Exhibit 1

Records Request of Pima County Attorney's Office

Office of
FEDERAL PUBLIC DEFENDER
for the District of Arizona
Capital Habeas Unit

COPY

Jon M. Sands
Federal Public Defender

Direct line: (520) 879-7570
email: tim_gabrielsen@fd.org

June 25, 2013

Ms. Kellie Johnson
Chief Criminal Deputy County Attorney
Pima County Attorney's Office
32 N. Stone, Suite 1400
Tucson, Arizona 85701

Re: State of Arizona v. Robert Glen Jones, CR-57526

Dear Ms. Johnson,

Our office was recently appointed to represent Mr. Jones in the U.S. Supreme Court and in any additional federal habeas proceedings. These proceedings stem from his capital murder conviction in Pima County in 1998.

We request an opportunity to review the Pima County Attorney's case files, pursuant to your office's open file policy, so that we may identify and duplicate any and all documents or items that we do not currently have for our files.

Please contact me at 520-879-7570 or Andrew Sowards, my lead investigator at 520-879-7654, with any question regarding this request. We hope to schedule a mutually convenient time to view the file as soon as possible. Thank you in advance for your cooperation and assistance in this matter.

Sincerely,

Tim Gabrielsen
Assistant Federal Public Defender

Cc: Lacey Stover Gard

407 W. Congress Street, Suite 501, Tucson, Arizona 85701
(520) 879-7614 / (800) 758-7054 / facsimile (520) 622-6844

Office of
FEDERAL PUBLIC DEFENDER
for the District of Arizona
Capital Habeas Unit

Jon M. Sands
Federal Public Defender

Direct line: (520) 879-7570
email: tim_gabrielsen@fd.org

August 2, 2013

Ms. Kellie Johnson
Chief Criminal Deputy County Attorney
Pima County Attorney's Office
32 N. Stone, Suite 1400
Tucson, Arizona 85701

Re: State of Arizona v. Robert Glen Jones, CR-57526

Dear Ms. Johnson,

Recently you granted our office the opportunity to review the Pima County Attorney's case files for both Robert Jones and Scott Nordstrom. I thank you for setting aside time for our investigator, Andrew Sowards, to be able to come to your offices and review that material.

In review of the case files, we did not notice any documents pertaining to communication between your office and BI, Incorporated, the company that manufactured the BI Model 9000 electronic monitoring units in use by the Arizona Department of Corrections and its Parole Department in 1996, the period of time Mr. Jones' co-defendant David Nordstrom was connected to the EMS device while on parole. You may know the EMS records served as David's alibi for four of the six Pima County homicides for which he was a suspect. You may know that there were complaints against BI, Inc. in several jurisdictions for parolees or detainees evading detection when in violation of curfew, who committed sometimes violent crimes.

We are attempting to obtain records in the possession of BI, Inc. and Arizona DOC, law enforcement and prosecuting agencies that document sales, maintenance and repairs of BI Model 9000 EMS units used to monitor Arizona parolees or detainees in the period that included 1996. I respectfully ask that your office review its files to detennine whether such correspondence or other records exist. If they do, I would ask that your office contact me.

Thank you again for your continued assistance in facilitating access to a complete copy of the case file.

Sincerely,

Tim Gabrielsen
Assistant Federal Public Defender

Cc: Lacey Stover Gard

407 W. Congress Street, Suite 501, Tucson, Arizona 85701
(520) 879-7614 / (800) 758-7054 / facsimile (520) 622-6844

Exhibit 2

Records Request of BI Incorporated

Office of
FEDERAL PUBLIC DEFENDER
for the District of Arizona
Capital Habeas Unit

Jon M. Sands
Federal Public Defender

Direct line: (520) 879-7570
email: tim_gabrielsen@fd.org

June 28, 2013

BI Incorporated
6400 Lookout Road
Boulder, CO 80301

Re: State of Arizona v. Robert Glen Jones, Pima County No. CR-57526

To Whom It May Concern,

Our office was very recently appointed to represent Mr. Jones in the U.S. Court of Appeals for the Ninth Circuit in federal habeas corpus appeals. We have also entered an appearance for Mr. Jones in the U.S. Supreme Court. These proceedings stem from his capital murder convictions in Pima County, Arizona, in 1998. The State of Arizona has requested an execution date by the state supreme court. We respectfully inform you that time is of the essence.

