

LINDA SEAPY
Clerk of Superior Court
Maricopa County Courthouse
1 E. Spring Street
Phoenix, Arizona 85001

FILED
FEB 3 1988
LINDA SEAPY
CLERK SUPERIOR COURT
DEPUTY

**CONFIDENTIAL
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BY ORDER OF THE COURT**

CR-9358 STATE vs. DANIEL WAYNE COOK
Letter from Dr. Eugene R. Almer, M.D.
dated January 18, 1988, Sealed per
Court Order of Feb. 3, 1988



LINDA SEAPY
Clerk of Superior Court
Mohave County Courthouse
401 E. Spring Street
Kingman, Arizona 86401

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ORDERED SEALED PER COURT ORDER 2/23/88

Steven F. Conn, Division III

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↑
Envelope sealed
Per order of
the court
↓

In process of being
collected for the
court
of 8-3-88
at 8 o'clock

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JAN 21 REC'D

EUGENE R. ALMER, M.D., P.C.
AND ASSOCIATES
7432 East Camelback Road
Scottsdale, Arizona 85251-3594

Telephone
(602) 423-0713

Diplomat American Board of
Psychiatry and Neurology

January 18, 1988

FILED
TIME _____ M
FEB 3 1988
LINDA SEAPY
CLERK SUPERIOR COURT
DEPUTY

The Honorable Steven F. Conn
Judge of the Superior Court of
Mohave County Courthouse
401 East Spring Street
Kingman, Arizona 86401

In Re: Daniel Wayne Cook
CR-9358

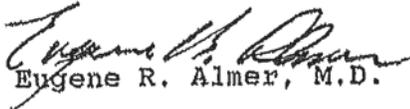
Dear Judge Conn:

This is an update on my evaluation of Mr. Cook dated December 14, 1987. There is a history that he did have some serious trauma to his head when he was run over by the back wheel of a car and hospitalized for a number of days at the Kingman Regional Hospital in 1983. At that time he was supposedly unconscious for nine hours. Also, after that, allegations were made that he had a seizure disorder.

Based on the above information, it is my recommendation that he have neurological evaluation by a competent specialist in the field of neurology. This is in keeping with the Arizona Revised Statutes as outlined in Rule 11-f which provides for consultative services and evaluations by other specialists when there is indication or suggestion that other specialists are needed.

Trusting that this will be of help to the Court, I am

Sincerely yours,


Eugene R. Almer, M.D.

ERA:jp

EXHIBIT 27

ER 000228

BOY'S NAME: DAN COOK MCKINLEY CASE NO. 1539 DATE ADMITTED: 1-29-76
 AGENCY CASE NO. DATE DISCHARGED: 12-1-77

DOB: 7-23-61 SSN: 570-71-1645 PLACED BY: PARENTS DPSS PROB. OTHER _____

MOTHER: NAME WANDA DUNNE FATHER: NAME GORDON COOK SIBLINGS: Sister-Debbie
 ADDRESS 1265 KIBBEY LAKE ADDRESS ?
HAYES CITY, CA 95428-86402

DISCHARGE SUMMARY: Dan accomplished limited progress during his almost 2 yr stay here. Placed in 3B then moved to Cottage 2 because of immature behavior & socially timid. Moved back to 3B in fall of 76. Had ongoing peer problems - would say inappropriate remarks to peer staff. His mother would not give permission for a corner pass & Dan had ongoing problems with smoking. best SUMMARY BY Marionne Downing, Soc. Worker (NAME) (TITLE)

SIGNIFICANT EVENTS: April - Sept 29-Oct 2, 76; 11-07-11-22, 11-25/12-1

GROUP LIVING: Low peer interaction, provides peers by inappropriate remarks.

FAMILY: Moved to Irving fall of 76. Several times had promised that Dan would return to live with Steve's mother. Continued to refuse permission to a smoking pass. During 2nd year school: success in upper 0 and 64. 5th-8th grade, Canyon View 5th, 5th-8th reg. Had good behavior. Occasional angry outbursts. Spring 77: Dislocated left thumb, emergency dental 3 more times. TESTING: PIAT Test showed Dan to have good verbal skills despite social abilities. Had ongoing psychological anxiety. Dan's anxious behavior & social abilities may be attributed to noisiness in home.

PROGNOSIS: If Dan can learn to care about himself, in spite of family situation, he may be motivated to modify behavior.

FORWARDING ADDRESS: Ch. C. Shephard, #855, 14417 Chase St., Panorama City, Calif. 91402

TO BE COMPLETED AT DISCHARGE. CASE RECORDS DESTROYED 5 YEARS AFTER DISCHARGE. THIS SUMMARY RETAINED AS A PERMANENT RECORD.
 MHB 60 11/75 5GVP

DISCHARGE SUMMARY

Your Social

Detach your card and sign it
Carry it in your purse or wall
Keep *this* part with your other

570-21-1645
DANIEL W COOK



Dan could also be very pleasant, cooperative, & helpful.
He was sensitive & creative in photography &
poetry. His behavior seemed to be directly correlated
with his family. They had planned to take him back
home (Hawaii City, Ohio) several times, but when the time
came - they had excuses for it not to happen. Dan was very
discouraged & frustrated by this. He went AWOL Nov. 17-22, per Chops
express about the upcoming Thanksgiving. He AWOL'd again
Nov. 25; whereabouts unknown & was terminated from
bus routes 12-1/97.

EXHIBIT 28

ER 000231



BONITA UNIFIED SCHOOL DISTRICT

115 West Allen Avenue San Dimas, California 91773 (909) 971-8200 Fax (909) 971-8329

Superintendent
Gary J. Rapkin - Ph.D.

Assistant Superintendents
Lols Klein - Educational Services
Curtis Prick - Human Resources Development
Ann Sparks - Business Services

Board of Education
Chuck Coyne
Glenn Creiman
Jim Elliot
Diane Koach
Patti Latourelle

March 27, 2009

Enclosed is a copy of the record we have pertaining to Daniel Wayne Cook, DOB 7-23-1961. He attended San Dimas High School in 1976 and 1977.

Please call if you have any questions.

A handwritten signature in cursive script, appearing to read "Lols J. Klein", is written over a horizontal line.

Lols J. Klein, Assistant Superintendent
Educational Services

MAR 24 2009 14:09 From YHT740493

To: 6023822801

P.3/5

SAUGUS HIGH SCHOOL
21900 West Centurion Way
Saugus, California 91350-1607

FILE No. (Form 1) **20053**
**CALIFORNIA CUMULATIVE RECORD
ELEMENTARY FORM**
Confidential Information for use by Professionals

1. IDENTIFICATION INFORMATION

CHECK SEX:	M	F
	X	

COOK, DANIEL WAYNE
7-23-61
From: Desert Winds HS, Lancaster, CA

BIRTH DATE: 7/23/61
BIRTH DATE VERIFICATION: [Blank]
CITY (OR COUNTY): Cook County
STATE (OR NATION): Illinois

HOME NAME: MCKINLEY 762 W. Cypress SD
ADDRESS: [Blank]
TELEPHONE (OR): 599-1227
IN CASE OF EMERGENCY NOTIFY ADDRESS: [Blank]
TELEPHONE (OR): [Blank]
NAME: [Blank]
ADDRESS: [Blank]
TELEPHONE (OR): [Blank]
DATE PHOTOGRAPHED (Parent): [Blank]
SCHOOL: [Blank]

2. GROUP SCHOLASTIC CAPACITY TESTS (LABEL OTHER SUB SCORES USED, e.g., PERFORMANCE, PERCEPTION, ETC. DOUBLE SPACES PROVIDED.)

DATE TEST GIVEN	GRADE	NAME OF TEST	FORM	LEVEL	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	COMMENTS	

3. INDIVIDUAL TESTS

DATE TEST GIVEN	GRADE	NAME OF TEST	FORM	LEVEL	RESULTS AND REMARKS

4. GROUP ACHIEVEMENT TESTS (Including Reading Readiness) (LABEL VARIOUS SUB SCORES, e.g., VOCABULARY)

DATE TEST GIVEN	GRADE	NAME OF TEST	FORM	LEVEL	READING	ARITHMETIC	LANGUAGE	COMMENTS

Sheri Pagen
Registrar
3-17-09

MAR-24-2009 14:30 From: YHT740493

To: 6023022801

P. 4/5

SAUGUS HIGH SCHOOL

21900 West Centurion Way
SAUGUS, California 91350-1607

FILE No. (Parent)

200530

CALIFORNIA CUMULATIVE RECORD
ELEMENTARY FORM

FORM L.M.—A. Carlisle & Co., S. F., 195

By my date 2-14-79

FOR INDICATING DEGREE OF SUCCESS IN SCHOOL EXPERIENCES AND READERS USED

CHECK SEX:	
M	F
X	

E

COOK, DANIEL WAYNE
7-23-61 Cook County, ILL.
From: Desert Winds HS, Lancaster, CA

LAST NAME
00K

GROWTH AND DEVELOPMENT THROUGH SCHOOL EKI D.7
INDICATE MAJOR CURRICULUM UNIT, DESCRIPTION OF EXPERIENC
Salvo 66 (3)
D.7 66 (3)
Burbank - Illinois

YEAR 19 -19	GRADE						

SAUGUS HIGH SCHOOL

21900 West Centurion Way
Saugus, California 91350
Continued 2-5-79
see 5-17-79
to be reorganized

Coak, Dan

Shari Palmer
Registrar
2 17 2009

CALIFORNIA DU WILE RETURN

PAGE

00000000

STUDENT NAME: Cook, Daniel Wayne
 GRADE: 12
 SCHOOL NAME: Saugus
 DISTRICT: Wm. S. Hart
 CITY: Saugus
 ZIP: 91350
 HOME TELEPHONE: 251-5484
 BIRTH PLACE: Ill
 CURRENT DATE: 2-14-79
 COUNSELOR: Dillbert

STUDENT ID: 7-23-61
 PARENT-GUARDIAN NAME: A R Benton
 ADDRESS - GUARDIAN ADDRESS - STREET: 26115 Oakflat Ct Newhall CA
 CITY: Newhall CA
 STATE: CA
 DATE LEFT PREVIOUS DIST.: 07-29-79

COURSE NO.	COURSE TITLE	MARK	CR	DATE	MARK	CR	DATE	MARK	CR	DATE
SPECIAL REPORTS 1-76 No Credits Earned 200 Credits required for graduation CURRENT SUMMARY STATE COLLEGE MARK PLACE CUMULATIVE TOTAL MARK POINT AVE. TEST MARKS TEST NAME DATE SUB TEST RESULT 00-04 05-11 12-23 24-40 41-60 61-77 78-89 90-96 97-99										

COURSE NO.	COURSE TITLE	MARK	CR	DATE	MARK	CR	DATE	MARK	CR	DATE
BH	Read / Lang	B	5.0	6-76	B	3.0	6-78			
BH	Math/SC	A	5.0	6-76	F	.0	6-78			
BH	Soc Studies	C	5.0	6-76	C	5.0	6-78			
BH	Arts/Crafts	C	5.0	6-76	C	2.0	6-78			
BH	Read/Lang	C	5.0	1-77	D	4.0	6-78			
BH	Voc Educ	C	5.0	1-77	C	14.0	6-78			
BH	Math/Sci	C	5.0	1-77	C	19.0	6-78			
BH	Soc Studies	C	5.0	1-77	F	.0	1-79			
BH	Arts/Crafts	B	5.0	1-77	D	2.0	1-79			
BH	Reading	A	5.0	6-77	C	11.0	1-79			
BH	Lang/Sci	A	5.0	6-77	C	2.0	1-79			
BH	Spelling	A	5.0	6-77	F	.0	1-79			
BH	Driver Ed	A	5.0	6-77	B	3.0	1-79			
BH	Voc Ed	A	5.0	6-77	N	.0	1-79			
BH	PE	A	5.0	6-77	D	5.0	8-75			
BH	English III	B	1.0	1-78	F	.0	8-75			
BH	U S History	C	1.0	1-78	A	5.0	8-77			
BH	Health	F	.0	1-78	A	5.0	8-77			
BH	Wood	C	5.0	1-78	B	5.0	8-77			
BH	Auto I	F	.0	1-78	A	5.0	8-77			

FORM 400 - (1-74-78)

To: 60233822801

MAR-24-2009 14:30 From: YHT740493

ER 000237

DATE OF BIRTH: 5-14-79
 DATE WITHDRAWN: 07-29-79
 DATE LEFT PREVIOUS DIST.: 07-29-79

SCHOOL OFFICIAL'S SIGNATURE: *Sharon Baker*
 REGISTRAR: *3-17-09*

REMARKS: SAUGUS HIGH SCHOOL
 21900 West Centurion Way
 Saugus, California 91350-1607

NAME COOK, DANIEL WAYNE Quartz Hill High School, Quartz Hill, California
 BIRTH DATE 7-23-61 PLACE OF BIRTH Chicago, Illinois PREVIOUS SCHOOL Desert Winds High

9th Grade		ENTERED <u>1-30-78</u> LEY OR <u>2-03-78</u> OHADIATED REASON FOR Out of Area LEAVING RELEASE INFO. ON FILE <input checked="" type="checkbox"/> TRANSCRIPTS & RECOMMENDATIONS
10th Grade		

COOK, DANIEL WAYNE ADDRESS 43838 N 90th Street West, Lancaster

EXCHANGED GUARDIAN M/M Thomas Maas - Westside Youth Homes

I CERTIFY THIS RECORD TO BE CORRECT
R. Manning
 REGISTRAR

DATE OF GRADUATION	NO. IN CLASS	GRADE AVERAGE		
11th Grade 1977-78	EN 1-4-78		11th Grade 1977-78	
<u>Subject</u>	<u>Grade</u>	<u>Credit</u>	<u>Subject *GR</u>	
English 3	B	1	US Hist -	
Health	F	0	Eng 3 -	
U S History	C	1	St & Law -	
Wood	C	2	Health -	
Auto 1	E	-	Bus Math -	
			Wood 2 -	
Semester Ending 1/78			*NO WD GRADES	
Desert Winds High			2 Days Attend	
Lancaster, CA	4		QHHS	

GRADUATION REQUIREMENTS

ENGLISH	<input type="checkbox"/>				
MATH	<input type="checkbox"/>				
SCIENCE	<input type="checkbox"/>				
DRIVER EDUCATION	<input type="checkbox"/>				
HEALTH/EXEMPT	<input type="checkbox"/>				
SOCIAL STUDIES	<input type="checkbox"/>				
U.S. HISTORY	<input type="checkbox"/>				
GOVERNMENT & CONSTITUTION	<input type="checkbox"/>				
READ PROFICIENCY MET	<input type="checkbox"/>				
MATH PROFICIENCY MET	<input type="checkbox"/>				
MEASLES COMPLETED/EXEMPT	<input checked="" type="checkbox"/>				
FOLIO COMPLETED/EXEMPT	<input checked="" type="checkbox"/>				
DPT COMPLETED/EXEMPT	<input checked="" type="checkbox"/>				

KEY TO GRADES
 A-EXCELLENT
 B-GOOD
 C-AVERAGE
 D-BARELY PASSING
 I-INCOMPLETE
 F-FAIL
 P-PASS
 S-SATISFACTORY
 U-UNSATISFACTORY
 W-WITHDRAWAL
 COOK, DANIEL WAYNE

PREVIOUS SCHOOLS ATTENDED: San Dimas High School, San Dimas
 Mountain View High, El Monte, CA

SCHOOL RECORDS NOT RECEIVED

EXHIBIT 29

ER 000239

Declaration of Michael Terribile

I, Michael Terribile, declare under penalty of perjury the following to be true to the best of my information and belief:

1. I am a trial attorney.
2. I represented Daniel Cook in his state post-conviction proceedings because John Williams asked me to conduct the evidentiary hearing for Daniel Cook. I discussed the case and the witnesses who should be called with him, and I agreed to conduct this evidentiary hearing and present the testimony of the witnesses as Mr. Williams requested. It was clearly understood that my only responsibility would be to present witnesses in court.
3. I played no role in developing the issues during Daniel Cook's post-conviction proceedings. I did not take part in determining how any of the specific legal claims should be raised in order to preserve the issues for future litigation.
4. When relief was denied Mr. Williams advised me what pleadings need to be filed and the pleadings that I did file were done so at the direction of Mr. Williams.
5. I agreed to file the post hearing pleadings as directed by Mr. Williams in the belief that it was more efficiently done that way.
6. I know of no reason why Mr. Williams failed to direct me to include a claim of ineffectiveness of trial and appellate counsel in the motion for rehearing.
6. Relying on Mr. Williams and working at his direction, I did not know that the claim related to the trial judge's bias against Daniel Cook should have been grounded upon federal constitutional law, as well as state law, in order to properly preserve the claim for federal proceedings.

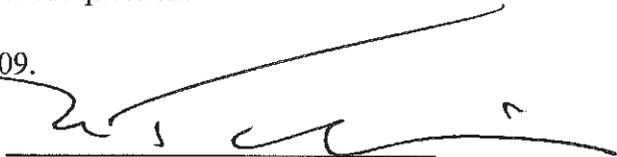
- 7. Relying on Mr. Williams and working at his direction, I was not aware that if any claim was not properly raised it would result in Daniel Cook being barred from presenting that claim in his federal habeas corpus proceedings.
- 8. I can unequivocally say that there were no strategic reasons why I did not include a claim of ineffectiveness of trial and appellate counsel or why I did not federalize the judicial bias claim in the motion for rehearing.
- 9. Had I known that I would have been held responsible for filing pleadings after completion of the evidentiary hearing I would not have agreed to handle that hearing.
- 10. Believing Mr. Williams to be a qualified post conviction advocate with many years of experience in handling such matters I did not question or second guess his directions to me.

