting attorney shall inquire of the Detective Dave Smith and disclose any existing notes made by law enforcement which were not reflected in reports disclosed to trial counsel.
3. Petitioner's request for "A complete NCIC criminal record check, including juvenile criminal records" is WITHDRAWN without prejudice to renew the request upon further investigation.

G. **Norma Jean Oliver.**

1. Petitioner's request for "Prosecuting attorney documents" is GRANTED IN LIMITED PART. The prosecuting attorney shall disclose any notes

not previously provided regarding Ms. Oliver's mental health history from his files in both the 2004 murder case and the 1991 rape case. The remainder of Petitioner's request is DENIED.

2. Petitioner's request for "All statements and summaries of statements to law enforcement either made by or attributed to Ms. Oliver, regardless of medium, and all reports and notes made by law enforcement about Ms. Oliver" is GRANTED IN LIMITED PART. The prosecuting attorney shall inquire of the Garden City Police Department and disclose any existing requested items specific to the 1991 rape case.
3. Petitioner's request for "Any incentives to testify against Erick Hall explicitly or implicitly offered to, or requested by, Ms. Oliver" is DENIED.
4. Petitioner's request for the "Transcript of hearing to release 1992 Presentence Investigation Report held on 10/28/03" is GRANTED, provided that Petitioner shall provide the Court with further identifying information, including the name of the judge presiding at said hearing.
5. Petitioner's request for "A complete NCIC criminal record check, including juvenile criminal records" is DENIED IN LARGE PART. However, the prosecuting attorney shall inquire of Ada County and Payette County juvenile courts to determine what records, if any, exist.
6. Petitioner's request for "All documentation and recordings relating to Ms. Oliver's arrest as a runaway on or about 12/04/91, including any statements made to the arresting officers, jail or juvenile authorities, and any dispatch or other recordings, including the entire juvenile criminal file stemming from that arrest" is GRANTED IN PART. The prosecuting attorney shall inquire of Ada and Payette County law enforcement agencies as to the existence of police reports, recordings, and written statements and provide existing police reports, recordings and written statements to Petitioner. The remainder of Petitioner's requests are DENIED.
7. Petitioner's request for "Information regarding Ms. Oliver's mental health, competency, or veracity, regardless of whether documentation exists, known by the prosecution in the underlying criminal case" is DENIED.
8. Petitioner's request for "Information regarding the investigation of the reported rape of Ms. Oliver, and subsequent charging, arrest, plea negotiations and plea entry [of] Petitioner in State v. Hall, Case No. M9108836" is GRANTED IN PART and DENIED IN PART, as follows:

- a. Petitioner's request for "A complete transcript of the proceedings including a transcript of the grand jury proceedings" is GRANTED. Petitioner has already received a copy of said transcript.
- b. Petitioner's request for "A 'contact sheet' of all photos taken of Ms. Oliver after the alleged rape" is GRANTED IN LIMITED PART. The prosecuting attorney shall disclose to the extent he has possession of the requested discovery.
- c. Petitioner's request for "Color copies of all photos taken of Ms. Oliver after the alleged rape and not submitted as an exhibit in Petitioner's current case" is GRANTED IN LIMITED PART. The prosecuting attorney shall disclose to the extent he has possession of the requested discovery.
- d. Petitioner's request for "The name of the person with whom Ms. Oliver stayed at the Sands Motel on or about 12/04/91, after the alleged rape and prior to her arrest as a runaway, and any documentation of communication with that person" is DENIED.
- e. Petitioner's request for "Any notes, memoranda or other documents memorializing oral communications made during plea negotiations held by the Ada County Prosecutor's office" is DENIED.
- f. Petitioner's request for "All files created by or held by the Ada County Public Defender's office related to State v. Hall, Case No. M9108836, including documentation pertaining to plea negotiations" is WITHDRAWN without prejudice to renew the request upon further investigation.
- g. Petitioner's request for "All reports and notes, photographs, audio and video recordings, including, but not limited to:
 - i. Tape-recorded statement made to the Garden City Police Department (hereinafter "GCPD") by Erick Hall on or about 12/04/91.
 - ii. Tape-recorded statement made to GCPD by Norma Jean Oliver on or about 12/04/91"

is GRANTED IN LIMITED PART to the extent that the prosecuting attorney can obtain the requested discovery by inquiring of the Garden City Police Department.

- h. Regarding Petitioner's request for "Admission from the Ada County Prosecutor that state discovery page numbers 120-138 were disclosed

in discovery to defense counsel, as stated in the State's 'Informal Discovery Letter' dated 01/16/04, confirmation that the prosecutor's office hand-writes discovery page numbers on the lower right corner of each page turned over in discovery, and copies of said discovery pages with such discovery page numbers clearly visible," the Court WITHHOLDS RULING,

- i. Petitioner's request for "All reports, notes and other documents made by Dr. Lawrence Vickman, St. Alphonsus Regional Medical Center, regarding the examination and treatment of Ms. Norma Jean Oliver in or around December 1991" is GRANTED CONDITIONALLY. Petitioner shall determine whether St. Alphonsus and/or Dr. Vickman require a court order.
- j. Petitioner's request for "Results of DNA or other forensic testing conducted on vaginal and anal swabs and articles of clothing belonging to Ms. Oliver" is GRANTED IN LIMITED PART. The prosecuting attorney shall search the 1991 rape case file for results of testing conducted on the anal swabs and disclose existing results.
- k. Petitioner's request for "Information regarding Ms. Oliver's mental health, competency, or veracity, regardless of whether documentation exists, known by the prosecution in the underlying criminal case as well as Case No. M9108836" is DENIED.
- l. Petitioner's request for "All mental health, psychological and/or psychiatric records, including all reports, notes and other documents, held or created by Intermountain Hospital, Dr. Lamar Heyrend, counselor Margaret Farmer, and Bonnie Pitman for Ms. Oliver," is GRANTED CONDITIONALLY. Petitioner shall determine whether Intermountain Hospital, Dr. Lamar Heyrend, counselor Margaret Farmer, and/or Bonnie Pitman require a court order. The requested discovery materials shall be reviewed by the Court in camera to determine relevance to mental health conditions as they existed at the time of Petitioner's sentencing.
- m. With regard to Petitioner's request for "Social Security Income records, including all application materials, of Norma Jean Oliver," the Court WITHHOLDS RULING until Petitioner provides the Court with further information.

H. **Detective Daniel Hess.**

Petitioner's request for discovery regarding Detective Hess is WITHDRAWN without prejudice to renew the request upon further investigation.

I. **Jay Rosenthal.**

Petitioner's request for discovery regarding Mr. Rosenthal is WITHDRAWN without prejudice to renew the request upon further investigation.

J. **April Sebastian.** Petitioner made numerous discovery requests with respect to Ms. Sebastian, in particular as related to Ada County Case No. H0400228. Petitioner clarified that Ada County Case No. H0400335 was not relevant, and withdrew any requests insofar as they related to that case number. With respect to the remaining claims, the Court rules as follows:

1. Petitioner's request for "Prosecuting attorney documents" is DENIED.
2. Petitioner's request for "Any incentives to testify against Erick Hall explicitly or implicitly offered to, or requested by, this witness" is DENIED.
3. Petitioner's request for "Copy of the Presentence Investigation Report for Case No. H0400335/M0401584" is WITHDRAWN.
4. Petitioner's request for "Copy of the Presentence Investigation Report, including 'Addendum to Presentence Investigation Report' and any document purporting to make 'rider' recommendations in Case No. H0400228" is GRANTED IN LIMITED PART. The Court will obtain the PSI, conduct an in-camera review for relevant information, and release a redacted version of the PSI and any addenda to Petitioner's counsel. The Court FURTHER ORDERS that Petitioner's counsel may share information contained in the redacted PSI with Petitioner; however, counsel may not make copies for Petitioner without express permission from the Court.
5. Petitioner's request for "All statements and summaries of statements to law enforcement either made by or attributed to April Sebastian, regardless of medium, and all reports and notes made by law enforcement about Ms. Sebastian, from March 1, 2003 to present" is DENIED.
6. Petitioner's request for "A complete NCIC criminal record check, including juvenile criminal records" is DENIED.
7. Petitioner's request for "All reports and notes from Idaho Department of Corrections and Idaho Department of Probation and Parole" including, but not limited to, the documents specified in the Motion for discovery, is DENIED.

K. **Michelle Deen.**

1. Petitioner's request for "Prosecuting attorney documents" is DENIED.
2. Petitioner's request for "Documentation of initial contact between Michelle Deen and the prosecuting attorney's office" is DENIED.
3. Petitioner's request for "Any and all incentives to testify against Erick Hall explicitly or implicitly offered to, or requested by, this witness" is DENIED.
4. Petitioner's request for "All statements and summaries of statements to law enforcement either made by or attributed to Ms. Deen, regardless of medium, and all reports and notes made by law enforcement about Ms. Deen, from March 2003 to present" is DENIED.
5. Petitioner's request for "A complete NCIC criminal record check, including juvenile criminal records" is DENIED.
6. Petitioner's request for "All police reports, notes and recordings regarding theft, breaking and entering, burglary or similar crimes stemming from incidents reported by Erick Hall and/or Janet Hock against Michelle Deen and/or Tommy Workman and to which law enforcement responded in or around July 2001" is DENIED.
7. Petitioner's request for "Documents related to Ada County Case No. H0200584," including
 - a. "Copy of the Presentence Investigation Report, including any probation revocation report, reports or recommendations from the Jurisdictional Review Committee or any other addenda" is DENIED.
8. Petitioner's request for "Documents related to Ada County Case No. H0301398," as specified in the Motion for Discovery, is WITHDRAWN without prejudice to renew the request upon further investigation and upon submission to the court of further identifying information.
9. Petitioner's request for "All reports and notes from the Idaho Department of Corrections and Idaho Department of Probation and Parole" including, but not limited to the documents specified in the Motion for Discovery is DENIED.

L. **Evelyn Dunaway.**

1. Petitioner's request for "Prosecuting attorney documents" is DENIED without prejudice to renew the request upon providing further factual basis.
2. Petitioner's request for "Any incentives to testify against Erick Hall explicitly or implicitly offered to or requested by this witness" is DENIED.
3. Petitioner's request for "All statements and summaries of statements to law enforcement either made by or attributed to Ms. Dunaway, regardless of medium, and all reports and notes made by law enforcement about Ms. Dunaway, from March 2003 to present" is DENIED.
4. Petitioner's request for "A complete NCIC criminal record check, including juvenile criminal records" is WITHDRAWN without prejudice to renew the request upon further investigation.
5. Petitioner's request for "All police reports, notes, recordings and witness statements regarding a domestic dispute or incident between Evelyn Dunaway and Erick Hall to which law enforcement responded in or around March 2002" is DENIED without prejudice to renew the request upon further investigation.
6. Petitioner's request for "All reports and notes from Idaho Department of Corrections and Idaho Department of Probation and Parole" including, but not limited to, the documents specified in the Motion for Discovery, is WITHDRAWN without prejudice to renew the request upon further investigation.

M. **Rebecca McCusker.**

Petitioner's request for discovery related to Rebecca McCusker, as specified in the Motion for discovery, is WITHDRAWN without prejudice to renew the request upon further investigation.

N. **Dr. Glenn Groben and the Ada County Coroner's Office.**

1. Petitioner's request for "All bench notes from the Lynn Henneman autopsy, sexual assault kit and any other procedures performed or observed by Dr. Groben or any other Ada County Coroner personnel" is GRANTED, based on the prosecuting attorney's agreement to provide the requested discovery.

2. Petitioner's request for "Any peer review, formal or informal, whether internal or external to the Ada County Coroner's Office, as well as any documentation related thereto, of the autopsy performed on Ms. Henneman, or confirmation that no peer review was conducted" is GRANTED IN LIMITED PART, based on the prosecuting attorney's agreement to provide the requested discovery insofar as the information is contained in a report. Reports prepared by Mr. Erwin Sonenberg and Ms. Hoffman shall be included, if such reports exist.
3. Petitioner's request for "Any notes, reports, or dictations of findings made by Dr. Groben" in the locations specified in the Motion for Discovery, namely "At or near the body recovery scene," and "At or near the alleged crime scene near the Main St. Bridge" is GRANTED, based on the prosecuting attorney's agreement to provide the requested discovery.
4. Petitioner's request for "Ada County Coroner's Office procedures for body removal and preservation" is DENIED.
5. Petitioner's request for "Copies of the full body x-rays taken of Lynn Henneman, and full disclosure of where, when and by whom the x-rays were taken" is GRANTED, based on the prosecuting attorney's agreement to provide the requested discovery.
6. Petitioner's request for "Any toxicology test results from Idaho labs; and if none exist, then an explanation why testing was conducted by a Texas laboratory, and a complete copy of the Texas report" is GRANTED, based on the prosecuting attorney's agreement to provide the requested discovery.
7. Petitioner's request for "A list of all cases, regardless of jurisdiction, in which Dr. Groben conducted autopsies wherein broad ligature strangulation, drowning, or blunt force trauma was the cause, suspected cause, or explicitly excluded cause of death, including specific identification of those "other cases exactly like this" referenced by Dr. Groben in his trial testimony" is WITHDRAWN without prejudice to renew the request upon further investigation.
8. Petitioner's request for "A list of all cases in which Dr. Groben testified wherein broad ligature strangulation, drowning, or blunt force trauma was the cause, suspected cause, or explicitly excluded cause of death" is DENIED.
9. Petitioner's request for "Reports and notes from all autopsies referenced in preceding request no. 7" is WITHDRAWN without prejudice to renew the request upon further investigation.

10. Petitioner's request for "Any complaints filed against Dr. Groben and/or the Ada County Coroner with any agency or professional association regarding his/its professional performance, qualifications or veracity" is DENIED.
11. Petitioner's request for "Scanned, accessible, high-resolution files of all photos of Ms. Henneman's body, including reenactment photographs" is GRANTED, based on the prosecuting attorney's agreement to provide the requested discovery.
12. Petitioner's request for "Microscopic slides and reports, notes, or other documentation of "residual intact red blood cells" for the seven identified scalp injuries, and specific identification of the number of sections taken from each individual laceration and the results at each identified section" is GRANTED IN PART. The prosecuting attorney shall provide the requested reports, notes and other documentation. The Court FURTHER ORDERS that counsel for Petitioner and the prosecuting attorney shall confer further to establish a mutually agreeable chain of custody procedure for the microscopic slides.
13. Petitioner's request for "Sex crimes kit protocol" is GRANTED, based on the prosecuting attorney's agreement to inquire of the Ada County Coroner's Office and provide such procedures if they exist.
14. Petitioner's request for "Any notes, reports, or results of tests in the Henneman case regarding the following:
 - a. Reconstruction of ligatures
 - b. Depth of the scalp wounds
 - c. Fingernail clippings
 - d. Pubic hair combings
 - e. Head hair
 - f. Blood sample (tube)
 - g. The amount of force to break the humerus
 - h. Any subcutaneous examination of the left and right wrists and left and right ankles as well as any other possible ligature sites (Petitioner is in possession of Dr. Groben's report at page 3 which describes a subcutaneous examination of Ms. Henneman's right wrist and left arm only)"

is GRANTED IN LIMITED PART. The prosecuting attorney shall provide the requested discovery if said discovery is contained in notes which were not otherwise provided for in reports provided to trial counsel.

15. Petitioner's request for "List of videos that Dr. Groben watched that, according to his testimony, demonstrated the length of time it takes a choking victim to be rendered unconscious" is WITHDRAWN without prejudice to renew the request upon further investigation.
16. Petitioner's request for "Forensic pathology procedural manual currently in effect as well as in effect in October 2000 for the Ada County Coroner's Office" is DENIED.
17. Petitioner's request for "All materials presented, including PowerPoint slides, used for the presentation given by Dr. Groben on the Henneman homicide at the northwest pathologist meeting held in September or October 2004" is WITHDRAWN without prejudice to renew the request upon further investigation.
18. Petitioner's request for "All notes, reports and recordings made by or at the direction of the Coroner's Office or its agents regarding the death of Amanda Stroud" is WITHDRAWN without prejudice to renew the request upon further investigation.
19. Petitioner's request for "All notes, reports and recordings made by or at the direction of the Coroner's Office or its agents regarding the death of Kay Lynn Jackson" is DENIED.
20. Petitioner's request for "Documentation of all correspondence between Dr. Groben or Erwin Sonnenberg or their agents and other non-lay or expert witnesses or potential witnesses or their agents" is GRANTED IN LIMITED PART. Based on the prosecuting attorney's agreement, he shall provide notes as stated above with respect to request number I.N.14. The remainder of Petitioner's request is DENIED.
21. Petitioner's request for "Dr. Groben's curriculum vita" is GRANTED, based on the prosecuting attorney's agreement to provide the requested discovery.
22. Petitioner's request for "Dr. Groben's billing records or invoices for the instant case" is DENIED based upon the prosecuting attorney's assertion that no such billing records exist.
23. Petitioner's request for "Any applications by the Ada County Coroner's office for accreditation with the National Association of Medical Examiners ("NAME"), or any other accrediting association, and any responses thereto" is GRANTED IN LIMITED PART. Based on the prosecuting attorney's agreement, he shall inquire as to whether the Coroner's Office was or was not accredited by NAME during the

Henneman autopsy through the time of trial and sentencing and disclose that information. The remainder of Petitioner's request is DENIED.

O. **Dr. Michael Estess.**

1. Petitioner's request for "Prosecuting attorney documents" is DENIED.
2. Petitioner's request for "Dr. Estess's files" is DENIED.
3. Petitioner's request for "Any reports or summaries of oral communications made by Dr. Estess to the State in the instant case" is DENIED.
4. Petitioner's request for "Documentation of all correspondence between Dr. Estess or his agents and other non-lay or expert witnesses or potential witnesses or their agents" is DENIED.
5. Petitioner's request for "Dr. Estess' curriculum vita" is DENIED.
6. Petitioner's request for "Dr. Estess' billing records or invoices for the instant case" is DENIED.

P. **Dr. Robert Engle.**

1. Petitioner's request for "Prosecuting attorney documents" is DENIED.
2. Petitioner's request for "Dr. Engle's files" is DENIED.
3. Petitioner's request for "Any reports or summaries of oral communications made by Dr. Estess to the State in the instant case" is DENIED.
4. Petitioner's request for "Documentation of all correspondence between Dr. Engle or his agents and other non-lay or expert witnesses or potential witnesses or their agents" is DENIED.
5. Petitioner's request for "Dr. Engle's billing records or invoices for the instant case" is DENIED.

Q. **Other Non-Lay or Expert Witnesses.**

1. Petitioner's requests for "All correspondence between non-lay or expert witnesses or their agents," as specified in Petitioner's Motion for Discovery and during the hearing on that Motion is DENIED.

R. **Jean McCracken.**

1. Petitioner's request for "Prosecuting attorney documents," as narrowed at the hearing on the Motion for Discovery, is DENIED.

S. **Amanda Stroud.**

Petitioner's request for discovery regarding Amanda Stroud is WITHDRAWN without prejudice to renew the request upon further investigation.

T. **Kathy Stroud.**

Petitioner's request for discovery regarding Kathy Stroud is WITHDRAWN without prejudice to renew the request upon further investigation.

II. **Prosecuting Attorney's Office**

A. **Miscellaneous documentation.**

1. Petitioner's request for "Color copies of any illustrative exhibits utilized during the State's opening statement" is GRANTED, limited to the one (1) color portrait of Ms. Henneman shown during opening argument.
2. Petitioner's request for "A copy of the motion requesting an order impaneling the grand jury, and a copy of the order as required under ICR 6.1(b) and I.C. § 19-1307" is GRANTED.
3. Petitioner's request for "A copy of any committee minutes on the drafting of the death penalty jury instructions" is WITHDRAWN without prejudice to renew the request upon further investigation.
4. Petitioner's request for "Color copies of all PowerPoint slides and other documents shown to the jury, including, but not limited to the "scale" diagram roughly drawn and referenced in Mr. Hall's petition for post-conviction relief" is GRANTED.
5. With respect to Petitioner's request for "Access to the original video and/or audio tapes made during police custodial interrogation of Petitioner," as clarified at the hearing to include those recordings made on 3/13/03, 3/29/03, and 4/1/03, the Court ORDERS the prosecuting attorney to determine the location of said recordings. The parties shall determine the best method of enhancing said recordings, after which the Court shall enter an Order accordingly.
6. Petitioner's request for "Disclosure and access to any other audio and/or video recordings involving Petitioner while in police custody and not

previously disclosed during the underlying criminal proceedings” is DENIED, based on the prosecuting attorney’s assertion that no additional recordings exist.

7. Petitioner’s request for “All documented communications, or summaries of communications, by the prosecutor’s office with the media, including but not limited to press releases” is DENIED.

B. Discovery Materials.

1. With respect to Petitioner’s request for “Documentation denoted by asterisk (*) as identified in comments section of attached Appendix B,” the Court WITHHOLDS RULING pending an attempt of the parties to satisfy the request.
2. Petitioner’s request for “State’s 1st, 3rd, 6th, 8th, 10th, 12th and 15th Addenda to Discovery Responses, and confirmation that the State’s 16th Addenda to Discovery Response was the last discovery response sent to defense counsel” is GRANTED.

C. Electronic Mail.

1. Petitioner’s request for “Copies of all e-mails between the Ada County Prosecuting Attorney’s office and the Ada County Public Defender’s office regarding the Henneman case, the Hanlon case, or Erick Hall” is DENIED, said request having been previously denied.

III. Law Enforcement Agencies

A. Field notes and logbooks.

Petitioner’s request for “field notes and logbooks generated by any law enforcement officer” is GRANTED IN LIMITED PART. The prosecuting attorney shall check relevant police files for notes not contained in reports regarding the Henneman murder investigation.

B. Correspondence.

Petitioner’s request for “correspondence or summaries of correspondence between law enforcement and other state and federal agencies regarding the Henneman murder investigation,” is WITHDRAWN without prejudice to renew the request upon review of the discovery addenda provided under Section II.B.2, above.

C. **Specific reports.**

With respect to Petitioner's request for specific reports, the Court WITHHOLDS RULING pending review of the discovery addenda provided under Section II.B.2, above.

D. **FBI I-drives.**

Petitioner's request for "Copies of all reports, communications or files contained on any I-Drive of any FBI field office involved in the Henneman or Hanlon investigation, including, but not limited to the Salt Lake City and Boise field offices" is DENIED, based on the prosecuting attorney's assertion that no evidence was recovered by the FBI and there was no report from the FBI to local law enforcement agencies.

E. **Task force lead assignments.**

Petitioner's request for task force "lead assignments" is GRANTED IN LIMITED PART. Petitioner may, upon appointment, inspect the 3-ring binders containing the lead sheets with follow up reports and/or notes in the possession of Detective Dave Smith and located at the Clinton Street Detective's Annex of the Boise Police Department. Petitioner may examine the information contained in said binders and copy those pages Petitioner wishes to retain, at Petitioner's expense.

F. **Miscellaneous reports and other documentation.**

1. Petitioner's request for "Police reports regarding all unsolved rapes, attempted rapes, murders and attempted murders that took place in Ada County from January 1995 to date" is WITHDRAWN without prejudice to renew the request upon further investigation.
2. Petitioner's request for "Police reports regarding any and all attempted abductions taking place in or around the Greenbelt, from January 1995 to date, including, but not limited to the following unsolved homicides," as limited at the hearing and in subsection (a) of the Motion for Discovery to "law enforcement reports and notes regarding the murder of Kay Lynn Jackson" is DENIED.
3. Petitioner's request for "Police reports regarding any and all attempted robberies involving beating on or around the head and taking place in Ada County from January 1995 to date" is DENIED.
4. Petitioner's request for "Any and all FBI reports containing 'profiling' of the perpetrator in the Lynn Henneman and Cheryl Hanlon murders" is DENIED.

5. Petitioner's request for "Any and all reports or documentation regarding the special light sources used, and where, when and by whom used" is WITHDRAWN without prejudice to renew the request upon review of pending discovery, specifically, police reports.
6. Petitioner's request for "Police reports regarding Petitioner's escape history" is GRANTED, based on the agreement of the parties.
7. Petitioner's request for "Copy of all police reports and notes regarding Ada County Case No. M0303573, the Failing to Register as a Sex Offender case filed against Petitioner" is GRANTED, based on the agreement of the parties.
8. Petitioner's request for "The name of the officer(s) who searched the Main Street Bridge area" is WITHDRAWN without prejudice to renew the request upon review of pending discovery.
9. Petitioner's request for "All documented communications, or summaries of communications, by law enforcement with the media, including but not limited to press releases" is WITHDRAWN without prejudice to renew the request upon review of pending discovery.
10. Petitioner's request for "Any reports identifying transients' involvement in small fires reported at East Jr. High" is WITHDRAWN without prejudice to renew the request upon review of pending discovery.
11. Petitioner's request for "Documentation regarding the search for bloodstains located at or near the Chart House parking lot and near the Main Street Bridge" is WITHDRAWN without prejudice to renew the request upon review of pending discovery.
12. Petitioner's request for "Records for Lynn Henneman's cellular telephone use from October 1, 2000 until service was terminated" is GRANTED. The prosecuting attorney shall conduct another review of his files for such documents and disclose such documents found.
13. Petitioner's request for "Any results from informal or formal testing conducted for time and distance to walk relevant areas of the Greenbelt, whether such testing was conducted by law enforcement personnel or others" is WITHDRAWN without prejudice to renew the request upon review of pending discovery.
14. Petitioner's request for "Any and all reports, notes and statements related to searches conducted along the Boise River between the DoubleTree Motel and the Capital Street Bridge, including searches of the Main Street

bridge area on October 9, 2000” is WITHDRAWN without prejudice to renew the request upon review of pending discovery.

15. Petitioner’s request for “Any and all reports, notes and statements related to searches conducted by the FBI Salt Lake City-based ‘Evidence Recovery Team’ along the Boise River near the Main St. bridge area on or about 10/10/00, including documents relating to use of alternative light sources” is DENIED for those reasons given with respect to request III.D, above.