A co-defendant, David Nordstrom, was suspected in the homicides for which Mr. Jones was convicted and sentenced to death. He pleaded guilty to lesser charges in exchange for his testimony against Jones. Nordstrom was on parole at the time of the homicides and being monitored through the Arizona Department of Corrections my means of a BI 9000 Series Offender Electronic Monitoring system. That EMS system was employed as an alibi by Mr. Nordstrom to deflect suspicion that he was involved in the homicides at one of two crime scenes in Tucson on June 13, 1996. He acknowledged being present at a first homicide scene on May 30, 1996.

We seek to review the effectiveness of the BI 9000 units in use by the Arizona Department of Corrections and its Parole Department, and Arizona county law enforcement and courts between January 25, 1996, the date Nordstrom was connected to the EMS, and June 13, 2013, as reflected in, but not limited to, records of sales of the units to those offices, units returned to BI for maintenance or repair, complaints received about defective products, or other correspondence received from Arizona authorities with respect to the BI 9000. We also seek forms or reports generated by BI that reflect the collection or gathering of that data. If available, we also seek data from BI with respect to data gathered from other entities nationally that reflect the performance of the BI 9000 during that period.

407 W. Congress Street, Suite 501, Tucson, Arizona 85701
(520) 879-7614 / (800) 758-7054 / facsimile (520) 622-6844

We ask that you provide the Capital Habeas Unit with a complete, accurate and legible copy of all files pertaining to BI 9000 Series Offender Electronic Monitoring system. We also request a cover letter certifying that you are providing us with a complete and accurate copy of all requested records. If records have been destroyed due to a records retention policy, please so indicate. If your office withholds any materials, please provide us with a list of materials withheld and a written explanation identifying the basis for that withholding.

We appreciate your expediency in processing this request.

Please call me at (520) 879-7570 or e-mail me at tim_gabrielsen@fd.org to advise me of the costs associated PRIOR TO STARTING ANY DUPLICATION. Our office cannot process any payments without prior authorization. Thank you for your cooperation.

Sincerely,

Tim Gabrielsen
Assistant Federal Public Defender

407 W. Congress Street, Suite 501, Tucson, Arizona 85701
(520) 879-7614 / (800) 758-7054 / facsimile (520) 622-6844

Exhibit 3

Records Request of Arizona Department of Corrections

Office of
FEDERAL PUBLIC DEFENDER
for the **D**istrict of Arizona
Capital Habeas Unit

Jon M. Sands
Federal Public Defender

Direct line: (520) 879-7570
email: tim_gabrielsen@fd.org

July 2, 2013

Mr. Charles Ryan, Director
Arizona Department of Corrections
1601 West Jefferson
Phoenix, AZ 85007

Mr. Paul O'Connell
Operations Manager
Community Corrections
Arizona Department of Corrections
1601 West Jefferson
Phoenix, AZ 85007

Re: Robert Glen Jones, ADC #070566,
State of Arizona v. Robert Glen Jones, Pima County No. CR-57526;

David Nordstrom, ADC #097612
State of Arizona v. David Nordstrom, Pima County No. CR-55947

Dear Director Ryan and Mr. O'Connell:

Our office very recently was appointed to represent Robert Jones in his death penalty appeals in the U.S Court of Appeals for the Ninth Circuit. We also just notified the Arizona Supreme Court that we will represent Mr. Jones with respect the motion filed by the State of Arizona for a warrant of execution, which was filed on June 25, 2013.

We respectfully request all parole records, including all electronic monitoring records, on David Nordstrom, Robert Jones' co-defendant in two homicides for which Mr. Jones was convicted and sentenced death in the above-captioned Pima County case. Time, obviously, is of the essence. The offenses took place at The Moon Smoke Shop in Tucson on May 30, 1996. Mr. Nordstrom pleaded to lesser offenses, testified against Mr. Jones and his brother, Scott Nordstrom, in their separate trials, served time in prison, and was released by ADC.