I filed the pleadings as he directed without question.

Signed this 30th day of March, 2009.

Michael Terribile

Name (Printed)



Signature

Phoenix, Arizona

City, State

STATE OF ARIZONA)

) ss.

County of Maricopa)

SUBSCRIBED AND SWORN TO before me this 30th day of March, 2009 by.

Melne Shepard
Notary Public

My Commission Expires:



Initials MT

COPY

Only 1 copy 1

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

STATE OF ARIZONA,)
)
 Plaintiff,)
)
 vs.) Cause No. CR-9358
)
 DANIEL WAYNE COOK,) EVIDENTIARY HEARING
)
 Defendant.)
 _____)

Before the Honorable Steven F. Conn, Judge

Friday, December 2, 1994

10:25 a.m.

Kingman, Arizona

Reporter's Transcript of Proceedings

Appearances:

For the State: Kent E. Cattani
Assistant Attorney General
1275 West Washington
Phoenix, Arizona 85007

For the Defendant: Michael Terribile
111 West Monroe, Suite 1650
Phoenix, Arizona 85003

Reported by: Sandra R. Brice, Official Reporter

10

1 THE COURT: All right.

2 (A prospective witness entered the courtroom.)

3 THE COURT: All right. Mr. Keller, come up here and
4 take the stand. You have already been sworn in and you are
5 under oath.

6

7 Thereupon --

8

CLAUDE D. KELLER,

9 was called as a witness by the Defense, and having been
10 previously duly sworn, was examined and testified as follows:

11 THE COURT: Counsel, just for scheduling purposes, I
12 am willing to go to maybe 12:15 and then break at that time
13 and plan on coming back at 1:30.

14 MR. TERRIBILE: That's fine.

15

16

DIRECT EXAMINATION

17 BY MR. TERRIBILE:

18 Q. Please state your name.

19 A. Claude D. Keller.

20 Q. Were you an attorney practicing criminal defense law
21 in about 1987-88 here in Mohave County?

22 A. Yes.

23 Q. Were you a public defender or private counsel? What
24 was your status?

25 A. I had a -- at that time I think if I recall

10 1 correctly I had a contract to represent people where the
2 2 public defender had a conflict. I would be determined to be
3 3 a public defender.

4 4 Q. How did that contract work? How did you get paid?

5 5 A. Paid by the county.

6 6 Q. Were you paid by the case or by the hour?

7 7 A. By -- at that time I was paid by a -- I think I got
8 8 a flat fee per year. I can't recall exactly because we were
9 9 compensated differently at different times. One time we were
10 10 paid by the hour and other times -- but at that time I think
11 11 I got a flat fee per year but I could have been paid by the
12 12 hour at that time. I don't recall exactly specifically.

13 13 Q. Referring to Dan Cook, were you appointed to
14 14 represent Mr. Cook?

15 15 A. Yes.

16 16 Q. That was on a murder charge?

17 17 A. That is correct.

18 18 Q. A capital case?

19 19 A. That is correct.

20 20 Q. Had you ever handled any capital case before that?

21 21 A. Yes. But the only one that I can recall the family
22 22 hired another lawyer before -- I think before the
23 23 arraignment.

24 24 Q. Referring to Mr. Cook's case, I am trying to
25 25 understand and I would like the record to reflect what you

11 1 got paid to represent Mr. Cook in a capital case.

2 A. I don't recall the exact sum.

3 Q. Can you give me a ball park number?

4 A. I think at that time -- at that time that it was
5 determined that -- by the court -- by the Supreme Court that
6 the county was not compensating attorneys enough to handle
7 the amount of indigent prisoners. Pursuant to a plan they
8 had where they gave four lawyers a contract each year to take
9 one-fourth of the volume, the Superior Court at that time
10 agreed to pay us \$45 an hour anybody that got appointed.
11 Then subsequently the Public Defender's Office was created.
12 Mr. Everett was hired and he hired lawyers on a flat fee and
13 conflict cases were given to other attorneys on a contract.

14 Now, I am not certain in my own mind right now whether
15 or not we got paid a flat fee for a year or whether we were
16 paid by the hour. I believe we were paid by the hour.

17 Q. If you were paid by the hour, what was that hourly
18 fee?

19 A. Then I believe \$45 an hour but I am not certain.

20 Q. If you were paid a flat fee, what was that?

21 A. I don't recall.

22 Q. After being appointed to represent Mr. Cook in this
23 capital case, as I understand you had an investigator
24 assigned to work with you?

25 A. That is correct.

11

1 Q. That was Evan Williams?

2 A. That is correct.

3 Q. Did you give Mr. Williams any instructions as far as
4 what he should do in the way of assisting you as an
5 investigator?

6 A. Yes.

7 Q. What instructions did you give him?

8 A. To interview witnesses.

9 Q. Do you recall which witnesses he interviewed?

10 A. Well, let's see. I don't recall exactly which
11 witnesses. I know he interviewed -- I think he interviewed
12 some of Mr. Cook's family.

13 Q. What is your understanding of who you told him to
14 interview?

15 A. I don't recall exactly who I told him to.

16 Q. Isn't it a fact --

17 A. The police I think.

18 Q. -- isn't it a fact you never told him exactly who to
19 interview?

20 A. I don't recall.

21 Q. Do you remember being interviewed by my office on --

22 A. Yes. Yes, I do.

23 Q. Do you remember being asked this question and giving
24 this answer. Well, just your answer: No, I don't recall
25 that I ever told him exactly who I wanted interviewed.

11

1 Do you remember telling me --

2 A. Yes. Uh-huh.

3 Q. During my interview with you, you told me you didn't
4 interview Matzke; is that correct?

5 A. No, I did not interview him. Not that I recall.

6 Q. Okay. During my interview with you --

7 A. Yes, that's correct.

8 Q. Okay. And as far as you knew, Evan Williams never
9 interviewed Matzke; correct?

10 A. Not that I recall, no.

11 Q. Did you ever make any motion to challenge Matzke's
12 plea agreement because of two provisions; one which required
13 him to testify consistently with other statements he had made
14 and two --

15 A. No, I did not because as you are --

16 Q. Just let me finish for the record.

17 A. Very well.

18 Q. The second provision which precluded you or Evan
19 Williams or anybody working for you representing Mr. Cook to
20 interview Matzke.

21 Did you challenge that provision of the plea agreement?

22 A. No.

23 Q. Now, as I understand, you'd never gone to trial in a
24 capital case; is that correct?

25 A. That's correct. Yeah, that's correct.

11

1 Q. At some point Mr. Cook made a motion requesting the
2 Court to be allowed to waive counsel.

3 Do you recall that?

4 A. Yes.

5 Q. Now, that was some time in April of '88.

6 Does that sound right?

7 A. I don't recall the exact date but that's probably
8 accurate.

9 Q. Okay. Now, you were appointed some time in the
10 summer. In August as I understand it.

11 Does that sound right to you?

12 A. Yes. I am not certain of that date either.

13 Q. All right. Would you argue with it?

14 A. I would not argue with it.

15 Q. Assuming that I'm right, between the time that you
16 were appointed -- which, if I am right, would be some time in
17 August --

18 A. That's correct.

19 Q. -- of '87 and April of '88 at the time that Mr. Cook
20 was in front of Judge Conn arguing a motion to waive counsel,
21 had you settled on any of the defenses?

22 A. No. I was still leaving all options open.

23 Q. What options remained open in your mind at that
24 point?

25 A. Well, denial that he did it; alibi. I think I made

11 1 a notice of defense for diminished capacity. It was possible
2 that he could have a defense on the basis of insanity. I
3 can't recall any others right now.

4 Q. And you said denial. I understand that means
5 reasonable doubt?

6 A. That's right. That's right.

7 Q. Okay. As to alibi, between August and April had you
8 found any witness that would be an alibi witness and place
9 Dan Cook somewhere other than the scene of the crime?

10 A. No, I --

11 Q. As to insanity, had you found a mental health expert
12 that would -- who found Dan Cook insane at the time of the
13 offense?

14 A. I made a motion to have his mental condition
15 examined and I talked to a licensed psychiatrist who lived
12 16 here in the county, Dr. Ruland, who has retired about
17 reviewing the discovery materials and talking to Mr. Cook and
18 perhaps formulating an opinion about Mr. Cook's sanity but
19 Dr. Ruland talked to me one time at my office then later I
20 couldn't locate him. I got no further cooperation.

21 Q. Up to that time you lost contact with Dr. Ruland had
22 he offered an opinion to you that Dan Cook was insane at the
23 time of the offense?

24 A. No, he did not say that. He said that he was
25 acquainted with Mr. Cook and had been but he did not offer an

12 1 opinion.

2 Q. Did you find any other mental health expert who was
3 willing to offer an opinion or conclusion or come to the
4 conclusion Dan Cook was insane at the time of the offense?

5 A. No.

6 Q. Would it be fair to say that without having
7 witnesses who would testify as to the alibi defense that
8 theory of alibi really wasn't going to fly?

9 A. Well, it wasn't certain. As I said I was leaving
10 the option open but I had not found an alibi witness.

11 Q. Would it be fair to say without a mental health
12 expert willing to testify that Dan Cook was insane at the
13 time of the offense that insanity defense wasn't viable?

14 A. That -- well, that would be fair to say, yes.

15 THE COURT: Let me just interrupt for one second.
16 There's a procedure that I usually go through during these
17 kinds of hearings and this is probably a good time to do it.

18 Mr. Keller, I just want to make sure that there's no
19 doubt in your mind. Any attorney-client privileges are
20 specifically waived by Mr. Cook making an issue out of the
21 effectiveness of your representation and I am not sure
22 whether any of these questions that have been asked this far
23 would have caused you to give responses that would contain
24 what would normally be privileged information but you may
25 testify at this hearing about any communications that you had

12

1 with Mr. Cook. It is my position that that is not protected
2 by the attorney-client privilege.

3 I am sorry. Go ahead, Mr. Terribile.

4 MR. TERRIBILE: Your Honor, I just got a note saying
5 Ron Wood is available now and will be available until
6 one p.m. and that we will have trouble after one p.m.

7 THE COURT: Do you just want to break and then go in
8 and talk to him?

9 MR. TERRIBILE: Please.

10 THE COURT: All right. Let's stand at recess.

11 Mr. Keller, you will have to come back at 1:30 and we
12 will complete your testimony at that time.

13 Why don't you all come back into my office.

14 (There was a break in the proceedings from
15 12:08 p.m. until 12:18 p.m.)

16 (The following was held in Chambers.)

17 THE COURT: All right. This is a continuation of
18 CR-9358, State versus Cook. Show the presence of the
19 Defendant and Counsel. And I have Mr. Wood on the speaker
20 phone.

21 Mr. Wood, let me swear you in. Do you solemnly swear
22 that the testimony you are about to give in the cause now
23 pending will be the truth, the whole truth and nothing but
24 the truth under penalty of perjury so help you God?

25 MR. WOOD: I do, Judge.

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THE COURT: Proceed, Mr. Terribile.

Thereupon --

RONALD WOOD,

was called as a witness by the Defense, and having been first
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TERRIBILE:

Q. Please state your name for the record.

A. Ronald Wood.

Q. What do you do for a living?

A. I am an attorney.

Q. How long have you been practicing law in Arizona?

A. Since 1985.

Q. Has your practice been limited to a particular area
of law?

A. Up until a year ago it was limited exclusively to
criminal and in the past year I have diversified somewhat
necessitating my venturing into civil practice but I would
say 80 percent of my practice is still criminal.

Q. Did you practice criminal law in Mohave County
between the dates 1986 and 1990?

A. I did.

Q. What were you doing in Mohave County at that time?

12 1 A. That changed several times but I worked in the
2 Public Defender's Office originally as a deputy. Then for a
3 brief time I was chief deputy and then my last position was
4 that as Legal Defender.

5 Q. In your capacity as a criminal defense lawyer
6 working in Mohave County did you have contact with Claude
7 Keller?

8 A. Yes.

9 Q. Did you have occasion to observe Claude Keller in
10 court and overhear him interact with his clients and other
11 lawyers?

12 A. Yes.

13 Q. Based on your contact observations of him with or
14 observations of and contacts with Claude Keller did you form
15 an opinion as to his competency --

16 A. Yes.

17 Q. -- as a criminal defense lawyer? I am sorry.

18 A. Yes.

19 Q. What is that opinion?

20 A. Claude only was -- Claude was competent to handle
21 simple changes of pleas. He was -- he was competent and
22 capable of handling relatively simple matters or matters that
23 didn't require some skill or the filing of any motions but as
24 far as complex things such as, say, a jury trial or a motion
25 to suppress -- and when I say more complex, I don't mean more

12 1 complex in the sense that anybody would consider complex.
2 Anything more than just a simple conveyance of an offer and
3 acceptance and guiding that case through a routine change of
4 plea and sentencing that was pretty much beyond what Claude
5 was -- was capable of doing.

6 Q. Was it your opinion Claude Keller had a grasp of the
7 law or kept up with the law?

8 A. Well, one time I recall Claude argued to Judge Conn
9 that a controlling case was Territory v. someone and I
10 remember that the Judge admonished that that sort of citation
11 was not going to be particularly persuasive to the Court so I
12 don't think that he did.

13 Also, on another occasion I believe in Division One in
14 front of Judge Pope he indicated that he had not filed a
15 suppression motion because he didn't want to have his client
16 testify at a suppression motion and getting an admission
17 regarding possessory interest in property where the
18 contraband was found.

19 I don't think he had much of a grasp of the real nuts
20 and bolts of the law. He had a general overview of how it
21 was supposed to work; who the judge was, who the prosecutor
22 was and where everyone was supposed to sit. Beyond that I
23 don't think he had much of an idea.

24 Q. Do you know what Claude Keller's reputation among
25 the Bench and Bar of Mohave County was back then?

13 1 A. Well, he had certainly a reputation with -- with the
2 defense bar. As I indicated, I was with the Public
3 Defender's Office. I guess with a few notable exceptions --
4 Mr. Forrester, Mr. Porter, Maurice Coburn, Michael Boose,
5 some other private counsel -- the Public Defender's Office
6 pretty much became the defense bar after they set up the
7 P.D.'s office. We pretty much all characterized Claude as
8 simply a plea sense guy.

9 The first jury trial I ever did was a case that I had
10 gotten from Claude because the client fired him because he
11 wouldn't take the deal and Claude just couldn't do a trial
12 because he would have to get busy with it.

13 Among defendants, people that were in the jail, he had
14 the reputation for being what was characterized a dump trunk;
15 someone who would take your case then dump it at the end of
16 it.

17 Q. Was that a fair characterization of Claude Keller?

18 A. Yeah, I think it was. It may have not been
19 particularly kind. Claude was a nice man but that's probably
20 an accurate characterization of the way he practiced law.

21 Q. Do you have an opinion as to whether or not the
22 judges of Mohave County knew or should have known Claude
23 Keller was incompetent?

24 A. Yeah. If he practiced law in front of them they
25 would have had to have known that he was -- that he had that

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1 reputation; that characterization along these lines.

2 Q. I am sure I asked you but I want to make sure that I
3 get it on the record. In your opinion was Claude Keller
4 competent to handle a capital case?

5 A. No. The nuances of doing capital litigation -- the
6 aggravating and mitigating factors and -- and the
7 constitutional objections to the various stages of a capital
8 case are just not -- this is a man who couldn't do a simple
9 motion to suppress when the police go into someone's house
10 and search for contraband without a warrant and without
11 permission. I don't know how he would ever get the true
12 magnitude of a capital case.

13 Q. Earlier today Mike Burke testified that he went to
14 trial with Claude Keller as co-counsel and they had
15 defendants charged with several felonies and Mike Burke's
16 client got convicted of a felony and Claude Keller's client
17 got a misdemeanor.

18 Does that change your opinion of Claude Keller's ability
19 or competence to handle a capital case?

20 A. No.

21 Q. Would you give us your opinion as to whether or not
22 Claude Keller, beyond his ability, do you believe that he had
23 the desire and interest necessary to handle a capital case?

24 A. I don't know whether he had the desire. I don't
25 know. I can't answer that. I don't know that he ever did or

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1 did not volunteer for them. I just don't think he can do
2 them.

3 Q. You said a little while ago that you didn't think
4 Claude Keller was competent to handle a capital case. I
5 assume you meant as lead counsel?

6 A. I don't -- I mean I am well aware that he -- that he
7 was -- in the case that we are dealing with now he was
8 advisory counsel. It seems to me that my opinion as to
9 whether he could be competent to handle a capital case would
10 also extend to advisory counsel because it is my
11 understanding that advisory counsel supposedly assumes that
12 you know what you are talking about to begin with and so I
13 don't think he could do that either.

14 Q. Based on conversations that you had with most of the
15 judges in Mohave County back in 1987 and '88 who were
16 familiar with Claude Keller's work, is it your belief that
17 they also shared your opinion about Claude Keller?

18 A. Yes.

19 Q. Did you have a conversation with Judge Conn which
20 lead you to believe Judge Conn also shared your opinions
21 about Claude Keller?

