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MEMORANDUM

To File
FROM Ali Kazemi
DATE 5/17/04
RE Telephone Hearing With Judge Huff

various voices talking

Male voice: Okay. Is Holly there?

Holly: Yes, I am.

Male voice: Okay.

Norm Hile: We've only appointed two people.

Judge Huff: Alright. This is catch-up. First, for purposes of the hearing, the Court has reviewed the _____ of the party and the Court will issue a scheduling order concerning the scope of the hearing. The pleadings have been, the papers submitted has been helpful to the Court and the Court will issue an order concerning this scope of the hearing. And then, as to the _____ mission as to discovery, the Court's going to order, regulate order of proof in this matter and so first we're focusing on the shoe concerning the Brady issue and the testing and so, to the extent, that there's request for additional items the Court denies that without prejudice. Then additional ways as to Mr. Furrow and Mr. Koons, the Court's going to issue an order permitting the parties to contact Mr. Furrow and Mr. Koons to see if they would be willing to voluntarily provide some type of DNA sample whether it be hair or otherwise; probably hair, but you can figure out what would be the most effective and then as soon as we have Mr. Blake's, we have been contacted – the Court had issued an order requesting Dr. Blake to participate in the hearing. He is concerned with the Court's order indicated that we would provide him with reasonable compensation. He is concerned about getting reasonable compensation for the hearings. The Court believes that reasonable compensation for him is appropriate. I have checked with the Capital case _____ and have a proposed solution to it. Pursuant



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to Federal Rules of Evidence 706, the Court may appoint an expert witness consent of the parties with the consent of the expert which I would believe that he would do just for the purpose of getting him compensation and then, the Court would then for purposes of the compensation order the government to pay. He's given an estimate to the Court and it would be the low end of his estimate –

David Alexander: Judge Huff, this is David Alexander. If I might inquire, just briefly. The very first item –

Judge Huff: Yes.

David Alexander: is not clear to me because I know there was some issues made by the Attorney General to which we had not yet had an opportunity to respond. So, I believe, as far as I'm clear which matters Your Honor had in mind when she said she would be issuing an order. For example, with regard to Mr. Barrett, I know that was a matter we certainly want to address that and the like, so I was a little puzzled, but I may be wrong, so if with all due respect, the Court could clarify which matters she believes there is submissions by both parties.

Judge Huff: Well, we received numerous submissions on the _____ and on the proposed witness list and on the issue concerning proposed questions for the person who's in Hong Kong and so based on what the Court's reviewed, the Court will issue an order concerning the scope of the hearing as to the Brady matter. As I understand the case, the parties had made representation to the Ninth Circuit included certain declarations to the _____ at the last minute.

David Alexander: _____ if I might suggest that I think Mr. _____ may also want to _____. With regards to the other _____ submissions _____ they are filed at the same time our responses to the others.

Judge Huff: Sure.

David Alexander: Okay. I just wanted to _____ to clarify _____.

Judge Huff: No, no, no. I'm talking primarily, I'm going to issue an – the one side wants to call a whole bunch of witnesses, the Court's interested in a more focused approach and based on what I've reviewed, the Court will issue an order concerning the scope of the hearing.

Norm Hile: This is Norm Hile. We have received an objection to the petition which we have not had a chance to respond to.



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Judge Huff: It's not necessary for you to respond to. The Court on its own will issue an order concerning the scope of the hearing. The Court's interested in certain witnesses and the Court will deal with that and then after we've dealt with that, if its necessary to do anything further, then the Court will then issue an appropriate order as well.

David Alexander: So these would be _____ this is David Alexander. I apologize _____ Mr. Hile. These would be to the extent _____ without prejudice. We'll get as much done as we can. This is I understand it on the present date _____

Judge Huff: And that may be enough. And that may be enough for the Court to decide the issue.

David Alexander: We would to _____ Mr. Hile has appeared to address that if Your Honor would be willing to _____

Judge Huff: Well, we don't need to do it at this time because when and where the holding of evidentiary hearing is up to the Court and so, and the scope of the evidentiary hearing is up to the Court.

David Alexander: Of course, Your Honor. We just wanted to give the Court some additional input based on information that we received, but I don't know if the Court has received and that might affect the Court's rulings on that.

Judge Huff: I don't think it will be necessary at this time. So, we'll first deal with this as to the issues that the Court is interested in having that evidentiary hearing on. Obviously, if we wanted to have an evidentiary hearing on every possible issue, we could have evidentiary hearings for the next five years. I don't think that's what the Ninth Circuit intended.