407 W. Congress Street, Suite 501, Tucson, Arizona 85701
(520) 879-7614 / (800) 758-7054 / facsimile (520) 622-6844

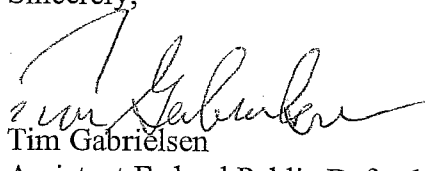
David Nordstrom was suspected of four additional homicides with Mr. Jones and his brother Scott on June 13, 1996, at the Firefighters Union Hall in Tucson. His alibi for those offenses was that he was on home arrest for a prior conviction at the time of those homicides and was monitored by the ADC's parole department. We believe Nordstrom was monitored by means of a BI 9000 Series Offender Electronic Monitoring system, which was manufactured by BI, Inc., a Colorado company. He was connected to the unit on January 25, 1996.

We seek to review the information in your possession with respect to BI 9000 units in use by ADC and its Parole Department between January 1, 1996, and June 30, 2013, as reflected in, but not limited to, ADC's records of purchase of EMS systems from BI, reports of units returned to BI for maintenance or repair, complaints issued by ADC to BI regarding defective or malfunctioning products, or other correspondence sent to BI with respect to the BI 9000 or other BI EMS systems in use in Arizona at the time if Nordstrom was, in fact, monitored by some other model. We also seek forms or reports generated by ADC that reflect the collection or gathering of data in Arizona concerning BI's EMS systems.

We appreciate your expediency in processing this request.

Please call me at (520) 879-7570 or e-mail me at tim_gabrielsen@fd.org to advise me of the costs associated PRIOR TO STARTING ANY DUPLICATION. Our office cannot process any payments without prior authorization. Thank you for your cooperation.

Sincerely,



Tim Gabrielsen
Assistant Federal Public Defender

407 W. Congress Street, Suite 501, Tucson, Arizona 85701
(520) 879-7614 / (800) 758-7054 / facsimile (520) 622-6844

Exhibit 4

Declaration of Timothy M. Gabrielsen

DECLARATION OF TIMOTHY M. GABRIELSEN

I, Timothy M. Gabrielsen, declare the following to be true to the best of my information and belief:

1. I am counsel for Robert Glen Jones, Jr., in *Jones v. Ryan*, U.S.D.C. No. CV-03-00478-TUC-DCB.

2. After sending correspondence to the Arizona Department of Corrections, I had phone contact twice with Ms. Mary Ondreyco at ADC. She followed up the second conversation with a letter that is attached to this Rule 60(b) Motion as Exhibit 5.

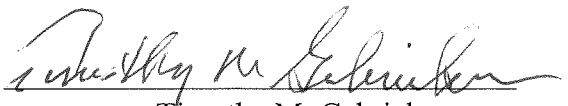
3. She agreed to assist me in obtaining parole records for David Nordstrom. She also stated that she would contact BI, Inc., to attempt to obtain records in their possession on the functioning of electronic monitoring units purchased by ADC for use in monitoring parolees in Arizona. She indicated BI would likely not respond to requests for records without a subpoena. She confirmed that the units purchased from BI and used on Nordstrom were the Model 9000.

4. I have twice written to Ms. Kellie Johnson, Chief Criminal Deputy County Attorney at the Pima County Attorney's Office. Those letters are attached as Exhibit 1. I requested access to the files of Mr. Jones and, after Ms. Johnson made the files available, she accommodated the request of my investigator, Andrew Sowards, to produce the files for Nordstrom as well. After review of those files, and due to the absence of correspondence with BI relative to the EMS unit used on Mr. Nordstrom, I wrote Ms. Johnson to ask that files be checked for correspondence with BI concerning the units used on Mr. Nordstrom.

5. Ms. Johnson called in response to the second letter to indicate that she could not locate any files outside the case files for Mr. Nordstrom that bore EMS records. She said she contacted Investigator Steve Merrick, who was the investigator during the trials of Mr. Jones and the Nordstroms and who is still employed by her office. She said she asked Mr. Merrick to see whether any such files may exist. As of this date, I have not heard anything more from Ms. Johnson about the existence of EMS files at her office.

6. I wrote to BI, Inc., to request information on the functioning of its units in Arizona during the period of time relevant to this matter. The letter is attached to the Rule 60(b) Motion as Ex. 2. BI has not responded.

Signed this 19th day of August, 2013, in the State of Arizona.