22 A. Yeah. I can recall having a conversation with Judge
23 Conn wherein he indicated that he didn't think Claude was
24 doing a very good job. I haven't looked at my affidavit for
25 a long time. I haven't really thought about this for a long

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1 time so I don't remember specifics but I can recall a comment
2 Judge Conn made.

3 And I also recall another conversation that he and I
4 had. I don't know whether it was a comment or a conversation
5 that we had and it may have been with a prosecutor present.
6 I'm sure it wasn't an ex parte communication. It was just
7 what I believe. My recollection is that he just personally
8 expressed he didn't think Claude was one of these lawyers who
9 was going to be able to handle complex things.

10 Q. Ron, have you handled a capital case in your career?

11 A. Yes. Well, what do you mean by capital case? I've
12 never represented a defendant who's been sentenced to die.

13 Q. Have you ever represented a defendant who was
14 charged in a case which could result in his death?

15 A. Yes.

16 Q. I'm going to ask you to assume some facts here.
17 Assume that you are the attorney defending a capital case.

18 A. Okay.

19 Q. The only viable theory of a defense is reasonable
20 doubt.

21 A. Okay.

22 Q. There is one witness who can place the defendant at
23 the scene of the crime. This is an eye witness and
24 co-defendant who will testify that he and the defendant
25 committed the crime as charged. There are no other eye

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1 witnesses or essentially other evidence linking the defendant
2 to the crime as strongly as the testimony of this
3 co-defendant/eye witness.

4 A. Okay.

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5 Q. Assume further that you believe the only way you can
6 successfully raise the defense of reasonable doubt would be
7 to impeach the co-defendant/eye witness.

8 A. Okay.

9 Q. In your opinion would it be absolutely necessary for
10 the defense counsel to interview that co-defendant/eye
11 witness?

12 A. Well, first of all, you've got to understand that I
13 am very familiar with the case and with the facts of this
14 particular case because I was also in the office.
15 Mr. Everett and I specifically represented Mr. Matzke and I
16 was involved in some of the negotiations with Mr. Larsen
17 which eventually resulted in Mr. Matzke receiving the
18 sentence -- 20 year sentence that he received with an
19 agreement to testify against Mr. Cook so I know what
20 Mr. Matzke's testimony would have been so I am familiar
21 enough just with the general scenario that you presented,
22 Mr. Terribile.

23 With the specific facts of the case, I would think that
24 if I were lead counsel for Mr. Cook not only would I have,
25 one, interviewed Mr. Matzke but I would want to know

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1 everything in the world about him. Everything that he had
2 ever done. Anybody he had ever talked to. The benefit that
3 he received not only from the plea agreement but also in his
4 treatment in prison. I would just want to know everything
5 you can about a person so that you can present that at trial
6 to prove to the jury that this person's testimony is not
7 worthy of belief.

8 Q. And specifically you would want to interview him;
9 correct?

10 A. Oh, yeah.

11 Q. In your opinion would it have been enough to
12 interview such an eye witness/co-defendant and not do any
13 more?

14 A. In the Cook case or any other case?

15 Q. Generally. Generally.

16 A. In a capital case it is absolutely not going to be
17 enough. It is not.

18 In the Cook case it certainly would not have been enough
19 because there were a number of other factors in play. I
20 think that the relationship between the parties had to be
21 explored in depth but I believe just a simple interview of
22 Mr. Matzke would not have been enough to get you where you
23 needed to be able to impeach him or impeach his testimony at
24 trial.

25 Q. Assume for a minute you did do an interview.

14

1 A. Okay.

2 Q. Would it be enough to have just done an interview or
3 would you have to have done something with that interview
4 after you're done with it?

5 A. Well, you certainly have to prepare for
6 cross-examination using the transcript of the interview.
7 Yes, you have to do more with the interview than just conduct
8 the interview and have the tape in your possession.

9 Q. Would it be your opinion that a competent attorney
10 in a capital case having done an interview, having a
11 transcript of the interview in his hand would need to study
12 the interview and need to somehow be prepared to use that
13 interview to impeach the witness once he got on the stand?

14 A. Yes.

15 Q. If there was no mental health expert willing to
16 testify that a defendant was insane at the time of the
17 offense in your opinion would a competent attorney even
18 consider the defense of insanity?

19 A. No, because you would give the prosecution access to
20 records that they would not otherwise be able to get.

21 Q. If there was no witness willing and able to
22 establish an alibi defense, in your opinion would a competent
23 attorney even consider an alibi defense?

24 A. If there was no witness that could testify to that
25 alibi?

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Q. Yes.

A. No.

Q. Just give me a minute, Ron. I lost my place.

Ron --

A. Yes?

Q. -- assuming that the co-defendant/eye witness in this hypothetical had consumed approximately 36 to 40 cans of beer and did some drugs an hour immediately preceding the crime in question.

Do you think that a competent attorney would have called that fact to the attention of the jury by way of impeaching his ability to recall and perceive the events he's testifying about?

A. Repeatedly.

Q. I am sorry?

A. Repeatedly. Over and over and over again.

Q. Do you believe that is an important fact to get in front of a jury?

A. Yes.

MR. TERRIBILE: I have no other questions, your Honor.

Thank you, Ron.

THE COURT: Cross-examination, Mr. Cattani?

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CROSS-EXAMINATION

BY MR. CATTANI:

Q. Mr. Wood, were you present during any pretrial hearings in the Cook case?

A. I don't -- I don't believe so.

No, I take that back. There was one hearing and I am not exactly sure exactly what the -- what the issue was. I know that at that time Mr. Cook was representing himself and Mr. Keller was -- was there.

Q. Were you present during any pretrial hearings while Mr. Keller was still representing --

A. Not that I recall.

Q. -- Mr. Cook?

Have you reviewed any pleadings filed by Claude Keller in Mr. Cook's case?

A. No.

Q. Are you aware of any specific defense strategies that Mr. Keller should have pursued in Mr. Cook's case but did not pursue?

A. Well, yes. His -- I am aware that his impeachment of Mr. Matzke was --

Q. I am talking about during the period in which he was representing --

A. Pardon me?

Q. -- period of time in which Mr. Keller was

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REDIRECT EXAMINATION

BY MR. TERRIBILE:

Q. Ron, regarding things that Claude Keller should have done in the Cook case, are you familiar with the plea agreement Matzke signed and entered and the Court accepted?

A. Yes.

Q. Are you familiar with the fact there was a provision that required Matzke to testify consistently with any statements he had previously made?

MR. CATTANI: Objection.

THE WITNESS: I am not sure.

THE COURT: Hold on. Hold on a second, Mr. Wood.

Mr. Cattani, you had an objection?

MR. CATTANI: My objection is that the plea agreement speaks for itself. It does not make that provision.

THE COURT: I would agree that he misstated the testimonial agreement. My recollection is that they just had to be consistent with statements made during the interview process not that they had to be consistent with all statements he ever made. Whether that is relevant or not may remain to be seen but maybe you can rephrase your question.

Q. (BY MR. TERRIBILE) Ron, assume the Judge's statement of that provision of the plea agreement is accurate. Are you familiar with that provision?

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1 A. In Mr. Matzke's plea?

2 Q. Yeah.

3 A. I am aware Mr. Matzke was required to testify as
4 part of his agreement against Mr. Cook. My recollection at
5 this point was that he was required to testify truthfully. I
6 don't know that he was required to testify consistently with
7 anything that he said before if that wasn't truthful.

8 Q. Okay. Let me give it this way. Assume for a minute
9 that Matzke's plea agreement had a provision that required
10 him to testify consistently with the statements he had made
11 previously to the police department.

12 A. Okay.

13 Q. Do you think a competent attorney would have
14 challenged that provision in light of the Fisher decision?

15 A. I think a competent attorney would challenge that
16 provision in that plea agreement. A competent attorney that
17 was representing Mr. Cook would use that provision to beat
18 Matzke over the head whether Fisher was ever decided or not.

19 Q. Would a competent attorney have filed a motion to
20 try to do away with that provision or to attack the plea
21 agreement?

22 A. I don't know that the attorney representing a
23 co-defendant has the standing to file a motion to do away
24 with a provision of the plea agreement. I think that you
25 just have to beat him over the head with it.

15 1 Q. Do you think that a competent attorney would have
2 given that a shot? Would have filed a motion to preclude
3 Matzke from testifying as long as that plea agreement was
4 alive?

5 A. Yes.

6 Q. There was another provision in the plea agreement
7 that prevented Matzke from talking to or consulting with or
8 answering questions posed to him by anyone representing
9 Mr. Cook.

10 Do you think that a competent attorney representing
11 Mr. Cook would attack that provision of the plea agreement?

12 A. Yeah.

13 Q. Do you think that a competent attorney representing
14 Cook would use that provision to prevent Matzke from
15 testifying at all at the trial?

16 A. That certainly would be the basis of a good motion
17 to preclude his testimony.

18 MR. TERRIBILE: Thank you. I have no other
19 questions.

20 THE COURT: Mr. Cattani, anything further?

21 MR. CATTANI: No.

22 THE COURT: All right. Thank you, Ron. I am going
23 to hang up on you now.

24 MR. WOOD: Okay Judge.

25 THE COURT: See you later.

15

1 MR. WOOD: Thank you.

2 (The telephone call was concluded.)

3 THE COURT: Okay. Let's stand at recess until a
4 quarter to two.

5 MR. TERRIBILE: Thank you.

6 (There was a break in the proceedings from
7 12:42 p.m. until 1:55 p.m.)

8 (The following was held in open court.)

9 THE COURT: Thank you. Be seated.

10 This is a continuation of Cause Number CR-9358, State
11 versus Daniel Wayne Cook. Show the presence of the Defendant
12 and Counsel.

13 Just a couple of scheduling notes before the questioning
14 gets started.

15 Mr. Terribile, I have been advised by my Secretary that,
16 ironically, you are going to testify by phone in another case
17 so I have told her as soon as we get that call, she is going
18 to tell me. We will just stop immediately what we are doing
19 and enable you to do that. Since everyone has accommodated
20 me to a varying extent I'll try to do the same.

21 MR. TERRIBILE: Thank you, your Honor.

22 THE COURT: And also I don't have any idea how much
23 more testimony the two of you are going to put on or what you
24 are looking at time-wise. Just so you are aware, I will
25 probably have to stop at about 4:30 this afternoon because I

15 1 know I have three initial appearances that I have to do. I
2 cannot work beyond five o'clock today.

3 I will let you all call your witnesses in whatever order
4 you want. I would -- I would love to see you do so in a way
5 that would minimize the possibility of us having to keep
6 bringing Mr. Cook back and forth between here and D.O.C. but
7 I am not going to dictate the order in which you call your
8 witnesses and if we get to the point that is not convenient
9 for me, I will bite the bullet and live with that.

10 So, do you want to continue with Mr. Keller's testimony
11 at this time?

12 MR. TERRIBILE: Please, your Honor.

13 THE COURT: All right. Let's have him come back in.

14 (The witness entered the courtroom.)

15 THE COURT: Mr. Keller, come up and resume the
16 stand. You are still under oath.

17 THE WITNESS: Yes, your Honor.

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19 Thereupon --

20 CLAUDE D. KELLER,

21 resumed the stand and testified further as follows:

22

23 CONTINUED DIRECT EXAMINATION

24 BY MR. TERRIBILE:

25 Q. Mr. Keller, before we broke we discussed the fact

15 1 that you had no witness who would be able to establish an
2 alibi for Dan Cook.

3 A. No.

4 Q. You had no witness or mental health expert who had
5 formed an opinion and was willing to testify that Dan Cook
6 was insane at the time of the offense; correct?

7 A. Essentially correct. Dr. Ruland had indicated that
8 he had some knowledge -- prior knowledge of Mr. Cook's early
9 life but nothing that I discussed with him had ever been
10 furnished to me in writing and eventually, as I recall, he
11 just didn't answer my phone calls.

16 Q. Well, in fact, Dr. Ruland did form an opinion as to
12 Dan Cook's state of mind; correct?

13 A. No, he didn't. Not -- not -- not a formal opinion,
14 no.

15 Q. And you certainly had no expectation that Dr. Ruland
16 would testify to that effect?

17 A. Well, I discussed that with him one time. He said
18 that he would help out and if his testimony was helpful he
19 would testify but --

20 Q. Let's cut to the chase, Mr. Keller.

21 A. Okay.

22 Q. You are a defense counsel. You are in charge of a
23 capital case.

24 A. That's correct.
25

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1 Q. Did you have a mental health expert that was ready
2 to testify that Dan Cook was insane?

3 A. No.

4 Q. Thank you.

5 Now, your last theory of a defense you discussed was
6 reasonable doubt --

7 A. That's correct.

8 Q. -- right?

9 Now, based on the facts of the case that you had in your
10 hands at that time, you had an eye witness slash co-defendant
11 John Matzke.

12 A. That's correct.

13 Q. He was the biggest problem from the Defense point of
14 view; would you agree?

15 A. That is correct and yes.

16 Q. Would you agree that in order to successfully mount
17 a reasonable doubt defense, you would have to successfully
18 impeach Matzke?

19 A. That or if he changes his testimony --

20 Q. One or the other?

21 A. -- voluntarily.

22 Q. One or the other?

23 A. That's correct.

24 Q. Did you have any reason to think Matzke would change
25 his testimony?

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1 A. No.

2 Q. Now, you do believe --

3 A. Pardon me. Go ahead. I was going to add something
4 but -- but go ahead.

5 Q. When you and I talked in my office it was your
6 memory that you had never interviewed Matzke before trial;
7 correct?

8 A. I did not recall that I did but subsequently I was
9 informed that we did. There was an interview of Matzke by
10 various people.

11 Q. Okay.

12 A. You told me that the record reflected that.

13 Q. That's right. That's right.

14 Now, your understanding of Matzke's plea agreement was
15 that you couldn't interview him; correct?

16 A. That's what he had did, yes.

17 Q. It was your impression when I talked to you Matzke
18 had never given the police a videotaped statement; isn't that
19 true?

20 A. I don't recall that he did, no.

21 Q. In fact, you told me that he probably didn't because
22 the authorities didn't have that kind of equipment back then.

23 A. Well --

24 Q. Do you recall telling me that?

25 A. I had no knowledge that they had that type of

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1 equipment. I knew Mr. Williams who worked for the defense
2 had some videotape equipment.

3 Q. Now, after that interview you had with me I brought
4 to your attention the fact I did find a transcript of an
5 interview with Matzke.

6 A. That is correct. You did.

7 Q. Do you have any memory of that transcript?

8 A. No, I don't.

9 Q. Did you work off that transcript getting ready for
10 trial?

11 A. I did not request a transcript be prepared so that I
12 would have it, no, for trial or any other reason.

13 Q. Did you have a copy of the transcript prepared?

14 A. No, I did not have a copy of the transcript.

15 Q. Now, it turns out there was a videotape statement
16 made by Matzke to the police department and if I understand
17 correctly, you never viewed that videotape statement Matzke
18 made to the police department; correct?

19 A. I don't recall viewing it. I don't think that I
20 did.

21 Q. Having not reviewed the statement made by Matzke to
22 the police, having not ordered a transcript of an interview
23 Matzke gave, you realize that the only way to establish
24 reasonable doubt was effective impeachment of Matzke?

25 A. That -- that's -- that -- that's -- that would be

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1 the best way to defend --

2 Q. How did you plan --

3 A. -- or to establish that some other person other than
4 Cook was Matzke's co-defendant or co-partner.

5 Q. Referring now just to the impeachment of Matzke and
6 the working with the reasonable doubt defense --

7 A. Uh-huh.

8 Q. -- since you didn't view the videotape statement he
9 made to the police and you didn't plan to work from the
10 transcript, how did you plan on impeaching Matzke?

11 A. The only possible way would be to establish that he
12 had got a 20 year deal and the guy that was being tried was
13 subject to the death penalty so he had every type of motive
14 to falsify his testimony because of the fact that he was able
15 to get 20 years and the other guy was charged with the death
16 and subject to the death penalty and he had -- voluntarily
17 had confessed whereas the -- the other fellow did not.

18 Q. By other guy, you mean Mr. Cook?

19 A. That's right. So you -- you could establish motive
20 to falsify; to establish motive by him falsifying his
21 testimony in order to receive a deal.

22 Q. So your plan was to impeach Matzke?

23 A. That was one way.

24 Q. Okay. What was the other way?

25 A. Well, the -- I didn't -- I had not decided whether

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1 or not to advise Mr. Cook to take the witness stand or not.
2 That was still open but in the event he did take the witness
3 stand, he might be able to help himself. I don't know. I --
4 that -- I -- essentially that was the only way that I was
5 able to think I could impeach Matzke other than
6 cross-examining him about the fact that he was a
7 homosexual --

8 Q. All right. Just --

9 A. -- person and that he admitted that and had lived
10 with man for a number of years and --

11 Q. Just to summarize. Your plan by way of impeaching
12 Matzke was to impeach him with the plea agreement he entered
13 and the benefits he got as a result?

14 A. That's right.

15 Q. If Dan Cook took the stand he obviously would
16 testify contrary to Matzke?

17 A. Well, I am not certain exactly what he would testify
18 to --

19 Q. Okay. And -- and you --

20 A. -- at that time.

21 Q. And you wanted to impeach Matzke also with his
22 homosexual lifestyle or --

23 A. Yeah, and that he had -- he had the opportunity to
24 do this all by himself or with some other person --

25 Q. Now --

17

17 1 A. -- who was part of the record who had not been
2 interviewed by the police.