David Alexander: _____ nor do we, Your Honor, but we had a scheduled proceeding _____ and with regard for example with regard to the John _____ matter, I don't know whether or not it's now contemplated that the two people that they've identified as _____ who is not on their schedule if that's something _____ Court's examination will be based on what they've said. Whether that's contemplated in this hearing _____

Judge Huff: It's not the Court's intent at this time to have necessarily witnesses called for the Daubert(?) hearing.

Norm Hile: This is Norm Hile.



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Judge Huff: Let me first interrupt because we're trying to get Dr. Blake. So let's –

Norm Hile: Alright.

Judge Huff: make some –

Norm Hile: -- Judge.

Judge Huff: Oh, good. Alright. Thank you. That's the main reason that we're calling. I had refused a request from Dr. Blake so Attorney General had paid him witness fees because he had previously been hired by the defense and so the Attorney General has _____ numbers percipient witness the Court has a proposed solution. Let me read Federal Rules of Evidence 706. We're trying to find a reasonable mechanism to get you reasonable compensation recognizing that there are budgetary limits on all of these matters and, but we do believe the Court has requested your participation in this hearing, it would not be fair to you to call you as here percipient witness and so the Court's previous order had indicated that it would pay reasonable compensation to you. The proposed solution for the Court is under Federal Rules of Evidence 706 Appointment. I'll read it. The Court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed and may request the parties to submit domination. The Court may appoint any expert witness who's agreed upon by the parties and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the Court unless the witness consents to act. And I understand Dr. Blake, you have no problem acting for the purposes of this hearing. Is that correct?

Dr. Blake: That is correct.

Judge Huff: A witness so appointed shall be informed of the witnesses duties by the Court in writing a copy of which should be filed with the clerk or at conference in which the parties shall have the opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any. The witness' deposition may be taken by any party that that would be subject to the Court order. And in this case the Court does not believe that that's necessary. And the witness may called to testify by the Court or any party. We've already scheduled the hearing for Dr. Blake. The witness shall be subject to cross-examination by each party including a party calling the witness. It would not be the Court's intent to have ex parte communication with Dr. Blake. It would be the Court's intent to authorize a reasonable fee for him. He's indicated his hourly rate is \$175. I have made contact with the Capital Case Committee and if the Court issues an order appointing him then he can qualify for the federal



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government air fare and we're trying to schedule the hearing so it would not be necessary for him to stay overnight. And then, I would request as Dr. Blake had indicated that he would like to prepare for the hearing and the Court would authorize him to prepare and make a report that would then be given to the parties and then it would be the low end of your estimate for that report.

David Alexander: Your Honor, this is Alexander. I apologize, I don't mean to interrupt _____ on the phone.

Judge Huff: Go ahead. Yes.

David Alexander: This is Mr. Alexander. I have a couple inquiries following _____. First of all, as you know, Dr. Blake was an expert for the defense at the trial of the matter. And, I just want to point it out. Number two, I think Dr. Blake may have two roles; one as a percipient and one, if Your Honor is choosing as an expert, for example, a very important part, and I've spoken to Dr. Blake _____ expert for us, to describe exactly what was done with regards to the testing on the hairs, testing on the T-shirt and the testing on the hairs. And, I believe, in fact, he informed me that the report that was prepared by Dr. Meyers was, indeed, either in, Dr. Blake correct me if I'm wrong, either merely conclusory insufficient or wrong. Not sure which, but in either event, I think it would be important –

Norm Hile: (phone ringing) Hold on for a second.

David Alexander: -- alright. Hold on. Let me just finish with this. And, but in any, regardless of that I think it would be important and it is important to have Dr. Blake set forth precisely for step-by-step as he has already suggested he _____ do, to let us know what indeed was done previously with regard to both the hairs and the T-shirt and I think that's an _____ role in the percipient and then with regard to the expert, my only question would the areas in which he would be designated by the Court as an expert.

Judge Huff: Alright. As to those areas, I believe that what I think it would be helpful to have a – his compilation of the physical evidence and a summary of the testing that was done to date. Dr. Blake, do you have any additional suggestions as to the scope of your report and then we're also interested in stating timely spent concerning any mitochondria testing or EDTA testing.

Dr. Blake: Okay. The Court is aware of the letter I sent to the Court making certain proposals, is that correct?

Judge Huff: Yes.