Timothy M. Gabrielsen

Exhibit 5

Letter from Arizona Department of Corrections dated July 29, 2013

Arizona Department of Corrections

1601 WEST JEFFERSON
PHOENIX, ARIZONA 85007
(602) 542-5497
www.azcorrections.gov

JANICE K. BREWER
GOVERNOR

CHARLES L. RYAN
DIRECTOR

July 29, 2013

Tim Gabrielsen
Office of the Federal Public Defender- District of Arizona
407 W. Congress, Suite 501
Tucson, Arizona 85701

Re: Public Records Request - Robert Glenn Jones, ADC #070566, State of Arizona v. Robert Glen Jones, Pima County No. CR 57526-David Nordstrom, ADC #097612, State of Arizona v. David Nordstrom, Pima County No. CR 55947

Dear Mr. Gabrielsen:

I am responding on behalf of Director Ryan and Paul O'Connell to your written request dated July 2, 2013. The Arizona Department of Corrections (ADC) does not have any responsive records. ADC ceased using the BI 9000 electronic monitoring system in 2005. Under ADC's record retention schedule, contracts and requests for purchases are retained for six years after the fiscal year the contract was fulfilled, canceled or revoked. Similarly, purchase order records issued under contract are retained for six years after the fiscal year created or received. Per your request, I have enclosed a copy of the applicable policies. ADC is checking with archives to see if there are stored records responsive to your request. I will forward any responsive records if located by the records management center at the Arizona State Library Archives, and Public Records. A minute entry from the Pima County Superior Court dated April 23, 1997, indicates that inmate Nordstrom's parole records were provided to his attorney Laura Udal. I have enclosed a copy of the minute entry for your convenience.

In regard to your request for monitoring reports or data generated by or in connection with the EMS worn by inmate Nordstrom, the inmate was monitored electronically by BI and the monitoring system was maintained electronically by BI. ADC has no records responsive to this request. Please let me know if you have any questions. I can be reached me at 602-542-4916.

Sincerely,

Mary Ondreyco
Legal Support Unit Supervisor

Enclosures as stated

cc: Paul O'Connell, Director Community Corrections
Jeff Zick, Division Chief Capital Appeals, Assistant Attorney General
Dawn Northup, General Counsel
CLR 83107287

Arizona State Library, Archives and Public Records

General Records Retention Schedule for All Public Bodies Purchasing/Procurement Records

Schedule Number:
000-11-54

Authorization and Approval

Pursuant to ARS §41-151.12, the retention periods listed herein are both the minimum and maximum time records may be kept. Keeping records for a time period other than their approved retention period is illegal. However, records required for ongoing or foreseeable official proceedings such as audits, lawsuits or investigations, must be retained until released from such official proceedings, notwithstanding the instructions of this schedule. If it is believed that special circumstances warrant that records should be kept longer or shorter times than the time period listed in this schedule or that any of these records may be appropriate for transfer to the State Archives, please contact the Records Management Division to inquire about a change to the retention period. Only the Arizona State Library, Archives and Public Records has the authority to extend records retention periods. Public records, including electronic records, not listed in this schedule are not authorized to be destroyed.

GladysAnn Wells, Director
Arizona State Library, Archives and Public Records

Date Approved: 8/30/11

Records Retention Schedule for
All Public Bodies
Purchasing/Procurement Records

Item #	Records Series	Retention (Yrs.)	Remarks
1.	Contract and Lease Records (including Requests for Quotes (RFQ)/ Requests for Purchase (RFP)/ Requests for Information (RFI), recap sheets, scores, awards, bonds, certificates of insurance, W-9 forms, and other related records)	6	After fiscal year contract fulfilled, canceled or revoked
2.	Unsuccessful Bids (if filed separately from contract records)	3	After fiscal year received but no more than 6 years after fiscal year contract fulfilled, canceled or revoked
3.	Late Received Bids (including modifications, withdrawals and other related records)	1 month	After vendor notified (Bids may be returned to vendor in lieu of destruction)
4.	Canceled Solicitation Records	1	After fiscal year canceled but not more than 5 years after fiscal year canceled
5.	Vendor Lists (including active, potential or registered vendors)	-	After superseded or obsolete
6	Purchase Order Records (if issued under contract)	6	After fiscal year created or received
7.	Protest Records (if filed separately from contract records)	5	After fiscal year resolved
8.	Credit Memos	5	After fiscal year created or received
9.	Oral and Written Quotations (for purchases for which a contract is not required)	5	After fiscal year created or received