3 Q. That's what I am going to next.

4 You said one of the ways of establishing reasonable
5 doubt was to point the finger at someone besides Daniel Wayne
6 Cook?

7 A. That is correct or that -- yeah, or -- or bring that
8 up to the jury there was another person.

9 Q. Who was this person?

10 A. Watkins.

11 Q. What did you know that put Watkins at the scene at
12 the time of the offense?

13 A. Well, as I recall he's the one that went down and
14 originally talked to the police.

15 Q. What evidence did you have that this individual had
16 anything to do with the offense?

17 A. His presence in the area and the fact that he fled.
18 Nobody could find him. Flight, you know, is an indication of
19 guilt.

20 Q. Well, you say he -- he fled. What leads you to say
21 he fled?

22 A. Well, I asked Evan Williams to try to find him and I
23 think I talked to the Havasu police about that and asked them
24 to produce him. I don't recall that I did but I think I did
25 and we -- he was unavailable.

17

1 Q. Did you have an address for him?

2 A. No. I don't know whether they were secreting him.
3 Usually people can find somebody. They have the F.B.I. if
4 they're really looking.

5 Q. Did you have an address for this individual?

6 A. No.

7 Q. Phone number?

8 A. Not that I recall.

9 Q. Phone number of his place of employment?

10 A. No, not that I recall. Not -- not after the fact
11 here.

12 Q. So, the fact you couldn't find him lead you to
13 conclude he fled?

14 A. Well --

15 Q. Am I correct?

16 A. There's some evidence that he was in the area, yes.

17 Q. Okay. Now, some time prior to Mr. Cook making his
18 request to waive counsel in April, as I recall it you
19 discussed some of your physical problems with Dan; is that
20 true?

21 A. I think that I did, yes. I -- I -- I -- I am not
22 certain that I -- I did at one time but I am not certain that
23 I did it before he made a motion to represent himself. I --
24 I advised the Court and I am not certain of the sequence but
25 I think that I did.

17 1 Q. Now, when we were talking at my office we talked
2 about your health problems.

3 A. That's right.

4 Q. And I apologize for bringing this up now.

5 A. That's all right. I expected this.

6 Q. Well, all right, but I want you to know I do
7 apologize.

8 A. I understand.

9 Q. You asked me to turn off the tape recorder and I did
10 but I have to bring this up.

11 A. That's -- that's right. I am -- I have no secrets.

12 Q. Okay. As I understand it, back around the time you
13 were representing Dan Cook you were suffering from bouts of
14 depression; is that true?

15 A. Well, subsequently diagnosed, yes.

16 Q. Well --

17 A. If you want me to explain the full story I will.

18 Q. Well, let's try to make this short and just hit the
19 highlights.

20 At the time you were representing Dan, even though you
21 hadn't been diagnosed yet, it turns out you were suffering
22 with clinical depression; correct?

23 A. Well, I don't know if it's clinical. I think
24 it's -- there's a distinction between that and actual
25 bi-polar condition.

17

1 Q. Do you suffer from a bi-polar condition?

2 A. That's what it has been diagnosed as, yes.

3 Q. And did you suffer with that condition at the time
4 you were representing Dan -- bi-polar depression?

5 A. I believe I was. I didn't think that I was.

6 Q. Okay. In fact, some time prior to your representing
7 Dan you had been on Lithium because of that condition?

8 A. I had about ten years before, yes.

9 Q. While you were representing Dan you weren't taking
10 Lithium?

11 A. No. I hadn't done so for eight years. I had gone
12 eight years without Lithium.

13 Q. What are the symptoms that you experience from the
14 bi-polar disorder when you are not on medication?

15 A. Well, if you are high, you have tremendous energy.
16 You have a feeling of well-being. Everything is rosy. You
17 are -- you -- you can out work anybody. You -- you are
18 happy. You can't sleep.

19 If you are low, you are depressed. Everything looks
20 bad. The future looks terrible. The -- the -- you have a
21 tendency to take to the bed. You don't want to work. You
22 have to force yourself to do things.

23 Now, that's extreme. Now, I am not really extreme or,
24 at least, that's what the doctor tells me either way but I do
25 go back and forth and as you grow older it becomes more

17 1 pronounced.

2 Q. Does this --

3 A. So that you have to stay on Lithium which has
4 some -- some side effects that you don't really like but
5 that's the -- still the best medicine the doctor can offer.

6 Q. Does this condition lead to physical complaints,
7 aches and pains of other causes?

8 A. Well, that's -- that's one of the -- of the signs of
9 depression is you -- you think you have some type of -- of a
10 condition or disease or for want of a better word condition
11 or disease or ailment that you don't really have and so you
12 see the doctor.

13 And I thought I had gallbladder trouble. It took them
14 two years to tell me I didn't and I had every blood test
15 there was. They thought I had multiple sclerosis because I
16 had a little bit of tremors. Other people didn't notice. It
17 didn't seem to affect my ability to think. And I, of course,
18 always had asthma which is aggravated by the fact that I am a
19 damn fool who smoked for 25 years when I shouldn't have.

18 20 Q. Calling your attention to the hearing on Mr. Cook's
21 motion to waive counsel. Do you remember pointing out to the
22 Court that you had some problems with your back which may
23 prevent you from carrying on your representation of Mr. Cook?

24 A. Yes. That's in the record that I -- that I
25 thought -- I had self-diagnosed myself and thought that I had

18 1 a slipped disk. My back hurt and, of course, one of the --
2 one of the signs of gall stones is pain in your back, in
3 the -- right in your spine.

4 Q. Isn't it a fact that you later discovered there was
5 nothing wrong with your back?

6 A. That's right. I eventually was forced to go back to
7 the shrink and I apologize if there are any doctors around
8 because I have a great deal of respect for that branch of
9 medicine.

10 Q. My point is that at the time that you were
11 representing Mr. Cook you had physical ailments?

12 A. That's right.

13 Q. And it turns out there wasn't anything physically
14 wrong with your back or gallbladder but that you needed to
15 get back on Lithium because of your bi-polar disorder?

16 A. That -- that was very helpful as soon as I got back
17 on it, yes.

18 Now, also, it is an established fact that bi-polar
19 people get well automatically. It is a psychological thing.
20 If you don't take any medication eventually it turns around
21 and you go back to being high.

22 Q. But my point --

23 A. Lucky I had gone all my life undiagnosed until I was
24 about 45.

25 Q. Mr. Keller, let's get back to the point. Back in

18

1 April of '88 when Dan Cook was standing in front of Judge
2 Conn saying he wanted to waive counsel, you at that point
3 were suffering the effects of bi-polar disorder; correct?

4 A. I could have been and probably was but I had not
5 sunk to the level where I couldn't operate but I -- I knew
6 something was serious.

7 Q. Okay. Please describe your drinking habits before
8 at the time you were representing Dan Cook.

9 A. Well, here's my -- all I can tell you about this. I
10 started drinking when I was quite young. My friends were
11 usually drinkers. I have never been picked up for a D.U.I.
12 or any other offense involving alcohol but you discover when
13 on a high that one way you can sleep is to drink a little
14 bit. Pretty soon you drink more and so although I don't know
15 whether I am an alcoholic or not, I was a -- I -- I don't
16 think it affected my business but that's subjective.

17 Q. Isn't it a fact --

18 A. And so I haven't drank now four years and I don't
19 want to take a drink but I don't have any compulsion to drink
20 but I was in bars having a few drinks and maybe more than a
21 few drinks. I am not going to be like the ordinary drunk
22 driver and say I only had two drinks. Sometimes I had three
23 or four, maybe five drinks.

24 Q. I am concerned about --

25 A. But as I told you I didn't ever get in any trouble

18

1 over that.

2 Q. I am concerned about your drinking habits at the
3 time you were representing Dan Cook. Isn't it a fact you
4 were drinking every night?

5 A. No.

6 Q. No?

7 A. Not every night.

8 Q. Can you describe the frequency of these nights?

9 A. Well, I was probably having a few drinks maybe five
10 nights out of seven. Maybe four nights out of seven, yeah.

11 Q. On the four or five nights --

12 A. Depends on what I was doing. I would never drink
13 before a trial. I -- if I were going on a trip I didn't
14 drink but I just --

15 Q. Let me just ask that on the four to five nights that
16 you did drink --

17 A. Yeah.

18 Q. -- you were drinking to the point of intoxication;
19 weren't you?

20 A. Depends on how you define intoxication.

21 Q. Were you qualified to get behind the wheel of a car?

22 A. I was very careful not --

23 Q. I am not asking if you were too drunk to be driving.
24 All I am asking --

25 A. I usually did not drink. I was very careful not to

18 1 drink and drive usually.

2 Q. I understand that.

3 A. I would be dropped off at home. I would have a
4 couple in the bar and I might go home.

5 Q. Mr. Keller, please. That isn't what I asked.

6 A. Okay. I'll listen. I want to answer your
7 questions.

8 Q. What I am asking is that did you have enough to
9 drink on these four or five nights a week that you drank that
10 you should have been driving a car or not?

11 A. Probably not.

12 Q. Thank you.

13 A. But I am not certain of that.

14 Q. Okay.

15 Q. Now, at the time you were appointed to represent
16 Mr. Cook you had been practicing criminal law in Mohave
17 County for a number of years; is that true?

18 A. That's correct. Yes.

19 Q. How long had you been practicing criminal law in
20 Mohave County?

21 A. Well, I came here in 1981 I think or 1980. I
22 believe 1980.

23 Q. Before being appointed to represent Mr. Cook you
24 appeared before Judge Conn before on felony cases; hadn't
25 you?

18 1 A. Oh, yeah. I've tried cases in front of him.

2 Q. And before you appeared in front of him, you had
3 cases against Judge Conn as a prosecutor; correct?

4 A. Yes, we had. He was the chief prosecutor and I was
5 the defense lawyer on hundreds of cases.

6 Q. Do you have any --

7 A. And I -- I recall I won a couple in front of Judge
8 Conn but --

9 Q. Do you have any idea how many cases you had before
10 Judge Conn?

11 A. No, I don't know. He was -- he was not appointed as
12 a judge until later in my tenure as a defense lawyer. Most
13 of my cases in the earlier years were before Judge Langford
14 and Judge Pope.

15 Q. Would you say Judge Conn had enough familiarity with
16 you to form an opinion as to your ability as a criminal
17 defense lawyer?

18 A. Yes, I think that he probably was well acquainted
19 with me.

20 Q. When Dan Cook raised the issue of waiving counsel
21 did you try to talk him out of it?

22 A. I don't recall that I did, no.

23 Q. When Dan Cook raised the issue of waiving counsel
24 did you bother to learn why Dan wanted to waive counsel?

25 A. I don't think that I asked him. He just told me

19 1 that he was going to represent himself as I recall. Now, my
2 conversation may have gone further than that but I don't
3 know.

4 MR. TERRIBILE: I have no further questions, your
5 Honor.

6 THE COURT: Cross-examination, Mr. Cattani?

7
8 CROSS-EXAMINATION

9 BY MR. CATTANI:

10 Q. Mr. Keller, you indicated that you didn't recall
11 being present during an interview or deposition of John
12 Matzke when Mr. Terribile initially asked you that question.

13 A. No, I didn't recall during our interview. I know
14 now.

15 Q. Right. Subsequently Mr. Terribile indicated there
16 was a record that shows that you were present?

17 A. Uh-huh.

18 Q. And if I were to show you a copy of the deposition
19 of John Eugene Matzke and you were to see your name as being
20 present and conducting examination, do you have reason to
21 believe that you were not there?

22 A. No, I must have been there. I am sure certain that
23 I was if the reporter so indicated.

24 Q. What you are saying is that you were there but some
25 time over the last seven years you forgot about the specific

19

1 details of the meeting?

2 A. Yes, I have. I have, correct and I didn't have
3 transcripts.

4 Q. Okay. If I were to show you a portion of that
5 deposition in which one of the attorneys present discusses a
6 videotape confession by John Matzke, would that surprise you?

7 If you were to see that, would that help refresh your
8 memory about whether you had seen or heard about a videotape
9 confession by John Matzke?

10 A. Who was --

11 Q. I am referring to page four of the deposition --

12 A. Who asked the --

13 Q. -- of John Matzke.

14 A. Who asked the question?

15 Q. The question is by Mr. Larsen.

16 A. Mr. Larsen. Let's see.

17 Well, that does not. If you are asking if this
18 refreshes my recollection, no, but --

19 Q. Is it possible that you were aware of the video
20 during this deposition but that some time during the past
21 seven years you forgot about it?

22 A. That's correct. I -- I remember quite a lot about
23 this but I don't recall that.

24 Q. Okay.

25 A. And, of course, I don't have the transcripts.

19

1 Q. Okay. I realize you don't recall very much detail
2 of the interview but let me ask this question. Do you
3 remember having any questions that you wanted to ask
4 Mr. Matzke but that you were unable to ask?

5 A. No.

6 Q. Do you remember if the deposition or interview was
7 concluded summarily without you being given an opportunity to
8 ask questions?

9 A. I don't recall that, no. It could have been but I
10 don't recall it.

11 Q. Did Dan Cook ever tell you that he thought you were
12 incompetent?

13 A. No.

14 Q. Did --

15 A. Not that I recall.

16 Q. Did Dan Cook ever tell you he wanted to be
17 represented by a different lawyer?

18 A. No, not that I recall.

19 Q. Did Dan Cook give you any reasons for wanting to
20 represent himself?

21 A. I vaguely recall him talking about the fact that he
22 would like to -- to have an opportunity to explain his
23 situation to the jury without being a witness but I am not
24 certain of that.

25 Q. Did you ever tell Dan Cook that he could have

19 1 someone else represent him?

2 A. Yes. I -- I don't recall telling him that but I am
3 sure he could have made a motion for substitution of counsel
4 and the courts are usually quite receptive to that at least
5 one change of -- change of counsel.

6 Q. Do you remember when Mr. Terribile interviewed you
7 recently him asking you did you ever try to talk him, meaning
8 Dan Cook, out of representing himself?

9 And I am reading from page 25 of the taped interview of
10 Claude Keller.

11 MR. TERRIBILE: What line?

12 Q. (BY MR. CATTANI) Starting with the fourth line.

13 Mr. Keller's response: Well, I think that I told him he
14 could get somebody else.

15 Mr. Terribile: You told him.

16 And if he tried to get rid of me who else was available
17 was somebody that he didn't want.

18 A. Well, I think I might have said that so that he
19 would be aware that if he got rid of me, he might get
20 somebody he didn't like.

21 You see that a defendant in a case such as this has no
22 real control over the -- who the court appoints and --

23 Q. Okay.

24 A. -- that's a possibility that --

25 Q. Okay. I am sorry.

19 1 A. That's okay. Go ahead.

2 Q. Let me read your statement again. If he tried to
3 get rid of me who else was available was somebody that he
4 didn't want.

5 Is it possible that you are referring to the other
6 attorney who might be available to represent Mr. Cook being
7 someone that he -- that he knew about and did not want to
8 have?

9 A. That's possible. That's possible, yes, but --

10 Q. Okay.

11 A. -- I -- I thought I might -- I may have told him
12 that. I am not certain but I think that he was aware that if
20 13 he asked for a substitution of counsel he would not be able
14 to ask the court for a certain person. He would get whoever
15 the court appointed.

16 Q. Were you aware who that other person would be? Who
17 would be appointed?

18 A. No. It could have been anybody that the -- the
19 judge would appoint who wanted the case.

20 Q. Okay. Were there any witnesses that Dan Cook asked
21 you to interview that were not interviewed by either you or
22 Evan Williams?

23 A. Well, I wanted to interview Watkins and --

24 Q. That was because you were unable to locate him?

25 A. Well, then I finally determined that there -- there

20

1 was no reason to interview Watkins or Watkins was
2 unavailable. I wanted to find out a little more about this
3 from Watkins if I could because the police had interviewed --

4 MR. TERRIBILE: I object; not responsive at this
5 point.

6 THE WITNESS: That is correct. Okay.

7 THE COURT: Okay. I feel better when I get to make
8 the rulings.

9 THE WITNESS: Very well.

10 THE COURT: Go ahead and ask your next question,
11 Mr. Cattani.

12 MR. CATTANI: Okay. Okay.

13 Q. (BY MR. CATTANI) You are now retired, is that
14 correct, Mr. Keller?

15 A. Yeah. I am not doing anything except my own
16 business for right now. I am still an active member of the
17 Bar. My ticket is good. I -- my continuing legal education
18 is all up to snuff. I am -- I don't know if I am going to go
19 back to work or not but I am -- if somebody asks me I say I
20 am nearly retired. I go and do work for my family once in a
21 while --

22 Q. Okay.

23 A. -- for free.

24 Q. In the two years prior to representing Mr. Cook do
25 you recall representing any criminal defendants who were

20

1 ultimately acquitted of the charges against them or who were
2 ultimately convicted of a lesser offense than the crimes
3 charged?

4 MR. TERRIBILE: Objection; relevancy.

5 THE COURT: Well, this gets back to what we talked
6 about before, Mr. Terribile. It seems that if I am going to
7 allow you to present evidence concerning Mr. Keller's general
8 reputation and I allowed you to question attorneys this
9 morning about the recollection that they had in specific
10 cases as far as what Mr. Keller did or didn't do, if I am
11 going to allow you to do that, it just seems fair that I
12 should allow Mr. Cattani to get into specific instances in
13 which Mr. Keller may have provided effective representation
14 to people.