F. **Documentation regarding DNA evidence.**

1. Petitioner’s request for “Legible, readable, and unredacted miscellaneous documentation and other requested information identified in Appendix A and attached thereto” is DENIED, based on the prosecuting attorney’s assertion that he provided his color copies to trial counsel and retained only a black and white copy.
2. Petitioner’s request for “All documentation relating to entry of Petitioner’s DNA profile into the Idaho CODIS database, or any local or state database” is GRANTED IN LIMITED PART. The prosecuting attorney shall determine whether Petitioner’s DNA was submitted to or entered into the Idaho CODIS or state-wide database in the 1990s, as maintained by the Idaho State Police.
3. Petitioner’s request for “All documentation relating to entry of Petitioner’s DNA profile into the national NDIS database, or any national database” is DENIED without prejudice to renew the request based upon the results of request III.F.2, above.
4. Petitioner’s request for “Copies of any reports and summaries of communications or conversations between Cellmark, Idaho State Police Forensics Laboratory, police agencies and/or the Ada County prosecutor’s office regarding the existence and/or DNA profile for another perpetrator in the Henneman and/or Hanlon homicide cases,” as limited at the hearing to the Henneman case, is DENIED.
5. Petitioner’s request for “Results of all comparisons made of Erick Virgil Hall’s DNA profile against any local, state, or national DNA database, including the Idaho CODIS and national NDIS databases” is DENIED without prejudice to renew the request based upon the results of request III.F.2, above.
6. Petitioner’s request for “All DNA profile information developed or other forensic testing conducted in connection with the murder of Kay Lynn

Jackson and information related to DNA or other forensic exclusions in that case” is DENIED.

7. Petitioner’s request for “All DNA profile information developed or other forensic testing conducted in connection with the death of Amanda Stroud and information related to DNA or other forensic exclusions in that case” is WITHDRAWN without prejudice to renew the request based upon further investigation.

G. **All Documentation and Information Regarding Reward Money Offered For Assistance In The Henneman and Hanlon Homicide Investigations Including Claims Made On Such Reward.**

Petitioner’s request for documentation and information is GRANTED IN LIMITED PART, based upon the prosecuting attorney’s assertion that only one claim was made on the reward money, that the claim was made by the Boise Police Department on behalf of another person, and that a private company administering the reward money did not pay out any reward money. The prosecuting attorney shall provide the name of the person who made claim on the reward money or the name of the person upon whose behalf the claim was made by the Boise Police Department, and disclose the basis upon which the claim was made.

H. **Documentation Regarding Sex Offender Registration.**

1. Petitioner’s request for “Documentation from the Idaho sex offender registry involving registration, or attempts at registration, by Erick Hall” is GRANTED IN LIMITED PART. The prosecuting attorney agreed to and shall provide the relevant police reports. The remainder of Petitioner’s request is DENIED.

V. **Miscellaneous Documents and Reports.**

A. **Miscellaneous**

1. Petitioner’s request for “Legible copy of all receipts from the Table Rock Brewhouse associated with food and alcohol ordered and purchased by Lynn Henneman on 09/24/00” is DENIED. Petitioner has access to the receipts admitted as trial exhibits.
2. Petitioner’s request for “Transcripts of all grand jury proceedings held in connection with State v. Erick Virgil Hall, Ada County No. H0300614 (Hanlon)” is WITHDRAWN without prejudice to renew the request based upon further investigation.

3. Petitioner's request for "Register of Actions for State v. Erick Virgil Hall, Ada County Case Nos. H0300614/M0302868 (Hanlon)" is WITHDRAWN without prejudice to renew the request based upon further investigation.
4. Petitioner's request for "Copies of all exhibits presented to Grand Jury No. 03-35 (Lynn Henneman)" is GRANTED, to the extent that the prosecuting attorney possesses said exhibits.
5. Petitioner's request for "Copies of any and all written questions by jury to the court, any bailiff, or other court personnel" is GRANTED. Madame Clerk shall examine the Court's file and make copies of all notes from jurors.

VI. IMSI, Ada County Jail, Garden City Jail and Other Prison and Jail Records

A. Inmate Classification Manuals.

Petitioner's request for Idaho Department of Correction's inmate classification manuals is DENIED. However, Petitioner may seek a Court order if IDOC will not cooperate with Petitioner's investigation.

B. Safety Practices Manual.

Petitioner's request for "manuals, informal or formal policies, memoranda or guidelines regarding safety practices for female correctional officers or other female employees or volunteers and inmates classified as or believed to be sexually violent toward women" is DENIED. However, Petitioner may seek a Court order if IDOC has the requested information but will not cooperate with Petitioner's investigation.

VII. Depositions and Related Documentation Requiring Subpoenas

A. All members of the defense team and their agents.

Trial counsel Amil Myshin and D.C. Carr have been deposed. Petitioner's request for the depositions of Glen Elam, Roseanne Dapsauski, and Rolf Kehne are DENIED.

1. Petitioner's request for subpoena duces tecums for "Documentation identifying the cases each trial team member worked on from April 1, 2003 through January 18, 2005" was previously and is DENIED.

2. Petitioner's request for "All e-mail correspondence between trial team members and the prosecutor's office" was previously and is DENIED.

B. Dr. Michael Estess

Petitioner's request to depose Dr. Michael Estess is WITHDRAWN without prejudice to renew the request upon further investigation.

VIII. Documents Requiring Subpoenas

A. Miscellaneous

1. Petitioner's request for "All files created by or held by the Ada County Public Defender's office related to State v. Erick Virgil Hall, Case No. M0302158/H0300423 (failure to register)" is WITHDRAWN without prejudice to renew the request upon further investigation.
2. Petitioner's request for "An identification of the names of all cases that each trial counsel handled while representing Petitioner including the case names and dates that any of the cases went to trial, including an identification of cases involving serious felony offenses of arson, homicide (all degrees), rape, sodomy, kidnapping, burglary and robbery" was previously and is DENIED.
3. Petitioner's request for "All Washington DSHS Division of Child Support records pertaining to Frank McCracken and Jean McCracken/Hall in Case No. 70253" is GRANTED. Petitioner shall submit an order to the Court which specifies that the need for records outweighs the need for privacy.

IX. Preservation of Physical Evidence.

Petitioner's requests that "all physical evidence collected in the underlying criminal investigation be preserved in order to avoid the destruction of potentially exculpatory materials" is GRANTED IN LIMITED PART, to the extent that the prosecuting attorney has control over physical evidence, and based upon the prosecuting attorney's assertion that law enforcement agencies and other public agencies would not destroy physical evidence in a murder case.

X. Access to Hanlon Court Documents.

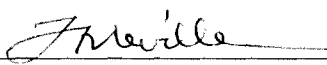
Petitioner's request for access to the "Hanlon court file/record" is WITHDRAWN without prejudice to renew the request upon further investigation.

PETITIONER'S "APPENDIX A": The parties agree to further confer regarding documents contained in Petitioner's Appendix A to the Motion for Discovery to determine whether agreement can be reached.

PETITIONER'S "APPENDIX B": The parties agree to further confer regarding documents contained in Petitioner's Appendix B to the Motion for Discovery to determine whether agreement can be reached.

IT IS SO ORDERED.

Dated this 16th day of February, 2007.



Thomas F. Neville
District Judge

CERTIFICATE OF SERVICE

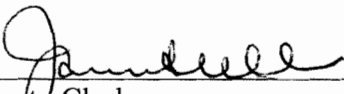
I HEREBY CERTIFY that on this 16 day of February, 2007, I served a true and correct copy of the foregoing ORDER REGARDING DISCOVERY by method indicated below to:

MARK ACKLEY
STATE APPELLATE PUBLIC DEFENDER
3647 LAKE HARBOR LANE
BOISE ID 83703

☐ U.S. Mail
☐ Statehouse Mail
☒ Facsimile
☐ Hand Delivery

ROGER BOURNE
ADA COUNTY PROSECUTOR'S OFFICE
200 W FRONT STEET 3RD FLOOR
BOISE ID 83702

☐ U.S. Mail
☐ Statehouse Mail
☒ Facsimile
☐ Hand Delivery



Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

NO. _____ FILED P.M. 4:50
A.M.

FEB 16 2007

ERICK VIRGIL HALL,
Petitioner,

v.

THE STATE OF IDAHO,
Respondent.

Case No. SPOT0500155

J. DAVID NAVARRO, Clerk
By *[Signature]* DEPUTY

**ORDER TO TRANSPORT
PETITIONER NO LATER THAN
FEBRUARY 26, 2007 FOR
RADIOLOGICAL AND
SEROLOGICAL TESTING**

(Capital Case)

The matter having come before the Court on Petitioner's Renewed Motion for Medical Testing and good cause appearing therefore:

IT IS HEREBY ORDERED THAT the Idaho Department of Corrections ("IDOC"), transport Petitioner, Erick Virgil Hall, no later than February 26, 2007, to Intermountain Medical Imaging, 2929 E. Magic View Drive, Meridian, Idaho, 83642, telephone 367-8222, for the purpose of completing the following radiological and serological tests, as noted in the attached requisitions for radiological and blood testing signed by Dr. James Merikangas:

- (a) (functional) MRI scans of the brain, with and without contrast;
- (b) X-Ray of the cervical spine;
- (c) VDRL/RPR blood testing;
- (d) T3, T4, T7, and TSH blood testing;
- (e) 5 hour glucose tolerance testing; and
- (f) blood test for syphilis.

IT IS FURTHER ORDERED THAT at the conclusion of the appointment, the Petitioner shall be returned to the custody of the IDOC;

ORDER TO TRANSPORT PETITIONER NO LATER THAN
FEBRUARY 26, 2007 FOR RADIOLOGICAL AND
SEROLOGICAL TESTING

IT IS FURTHER ORDERED THAT Intermountain Medical Imaging forward the results of the testing only to Dr. James Merikangas at 4938 Hampden Lane, #428, Bethesda, Maryland 20814, to be kept by him in accordance with the privileges attendant to doctor/patient and attorney/client unless otherwise requested by Petitioner, through his attorneys of record, and as otherwise agreed by his attorneys during the hearing held February 16, 2007.

IT IS FURTHER ORDERED THAT the Clerk of the Court serve a copy hereof upon the IDOC, and Intermountain Medical Imaging, forthwith and certify to the same.

Dated this 16th day of February, 2007.



HONORABLE THOMAS F. NEVILLE
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17 day of February, 2007, I served a true and correct copy of the foregoing ORDER TO TRANSPORT PETITIONER NO LATER THAN FEBRUARY 26, 2007 FOR RADIOLOGICAL AND SEROLOGICAL TESTING by method indicated below to:

MARK ACKLEY
STATE APPELLATE PUBLIC DEFENDER
3647 LAKE HARBOR LANE
BOISE, ID 83703

☐ U.S. Mail
☐ Statehouse Mail
☒ Facsimile
☐ Hand Delivery

ROGER BOURNE
ADA COUNTY PROSECUTOR'S OFFICE
200 W. FRONT, SUITE 3191
BOISE, ID 83702

☐ U.S. Mail
☐ Statehouse Mail
☒ Facsimile
☐ Hand Delivery

INTERMOUNTAIN MEDICAL IMAGING
2929 E. MAGIC VIEW DRIVE
MERIDIAN, ID 83642

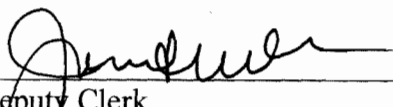
☐ U.S. Mail
☐ Statehouse Mail
☐ Facsimile
☐ Hand Delivery

DENNIS DEAN
IDAHO DEPARTMENT OF CORRECTION
P.O. BOX 83720
BOISE, ID 83720-0018
FAX NO.: 327-7480

☐ U.S. Mail
☐ Statehouse Mail
☒ Facsimile
☐ Hand Delivery

WARDEN JOHN HARDISON
IDAHO MAXIMUM SECURITY INSTITUTION
P.O. BOX 51
BOISE, ID 83707
FAX NO.: 334-4896

☐ U.S. Mail
☐ Statehouse Mail
☒ Facsimile
☐ Hand Delivery


Deputy Clerk

Janet Ellis

From: Mark Ackley [mackley@sapd.state.id.us]
Sent: Friday, February 16, 2007 4:00 PM
To: Janet Ellis; Roger Bourne
Cc: Paula Swensen
Subject: 53723
Attachments: 53726.PDF; 53723.doc

Janet & Roger,

Attached is the proposed order for medical testing, as well as the requisitions by Dr. Merikangas referenced in the proposed order as an attachment. My records reflect that these requisitions were previously filed as Attachment A to our original motion for testing.

I tried to mirror the Hanlon order re: PET scans, but deviated as follows:

- I thought attaching Dr. Merikangas's requisitions to the order would be helpful based on my telephone calls this afternoon with both Intermountain Medical Imaging who will conduct the radiological tests (MRI and X-rays) and draw blood to be sent to their lab of choice for blood testing (IDX Pathology). After discussing the tests (and the costs) with the folks over there, it seemed that the requisition form attached is a standard form they are most comfortable with and will facilitate the testing. If the Court decides to revise the order and remove the attachment, we have no objection.
- In the second "IT IS FURTHER ORDERED," we included language that the tests should be sent directly to Dr. Merikangas. This was pursuant to prior conversations with Dr. Merikangas for the purpose of expediting his review. Also in that paragraph, it says in part that Dr. Merikangas shall hold the tests unless requested by his attorneys as agreed at the hearing held today; this is a reference to our agreement to share these tests with the Hanlon defense team. Again, if the Court decides to revise the order for greater clarification, then we have no objection.
- Finally, we drafted a courtesy certificate of service, which includes service to Dennis Dean and the Warden; inclusion of them by name was at the request of IMSI based on a call to them this afternoon.

Mark

00891

James R. Merikangas, M.D.
4938 Hampden Lane #428
Bethesda, Maryland 20814
(301) 654-1934 telephone
(301) 654-9834 fax
Neuropsych2001@yahoo.com

REQUISITION FOR RADIOLOGICAL CONSULTATION

Last Name Hall First Name Erick Middle Initial V

Address IMSI P.O. Box 51 City Boise

State ID Zip 83707 Home phone — Work phone —

Date of birth [REDACTED] Social Security # [REDACTED]

Primary Insurance —

Address — City —

State — Zip — Phone —

Policy Holder Name — Date of birth —

Employer N/A Social Security # —

Policy # — Group # — Group Name —

EXAMINATION REQUESTED:

☒ MRI scan of Brain w/o contrast
Body part — Xray of — Body part —
☐ CAT scan of — Bone spect of — Body part —
☐ Spect scan of — Other study of — Body part —
Body part —

DIAGNOSIS: 780.01
784.0
907.0

OTHER CLINICAL INFORMATION: 6' tall weight: 225

Note: Please give copy of films or CD images to patient address at top

James R. Merikangas, M.D.

4-11-06
Date

James R. Merikangas, M.D.
 4938 Hampden Lane #428
 Bethesda, Maryland 20814
 (301) 654-1934 telephone
 (301) 654-9834 fax
 Neuropsych20017@hotmail.com

REQUISITION FOR RADIOLOGICAL CONSULTATION

Last Name Hall First Name ERICK Middle Initial ✓
 Address IMSI P.O. Box 51 City Boise
 State ID Zip 83707 Home phone — Work phone —
 Date of birth [REDACTED] Social Security # [REDACTED]
 Primary Insurance —
 Address — City —
 State — Zip — Phone —
 Policy Holder Name — Date of birth —
 Employer N/A Social Security # —
 Policy # — Group # — Group Name —

EXAMINATION REQUESTED:

<u>—</u> MRI scan of <u>—</u>	Xray of <u>—</u>
<u>—</u> CAT scan of <u>—</u>	Bone spect of <u>—</u>
<u>—</u> Spect scan of <u>—</u>	Other study of <u>Brain</u>
<u>—</u> Body part <u>—</u>	<u>PEP Scan</u>
<u>—</u> Body part <u>—</u>	<u>Other study of</u>
<u>—</u> Body part <u>—</u>	<u>Body part</u>

DIAGNOSIS: 780.01
784.0
907.0

OTHER CLINICAL INFORMATION: 6' tall weight 225

Note: Please give copy of films or CD images to patient address at top

James R. Merikangas, M.D.

4-11-06

Date

James R. Merikangas, M.D.
 4938 Hampden Lane #428
 Bethesda, Maryland 20814
 Office: (301) 654-1934
 Fax: (301) 654-1834
 Neuropsych2001@aol.com

Please send results to:

REQUISITION FOR BLOOD TESTING:

Patient name: Eric Virgil Hall D.O.B. [REDACTED]

Neuroprofile:

CBC with differential	Glucose
Platelet count	BUN
Sedimentation rate	Creatinine
Antinuclear antibody (ANA)	Sodium
Rheumatoid factor	Potassium
<u>VDRL/RPR</u>	Chloride
<u>T3, T4, T7, TSH</u>	CO2
Serum iron and TIBC	Calcium
Serum folate	Phosphorus
Serum vitamin B12	Uric acid
Alkaline phosphates	Total protein
LDH	Albumin
ASAT (SGOT)	Globulin
ALAT (SGPT)	A/G ratio
GGT	Ceruloplasmin
CPK	Cholesterol
Bilirubin	Triglycerides

<input checked="" type="checkbox"/> Urinalysis	<input type="checkbox"/> Toxoplasmosis titer
<input checked="" type="checkbox"/> Five hour glucose tolerance test	<input type="checkbox"/> Lead level
<input type="checkbox"/> Lyme titer	<input type="checkbox"/>
<input type="checkbox"/> Toxoplasmosis titer	<input type="checkbox"/>
<input type="checkbox"/> HIV*	<input type="checkbox"/>

*Special signature form required

DIAGNOSIS: 780.01
784.0
907.0

OTHER CLINICAL INFORMATION: 6' tall weight: 225

James R. Merikangas, M.D.

7-11-06
 Date

Session: NEville021607
Session Date: 2007/02/16
Judge: Neville, Thomas F.
Reporter: Wolf, Sue

Division: DC
Session Time: 07:47

Courtroom: CR503

Clerk(s):
Ellis, Janet

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case Number: SPOT0500155D
Plaintiff: HALL, ERICK VIRGIL
Plaintiff Attorney: ACKLEY, MARK
Defendant: STATE OF IDAHO
Additional audio and annotations can be found in case: 0003.
Co-Defendant(s):
Pers. Attorney:
State Attorney: BOURNE, ROGER
Public Defender:

2007/02/16

09:28:51 - Operator
Recording:

09:28:51 - New case
, STATE OF IDAHO

09:29:40 - State Attorney: BOURNE, ROGER
Mr. Bourne stated have with him today, Jan Bennetts and Doug
Varie, who are

09:30:07 - State Attorney: BOURNE, ROGER
here to listen regarding Medical testing

09:30:22 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley stated have Paula Swenson here on behalf of petit
ioner

09:30:44 - Judge: Neville, Thomas F.
Court stated this matter set over to today, to view proposed

order on the
09:30:59 - Judge: Neville, Thomas F.
last hearings. Court has Motion to Clarify Discovery order
filed by the
09:31:36 - Judge: Neville, Thomas F.
State on Feb. 9th, received this morning Petitioner's Respo
nse to State's
09:31:57 - Judge: Neville, Thomas F.
Motion to Clarify. Going to issue of Norma Jean Oliver, com
plete NCIC check
09:32:42 - Judge: Neville, Thomas F.
and criminal juvenile records. Court's notes reflect State
vol. to make
09:33:21 - Judge: Neville, Thomas F.
phone calls to Ada Co. and Payette Co. Juvenile to find out
what records were
09:33:36 - Judge: Neville, Thomas F.
available as to the Runaway charge.
09:34:41 - Judge: Neville, Thomas F.
Court had concerns re: Payette Co. would have records
09:35:20 - State Attorney: BOURNE, ROGER
Mr. Bourne concurred, no charges filed in Ada Co. on Norma J
ean Oliver,
09:35:57 - State Attorney: BOURNE, ROGER
police report confirms parents were called to pick her up.
Did not check
09:36:16 - State Attorney: BOURNE, ROGER
juvenile authorities here, because did not have file in Ada
Co. prosecutors
09:36:41 - State Attorney: BOURNE, ROGER
office. Have not gotten a hold of the person who would have
been there in
09:37:06 - State Attorney: BOURNE, ROGER
Payette Co. at that time. Prosecutor there now did not have
files. Made
09:37:50 - State Attorney: BOURNE, ROGER
calls but have reached right person to talk to. Spoke with
Ms. Swenson which
09:39:30 - State Attorney: BOURNE, ROGER
prompted Motion to Clarify. Understand Brady Obligations.
Ordered reports
09:40:32 - State Attorney: BOURNE, ROGER
from Police Department when Norma Jean picked up. Don't bel
ieve that agreed
09:41:06 - State Attorney: BOURNE, ROGER
to interview police officers involved and don't believe Cour
t ordered him to
09:41:28 - State Attorney: BOURNE, ROGER

do so. Request Court clarify

09:41:38 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley stated IG-6 was at issue not IG-5, notes and understanding State

09:43:34 - Plaintiff Attorney: ACKLEY, MARK
focusing on IG-6, limited proposed order based on Ms. Swenson's conversation

09:44:42 - Plaintiff Attorney: ACKLEY, MARK
with Mr. Bourne, re: Ada, Payette Co.'s , sherriffs, police dept and GCPD.

09:45:39 - Plaintiff Attorney: ACKLEY, MARK
Runaway from Fruitland, should be filed in Payette Co. Believe this all

09:48:47 - Plaintiff Attorney: ACKLEY, MARK
falls under Brady

09:49:49 - Judge: Neville, Thomas F.
Court reviews language in revised proposed order

09:50:31 - State Attorney: BOURNE, ROGER
Remembers agreeing to contact Ada & Payette Co.

09:55:28 - Judge: Neville, Thomas F.
The language of proposed order on page 5 could be improved. paragraph 5

09:55:49 - Judge: Neville, Thomas F.
should say denied in large part, Court was prepared to deny , State agreed to

09:56:38 - Judge: Neville, Thomas F.
make phone calls and check into Ada & Payette County. RE: IG-6, Court

09:57:19 - Judge: Neville, Thomas F.
intended to grant in so far as the State agreed to check into police reports

09:57:34 - Judge: Neville, Thomas F.
or recordings still exist. Did not intend on State to do new investigation.

09:57:57 - Judge: Neville, Thomas F.
Court goes to page 8 of proposed order J-4, have read State's Motion,

10:00:02 - Judge: Neville, Thomas F.
Court's recollection was that this was Judge Wilper's case and he would have

10:00:15 - Judge: Neville, Thomas F.
to make that decision, with no copies to be made, only shown to petitioner

10:00:45 - State Attorney: BOURNE, ROGER
Mr. Bourne stated if Judge Wilper agrees to release. Concern there are

10:01:40 - State Attorney: BOURNE, ROGER
privacy issues. April Sebastian has new pending charges and

it has been

- 10:02:16 - State Attorney: BOURNE, ROGER
conflicted out of office. There were no incentives given, do not care about
- 10:02:53 - State Attorney: BOURNE, ROGER
criminal record, and are relevant. There could be other private personal
- 10:03:34 - State Attorney: BOURNE, ROGER
things that are not relevant to petitioner. Should be reviewed in camera and
- 10:03:48 - State Attorney: BOURNE, ROGER
redacted.
- 10:04:07 - Plaintiff Attorney: ACKLEY, MARK
To large extent agree with State. If Judge Wilper orders PSI to be released
- 10:05:52 - Plaintiff Attorney: ACKLEY, MARK
could sit down with State and review, could agree to what might be used. Can
- 10:06:51 - Plaintiff Attorney: ACKLEY, MARK
redact information that is not helpful. Request Court deny in camera but
- 10:07:19 - Plaintiff Attorney: ACKLEY, MARK
grant for limited use with provisions.
- 10:07:42 - State Attorney: BOURNE, ROGER
Will leave in Court's discretion.
- 10:08:24 - Judge: Neville, Thomas F.
Court was satisfied after at least three days of hearings with its rulings.
- 10:08:57 - Judge: Neville, Thomas F.
Court is willing to get report and do an in camera review, Court would enter
- 10:09:31 - Judge: Neville, Thomas F.
an order that would turn over to this court for in camera view and redact
- 10:09:53 - Judge: Neville, Thomas F.
what is not important with same provisions that it is not to be copied and
- 10:10:12 - Judge: Neville, Thomas F.
shared.
- 10:10:37 - Judge: Neville, Thomas F.
Court states in proposed order on page 10, paragraphs on Evelyn Dunaway,
- 10:11:41 - Judge: Neville, Thomas F.
IL-1-ILK. Shows 5 was withdrawn, but Court thought it was ruled on. Court
- 10:12:42 - Judge: Neville, Thomas F.
will request proposed revised order
- 10:13:35 - Judge: Neville, Thomas F.

Court has Renewed Motion to Conduct Medical testing.

10:14:27 - Judge: Neville, Thomas F.

Court will take short recess

10:14:43 - Operator

Stop recording: (On Recess)

Case ID: 0003

Case Number: SPOT0500155D

Plaintiff: HALL, ERICK VIRGIL

Plaintiff Attorney: ACKLEY, MARK

Defendant: STATE OF IDAHO

Previous audio and annotations can be found in case: 0001.

Co-Defendant(s):

Pers. Attorney: Chastain, Rob

State Attorney: BOURNE, ROGER

Public Defender:

10:56:58 - Operator

Recording:

10:56:58 - Recall

, STATE OF IDAHO

10:57:07 - Judge: Neville, Thomas F.

The Court cont'd to petitioner's Renewed Motion to conduct testing.

10:58:30 - State Attorney: BOURNE, ROGER

Mr. Bourne requested that Mr. Chastain be here since he is counsel in the

11:00:11 - State Attorney: BOURNE, ROGER

Hanlon case.

11:00:25 - State Attorney: BOURNE, ROGER

Understood P.E.T. scan done yesterday. Do not know if the results would be

11:00:55 - State Attorney: BOURNE, ROGER

given to SAPD or to just Mr. Chastain, so thought it useful to have everyone

11:01:17 - State Attorney: BOURNE, ROGER

here.

11:01:43 - Pers. Attorney: Chastain, Rob

Stated test was completed yesterday. Results will not be read till next

11:02:13 - Pers. Attorney: Chastain, Rob

week. Would be happy to share results with S.A.P.D. to save costs.

11:03:39 - State Attorney: BOURNE, ROGER

No objection to sharing results

11:03:48 - Plaintiff Attorney: ACKLEY, MARK

Mr. Ackley argued renewed Motion. Dr. Merikangas's C.V. attached to earlier

11:05:09 - Plaintiff Attorney: ACKLEY, MARK

affidavit. Argues impeccable credentials. Dr. Stewart board certified

11:07:39 - Plaintiff Attorney: ACKLEY, MARK

psychiatrist. Other requested testing, M.R.I, X-ray of cervical spine,

11:10:02 - Plaintiff Attorney: ACKLEY, MARK

glucose testing, syphilis testing, various other blood testing. Add'l

11:11:42 - Plaintiff Attorney: ACKLEY, MARK

testing is warranted.

11:12:15 - State Attorney: BOURNE, ROGER

Mr. Bourne stated since P.E.T scan already ordered and will be shared, Will

11:13:01 - State Attorney: BOURNE, ROGER

not object to further testing, but by saying this, have same security

11:13:30 - State Attorney: BOURNE, ROGER

concerns. Request Court place no restrictions on IDOC, since defendant

11:14:50 - State Attorney: BOURNE, ROGER

escape risk.