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- Dr. Blake: Okay. One of the main facts concerned about with regard to the current schedule is to _____ is to provide a comprehensive report –
- Judge Huff: I think it can be done or else the Court is not interested. I think it can easily be done.
- Dr. Blake: Well, I'm concerned in that regard. There's so many hours in the day and I also have obligations to other patients.
- Judge Huff: Well, you could be subpoenaed solely as a percipient witness.
- Dr. Blake: I feel like I'm being squeezed here. Is that feeling correct?
- Judge Huff: No. We've already set a schedule. The schedule has been set quite some time ago. You've been contacted concerning the hearing and so the Court is requesting that – the Court could say just come and tell us about what you did. I thought we were being very fair to you in letting you have 20 hours to prepare a report. You certainly have time between now and the time of the hearing to get that done.
- Dr. Blake: Well. I am being squeezed. There's no question about it. And, -- I mean -- it's why I deducted the fare in that fashion and, you know, that's _____ gonna get the results of that. My judgment what should be going on here is that I should be allowed to time to deal with the hairs first since the hairs are very extensive. Basically – once the hairs are described and documented for the Court, I make a proposal about how those hairs might be dealt with in the current investigation.
- Judge Huff: I appreciate that and we do not intend in any way to pressure you and if you're not interested then we don't need you. The whole thought we already had a whole day of hearings and there was some suggestion that we could save time and expense because there was another proposed hair person to evaluate the hairs and prepare them for further testing. We thought that since you had already participated in some of that that we could save time and expense. If the outcome is that we have – that we pay you to do it and then we pay the additional person to do it, now we have double payment and that – and also we set the schedule long ago and now we have just wasted time and doubled our expense. So, from the Court's point of view, that doesn't make any sense to have a duplication of effort. The point of your testimony and Dr. Meyers' testimony is whether it would save time and expense. So, if you're reluctant to do that then we're not intending, as I indicate, to have you participate. We could call you as a percipient and then just if the Court believes that you should be entitled to reasonable compensation just have you testify about what you've

done, whether there's a soak that's available and the extent of the hairs. Because I do have the benefit of the State Court matter as well. So, it's up to you whether you wish to participate, we're sticking with this schedule. If you don't wish to participate, then obviously under Rule 706 then you're not required to participate at all. And we could, if we just want to find out whether there's a soak available, we could first with Dr. Meyers and not have you participate. Because Dr. Meyers was there for the soak, I believe. Correct me if I'm wrong.

Holly Wilkens: Your Honor, this is Holly Wilkens. What available soak with respect to the blood stain.

Judge Huff: Okay.

Holly Wilkens: I've reported on that –

Judge Huff: And then insofar as we understand that the Court has requested the government to have you produce for the hearing but we're not going to compel you to be an expert if you don't want and then if the defense is going to retain you then there's a different timing mechanism. But that's also subject to budget and some other issues, as well. So, do you want to participate and, if so, do you think that it could be done understanding the – the limited scope for a limited purpose or are you and the defense going to get together – if so, we still are sticking with the schedule and the date is the date.

Dr. Blake: Well, with 20 hours used up Judge, I'm going to stop.

Judge Huff: Alright.

Dr. Blake: That's – that's what the Court wants to do it – that's the way it's going to be done. With regard to the soak, I'm very concerned that people are operating on the basis of total _____ and the soak matter is an example of handle that. Somebody has _____ confused _____ concept of a soak. I don't know what the scientific basis for that is, but there is one [none??]. So, the Court is spending a lot of time talking about soaks with that's a figment of somebody's imagination and I would highly recommend that the Court wonder how many other examples of that existed. That's the whole point of doing this thorough. I made the offer to do it thoroughly and if the Court doesn't want to accept that offer, the Court can accept the consequences later on down the road.

Judge Huff: Well. You aren't actually – you are the one that gave the estimate and I'm going with the low end of your estimate given the constraints on the budget.



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- Dr. Blake: My estimate was 20 to 30 hours to compare the hair evidence for documentation and that's – I assume that the Court's interest to be remained focused on the hair and that's where I'll devote my energy. I think that I can contribute a great deal of information to this Court on other evidence that the Court has to consider, but I can't do that without being provided the funding and the time to do that job.
- Judge Huff: It –
- Dr. Blake: -- can't do a job that I can't do thoroughly because it's simply inappropriate matter of science to not do things thoroughly. That's we're in the situation we're in now.
- Judge Huff: I'm just reading from your own letter. "I estimate the time involved in the preparation of this fully-illustrated report to be on the order of 20 to 30 hours." So?
- Dr. Blake: That was in regard to the hair work. It wasn't in regard to other – the other evidentiary matters that are under consideration which involve _____ bar shirt, stain 41, blood stain samples and that cigarette butt.
- Judge Huff: Well, what we were interested in for purposes of this hearing is seeing whether there would be a way to save time and expense with your knowledge of the hair samples instead of having an additional person also do hair analysis, as well. And so, that was the concept –
- Dr. Blake: There's only two people on the table here that are familiar with the hair evidence in this case. One is Mr. Meyers and the other is myself. Who is this other person?
- Judge Huff: There was another person proposed at the earlier hearing.
- Dr. Blake: Is that other person even familiar with this evidence.
- Judge Huff: That's exactly why I wanted you to come to see if we could save some time and effort, but the other person maybe Mr. Alexander could say the name of the first witness at the hearing.
- ?? DeForest?
- David Alexander: Yes. This it's Mr. DeForest.