GladysAnn Wells, Director
Arizona State Library, Archives and Public Records

Records Retention Schedule for
All Public Bodies
Purchasing/Procurement Records

Item #	Records Series	Retention (Yrs.)	Remarks
10.	Vendor Records (records about vendors and suppliers providing goods and services to the agency including name and address of vendor or company, description of goods and services provided, catalogs, promotional and advertising materials, product specification sheets, copies of price quotations, and other related records)	5	After fiscal year superseded or obsolete

Supersedes schedule dated **May 16, 2011**

GladysAnn Wells, Director
Arizona State Library, Archives and Public Records

RECORDS RETENTION AN DISPOSITION SCHEDULE

PAGE 1

TO:
RECORDS MANAGEMENT CENTER
1919 WEST JEFFERSON STREET
PHOENIX, ARIZONA 85009

FROM:
STATE AGENCY OR POLITICAL SUB. Department of Corrections ADE
ORGANIZATIONAL UNIT Purchasing ADA
SUBMITTED BY Michael Veit TITLE Manager
X Michael Veit TELEPHONE 255-5612

NO.	RECORD SERIES	RETENTION PERIOD Total	Office	Records Center	REMARKS
1.	Bid Files	7	1	6	After Fiscal Year received or created
2.	Capital Expenditure Requests	3	1	2	After Fiscal Year created
3.	Contracts	6	2	4	After Fiscal Year fulfilled, expired, cancelled or revoked
4.	Purchase Order Files	3	1	2	After Fiscal Year created
5.	Vendor Files	3	1	2	After Fiscal Year received or created

APPROVED BY:
Sharon Sugar Date June 12, 1984
DIRECTOR, DEPT. OF LIBRARY, ARCH. & PUB. RECORDS

Coordinated with Auditor General - Financial Audit June 6, 1984

DLAPR-RMC-2 R1/84

4/6/12

FILED
4-23 1997
JAMES N. CORBETT, Clerk
M. Mieler Deputy

15

ARIZONA SUPERIOR COURT, PIMA COUNTY

JUDGE PROTEM: HON. MICHAEL J. CRUIKSHANK CASE NO. CR-55947

COURT REPORTER: Liz Lumia DATE: April 23, 1997

STATE OF ARIZONA Barbara Catrillo appearing for David White

VS.

DAVID MARTIN NORDSTROM Laura Udall
SCOTT DOUGLAS NORDSTROM Richard Bock and Harley Kurlander

APR 1997 Arizona Supreme Ct. Recorder/Int. Ser.

MINUTE ENTRY

HEARING ON PENDING MATTERS AND MOTIONS:

Defendant Scott Nordstrom present, in custody; defendant David Nordstrom not present, in custody; his presence is waived by Ms. Udall.

The Court indicates that this hearing is being held to consider defendant Scott Nordstrom's Motions for Deposition as to Toni Hurley and as to the parole officers for Scott Nordstrom, David Nordstrom, and Robert Jones and defendant Scott Nordstrom's Motion to Release Department of Corrections' Parole Records as to Scott and David Nordstrom and Robert Jones.

Ms. Catrillo advises that her instructions from Mr. White are to proceed only with the issues of depositions of parole officers and release of parole records from the Department of Corrections. He has not sent instructions about any other issues, and she is not prepared to proceed as to any other matters.

Based on the representations of counsel,

IT IS ORDERED granting defendant Scott Nordstrom's Motion for Deposition of Toni Hurley, subject to Mr. White being granted leave to file an objection to same.

Counsel for defendant Scott Nordstrom are directed to contact Toni Hurley for the purpose of setting a date and time for the deposition, and they are to submit an order for the Court's signature containing the agreed upon date and time.

APR 24 REC'D

Mary Mieler
Deputy Clerk

6.1

MINUTE ENTRY

Ms. Catrillo represents that Mr. White has no objection to release of the requested parole records from the Department of Corrections nor to the taking of depositions of the various parole officers as long as the State receives a copy of anything provided to defense counsel and so long as Mr. White is allowed to be present at the depositions.