11:15:19 - Pers. Attorney: Chastain, Rob

Mr. Chastain responded re: IDOC has their own safety team in place.

11:15:48 - State Attorney: BOURNE, ROGER

Response. Request that if that testing done, will request that SAPD also

11:16:34 - State Attorney: BOURNE, ROGER

share with Mr. Chastain results. Trial less than two months away

11:17:34 - Judge: Neville, Thomas F.

Court inquired about budget problem

11:17:48 - Plaintiff Attorney: ACKLEY, MARK

Mr. Ackley stated these costs are covered within the SAPD. Would agree to

11:18:22 - Plaintiff Attorney: ACKLEY, MARK

share results with Mr. Hanlon. Request if choose not to use, would not be

11:19:12 - Plaintiff Attorney: ACKLEY, MARK

discoverable to the State.

11:19:35 - State Attorney: BOURNE, ROGER

Mr. Bourne no objection to Dr. Merikangas look at results. Other question is

11:20:17 - State Attorney: BOURNE, ROGER
whether or not State would exploit a privilege question of a
n act of sharing

11:20:31 - State Attorney: BOURNE, ROGER
information back and forth between Mr. Chastain and SAPD.

11:21:05 - State Attorney: BOURNE, ROGER
Do not take a position on who SAPD might show results too

11:21:40 - Judge: Neville, Thomas F.
The Court grants renewed motion to allow full range of testi
ng sought.

11:21:55 - Judge: Neville, Thomas F.
Request this be accomplished as soon as possible that if Mr.
Chastain chooses

11:22:08 - Judge: Neville, Thomas F.
to use, he would have time to advise the State on whether he
will use. Time

11:22:39 - Judge: Neville, Thomas F.
is important.

11:23:24 - Judge: Neville, Thomas F.
Court would request an order that is brief but would state t
o happen no later

11:23:48 - Judge: Neville, Thomas F.
than a certain day.

11:24:11 - Plaintiff Attorney: ACKLEY, MARK
States Intermountain can do all the tests. IMSI may be able
to do some of

11:24:41 - Plaintiff Attorney: ACKLEY, MARK
blood tests

11:24:50 - Judge: Neville, Thomas F.
May make sense that IMSI should not do those tests. Court w
ould request that

11:26:14 - Judge: Neville, Thomas F.
tests be accomplished by no later than Feb. 28th.

11:26:34 - Other: Bennetts, Jan
Stated State will do the best they can as soon as the State
is made aware

11:26:50 - Judge: Neville, Thomas F.
Court will set Feb. 26th.

11:27:00 - Judge: Neville, Thomas F.
Court will request proposed orders from Ms. Swenson.

11:27:33 - State Attorney: BOURNE, ROGER
Mr. Bourne stated one of police reports from Norma Jean Oliv
er makes name of

11:27:51 - State Attorney: BOURNE, ROGER
another juvenile, and should strike that particular juvenile
that not

11:28:24 - State Attorney: BOURNE, ROGER
pertains to this case

11:28:31 - Plaintiff Attorney: ACKLEY, MARK
States would be interested in that name.
11:29:00 - Judge: Neville, Thomas F.
Court will allow that name to be included
11:29:21 - Operator
Stop recording:

ORIGINAL

MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

NO. _____
A.M. _____ FILED P.M. 4:20

FEB 20 2007

MARK J. ACKLEY, I.S.B. # 6330
PAULA M. SWENSEN, I.S.B. # 6722
Deputy State Appellate Public Defenders
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

J. DAVID NAVARRO Clerk
By [Signature] DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERICK VIRGIL HALL,	)	CASE NO. SPOT0500155
)	
Petitioner,)	
)	
v.	)	NOTICE OF FILING OF
	)	CURRICULUM VITAE FOR
STATE OF IDAHO,	)	JAMES R. MERIKANGAS, M.D.
)	
Respondent.	)	(CAPITAL CASE)

COMES NOW the Petitioner, ERICK VIRGIL HALL, by and through his attorneys at the Office of the State Appellate Public Defender and files the following document: Curriculum Vitae for James R. Merikangas, M.D.

Dated this 16th day of February, 2007.

[Signature]
MARK J. ACKLEY
Deputy State Appellate Public Defender

March 20, 2006

Curriculum Vitae

James R. Merikangas, M.D.

Address: J.R. Merikangas, M.D., L.L.C.
4938 Hampden Lane, # 428
Bethesda, MD. 20814

Phone: 301-654-1934
Fax: 301-654-1834
Email: neuropsych2001@hotmail.com

Citizenship: USA

Education: B.S., Physics, Villanova University, 1960
M.D., Johns Hopkins University, School of Medicine, 1969

Licenses:

1969	Diplomate, National Board of Medical Examiners	#107478
1974-1976	California M.D. License	#23318
1969-2002	Connecticut M.D. License	#14074
1974-1981	Pennsylvania M.D. License	#014082
2001- 2005	Washington, D.C. M.D. License	#MD-33036
2001-	Maryland M.D. License	#D57622

Military:
1960-1963 United States Navy, LT(J.G.)

Career:

2006- Guest Researcher, National Institutes of Health, Bethesda, MD

2002- Clinical Professor of Psychiatry and Behavioral Sciences,
George Washington University School of Medicine and Health
Sciences, Washington, D.C.

2002-2003 Clinical Associate Professor of Psychiatry
Georgetown University School of Medicine, Washington, D.C.
Georgetown University Hospital, Washington, D.C.

- 2002-2003 Director, Neuropsychiatry Program, Department of Psychiatry, Georgetown University School of Medicine, Washington, D.C.
- 1980-2002 Practice of Neuropsychiatry, Neurology and Psychiatry
Temple Medical Center, New Haven and Woodbridge, CT.
- 1980-2000 Yale University School of Medicine, New Haven, CT:
Lecturer (1994-2002); Assistant Clinical Professor (1980-1994)
- 1973-1979 University of Pittsburgh School of Medicine, Pittsburgh, PA.:
Associate Professor of Psychiatry and Assistant Professor of
Neurology (1977-1979); Assistant Professor of Psychiatry and
Neurology (1973-1977)
- 1969-1973 Yale University School of Medicine, New Haven, CT; Chief
Resident in Neurology (1972-1973); Assistant Resident in
Neurology (1971-1972); Assistant Resident in Psychiatry
(1969-1971)
- 1968-1969 Medical and Pediatric Internship, Washington Hospital Center,
110 Irving Street, NW, Washington, D.C.

Professional Honors or Recognition:

- 1979 Elected Fellow, American College of Physicians
- 1987- Elected Counselor, Connecticut Psychiatric Society
New Haven – Middlesex Chapter
- 1988-1990 Director, American Neuropsychiatric Association
- 1990-2001 Advisory Board, American Neuropsychiatric Association
- 1991 Elected Fellow, The Royal Society of Medicine
- 1993 Elected Fellow, American Psychiatric Association
- 1996 Elected to the Board of Directors, American Academy of
Clinical Psychiatrists
- 1996 Exemplary Psychiatrist Award, National Alliance for the
Mentally Ill
- 1998 Elected President, New Haven-Middlesex Chapter,
Connecticut Psychiatric Society

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| 1998 | Elected President, American Academy of Clinical Psychiatrists |
| 1999 | Elected Treasurer, American Academy of Clinical Psychiatrists |
| 2000 | Elected Fellow, American Neuropsychiatric Association |
| 2004 | Elected Distinguished Life Fellow, American Psychiatric Association |

Boards and Specialty Certification:

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| 1974 | American Board of Psychiatry and Neurology # 13424
Diplomate, Certified in Psychiatry |
| 1978 | American Board of Psychiatry and Neurology # 17744
Diplomate, Certified in Neurology |
| 1991 | Diplomate, American Academy of Pain Management # 2431 |

Hospital Staff Appointments:

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| 1973-1979 | Western Psychiatric Institute & Clinic, Pittsburgh, PA. |
| 1973-1979 | Presbyterian University Hospital, Pittsburgh, PA. |
| 1979-1988 | Waterbury Hospital, Waterbury, CT. |
| 1979-2001 | Hospital of St. Raphael, New Haven, CT. |
| 1980-2001 | Yale-New Haven Hospital, New Haven, CT. |
| 1983-1993 | Veteran's Memorial Medical Center, Meriden, CT. |
| 1995-1997 | Yale Psychiatric Institute, New Haven, CT. |
| 1995-2001 | Masonic Geriatric Healthcare Center, Wallingford, CT. |
| 2001-2003 | Georgetown University Hospital, Washington, DC. |
| 2001- 2005 | The George Washington University Hospital, Washington, DC. |
| 2004- | Suburban Hospital, Bethesda, MD. |

Consultation:

1974-1977	Forbes Hospital System, Pittsburgh, PA.
1974-1977	Mayview State Hospital, Bridgeville, PA.
1974-1977	Veterans Administration Hospital, Pittsburgh, PA.
1978-1979	Monogahela Valley Hospital, Pittsburgh, PA.
1980-1982	Yale Psychiatric Institute, New Haven, CT.
1981-1982	Shirley Frank Foundation, Bridgeport, CT.
1983-2001	Connecticut Mental Health Center, New Haven, CT.
1985-1986	Veterans Administration Health Center, New Haven, CT.
1985-2001	Connecticut Peer Review Organization
1987- 1988	Whiting Forensic Institute, Middletown, CT.
1987-1990	Altobello State Hospital for Adolescents, Middletown, CT.
1987-2001	Saint Francis Care Behavioral Health, Portland, CT.
1996-2000	Professional Advisory Board of the Diagnostic and Assessment Center, Landmark College, Putney, VT.
2006-2007	Consultant of the Scientific Program Committee, American Psychiatric Association, Arlington, VA

Administrative Appointments:

1973-1975	Western Psychiatric Institute and Clinic, Pittsburgh, PA. Senior Physician, Neurodiagnostic Clinic
1973-1975	Western Psychiatric Institute and Clinic, Pittsburgh, PA. Director, Emergency Services and Brief Treatment
1973-1976	Western Psychiatric Institute and Clinic, Pittsburgh, PA. Senior Physician, Mental Retardation Service
1973-1978	Western Psychiatric Institute and Clinic, Pittsburgh, PA. Director, Electroencephalographic Laboratory
1976-1977	Western Psychiatric Institute and Clinic, Pittsburgh, PA.

Director, Office of Diagnostic Services

1977-1979 Western Psychiatric Institute and Clinic, Pittsburgh, PA.
Director, Behavioral Neurology Program

2002-2003 Georgetown University Hospital, Washington, DC.
Director, Neuropsychiatry Program

Membership:

1969- The Johns Hopkins Medical and Surgical Society

1973- American Academy of Neurology

1973- American Psychiatric Association

1973- American College of Physicians

1979-2001 Connecticut Psychiatric Society

1982- The New York Academy of Science

1982-2001 New Haven County Medical Association

1984-2001 Connecticut State Medical Society

1986- American Academy of Psychiatry & the Law

1988- American Academy of Clinical Psychiatrists

1988- American Neuropsychiatric Association

1990- World Federation of Neurology

1991- Royal Society of Medicine

1994- American Academy of Child and Adolescent Psychiatry

1996- American Society of Clinical Psychopharmacology

1997- International Society of Transcranial Magnetic Stimulation

2000- American Academy of Immunotherapy

Consultation to State and Federal Courts and Agencies:

1977-1978	Consultant, Neuropsychiatric Evaluation of Juvenile Offenders, Allegheny County Juvenile Court, Pittsburgh, PA.
1977-1979	Member, Acute Psychiatric Task Force Emergency Health Services Council, Commonwealth of PA.
1977-1985	Chairman, Committee on Psychotropic Medication for the Retarded, Department of Public Welfare, Commonwealth of PA.
1985-1990	State of Connecticut, Governor's Task Force on Aging
1986-1987	Superior Court of Waterbury, CT., Court Appointed Expert
1990-2001	State of Connecticut Department of Mental Health and Addiction Services, Evaluation Psychiatrist, Probate Court for Commitment Hearings
1997-1998	Human Rights Committee, Department of Mental Retardation, South Central Region, Connecticut

Committees, Boards and Consultantships:

1977-1985	Research Committee on Neuroepidemiology, World Federation of Neurology, Geneva, Switzerland
1982-1999	Medical Advisory Board, Easter Seal Goodwill Industries Rehabilitation Center, New Haven, CT.
1984-1988	Board of Directors, Alzheimer's and Related Diseases Association of Southern Connecticut
1985-1988	Board of Directors, Parkinson's Disease Association of Southern Connecticut
1985-1997	Board of Advisors, Burch House, Littleton, New Hampshire
1985	American Psychiatric Association's Task force on Treatment of Psychiatric Disorders
1986-1987	Chairman, Program Committee, New Haven-Middlesex Chapter, Connecticut Psychiatric Society

- 1987-1990 Membership Chair, New Haven-Middlesex Chapter, Connecticut Psychiatric Society
- 1987-2001 Counselor, New Haven-Middlesex Chapter, Connecticut Psychiatric Society
- 1988-1990 Alternative Care Committee, Connecticut Psychiatry Society
- 1988-1992 Convening Member, National Task Force for Children's Constitutional Rights, Philadelphia, PA.
- 1992-1997 National Task Force for Children's Constitutional Rights, Director and Treasurer
- 1992-2000 National Board of Medical Examiners, American Board of Psychiatry and Neurology, Part I Psychiatry Written Examination Sub Committee III
- 1992-2001 Physician Advisory Committee of Medicare, Connecticut Neurological Society
- 1992- Examiner, National Board of Medical Examiners, American Board of Psychiatry and Neurology Part II Psychiatry, Oral Examination
- 1994-1996 Scientific Advisory Board, Neurobiological Disorders Society
- 1994-1998 Treasurer, New Haven/ Middlesex Chapter, Connecticut Psychiatric Society
- 1996- Examiner, National Board of Medical Examiners, American Board of Psychiatry and Neurology, Part II Neurology Oral Examination
- 1996-2003 Board of Directors, American Academy of Clinical Psychiatrists
- 1997-2001 Private Practice Committee, Connecticut Psychiatric Society
- 1998-1999 Committee Member, New Haven Jewish Federation Housing Corp., Tower One/ Tower East
- 1999-2001 Board of Directors, Albert Schweitzer Institute for the Humanities

Editorial Consultant:

1979-	American Journal of Psychiatry
1983-	Psychosomatics
1983-	American Psychiatric Association Press
1987-	International Journal of Psychiatry in Medicine
1987-	Toxic Emergency Medical Information Sheet, Jonathan Borak and Company, Inc.
1990-2003	Annals of Clinical Psychiatry
1994-	Neurology
1996-	Clinical Child Psychology and Psychiatry
1998-	Harvard Review of Psychiatry
2002-	Journal of the American Academy of Psychiatry and the Law

Editorial Boards:

1990-1997	Annals of Clinical Psychiatry, Editor, Special Treatment Section
1997-2003	Annals of Clinical Psychiatry, Editorial Board
1999-2003	Psychiatric Update, Editorial Advisory Board

University Activities:**Teaching:**

1983-2000	Connecticut Mental Health Center, New Haven, CT. Neuropsychiatric Consultant
1984-1985	Yale University School of Medicine, Physicians Associate Program Thesis Supervision
1985	Geriatric Psychiatry, Elective for Psychiatric Residency Program, Yale University School of Medicine

1985-1987	Consultation-Liaison Rounds, Yale-New Haven Hospital
1985-1987	Yale University School of Medicine, Supervision of Medical Student Thesis
1985-1988	Yale University Third-Year Medical Students, Supervision of Neurology Clerkship
1986-1987	University of Connecticut School of Social Work, Clinical Internship Supervisor
1987-2001	Yale University School of Public Health, Division of Chronic Disease Epidemiology, Supervision of Clinical Practicum
1989	Institute of Living Residency Program, Neuropsychiatry Elective
1992-2001	Yale University School of Medicine, Department of Psychiatry, Genetic Epidemiology Research Unit, Supervision of PGY III and PGY IV Residents on Neurological Examination
1993	Yale University School of Medicine, Department of Psychiatry, Neuropsychiatry, PGY II Integrated Psychopathology Course
1993-2001	Yale University School of Medicine, Neurology Training Rotation Psychiatry Residents
1994-1996	Connecticut Mental Health Center, Dual Diagnosis Clinic, Training and Supervision of Psychiatry Residents
1996-1998	Connecticut Mental Health Center, Yale Medical Students, Psychiatry Clerkship
1998-2001	Yale University of Medicine, Psychiatric Residency, Neuropsychiatry Elective
2000-2001	Yale University School of Medicine, Neuropsychology Fellows, Neuropsychiatry Elective
2002	Georgetown University School of Medicine, Neuropsychiatry, Medical Students and Residents

Research:

- 1965 Medical Student Training Grant "Sensory Motor Feedback in the Temporal Lobe of the Brain" Neurocommunications Laboratory, Department of Psychiatry, Johns Hopkins Hospital, Principal Investigator – Richard Chase, M.D.
- 1966 Principal Investigator, Grant from the Moses Family Fund for Research On Myasthenia Gravis, "The Electromyographic Effect of Guanidine" Department of Medicine, Johns Hopkins Hospital
- 1977 Co-Investigator, "Involvement of Cholinergic Mechanisms in Mental Disease," MH26320, National Institute of Mental Health, University of Pittsburgh School of Medicine Principal Investigator: I. Hanin, Ph.D.
- 1977 Consultant, "Mental Health Clinical Research Center for Affective Disorders," MH30915, National Institute of Mental Health, University of Pittsburgh School of Medicine, Principal Investigator: David Kupfer, M.D.
- 1977 Consultant, "Multi-Institutionalized Controlled Study of Brain Resuscitation," Resuscitation Research Institute, University of Pittsburgh School of Medicine, Principal Investigator: Peter Safer, M.D.
- 1978 Consultant, "Environmental Personal Treatment Interaction in the Course of Schizophrenia," MH30750, National Institute of Mental Health, University of Pittsburgh School of Medicine, Principal Investigator: GE Hogarty, M.S.W.
- 1986 Consultant, "Alcoholism and Anxiety: A Genetic Epidemiologic Approach," AA 07080, January 1, 1987 – December 31, 1991, Yale University School of Medicine, Principal Investigator: Kathleen R. Merikangas, Ph.D.
- 1987 Consultant, "Specificity of Transmission of Substance Abuse," DA0534, October 1, 1987 – September 30, 1992, Yale University School of Medicine, Principal Investigator: Kathleen R. Merikangas, Ph.D.
- 1989 Consultant, "Family Study of Co-Segregation of Affective Disorders and Migraine," MacArthur Foundation Research Network I on the Psychobiology of Affective Disorder, Principal Investigator: Kathleen R. Merikangas, Ph.D.

- 1994 Consultant, "Minority Children at High Risk for Alcohol-Related Problems," Department of Health and Human Services, Principal Investigator: Kathleen R. Merikangas, Ph.D.
- 1996 Co-Investigator "Bipolar Affective Disorder in Migraine," Collaborative study at Harvard University and Yale University, Principal Investigator: Kathleen R. Merikangas, Ph. D.

Grant Reviews:

- 1991 Ad Hoc Reviewer, the Harry Frank Guggenheim Foundation for a Research Grant 1991

Publications:

Original Articles:

- Merikangas JR, Johns RJ. The effect of guanidine on the muscle action potential. *Johns Hopkins Med. J.*; 1968; 122:37-41.
- Foster G, Coble P, Merikangas JR, McPartland R, Ingenito G, Kupfer D. Disorder of arousal or psychomotor epilepsy; differential diagnosis and treatment of a rare heredofamilial disease. *Sleep Research*. 1975; 4:214.
- Glass J, Kennerdell J, Merikangas JR. Frontal and occipital visual evoked potentials in visually deprived humans. *Neurosci Abst*. 1975; 1:93.
- Merikangas JR. Common neurologic syndromes in medical practice. *Med Clin North Am*. 1977; 61:723-736.
- Glass J, Crowder J, Kennerdell J, Merikangas JR. Visually evoked potentials from occipital and pre-central cortex in visually deprived humans. *Electroencephalog Clin Neurophysiol*. 1977; 43:207-217.
- Hanin I, Kopp U, Zahniser NR, Shih TM, Spiker DG, Merikangas JR, Kupfer DG, Foster FG. Acetylcholine and choline in human plasma and red blood cells: A gas chromatograph/mass spectrometric evaluation. *Cholinergic Mechanisms and Psychopharmacology*. New York: Plenum. 1977:181-195.
- Merikangas, JR, Merikangas KR, Katz L, Pan S. Chromosome banding analysis in cornelia deLange syndrome. *Hum Genet*. 1977; 39:217-219.

Merikangas JR, Auchenbach R. Carbamazepine in raynaud's disease. *Lancet*. December. 1977; 3:2:1186.

Neil JF, Merikangas JR, Davies RK, Himmelhoch JM. Validity and clinical utility of neuroleptic-facilitated electroencephalography in psychotic patients. *Clin Electroencephalography*. 1978; 9:38-48.

Merikangas JR. Neurodiagnostic methods for the aged. *Audio-Digest* Glendale, Psychiatry, Vol. 7, Number 12, Side B, June 26, 1978.

Merikangas JR. Skew deviation in pseudotumor cerebri. *Ann Neurol*. 1978; 4:583.

Hanin I., Merikangas JR., Merikangas KR., Kopp U. Red cell choline and Gilles de la Tourette syndrome. *N Engl J Med*, 1979; 1301:661-662.

Merikangas JR, Reynolds CF. Blepharospasm: Successful treatment with clonazepam. *Ann Neurol*, 1979; 15:401-402.

Merikangas JR, Marasco JA, Feszko W. Basal ganglia calcification in Down's syndrome. *Computerized Tomography*. 1979; 13:111-113.

Neil JF, Merikangas JR, Glew RH. EEG findings in adult neuronopathic Gaucher's disease. *Clinical Electroencephalography*. 1979; 10:198-205.

Neil JF, Hanin I, Merikangas JR, Merikangas KR, Foster G, Spiker DG, Kupfer D. Walking and all-night sleep EEG's in anorexia nervosa. *Clinical Electroencephalography*. 1980; 11:9-15.

Merikangas KR, Risch NJ, Merikangas JR, Weissman MM. Association between depression and migraine. *Amer J Epid (Abst)*. 1985; 122:538-539.

Manuelidis EE, Kim JH, Merikangas JR, Manuelidis L. Transmission to animals of Creutzfeldt-Jacob disease from human blood. *Lancet ii*. 1985; 8460:896-897.

Merikangas JR, Merikangas KR, Kopp U, Hanin I. Blood choline and response to clonazepam and haloperidol in Gilles de la Tourette's syndrome. *Acta Psychiatrica Scand*. 1985; 72:395-399.

Merikangas KR, Risch NJ, Merikangas JR, Weissman MN, Kidd KK. Migraine and depression: Association and familial transmission. *J Psychiatric Res*. 1988; 22:119-129.

Merikangas JR, Merikangas KR. Calcium channel blockers in MAOI-induced hypertensive crises. *Psychopharmacology* 96 (supp): 1988: 229.

Merikangas KR, Merikangas JR. Advances in the pharmacologic treatment of migraine. *Psychopharmacology*, 96 (supp): 1988: 145.

Katz LJ, Lester RL, Merikangas JR, Silverman JP. Ocular myasthenia gravis after D-penicillamine administration. *Brit J Ophthalmology*. 1989; 73:12:1015-1018.

Merikangas JR. Seminars in Treatment: Introduction to serotonergic drugs. *Annals Clin Psychiatry*. 1990; 2:3:2-3.

Merikangas JR. Seminars in Treatment: Introduction to child psychiatry. *Annals Clin Psychiatry*. 1991; 3:1:1-3.

Merikangas JR. Seminars in Treatment: Introduction to hospital psychiatry. *Annals Clin Psychiatry*. 1992; 4:1:1.

Merikangas KR, Merikangas JR, Angst J. Headache syndromes and psychiatric disorders: Association and familial transmission. *J Psychiat Res*. 1993; 27:197-210.

Sananes C, Grillon C, Merikangas JR, Merikangas KR. Eyeblink reflex and migraine. Proceedings VIth Congress of the International Headache Society. 148, 1993.

Merikangas KR, Stevens D, Merikangas JR, Cooper T, Glover V, Sandler M. Tyramine conjugation deficit in migraine and tension type-headache. Proceedings VIth Congress of the International Headache Society. p. 236, August 26-29, 1993.

Merikangas JR, Rojahn J. Seminars in Treatment: Introduction to the treatment of the mentally retarded. *Ann Clin Psychiatry*. 1993; 5:3:149-150.

Merikangas KR, Stevens D, Merikangas JR, Katz C, Glover V, Sandler M. Tyramine conjugation deficit in migraine, tension-type headache and depression. *Biol Psychiatry*. 1995; 38:730-736.

Merikangas KR, Merikangas JR. Combination monoamine oxidase inhibitor and beta-blocker treatment of migraine with anxiety and depression. *Biol Psychiatry*. 1995; 38: 603-610.

Merikangas JR, Stevens D, Merikangas KR, Enalapril prophylaxis of migraine. *Schwizer Archiv for Neurologie and Psychiatrie*. 1996; 147:118-123.

Merikangas KR, Stevens D, Merikangas JR. Treatments of migraine and tension-type headaches with concomitant depression. *Directions in Psychiatry*, Vol. 17. Summer, 1997.

Davalos D, Merikangas JR, Bender S. Psychosis in hypomelanosis of Ito. *Journal of the Royal Society of Medicine*. 2001; 94:140-141.

Shur-Fen SG, Merikangas JR, Merikangas KR. Specificity of neurological and neurocognitive function in children with attention-deficit/hyperactivity disorder. *J Neuropsychiatry Clin Neuroscience*. 2002; 14:1:105.

Low NCP, Merikangas JR, Merikangas KR. Migraine and mood disorders. *Psychiatric Annals*. 2004; 34:1:33-40.

Chapters, Books:

Merikangas JR (Ed.) Brain-behavior relationships. Lexington: Health 1981.

Merikangas JR. The neurology of violence. In Merikangas JR (Ed.) Brain-behavior relationships. Lexington: Health 155-185, 1981.

Merikangas JR, Merikangas KR, Black HR. Clonidine and beta-blockers in psychiatry. In Giannini J (Ed.): *Biological Foundations of Clinical Psychiatry*, New York: Elsevier, 289-309, 1986.

Merikangas JR. Headache syndromes. In Stoudemeier A, Fogel B, (Eds.) *medical Psychiatric Practice Vol. 1*, Washington D.C.: American Psychiatric Press, 393-424, 1991.

Stevens DE, Merikangas KR, Merikangas JR. Comorbidity of depression and other medical conditions. In Weingarten S. (Ed.) *Handbook of Depression*, New York: Guilford Publications, 147-199. 1995.