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Dr. Blake: Peter? I know Peter DeForest. He was my teaching assistant _____ at _____ Cal.

Judge Huff: Uh huh.

Dr. Blake: But, Mr. DeForest is not familiar with this evidence. He couldn't possibly give any competent statements about the state of this evidence because he's never seen it before.

Judge Huff: That's why we have suggested bringing you in and seeing what's already been done so if another – the mitochondria expert needed the hair samples to be prepared and so we thought rather than jumping to Mr. DeForest, why don't we first find out what has been done through you to see if we could then perhaps save time and expense not having Mr. DeForest involved.

Holly Wilkens: Your Honor. This is Holly Wilkens. Also, we haven't reached a point of deciding whether or not to actually conduct the testing and since there's allegations about whether or not the hair has in fact been examined. It was also to clarify that, as well. Is that correct?

Judge Huff: Exactly.

Holly Wilkens: Now another thing, Your Honor. It's my understanding as to the science presentation on the _____ fourth(?) _____ _____ was it was focused solely on the hair evidence. Is that correct?

David Alexander: That's not correct, Your Honor. This is Mr. Alexander. We were addressing an _____ demonstrated by the very point in Mrs. Wilkens' brief that we will be responding to on Friday. _____ and proposed two new witnesses now on regarding EDTA. There's no question about it (?). In fact, I think, Your Honor articulated and I don't need to – but, I don't think there's an issue about the mitochondria testing and scientific reliability –

Judge Huff: Correct.

David Alexander: -- there is the management of it.

Judge Huff: Correct.

David Alexander: Your Honor has just described. With regard to the EDTA testing, I think Your Honor said that she wanted to hear more about that matter. And that would be the crust(?) of the Daubert(?) hearing _____ Daubert(?) hearing (?) that we're going to have so I believe that Ms. Wilkens is in error. And I would also



comment that with regard to the so-called “soak” and people – and we’re all unfamiliar except Dr. Blake with the terminologies and the like, _____ talked about the same thing. Calling something wrong, I don’t know, but Ms. Wilkens has a very vague reference in a footnote saying that there was no soak. We don’t know who she talked to, what the source of that is, or anything else. And with all due respect to the nature of this matter, I’m absolutely not prepared accept her representation of this and I think it’s appropriate to put evidence on it.

Judge Huff: No. I don’t think we’re going to have evidence on every – see, this where we have a fundamental difference of that. We’re taking it one step at a time. They’re two primary issues, the Brady issue and then the testing issue. And the testing has two branches, the mitochondria branch and the EDTA branch. The Court – the EDTA was the subject of a Ninth Circuit _____ opinion. It did not examine before whether there was sufficient findings in basis to even do it. And so, that’s why we’re having the Daubert(?) analysis of that and that was not my intent to have witnesses called as to that if Ms. Wilkens if you want to just put whatever they have to say in a declaration your previous submitted declaration and –

David Alexander: She’s done that. This is Mr. Alexander. She’s done that and we will respond.

Judge Huff: Yes.

David Alexander: On Friday.

Judge Huff: And then I don’t think that it was the Court’s intent to have _____ as additional witnesses. As far as the Brady matter, as I said I’m going to issue an order _____.

David Alexander: Your Honor, in that regard, if we must, and going back to the Ninth Circuit’s opinion, I think and I don’t have it in front of me so I apologize, but I think it is appropriate when considering the Brady matter that not only is this not only appropriate to consider very specific information, but all the evidence that relates to that particular claim and that’s why for our part, and we’ll address it after the hearing, we can go as far as we can go in these three days, Mr. Berge(?) and the like, _____ will be present. We just subpoenaed her and she confirmed that she will – that she will be there and we’re happy to proceed with her.

Judge Huff: Thank you. The Court will evaluate and then issue an appropriate order. So now, first to get back to Dr. Blake. Do you believe that, for purposes of the

hair analysis, where I received – a copy of the letter saying that you estimate the time involved in the preparation of the fully-illustrated report to be on the order of 20 to 30 hours, the Court will also contemplate a proposed means for selecting the individual hair samples for potential mitochondria DNA testing should the Court judge such testing to be meritorious. Should the Court agree with this proposal, I request an order be issued that clearly testifies that you would paid your normal rate of \$175 per hour and \$1,400 per day and that you be allowed to prepare a report concerning the hair evidence extending no more and what I said was the low end of your range, 20 hours.