Ms. Udall makes statements to the Court, joins in the motions on behalf of defendant David Nordstrom, and moves that Fritz Evenual be added to the list of parole officers to be deposed.

IT IS ORDERED granting Ms. Udall's request, and Fritz Evenual shall be included in the Motion for Deposition of parole officers, subject to Mr. White filing an objection to same.

All counsel argue to the Court regarding defendants' Motions for Depositions and Release of Parole Records by the Department of Corrections.

IT IS ORDERED granting defendants' Motion to Release Department of Corrections Records and Motion for Depositions of parole officers to the following extent:

1. The Department of Corrections shall produce to Laura Udall, counsel for David Nordstrom, the parole records pertaining to him.

2. Fred Gust and Fritz Evenual, parole officers for David Nordstrom, shall give a deposition to Ms. Udall at a date and time to be determined by a later Order of the Court. Ms. Udall is directed to submit an Order for the Court's signature containing the date and time she has arranged with said parole officers.

3. The Department of Corrections shall produce to Richard Bock, counsel for Scott Nordstrom, the parole records pertaining to him.

4. Debra Hegedus, parole officer for Scott Nordstrom, shall be deposed by defense counsel regarding her knowledge of this matter at a date and time to be determined by further Order of this Court. Mr Bock is directed to submit an Order for the Court's signature containing the date and time he has arranged with Ms. Hegedus.

Mary Mieler
Deputy Clerk

MINUTE ENTRY

5. The Department of Corrections shall provide parole files and records to respective defense counsel by not later than 5:00 p.m. on April 30, 1997.

As to the issue of disclosure of parole records and deposition of parole officer pertaining to Robert Jones,

THE COURT FINDS that in any further discovery requests pertaining to Robert Jones, counsel for the Department of Corrections, Bernard Lopez, Esq. and counsel for Robert Jones, being Michael Edwards, Esq. should be noticed regarding said requests.

IT IS ORDERED setting a Status Conference regarding defendants' discovery requests pertaining to Robert Jones on April 28, 1997 at 3:00 p.m. in Division MC.

Counsel for Robert Jones is to communicate with the Court, by written motion or telephonically and prior to the above hearing date, in order to lodge objections he may have regarding disclosure of the parole records of Robert Jones and to taking the deposition of his parole officer, Ron Kirby.

As to the issue of the State being allowed to attend all depositions,

IT IS ORDERED that any counsel may be present at a deposition if the witness/person being deposed requests his/her presence; however, counsel have no right to be present if his/her appearance has not been requested.

Mr. Kurlander moves, on behalf of defendant Scott Nordstrom, to extend Rule 16 motion for two weeks.

IT IS ORDERED that the motion is denied.

Mr. Kurlander moves that copies of the three sets of parole records (Scott and David Nordstrom and Robert Jones) be provided to the Court for in-camera inspection and subsequent review for the possiblility of further disclosure.

Ms. Udall joins in the motion.

Mary Mieler
Deputy Clerk

MINUTE ENTRY

IT IS SO ORDERED, and the Department of Corrections shall provide copies of the parole records of the individuals listed above to the Court for in-camera inspection.

Mr. Kurlander advises the Court that defendant Scott Nordstrom will be filing motions as to suggestive identification procedures and to suppress the search of the defendant's house.

Given the Rule regarding filing of motions 20 days prior to trial, Mr. Bock questions whether a face motion can be filed with the substance of the motion to follow at a later date.

The Court advises that a cover motion may be filed; however, if the late filing of the substance of the motion is prejudicial to the State, further hearings may be necessary.

Mr. Bock further advises the Court that a motion will be forthcoming as to the testimony of an eyewitness identification expert. Counsel is directed to file a written motion including the fees of such an expert, conforming as closely as possible to Pima County Indigent Defense Guidelines, and submit it to the Court.

IT IS ORDERED that the above motion shall be heard at the Pending Motions hearing set on April 28, 1997.

Ms. Udall advises that defendant David Nordstrom's Motion to Remand will be heard on that date as well, and Mr. Bock advises that defendant Scott Nordstrom's Motion to Remand has been withdrawn.