15 I will still continue to take the position that I
16 suspect this is not really relevant but I let you do it and I
17 will let him do it.

18 MR. TERRIBILE: Can I make a record on that?

19 THE COURT: Go ahead.

20 MR. TERRIBILE: My only point is that whether or not
21 Mr. Keller ever got an acquittal or got someone convicted of
22 a lesser charge is not in and of itself evidence of
23 competency.

24 THE COURT: We are operating under the Strickland
25 test which is a results-oriented analysis which talks about,

20 1 you know, whether -- whether someone suffers prejudice so I
2 still think that looking at the end result of these
3 proceedings is at least arguably a way of measuring the job
4 someone does and I had -- I have had lousy attorneys win
5 cases in my court and real good attorneys lose them so I
6 realize that we are getting into a subjective area but,
7 again, I think I have let you do this. I am going to let him
8 do it so your objection is noted.

9 You may proceed, Mr. Cattani.

10 Q. (BY MR. CATTANI) Do you remember the question?

11 A. Well, I can recall several. I recall one case I got
12 an acquittal on where the guy had flunked a lie detector test
13 and I consented to the admission as evidence and I was able
14 to impeach the polygraph expert and the jury came back with a
15 not guilty verdict.

16 I recall one case where one guy was charged with
17 attempted second degree murder and they came back with a
18 misdemeanor assault. And I think there was two of those that
19 I can think of.

20 There was -- I got an acquittal on a burglary but we
21 didn't try -- we tried quite a few cases in Mohave County but
22 the majority of that were through pleas.

23 Q. Okay. Have you had any bar complaint filed against
24 you?

25 MR. TERRIBILE: Objection; relevancy.

20

1 THE COURT: Overruled.

2 You can answer.

3 THE WITNESS: Well, I have 35 years. I have had one
4 complaint on a civil case and it didn't go anywhere. I have
5 had two or three.

6 Q. (BY MR. CATTANI) Any in a criminal case?

7 A. When I was a public defender I had two or three
8 that -- but they were summarily dismissed after I mailed my
9 record down there.

10 MR. CATTANI: Okay. Thank you.

11 I don't have any other questions, your Honor.

12 THE COURT: All right. Any redirect, Mr. Terribile?

13 MR. TERRIBILE: Yes, your Honor.

14

15 REDIRECT EXAMINATION

16 BY MR. TERRIBILE:

17 Q. Isn't it true, Mr. Keller, you aren't sure if you
18 told Dan that he could get another lawyer? You said --

19 A. I don't recall a specific conversation, no.

20 Q. Okay.

21 A. But I could have very easily.

22 Q. Okay. During my direct examination you indicated
23 that one of the ways you thought you might be able to impeach
24 Matzke was to get Dan on the stand; correct?

25 A. Well --

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Q. That calls simply for a yes or no.

A. Yes.

Q. Thank you.

But isn't it a fact that you concluded that you would not advise Dan to get up on the stand? Isn't that, in fact, what you told me during that interview I had with you?

A. Yes. That's -- that's usually my way.

MR. TERRIBILE: I have no further questions, your Honor.

THE COURT: Any recross, Mr. Cattani?

MR. CATTANI: No, your Honor.

THE COURT: All right. You can step down, Mr. Keller. You are free to leave or you can remain. Thank you for attending.

THE WITNESS: Thank you very much, your Honor.

(The witness was excused.)

THE COURT: Your next witness, Mr. Terribile?

MR. TERRIBILE: Yes, your Honor.

(A prospective witness entered the courtroom.)

MR. TERRIBILE: I'd call Evan Williams to the stand, your Honor.

THE COURT: All right. Mr. Williams, you can come up here and take the stand. You have already been sworn in and you are under oath.

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Certificate of Reporter

I, Sandra R. Brice, Official Reporter in the Superior Court of the State of Arizona, in and for the County of Mohave, do hereby certify that I made a shorthand record of the proceedings had at the foregoing entitled cause at the time and place hereinbefore stated;

That said record is full, true and accurate;

That the same was thereafter transcribed under my direction; and

That the foregoing one hundred seventy-five (175) typewritten pages constitute a full, true and accurate transcript of said record, all to the best of my knowledge and ability.

Dated this 29th day of April, 1996.

Sandra R. Brice
Sandra R. Brice, Official Reporter

COPY

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

STATE OF ARIZONA,)	
)	
Plaintiff,)	CR-88-0301-AP
)	
vs.)	Cause No. CR-9358
)	
DANIEL WAYNE COOK,)	<u>HEARING ON MOTION FOR</u>
)	<u>MENTAL HEALTH EVALUATION</u>
Defendant.)	

XII

Before the Honorable Steven F. Conn, Judge

Thursday, August 4, 1988
10:36 a.m.
Kingman, Arizona

Reporter's Transcript of Proceedings

Appearances:

For the State:	Eric A. Larsen Deputy County Attorney Mohave County Courthouse Kingman, Arizona 86401
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For the Defendant:	(Pro Per)
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Advisory Counsel:	Claude D. Keller, Esq. 212 North 4th Street Suite 7 Kingman, Arizona 86401
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Reported by: Sandra R. Brice, Official Reporter

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THE COURT: Thank you. Be seated.

This is CR-9358, State versus Daniel Wayne Cook. Show the presence of the Defendant; the presence of Mr. Keller, Advisory Counsel; and the presence of Mr. Larsen representing the State. This matter comes on at this time for Hearing on a Motion for Mental Health Evaluation that was filed by the Defendant.

Mr. Larsen, I went ahead and set this matter for a hearing. Are you opposed to the motion?

MR. LARSEN: Yes, your Honor. It's my opinion --

THE COURT: That's basically all I need for now.

Mr. Cook, it's your motion. Is there anything you want to add to your written motion and I realize that this puts you in sort of an awkward position. I have previously ordered that I felt you were competent to represent yourself and I have seen nothing that in this case suggests to me otherwise although I realize that in order for you to prevail on this motion you would almost have to convince me that you are not mentally competent. That perhaps creates some sort of paradox within the system here.

Is there anything you want to add to your written motion?

THE DEFENDANT: Well, your Honor, not so much that I am competent. I feel that every aspect of my life, past history, illnesses and so forth should be reviewed by the

1 Court through expert testimony before sentence is passed
2 down. I realize I am facing almost a certain death sentence
3 on my sentencing date and I feel the Court should look at all
4 of my life before sentence is handed down.

5 THE COURT: Mr. Cook, I tend to agree with that and
6 I also feel that in a possible capital case, it is imperative
7 that I have every source of information provided to me that
8 possibly can be especially in light of the fact that
9 mitigation in a capital case does not have to rise to the
10 same level of proof that aggravation does so I am certainly
11 extremely receptive to any possible evidence that might show
12 mitigation.

13 The only thing that's seems to stand out in this case is
14 the fact that you have previously been examined by two
15 doctors pursuant to the Rule 11 examination that was done and
16 I personally feel that that examination is probably more of
17 an in-depth examination than would be done under Rule 26.5.

18 So, I guess my question to you would be do you think
19 that there have been any changes in your mental state? Do
20 you think there's anything that has happened from the time
21 that the doctors examined you in connection with the Rule 11
22 examination -- anything that has happened since then that
23 would be disclosed in a mental health evaluation that hasn't
24 already been brought to my attention?

25 THE DEFENDANT: Yes, your Honor. I -- as the Court

1 knows, I am manic-depressive. I'd also like the Court to
2 know being convicted of these charges was a traumatic
3 experience. It has screwed up my head considerably since
4 then. I think the Court needs to look into that area as
5 well.

6 THE COURT: All right. Mr. Larsen?

7 MR. LARSEN: I would once again, your Honor, point
8 out that I did not receive a copy of this motion. I did not
9 receive a copy of the minute order until this morning. I did
10 go to the Clerk's Office this morning and make a copy of it.
11 That is why there is no written response in the Court's file.

12 I would note, as the Court did, that a Rule 11 Motion
13 was filed last fall. Mr. Cook was examined by a psychiatrist
14 and a psychologist. At that time, fairly extensive reports
15 were turned in.

16 I would further note that in January or February a
17 neurological examination was done upon Mr. Cook based upon
18 one of Mr. Keller's motions. I believe that that would give
19 the Court a complete history of the mental problems both
20 organic and non-organic that Mr. Cook may suffer from.

21 The fact that he has suffered some sort of emotional
22 trauma to screw up his heads since the time of conviction, I
23 don't believe is truly relevant to the sentencing for the
24 acts that occurred slightly more than one year ago.

25 I don't believe this Court needs any further information

1 in the mental health area within which to make a judgment of
2 aggravation or mitigation.

3 THE COURT: Mr. Cook, is there anything further that
4 you want to add at this time?

5 THE DEFENDANT: I'd just like to point out, your
6 Honor, that the Rule 11 was for different reasons other than
7 the motion for 26.5. At the time of my Rule 11 evaluation or
8 examination, that was for a possible defense for my trial.
9 Since it was not used, I feel that I should be examined
10 further by an expert before sentencing, your Honor.

11 THE COURT: Well, part of the problem of Rule 26.5
12 is that it doesn't really clarify why a diagnostic evaluation
13 is ever done; what the purpose of it is.

14 The purpose of the Rule 11, of course, was to determine
15 whether you were competent to stand trial and what your
16 mental state was at the time of the alleged offenses.

17 Is there any particular area or any particular question
18 that you would want addressed that wouldn't have been
19 addressed in the Rule 11 reports?

20 THE DEFENDANT: I'm not real sure, your Honor. I'm
21 not an expert in that field. I don't even know where to go
22 on this any more.

23 THE COURT: Well, Mr. Cook, I feel that your mental
24 state has probably been explored more thoroughly than just
25 about any other defendant that I have ever been involved with

1 because we have not only had Rule 11 reports but we have had
2 the further testing done locally at Mr. Keller's request.

3 Unless I'm mistaken, I don't think that I have ever
4 received copies of those reports and I believe that I made it
5 clear that I didn't think that I should unless someone
6 specifically wanted me to see them and I assume that those
7 reports are available to either you or Mr. Keller and that if
8 they do contain information that could possibly be considered
9 by me in finding mitigation in this case, I will assume they
10 will be presented to me at the appropriate time.

11 I just feel that ordering a further evaluation under
12 Rule 26.5 is going to be a duplication of work that's already
13 been done so I'm going to deny the Motion for Mental Health
14 Evaluation.

15 Anything further at this time?

16 MR. LARSEN: Are we firm on the Monday sentencing,
17 your Honor?

18 THE COURT: If that's when the sentencing is set. I
19 haven't ordered anything continuing so I assume that it is
20 still set. I have not received a presentence report yet.

21 All right. We will stand at recess. The Defendant is
22 remanded to the custody of the sheriff without bond.

23 (The proceedings were concluded at 10:44 a.m.)
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Certificate of Reporter

I, Sandra R. Brice, Official Reporter in the Superior Court of the State of Arizona, in and for the County of Mohave, do hereby certify that I made a shorthand record of the proceedings had at the foregoing entitled cause at the time and place hereinbefore stated;

That said record is full, true and accurate;

That the same was thereafter transcribed under my direction; and

That the foregoing six (6) typewritten pages constitute a full, true and accurate transcript of said record, all to the best of my knowledge and ability.

Dated this 29th day of September, 1989.

Sandra R. Brice
Sandra R. Brice, Official Reporter



LINDA SEAPY
Clerk of Superior Court
Mohave County Courthouse
401 E. Spring Street
Kingman, Arizona 86401

FILED

TIME

4:30 P. M.

NOV 13 1987

LINDA SEAPY

CLERK SUPERIOR COURT

REPTD

CONFIDENTIAL
CAN ONLY BE OPENED
BY ORDER OF THE COURT

CR-9358 STATE vs. DANIEL WAYNE CO
Mental Health Report from Dr. Wynn
Sealed per Court Order of 11-13-87

Mohave Mental Health Clinic, Inc.

FILED
4:30 PM
NOV 3 1987

LINDA SEAPY
CLERK SUPERIOR COURT
DEPT

November 3, 1987

Clinic and
Administrative Office
1750 Beverly Ave.
P.O. Box 4179
Kingman, AZ 86402
757-8111

PSYCHOLOGICAL EVALUATION
Date of Evaluation: October 23, 1987

NAME: Daniel Wayne Cook
SEX: Male
AGE: 26
DOB: July 23, 1961
REFERRAL SOURCE: Mohave County Superior Court,
Honorable Steven F. Conn, Judge
In the matter CR-9358

1641 Highway 95
Suite 0
Riviera, AZ 86442
758-5905

QUESTIONS TO BE ANSWERED:

We were asked to perform a mental examination pursuant to Rule 11 of the Rules of Criminal Procedure to determine if Daniel Wayne Cook is competent to stand trial and secondly, his mental condition at the time of the alleged crime.

2178 McCulloch
Suite 10
Lake Havasu City, AZ 86403
855-3432

BACKGROUND AND HISTORY:

The second of two children of Gordon Cook, a man he claimed never having seen, and Wanda Dunn of Lake Havasu City, Daniel was born in Chicago, Illinois. In his first years of life, his home situation was unstable as he was placed with grandparents "several different times" and remained with them until age nine when grandmother died. Mother and step-father were living in California at the time and he joined them, but the situation remained fragile. His behavior was such as to warrant placement in various facilities as an incorrigible. Foster homes, a boys' home, a youth facility and juvenile hall were used without significant improvement in behavior. Problems included fire setting, attacking his older sister with a knife and "some stealing." Alcohol use started by age thirteen and by age sixteen he was a regular alcohol abuser. Some five years ago he stated he finally recognized he truly had developed a problem with alcoholic beverages. He stated to having started using marijuana at age fifteen or sixteen and progressed to those drugs he described as "chemicals" which included amphetamines, LSD (hallucinogens) and barbiturates.

Transitional
Treatment Center
617 Oak St.
Kingman, AZ 86401
753-2901

At age fifteen he stated he was sexually abused by a house parent at McKinley's Home for Boys in San Diego, California. Later the same year he claimed again being sexually molested at the Greyhound bus station in Los Angeles, California.

Medically, he reported having been repeatedly involved in fights, requiring hospitalization and surgery on his hand because he had dislocated his thumb repeatedly. He stated to having had the mumps, measles and chicken pox of those diseases commonly identified with childhood. At age nineteen he was placed in a rehabilitation center in Salmon, Idaho because "they thought I had some type of nervous breakdown." As he described the program, it was oriented to drug and alcohol treatment and he remained some thirty days. Later that year he was placed at the state hospital in Evanston, Wyoming for approximately three to four months because he overdosed on a "bunch of pills in the house." Asked if he benefited from treatment, he stated hospital staff finally told him, "Nothing more could be done for me" and "so they discharged me." He also claimed having been hospitalized in Blackfoot, Idaho on two occasions for overdose on drugs. Asked if he received help while in the Idaho facility, he indicated he "kind of ran away from the place" and moved to Arizona to again be close to his family.

Mr. Cook has been hospitalized four to five times at Kingman Regional Medical Center because of depression and threats of self-destruction and also has been placed in the local alcohol treatment facility "quite a few times", again responsive to suicidal threat or substance abuse. He has been seen at the Lake Havasu City Regional Hospital on two occasions for having cut his wrists.

He has worked as a cook, grounds keeper and for some five months set up mobile homes in Kingman. Most jobs were held for a short-time and he either quit because "I couldn't get myself out of bed", or "I had a don't care attitude", or "depression" kept him from completing assigned tasks. Being fired was typical for failure to complete assignments or because of not coming to work.

He previously was incarcerated for a variety of misdemeanors including disorderly conduct, failure to comply with the order of an officer, threatening and intimidating an officer and refusing medical treatment once he cut his wrists in Lake Havasu City. In Idaho, at age twenty, he took a school bus for a ride, ended up wrecking the vehicle and was jailed for a relatively short time.

Mr. Cook claimed having an extended relationship with a woman named Barbara Witherow and her children, ages eleven and thirteen. During this period, he felt he had been more responsible and concerned with changing his image but periodically he had problems which created a great deal of stress. After describing his perception of improved behavior, he clarified the relationship admitting to manipulation, problems with suicidal threats and Ms. Witherow attempting to establish a different relationship.

The relationship with Barbara was fragile as he spoke to a number of mutually aggressive altercations when he "slapped her around a couple of times", and his having taken "a razor blade to his arms rather than hit her" because she would not come in until "around three o'clock in the morning."

Asked to describe the events prior to and during the alleged crime, he stated he quit his job at Bob's Big Boy the day prior to the incident, claiming when he came to work there already were two cooks on the line, that the "wheel was wrapped" (meaning there was a great deal of work to be done), that he "started to get things sorted out" but his "boss made some wise remarks" regarding his problems with Barbara Witherow telling him he had to leave his problems at home. Once the remark was made, he felt his only option was to quit the job and he did so. He spoke to his attitude at the time recognizing he had failed again to sustain employment, that giving up represented a common pattern he had demonstrated over his lifetime, and he felt he was fighting a losing battle. Never the less, that day he started to write a resume so he could look for a job but also described starting "to get ready for the weekend" which he interpreted as using drugs and alcohol to "party." Recalling talking with his roommate, John Matzke, he stated, "Me and John were talking about problems and I was pretty burned out" with his emotional state as depressed or angry, thinking of cutting his wrists again, stating he had to either take it out on myself or, "But from what the police reports say, I took it out on somebody else." Claiming there was "a lot of shit going on in my mind" because of his "fucked up relationship", he saw himself as having "lost everything I was living for the last year-and-a-half." At the same time he held Barbara responsible for his still being alive and characterized the relationship as giving his life meaning and purpose.