Merikangas KR, Merikangas JR. Neuropsychiatric aspects of headache. In *Comprehensive Text Book of Psychiatry*. Lippincott, Williams and Wilkins, 345-350. 1999.

Merikangas KR, Stevens DE, Merikangas JR. Migraine and headache disorders. In Robinson RG and Yates WR (Eds.) *Psychiatric Treatment of the Medically Ill*. New York, Marcel Dekker, Inc., 425-442. 1999.

Davalos, D.B., Hayes, A. & Merikangas, J. Autism and Hypomelanosis of Ito. In O. Ryanskin, (Ed.), *Focus on Autism Research*. (pp. 309-338). New York: Nova Science Publishers. 2005.

Book Reviews:

Merikangas JR. Gilles de la Tourette Syndrome. Shapiro AK, Shapiro ES, Bruun RD, Sweet RD. *J Clin Psychiatry*, 1981; 42:482-483.

Merikangas JR. Progress in Aphasiology. Rose CR (Ed.), New York: Raven, *Am. J. Psychiatry*, 1986; 143:1046-1047.

Merikangas JR. The Bridge Between Neurology & Psychiatry. In Reynolds EH and Trimble MR, *Am. J. Psychiatry*, 1991; 148:1.

Merikangas Jr. Merritt's Textbook of Neurology Eighth Edition, Rowland LP (Ed.), *Am. J. Psychiatry*, February 1992; 149:2.

Merikangas JR. Brain and Behavior in Child Psychiatry, Rothenberger A (Ed.) *Am. J. Psychiatry*, January 1993; 150:1.

Merikangas JR. The Butcher Boy, Patrick McCabe. *Am. J. Psychiatry*, December 1994; 151:12.

Merikangas JR. Johnny, I Hardly Knew You, Edna O'Brien in "Edna O'Brien Reader," *Am. J. Psychiatry*, December 1994; 151:12.

Merikangas JR. Molecular and Genetic Basis of Neurological Disease, Ronsenberg R, Prusnier S, DiMauro S, Barchi R, Kunkel L. (Eds.) *Am. J. Psychiatry*, January 1995; 152:1.

Merikangas JR. Marabou Stork Nightmares: A Novel, Irvine Welsh, *Am. J. Psychiatry*, December 1996; 153:12.

Merikangas JR. The Eighties: A Reader, Gilbert T. Sewall (Ed.), *Am. J. Psychiatry*, February 1999; 156:2:329-330

Merikangas JR. The Law & Mental Health Professionals – Connecticut, Sheila Taub. *Connecticut Psychiatrist*, Summer 1999; 41:3:13

Merikangas JR. Bad Boys, Bad Men: Confronting Antisocial Personality Disorder, Donald W. Black and C. Lindon Larson. *Am. J. Psychiatry*, December 1999; 156:12:2011-2012.

Merikangas JR. Child and Adolescent Neurology, Ronald B. David (Ed.), *Am. J. Psychiatry*, August 2000; 157:8:1356-1357.

Merikangas JR. Neurodevelopmental Approach to Specific Learning Disorder: Clinics in Developmental Medicine 145, Kingsley Whitmore, Hillary Hart and Guy Willems (Eds.), *Amer J Psychiatry*, March 2001; 158:3:510-512.

Merikangas JR. The Brain and Behavior An Introduction to Behavioral Anatomy, David I. Clark and Nashaat N. Boutros. *J Neuropsychiatry Clin Neurosci*, Fall 2001; 13:4:525-526.

Merikangas JR. Translated Accounts: A Novel, by James Kelman. *Am. J. Psychiatry*, 2002; 159:12:2120.

Merikangas JR. The Curious Incident of the dog in the Night-Time: A Novel. *Am. J. Psychiatry*, Dec 2003; 160:2245-2246.

Merikangas JR. The Developmental of Psychopathology: Nature and Nurture, Bruce f. Pennington. *Am. J. Psychiatry*, October 2004; 161:10:1932-1934.

Merikangas JR. Hitler: Diagnosis of a Destructive Prophet. *Am. J. Psychiatry*, Jun 2002; 159: 1760-1766.

Merikangas JR. The Cave. *Am. J. Psychiatry*, Dec 2004; 161: 2335-2336.

Merikangas JR. Transmission: A Novel. *Am. J. Psychiatry*, Dec 2005; 162: 2411-2412.

Miscellaneous Publications:

Merikangas JR. Neuropsychiatrist – Who qualifies as one? Letter to the Editor. *J Neuropsychiatry*. 1990; 2:3:354.

Merikangas JR. Rountine tests of drugs. Letter to the Editor. *Amer J Psychiatry*. 1991; 148:7:974.

Merikangas JR. Violence and the Brain. Letter to the Editor. *The Sciences*. November/December 1992.

Merikangas JR. Commentary regarding “The Treatment of Clinical Aggression: An Integrative Approach” by Ratey JJ and Leveroni CL. *Integrative Psychiatry*. 1992; 8:75-176.

Merikangas JR. “Changing over-the-counter drugs while retaining the brand name.” Letter to the Editor. *Annals of Internal Medicine*. 1993; 118:12:988.

Merikangas JR. “Resolved: Managed Care Violates Medical Ethics”, Letter to the Editor, *Connecticut Medicine*. August 1996:60:8:505-509.

Merikangas JR. “Confidentiality: A Vanishing Right?”, Letter to the Editor, ACP Observer, p 6. December, 1996.

Merikangas JR. “Ethics in Managed Care-A Response to Maria Lenaz’s Article”, Letter to the Editor, *Connecticut Medicine*, 62, 2, p 108. February 1998.

Merikangas JR. “Shortfall of Physicians?” Letter to the Editor, *Connecticut Medicine*, 62, 7. July, 1998.

Merikangas JR. “Das Warten auf den Tod ist Folter”, “Waiting for Death is Torture” Interview, *Der Spiegel*, Vol. 48, pp 176-180, October 18, 1999.

Merikangas JR. "A Review of Stephen Soderbergh's Movie Traffic", *J Amer Acad Psychiatry Law*, 29.2, pp 241-242, 2001.

Merikangas JR. "Commentary: Alcoholic Blackout – Does It Remove Mens Rea?", *J Am Acad Psychiatry Law*, 32:375-7, 2004.

National and International Lectures:

"Frontal and Occipital Evoked Potentials in Visually Deprived Humans", Society of Neurosciences, New York, December 5, 1975.

"Diagnosis and Management of Pain", American Psychosomatic Society, Continuing Education Course, Pittsburgh, P.A. April 1976.

"Psychosis and Movement Disorder: Interrelations", American Psychiatric Association Annual Meeting, Miami, FL, May 1976.

"Total Care of the Psychiatrically Ill Retarded", American Psychiatric Association Annual Meeting, Miami, FL, May 1976.

"Medication of the Mentally Retarded in an Outpatient Setting: Rationale and Consistencies", American Psychiatric Association Annual Meeting, Miami, FL, May 1976.

"Medical Considerations at Intake", The Association Psychiatric Outpatient Centers of American, Regional Meeting, Pittsburgh, PA, October 1977.

"Seizure Disorder and Headache", Practical Medicine for the General Psychiatrist, Western Psychiatric Institute and Clinic, University of Pittsburgh, Pittsburgh, PA, November 6, 1977.

"Neurodiagnostic Methods for the Aged", American Psychiatric Association Annual Meeting, Atlanta, GA, May 8, 1978
Industrial Health Foundation, Inc., Pittsburgh, PA, September 18, 1978.

"Seizure Disorder", Practical Medicine for the General Psychiatrist, Western Psychiatric Institute and Clinic, University of Pittsburgh, Pittsburgh, PA, November 9, 1978.

"Psychosomatic Illness-Evaluation and Treatment", Industrial Health Foundation, Inc. Pittsburgh, PA, May 1979.

"Psychological Aspects of Stress and "Overview of Psychosis and Neurosis", Industrial Health Foundation, Pittsburgh, PA, September 1980.

"Children with Neurological Problems Presenting as Psychiatric Problems", Continuing Educational Program, Dartmouth Hitchcock Medical Center, Brattleboro Retreat, Brattleboro, VT, October 1980.

"Neurophysiology of Violence", Psychosomatic Grand Rounds, Yale-New Haven Hospital, New Haven, CT, February 18, 1981.

"Behavioral Emergencies", Connecticut Emergency Medical Services Annual Educational Seminar, New Britain, CT, March 13, 1981.

"Mental Retardation", Yale Law School, Yale University, New Haven, CT, April 2, 1981.

"Organic Brain Disorders", South Central Community College, New Haven, CT, April 29, 1981.

"Behavioral Manifestations and Treatment of Chronic Organic Brain Syndrome", Chapel Haven Center for Brain Damaged Adults, New Haven, CT, November 10, 1981.

"Neurological and Psychiatric Considerations in Parkinson's Disease", East Shore Parkinson's Support Group, East Haven, CT, November 19, 1981.

"Psychiatric Complications of Medical Treatment", Neurology and Psychiatry Board Review Course, Department of Psychiatry, Yale University School of Medicine, New Haven, CT, March 15, 1981.

"Psychiatric Complications of Medical Treatment", Neurology and Psychiatry Board Review Course, Department of Psychiatry, Yale University School of Medicine, New Haven, CT, March 19, 1982.

"Psychiatric Problems of Epileptics" and "Atypical Psychiatric Syndromes and Pharmacological Treatment", Course on Psychopharmacology in Children and Adolescents. American Psychiatric Association, Toronto, Canada, May 20, 1982.

"Neurological Complications of Alcohol", Shirley Frank Foundation, New Haven, Ct, June 4, 1982.

"Psychotropic Medication", Conference on Mental Health and Developmental Disability Consortium of New Haven, Clifford Beers Child Guidance Center, New Haven, CT, October 9, 1982.

"Medical Problems in Arbitration", National Academy of Arbitrators, Northeast Regional Meeting, Southbury, CT, October 20, 1982.

"Pharmacology of Neuroleptic Induced Movement Disorder, II", Institute of Living, Hartford, CT, November 8, 1982.

"Headaches", Healthwise Television Broadcast, Storer Cable TV, Channel U-24, New Haven, CT, November 16, 1982.

"Psychiatric Complications of Medical Drugs", Board Review Course, Department of Psychiatry, Yale University School of Medicine, New Haven, CT, March 14, 1983.

"Choline and Drug Response in Tourette's Syndrome", VII World Congress of Psychiatry, Vienna, Austria, July 15, 1983.

"Psychiatric and Family Aspects of Parkinson's Disease", Parkinson Enlightenment Program, Hamden, CT, February 1, 1983.

"Headaches", Healthwise Television Broadcast, Storer Cable TV, Channel U-24, New Haven, CT, February 16, 18, 1983.

"Violence and Atypical Psychosis", Connecticut Valley Hospital, Middletown, CT, March 9, 1983.

"Hysteria and Neurological Conditions", Mental Health Clinic, Hospital of St. Raphael, New Haven, CT, March 11, 1983.

"Neuropsychiatric Assessment in Childhood", West Haven Division of Connecticut Mental Health Center, West Haven, CT, April 14, 1983.

"Parietal Lobe Disorders, Part I", Integrated Seminar in Psychiatry and Psychosomatic Medicine, Yale-New Haven Hospital, New Haven, CT, April 18, 1983.

"Parietal Lobe Disorders, Part II", Integrated Seminar in Psychiatry and Psychosomatic Medicine, Yale-New Haven Hospital, New Haven, CT, April 25, 1983.

"Stress and Headache in Business", Combined Resources, Stone School of Business, New Haven, CT, May 26, 1983.

"Job Stress", Hospital of St. Raphael, New Haven, CT, June 3, 1983.

"Neurological Considerations in Psychiatry", Connecticut Valley Hospital, Middletown, CT, November 17, 1983.

"Psychiatric Complications of Medical Treatment", Neurology and Psychiatry Board Review Course, Department of Psychiatry, Yale University School of Medicine, New Haven, CT, March 14, 1984.

"Psychopharmacology of Children and Adolescents", Course Presentation at Annual Meeting of the American Psychiatric Association, Los Angeles, CA, May 10, 1984.

"Temporal Lobe Epilepsy". Connecticut Mental Health Center, New Haven, CT, January 12, 1984.

"Face Pain", Grand Rounds in Oral Surgery, Hospital of St. Raphael, New Haven, CT, March 13, 1984.

"Beta Blockers in Psychiatry", Connecticut Valley Hospital, Middletown, CT, April 11, 1984.

"On the Insanity Defense", University of Bridgeport School of Law, Bridgeport, CT, April 19, 1984.

"Altered Mental States and the Interface Between Neurology and Psychiatry", Griffin Hospital, Derby, CT, November 10, 1984.

"Distinguishing Neurologic and Psychiatric disease", Consultation Liaison Service, Yale-New Haven Hospital, New Haven, CT, December 18, 1984.

"Association Between Depression and Migraine", Annual Meeting of The Society for Epidemiologic Research, Chapel Hill, NC, June 20, 1985.

"Altered States", Consultation Liaison Service, Yale-New Haven Hospital, New Haven, CT, January 17, 1986.

"Anticonvulsants in Psychiatric Disorders", Jefferson Medical College, Philadelphia, PA April, 1986.

"Facial Pain", Residents in Oral and Maxillofacial Surgery, Hospital of St. Raphael, New Haven, CT, July 15, 1986.

"Seizures and Affective Disorder", Consultation Liaison Service, Yale-New Haven Hospital, New Haven, CT, July 25, 1986.

"Management of the Difficult Patient", Memorial Hospital, Meriden, CT, September 18, 1986.

"Psychological Consequences of Multiple Trauma", International Rehabilitation Associates, Inc., Berlin, CT, November 1986.

"Mental Status Examination", Consultation Liaison Service, Yale-New Haven Hospital, New Haven, CT, January 16, 1987.

"Altered States of Consciousness", Neuropsychiatric Rounds, Yale-New Haven Hospital, January 17, 1987.

"The Neuropsychiatric Work-Up", Consultation Liaison Service, Yale-New Haven Hospital, New Haven, CT, January 23, 1987.

"Blepharospasm", Connecticut Blepharospasm Support Group Annual Meeting, Southbury, CT, April 26, 1987.

"Neuropsychiatry on Death Row", Rhode Island Hospital, Brown University, Providence, RI, October 27, 1987.

"MRI, Thermography and Evoked Potentials in the Evaluation of Low Back Pain", International Rehabilitation Associates, November 17, 1987.

"Neuropsychiatric Manifestations of Migraine", Connecticut Valley Hospital, Middletown, CT, February 3, 1988.

"Advances in the Pharmacologic Treatment of Migraine", Collegium Internationale Neuro-Psychopharmacologicum, Munich, West Germany, August 16, 1988.

"Calcium Channel Blockers in MAO-I Induced Hypertensive Crisis", Collegium Internationale Neuro-Psychopharmacologicum, Munich, West Germany, August 17, 1988.

"A Review of Physical Diagnosis for Psychiatrists", American Psychaitric Association Annual Meeting, San Francisco, CA, May 8, 1989.

"Dangerous Headaches", Swiss Headache Society, Solothurn, Switzerland, December 2, 1989.

"Neuropsychiatry and the Violent Criminal", The Institute of Living, Hartford, CT, February 8, 1989.

"Medical Testimony in Malpractice Actions", Connecticut Trail Lawyers Association, New Haven, CT, April 1989.

"Objective Testing to Determine Rehabilitation Potential for Appropriate Therapy for Traumatic Brain Injury", Intracorp, Glastonbury, CT, May 24, 1989.

"Neuropsychiatry", CROSSTALK, Television broadcast, Channel 28, New Haven, CT, May 24, 1989.

"Medical Ethics and the Care of Children", University of Pennsylvania School of Nursing, Philadelphia, PA, December 5, 1989.

"Thermaography", Trial Strategies Seminar, Travelers Insurance Company, Orlando, FL, February 14, 1990.

"Death Row Criminals", Breakthrough with Dr. Larkin, Radio broadcast, Pastoral Theological Institute, Hamden, CT, March 21, 1990.

"Alcoholism", Breakthrough with Dr. Larkin, Radio broadcast, Pastoral Theological Institute, Hamden, CT, March 21, 1990.

"A Review of Physical Diagnosis for Psychiatrists", American Psychiatric Association Annual Meeting, New York City, New York, May 13, 1990.

"A Practical Clinical Laboratory Guide for Psychiatrists", American Psychiatric Association Annual Meeting, New York City, NY, May 15, 1990.

"Neuropsychiatric Considerations and the Insanity Defense for Murder", Georgia Resource Center, Atlanta, GA, July 12, 1990.

"Painful Neuropathies", Bristol Hospital, Bristol, CT, January 29, 1991.

"Painful Neuropathies", Charlotte Hungerford Hospital, Torrington, CT, February 1, 1991.

"Behavioral Management for the TBI Client Via Pharmacological Intervention", New Medico Head Injury Systems, Meriden, CT, March 22, 1991.

"Children as Witnesses in Child Abuse Cases", Eyewitness News, WFSB Channel 3, April 29, 1991.

"A Review of Physical Diagnosis for Psychiatrists", American Psychiatric Association Annual Meeting, New Orleans, LA, May 14, 1991.

"Serial Killers", Eyewitness News, WFSB Channel 3, July 26, 1991.

"The Neuropsychiatric Evaluation of Violent Behavior", National Alliance for the Mentally Ill Children & Adolescent Network, Woodbridge, CT, November 13, 1991.

"Homicide Task Force", Eyewitness News, WFSB Channel 3, November 19, 1991.

"A Review of Physical Diagnosis for Psychiatrists", American Psychiatric Association Annual Meeting, Washington, DC, May 3, 1992.

"Evaluation and Treatment of Violent Youth", Community Action for the Mentally Ill Offender, Seattle, WA, May 28, 1992.

"Neuropsychiatric Evaluation of Juvenile Offenders", National Coalition for the Mentally Ill in the Criminal Justice System, Seattle, WA, May 28, 1992.

"The Phoenix Park Murders", James Joyce Symposium, Dublin, Ireland, June 18, 1992.

"The Neurological Basis for Violent Behavior: Children and Adults", National Alliance for the Mentally Ill National Meeting, Washington, DC, September 12, 1992.

"Who's on Death Row? Psychiatric Portraits", Violence in America Psychological and Sociological Perspectives, Washington, DC, October 16, 1992.

"Radiology and Neurology Consultation", PGY II Integrated Psychopathology Course, Veterans Administration Hospital, West Haven, CT, February 18, 1993.

"Epilepsy", PGY II Integrated Psychopathology Course, Veterans Administration Hospital, West Haven, CT, February 22, 1993.

"Diagnostic Imaging", PGY II Integrated Psychopathology Course, Yale-New Haven Hospital, New Haven, CT, March 15, 1993.

"Epilepsy", PGY II Integrated Psychopathology Course, Yale-New Haven Hospital, March 22, 1993.

"A Review of Physical Diagnosis for Psychiatrists", American Psychiatric Association Annual Meeting, San Francisco, CA, May 23, 1993.

"Post Traumatic Headaches", Swiss Neurological Society, Flims, Switzerland, June 5, 1993.

"Pharmacotherapy of Traumatic Brain Injury in Children", American Academy of Child Psychiatry National Meeting, San Antonio, TX, October 28, 1993.

"Specialty Clinics in Child Psychiatry", American Academy of Child Psychiatry National Meeting, San Antonio, TX, October 28, 1993.

"Evaluation of the Violent Offender", Second International Conference on Treatment and Diversion of Mentally Disordered Offenders, Tempe, AZ, November 8, 1993.

"The Clinton Health Care Package", with Senator Joseph Crisco, Commissioner Donald Pogue and Professor Theodore Marmer. Public Service Cable Television broadcast, Seymour, CT, November 12, 1993.

"The Neurobiology of the Attention Deficit Disorder and Learning Disabled Brain", Children and Adults with Attention Deficit Disorders Support Organization, Berlin, CT, November 13, 1993.

"The Clinton Health Care Package – Part II", with Senator Joseph Crisco, Commissioner Donald Pogue, Professor Robert A. Burt and State Senator Kenneth Przybysz. Public Service Cable Television broadcast, Seymour, CT, January 24, 1994.

"A Review of Physical Diagnosis for Psychiatrists", American Psychiatric Association Annual Meeting, Philadelphia, PA, May 22, 1994.

"Pharmacotherapy of Traumatic Brain Injury in Children", American Psychiatric Association Annual Meeting, Philadelphia, PA, May 23, 1994.

"SPECT, CT, MRI & EEG in Psychiatry", Yale University Psychiatric Residents, March 31, 1994.

"Anticonvulsants in Psychiatry", Yale University PGY III and PGY IV students, Veterans Administration Hospital, West Haven, CT, May 17, 1994.

"Preparing for a Career in Neuropsychiatry", American Psychiatric Association Annual Meeting, Miami, FL, May 24, 1995.

"Managed Care: The Psychiatrist and Neurologist in Private Practice", Department of Psychiatry, University Hospital, Bern, Switzerland, June 20, 1995.

"Mental Health Services to Youth Detained in Juvenile Justice Facilities", American Academy of Child and Adolescent Psychiatry Annual Meeting, New Orleans, LA, October 19, 1995.

"Vulnerability for Substance Abuse and Anxiety: A Family Study", American Academy of Child and Adolescent Psychiatry Annual Meeting, New Orleans, LA, October 21, 1995.

"Neuropsychiatric Evaluation of Death Row Criminals", University of Texas Medical Branch, Galveston, TX, January 31, 1995.

"Chronic Pain", Masonic Home and Hospital, Wallingford, CT, February 2, 1995.

"Swiss Psychiatry and the Mental Illness of Lucia Joyce", 15th Annual James Joyce Symposium, Zurich, Switzerland, June 21, 1996.

"Update on Headache", University of Massachusetts Medical Center, Worcester, MA, January 16, 1996.

"Medico-Legal Aspects of Headache Treatment", Headache Consortium of New England, Stowe, VT, March 2, 1996.

"Traumatic Brain Injuries and Its Consequences", Child Neurology and Psychiatry Conference, Vilnius, Lithuania, June 27, 1997.

"Behavioral Problems of Epileptics", Child Neurology and Psychiatry Conference, Vilnius, Lithuania, June 28, 1997.

“Neuromuscular Disorders”, Child Neurology and Psychiatry Conference, Vilnius, Lithuania, June 29, 1997.

“Traumatic Brain Injury and Its Consequences”, Child Neurology and Psychiatry Conference, Tartu, Estonia, July 1, 1997.

“Behavioral Problems in Epileptics”, Child Neurology and Psychiatry Conference, Tartu, Estonia, July 2, 1997.

“Neuromuscular Disorders”, Child Neurology and Psychiatry Conference, Tartu, Estonia, July 3, 1997.

“Serial Killers”, Eye Witness News, WFSB News, Hartford, CT, July 18, 1997.

“Brain Abnormalities in Violent Criminals”, Dateline NBC, July 20, 1997.

“Genetics of Crime”, MSNBC, July 21, 1997.

“Cortical Stimulation and Response-Brain Behavior Relationships”, Transcranial Magnetic Stimulation Conference, Interlaken, Switzerland, August 14, 1997.

“Mental Health Issues in Death Penalty Defense”, National Institute for Trial Advocacy Meeting, Temple University School of Law, Philadelphia, PA, January 31, 1998.

“Mental Health Issues in Habeas Appeals”, National Institute for Trial Advocacy Meeting, University of Texas School of Law, Austin, TX, June 27, 1998.

“James Joyce: Manic Genius and the Family Triangle”, The Program for Humanities and Medicine, Yale University School of Medicine, May 7, 1998.

“Koskoff Inn of Court: Admissibility of Evidence: Porter and Daubert Decisions”, Tyler, Cooper, and Alcorn, 205 Church Street, New Haven, CT, November 17, 1988.

“Introduction to the Multi-Axial System of DSM-IV”, Federal Defender Training Group, Atlanta, GA, August 28, 1999.

“Personality Disorder Diagnosis”, Fourth Annual National Habeus Corpus Seminar, Federal Defender Training Group, Atlanta, GA, August 28, 1999.

“Substance Abuse: A Medical Disease”, Fourth Annual National Habeus Corpus Seminar, Federal Defender Training Group, Atlanta, GA, August 28, 1999.

“The Mental Illness of Lucia Joyce”, Neurosciences and Psychiatry Congress of History, Joint Meeting of European Association for the History of Medicine, International Society for the History of the Neurosciences and European Club for the History of Neurology, Zurich, Switzerland, September 15, 1999.

“The Adolph Meyer Lecture: Crossing, Uncrossing, and Re-crossing of Neuropsychiatry in the USA”, Neurosciences and Psychiatry Congress of History, Joint Meeting of European Association for the History of Medicine, International Society for the History of the Neurosciences and European Club for the History of Neurology, Zurich, Switzerland, September 16, 1999.

“Representing a Death-Sentenced Client in Federal Post-Conviction Proceedings”, National Institute for Trial Advocacy Meeting, University of Houston Law Center, Houston, TX. January 20-23, 2000.

“Representing a Death-Sentenced Client in Federal Post-Conviction Proceedings”, National Institute for Trial Advocacy Meeting, University of North Carolina School of Law, Chapel Hill, NC, January 18-20, 2001.

“Understanding Forensic Mental Health Issues”, National Defender Investigator Association 2001 National Conference, Kansas City, MO, March 28, 2001.

“A New Look at Forensic Mental Health Issues, Missouri State Public Defender 2001 Capital Conference, Kansas City, MO. May 17, 2001.

“Understanding Forensic Mental Health Issues”, National Defender Investigator Association, Northeast Regional Conference, Philadelphia, PA, September 27, 2002.

“How the Brain Works”, Third National Seminar on Mental Health in Criminal Law, Atlanta, GA, November 2, 2002.

“Neuroscience of Music”, Humanities in Medicine Series, Yale University School of Medicine, New Haven, CT, March 20, 2003.

“Mental Health Issues in Criminal Defense”, D.C. Association of Criminal Defense Attorneys, Washington, DC, April 5, 2003.

“Applying Brain Imaging to Clinical Practice: A Master Clinician’s View-Opening the Mind – The Clinical Application of Brain SPECT Imaging in Psychiatry”, University of California Irvine College of Medicine and the Amen Clinics, Irvine, CA, May 3, 2003.

“Prosecutorial Misconduct in Capital Cases”, XXIXth International Congress on Law and Mental Health, Paris, France, July 8, 2005.