David Alexander: Your Honor, if I might _____. Mr. – Dr. Blake has retained, I believe, an attorney to advise him in this matter. And, I'm just wondering –

Dr. Blake: That's not correct.

David Alexander: Alright, I apologize.

Judge Huff: Alright.

David Alexander: I thought you said you did.

Judge Huff: Alright. Well, Dr. Blake, is that decision for purposes of this hearing that we would have a report with 20 hours subject to, if you end up to 20 hours and if you say I – so, just do the best that you can within that amount of time.

Dr. Blake: [voice is quite faint] _____ to hear evidence.

Judge Huff: Exactly.

Dr. Blake: Okay. My concern was that I thought heard the Court saying that what the Court anticipated to occur on June 4 was a complete examination and consideration of all of the relevant evidence which extends from the hair to the bar shirt to the cigarette butt to the 841 samples.

Judge Huff: And you're saying that you're not prepared to do that within your 20 hour estimate?

Dr. Blake: That's correct.

Judge Huff: Okay. So that's fair.



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David Alexander: Your Honor. It's Mr. Alexander again. We will need Dr. Blake as a percipient witness to tell us what happened in terms of the testing on the EDTA and I don't know whether – and I understand that's now outside –

Judge Huff: No, but you said –

David Alexander: -- _____ make the determination that _____.

Judge Huff: He's subject to cross-examination at the hearing. So he's being paid for his report which is – and then is also being asked to come for the hearing. He's being compensated for his time. And then, then you would lead with him and Ms. Wilkens would follow up.

Holly Wilkens: Your Honor. This is Holly Wilkens. If I could clarify – it's my understanding that the science testimony will relate to solely to the hair evidence and we will have argument on the Daubert _____.

Judge Huff: Correct.

Holly Wilkens: Okay. So, Mr. Alexander will not be permitted to examine witnesses _____ issues _____.

David Alexander: Well, I take a _____ strong objection – I object to that, Your Honor. Mr. Alexander _____. In order to do a proper evaluation particularly and the Court probably has _____ understandably to _____ review Ms. Wilkens' submission, but it is very important for the Court to understand just as in the case of the hairs, what was done in the testing of the T-shirt in order to evaluate whether or not what Mr. Bower(?) proposes can be done, can, in fact, be done. They take no exception to the scientific reliability of EDTA testing as set forth in their papers, all we question is whether or not it can be reliably on what proposed to be tested here could be reliably done. I would submit that the only way to know that is to do the testing and then to the examination. But, even if that's not in the case, it is simply inappropriate and I would object to their trying to cut us off and cut Your Honor off from knowing what has happened with this EDTA. What is the status of it?

Holly Wilkens: I don't –

David Alexander: And my percipient testimony that is actually critical –

Holly Wilkens: No, I don't –



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David Alexander: -- for our presentation to know just as in the case of the mitochondria what is in the EDTA and I will defer to Dr. Blake on that _____.

Holly Wilkens: Your Honor. This is Holly Wilkens. Your Honor, both parties (?) _____ to make presentation _____.

Judge Huff: That's right.

Holly Wilkens: Mr. Alexander also has an opportunity, once again on Friday, to bring information to this Court concerned with _____ ation.

Judge Huff: Correct.

Holly Wilkens: And, there's no -- there's no _____ firm objecting to _____ of the science hearing which _____ in quite some time.

Judge Huff: I agree.

David Alexander: Well, Your Honor. I --

Judge Huff: I agree. So to the extent you have an objection, that objection is sustained and overruled. The purpose of Dr. Blake is to do a preliminary information concerning the hairs so that the Court has background about whether we can then proceed with the mitochondria DNA testing.

David Alexander: Your Honor, --

Judge Huff: After the EDTA --

David Alexander: But --

Judge Huff: The Court already had a preliminary hearing and then we'll have an opportunity to hear argument from the parties on the Daubert issue and then make a determination about whether Dr. Bower(?) is the one; whether we have a blind testing of several samples for Dr. Bower's -- know what samples are testing; there hasn't been a lot of peer review; the Court has some major questions about whether there is sufficient review and scientific validity to the whole process, but the -- [END OF SIDE 1 OF TAPE]

Judge Huff: you have -- you submitted a budget -- I don't know whether the budget included Dr. Blake or not. If you wanted Dr. Blake, it should be in your budget.