"Crystal" (methamphetamine) was used during the day and he purchased an additional gram the evening in which the murders took place. He stated some of the crystal was left following the party and remembered going out to buy more beer. As he spoke to parts of the incident, it was generally in terms of the behavior of John Matzke, rather than himself. As an example, he described John Matzke holding the pipe against Carlos' neck, indicated he watched John kill Carlos, stating "I just watched" and recognized Carlos was "pretty badly beat up." He recalled Kevin coming over, indicated he "told him to leave (and) not come back" but denied intent to assault stating after Kevin left he went out to "sit by the pool." He denied killing Kevin Swaney yet indicated because of his consumption of alcoholic beverages he was unaware of what occurred during the night. He suggested John Matzke may have been responsible for the murder of Kevin Swaney as well as that of Carlos Ramos.

APPEARANCE AND BEHAVIOR DURING THE EVALUATION:

Daniel Cook seemed unclear as to whether he wished to give up his right to a confidential relationship which he felt due him because of visiting a psychologist. We discussed the court order, the evaluation, its purpose and who would have access to the data. Advised there could be no privilege, that if he responded to questions asked to determine his competency to assist his attorney and his mental status at the time of the crime, such information could be used at his trial and that if requested, I would be available to the court to testify as to matters he presented, he recognized this could both be advantageous and a potential liability. His questions and responses, however, were of such quality to indicate he felt it in his interest to participate in the assessment and he appeared to take an active part in the evaluation. He was oriented to time, place and person, ambivalent regarding various parties who were involved during the alleged crime, did not seem to be markedly depressed, was somewhat anxious regarding his current situation and those with whom he was incarcerated, expressed a great deal of anger at John Matzke whom he saw as not being as upset as he was, and concerned as to the lack of support he perceived from both his girlfriend and family.

Only in the matter of the alleged crime did he become evasive, claiming amnesia resulting from use of psychoactive substances. At the same time he suggested his roommate, John Matzke, may have actually committed the second murder for which he is being charged.

In the written instruments, he emphasized distress he experienced, but the data appeared valid and reflected his status at the time of the assessment.

EVALUATION INSTRUMENTS:

Minnesota Multiphasic Personality Inventory (MMPI)
16 PF
Bender-Motor Gestalt Test
Mental Status Checklist
Problem Evaluation
Memory-for-Designs Test
Wechsler Adult Intelligence Test-Revised (WAIS-R)
Rogers Criminal Responsibility Assessment Scales
Clinical Interview

EVALUATION RESULTS:

Daniel Cook functioned in the average range intellectually (90 - 110). WAIS-R results were as follows:

<u>Verbal Tests</u>	<u>Scaled Scores</u>	<u>Performance Tests</u>	<u>Scaled Scores</u>
Information	7	Picture Completion	11
Digit Span	12	Picture Arrangement	7

Vocabulary	8	Block Design	9
Arithmetic	8	Object Assembly	10
Comprehension	8	Digit Symbol	10
Similarities	10		
Verbal I.Q.	91		
Performance I.Q.	95		
Full-scale I.Q.	92		

Daniel Cook had adequate intellectual resources to well understand the demands of the legal process and to appreciate the need to assist his attorney in preparation of a defense. When assessed he was relatively clear thinking with adequate memory and ability to attend if he was so motivated. The data suggested moderate liabilities in his ability to abstract or generalize, some deficits in understanding cause and effect relationships, lack of social judgement, difficulty in delaying response until all data was at hand, and some failure to understand the implications of behavior. Quite alert to detail, with better than average short-term memory, he seemed to have the capacity to learn new skills. Those elements of the assessment predicting academic success were not as well developed, perhaps reflecting the fragmented, disrupted school experience he reported and a lack of appropriate and a productive stimulation in youth and adolescence.

There was no evidence of motor/visual perceptual deficits. Block Design, Object Assembly and the Bender-Motor Gestalt figures were performed well within the expectations for someone his age. Memory-for-Designs was adequate. There was no evidence to suggest organic dysfunction.

Personality structurally, the data suggested significant problems in coping with or accommodating to the demands of society as well as to establishing appropriate and productive interpersonal relationships. There was little evidence to suggest a major thought disorder which would impair his ability to recognize reality except at such times as he would abuse psychoactive substances. A chronic, severe personality disorder was strongly suggested. Affective instability, including anxiety and depression would be common and generally responsive to personality structural issues.

Unpredictable, impulsive, odd or peculiar, Daniel Cook seemed to have exercised poor social judgement over much of his life. The data supported an identity disturbance characterized by poor self-concept, feelings of helplessness, a tendency to set himself up for failure or rejection, frequent unusual thoughts, a tendency to act out manipulatively to have others rally to him so as to provide help, and a tendency to see the world as hostile, punishing, using and insensitive to him as a person. The profile is one seen in individuals who act out

without regard to the rights of others and where criminal behavior is involved are often seen as those who act out sadistically, sexually or violently.

The data supported the history in which he told of using various types of illegal and illicit substances and was highly predictive of addiction. The profile is often seen in drug abusers and reflected the personality variables common to that group including social alienation, difficulty in making or maintaining productive relationships with the opposite sex, fragmented relationships with significant family members and uneven performance in almost every arena of human endeavor.

Severe psychic distress seemed expressed in anger, depression, anxiety, worry, resentment and acute sensitivity to those around them. Emotionally labile, he currently seemed aware of the harm he may have done others, speaking to his tears for those who were dead, yet at the same time he seemed insensitive and spoke to lack of feeling over an extended time as he reflected on the murders of Kevin Swaney and Carlos Ramos. Impulsive suicide attempts seemed responsive to stressful incidents with responsibility for such behavior divided between his poor view of self and angry, reactive response to the behavior or demands of others.

SUMMARY:

Daniel Cook described psychoactive substance abusing behaviors the day prior to and the evening of the alleged crimes which involved the taking of amphetamines, smoking of marijuana and drinking a large amount of beer. That afternoon he purchased a quarter gram of crystal (methamphetamine) and apparently it was not completely consumed prior to the night in question. Marijuana, according to Mr. Cook, was brought into the home by others and shared by all occupants. His level of intoxication was described in emphatic terms suggesting he was disabled and amnesic for at least part of the evening. While aware of the criminality of the alleged behaviors, he told of not thinking in those terms nor having significant fear he should be discovered stating, "That never even entered my mind." If his statements were correct, it implied severe toxicity with major impairment of reasoning and actions.

Affect was described as depressed with chaotic socio-situational relationships and a high degree of uncertainty regarding his ability to control events. Once the alleged events occurred and he was arrested, he discussed being detached, unconcerned as to his behavior and the potential consequences to him if convicted. He seemed unconcerned as to the fate of the alleged victims indicating, "I didn't look at it" and later "It was quite some time before I started having some feelings about it." Asked when he started to deal with the memories of these events, he said three weeks later. "I cried and prayed" he said, asked

then for whom he cried he said, "The victims." Memory of events seemed impaired yet he recognized he was "able to cover up" by playing the "joker" and he suggested access to police reports provided him information for at least part of what had occurred.

There was little data to suggest bizarre or deviant behavior evolving out of distorted perceptions, delusions or hallucinations which had as a direct cause a defined thought disorder. Daniel Cook stated to being depressed, angry, frustrated at his inability to resolve problems regarding those he saw as using him, indicated he was under a great deal of stress, and the situation as one where "everybody (was) closing in on me at once." The choice of Mr. Ramos as a target eventuated because "he happened to be there." The crime was described as one of the moment, which while it may originally have had robbery as a motive, apparently had escalated to increasingly serious, sadistic, assaultive behaviors. There were no plans, rehearsals or preparations except an apparent agreement to get Mr. Ramos' money. The killing of Kevin Swaney also had the quality of opportunity as Mr. Cook emphatically stated, "He showed up-when I told him to leave, he hung around." Just as forceful he denied killing Kevin Swaney and when asked who did, he suggested "John (Matzke) must have done it." Mr. Cook emphasized the severity of his impairment and reported he was out of control and now amnesic for a significant portion of the alleged criminal act. When he described events he had a handle on, he claimed memory because of having read the police reports, but denied memory for much of what he did that night. He did recall carrying a body up the stairs to avoid discovery, described the killing of Mr. Ramos, recognized Mr. Ramos was badly beaten, and other parts of the evening which suggested at least partial memory. Anger at Mr. Matzke was voiced, not because Mr. Matzke called in the authorities but because Daniel Cook saw him as now "happy and comfortable in jail, not worried at all about the situation he's in."

There was no evidence to suggest serious cognitive deficit which would impact on Mr. Cook's capacity to stand trial. Personality structural issues seemed prominent and there was no evidence of a chronic, disabling thought disorder which would impair one's ability to recognize and deal with reality.

Diagnosis DSM III-R:

AXIS I: 305.00 Alcohol abuse, continuous
305.70 Amphetamine abuse, regular
305.20 Cannabis abuse, continuous
309.40 Adjustment disorder with mixed disturbance
of emotion and conduct (provisional
diagnosis - more accurately this is probably
a result of the borderline personality

disorder)

AXIS II: 301.83 Borderline personality disorder (principal diagnosis)

301.70 Anti-social personality disorder

AXIS III: None of significance to this evaluation

AXIS IV: Severity of psychosocial stressors: 4-severe

AXIS V: Highest level of functioning
Current GAF 30
Highest GAF past year 40

CONCLUSIONS:

Daniel Cook appeared competent to assist his attorney in preparation of and presentation of a defense. He had adequate intellectual assets, understood what was required of him and could provide considerable data if he so chose. Memory for actual behaviors at the time of the crime may be impaired as he claims due to the amount of drugs and alcohol he voluntarily consumed the day and evening prior to the alleged crime. At least part of the memory deficit may be under the conscious control of Mr. Cook as events seem too painful to recall and he claimed having facility in repressing events he did not choose to remember. One can anticipate guardedness, denial and emphasis or exaggeration of symptoms, distress, projection and rationalization. There was nothing in the data to suggest organic brain damage, mental retardation or a psychotic state which interfered with memory or would prevent him from making necessary decisions with his attorney.

At the time of the alleged crime, Daniel Cook apparently was so toxic as to seriously impact on his ability to exercise judgement. He chose to use the various psychoactive substances and was well aware of their potential to create impairment. He told of one previous blackout incident in 1985 wherein a psychoactive substance was alleged to have induced amnesia. He admitted to an extended problem with substance abuse and was not willing to exercise control in this area in spite of repeated treatment programs. There was a history of psychopathological behavior, having roots in a disruptive childhood, conditioning in illicit behaviors as well as rather marked emotional swings characterized by depression which often was accompanied by self-destructive ruminations, plans or manipulative actions. This seemed to eventuate from a pervasive pattern of instability of self-image characterized by the borderline personality disorder.

There was adequate data to indicate Daniel Cook was well able to appreciate the right and wrong of his behavior in a legal and moral

sense but judgement at the time of the crime may have been impaired, with such impairment resulting from willful abuse of alcohol and drugs. There was no evidence to suggest his impaired judgement resulted from a thought disorder other than as described.

Thank you for the referral to Mr. Cook. If I can be of further help in this matter, please feel free to call me.



Daniel W. Wynkoop, Ed.D.
Certified Psychologist
Executive Director

DWW:mlw

U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:97-cv-00146-RCB

Cook, et al v. Stewart
Assigned to: Judge Robert C Broomfield
Demand: \$0
Cause: 28:2254 Ptn for Writ of H/C - Stay of Execution
Date Filed: 01/24/1997
Date Terminated: 03/29/2006
Jury Demand: None
Nature of Suit: 535 Death Penalty - Habeas Corpus
Jurisdiction: Federal Question

Petitioner

Daniel Wayne Cook

represented by

Fredric F. Kay
Federal Public Defender's Office
850 W Adams St., Ste 201
Phoenix , AZ 85007
(602)382-2700
TERMINATED: 02/28/1997
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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TERMINATED: 01/12/2005

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ATTORNEY TO BE NOTICED

V.

Respondent

Terry Stewart
Director, Arizona DOC
ASPC - Florence

represented by

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/24/1997	1	PRELIMINARY PETITION for Writ of Habeas Corpus (STAY OF EXECUTION) (MAP) Modified on 01/24/1997 (Entered: 01/24/1997)
01/24/1997	1	MOTION for appointment of counsel by petitioner Daniel Wayne Cook [1-1] (MAP) (Entered: 01/24/1997)
01/24/1997	2	MOTION to proceed in forma pauperis by petitioner Daniel Wayne Cook (w/acct stmt atch'd) [2-1] (MAP) Modified on 01/24/1997 (Entered: 01/24/1997)
02/05/1997	3	ORDER by Judge Stephen M. McNamee granting Applc for appointment of counsel by petitioner Daniel Wayne Cook [1-1]; Fredric F Kay appointed; designated AFD file ntc of appearance w/i 10 days of this order; Az Atty Gen file ntc of appearance w/i 10 days of this order; status conf set for 2:00 3/10/97, before Judge Robert C. Broomfield; in addn to LR 1.9(g) ptys submit to attn of Death Penalty Law Clk copies of any pleading filed from this date forward; Case reassigned by random lot to Judge Robert C. Broomfield & redesignated as CIV-97-146-PHX-RCB; clk of crt forward FPD Kay copy of prelim petn for writ of h/c, applc for apptmnt of cnsl & this order & serve rspdnts Terry Stewart, Meg Savage, Kent Cattani (Asst AG) by cert mail; clk of crt forward cy of order to petnr Daniel Cook (cc: petnr Cook/RCB/Kay w/cys as directed/Stewart, Savage, Cattani w/cys as directed by cert mail/) (former emp) (Entered: 02/05/1997)
02/11/1997	4	RETURN OF SERVICE EXECUTED s/petn upon respondent Terry Stewart on 2/6/97 by certified mail; return receipts also received for Meg Savage on 2/6/97 & Kent Cattani on 2/7/97 (former emp) (Entered: 02/11/1997)
02/13/1997	6	ATTORNEY APPEARANCE for respondent Terry Stewart by Kent E Cattani (former emp) (Entered: 02/18/1997)
02/18/1997	5	MINUTE ORDER: :Donna Hallam, Death Penalty Law Clerk, advised the court that the status hearing set 3/10/97 needs to be vacated; status hearing set for 3/10/97 (1/2 hr) has been VACATED; status hearing to be reset upon appropriate notification (cc: all counsel/Hallam) [5-2] (former emp) (Entered: 02/18/1997)
02/18/1997	7	MOTION to withdraw as appointed counsel (Frederic Kay) by petitioner Daniel Wayne Cook [7-1] (former emp) (Entered: 02/21/1997)

- 02/26/1997 8 MINUTE ORDER: status hearing (1/2 hr) set for 2:00pm, MONDAY, APRIL 7, 1997 before Judge Broomfield, Courtroom #3, Seventh Floor. (cc: all counsel) [8-2] (former emp) (Entered: 02/26/1997)
- 02/28/1997 9 ORDER by Judge Stephen M. McNamee granting motion to withdraw as appointed counsel (Frederic Kay, FPD) by petitioner Daniel Wayne Cook [7-1]; clerk of court send a copy of this order to petitioner, Denise I Young, Asst FPD, Kent E Cattani, Asst Atty Gen (termining attorney Fredric F Kay for Daniel Wayne Cook) (cc: Cook/Young/Cattani) (former emp) (Entered: 02/28/1997)
- 02/28/1997 10 ORDER of Appointment & General Procedures by Judge Stephen M. McNamee: appointing counsel Michael J Meehan as cnsl for petitioner; status conf set for 2:00 4/7/97, before Judge Robert C. Broomfield ; granting motion to proceed in forma pauperis by petitioner Daniel Wayne Cook [2-1]; in addn to requirement of LR 1.9(g), ptys submt to the attn of Death Penalty Clk copy of any pleading/document fld from this date forward; case hvng been randomly reassigned by lot to Hon RCB, be designated as CIV-97-146-PHX-RCB; clk of crt forwad to Michael Meehan copy of the prelim petn for writ of h/c, apple for apptmnt of cnsl, cy of this order; clk make appropriate changes of petnr's cnsl; clk of crt send copy of this order to Kent Cattani, Asst Atty Gen; clk of crt send cy of this order to Petnr Cook (cc: all counsel/Cook/Cattani/Meehan w/cys of prelim petn & apple for appt of cnsl) (former emp) (Entered: 02/28/1997)
- 02/28/1997 11 EX PARTE ORDER by Judge Stephen M. McNamee: in addn to Guide to Judiciary Policies & Procedures for admin of CJA, Vol VII (Appt of Cnsl in Criminal Case), rules (set forth herein) shall apply as supplementing & interpreting those guidelines; clk of crt send copy of this order to Michael Meehan & Cathy Fujino only (cc: Meehan/Fujino) re: order [11-1] (former emp) (Entered: 02/28/1997)
- 04/07/1997 12 MINUTE ENTRY: Crt Rptr: R.Huckaby-Cotton - ECR: status hearing re briefing schedule & State Court Record held; amended petition to be filed by 7/31/97 [12-2] (former emp) (Entered: 04/07/1997)
- 04/16/1997 13 ORDER by Judge Robert C. Broomfield that petitioner shall have till 7/31/97 to file an amended petition for writ of habeas corpus.... (cc: all counsel) re: order [13-1] (LAD) (Entered: 04/16/1997)
- 06/16/1997 14 MOTION for extension of time to file petn for writ of h/c by Daniel Wayne Cook [14-1] (former emp) (Entered: 06/18/1997)