“Neurodiagnosis of Child Murderers”, 36th Annual Meeting, American Academy of Psychiatry and the Law, Montreal, PQ, Canada October 30, 2005.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of February, 2007, I served a true and correct copy of the foregoing document, NOTICE OF FILING CURRICULUM VITAE FOR JAMES R. MERIKANGAS, M.D., as indicated below:

ERICK VIRGIL HALL
INMATE # 33835
IMSI
PO BOX 51
BOISE ID 83707

☒ U.S. Mail
☐ Statehouse Mail
☐ Facsimile
☐ Hand Delivery

ROGER BOURNE
ADA COUNTY PROSECUTOR'S
OFFICE
200 W. FRONT, SUITE 3191
BOISE ID 83702

☐ U.S. Mail
☐ Statehouse Mail
☐ Facsimile
☒ Hand Delivery


BARBARA THOMAS
Administrative Assistant

January 3, 2005

Curriculum Vitae

James R. Merikangas, M.D.

Address:	J.R. Merikangas, M.D., L.L.C. 4938 Hampden Lane, # 428 Bethesda, MD. 20814
Phone:	301-654-1934
Fax:	301-654-1834
Email:	neuropsych2001@hotmail.com
Citizenship:	USA
Education:	B.S., Physics, Villanova University, 1960 M.D., Johns Hopkins University, School of Medicine, 1969
Licenses:	
1969	Diplomate, National Board of Medical Examiners #107478
1974-1976	California M.D. License #23318
1969-2002	Connecticut M.D. License #14074
1974-1981	Pennsylvania M.D. License #014082
2001-	Maryland M.D. License #D57622
2001-	Washington, D.C. License #MD-33036
Military:	
1960-1963	United States Navy, LT(J.G.)
Career:	
2002-	Clinical Professor of Psychiatry and Behavioral Sciences, George Washington University School of Medicine and Health Sciences, Washington, D.C.
2002-2003	Clinical Associate Professor of Psychiatry Georgetown University School of Medicine, Washington, D.C. Georgetown University Hospital, Washington, D.C.
2002-2003	Director, Neuropsychiatry Program, Department of Psychiatry,

	Georgetown University School of Medicine, Washington, D.C.
1980-2002	Practice of Neuropsychiatry, Neurology and Psychiatry Temple Medical Center, New Haven and Woodbridge, CT.
1980-2000	Yale University School of Medicine, New Haven, CT: Lecturer (1994-2002); Assistant Clinical Professor (1980-1994)
1973-1979	University of Pittsburgh School of Medicine, Pittsburgh, PA.: Associate Professor of Psychiatry and Assistant Professor of Neurology (1977-1979); Assistant Professor of Psychiatry and Neurology (1973-1977)
1969-1973	Yale University School of Medicine, New Haven, CT; Chief Resident in Neurology (1972-1973); Assistant Resident in Neurology (1971-1972); Assistant Resident in Psychiatry (1969-1971)
1968-1969	Medical and Pediatric Internship, Washington Hospital Center, 110 Irving Street, NW, Washington, D.C.
Professional Honors or Recognition:	
1979	Elected Fellow, American College of Physicians
1987-	Elected Counselor, Connecticut Psychiatric Society New Haven – Middlesex Chapter
1988-1990	Director, American Neuropsychiatric Association
1990-2001	Advisory Board, American Neuropsychiatric Association
1991	Elected Fellow, The Royal Society of Medicine
1993	Elected Fellow, American Psychiatric Association
1996	Elected to the Board of Directors, American Academy of Clinical Psychiatrists
1996	Exemplary Psychiatrist Award, National Alliance for the Mentally Ill
1998	Elected President, New Haven-Middlesex Chapter, Connecticut Psychiatric Society

1998	Elected President, American Academy of Clinical Psychiatrists
1999	Elected Treasurer, American Academy of Clinical Psychiatrists
2000	Elected Fellow, American Neuropsychiatric Association
2004	Elected Distinguished Life Fellow, American Psychiatric Association
Boards and Specialty Certification:	
1974	American Board of Psychiatry and Neurology # 13424 Diplomate, Certified in Psychiatry
1978	American Board of Psychiatry and Neurology # 17744 Diplomate, Certified in Neurology
1991	Diplomate, American Academy of Pain Management # 2431
Other Professional Activities:	
Hospital Staff Appointments:	
1973-1979	Western Psychiatric Institute & Clinic, Pittsburgh, PA.
1973-1979	Presbyterian University Hospital, Pittsburgh, PA.
1979-1988	Waterbury Hospital, Waterbury, CT.
1979-2001	Hospital of St. Raphael, New Haven, CT.
1980-2001	Yale-New Haven Hospital, New Haven, CT.
1983-1993	Veteran's Memorial Medical Center, Meriden, CT.
1995-1997	Yale Psychiatric Institute, New Haven, CT.
1995-2001	Masonic Geriatric Healthcare Center, Wallingford, CT.
2001-2003	Georgetown University Hospital, Washington, DC.

2001-	The George Washington University Hospital, Washington, DC.
2004-	Suburban Hospital, Bethesda, MD.
Consultation:	
1974-1977	Forbes Hospital System, Pittsburgh, PA.
1974-1977	Mayview State Hospital, Bridgeville, PA.
1974-1977	Veterans Administration Hospital, Pittsburgh, PA.
1978-1979	Monogahela Valley Hospital, Pittsburgh, PA.
1980-1982	Yale Psychiatric Institute, New Haven, CT.
1981-1982	Shirley Frank Foundation, Bridgeport, CT.
1983-2001	Connecticut Mental Health Center, New Haven, CT.
1985-1986	Veterans Administration Health Center, New Haven, CT.
1985-2001	Connecticut Peer Review Organization
1987- 1988	Whiting Forensic Institute, Middletown, CT.
1987-1990	Altogether State Hospital for Adolescents, Middletown, CT.
1987-2001	Saint Francis Care Behavioral Health, Portland, CT.
1996-2000	Professional Advisory Board of the Diagnostic and Assessment Center, Landmark College, Putney, VT.
Administrative Appointments:	
1973-1975	Western Psychiatric Institute and Clinic, Pittsburgh, PA. Senior Physician, Neurodiagnostic Clinic
1973-1975	Western Psychiatric Institute and Clinic, Pittsburgh, PA. Director, Emergency Services and Brief Treatment
1973-1976	Western Psychiatric Institute and Clinic, Pittsburgh, PA. Senior Physician, Mental Retardation Service
1973-1978	Western Psychiatric Institute and Clinic, Pittsburgh, PA.

	Director, Electroencephalographic Laboratory
1976-1977	Western Psychiatric Institute and Clinic, Pittsburgh, PA. Director, Office of Diagnostic Services
1977-1979	Western Psychiatric Institute and Clinic, Pittsburgh, PA. Director, Behavioral Neurology Program
2002-2003	Georgetown University Hospital, Washington, DC. Director, Neuropsychiatry Program
Membership:	
1969-	The Johns Hopkins Medical and Surgical Society
1973-	American Academy of Neurology
1973-	American Psychiatric Association
1973-	American College of Physicians
1979-2001	Connecticut Psychiatric Society
1982-	The New York Academy of Science
1982-2001	New Haven County Medical Association
1984-2001	Connecticut State Medical Society
1986-	American Academy of Psychiatry & the Law
1988-	American Academy of Clinical Psychiatrists
1988-	American Neuropsychiatric Association
1990-	World Federation of Neurology
1991-	Royal Society of Medicine
1994-	American Academy of Child and Adolescent Psychiatry
1996-	American Society of Clinical Psychopharmacology
1997-	International Society of Transcranial Magnetic Stimulation

2000-	American Academy of Immunotherapy
Consultation to State and Federal Courts and Agencies:	
1977-1978	Consultant, Neuropsychiatric Evaluation of Juvenile Offenders, Allegheny County Juvenile Court, Pittsburgh, PA.
1977-1979	Member, Acute Psychiatric Task Force Emergency Health Services Council, Commonwealth of PA.
1977-1985	Chairman, Committee on Psychotropic Medication for the Retarded, Department of Public Welfare, Commonwealth of PA.
1985-1990	State of Connecticut, Governor's Task Force on Aging
1986-1987	Superior Court of Waterbury, CT., Court Appointed Expert
1990-2001	State of Connecticut Department of Mental Health and Addiction Services, Evaluation Psychiatrist, Probate Court for Commitment Hearings
1997-1998	Human Rights Committee, Department of Mental Retardation, South Central Region, Connecticut
Committees, Boards and Consultantships:	
1977-1985	Research Committee on Neuroepidemiology, World Federation of Neurology, Geneva, Switzerland
1982-1999	Medical Advisory Board, Easter Seal Goodwill Industries Rehabilitation Center, New Haven, CT.
1984-1988	Board of Directors, Alzheimer's and Related Diseases Association of Southern Connecticut
1985-1988	Board of Directors, Parkinson's Disease Association of Southern Connecticut
1985-1997	Board of Advisors, Burch House, Littleton, New Hampshire
1985	American Psychiatric Association's Task force on Treatment of Psychiatric Disorders

1986-1987	Chairman, Program Committee, New Haven-Middlesex Chapter, Connecticut Psychiatric Society
1987-1990	Membership Chair, New Haven-Middlesex Chapter, Connecticut Psychiatric Society
1987-2001	Counselor, New Haven-Middlesex Chapter, Connecticut Psychiatric Society
1988-1990	Alternative Care Committee, Connecticut Psychiatry Society
1988-1992	Convening Member, National Task Force for Children's Constitutional Rights, Philadelphia, PA.
1992-1997	National Task Force for Children's Constitutional Rights, Director and Treasurer
1992-2000	National Board of Medical Examiners, American Board of Psychiatry and Neurology, Part I Psychiatry Written Examination Sub Committee III
1992-2001	Physician Advisory Committee of Medicare, Connecticut Neurological Society
1992-	Examiner, National Board of Medical Examiners, American Board of Psychiatry and Neurology Part II Psychiatry, Oral Examination
1994-1996	Scientific Advisory Board, Neurobiological Disorders Society
1994-1998	Treasurer, New Haven/ Middlesex Chapter, Connecticut Psychiatric Society
1996-	Examiner, National Board of Medical Examiners, American Board of Psychiatry and Neurology, Part II Neurology Oral Examination
1996-2003	Board of Directors, American Academy of Clinical Psychiatrists
1997-2001	Private Practice Committee, Connecticut Psychiatric Society
1998-1999	Committee Member, New Haven Jewish Federation Housing Corp., Tower One/ Tower East
1999-2001	Board of Directors, Albert Schweitzer Institute for the Humanities

Editorial Consultant:	
1979-	American Journal of Psychiatry
1983-	Psychosomatics
1983-	American Psychiatric Association Press
1987-	International Journal of Psychiatry in Medicine
1987-	Toxic Emergency Medical Information Sheet, Jonathan Borak and Company, Inc.
1990-2003	Annals of Clinical Psychiatry
1994-	Neurology
1996-	Clinical Child Psychology and Psychiatry
1998-	Harvard Review of Psychiatry
2002-	Journal of the American Academy of Psychiatry and the Law
Editorial Boards:	
1990-1997	Annals of Clinical Psychiatry, Editor, Special Treatment Section
1997-2003	Annals of Clinical Psychiatry, Editorial Board
1999-2003	Psychiatric Update, Editorial Advisory Board
University Activities:	
Teaching:	
1983-2000	Connecticut Mental Health Center, New Haven, CT. Neuropsychiatric Consultant
1984-1985	Yale University School of Medicine, Physicians Associate Program Thesis Supervision

1985	Geriatric Psychiatry, Elective for Psychiatric Residency Program, Yale University School of Medicine
1985-1987	Consultation-Liaison Rounds, Yale-New Haven Hospital
1985-1987	Yale University School of Medicine, Supervision of Medical Student Thesis
1985-1988	Yale University Third-Year Medical Students, Supervision of Neurology Clerkship
1986-1987	University of Connecticut School of Social Work, Clinical Internship Supervisor
1987-2001	Yale University School of Public Health, Division of Chronic Disease Epidemiology, Supervision of Clinical Practicum
1989	Institute of Living Residency Program, Neuropsychiatry Elective
1992-2001	Yale University School of Medicine, Department of Psychiatry, Genetic Epidemiology Research Unit, Supervision of PGY III and PGY IV Residents on Neurological Examination
1993	Yale University School of Medicine, Department of Psychiatry, Neuropsychiatry, PGY II Integrated Psychopathology Course
1993-2001	Yale University School of Medicine, Neurology Training Rotation Psychiatry Residents
1994-1996	Connecticut Mental Health Center, Dual Diagnosis Clinic, Training and Supervision of Psychiatry Residents
1996-1998	Connecticut Mental Health Center, Yale Medical Students, Psychiatry Clerkship
1998-2001	Yale University of Medicine, Psychiatric Residency, Neuropsychiatry Elective
2000-2001	Yale University School of Medicine, Neuropsychology Fellows, Neuropsychiatry Elective
2002	Georgetown University School of Medicine, Neuropsychiatry, Medical Students and Residents

Research:	
1965	Medical Student Training Grant "Sensory Motor Feedback in the Temporal Lobe of the Brain" Neurocommunications Laboratory, Department of Psychiatry, Johns Hopkins Hospital, Principal Investigator – Richard Chase, M.D.
1966	Principal Investigator, Grant from the Moses Family Fund for Research On Myasthenia Gravis, "The Electromyographic Effect of Guanidine" Department of Medicine, Johns Hopkins Hospital
1977	Co-Investigator, "Involvement of Cholinergic Mechanisms in Mental Disease," MH26320, National Institute of Mental Health, University of Pittsburgh School of Medicine Principal Investigator: I. Hanin, Ph.D.
1977	Consultant. "Mental Health Clinical Research Center for Affective Disorders," MH30915, National Institute of Mental Health, University of Pittsburgh School of Medicine, Principal Investigator: David Kupfer, M.D.
1977	Consultant, "Multi-Institutionalized Controlled Study of Brain Resuscitation," Resuscitation Research Institute, University of Pittsburgh School of Medicine, Principal Investigator: Peter Safer, M.D.
1978	Consultant, "Environmental Personal Treatment Interaction in the Course of Schizophrenia," MH30750, National Institute of Mental Health, University of Pittsburgh School of Medicine, Principal Investigator: GE Hogarty, M.S.W.
1986	Consultant, "Alcoholism and Anxiety: A Genetic Epidemiologic Approach," AA 07080, January 1, 1987 – December 31, 1991, Yale University School of Medicine, Principal Investigator: Kathleen R. Merikangas, Ph.D.
1987	Consultant, "Specificity of Transmission of Substance Abuse," DA0534, October 1, 1987 – September 30, 1992, Yale University School of Medicine, Principal Investigator: Kathleen R. Merikangas, Ph.D.
1989	Consultant, "Family Study of Co-Segregation of Affective Disorders and Migraine," MacArthur Foundation Research Network I on the Psychobiology of Affective Disorder, Principal Investigator: Kathleen R. Merikangas, Ph.D.

1994	Consultant, "Minority Children at High Risk for Alcohol-Related Problems," Department of Health and Human Services, Principal Investigator: Kathleen R. Merikangas, Ph.D.
1996	Co-Investigator "Bipolar Affective Disorder in Migraine," Collaborative study at Harvard University and Yale University, Principal Investigator: Kathleen R. Merikangas, Ph. D.
Grant Reviews:	
1991	Ad Hoc Reviewer, the Harry Frank Guggenheim Foundation for a Research Grant 1991

Publications:

Original Articles:

Merikangas JR, Johns RJ. The effect of guanidine on the muscle action potential. *Johns Hopkins Med. J.*; 1968; 122:37-41.

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"Diagnosis and Management of Pain", American Psychosomatic Society, Continuing Education Course, Pittsburgh, P.A. April 1976.

"Psychosis and Movement Disorder: Interrelations", American Psychiatric Association Annual Meeting, Miami, FL, May 1976.

"Total Care of the Psychiatrically Ill Retarded", American Psychiatric Association Annual Meeting, Miami, FL, May 1976.

"Medication of the Mentally Retarded in an Outpatient Setting: Rationale and Consistencies", American Psychiatric Association Annual Meeting, Miami, FL, May 1976.

"Medical Considerations at Intake", The Association Psychiatric Outpatient Centers of American, Regional Meeting, Pittsburgh, PA, October 1977.

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"Neurodiagnostic Methods for the Aged", American Psychiatric Association Annual Meeting, Atlanta, GA, May 8, 1978
Industrial Health Foundation, Inc., Pittsburgh, PA, September 18, 1978.

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"Psychosomatic Illness-Evaluation and Treatment", Industrial Health Foundation, Inc. Pittsburgh, PA, May 1979.

"Psychological Aspects of Stress and "Overview of Psychosis and Neurosis", Industrial Health Foundation, Pittsburgh, PA, September 1980.

"Children with Neurological Problems Presenting as Psychiatric Problems", Continuing Educational Program, Dartmouth Hitchcock Medical Center, Brattleboro Retreat, Brattleboro, VT, October 1980.

"Neurophysiology of Violence", Psychosomatic Grand Rounds, Yale-New Haven Hospital, New Haven, CT, February 18, 1981.

"Behavioral Emergencies", Connecticut Emergency Medical Services Annual Educational Seminar, New Britain, CT, March 13, 1981.

"Mental Retardation", Yale Law School, Yale University, New Haven, CT, April 2, 1981.

"Organic Brain Disorders", South Central Community College, New Haven, CT, April 29, 1981.

"Behavioral Manifestations and Treatment of Chronic Organic Brain Syndrome", Chapel Haven Center for Brain Damaged Adults, New Haven, CT, November 10, 1981.

"Neurological and Psychiatric Considerations in Parkinson's Disease", East Shore Parkinson's Support Group, East Haven, CT, November 19, 1981.

"Psychiatric Complications of Medical Treatment", Neurology and Psychiatry Board Review Course, Department of Psychiatry, Yale University School of Medicine, New Haven, CT, March 15, 1981.

"Psychiatric Complications of Medical Treatment", Neurology and Psychiatry Board Review Course, Department of Psychiatry, Yale University School of Medicine, New Haven, CT, March 19, 1982.

"Psychiatric Problems of Epileptics" and "Atypical Psychiatric Syndromes and Pharmacological Treatment", Course on Psychopharmacology in Children and Adolescents. American Psychiatric Association, Toronto, Canada, May 20, 1982.

"Neurological Complications of Alcohol", Shirley Frank Foundation, New Haven, Ct, June 4, 1982.

"Psychotropic Medication", Conference on Mental Health and Developmental Disability Consortium of New Haven, Clifford Beers Child Guidance Center, New Haven, CT, October 9, 1982.

"Medical Problems in Arbitration", National Academy of Arbitrators, Northeast Regional Meeting, Southbury, CT, October 20, 1982.

"Pharmacology of Neuroleptic Induced Movement Disorder, II", Institute of Living, Hartford, CT, November 8, 1982.

"Headaches", Healthwise Television Broadcast, Storer Cable TV, Channel U-24, New Haven, CT, November 16, 1982.

"Psychiatric Complications of Medical Drugs", Board Review Course, Department of Psychiatry, Yale University School of Medicine, New Haven, CT, March 14, 1983.

"Choline and Drug Response in Tourette's Syndrome", VII World Congress of Psychiatry, Vienna, Austria, July 15, 1983.

“Psychiatric and Family Aspects of Parkinson’s Disease”, Parkinson Enlightenment Program, Hamden, CT, February 1, 1983.

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“Violence and Atypical Psychosis”, Connecticut Valley Hospital, Middletown, CT, March 9, 1983.

“Hysteria and Neurological Conditions”, Mental Health Clinic, Hospital of St. Raphael, New Haven, CT, March 11, 1983.

“Neuropsychiatric Assessment in Childhood”, West Haven Division of Connecticut Mental Health Center, West Haven, CT, April 14, 1983.

“Parietal Lobe Disorders, Part I”, Integrated Seminar in Psychiatry and Psychosomatic Medicine, Yale-New Haven Hospital, New Haven, CT, April 18, 1983.

“Parietal Lobe Disorders, Part II”, Integrated Seminar in Psychiatry and Psychosomatic Medicine, Yale-New Haven Hospital, New Haven, CT, April 25, 1983.

“Stress and Headache in Business”, Combined Resources, Stone School of Business, New Haven, CT, May 26, 1983.

“Job Stress”, Hospital of St. Raphael, New Haven, CT, June 3, 1983.

“Neurological Considerations in Psychiatry”, Connecticut Valley Hospital, Middletown, CT, November 17, 1983.

“Psychiatric Complications of Medical Treatment”, Neurology and Psychiatry Board Review Course, Department of Psychiatry, Yale University School of Medicine, New Haven, CT, March 14, 1984.

“Psychopharmacology of Children and Adolescents”, Course Presentation at Annual Meeting of the American Psychiatric Association, Los Angeles, CA, May 10, 1984.

“Temporal Lobe Epilepsy”, Connecticut Mental Health Center, New Haven, CT, January 12, 1984.

“Face Pain”, Grand Rounds in Oral Surgery, Hospital of St. Raphael, New Haven, CT, March 13, 1984.

“Beta Blockers in Psychiatry”, Connecticut Valley Hospital, Middletown, CT, April 11, 1984.

"On the Insanity Defense", University of Bridgeport School of Law, Bridgeport, CT, April 19, 1984.

"Altered Mental States and the Interface Between Neurology and Psychiatry", Griffin Hospital, Derby, CT, November 10, 1984.

"Distinguishing Neurologic and Psychiatric disease", Consultation Liaison Service, Yale-New Haven Hospital, New Haven, CT, December 18, 1984.

"Association Between Depression and Migraine", Annual Meeting of The Society for Epidemiologic Research, Chapel Hill, NC, June 20, 1985.

"Altered States", Consultation Liaison Service, Yale-New Haven Hospital, New Haven, CT, January 17, 1986.

"Anticonvulsants in Psychiatric Disorders", Jefferson Medical College, Philadelphia, PA April, 1986.

"Facial Pain", Residents in Oral and Maxillofacial Surgery, Hospital of St. Raphael, New Haven, CT, July 15, 1986.

"Seizures and Affective Disorder", Consultation Liaison Service, Yale-New Haven Hospital, New Haven, CT, July 25, 1986.

"Management of the Difficult Patient", Memorial Hospital, Meriden, CT, September 18, 1986.

"Psychological Consequences of Multiple Trauma", International Rehabilitation Associates, Inc., Berlin, CT, November 1986.

"Mental Status Examination", Consultation Liaison Service, Yale-New Haven Hospital, New Haven, CT, January 16, 1987.

"Altered States of Consciousness", Neuropsychiatric Rounds, Yale-New Haven Hospital, January 17, 1987.

"The Neuropsychiatric Work-Up", Consultation Liaison Service, Yale-New Haven Hospital, New Haven, CT, January 23, 1987.

"Blepharospasm", Connecticut Blepharospasm Support Group Annual Meeting, Southbury, CT, April 26, 1987.

"Neuropsychiatry on Death Row", Rhode Island Hospital, Brown University, Providence, RI, October 27, 1987.

"MRI, Thermography and Evoked Potentials in the Evaluation of Low Back Pain", International Rehabilitation Associates, November 17, 1987.

"Neuropsychiatric Manifestations of Migraine", Connecticut Valley Hospital, Middletown, CT, February 3, 1988.

"Advances in the Pharmacologic Treatment of Migraine", Collegium Internationale Neuro-Psychopharmacologicum, Munich, West Germany, August 16, 1988.

"Calcium Channel Blockers in MAO-I Induced Hypertensive Crisis", Collegium Internationale Neuro-Psychopharmacologicum, Munich, West Germany, August 17, 1988.

"A Review of Physical Diagnosis for Psychiatrists", American Psychaitric Association Annual Meeting, San Francisco, CA, May 8, 1989.

"Dangerous Headaches", Swiss Headache Society, Solothurn, Switzerland, December 2, 1989.

"Neuropsychiatry and the Violent Criminal", The Institute of Living, Hartford, CT, February 8, 1989.

"Medical Testimony in Malpractice Actions", Connecticut Trail Lawyers Association, New Haven, CT, April 1989.

"Objective Testing to Determine Rehabilitation Potential for Appropriate Therapy for Traumatic Brain Injury", Intracorp, Glastonbury, CT, May 24, 1989.

"Neuropsychiatry", CROSSTALK, Television broadcast, Channel 28, New Haven, CT, May 24, 1989.

"Medical Ethics and the Care of Children", University of Pennsylvania School of Nursing, Philadelphia, PA, December 5, 1989.

"Thermaography", Trial Strategies Seminar, Travelers Insurance Company, Orlando, FL, February 14, 1990.

"Death Row Criminals", Breakthrough with Dr. Larkin, Radio broadcast, Pastoral Theological Institute, Hamden, CT, March 21, 1990.

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"A Review of Physical Diagnosis for Psychiatrists", American Psychiatric Association Annual Meeting, New York City, New York, May 13, 1990.

"A Practical Clinical Laboratory Guide for Psychiatrists", American Psychiatric Association Annual Meeting, New York City, NY, May 15, 1990.

"Neuropsychiatric Considerations and the Insanity Defense for Murder", Georgia Resource Center, Atlanta, GA, July 12, 1990.

"Painful Neuropathies", Bristol Hospital, Bristol, CT, January 29, 1991.

"Painful Neuropathies", Charlotte Hungerford Hospital, Torrington, CT, February 1, 1991.

"Behavioral Management for the TBI Client Via Pharmacological Intervention", New Medico Head Injury Systems, Meriden, CT, March 22, 1991.

"Children as Witnesses in Child Abuse Cases", Eyewitness News, WFSB Channel 3, April 29, 1991.

"A Review of Physical Diagnosis for Psychiatrists", American Psychiatric Association Annual Meeting, New Orleans, LA, May 14, 1991.

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"The Neuropsychiatric Evaluation of Violent Behavior", National Alliance for the Mentally Ill Children & Adolescent Network, Woodbridge, CT, November 13, 1991.

"Homicide Task Force", Eyewitness News, WFSB Channel 3, November 19, 1991.

"A Review of Physical Diagnosis for Psychiatrists", American Psychiatric Association Annual Meeting, Washington, DC, May 3, 1992.

"Evaluation and Treatment of Violent Youth", Community Action for the Mentally Ill Offender, Seattle, WA, May 28, 1992.

"Neuropsychiatric Evaluation of Juvenile Offenders", National Coalition for the Mentally Ill in the Criminal Justice System, Seattle, WA, May 28, 1992.

"The Phoenix Park Murders", James Joyce Symposium, Dublin, Ireland, June 18, 1992.

"The Neurological Basis for Violent Behavior: Children and Adults", National Alliance for the Mentally Ill National Meeting, Washington, DC, September 12, 1992.

"Who's on Death Row? Psychiatric Portraits", Violence in America Psychological and Sociological Perspectives, Washington, DC, October 16, 1992.

"Radiology and Neurology Consultation", PGY II Integrated Psychopathology Course, Veterans Administration Hospital, West Haven, CT, February 18, 1993.

"Epilepsy", PGY II Integrated Psychopathology Course, Veterans Administration Hospital, West Haven, CT, February 22, 1993.