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Norm Hile: He did not Your Honor and we will worry about that – that is between us and Dr. Blake and we have told him previously.

Judge Huff: Alright.

Norm Hile: And, _____ we reserve our right to apply to the Court for it, but I understand the Court's position on it.

Judge Huff: Okay. So, to answer Dr. Blake's question, I'm referring back to his own letter.

Norm Hile: If Your Honor _____ we will not need a copy of that letter. The Court made copies for both the petitioner and respondent.

Judge Huff: I will.

Norm Hile: Thank you.

Judge Huff: And, see(?) the report during the first post-conviction investigation, he produced one "heads-up" (?) report for the Court and counsel of record at that time. The report is enclosed as Exhibit 4. He has produced no other post-conviction report. He estimates the time involved in the preparation of the fully-illustrated report to be on the order of 20 to 30 hours. The report will also contemplate a proposed means for his collecting individual hair samples for potential mitochondria DNA testing should the Court judge such testing to be meritorious. And that's the scope of the report.

Dr. Blake: The scope of my report is to find in the hair –

Judge Huff: Correct.

Dr. Blake: If the Court _____ permission to engage in a educational consulting capacity to be paid for by Mr. Alexander and Mr. Heil's(?) firm. Is there any objection to that?

Judge Huff: After that, they were required to submit a budget to the Court. Their budget that was submitted did not include that. If they are pro bono counsel, and are fully able to then decide what they want to do subject to the Court deciding what is reasonable. So, I'm just saying that it has to be reasonable and that that's between you and their firm.

Dr. Blake: But, that's not my question, Judge. My question is, does the Court have any difficulty – is that there is a legal reason why I should not engage in that educational consulting relationship?



Judge Huff: I can't advise you on that because I'm the judge. What I can say is that the Court has a dual role. The Court ruled on the merits that the same time the Court or magistrate judge or someone ruled on fundings(?). If the funding exceeds what it reasonably limits – what is reasonably necessary, then their firm may be responsible for it. They may not get full funding for it if the Court thinks that it's outside their budget or not reasonable.

Holly Wilkens: Your Honor. This is Holly Wilkens. If I declare my _____ for my ethical consideration, I'm clear on whether or not the complication with Dr. Blake would be within the umbrella that was described earlier where they are simply discussing what has transpired before. If it's actually an expert relationship, for this proceeding, I need to have that clarified because then I would not be contacting Dr. Blake at all. And I want to know what we're discussing. Are we discussing Mr. Alexander and Mr. Hile compensating him as an expert for what is really percipient information or are they, in fact, retaining Dr. Blake as an expert?

Judge Huff: I don't know.

Norm Hile: Your Honor, I don't know that Ms. Wilkens needs to know that. If –

Judge Huff: She does need to know it in order to – whether she can contact him to get percipient information or not.

Norm Hile: We don't have any objection to that.

Judge Huff: Okay. Alright. And so, I think to answer you, I don't mean to be vague about this, but all funding is subject to approval by the Court. It's also subject to approval by a Capital Case Committee and the Ninth District Judicial Council which – so there's multiple layers of review.

Dr. Blake: _____ it's still – you're still evading the question that I'm asking. I think I know what the answer is and the Court hasn't been direct on the point. Is it that my acting more or less as a Court-appointed –

Judge Huff: No, I think – well –

Dr. Blake: Is there any bar – is there any legal bar to me providing educational assistance to Mr. Hile and Mr. Alexander with regard to the physical evidence items that was subject of the first post-conviction inquiry?

Judge Huff: The answer, in my opinion, is no in that the Court suggestion of the Court-appointed expert should not be misconstrued. It was solely to provide a



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funding mechanism so that you would not be limited to be a percipient witness for the purpose of this hearing.

Dr. Blake: _____(?)

Judge Huff: Correct. It would not pose any bar to you being retained by the defense.

Dr. Blake: For this educational purpose that I just described?

Judge Huff: Correct.

Dr. Blake: And, does Ms. Wilkens have an objection to that?

Holly Wilkens: I don't know if that _____, Dr. Blake.

David Alexander: We'll stipulate it, Your Honor.

Judge Huff: I agree.

Dr. Blake: Okay.

Judge Huff: Alright. So, all I'm saying is that if you submit a bill for 50 hours then that would seem to be a little unreasonable to the Court.

Dr. Blake: Is that question directed to me or to Mr. Heil?

Judge Huff: Both.

Dr. Blake: Well, I'm not going to submit any bills to the Court other than the bill associated with the report on the hair that the Court approves.

Judge Huff: Correct.