07/08/1997 15 ORDER by Judge Robert C. Broomfield granting motion for extension of time to file petn for writ of h/c by Daniel Wayne Cook [14-1]; FUR briefing schedule modified (as noted herein) (cc: all counsel) (former emp) (Entered: 07/08/1997)

09/12/1997 16 MOTION for extn of time to file amended petition for writ of h/c by petitioner [16-1] (former emp) (Entered: 09/16/1997)

09/17/1997 17 ORDER by Judge Robert C. Broomfield granting motion for extn of time to file amended petition for writ of h/c by petitioner [16-1]; petnr file his amended petition by 9/25/97 (cc: all counsel) (former emp) (Entered: 09/17/1997)

09/25/1997 18 AMENDED PETITION FOR WRIT OF HABEAS CORPUS (former emp) (Entered: 10/01/1997)

11/21/1997 19 MOTION for extension of time (to answer amnd h/c petn) by respondent [19-1] (former emp) (Entered: 11/22/1997)

11/26/1997 20 ORDER by Judge Robert C. Broomfield granting motion for extension of time by respondent [19-1] to 12/8/97 to respond to amended habeas corpus petition [18-1] (cc: all counsel) (former emp) (Entered: 11/26/1997)

12/08/1997 21 Answer (RESPONSE) re Procedural Status by respondent (to habeas corpus petition) (former emp) (Entered: 12/09/1997) 12/08/1997 22 EXHIBITS A-V to Answer to Petn for Writ of H/C Re: [21-1] (3 volumes) (former emp) (Entered: 12/09/1997)

01/08/1998 23 Application (MOTION) for extension of time to controvert respondent's procedural filing by petitioner [23-1] (former emp) Modified on 01/22/1998 (Entered: 01/09/1998)

01/08/1998 24 MOTION to extend time to Controvert Respondent's Procedural Filing by petitioner Daniel Wayne Cook [24-1] (copy filed as an original until original pleading may be located) (MAP) Modified on 01/22/1998 (Entered: 01/15/1998)

01/23/1998 27 MOTION for extension of time for petitioner's traverse to answer re procedural status of claims by petitioner Daniel Wayne Cook [27-1] (LAD) (Entered: 01/30/1998)

01/27/1998 25 ORDER by Judge Robert C. Broomfield granting motion to extend time to Controvert Respondent's Procedural Filing by petitioner Daniel Wayne Cook [24-1] [23-1]; time for filing all remaining pleadings shall continue as set forth in this crt's scheduling order (cc: all counsel) (former emp) (Entered: 01/27/1998)

01/27/1998 26 TRAVERSE to respondent's answer re procedural status of claims by petitioner (former emp) (Entered: 01/28/1998)

02/05/1998 28 ORDER by Judge Robert C. Broomfield denying as moot motion for extension of time for petitioner's traverse to answer re procedural status of claims by petitioner Daniel Wayne Cook [27-1] (cc: all counsel) (former emp) (Entered: 02/05/1998)

02/25/1998 29 ORDER by Judge Robert C. Broomfield: Clk of Az Supreme Crt transmit certified copy of petnr's entire state crt record (Az Supreme Crt # CR-88-0301-AP, Mohave Co Superior Crt # CR-9358; any related R.32 proceedings) excluding trial exhibits to Clk, USDC, Dist of Az, Attn: Capital Case Staff Atty; FUR clk of DC send copy of order to Noel K. Dessaint, Clk Az Supreme Crt, Phx, Az (cc: all counsel/Dessaint) re: order [29-1] (former emp) Modified on 02/25/1998 (Entered: 02/25/1998)

03/09/1998 30 MOTION to accept late filing of Reply to Petnr's Traverse re Procedural Status by respondent [30-1] (LODGED: Reply/Dkt Clk) (former emp) (Entered: 03/10/1998)

03/13/1998 31 ORDER by Judge Robert C. Broomfield granting motion to accept late filing of Reply to Petnr's Traverse re Procedural Status by respondent [30-1]; clk shall file rspdnt's reply; if petnr files a sur-reply, he shall do so nlt 15 days after the reply is filed (cc: all counsel) (former emp) Modified on 03/13/1998 (Entered: 03/13/1998)

03/13/1998 32 REPLY by respondent to petitioner's traverse re procedural status [26-1] (former emp) (Entered: 03/13/1998)

03/18/1998 33 CASE Record received from Arizona State Supreme Court (1 box - stored in Room B-627) (MAP) Modified on 12/15/1998 (Entered: 03/19/1998)

03/24/1998 34 MOTION for extension of time for petnr's sur-reply to rspdnt's reply to petnr's traverse re procedural status by petitioner [34-1] (former emp) (Entered: 03/25/1998)

03/26/1998 35 ORDER by Judge Robert C. Broomfield granting motion for extension of time for petnr's sur-reply to rspdnt's reply to petnr's traverse re procedural status by petitioner [34-1] for a period of 10 days to 4/3/98 (cc: all counsel) (former emp) (Entered: 03/26/1998)

04/03/1998 36 MOTION for extension of time for petnr's sur-reply to respondent's reply to petnr's traverse re procedural status by petitioner [36-1] (former emp) (Entered: 04/06/1998)

04/03/1998 VOUCHER (CJA 30) Apptmnt of & Authority to pay crt apptd cnsl chael J. Meehan the sum of \$7,370.00; approved by Judge Broomfield (former emp) (Entered: 04/07/1998)

04/03/1998 VOUCHER (CJA 30) Apptmnt of & Authority to pay crt apptd cnsl Michael J. Meehan the sum of \$920.00; approved by Judge Broomfield (former emp) (Entered: 04/07/1998)

04/03/1998 VOUCHER (CJA 30) Apptmnt & Authority to pay crt apptd cnsl Michael J. Meehan the sum of \$2,137.50; approved by Judge Broomfield (former emp) (Entered: 04/07/1998)

04/03/1998 VOUCHER (CJA 30) Appointment & Authority to pay crt apptd cnsl Michael J. Meehan the sum of \$14,545.20; approved by Judge Broomfield (former emp) (Entered: 04/07/1998)

04/07/1998 37 ORDER by Judge Robert C. Broomfield granting motion for extension of time for petnr's sur-reply to respondent's reply to petnr's traverse re procedural status by petitioner [36-1] (cc: all counsel) (former emp) (Entered: 04/07/1998)

04/10/1998 38 SUR-REPLY by petitioner to respondent's reply to petitioner's traverse re procedural status [32-1] (former emp) (Entered: 04/14/1998)

05/22/1998 VOUCHER (CJA 30) Appointment & Authority to pay crt apptd cnsl Michael J. Meehan the sum of \$475.00; approved by Judge Broomfield. (former emp) (Entered: 06/01/1998)

05/22/1998 VOUCHER (CJA 30) Appointment & Authority to pay crt appointed cnsl Michael J. Meehan the sum of \$137.50; approved by Judge Broomfield. (former emp) (Entered: 06/01/1998)

10/23/1998 Appointment of & authority to pay court appointed counsel (Michael J. Meehan) (former emp) (Entered: 10/27/1998)

10/23/1998 Appointment of & authority to pay court appointed counsel (Michael J. Meehan) (former emp) (Entered: 10/27/1998)

09/17/1999 39 ORDER by Judge Robert C. Broomfield that petitioner shall file a brief on the merits of the following claims, 1,2,3(b) in part, 4,5,6 (14th Amendment), 8,9,10,14,15,16, and 21 in part (14th Amendment) No later than 90 days following the entry of this Order, Petitioner shall file a brief addressing the merits of the above claims FURTHER ORDERED that nlt 60 days following the filing of Petitioner's brief on the merits, Respondents shall file a response brief addressing the merits of the above claims FURTHER ORDERED that nlt 30 days following the filing of Respondents' response, Petitioner may file a reply FURTHER ORDERED finding that the following claims are procedurally barred: 3(a), 3(b) in part, 7,11,12,13,17,18,19,20,21 in part FURTHER ORDERED that additional briefing on the procedural status of Claim 1 shall be included in the briefing schedule as outlined and set forth by this Order FURTHER ORDERED that if pursuant to Local Rule 1.10(p), Petitioner or Respondents file a motion for reconsideration of this Order, such motion shall be filed w/in 15 days of the filing of this Order (cc: all counsel) re: order [39-1] (MAP) (Entered: 09/17/1999)

09/29/1999 40 MOTION for extension of time to file motion for reconsideration by petitioner [40-1] (former emp) (Entered: 09/30/1999)

10/04/1999 41 ORDER by Judge Robert C. Broomfield granting motion for extension of time to file motion for reconsideration by petitioner [40-1] to 10/18/99 (cc: all counsel) (former emp) (Entered: 10/04/1999)

10/18/1999 42 MOTION for reconsideration of court's order re procedural bar by petitioner [42-1] , for orders granting discovery by petitioner [42-2], for evidentiary hearing by petitioner [42-3] (former emp) (Entered: 10/19/1999) 10/25/1999 43 ORDER by Judge Robert C. Broomfield directing respondent to respond by 11/3/99 to motion for reconsideration of court's order re procedural bar by petitioner [42-1] [42-1] (cc: all counsel) (DMT) (Entered: 10/25/1999)

11/03/1999 44 MOTION for extension of time to file response to motions for reconsideration & for discovery by respondent [44-1] (former emp) (Entered: 11/04/1999)

11/08/1999 45 ORDER by Judge Robert C. Broomfield granting motion for extension of time to file response to motions for reconsideration & for discovery to 11/23/99 by respondent [44-1] (cc: all counsel) (DMT) (Entered: 11/08/1999)

11/15/1999 46 Ex parte MOTION TO SEAL moving papers requesting funds for mental health examination & appointment of neuropsychological expert & documents investigator/ mitigation specialist by petitioner Daniel Wayne Cook (LODGED/Dkt Clk: Sealed Motion) [46-1] (former emp) Modified on 11/16/1999 (Entered: 11/16/1999)

11/23/1999 47 RESPONSE by respondent to motion for reconsideration of court's order re procedural bar by petitioner [42-1], motion for orders granting discovery by petitioner [42-2], motion for evidentiary hearing by petitioner [42-3] (former emp) (Entered: 11/24/1999)

12/06/1999 48 MOTION for extension of time to file brief on the merits by petitioner [48-1] (former emp) (Entered: 12/07/1999)

12/06/1999 49 MOTION for leave to file reply to motion for reconsideration by petitioner [49-1] , for extension to file reply on motions for discovery & evidentiary hearing by petitioner [49-2] (former emp) (Entered: 12/07/1999)

12/13/1999 50 ORDER by Judge Robert C. Broomfield granting unopposed motion for leave to file reply to motion for reconsideration by petitioner [49-1]; petitioner reply by 12/20/99 to motion for reconsideration of order re procedural bar by petitioner [42-1]; FURTHER granting unopposed motion for extension to file reply on motions for discovery & evidentiary hearing by petitioner [49-2]; petitioner reply by 12/20/99 to motion for orders granting discovery by petitioner [42-2] & motion for evidentiary hearing by petitioner [42-3]; FURTHER granting motion for extension of time to file brief on the merits by petitioner [48-1] by 1/17/00 (cc: all counsel) (former emp) (Entered: 12/13/1999)

12/20/1999 51 REPLY by petitioner to response to motion for reconsideration of court's order re procedural bar by petitioner [42-1], motion for orders granting discovery by petitioner [42-2], motion for evidentiary hearing by petitioner [42-3] (former emp) (Entered: 12/21/1999)

12/27/1999 53 ORDER by Judge Robert C. Broomfield denying motion for reconsideration of court's order re procedural bar by petitioner [42-1], denying motion for orders granting discovery by petitioner [42-2], denying motion for evidentiary hearing by petitioner [42-3] (cc: all counsel) (DMT) (Entered: 12/27/1999)

12/27/1999 52 ORDER by Judge Robert C. Broomfield re: order (this order is unsealed pursuant to the order filed 2/22/00 document number 61.) Mtn to seal moving papers requesting funds for mental health examination and appointment of neuropsychological expert and documents investigator/mitigation specialist by petitioner Daniel Wayne Cook (lodged/Dkt Clk: Sealed Mtn) [46-1]. Pet to file ex parte brief by 1/10/00 regarding reasons for considering petitioners request for resources on ex parte and under seal basis, setting mtn to seal moving papers requesting funds for mental health examination and appointment of neuropsychological expert and documents investigator/mitigation specialist by petitioner Daniel Wayne Cook (Lodged/Dkt Clk: Sealed Mtn) [46-1] for hearing at 10:30 on 1/28/00. Pet initial merits brief is due by 2/28/00. (cc: pet's counsel and Capital Case Staff Attorney only) (former emp) (Entered: 02/22/2000)

01/03/2000 54 MINUTE ORDER: IT IS HEREBY ORDERED resetting the time for Petitioner to file his initial merits brief on or before 2/28/00. (cc: all counsel) [54-1] re: order [54-1] (former emp) (Entered: 01/03/2000)

01/10/2000 55 SEALED Document Petitioners ex parte brief re: request for resources on an ex parte and under seal basis (former emp) (Entered: 02/22/2000)

01/26/2000 56 EX PARTE MEMORANDUM of Points and Authorities re: reasonable necessity of expert and investigative funding by petitioner Daniel Wayne Cook (former emp) (Entered: 01/27/2000)

01/28/2000 57 SEALED Minute Entry Hearing held re: motion TO SEAL moving papers requesting funds for mental health examination & of neuropsychological expert & documents investigator/ mitigation specialist by petitioner Daniel Wayne Cook IT IS ORDERED Pet to file alternative pleadings and a proposed form of order resolving the pending ex parte mtn for expert and investigative resources by 2/11/00. Pet is also to file a new mtn on the public record regarding resources and the claims for which those resources are sought (LODGED/Dkt Clk: Sealed Motion) [46-1] [46-1]; [57-1] (former emp) Modified on 02/17/2000 (Entered: 01/31/2000)

02/09/2000 VOUCHER for payment of attorney fees for Michael J. Meehan (former emp) (Entered: 02/10/2000)

02/16/2000 59 NOTICE by petitioner Daniel Wayne Cook of petitioners modification of ex parte mtn to seal moving papers requesting funds for mental examination and appointment of neuropsychological expert and documents and investigator/mitigation specialist/proposed order (former emp) (Entered: 02/17/2000)

- 02/16/2000 58 AMENDED MOTION for financial assistance to receive a mental health examination and appointment of mental health expert and document investigator/mitigation specialist by petitioner Daniel Wayne Cook [58-1] (former emp) (Entered: 02/22/2000)
- 02/18/2000 60 ORDER by Judge Robert C. Broomfield that Respondents' response to Petitioner's amended motion for financial assistance shall be filed on/before 3/6/00; reply due 3/17/00 (cc: all counsel) re: order [60-1] (MAP) (Entered: 02/18/2000)
- 02/22/2000 61 ORDER by Judge Robert C. Broomfield IT IS ORDERED Petitioner may file an amended mtn for resources; FURTHER ORDERED unsealing the Courts Order of 12/27/99 and the Petitioners memorandum of 1/26/00 and shall be served by Petitioner upon counsel for respondent Stewart, et al. Any other documents in connection with the original mtn for financial assistance shall remain under seal; granting motion TO SEAL moving papers requesting funds for mental health examination & appointment of neuropsychological expert & documents investigator/ mitigation specialist by petitioner Daniel Wayne Cook (LODGED/Dkt Clk: Sealed Motion) [46-1] (cc: all counsel) (former emp) (Entered: 02/22/2000)
- 02/22/2000 62 EX PARTE SEALED Motion for financial assistance to receive a mental health examination and appointment of mental health expert and document investigator/mitigation specialist by petitioner Daniel Wayne Cook [62-1] (former emp) (Entered: 02/22/2000)
- 02/22/2000 63 MOTION to extend time for Petitioner to file brief on the merits by petitioner Daniel Wayne Cook [63-1] (MAP) (Entered: 02/24/2000)
- 02/24/2000 64 ORDER by Judge Robert C. Broomfield granting motion to extend time for Petitioner to file brief on the merits by petitioner Daniel Wayne Cook [63-1], time extended thru 3/29/00, excluding the presentation of merits briefing for Claims 2 and 4 FURTHER ORDERED that the Court will issue a separate briefing schedule re Claims 2 and 4 following disposition of Petitioner's Amended Motion for Financial Assistance (cc: all counsel) (MAP) (Entered: 02/24/2000)
- 03/03/2000 70 REPLY by petitioner Daniel Wayne Cook to response to motion for financial assistance to receive a mental health examination and appointment of mental health expert and document investigator/mitigation specialist by petitioner Daniel Wayne Cook [58-1] (former emp) (Entered: 04/04/2000)

03/06/2000 65 MOTION to extend time to file an answer to petitioners mtn for financial assistance until 3/20/00 by respondents [65-1] (former emp) (Entered: 03/07/2000)

03/09/2000 66 ORDER by Judge Robert C. Broomfield granting motion to extend time to file an answer to petitioners mtn for financial assistance until 3/20/00 by respondents [65-1]; Reply due nlt 4/3/00 (cc: all counsel) (MAP) (Entered: 03/09/2000)