"Diagnostic Imaging", PGY II Integrated Psychopathology Course, Yale-New Haven Hospital, New Haven, CT, March 15, 1993.

"Epilepsy", PGY II Integrated Psychopathology Course, Yale-New Haven Hospital, March 22, 1993.

"A Review of Physical Diagnosis for Psychiatrists", American Psychiatric Association Annual Meeting, San Francisco, CA, May 23, 1993.

"Post Traumatic Headaches", Swiss Neurological Society, Flims, Switzerland, June 5, 1993.

"Pharmacotherapy of Traumatic Brain Injury in Children", American Academy of Child Psychiatry National Meeting, San Antonio, TX, October 28, 1993.

"Specialty Clinics in Child Psychiatry", American Academy of Child Psychiatry National Meeting, San Antonio, TX, October 28, 1993.

"Evaluation of the Violent Offender", Second International Conference on Treatment and Diversion of Mentally Disordered Offenders, Tempe, AZ, November 8, 1993.

"The Clinton Health Care Package", with Senator Joseph Crisco, Commissioner Donald Pogue and Professor Theodore Marmer. Public Service Cable Television broadcast, Seymour, CT, November 12, 1993.

"The Neurobiology of the Attention Deficit Disorder and Learning Disabled Brain", Children and Adults with Attention Deficit Disorders Support Organization, Berlin, CT, November 13, 1993.

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"Pharmacotherapy of Traumatic Brain Injury in Children", American Psychiatric Association Annual Meeting, Philadelphia, PA, May 23, 1994.

"SPECT, CT, MRI & EEG in Psychiatry", Yale University Psychiatric Residents, March 31, 1994.

"Anticonvulsants in Psychiatry", Yale University PGY III and PGY IV students, Veterans Administration Hospital, West Haven, CT, May 17, 1994.

"Preparing for a Career in Neuropsychiatry", American Psychiatric Association Annual Meeting, Miami, FL, May 24, 1995.

"Managed Care: The Psychiatrist and Neurologist in Private Practice", Department of Psychiatry, University Hospital, Bern, Switzerland, June 20, 1995.

"Mental Health Services to Youth Detained in Juvenile Justice Facilities", American Academy of Child and Adolescent Psychiatry Annual Meeting, New Orleans, LA, October 19, 1995.

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"Neuropsychiatric Evaluation of Death Row Criminals", University of Texas Medical Branch, Galveston, TX, January 31, 1995.

"Chronic Pain", Masonic Home and Hospital, Wallingford, CT, February 2, 1995.

"Swiss Psychiatry and the Mental Illness of Lucia Joyce", 15th Annual James Joyce Symposium, Zurich, Switzerland, June 21, 1996.

"Update on Headache", University of Massachusetts Medical Center, Worcester, MA, January 16, 1996.

"Medico-Legal Aspects of Headache Treatment", Headache Consortium of New England, Stowe, VT, March 2, 1996.

"Traumatic Brain Injuries and Its Consequences", Child Neurology and Psychiatry Conference, Vilnius, Lithuania, June 27, 1997.

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→ "Mental Health Issues in Death Penalty Defense", National Institute for Trail Advocacy Meeting, Temple University School of Law, Philadelphia, PA, January 31, 1998.

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"James Joyce: Manic Genius and the Family Triangle", The Program for Humanities and Medicine, Yale University School of Medicine, May 7, 1998.

"Koskoff Inn of Court: Admissibility of Evidence: Porter and Daubert Decisions", Tyler, Cooper, and Alcorn, 205 Church Street, New Haven, CT, November 17, 1988.

"Introduction to the Multi-Axial System of DSM-IV", Federal Defender Training Group, Atlanta, GA, August 28, 1999.

"Personality Disorder Diagnosis", Fourth Annual National Habeus Corpus Seminar, Federal Defender Training Group, Atlanta, GA, August 28, 1999.

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"The Mental Illness of Lucia Joyce", Neurosciences and Psychiatry Congress of History, Joint Meeting of European Association for the History of Medicine, International Society for the History of the Neurosciences and European Club for the History of Neurology, Zurich, Switzerland, September 15, 1999.

"The Adolph Meyer Lecture: Crossing, Uncrossing, and Re-crossing of Neuropsychiatry in the USA", Neurosciences and Psychiatry Congress of History, Joint Meeting of European Association for the History of Medicine, International Society for the History of the Neurosciences and European Club for the History of Neurology, Zurich, Switzerland, September 16, 1999.

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“Neuroscience of Music”, Humanities in Medicine Series, Yale University School of Medicine, New Haven, CT, March 20, 2003.

“Mental Health Issues in Criminal Defense”, D.C. Association of Criminal Defense Attorneys, Washington, DC, April 5, 2003.

“Applying Brain Imaging to Clinical Practice: A Master Clinician’s View-Opening the Mind – The Clinical Application of Brain SPECT Imaging in Psychiatry”, University of California Irvine College of Medicine and the Amen Clinics, Irvine, CA, May 3, 2003.

RECEIVED

MAR 16 2007

Ada County Clerk

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
Idaho State Bar No. 2127
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

NO. _____ FILED P.M. 5:00
A.M. _____

MAR 16 2007

By DAVID NAVARRO Clerk
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERICK VIRGIL HALL,

Petitioner,

vs.

THE STATE OF IDAHO,

Respondent,

Case No. SPOT0500155

**DISCOVERY
RESPONSE TO COURT**

COMES NOW, Roger Bourne Deputy Prosecuting Attorney, in and for the County of Ada,
State of Idaho, and informs the Court that the State has complied with the Court's Discovery Order
on the 15 day of March 2007.

RESPECTFULLY SUBMITTED this 15 day of March 2007.

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Roger Bourne
Deputy Prosecuting Attorney

ORIGINAL

MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

MARK J. ACKLEY, I.S.B. # 6330
PAULA M. SWENSEN, I.S.B. # 6722
Deputy State Appellate Public Defenders
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

NO. _____
FILED _____
A.M. _____ P.M. 1:11

MAY 14 2007

J. DAVID NAVARRO, Clerk
By: *Michaela Anderson*
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERICK VIRGIL HALL,
Petitioner,

v.

STATE OF IDAHO,
Respondent.

CASE NO. SPOT0500155


NOTICE OF HEARING

(CAPITAL CASE)

COMES NOW, Petitioner, ERICK VIRGIL HALL, by and through his counsel at the State Appellate Public Defender, and provides notice that a hearing will be held regarding the status of the above-captioned case on June 15, 2007, at 2:30 p.m. The hearing will be held before the Honorable Thomas F. Neville at the Ada County Courthouse, 200 W. Front Street, Boise, Idaho. The necessity for, and the date of, this hearing have been agreed upon by the parties. Among other matters, the parties will seek a deadline to be imposed by this Court for the filing of Petitioner's final amended petition for post-conviction relief. At this point in time, the parties have not agreed upon such a date. Petitioner also intends to file motions to be heard at the hearing, including a motion regarding discovery matters stemming in part from the State's response to this Court's Order Regarding Discovery. Any motion will be filed no later than

June 1, 2007, to provide a meaningful opportunity for this Court's consideration and for any response from the State.

DATED this 11TH day of May, 2007.




MARK J. ACKLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of May, 2007, served a true and correct copy of the attached NOTICE OF HEARING by the method indicated below:

ERICK VIRGIL HALL INMATE # 33835 IMSI PO BOX 51 BOISE ID 83707	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Statehouse Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery
ROGER BOURNE ADA COUNTY PROSECUTOR'S OFFICE 200 W. FRONT, SUITE 3191 BOISE ID 83702	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Statehouse Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> E-Mail


BARBARA THOMAS
CLU Administrative Assistant

ORIGINAL

MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

MARK J. ACKLEY, I.S.B. # 6330
PAULA M. SWENSEN, I.S.B. # 6722
Deputy State Appellate Public Defenders
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERICK VIRGIL HALL,

Petitioner,

v.

STATE OF IDAHO,

Respondent.

CASE NO. SPOT0500155

**MOTION FOR
JUROR CONTACT**

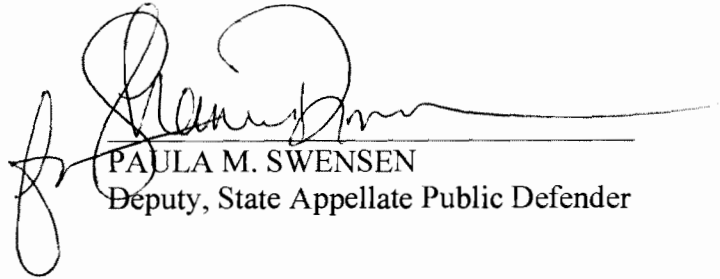
(CAPITAL CASE)

Petitioner, ERICK VIRGIL HALL, by and through his attorneys, moves this Court for permission for counsel to contact jurors and alternate jurors who sat in the underlying criminal matter, for the purpose of conducting post-conviction investigation. This Court indicated during hearings held in January and February, 2006, that it would require Petitioner to seek permission to contact jurors prior to Petitioner's counsel making such contact.

Petitioner relies upon the Memorandum in Support of this motion filed herewith, and all matters of record in the underlying criminal case and this post-conviction case. Petitioner incorporates by reference his "Motion to Reconsider Oral Orders Regarding Ex Parte Procedures and Restrictions on Juror Contact," filed January 20, 2006, the

memorandum filed in support of that motion, and oral argument presented in support of that motion.

Dated this 1st day of June, 2007.



PAULA M. SWENSEN
Deputy, State Appellate Public Defender

CERTIFICATE OF SERVICE

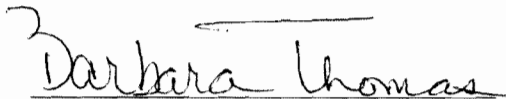
I HEREBY CERTIFY that I have on this 1st day of June, 2007, served a true and correct copy of the forgoing MOTION FOR JUROR CONTACT as indicated below:

ROGER BOURNE
ADA COUNTY PROSECUTOR'S OFFICE
200 W. FRONT, SUITE 3191
BOISE ID 83702

☐ Statehouse Mail
☐ U.S. Mail
☐ Facsimile
☒ Hand Delivery

ERICK VIRGIL HALL
INMATE # 33835
IMSI
PO BOX 51
BOISE ID 83707

☒ Statehouse Mail
☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery


BARBARA THOMAS
Administrative Assistant

Session: Neville061507
Session Date: 2007/06/15
Judge: Neville, Thomas F.
Reporter: Gorczyca, Melanie

Division: DC
Session Time: 08:30

Courtroom: CR501

Clerk(s):
Ellis, Janet

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0005

Case Number: SPOT0500155D
Plaintiff: HALL, ERICK VIRGIL
Plaintiff Attorney: ACKLEY, MARK
Defendant: STATE OF IDAHO
Co-Defendant(s):
Pers. Attorney:
State Attorney: BOURNE, ROGER
Public Defender:

2007/06/15

15:13:24 - Operator

Recording:

15:13:24 - New case

, STATE OF IDAHO

15:13:45 - Other: SWENSON, PAULA

present on behalf of the petitioner as well.

15:13:54 - Judge: Neville, Thomas F.

Court has Motion for Juror access as well as sealed supp. Motion for

15:14:16 - Judge: Neville, Thomas F.

Discovery. Court understands responsive memorandum completed earlier today

15:14:40 - Judge: Neville, Thomas F.

that have not been shared with Court and counsel. Court would like to set

00964

15:15:05 - Judge: Neville, Thomas F.
this over to July 11th @ 9:00 a.m. Court will set all motions to that date.

15:16:18 - Judge: Neville, Thomas F.
Court inquired anything further today

15:16:27 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley stated have identified a few areas where there is disagreement,

15:16:57 - Plaintiff Attorney: ACKLEY, MARK
Regarding Motion for Jury Contact, State does not have objection to contact,

15:17:13 - Plaintiff Attorney: ACKLEY, MARK
but how they will be contact, where it will be, the scope and who will be

15:17:30 - Plaintiff Attorney: ACKLEY, MARK
present and what restrictions would be imposed. In terms of Motion for

15:17:58 - Plaintiff Attorney: ACKLEY, MARK
Discovery, sensitive documents held by State of Washington, want unredacted

15:18:21 - Plaintiff Attorney: ACKLEY, MARK
version of a diary of Westly Alan Dodd. Have located the diary, have a

15:19:11 - Plaintiff Attorney: ACKLEY, MARK
sample protective order from State of Washington. Other sealed records of

15:19:48 - Plaintiff Attorney: ACKLEY, MARK
Norma Jean Oliver, have concerns with dates that should be available and

15:20:16 - Plaintiff Attorney: ACKLEY, MARK
close to resolving that. Could not recall if asked first if medical records

15:20:36 - Plaintiff Attorney: ACKLEY, MARK
could be given to SAPD first, and then if Court denied then have In Camera

15:21:07 - Plaintiff Attorney: ACKLEY, MARK
review.

15:21:16 - Judge: Neville, Thomas F.

15:21:33 - Plaintiff Attorney: ACKLEY, MARK
Other issues of sealed motion, was obtaining PSI re: April Sebastian. State

15:22:39 - Plaintiff Attorney: ACKLEY, MARK
served some supp. discovery on Norma Jean Oliver, tape recording from 1991

15:23:04 - Plaintiff Attorney: ACKLEY, MARK
both from Ms. Oliver and Erick Hall. Will listen to right away and if needed

15:23:24 - Plaintiff Attorney: ACKLEY, MARK

supplement the record.

- 15:25:42 - Plaintiff Attorney: ACKLEY, MARK
Stated audio attachments have cites for the Court. Have had recent interview
- 15:26:11 - Plaintiff Attorney: ACKLEY, MARK
from 2006 interviewing her in West Virginia.
- 15:27:51 - Other: SWENSON, PAULA
Ms. Swenson stated have typographical error in Memo in support of juror
- 15:28:14 - Other: SWENSON, PAULA
contact.
- 15:28:50 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley stated in Motion for Discovery, add'l information on hearing date,
- 15:29:12 - Plaintiff Attorney: ACKLEY, MARK
release of the 1991 PSI. The Court requested add'l information /transcript
- 15:33:11 - Plaintiff Attorney: ACKLEY, MARK
from the October 28th hearing where Mr. Myshin was told the PSI no longer
- 15:33:34 - Plaintiff Attorney: ACKLEY, MARK
existed. Would like that transcript
- 15:33:49 - Judge: Neville, Thomas F.
The Court inquired of Mr. Bourne re: Juror Contact
- 15:34:14 - State Attorney: BOURNE, ROGER
Mr. Bourne responded, could be some circumstances where there could be some
- 15:34:33 - State Attorney: BOURNE, ROGER
juror contact.
- 15:35:10 - State Attorney: BOURNE, ROGER
Mr. Bourne stated these jurors believed their phone numbers and addresses are
- 15:35:29 - State Attorney: BOURNE, ROGER
confidential, would prefer Court send letter to jurors.
- 15:35:49 - Judge: Neville, Thomas F.
Court states jurors are sent away thinking their service is done after
- 15:37:19 - Judge: Neville, Thomas F.
verdicts are reached. Court had prior case where jurors contacted by defense
- 15:37:54 - Judge: Neville, Thomas F.
counsel private investigator who were genuinely upset. Possibly with a
- 15:39:31 - Judge: Neville, Thomas F.
letter from the Court reactions might be different. Death penalty case does
- 15:40:41 - Judge: Neville, Thomas F.
not automatically qualify for this kind of contact.

15:41:22 - State Attorney: BOURNE, ROGER
Do have a unqualified view that jurors should be contacted, would need to be

15:41:41 - State Attorney: BOURNE, ROGER
qualified.

15:42:53 - Judge: Neville, Thomas F.
Defense would have a substantial showing to make on that

15:43:10 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley stated trying to err on side of caution. Inquire if Court would

15:44:40 - Plaintiff Attorney: ACKLEY, MARK
like to have future motions under seal. Stated Mr. Chastain would like to

15:45:58 - Plaintiff Attorney: ACKLEY, MARK
join in the particular discovery issue on Westley Dodd.

15:46:20 - Judge: Neville, Thomas F.
Court received that motion today from Mr. Chastain.

15:46:32 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley inquired if free to share discovery with trial counsel on the

15:46:51 - Plaintiff Attorney: ACKLEY, MARK
Hanlon case.

15:47:17 - Judge: Neville, Thomas F.
Court would ask that Ms. Bennett's handling prosecutor for the Hanlon case be

15:47:40 - Judge: Neville, Thomas F.
advised, and believe she would think that was fair. Will ask that Mr. Bourne

15:47:55 - Judge: Neville, Thomas F.
relate that to Ms. Bourne. Mr. Chastain can make specific request made

15:48:50 - Judge: Neville, Thomas F.
through the H0300624 case and allow State to have opportunity to respond.

15:50:15 - Judge: Neville, Thomas F.
Court will see counsel back on July 11, 2007 @ 9:00 a.m.

15:50:37 - Operator
Stop recording:

RECEIVED

JUL 09 2007

Ada County Clerk

GREG H. BOWER

Ada County Prosecuting Attorney

Roger Bourne

Deputy Prosecuting Attorney

Idaho State Bar No. 2127

200 West Front Street, Room 3191

Boise, Idaho 83702

Phone: 287-7700

Fax: 287-7709

NO
FILE
JUL 09 2007

JUL 09 2007

DAVID NAVARRO, Clerk
By PATRICIA A. DWONCH
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERICK VIRGIL HALL,

Petitioner,

vs.

THE STATE OF IDAHO,

Respondent,

Case No. SPOT0500155

STATE'S OBJECTION TO
PETITIONER'S MOTION FOR
UNRESTRICTED ACCESS TO
JURORS

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and puts before the Court the State's Objection to the Petitioner's Motion for Unrestricted Access to the trial jurors and alternates who sat in the guilt and penalty phase of the Henneman murder case against the petitioner. The petitioner has put the Court on notice that he has at least eleven areas of general inquiry to talk to all of the jurors about and then more specific questions for individual jurors.

STATE'S OBJECTION TO PETITIONER'S MOTION FOR UNRESTRICTED ACCESS
TO JURORS (HALL), Page 1

00968

The petitioner essentially admits that his desire for questioning of the jurors is a fishing expedition. He puts no evidence before the Court indicating that the jurors acted improperly in any respect. The Court has earlier ordered that neither post-conviction counsel nor the State may contact the jurors without further order of the Court.

On the basis of the evidence before the Court, the Court's current order is proper in every respect. The petitioner should not have unrestricted access to the jury panel.

To begin with, it must be remembered that these jurors have convicted the defendant of a violent and shocking rape and murder. The evidence these jurors saw proved that the petitioner repeatedly struck Lynn Henneman on the head with some blunt object, raped her and strangled her. The evidence further showed that he tied her up with her own clothing and left her on the bank of the river for several hours. They heard during the penalty phase that he had violently raped and choked another young woman, had served a lengthy prison sentence and had been convicted of escape. The jury's verdict and sentence clearly indicates the jury's view of the defendant's dangerousness and criminality.

The jurors thought that their service in the case was complete. They thought their home addresses and telephone numbers were not available to the man that they convicted of murder and rape. Some of these jurors are elderly or live alone. Now to have the killer's lawyers or agents show up on their doorstep and demand interviews about their deliberations and other confidential things in their lives, two and a half years later, will be predictably upsetting. Those jurors are particularly susceptible to intimidation, coercion, harassment and to being influenced improperly by suggestion. In short, jury tampering. Idaho Code §18-1304.

To limit this significant potential for abuse, Idaho Rule of Evidence 606(b) prohibits testimony from jurors about a verdict except in very limited circumstances:

1. Whether extraneous, prejudicial information was improperly brought to the jury's attention;
2. Whether any outside influence was improperly brought to bear upon any juror;
3. Whether or not the jury determined any issue by resort to chance.

Idaho Courts have routinely upheld court orders restricting post verdict testimony based upon an I.R.E. 606(b) analysis. Several cases will be discussed below.

The Supreme Court has also recognized that there are proper public policy goals underlying I.R.E. 606(b), namely to, "promote finality, protect jurors from post trial inquiry or harassment, and to avoid the practical concern that an affidavit by a juror to impeach the verdict is potentially unreliable." *Levinger v. Mercy Medical Center*, 139 Idaho 192 (S.Ct. 2003).

The petitioner cites several Idaho cases and would have the Court believe that they stand for the proposition that Idaho courts routinely allow unrestricted access to jurors post-verdict. Those cases cited do not stand for that proposition, but clearly show that trial courts routinely restrict access to jurors. In *State v. Rhoades*, 121 Idaho 63 (S.Ct. 1991) the petitioner correctly states that the trial court permitted post trial interviews with jurors and authorized the defense to hire an investigator for that purpose. However, the opinion highlights that the defendant was not allowed to call the jurors as witnesses nor to take their depositions and the court instructed the defense to limit their question of the jurors to a single inquiry. That trial court would not have tolerated the wide scope of questioning proposed by counsel.

The petitioner also cites *Roberts v. State*, 132 Idaho 494 (S.Ct. 1999). In that case jurors were interviewed, apparently without the court's knowledge, but juror affidavits were excluded from the post conviction hearing because the defendant inquired about the validity of the verdict which violated I.R.E. 606(b).

In *State v. Webster*, 123 Idaho 233 (Ct.App. 1993) the court declared evidence of juror's affidavits to be inadmissible because the evidence violated I.R.E. 606(b).

In *Watson v. Navistar Intern. Transp. Corp.*, 121 Idaho 643 (S.Ct. 1992), the court permitted inquiry of jurors post-verdict related to a "quotient verdict." The case does not indicate that trial counsel was allowed to inquire into other parts of the jury's verdict.

While the cases speak of post-verdict inquiry, they clearly stand for the proposition that the trial court can restrict the contact. Nothing about those cases stands for the proposition asserted by the petitioner, that he should have unrestricted access to the jurors.

As it relates to post-verdict questioning of the jurors, nothing could be clearer from Idaho case law that I.R.E. 606(b) has been repeatedly upheld. No Idaho case permits inquiry into jurors' mental processes or the affect that certain information may have had upon the jurors' minds during deliberation and any attempt to do so has been prohibited.

The Idaho Court of Appeals in *State v. Webster*, 123 Idaho 233 (Ct.App. 1993) held that statements made by jurors as to how they had arrived at the conviction of a co-defendant were not admissible under I.R.E. 606(b). The Court stated, "statements regarding any other aspect of the jury's deliberations are inadmissible to impeach the jury's verdict." The Court held that Rule 606(b) only permitted impeachment of a jury verdict on the grounds that:

- (1) Extraneous prejudicial information was improperly brought to the jury's attention, (2) outside influence was improperly brought to bear on a juror, or (3) the verdict was determined by resort to chance. pg 236.

In *State v. Turner*, 136 Idaho 629 (Ct.App. 2001), the defendant sought to introduce the affidavit from an investigator who had interviewed some of the jurors post-verdict. The issue was whether or not the jurors had considered *Turner's* failure to testify at trial, during their deliberations, in violation of the court's instruction. The district court denied *Turner's* motion

for a new trial and cited to I.R.E. 606(b). The Court of Appeals affirmed the district court and stated the following:

Under Rule 606(b), there are certain matters a juror may not testify about when there is a challenge to the validity of a verdict. A juror may not testify about any matter or statement occurring during the course of the jury's deliberation. A juror cannot testify about the affect of anything upon that juror's or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or concerning the juror's mental processes in connection therewith. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for the purpose of inquiring into the validity of a verdict. A juror may only testify about whether extraneous prejudicial information was improperly brought to bear upon any juror and whether the juror determined any issue by resort to chance. at p. 635

The Court of Appeals also referred to an Idaho Supreme Court case, *State v. DeGrat*, 128 Idaho 352 (S.Ct. 1996). In *DeGrat*, the court considered whether or not the trial court erred in refusing to grant the defendant a hearing so that he could adduce evidence from a juror that the jurors had considered the defendant's failure to testify at trial. The trial court held that Rule 606(b) prohibited the, "juror from testifying about or submitting an affidavit on the jury's deliberations." The Supreme Court affirmed the trial court, and held the following:

Broken down into its constituent parts, I.R.E. 606(b) provides that '[u]pon an inquiry into the validity of a verdict or indictment,'
-- a juror may *not* testify as to

- Any matter or statement occurring during the course of the jury's deliberations *or*
- The effect of anything upon the juror's or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment *or*
- Concerning the juror's mental processes in connection therewith;

– *Nor* may a juror’s affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes,

– *But* a juror *may testify* whether

- Extraneous prejudicial information was improperly brought to the jury’s attention *or*
- Any outside influence was improperly brought to bear upon any juror *and*

– *May be questioned* about or may execute an affidavit on the issue of whether or not the jury determined any issue by resort to chance. at page 354

The Supreme Court held that the juror’s testimony was “clearly prohibited by I.R.E. 606(b).

The *DeGrat* court cited to the United States Supreme Court case of *Tanner v. United States*, 483 U.S. 107, 107 S.Ct. 2739, 97 L.Ed.2d 90 (1987). In that case, a juror told one of the defendant’s lawyers, while the case was pending on appeal, that “the jury was on one big party.” The juror said that other jurors had used drugs and had even slept during the trial. The trial court had refused to hold an evidentiary hearing on the alleged jury misconduct because the testimony would not have been admissible under Federal Rule of Evidence 606(b). The Federal Rule and the State Rule are the same except that the Federal Rule does not allow inquiry into whether the verdict was arrived at by chance as the State Rule does.

The defendant appealed and argued that his Sixth Amendment Right to a fair trial had been violated. The Supreme Court recognized that defendant’s have a Sixth Amendment Right to an “unimpaired jury,” but held that the defendant’s rights were protected by other aspects of the trial including jury selection and observation by the court, the attorneys, and other court personnel.

The *DeGrat* court held that the court's jury instructions requiring that the jury not consider the defendant's failure to testify was, "sufficient to protect DeGrat's constitutional privilege not to testify, although there may be other procedures that would also be sufficient." As stated above, the Supreme Court upheld the trial court's refusal to hold a hearing and allow testimony from the juror.

In *Roberts v. State*, 132 Idaho 494 (S.Ct. 1999) *Roberts* challenged his conviction in a motion for post conviction relief. *Roberts* claimed that if jurors had heard certain alibi testimony, the outcome of his trial might have been different. He attempted to submit the affidavits from four of his jurors on that issue. In their affidavits, the jurors claimed that, had they heard the evidence, the outcome "might," "could," or "would" have been different. The district court granted the State's motion to strike those affidavits under Rule 606(b) and held that they were, "offered to demonstrate the affect that having certain information would have had on certain juror's minds or emotions while deliberating and address the forbidden area of the jury's mental processes during their deliberation." at p. 496

FACTS AND ARGUMENT

Before the jury heard any evidence, the Court specifically instructed the jury that, "in determining the facts you may consider only the evidence admitted in this trial." Opening instructions Tr. pg 3404 line 13-14.