Dr. Blake: My understanding from my interactions with Mr. Alexander and Mr. Heil is that their firm _____ their pro bono _____ in the Cooper defense and their firm is prepared to simply pay me for my time –

Judge Huff: Uh huh.

Dr. Blake: -- _____ with them so that they can become _____ about the evidence in this case.

Judge Huff: And there's no bar in that.



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Dr. Blake: Okay. I just want to make sure –

Judge Huff: But, then they have to submit if they want to get back your expenses paid, they have to submit approval to the Court –

Dr. Blake: That part of it I understand, Judge –

Judge Huff: Okay.

Dr. Blake: It's between Mr. Heil and Mr. Alexander and the Court. That's not between me and the Court?

Judge Huff: Correct.

Norm Hile: Yes, that's correct.

David Alexander: Your Honor, this is Mr. Alexander. Just before we conclude, there's no doubt that _____ to be on the second to the fourth –

Judge Huff: I'll –

David Alexander: -- absolutely no –

Judge Huff: I'll issue a scheduling order.

Norm Hile: _____. This is Norm Hile. May I address the _____ for a second, please? This is a scheduled matter, but it also has something to do with how we go forward. I don't know when the Court will issue that order as to who is going to be allowed to testify and we did not respond and had a chance to respond to the objections that were filed by the respondent to our witnesses and we haven't made any objections yet because we just got theirs – their witness list. There is a question of great _____ in my mind first whether we will be able to get a number of witnesses in because we don't know what the Court's _____.

Judge Huff: It's not going to be a problem because the Court's going to restrict the number of witnesses.

Male voice or David Alexander?: And, Your Honor, as a reinforcement, Mr. Heil, today the People have listed, we don't know who they are and they didn't even tell us – one person we listed was Mr. Berge(?) who was the crime lab manager, the key guy on the gym shoes from the crime lab point of view who I think, Your



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Honor, may be aware that there's a _____ and a series _____.

Judge Huff: That was well known from – that's been well known.

David Alexander?: That's exactly – and we intend to talk about it – intend to talk to you, but what I want to make – you know, if Ms. Wilkens can even tell us who these people are that she intends to call then we can properly and what the offer(?) is on them, if she could write a letter today or something then we could at least respond – you know, but to throw an "A" bomb _____ -- does(?) in the least in _____ our opportunity to object just as they had an opportunity to object to ours.

Judge Huff: Do you have Mr. Beard under a subpoena?

David Alexander: [and Mr. Hile briefly] The answer is no we do not. We are planning to go _____ to go talk to him and before the proceeding to see if, in fact, there's a question of what the disclosure will bear and we want to pursue that we may relate very directly to the very specifications(?) that are involved and I would _____ and at a minimum request the opportunity to visit this issue once we have done that and we'll go about doing that quite promptly.

Judge Huff: Well, after I've –

David Alexander: -- up in Washington. He's up in the state of Washington.

Judge Huff: Uh huh. After I've reviewed the summations more fully, I'll issue a scheduling order, but I can tell you it's gonna to be more limited based on the Court's review of the matters to date.

Norm Hile: Your Honor, if I may _____. The respondent has listed four witnesses who we've never heard of before this listing came out. We don't know who they are and that's the reason why we wanted to have some of the discovery that we requested and I appreciate that the Court has scheduled a hearing, but at the moment, we don't know who the witnesses are that they've identified. We don't know who – which witnesses the Court's going to approve and we don't yet have a ruling on our discovery motion and we –

Judge Huff: On the –

Norm Hile: -- we won't have – we don't even know whether we're going to have a chance to know who these people are so my request would be from a scheduling standpoint, if the Court could allow us –



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- Judge Huff: Let's first, Dr. Blake. Thank you for your participation. I'll issue an order.
- Norm Hile: Okay.
- Judge Huff: Alright. And then we look forward to seeing you.
- Dr. Blake: Okay, great.
- Judge Huff: Thank you very much.
- Dr. Blake: Good-bye.
- Judge Huff: Alright. Good-bye. [phone hang up] On the discovery request, I thought what I said at the beginning is to the – the Court will deny it without prejudice with the exception that your – the Court will permit you to see if you can get a voluntary sample from Mr. Furrow and Mr. Koons.
- Norm Hile: Alright. What I wanted to ask from a scheduling standpoint, Your Honor, was we would like to file a motion to continue the hearing date –
- Judge Huff: The Court denies that because you brought the warden under subpoena and _____ Taylor(?) is scheduled to be here and then based on the submissions that the Court's reviewed, the Court may or may not need additional witnesses.
- Norm Hile: Alright. Well, Your Honor, for purposes of scheduling just so that we can make our record, you might file such a motion for a continuance so at least we have a record of what we've asked for. How do I reschedule that with respect to an Order Shortening Time?
- Judge Huff: You can just make a motion now or a motion as to continue _____ hearing and the Court denies that.
- Norm Hile: Alright. Then I don't need to schedule a hearing for it?
- Judge Huff: No. It's not necessary.
- Norm Hile: Okay, we'll file a motion then to that extent. Now, the other thing that I just wanted to ask the Court about is with respect to the lodgment(?) of 15 audio tapes that were lodged with the Court, some of them including people to be respondents(?) and I call(?) and some were participated(?) _____ and I call –
- Judge Huff: Right.