03/09/2000 67 ORDER by Judge Robert C. Broomfield granting motion to extend time to file an answer to petitioners mtn for financial assistance until 3/20/00 by respondents [65-1] FURTHER ORDERED Petitioner may file a reply no later than 4/3/00 (cc: all counsel) (former emp) (Entered: 03/09/2000)

03/09/2000 VOUCHER for Daniel Cook for payment of fees (former emp) (Entered: 03/10/2000)

03/09/2000 VOUCHER for Daniel Cook for payment of fees (former emp) (Entered: 03/10/2000)

03/20/2000 68 RESPONSE by respondent Terry Stewart to 2/18/00 order regarding development of facts not pursued in State Court (former emp) (Entered: 03/21/2000)

03/29/2000 69 BRIEF on the merits FILED by petitioner Daniel Wayne Cook (former emp) (Entered: 03/30/2000)

04/03/2000 71 REPLY by petitioner Daniel Wayne Cook to response to motion for financial assistance to receive a mental health examination and appointment of mental health expert and document investigator/mitigation specialist by petitioner Daniel Wayne Cook [58-1] (former emp) (Entered: 04/11/2000)

05/02/2000 VOUCHER for payment for Michael J. Meehan (former emp) (Entered: 05/03/2000)

05/02/2000 VOUCHER for payment of fees for atty Michael J Meehan (former emp) (Entered: 05/03/2000)

05/03/2000 72 ORDER by Judge Robert C. Broomfield denying motion for financial assistance to receive a mental health examination and appointment of mental health expert and document investigator/mitigation specialist by petitioner Daniel Wayne Cook [58-1]; FURTHER ORDERED petitioners initial brief on Claims 2 and 4 shall be filed no later than 5/30/00; FURTHER ORDERED respondents brief on the merits shall be filed no later than 6/30/00; Petitioners reply brief shall be filed no later than 7/31/00 (cc: all counsel) (former emp) (Entered: 05/03/2000)

05/26/2000 VOUCHER for payment of \$575.00 to M. Meehan (former emp) (Entered: 05/30/2000)

05/26/2000 73 MOTION for extension of time to file a brief on the merits of claims 2 and 4 until 6/29/00 by petitioner Daniel Wayne Cook [73-1] (former emp) (Entered: 05/30/2000)

06/02/2000 74 ORDER by Judge Robert C. Broomfield granting motion for extension of time to file a brief on the merits of claims 2 and 4 until 6/29/00 by petitioner Daniel Wayne Cook [73-1]; petitioner shall file his initial merits brief re the merits of claims 2 and 4 on or before 6/29/00; respondents shall file their response by 7/28/00 and petitioner shall file his reply by 8/14/00 (cc: all counsel) (LAD) (Entered: 06/02/2000)

06/15/2000 VOUCHER for payment of \$37.50 to Michael J. Meehan (former emp) Modified on 06/19/2000 (Entered: 06/19/2000)

06/15/2000 VOUCHER for payment to Michael Meehan (former emp) (Entered: 06/19/2000)

06/28/2000 75 MOTION to modify briefing schedule re: merits on the claims by respondent Terry Stewart [75-1] (former emp) (Entered: 06/29/2000)

06/29/2000 76 BRIEF ON THE MERITS FILED by petitioner Daniel Wayne Cook (former emp) (Entered: 06/30/2000)

07/10/2000 77 ORDER by Judge Robert C. Broomfield granting motion to modify briefing schedule re: merits on the claims by respondent Terry Stewart [75-1] (cc: all counsel) (former emp) (Entered: 07/10/2000)

07/12/2000 Payment voucher for cnsl Michael Meehan (former emp) (Entered: 07/13/2000)

07/12/2000 Payment VOUCHER for cnsl Michael J. Meehan (former emp) (Entered: 07/13/2000)

07/28/2000 78 RESPONSE re: Merits by respondent Terry Stewart to amended habeas corpus petition (former emp) Modified on 07/31/2000 (Entered: 07/31/2000)

08/14/2000 79 MOTION to extend time to file his reply brief on the merits of claims 2 and 4 by petitioner Daniel Wayne Cook [79-1] until 8/28/00 (former emp) Modified on 08/14/2000 (Entered: 08/14/2000)

08/16/2000 80 ORDER by Judge Robert C. Broomfield granting motion to extend time to file his reply brief on the merits of claims 2 and 4 by petitioner Daniel Wayne Cook [79-1] until 8/28/00 (cc: all counsel) (former emp) (Entered: 08/16/2000)

08/24/2000 81 MOTION for extension of time for petitioner to file his reply brief on the merits of Claims 1-16 until 9/18/00 by petitioner Daniel Wayne Cook [81-1] (former emp) (Entered: 08/28/2000)

08/30/2000 82 ORDER by Judge Robert C. Broomfield granting motion for extension of time for petitioner to file his reply brief on the merits of Claims 1-16 until 9/18/00 by petitioner Daniel Wayne Cook [81-1] (cc: all counsel) (former emp) (Entered: 08/30/2000)

09/21/2000 83 MOTION Nunc Pro Tunc for extension of time to file reply brief for 3 days by petitioner Daniel Wayne Cook [83-1] (Lodged document at docket clerks desk) (former emp) Modified on 09/22/2000 (Entered: 09/22/2000)

09/28/2000 84 ORDER by Judge Robert C. Broomfield granting motion Nunc Pro Tunc for extension of time to file reply brief for 3 days by petitioner Daniel Wayne Cook [83-1] (Lodged document at docket clerks desk) (cc: all counsel) (former emp) (Entered: 09/28/2000)

09/28/2000 85 REPLY Brief on the Merits of Claims 1,2,3,4,5-16 by petitioner Daniel Wayne Cook (former emp) (Entered: 09/28/2000)

10/03/2000 PAYMENT VOUCHER as to Daniel Cook for cnsl Michael J. Meehan (former emp) (Entered: 10/04/2000)

10/10/2000 86 MOTION for oral argument re: claims on the merits by petitioner Daniel Wayne Cook [86-1] (former emp) (Entered: 10/11/2000)

01/02/2001 PAYMENT VOUCHER for Michael J. Meehan (former emp) (Entered: 01/03/2001)

03/08/2001 87 NOTICE by petitioner Daniel Wayne Cook of change of address for counsel Michael J. Meehan and Paul Correa (former emp) (Entered: 03/09/2001)

03/13/2001 CJA 30 PAYMENT VOUCHER as to Michael Meehan (former emp) (Entered: 03/14/2001)

04/04/2001 88 ORDER by Judge Robert C. Broomfield that the parties shall not file in this Court any motions based on Smith (Robert) v. Stewart, Nos. 96- 99025, 96-99026, _F.3d_(9th Cir.March 6, 2001), until the period for a motion for rehearing, motion for rehearing en banc in the Ninth Circuit and the period for filing a petition for a writ of certiorari in the United States Supreme Court, and any action taken thereunder, have expired FURTHER ORDERED that any previously-entered scheduling orders shall remain in effect FURTHER ORDERED Clerk of Court forward a courtesy copy of this Order to the Ninth Circuit Court of Appeals (cc: all counsel/9CCA) re: order [88-1] (MAP) (Entered: 04/04/2001)

09/27/2001 89 ORDER by Judge Robert C. Broomfield denying motion for oral argument re: claims on the merits by petitioner Daniel Wayne Cook [86-1] (cc: all counsel) (former emp) (Entered: 09/27/2001)

03/29/2006 90 MEMORANDUM OF DECISION AND ORDER 18 Petitioner's AMENDED PETITION FOR WRIT OF HABEAS CORPUS is denied with prejudice. The Clerk of Court shall enter judgment accordingly. IT IS FURTHER ORDERED that the stay of execution entered by this Court on 1/24/97 is vacated. IT IS FURTHER ORDERED that the Clerk of Court send a courtesy copy of this Order to Noel Dessaint. Signed by Judge Robert C Broomfield on 3/28/06. (LSP) Modified on 3/29/2006 (LSP). DOCKET TEXT MODIFIED TO ADD "Momorandum and Decision and". (Entered: 03/29/2006)

03/29/2006 91 CLERK'S JUDGMENT that the Court has denied with prejudice Petitioner's Amended Petition for Writ of Habeas Corpus, 18. This Petition and action are hereby dismissed and the stay of execution entered by this Court on January 24, 1997 is vacated. Signed by Judge Judge Unassigned on 3/29/06. (LSP) (Entered: 03/29/2006)

03/29/2006 92 ORDER re: Certificate of Appealability, the Court grants a Certificate of Appealability as to the following issues; Claims 1, 2, 6, 10, 17, 18, 19 and 20, see order for details. (LSP) Signed by Judge Robert C Broomfield on 3/28/06. (LSP) (Entered: 03/29/2006)

04/26/2006 93 NOTICE OF APPEAL to 9th Circuit, as to 91 Judgment, 90 Order by Daniel Wayne Cook. (Meehan, Michael) Modified on 4/26/2006 (LSP). DOCKET TEXT MODIFIED TO CORRECT DOCUMENT LINKAGE. (Entered: 04/26/2006)

04/26/2006 94 Notice of Appeal Notification Form; Notice of Appeal and copy of docket sheet transmitted to Ninth Circuit and all parties re 93 Notice of Appeal (LSP) (Entered: 04/26/2006)

05/09/2006 95 Ninth Circuit Case Number 06-15840 for 93 Notice of Appeal. (LSP) (Entered: 05/09/2006)

05/09/2006 96 ORDER of 9th Circuit; re appeal case number 06-15840 is closed out as opened in error; reassigned appeal case number 06-99005; all further filings should be captioned with case number 06-99005, as to 93 Notice of Appeal filed by Daniel Wayne Cook, (LSP) (Entered: 05/09/2006)

05/15/2006 Notice of request for e-notices by Jennifer Bedier. (Bedier, Jennifer) (Entered: 05/15/2006)

05/16/2006 Notice of request for e-notices by Dale A. Baich. (Baich, Dale) (Entered: 05/16/2006)

08/14/2006 97 MOTION for Order to Transcribe Ex Parte Hearing of January 28, 2000 by Daniel Wayne Cook. (Meehan, Michael) (Entered: 08/14/2006)

08/25/2006 98 ORDER granting petitioner's 97 Motion; the court reporter for the hearing on 1/28/00 shall transcribe those proceedings, file the original under seal and furnish petitioner's counsel with a copy; the transcript shall be provided to petitioner's counsel on or before 8/31/06. Signed by Judge Robert C Broomfield on 8/23/2006. (LAD) (Entered: 08/25/2006)

08/31/2006 99 SEALED TRANSCRIPT (LSP) (Entered: 09/06/2006)

10/26/2007 100 Transmitted Record on Appeal to 9th Circuit re 93 Notice of Appeal. Number of Volumes of Clerk's Record: 3; Number of Bulky Documents: 3; Docket Numbers of Bulky Documents: #22A, 22B, 22C; Number of Expandos: Two; Other: Two boxes of State Court Records consisting of 10 Volumes and 21 Transcripts. One Volume of Sealed Documents. (LSP) (Entered: 10/26/2007)

03/05/2008 101 Appeal Record Returned: 93 Notice of Appeal, Number of Volumes of Clerk's Record: 3, Number of Bulky Documents: 3, Docket numbers of Bulky Document:#22a, 22b, 22c, Number of Expandos: Two, Other: 2 Boxes of State Court Records consisting of 10 Volumes and 21 Transcripts. One volume of Sealed Documents. (LSP) (Entered: 03/05/2008)

10/03/2008 102 MANDATE of 9th Circuit, affirming District Court decision, re case number 06-99005, as to 93 Notice of Appeal filed by Daniel Wayne Cook. (Attachments: #(1) Order and Amended Opinion, #(2) NDA). (LSP) (Entered: 10/03/2008)

02/19/2009 103 NOTICE of Appearance by Dale A Baich on behalf of Daniel Wayne Cook (Baich, Dale) (Entered: 02/19/2009)

03/19/2009 104 Notice re issuance of Order by Arizona Supreme Court, Chief Justice Ruth V McGregor denying the request to appoint Michael Meehan as counsel for state court proceedings as to Daniel Wayne Cook. (LSP) (Entered: 03/20/2009)

03/24/2009 105 ORDER that as soon as practicable the Clerk of Court shall return to the Arizona Supreme Court the state court records received on March 18, 1998. (See Dkt. 33). Signed by Judge Robert C Broomfield on 3/24/09. (DMT,) (Entered: 03/24/2009)

03/27/2009 106 NOTICE of Appearance by Ashley Jane McDonald on behalf of Daniel Wayne Cook (McDonald, Ashley) (Entered: 03/27/2009)

04/02/2009 107 Notice re issuance of Order by Arizona Supreme Court, Chief Justice Ruth V McGregor denying the State of Arizona's Motion for Warrant of Execution as to Daniel Wayne Cook (SAT) (Entered: 04/08/2009)

05/13/2009 108 Letter to the Clerk of the AZ Supreme Court returning the State Court record, consisting of 31 items in one box. (REW,) (Entered: 05/13/2009)

06/02/2009 109 Miscellaneous Document: Acknowledgment from the Arizona Supreme Court. State Court record received 05/14/09. (ESL,) (Entered: 06/03/2009)

- 04/15/2010 110 STIPULATION for Order Allowing Confidential Contact Visit with Petitioner by Daniel Wayne Cook. (Attachments: # 1 Text of Proposed Order)(Konrad, Robin) (Entered: 04/15/2010)
- 04/16/2010 111 ORDER granting the [110] Stipulation for Order Allowing contact Visit between Daniel Wayne Cook and Dr Tora Brawley as set forth in this order; the Clerk shall forward a copy of this Order to counsel of record, Michael Brodsky, Assistant Attorney General, Arizona Department of Corrections, and Warden Trujillo, Arizona State Prison, Eyman Prison Complex. Signed by Judge Robert C Broomfield on 4/16/10. (REW)
- 04/27/2011 112 Notice of Change of Address
- 01/06/2012 113 MOTION to Withdraw as Attorney by Daniel Wayne Cook. (Attachments: # (1) Text of Proposed Order)(Baich, Dale)
- 01/09/2012 114 ORDER granting Petitioner's [113] Motion to Withdraw as Counsel; That Ashley Jane McDonald is withdrawn as counsel. Michael J. Meehan, Dale A. Baich, and Robin C. Konrad will remain as counsel for Mr. Cook. Signed by Judge Robert C Broomfield on 01/09/12.(ESL)

GO TO VOLUME 3

- 06/05/2012 115 MOTION for Leave to File Excess Pages for Motion for Relief from Judgment Pursuant to Rule 60(b)(6) by Daniel Wayne Cook. (Attachments: # (1) Text of Proposed Order)(Meehan, Michael)
- 06/05/2012 116 LODGED Proposed Motion for Relief from Judgment Pursuant to Rule 60(b)(6) re: [115] MOTION for Leave to File Excess Pages for Motion for Relief from Judgment Pursuant to Rule 60(b)(6) . Document to be filed by Clerk if Motion to Leave to File or Amend is granted. Filed by Daniel Wayne Cook. (Attachments: # (1) Exhibit Index and Exhibits 1-22, # (2) Exhibit Exhibit 23, # (3) Exhibit Exhibit 24-29, # (4) Text of Proposed Order)(Meehan, Michael)
- 06/07/2012 117 ORDER granting [115] Motion for Leave to File Excess Pages. The Clerk of Court shall file Petitioner's lodged Motion for Relief from Judgment Pursuant to Rule 60(b)(6) (Doc. 116). IT IS FURTHER ORDERED that Respondents shall file a response to Petitioner's Motion for Relief from Judgment Pursuant to Rule 60(b)(b) no later than Monday, June 18, 2012. Because this Court has returned the state court record to the Arizona Supreme Court, Respondents shall append to their response copies of any documents or transcripts from the state court record relevant to consideration of Petitioners motion. IT IS

FURTHER ORDERED that Petitioner may file a reply no later than Monday, June 25, 2012. Signed by Senior Judge Robert C Broomfield on 6/7/12.(LAD)

- 06/07/2012 118 MOTION for Relief from Judgment Pursuant to Rule 60(b)(6) by Daniel Wayne Cook. (Attachments: # (1) Index and Exhibits 1-5, # (2) Exhibits 6-15, # (3) Exhibits 16-21, # (4) Exhibit 22 part 1, # (5) Exhibit 22 part 2, # (6) Exhibit 22 part 3, # (7) Exhibit 23 part 1, # (8) Exhibit 23 part 2, # (9) Exhibit 23 part 3, # (10) Exhibit 23 part 4, # (11) Exhibits 24-29, # (12) Text of Proposed Order)(LAD)
- 06/18/2012 119 RESPONSE to Motion re [118] MOTION for Relief from Judgment Pursuant to Rule 60(b)(6) filed by Charles L Ryan. (Cattani, Kent)
- 06/25/2012 120 REPLY to Response to Motion re [118] MOTION for Relief from Judgment Pursuant to Rule 60(b)(6) Reply to Response to Motion for Relief from Judgment Pursuant to Rule 60(b)(6) filed by Daniel Wayne Cook. (Meehan, Michael)
- 06/27/2012 121 MOTION to Stay by Daniel Wayne Cook. (Meehan, Michael)
- 07/09/2012 122 ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT: IT IS ORDERED that Petitioner's Motion for Relief from Judgment Pursuant to Rule 60(b)(6) (Doc. 118) is DENIED. IT IS FURTHER ORDERED that Petitioner's Motion for Stay of Execution (Doc. 121) is DENIED. Signed by Senior Judge Robert C Broomfield on 7/6/12. (LAD)