The Court also instructed the jurors that, "you should keep an open mind throughout the trial and not form or express an opinion about the case. You should only reach your decision after you have heard all of the evidence, after you have heard my final instructions and after the final arguments." Tr. pg 3407 -- 3407.

The Court also instructed the jury as follows:

Fourth, during this trial do not make any investigation of this case or inquire outside the courtroom on your own. Do not go to any place mentioned in the testimony without an explicit order from me to do so. You must not consult any books, dictionaries, encyclopedias, or any other source of information unless I specifically authorized you to do so. Tr. pg 3408 – 3409.

The bulk of the petitioner's proposed questions are merely to find out if the jury followed the Court's instructions. The *DeGrat* case specifically prohibits jury testimony on that issue. As pointed out above, the defendant in *DeGrat* had been told by a juror that the jury considered the defendant's failure to testify. The trial court refused to allow testimony from the juror and held that the court's instructions to the jury were sufficient to protect the defendant's Fifth Amendment Rights. That is no different than this defendant's desire to attempt to create jury testimony on the question of whether they followed the Court's opening instructions. That is prohibited.

A review of the questions proposed by the petitioner, for the jury, shows that any answers to those questions will not produce admissible evidence under the Rule and so should not be permitted.

1. Knowledge of Undisclosed Witnesses

Prior knowledge of undisclosed witnesses is not, "extraneous prejudicial information improperly brought to bear upon a juror." That inquiry should not be allowed.

2. Awareness of Mr. Hall's Shackles

This is just a fishing expedition. The Court stated on the record that the shackles weren't obvious. Tr. pg 2067. There is no evidence that the shackles were visible.

This inquiry should not be allowed. It is an example of the *Tanner supra* court and *DeGrat supra* court analysis that juror misconduct could be observed by others, making jury inquiry unnecessary.

3. Undisclosed Information During Voir Dire or in Juror Questionnaires

This inquiry is to determine, “whether jurors failed to disclose material information on either the jury questionnaires or during voir dire.” This is a fishing expedition. The petitioner has no reason to think that there was undisclosed information. There is nothing about this inquiry that fits within Rule 606(b) as being, “extraneous prejudicial information . . . improperly brought to bear upon any juror.” This inquiry should not be allowed.

4. Juror Experimentation, Crime Scene Visits or Consideration of Other Extra Record Evidence

This inquiry is simply fishing. Counsel has no evidence to support a belief that there was extraneous information received. The question does fit the literal language of the Rule and if questioning were allowed, this one question without any follow up question as to the effect that information had on jury deliberation would fit within the language of the Rule.

But this is no different than the questions prohibited by *DeGrat* and *Tanner*. The jurors were instructed not to visit the crime scene and there is no more reason to think they disregarded the instruction than there is reason for the *DeGrat* court to think the jury disregarded the instruction to not consider the defendant’s failure to testify.

5. Extraneous Influences or Evidence

It is unclear how No. 5 is different than No. 4, but it should not be allowed because it is a question about the juror’s thought process. Specifically, the jurors would be asked how they

viewed certain information. The question is, “whether jurors were influenced by non-jurors.” Testimony about juror’s thought process or emotions is specifically prohibited.

6. Extrinsic Evidence Found in Reference Materials

It is not clear how this question is different from No. 5 or No. 6 and the petitioner has no evidence to support a suspicion that jurors looked at reference material. The jury was specifically instructed not to look at reference material. Testimony about whether they looked at reference material, without reference to whether or not the information affected their deliberations, seems to be allowable under the rule. But there is no reason to think that they did not follow the Court’s instructions.

7. Religious Sources or Influences

This appears to be the same type of question as No. 4, No. 5 and No. 6 as far as being extraneous information. The jury was properly instructed not to make any independent investigation or to discuss the case with anyone else or among themselves. There is no reason to think that they violated that instruction. This question should not be allowed as a fishing expedition.

8. Media Exposure and Exposure to the Hanlon Case

No question about the Hanlon case nor about juror’s use of the greenbelt should be allowed. Nothing about those topics is, “extraneous prejudicial information . . . improperly brought to bear upon any juror.” There is no suggestion that the defendant’s other crimes or the juror’s concerns about the greenbelt were improperly brought to bear upon the jury during their service.

9. Premature Jury Deliberation

Questions about the jury's deliberation should not be allowed. Nothing about the starting of deliberations can be characterized as, "extraneous prejudicial information improperly brought to bear upon the juror."

10. Juror Bias Regarding Mr. Hall's Dangerousness

The petitioner claims significance to a note sent by a juror referring to a paperclip being "fiddled with" by D.C. Carr. The juror may have referred to it as a sharp instrument. The petitioner wants to do what the case law specifically says he cannot do, and that is to ask a juror to, "testify about the affect of anything upon that juror or any other jurors mind or emotions as influencing a juror . . ." *State v. Turner*, 136 Idaho at 635. This question should not be allowed.

11. Improper Consideration of Exercise of Constitutional Rights

This inquiry is also specifically prohibited by the *Turner supra* case and *DeGrat supra* as being something that influenced the juror's mind.

The petitioner also lists what he calls inquiries specific to certain jurors, which the State will discuss below. All of the topics discussed under the juror's names below were brought out during jury selection or in the written questionnaires.

1. Juror Ostolasa

The petitioner wants to talk to this juror about the juror's time constraints and the affect they had on her deliberations. "A juror cannot testify about the affect of anything upon that juror's or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or concerning the juror's mental processes in connection therewith." *Turner* at page 635. This question should not be allowed.

2. Juror Mitchell

The petitioner wants to inquire, “whether the juror’s extensive use of the greenbelt affected her views of the crime or Mr. Hall.” This question is also precluded by the holding in *Turner*.

3. Juror Keeney

At the same time that the Erick Hall case was being tried, another murder case was being tried in Judge Copsey’s court. The victim of that case was Angie Abdullah. During jury selection in the Hall case, Juror Keeney indicated that she knew Angie Abdullah because they had attended the same church. Now the petitioner wants to question Juror Keeney about, “the extent to which her sympathy for Mrs. Abdullah influenced her decision making in Mr. Hall’s case.” That inquiry is specifically prohibited by every Idaho court that has considered the question.

4. Juror Johnson

The petitioner wants to ask Juror Johnson about Juror Johnson’s hearing impairment. He is curious about whether the impairment, “prevented her from hearing the evidence presented at trial and sentencing.” This inquiry is also a question of what evidence the juror considered in her verdict. That is specifically prohibited under Rule 606(b). Additionally, Juror Johnson said during jury selection that she was able to hear both counsel without difficulty. Tr. 2177, 2118, 2123.

5. Juror Jasper

The petitioner wants to question Juror Jasper about his views on the death penalty as related by Juror Jasper during jury selection. The juror's views on the death penalty are not, "extraneous prejudicial information . . . improperly brought to bear upon any juror." The inquiry should not be allowed.

6. Juror Alloway

It came out during jury selection that Mr. Alloway had done electrical work at the Idaho Department of Corrections. The petitioner now wants to ask further questions of the juror about his interaction with inmates and, "how his experience at the prison affected his views of criminal justice or the death penalty." For the reasons set out above, this is a question concerning the affect of things on the juror's mind or emotions and should not be allowed. It is also not extraneous information brought to bear on the jury.

7. Juror McNeese

The Court probably recalls that this juror's husband was a deputy attorney general assigned to the Department of Corrections at the time of the trial. This juror was questioned about her husband's work and about her husband's view of the death penalty. The petitioner now wants to question Juror McNeese about whether her, "views of inmates and criminals are biased because of the personal and professional stigma brought to bear on her husband by the action of inmate-claimants." The petitioner also wants to question her about how the rape and murder of the juror's cousin twenty-five years ago in California, "influenced Mrs. McNeese." He also wants to question the juror about whether she knew Jay Rosenthal and, "whether she made credibility determinations based on Mr. Rosenthal's occupation or personal acquaintance."

All of those inquiries are questions about the affect of things upon the juror's mind or emotions and as such are specifically prohibited by the Court and Rule 606(b).

8. Juror Brown

The petitioner says that Juror Brown said during jury selection that her husband was an investigator for the United States Investigative Services. The petitioner wants to further question her to see if she was, "more inclined to believe law enforcement testimony over other testimony."

This is a matter that affects a juror's mind or emotions and as such is specifically prohibited. It is also not prejudicial information improperly brought to bear upon the juror.

9. Juror Green

In addition to questions concerning media coverage, the petitioner wants to question Juror Green as to whether Juror Green gave, "meaningful consideration to mitigation testimony." Specifically, the petitioner wants to know about her view of psychological testimony. It cannot be clearer from case law that Rule 606(b) does not allow that inquiry.

The petitioner also wants to ask Juror Green whether she gave, "meaningful consideration to a life sentence." This line of inquiry is prohibited for the same reason.

10. Juror Call

The petitioner says that Mr. Call stated in his questionnaire that sometimes his, "mind wandered in the afternoons." The petitioner has seized upon this as being an "attention deficit" and wants to inquire about that further. The State can only assume that the petitioner's questions would be about the same as to Juror Johnson and her hearing impairment. This is clearly an inquiry into the evidence that the juror considered in arriving at a verdict and as such is not permissible. The petitioner can ask court personnel as to their observations of this juror in the courtroom.

The petitioner also wants to talk to Mr. Call about whether Mr. Call's religious belief system, "precluded him from giving meaningful consideration to a life sentence." Again, this is a question concerning a juror's mental process and as such is not permissible.

Neither of those areas of inquiry are prejudicial information improperly brought to bear upon the juror.

11. Juror Kennedy

The petitioner says that Mr. Kennedy was an accountant for the Department of Transportation and worked with a deputy attorney general. The petitioner is now curious as to whether Mr. Kennedy knew Jay Rosenthal or would give Mr. Rosenthal more credit because he was a deputy attorney general. This is part of the juror's mental process and is not a permissible area of questioning.

The petitioner says that Mr. Kennedy's son works with the Ada County court as a conservator and guardian and Mr. Kennedy assists his son in that business. The petitioner is now curious about, "how those relationships would affect his credibility determinations." Credibility determinations are obviously a mental process of the juror and as such are beyond the reach of Rule 606(b). He should not be allowed to inquire into that.

Mr. Kennedy said that he had been called to jury duty four other times before the Hall case. One of the cases he sat as a juror on was a rape case that was, "pretty graphic." Now the petitioner wants to question Juror Kennedy about how Juror Kennedy's, "prior service affected his views of criminal defendants." That is part of the juror's mental process and is not permissible.

Mr. Kennedy also said that he had worked at the penitentiary for a few years and managed Corrections Industries. Mr. Kennedy did not indicate on the questionnaire or during jury

selection that he recognized Erick Hall, but Hall apparently told Amil Myshin that Hall recognized Juror Kennedy. This is not an area of permissible inquiry because it is not, “extraneous prejudicial information . . . improperly brought to bear upon a juror.” As such it is not permissible.

The petitioner also desires to question Juror Kennedy about Juror Kennedy’s mental processes in terms of determining credibility of law enforcement versus non-law enforcement witnesses. That area of inquiry is not permissible.

12. Juror Proctor

Ms. Proctor worked for the Sheriff’s Office and was acquainted with Detective Dave Smith as a former neighbor. The petitioner desires to question her now about the weight she gave to Detective Smith’s testimony and generally to the weight she gave the testimony of law enforcement witnesses. That is part of the juror’s mental process and so is not permissible. Further, it is not, “extraneous prejudicial information . . . improperly brought to bear upon a juror” and is not allowed by Rule 606(b).


CONCLUSION

For the reasons set out above, the Court should not give the defendant unrestricted access to the jurors. If the Court allows any questioning, it is the State’s view that the questioning should only be done in the Court’s presence so the Court can enforce its order restricting the questions. The questioning should only be done if the jurors agree to be questioned after being notified by the Court that the defendant wants to question them. And finally, the Court should limit the questions to whether or not the jurors received any outside influence or information during their jury service such as experiments, visiting the crime scene, or consulting reference

material. They could also be asked if they resorted to chance. Testimony or affidavits about any other topic are inadmissible.

RESPECTFULLY SUBMITTED this 6th day of ~~June~~ ^{July} 2007.

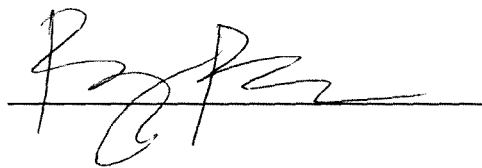
GREG H. BOWER
Ada County Prosecutor



Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I **HEREBY CERTIFY** that a true and correct copy of the foregoing document was delivered to State Appellate Public Defender's Office, 3647 Lake Harbor Lane, Boise, Idaho 83703, through the United States Mail, this 6th day of ~~June~~ ^{July} 2007.



MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

MARK J. ACKLEY, I.S.B. # 6330
PAULA M. SWENSEN, I.S.B. # 6722
Deputy State Appellate Public Defenders
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

NO. _____ FILED _____
A.M. 11:26 P.M. _____

AUG - 8 2007

J. DAVID NAVARRO, Clerk
By [Signature] DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERICK VIRGIL HALL,)	
	)	Case No. SPOT0500155
Petitioner,)	
	)	AGREED PROTECTIVE ORDER
v.)	
)	
THE STATE OF IDAHO,)	
	)	(CAPITAL CASE)
Respondent.)	
_____)	

This matter is before the Court on the agreement of the parties, through their undersigned counsel, for the entry of a protective order relating to certain records in the possession or under the control of the Sheriff of Clark County, Washington, namely, criminal records relating to child homicides committed by Westley Allen Dodd. The Sheriff's records are currently the subject of a public records request by Petitioner's mitigation specialist, and it is agreed that good cause exists for the production of the records and that a protective order should issue.

ACCORDINGLY, IT IS ORDERED as follows:

1. One copy of the referenced records or relevant copies of documents from the records shall be delivered to Guadalupe Ayala, Mitigation Specialist, for use by counsel for Petitioner;

AGREED PROTECTIVE ORDER

2. Respondent does not wish to receive a separate copy because of the cost of the copying; however, Petitioner agrees to share any and all materials with the Respondent and agrees to make copies of any the State deems relevant, with Respondent being subject to all privacy terms otherwise contained in this agreement;
3. Neither Petitioner nor Respondent deem any crime-scene photographs relevant to this case, and therefore do not request copies of such photographs;
4. No additional copies of said documents may be made, except on further order of the Court;
5. Information tending to identify victims or witnesses, or parents of victims or witnesses, to the underlying crimes shall be utilized by counsel for the parties solely in the prosecution or defense of the present case and for no other purpose;
6. Subject to the requirements of paragraph 4, counsel for the parties may share the referenced records or documents from the records with their agents and experts;
7. All copies of the referenced records and copies of documents from the file shall remain in the custody or under the control of the counsel; and
8. Within thirty (30) working days of termination of this case, by finality of judgment or by dismissal, all copies of the referenced reports produced by the Sheriff of Clark County, Washington, and all copies produced by subsequent order of the Court, shall be returned to counsel for the Clark County Sheriff, with the exception of such documents entered as part of the formal Court record of these proceedings for the purposes of appeal, at the address indicated below:

The Honorable Arthur D. Curtis
Clark County Prosecuting Attorney
1013 Franklin Street
P.O. Box 5000
Vancouver, WA 98666-5000

DONE IN OPEN COURT this 8th day of August, 2007.

Thomas F. Neville
Thomas F. Neville
District Judge

Presented By:

Paula M. Swensen
Paula M. Swensen, I.S.B. # 6722
Deputy State Appellate Public Defender
Attorney for Petitioner

Presented By:

Roger Bourne
Roger Bourne
Deputy Ada County Prosecuting Attorney
Attorney for Respondent

Approved for Entry and Notice of
Presentation Waived this ____ day of
February, 2007.

Dennis M. Hunter, WSBA No. 6734
Senior Deputy Prosecuting Attorney
Of Attorneys for Sheriff of Clark County,
Washington

AGREED PROTECTIVE ORDER

Session: Neville080807
Session Date: 2007/08/08
Judge: Neville, Thomas F.
Reporter: LaMar, Jeff

Division: DC
Session Time: 08:06

Courtroom: CR501

Clerk(s):
Ellis, Janet

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case Number: SPOT0500155D
Plaintiff: HALL, ERICK
Plaintiff Attorney: ACKLEY, MARK
Defendant: STATE OF IDAHO
Co-Defendant(s):
Pers. Attorney:
State Attorney: BOURNE, ROGER
Public Defender:

2007/08/08

09:34:28 - Operator
Recording:

09:34:28 - New case
, STATE OF IDAHO

09:34:50 - Other: SWENSON, PAULA
present on behalf of the petitioner as well.

09:35:00 - Judge: Neville, Thomas F.
Court has a couple of motions before the Court. The Court i
s in receipt of a

09:35:30 - Judge: Neville, Thomas F.
stipulated order. Court enters proposed order.

09:36:20 - Judge: Neville, Thomas F.
The Court notes this order deals with Mr. Dodd and Washingto
n records and a

09:36:49 - Judge: Neville, Thomas F.

diary.

- 09:36:52 - Judge: Neville, Thomas F.
The Court goes to first motion, petitioner's sealed supplemental motion for
- 09:37:14 - Judge: Neville, Thomas F.
discovery. The records of Norma Jean Oliver seeking medical information.
- 09:38:05 - Judge: Neville, Thomas F.
Court understands Mr. Westermeier needs an order from the Court to release
- 09:38:42 - Judge: Neville, Thomas F.
those records.
- 09:38:48 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley stated have proposed order
- 09:39:02 - State Attorney: BOURNE, ROGER
Mr. Bourne stated proposed order direct St Alphonsus and Intermountain
- 09:39:31 - State Attorney: BOURNE, ROGER
Hospital to give over records. The proposed order directs to turn over all
- 09:39:53 - State Attorney: BOURNE, ROGER
the records of Norma Jean Oliver up and to the time of 2004 at the time of
- 09:40:14 - State Attorney: BOURNE, ROGER
the trial. Have no objection if it relates to time of rape, but order to
- 09:41:12 - State Attorney: BOURNE, ROGER
broad, There are two proposed orders one to have turned over to SAPD or to
- 09:42:22 - State Attorney: BOURNE, ROGER
the Court and if Court were to enter would request Court view first. Believe
- 09:42:41 - State Attorney: BOURNE, ROGER
it should only cover possibly 1991-1992.
- 09:42:58 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley responded need to know her frame of mind at time she testified in
- 09:43:48 - Plaintiff Attorney: ACKLEY, MARK
October, 2004 as well as 1991-1992
- 09:45:40 - Plaintiff Attorney: ACKLEY, MARK
Would concede passage of time memory would fade a little bit. Not asking for
- 09:46:24 - Plaintiff Attorney: ACKLEY, MARK
records \
- 09:46:44 - Judge: Neville, Thomas F.
What if court were to narrow to 1991 & 1992 and then 2003/2004
- 09:47:05 - Plaintiff Attorney: ACKLEY, MARK

If suff. showing has not been made then maybe Court should view, but believe

09:47:31 - Plaintiff Attorney: ACKLEY, MARK
if there was a trumatic event would need to know this. Have an order that

09:49:06 - Plaintiff Attorney: ACKLEY, MARK
would deliver to us, but have given the Court the order that directs they be

09:49:21 - Plaintiff Attorney: ACKLEY, MARK
given to the Court for in camera review.

09:49:34 - State Attorney: BOURNE, ROGER
Court's discretion on time frame, but would request Court do in camera

09:49:52 - State Attorney: BOURNE, ROGER
review.

09:49:57 - Judge: Neville, Thomas F.
The Court will grant motion, all records of Norma Jean Oliver to the two

09:51:05 - Judge: Neville, Thomas F.
times, 1991-1992 and then 2003 & 2004, to come in for in camera review.

09:51:54 - Judge: Neville, Thomas F.
Request Mr. Ackley prepare order. Court goes to Social Security Records.

09:52:16 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley responded re: Social Security Benefits of Ms. Oliver. Diagnosed

09:53:47 - Plaintiff Attorney: ACKLEY, MARK
with bi polar, post trumatic and personality disorder, do not know when these

09:54:07 - Plaintiff Attorney: ACKLEY, MARK
diagnosis was made.

09:56:25 - Judge: Neville, Thomas F.

09:59:25 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley responded.

10:01:17 - Judge: Neville, Thomas F.
Inquired if would be submitting an order for both medical providers

10:01:47 - Plaintiff Attorney: ACKLEY, MARK
Will include medical providers and St Alphonsus and Intermountain

10:02:11 - State Attorney: BOURNE, ROGER
Mr. Bourne responded re: Social Security order

10:06:43 - Plaintiff Attorney: ACKLEY, MARK
Believe can file a final petition within 45 days

10:13:40 - Judge: Neville, Thomas F.
The Court will grant motion for full time frame from 1991-2004. Request

10:17:05 - Judge: Neville, Thomas F.
proposed order, going to payette county juvenile records

10:17:19 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley cont'd argument

10:18:53 - Judge: Neville, Thomas F.
Court inquired if they go to runaway status of Norma Jean Oliver

10:19:22 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley concurred

10:28:37 - Plaintiff Attorney: ACKLEY, MARK
want admissions from the state was not previously disclosed to trial counsel.

10:28:54 - Plaintiff Attorney: ACKLEY, MARK
Going to the third report.

10:35:24 - Judge: Neville, Thomas F.
Court re: reviewing ROA

10:36:23 - State Attorney: BOURNE, ROGER
Mr. Bourne responded, 4 of the 6 cases completed in mid 1990, 1 1/2 yrs prior

10:39:20 - State Attorney: BOURNE, ROGER
Do not know who this can be attributed to a Brady claim. If Court would like

10:39:45 - State Attorney: BOURNE, ROGER
to view in camera

10:39:54 - Judge: Neville, Thomas F.
The Court responded re: three reports

10:41:06 - State Attorney: BOURNE, ROGER
Mr. Bourne responded

10:41:13 - Judge: Neville, Thomas F.
The Court will grant the motion, but do not know what significance may be.

10:42:13 - Judge: Neville, Thomas F.
Court will view. Court going to transcript of hearing for release of PSI.

10:43:03 - State Attorney: BOURNE, ROGER
No objection

10:43:09 - Judge: Neville, Thomas F.
Court responded, would grant.

10:43:53 - Judge: Neville, Thomas F.
Going to PSI report for April Sebastian.

10:44:25 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley responded.

10:46:31 - State Attorney: BOURNE, ROGER
Mr. Bourne stated asked for Court to reconsider.

10:48:47 - Judge: Neville, Thomas F.
Court would pull and view in camera

10:48:58 - Judge: Neville, Thomas F.
Going to Glen Elam

10:50:00 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley stated probably would resolve if Court ordered a deposition

10:50:46 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley stated only wanted an affidavit

10:51:05 - State Attorney: BOURNE, ROGER
Mr. Bourne responded, do not need to go to a deposition hearing

10:51:21 - Plaintiff Attorney: ACKLEY, MARK
Would be ok with that.

10:53:01 - Judge: Neville, Thomas F.
Court will deny motion to compel a deposition of Glen Elam.
Going to Jay

10:53:58 - Judge: Neville, Thomas F.
Rosenthal, inquired if he had been interviewed

10:54:10 - Plaintiff Attorney: ACKLEY, MARK
Do not know if Mr. Shaw spoke to him

10:54:25 - Judge: Neville, Thomas F.
Inquired what need to jump to deposing

10:54:39 - Plaintiff Attorney: ACKLEY, MARK

10:59:28 - State Attorney: BOURNE, ROGER
Oppose Mr. Rosenthal being deposed. Went through the file and could find no

11:00:10 - State Attorney: BOURNE, ROGER
no notes, object to deposing

11:02:06 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley, concurred Court ordered Mr. Bourne to view file and to turn over

11:02:29 - Plaintiff Attorney: ACKLEY, MARK
if there were any in the file.

11:05:26 - Judge: Neville, Thomas F.
Do not feel approp. to force a deposition of Mr. Rosenthal.
Going to Daniel

11:08:12 - Judge: Neville, Thomas F.
Hess

11:08:14 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley responded.

11:13:03 - State Attorney: BOURNE, ROGER
Mr. Bourne does not see need for a deposition, wrote a report, testified at

11:13:26 - State Attorney: BOURNE, ROGER
death penalty phase

11:13:35 - Judge: Neville, Thomas F.
The Court denied Motion for deposition.

11:14:08 - Judge: Neville, Thomas F.
The Court goes to depositions of Mr. Bourne and Mr. Bower

11:14:27 - Plaintiff Attorney: ACKLEY, MARK
states if will admit reports were not disclosed, would elimi

nate need for
11:15:16 - Plaintiff Attorney: ACKLEY, MARK
deposition. Would request in the least that Mr. Bower be de
posed, is not
11:19:04 - Plaintiff Attorney: ACKLEY, MARK
dealing with post conviction
11:19:13 - State Attorney: BOURNE, ROGER
Mr. Bourne responded.
11:19:44 - Judge: Neville, Thomas F.
The Court denied Motion for depositions of Mr. Bourne or Mr.
Bower. Court
11:20:17 - Judge: Neville, Thomas F.
will request proposed orders reflecting rulings today.
11:21:57 - Operator
Stop recording: (On Recess)
11:42:59 - Operator
Recording:
11:42:59 - Record
, STATE OF IDAHO
11:43:00 - Judge: Neville, Thomas F.
The Court recalls case.
11:45:44 - Judge: Neville, Thomas F.
The Court goes to next motion requesting to contact jury. C
ourt has concern
11:50:27 - Judge: Neville, Thomas F.
with prior jurors being upset if someone were to contact the
m or even the
11:50:56 - Judge: Neville, Thomas F.
Court. Court not aware of any caselaw for a jurors mental
process. Court
11:52:43 - Judge: Neville, Thomas F.
has no indication that any juror did not follow the Court's
instruction.
11:56:26 - Judge: Neville, Thomas F.
Court inquired how Court would like to take this motion
11:56:54 - Other: SWENSON, PAULA
Ms. Swenson stated would like to go through general fashion.
11:57:36 - Judge: Neville, Thomas F.
Court has broken out in general inquiries and specific inqui
ries
11:58:07 - Other: SWENSON, PAULA
Ms. Swenson stated will rely on memorandum filed. Argues 60
6b. Inquired
12:11:02 - Other: SWENSON, PAULA
about paperclip twirling of Mr. Carr
12:12:50 - Judge: Neville, Thomas F.
The Court never understood this to be a dangerous considerat
ion of the juror

12:14:49 - Judge: Neville, Thomas F.
that Mr. Carr might provide a sharp object to the defendant.