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Norm Hile: -- as witnesses. Is the Court going to consider those for purposes of the hearing on June 2d or should we be -- are we allowed to do some discovery with respect to that if the Court is going to allow people who submitted those tapes _____ to be part of the hearing -- are we going to have a chance to get some discovery about that?

Judge Huff: The Court denies the request for discovery. In criminal cases -- this is a case where we've already had post-conviction review. We've already had an _____ of the post-conviction review. The Ninth Circuit has now sent it back for further habeas petition. That's accepted(?) habeas petition and has given some direction to the Court. It is not the case in every -- in every habeas case that just because it labeled civil that you do all civil discovery. We've got a hearing. They've given you the tapes. If it was a criminal case, they're going to need -- they would give you the tapes and that's -- you can go talk to the people if they want to talk to your or they don't talk to you.

Norm Hile: But, Your Honor --

Judge Huff: You've got the benefit of their tapes. We don't need any discovery on that and then we can have the hearing. The Court will then based on the submissions of the parties decide to go the evidentiary hearing and I'm giving you surprise that the Court intends constricted it a little more bec-- based on the submissions that the Court has received.

David Alexander: Your Honor, if I may just raise a point that I think is worth -- we need to consider -- these tapes were, in part, I don't know how many because I don't know who all the people are, conducted and interviews done _____ a wholly intrastate(?) and we have a very serious question and I don't purport to have the answer now --

Judge Huff: They're law enforcement. They're allowed to --

David Alexander: Well, there is an exception, Your Honor, for law enforcement, but I would --

Judge Huff: The law enforcement --

David Alexander: I'm raising the issue because we're looking at that and I don't know whether --

Judge Huff: The law enforcement -- the law enforcement --

David Alexander: The(?) law enforcement is that is contemplated by the statute so we would like the opportunity to look at that before these tapes are _____ to listen to _____ the tapes themselves, are hearsay evidence; I don't know what they're



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being submitted for – we may turn out – we want to – we want to use them also, but I want to raise this issue because it's one that we are looking into and we intend to advise the Court whether we have any objection or whether that's a matter that we need to have raised.

Judge Huff: Alright. Anything else?

Holly Wilkens: Yes, Your Honor. I wanted to clarify, I have the discovery motion on my desk. Is that something that I do not need to respond to?

Judge Huff: No. You should respond to it in writing for purposes of the record on appeal.

Holly Wilkens: Okay.

David Alexander: Your Honor, we _____ the _____ of the Court _____ we have – you're receiving for this the first time on Monday we're expecting the official transcript of the tutorial.

Judge Huff: Alright.

David Alexander: So we don't have that at this time. We have some of unauthorized transcript that I believe the AG obtained of just a portion of the _____ --

Judge Huff: Okay. Alright. So we'll see you at the date of the scheduled hearing and I'll issue a _____ order.

Male voice: [Mr. Hile] Your Honor, this is _____. Can you give us some idea of when that'll come out because _____? If I can raise one other question on the scheduling then. Just by the way these things fall, the petitioner's demur should be filed when it's due the day of the hearing?

Judge Huff: Uh huh.

Male voice: [Mr. Hile] And the respondent has filed a – an answer with exhibits that is seven inches thick.

Judge Huff: Uh huh.

Male voice: [Mr. Hile] And I would ask that if we're going to go ahead with the evidentiary hearing on the second through the fourth, that we be given an extension of time to file our traverse – given that we're doing the evidentiary hearing at least a evidentiary hearing before the pleadings have been set.



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Female voice(?): I don't –

Male voice: [Mr. Hile] I'd like to ask _____ if the Court would allow us an additional 30 days to file our traverse?

Judge Huff: The Court denies that. You can file it a week later. You can have an extra week.

Male voice: [Mr. Hile] Thank you, Your Honor.

Judge Huff: Alright. Thank you very much.

Holly Wilkens: Thank you, Your Honor.

Judge Huff: Bye.

Male voice(?): ??

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