12:16:39 - Other: SWENSON, PAULA
Tenders to the Court an exhibit of the letters that are handed out as a

12:16:57 - Other: SWENSON, PAULA
practice in other cases.

12:17:31 - Judge: Neville, Thomas F.
Court viewed

12:21:09 - State Attorney: BOURNE, ROGER
Believes the Court has clear authority to restrict contact of the jurors.

12:24:09 - State Attorney: BOURNE, ROGER
Believe that if the Court allows any contact, should be very limited.

12:24:59 - State Attorney: BOURNE, ROGER
Believe that if a juror wants to talk, they come into open courtroom

12:25:45 - Other: SWENSON, PAULA
Ms. Swenson responded. Request Court allow petitioner's counsel to conduct

12:30:19 - Other: SWENSON, PAULA
their investigation in a thorough fashion

12:30:32 - Judge: Neville, Thomas F.
The Court states there is no evidence before the Court or shown by counsel

12:36:10 - Judge: Neville, Thomas F.
to suspect that jurors engaged in misconduct. Court not inclined to allow

12:39:07 - Judge: Neville, Thomas F.
this to happen.

12:39:56 - Judge: Neville, Thomas F.
Court will go through this point by point if Counsel would like

12:40:21 - Other: SWENSON, PAULA
Ms. Swenson responded

12:40:33 - Judge: Neville, Thomas F.
The Court states general inquiries

12:45:50 - Judge: Neville, Thomas F.
Court will make bailiff's note part of the record on the paper clip issue

12:51:29 - Judge: Neville, Thomas F.
The Court cont'd

12:52:05 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley responded, Mr. Hall could have been in same facility same time Mr.

12:54:01 - Plaintiff Attorney: ACKLEY, MARK
McNeese did some work out there as A.G.

12:54:12 - Judge: Neville, Thomas F.
Court appreciates the distinction. Continues through other jurors.

13:02:54 - Judge: Neville, Thomas F.
Court denies motion based on all Court's findings today. Request State

13:03:11 - Judge: Neville, Thomas F.
prepare an order on that motion.

13:03:20 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley requested a final deadline on when to have final petition in.

13:04:49 - Plaintiff Attorney: ACKLEY, MARK
Believe can have done within 45 days.

13:08:31 - Judge: Neville, Thomas F.
Court will allow until October 5th.

13:09:07 - Plaintiff Attorney: ACKLEY, MARK
Don't believe the Abdullah or Dunlap case will hold up timelines in this

13:09:35 - Plaintiff Attorney: ACKLEY, MARK
case.

13:09:55 - State Attorney: BOURNE, ROGER
Mr. Bourne would request September 28th as final deadlines.

13:10:29 - Plaintiff Attorney: ACKLEY, MARK
Mr. Ackley stated he is out of the office on September 28th.

13:10:48 - Operator
Stop recording:

13:14:47 - Operator
Recording:

13:14:47 - Record
, STATE OF IDAHO

13:14:47 - Judge: Neville, Thomas F.
Court will set final deadline on October 5th. Court will give Mr. Bourne the

13:15:18 - Judge: Neville, Thomas F.
time he needs to file his response, Court will give until November 2, for

13:15:41 - Judge: Neville, Thomas F.
State's response

13:16:27 - Judge: Neville, Thomas F.
The Court will set Friday, November 9, 2007 @ 11:00 a.m. for status

13:16:43 - Judge: Neville, Thomas F.
conference.

13:16:50 - Operator
Stop recording:

MOLLY J. HUSKEY, I.S.B. # 4843
State Appellate Public Defender
State of Idaho

MARK J. ACKLEY, I.S.B. # 6330
PAULA M. SWENSEN, I.S.B. # 6722
Deputy State Appellate Public Defenders
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

ORIGINAL
NO. _____ FILED 2:3
A.M. _____ P.M.
AUG 23 2007
J. DAVID NAVARRO, CLERK
By J. WEATHERS
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERICK VIRGIL HALL,)	
	)	CASE NO. SPOT0500155
Petitioner,)	
v.	)	MOTION FOR PERMISSION
	)	TO APPEAL
STATE OF IDAHO,)	
)	
Respondent.	)	(CAPITAL CASE)

Petitioner, ERICK V. HALL, by and through his attorneys, moves this Honorable Court for permission to appeal, pursuant to the Idaho Appellate Rules, Rule 12, from two rulings made by this Court at a hearing held on August 8, 2007 – specifically, the Court’s denial of Petitioner’s Motion For Jury Contact, filed June 1, 2007, and the Court’s partial denial of Petitioner’s Sealed Supplemental Motion For Discovery, also filed June 1, 2007, in which he had requested the Court to order the deposition of trial counsels’ investigator, Glenn Elam. ¹

ARGUMENT

I.

Permissive Appeal From This Court’s Ruling Prohibiting Jury Contact Involves A Controlling Question Of Law As To Which There Are Substantial Grounds For Differences Of Opinion And In Which An Immediate Appeal Will Materially Advance The Orderly Resolution Of These Post-Conviction Proceedings

A. Introduction

¹ Due to today’s closure of the Ada County courthouse, Petitioner is filing by facsimile, and is limited to ten (10) pages. I.C.R.P. 5(e)(2). Appendices will be submitted under separate cover.

During a January 6, 2006 telephonic hearing, the Court indicated that post-conviction counsel would not be allowed to contact jurors in the underlying criminal case without prior approval. On January 20, 2006, Petitioner filed a Motion to Reconsider Orders Re: *Ex Parte* Procedures and Restrictions on Juror Contact, (Appendix 1), and a Memorandum of Law in Support of Motion to Reconsider Orders Re: *Ex Parte* Procedures and Restrictions on Juror Contact. (Appendix 2). During hearing on the motion, the Court specifically prohibited counsel from contacting jurors, but indicated it would entertain further motions on the matter. On February 2, 2007, Petitioner filed another motion for juror contact, but withdrew the motion.

Petitioner refiled his Motion for Juror Contact on June 1, 2007 (Appendix 3), and filed his Memorandum in Support of the motion. (Appendix 4). At a hearing on August 8, 2007, the Court ruled it would continue to prohibit counsel from contacting jurors. The Court has not yet entered a written order. This is a request for permission to appeal the Court's ruling.

B. Permissive Appeal From This Court's Ruling Prohibiting Jury Contact Involves A Controlling Question Of Law As To Which There Are Substantial Grounds For Differences Of Opinion And In Which An Immediate Appeal May Materially Advance The Orderly Resolution Of These Post-Conviction Proceedings

Idaho Appellate Rule 12 sets forth the procedures for filing an interlocutory appeal. The rule mandates that a request for permission to appeal must be made to the district court prior to filing a motion for permissive appeal to the Idaho Supreme Court. Rule 12(a) provides that permission for an interlocutory appeal may be granted by the district court where there is "a controlling question of law as to which there is substantial grounds for difference of opinion and in which an immediate appeal from the order or decree may materially advance the orderly resolution of the litigation." I.A.R. 12(a). Petitioner can satisfy this threshold showing.

1. Permissive Appeal From This Court's Ruling Prohibiting Jury Contact Involves A Controlling Question Of Law

The controlling question of law is whether a district court in capital post-conviction proceedings has the authority to prohibit jury contact as part of Petitioner's independent post-conviction investigation, where no statutory authority and no court rule prohibits such contact.

2. There Are Substantial Grounds For Differences Of Opinion Involving This Court's Ruling Prohibiting Jury Contact

Substantial grounds for difference of opinion regarding this controlling question of law stem from case law supporting the motion. Petitioner incorporates by reference his motion to

reconsider the court's oral order regarding juror contact and the memorandum in support of the motion to reconsider the court's oral order filed in January 2006, and the motion for juror contact and memorandum in support filed in June 2007. *See* Appendices 1-4. Petitioner's argument, as fully set forth in the referenced appendices, is summarized in the following paragraphs.

Juror interviews are an essential component of post-conviction investigation, and counsel is obligated to conduct an independent and thorough investigation of all potentially meritorious claims. *See* 2003 American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (hereinafter "ABA Guidelines"), Guideline 10.15.1 ("Duties Of Post-Conviction Counsel"). Pursuant to the ABA Guidelines, post-conviction counsel is advised to investigate juror misconduct and bias claims. *See* ABA Criminal Justice Section Standards, Defense Function, Standard 4-7.3(c) ("After discharge of the jury from further consideration of the case,...[i]f defense counsel believes that the verdict may be subject to legal challenge, he or she may properly, if no statute or rule prohibits such course, communicate with jurors to determine whether such challenge may be available.").

Post-trial juror interviews are critical to developing constitutional claims regarding jury misconduct and bias. *See, e.g.*, improper exposure to media, *People v. Holloway*, 790 P.2d 1327 (Cal. 1990)(reversing based on juror's improper exposure to media), *overruled on other grounds*, *People v. Stansbury*, 889 P.2d 588, (Cal. 1995); *Reyna v. State*, 846 S.W.2d 498 (Tex. Ct. App. 1993)(reversing based on improper jury discussions regarding defendant's failure to testify); *Green v. White*, 232 F.3d 671 (9th Cir. 2000)(granting habeas relief and finding basis for presumption of actual bias where juror failed to disclose information on voir dire and on juror questionnaire); *Lawson v. Borg*, 60 F.3d 608 (9th Cir. 1995)(affirming grant of habeas relief based on juror's experimentation and investigation); *Fullwood v. Lee*, 290 F.3d 663 (4th Cir. 2002)(remanding for evidentiary hearing in capital habeas case to determine juror's bias and jury's use of extra-record evidence); *Ex parte Troha*, 462 So.2d 953 (Ala. 1984)(reversing based on juror's use of extra-record religious material).

Because there is no statute or court rule prohibiting juror contact, the Court's order prohibiting post-conviction counsel from contacting jurors constitutes an unconstitutional exercise of legislative power in violation of Articles II, III, and IV of the Idaho Constitution. Under the Idaho State Constitution, it is solely the province of the legislature to make or modify laws. *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada*

County, 123 Idaho 410, 415, 849 P.2d 83, 88 (1993); *State v. Lindquist*, 99 Idaho 766, 770, 589 P.2d 101, 105 (1979); Idaho Const. Art. II, § 1; Art. III, § 1; Art. III, § 15. Moreover, it is the sole province of the Idaho Supreme Court to create rules governing the practice and procedure in all Idaho courts. Art. V, § 2; I.C. § 1-212. The Supreme Court prescribes, “by general rules, for all the courts of Idaho . . . the practice and procedure in all actions and proceedings,” I.C. § 1-213, but may not adopt rules which “abridge, enlarge or modify the substantive rights of any litigant.” *Id.* Thus, the Court’s order is an unauthorized exercise of judicial authority which usurps both legislative and Supreme Court functions, and violates constitutionally-grounded separation of powers principles.

By prohibiting post-conviction counsel from contacting jurors, the order also violates the First and Eighth Amendment to the United States Constitution, as well as the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Because there is no indication that juror contact by post-conviction counsel presents a substantial likelihood of materially prejudicing the post-conviction proceedings, the order violates the First Amendment. *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1057-1058 (1991)(restricting attorney speech can pass constitutional muster under the First Amendment only if it prohibits attorney comments which present a “substantial likelihood of materially prejudicing an adjudicative proceeding”). Because the order unreasonably and arbitrarily prohibits post-conviction counsel from conducting necessary and independent post-conviction investigation, the order violates the Due Process Clause of the Fourteenth Amendment. *See Evitts v. Lucey*, 469 U.S. 387, 401(1985) (“[W]hen a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution--and, in particular, in accord with the Due Process Clause”); *see generally* I.C. §§ 19-4901 et seq., and I.C. § 19-2719. Because this is a capital case, the order violates the Eighth Amendment in failing to provide – indeed, in undermining – heightened procedural protections. *See Hoffman v. Arave*, 236 F.3d 523, 539-540 (9th Cir. 2001)(recognizing the “long line of cases requiring heightened procedural safeguards in capital cases”); *Lankford v. Idaho*, 500 U.S. 110, 125-27, (1991) (weighing the “special importance of fair procedure in the capital sentencing context”).

Moreover, because the order singles out post-conviction counsel alone for prohibitions, where the jurors were instructed they may choose to speak to anyone they wished, and where the court placed no such prohibitions on trial counsel, the State, or the media, the order violates the

Equal Protection Clause of the Fourteenth Amendment. It is readily apparent that other litigants – including death-sentenced post-conviction litigants – have conducted juror interviews in order to identify and develop claims. See, e.g., *State v. Rhoades*, 121 Idaho at 63, 922 P.2d at 960 (noting that trial court permitted post-trial interviews of jurors and authorized the defense to hire an investigator for that purpose); *Roberts v. State*, 132 Idaho 494, 495-496, 975 P.2d 782, 783-784 (Idaho 1999) (excluding affidavits of jurors interviewed during post-conviction investigation); *State v. Turner*, 136 Idaho 629, 635, 38 P.3d 1285, 1291 (Ct. App. 2001) (noting that investigator contacted and interviewed jurors post-trial in attempt to support motion for new trial); *State v. Webster*, 123 Idaho 233, 846 P.2d 235 (Ct. App. 1993) (mentioning that four jurors were contacted post-trial); *Watson v. Navistar Intern. Transp. Corp.*, 121 Idaho 643, 827 P.2d 656 (1992)(claim that civil jury reached impermissible quotient verdict in awarding damages was not waived and required remand despite failure of trial counsel to object where the party “has no way of knowing whether a verdict was [impermissible] until some of the jurors are interviewed.”). As noted to the Court at the August 8th hearing, current post-conviction counsel have and continue to interview jurors in other on-going post-conviction cases.² Thus, the order unfairly singles out Petitioner for disparate treatment from other similarly situated litigants.

Idaho case law does not directly address the issue of whether juror interviews are proper, but implicitly condone such interviews in the course of deciding evidentiary issues related to juror testimony and affidavits. Contrary to the Court’s decision announced at the hearing, but as is clear from the state cases cited *supra*, I.R.E. 606(b) is an *evidentiary* rule, and does not place restrictions on juror *contact*. Indeed, the rule implicitly allows for juror contact as the mechanism for developing the very evidence the rule deems admissible.³ Thus, the Court’s reliance on the rule in prohibiting counsel from contacting jurors was misplaced. That differences of opinion exist regarding the Court’s order is further illustrated by the fact that the State argued for *limited* juror questioning under restrictive Court-controlled conditions, while the Court order *prohibited* all juror contact.

² Counsel offered the letter used by Michael J. Shaw in the case of *Abdullah v. State*, Ada County Case No. SPOT0500308, to illustrate the safeguards implemented by SAPD to ensure that jurors are given adequate notice of the investigator’s identity and role in the case, and to give each juror ample opportunity to decline to speak to the investigator. See Appendix 5.

³ Petitioner contends that I.R.E. 606(b) places no restrictions on the scope of questioning, but merely purports to place limits on the admissibility of juror testimony or affidavits.

Thus, because there is no statutory or court-imposed rules prohibiting juror contact, because the order implicates numerous constitutionally-protected rights, and because Idaho case law does not address the issue of juror contact, there are substantial grounds for differences of opinion regarding a controlling question of law.

3. An Immediate Appeal May Materially Advance The Orderly Resolution Of These Post-Conviction Proceedings

Idaho Code § 19-2719(6) mandates that “[a]ll issues relating to conviction, sentence and post-conviction challenge . . . be considered in the same appellate proceeding.” I.C. § 19-2719(6). Allowing an immediate appeal will materially advance the orderly resolution of this litigation because Petitioner asserts that the Court’s ruling precludes him from having a full and fair opportunity to develop meritorious post-conviction claims, while the jurors are still available and their memories are fresh. Petitioner believes that it is likely another court will rule that juror interviews are permissible and see the unfairness of the current situation and remand this case for further post-conviction proceedings following appeal, causing undue and prejudicial delay as well as multiple appeals in contradiction to the mandate of I.C. § 19-2719(6).

C. Conclusion

This case presents a controlling question of law as to which there are substantial grounds for difference of opinion. Allowing an immediate appeal will materially advance the orderly resolution of this litigation under the special procedures for unitary appellate review of criminal and post-conviction proceedings required in capital cases.

II.

Permissive Appeal From This Court’s Denial of Petitioner’s Request To Depose Glenn Elam Involves A Controlling Question Of Law As To Which There Are Substantial Grounds For Differences Of Opinion And In Which An Immediate Appeal Will Materially Advance The Orderly Resolution Of These Post-Conviction Proceedings

A. Introduction

On January 5, 2006, Petitioner filed his Motion for Discovery, (Appendix 6), and Memorandum Of Law In Support Of Motion For Discovery. (Appendix 7.) Within his motion, Petitioner requested that the Court order the deposition of Glenn Elam, the investigator utilized by his trial counsel during the underlying criminal proceedings.

On December 29, 2006, Petitioner filed his Supplemental Memorandum In Support Of Motion For Discovery. (Appendix 8.) The memorandum relied on the deposition testimony of trial counsel, Amil Myshin and D.C. Carr, to support the need for testimony from other defense team members to fill in the gaps of trial counsels' testimony. (See e.g., Appendix 8 pp.20-21 (citing Amil Myshin's deposition at Tr. 9/14/06, p.8, Ls.16-23 (describing Glenn Elam as responsible for guilt phase investigation and coordination of mitigation witnesses); p.69, L.2 – p.72, L.23 (stating that Glenn Elam conducted interviews based on a police report regarding Patrick Hoffert); p.73, Ls.21 – p.74, L.17 (assuming that Glenn Elam interviewed Lisa Lewis and Peggy Hill, and stating Glenn would know if he took notes).) A hearing on the motion for discovery was held on January 10-12 and 16, 2007. At the hearing, the Court denied Petitioner's request to depose Mr. Elam. On February 16, 2007, the district court entered its written order memorializing its ruling. (Appendix 9.)

On June 1, 2007, Petitioner filed his Sealed Supplemental Motion For Discovery. (Appendix 10.)⁴ Within his supplemental motion, Petitioner renewed his motion for an order requiring the deposition of Mr. Elam. On August 8, 2007, the Court heard oral argument on Petitioner's supplemental motion. At the hearing, Petitioner's counsel made a proffer in support of his request which can be summarized as follows: Glenn Elam was the investigator for the defense team in the underlying criminal case. His testimony is necessary to fill the gaps in the deposition testimony of trial counsel regarding the scope of their guilt and sentencing phase investigations. While the SAPD has interviewed Mr. Elam and gathered relevant information for a final amended petition for post-conviction relief, Mr. Elam has refused to sign an affidavit without express consent from former lead trial counsel, Amil Myshin. Mr. Myshin has not responded to the SAPD's requests for consent.⁵ After hearing Petitioner's renewed request, the Court once again ruled that it would not order the deposition of Mr. Elam. The Court has not yet entered a written order. This is a request for permission to appeal that ruling.

B. Permissive Appeal From This Court's Denial Of Petitioner's Request To Depose Glenn Elam Involves A Controlling Question Of Law As To Which There Are Substantial Grounds For Differences Of Opinion And In Which An Immediate

⁴ This motion is attached hereto under seal and is not elaborated upon herein beyond the extent that it was addressed in open court on August 8, 2007.

⁵ Petitioner attaches the Affidavit of Michael J. Shaw. Mr. Shaw's affidavit is consistent with Petitioner's counsel's proffer made in court. (Appendix 11.)

Appeal Will Materially Advance The Orderly Resolution Of These Post-Conviction Proceedings

Petitioner incorporates by reference Section I.B., *supra*, with respect to I.A.R. 12.

1. Permissive Appeal From This Court's Ruling Denying Petitioner's Request To Depose Glenn Elam Involves A Controlling Question Of Law

The controlling question of law is whether a district court errs in refusing to order the deposition of a member of a capital petitioner's defense team who is not fully cooperative with the petitioner's independent post-conviction investigation.

2. There Are Substantial Grounds For Differences Of Opinion Involving This Court's Denial Of Petitioner's Request To Depose Glenn Elam

Substantial grounds for difference of opinion regarding this controlling question of law stem from case law supporting the motion. Petitioner incorporates herein by reference his initial motion for discovery and memorandum in support thereof, supplemental memorandum in support of motion for discovery, and his sealed supplemental motion for discovery. (See Appendices 6, 7, 8, and 10.) Petitioner's argument, as fully set forth in the referenced appendices, is summarized in the following paragraphs.

A capital petitioner is entitled to meaningful post-conviction proceedings which depend upon a meaningful post-conviction investigation. *See State v. Beam*, 121 Idaho 862, 864, 828 P.2d 891, 893 (1992)(recognizing that the absence of meaningful capital post-conviction proceedings may violate due process). Accordingly, while Idaho case law generally discusses discovery in post-conviction proceedings under state criminal rules and post-conviction statutes, discovery implicates a petitioner's federal constitutional rights to due process, heightened procedural safeguards under the Eighth Amendment, and the effective assistance of post-conviction counsel. *See e.g., Spaziano v. Florida*, 468 U.S. 447, 468 (1984)("[E]very Member of this Court has written or joined at least one opinion endorsing the proposition that because of its severity and irrevocability, the death penalty is qualitatively different from any punishment, and hence must be accompanied by unique safeguards....") The failure to order discovery upon the requisite showing violates a capital petitioner's federal and state constitutional rights.

Under Idaho law, post-conviction discovery is generally discretionary unless the petitioner can show that discovery is necessary to protect his substantial rights, in which case discovery is mandatory. *Raudebaugh v. State*, 135 Idaho 602, 605, 21 P.3d 924, 927 (2001)

(addressing discovery in a non-capital post-conviction case). Even if deemed discretionary however, discovery should be liberally granted in capital cases. *See e.g., Payne v. Bell*, 89 F. Supp. 2d 967, 971 (W.D. Tenn. 2000) (recognizing that “more liberal discovery is appropriate in capital cases where the stakes for petitioner are so high.”) (relying on *Lockett v. Ohio*, 438 U.S. 586, 604 (1978).)

As the investigator for Petitioner’s trial team, Glenn Elam was an integral part of Petitioner’s representation during the underlying criminal proceedings. *See* ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (Rev. ed. 2003) (hereinafter “ABA Guidelines”) (Guideline 4.1 (“The Defense Team and Supporting Services”).⁶ In fact, Petitioner has demonstrated that his trial counsel relied on Mr. Elam to conduct their guilt-phase investigation and to coordinate witnesses for both the guilt and penalty phases of his trial. Importantly, Petitioner has shown that his trial counsel cannot recall the full scope of Mr. Elam’s investigation. *See e.g.,* Appendix 8, pp.20-21 (citing Amil Myshin’s deposition at Tr. 9/14/06, p.69, L.2 – p.72, L.23 (stating that Glenn Elam conducted interviews based on a police report regarding Patrick Hoffert); p.73, Ls.21 – p.74, L.17 (assuming that Glenn Elam interviewed Lisa Lewis and Peggy Hill regarding the Patrick Hoffert suicide, and stating Glenn would know if he took notes).)

Petitioner has raised several claims of ineffective assistance of counsel in his Amended Petition for Post-Conviction Relief, (hereinafter “Am. Pet.”), to which Mr. Elam’s testimony regarding the scope and direction of his investigation is necessary and relevant. (*See* Appendix 8, p.20.)⁷ A full understanding of the scope of Mr. Elam’s investigation is necessary to assess trial counsel’s performance, making Mr. Elam’s testimony in these proceedings crucial. *See e.g., Strickland v. Washington*, 466 U.S. 668, 690-691 (1984) (“counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.”); *Wiggins v. Smith*, 539 U.S. 510, 522-23 (2003) (noting that when assessing trial counsel’s choices, courts should first focus on whether the investigation is itself reasonable).

⁶ The ABA Guidelines provide that the core defense team consists of two lawyers, a mitigation specialist, and an investigator. ABA Guidelines, Guideline 4.1 and commentary. The Guidelines are attached to Petitioner’s Amended Petition for Post-Conviction Relief and are reprinted in 31 Hofstra L.Rev. 913 (2003)

⁷ These ineffective assistance claims include those set forth in Claims A.7, J.1, R, S, and W.2.

Although Mr. Elam has been interviewed by the SAPD, he has refused to sign an affidavit relating to his investigation (including Patrick Hoffert's suicide), without the consent of lead counsel, Amil Myshin. Where attempts to obtain Mr. Myshin's consent have been unsuccessful, discovery is mandatory -- a court-ordered deposition is necessary to protect Petitioner's substantial rights. Alternatively, the refusal to order discovery under these circumstances constitutes a clear abuse of discretion.

3. An Immediate Appeal May Materially Advance The Orderly Resolution Of These Post-Conviction Proceedings

Petitioner incorporates by reference Section I.B.3, *supra*, with respect to I.C. § 19-2719(6), and the implications of that statute. Allowing an immediate appeal will materially advance the orderly resolution of this litigation because the Court's ruling precludes him a full and fair opportunity to present the testimony of a critical witness, while the witness is still available and his memory is fresh.

C. Conclusion


This case presents a controlling question of law as to which there are substantial grounds for difference of opinion. Allowing an immediate appeal will materially advance the orderly resolution of this litigation under the special procedures for unitary appellate review of criminal and post-conviction proceedings required in capital cases.

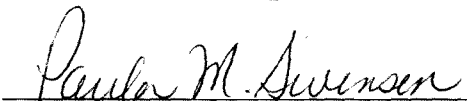
REQUEST FOR RELIEF

Petitioner respectfully requests that this Court grant permission to appeal from this Court's post-conviction orders and then stay these post-conviction proceedings pending resolution of the appeal by the Idaho Supreme Court.

Dated this 22nd day of August, 2007.

Respectfully submitted,


MARK J. ACKLEY
Lead Counsel for Petitioner


PAULA M. SWENSEN
Co-Counsel for Petitioner

CERTIFICATE OF SERVICE

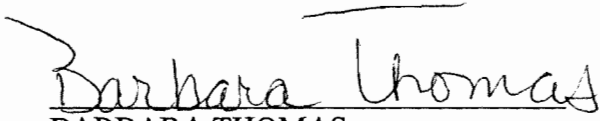
I HEREBY CERTIFY that I have on this 22nd day of August, 2007, served a true and correct copy of the foregoing MOTION FOR PERMISSION TO APPEAL, as indicated below:

ERICK V. HALL
INMATE #33835
IMSI
PO BOX 51
BOISE ID 83707

☒ U.S. Mail
☐ Statehouse Mail
☐ Facsimile
☐ Hand Delivery

ROGBER BOURNE
ADA COUNTY PROSECUTOR'S OFFICE
200 W FRONT STEET 3RD FLOOR
BOISE ID 83702

☐ U.S. Mail
☐ Statehouse Mail
☒ Facsimile
☒ Hand Delivery 8/23/07


BARBARA THOMAS
ADMINISTRATIVE ASSISTANT