HON. MICHAEL J. CRUIKSHANK

cc: Hon. Michael J. Cruikshank
Criminal Calendaring
County Attorney--David White, Esq.
Sheriff
Richard Bock, Esq.
Harley Kurlander, Esq.
Laura Udall, Esq.
Gregory Kuykendall, Esq.
James Morrow, Esq. (Phx)
Maricopa County Legal Defender--Michael Edwards (Counsel for Robert Jones)
Bernard Lopez, Esq. Discovery Counsel, Department of Corrections

Mary Mieler
Deputy Clerk

Exhibit 6

The Palm Beach Post, October 22, 1997 article titled Teen's Monitor was Working Properly, Company Says

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Bibliography (export)

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Find articles by Christine Stapleton ; Palm Beach Post Staff Writer
Find more articles from page 1B
Find more from section "LOCAL"
Find all articles from October 22, 1997

TEEN'S MONITOR WAS WORKING PROPERLY, COMPANY SAYS

The **Palm Beach Post** - Wednesday, October 22, 1997

Author: *Christine Stapleton ; Palm Beach Post Staff Writer*

The electronic ankle bracelet that monitored the house arrest of Ralph Jamie Hayes didn't report his absence the night that deputies say he stole a car, ran over his girlfriend, abandoned the car and made his way back home.

On Tuesday, a day after Hayes' arrest on a second-degree murder charge, the makers of the monitor device and the probation officials who strapped it on Hayes in July 1996 said the device worked fine.

"The equipment functioned as it was supposed to," said Anita Pedersen, marketing communications manager at **BI Inc** ., the company that monitors all 900 of the Department of Corrections' house-arrest offenders. "It did not fail."

If the device is supposed to ensure that offenders on house arrest don't leave home when they aren't supposed to, why didn't it report Hayes' alleged absence?

"It is not in the public's best interest to understand the intricate workings of these systems," Pedersen said. "Many people would enjoy knowing how to defeat the system."

Donald Monroe, a DOC administrator in Palm Beach County, agreed. There are 150 other offenders on house arrest in Palm Beach County and "we don't want other folks getting any weird ideas," Monroe said.

Hayes, 16, told two jail inmates that he killed 14-year-old Kathleen "Kady" Wilt on a Jupiter Farms road Nov. 9 because he believed Wilt was pregnant and cheating on him, the arrest report said. The night of the hit-and-run, Hayes was on house arrest from a 1995 burglary case.

Investigators questioned Hayes on Nov. 27 - a week after he was arrested for violating his probation by hiding a bag of marijuana in his sock at Jupiter High School - but he was ruled out as a suspect because of the house arrest.

Hayes denied knowing anything about Wilt's death but asked investigators if Wilt had been pregnant. He looked "bewildered" when the investigator told him that Wilt was not, the arrest report said.

The monitoring reports of Hayes' house arrest seemed to confirm Hayes was at home at the time of the hit-and-run. But another teen who knew Hayes and had also been on house arrest told an investigator that Hayes confessed to the killing and that Hayes was able to commit the crime by "fooling his house arrest."

The teen also told the investigator that when he was on house arrest he, too, had been able "to leave his residence and go out of range undetected for short periods of time," the

police report said.

Investigators then began testing the ankle monitors, about the size of a beeper, supplied by **BI Inc** . The company "identified a default feature" of the equipment that "allows for an out-of-range within a short period of time to be undetected," the report said.

On Tuesday, a spokesperson for **BI Inc** . refused to describe the "default feature" or discuss how long or far away a house-arrest offender could be away from home before their monitors in Boulder, Colo., detected an absence.

Monroe also declined to discuss the "default feature" but said he had no doubt that Hayes had the time to commit the crimes.

"Is it probable he could have committed this crime?" Monroe said. "Yes."

Caption: PHOTO (B&W) & GRAPHIC (B&W)
1. ERIN MORONEY/Staff Photographer Justin Farah (left), 16, and Kevin Zimmer, 15, look at a memorial to Kady Wilt Tuesday. Zimmer was Wilt's neighbor and was one of the first on the accident scene. 2. ROB BARGE/Staff Artist What happened 1) Ralph Hayes' home 2) Kady Wilt's home 3) 6:05-6:10 p.m., Nov. 9: Neighbor's car last seen in driveway 4) 6:15 p.m., Kady Wilt hit and killed by car 5) 9:37 p.m., Neighbor reports car stolen 6) 6:45 a.m., Nov. 10: Abandoned car found Source: Palm Beach County Sheriffs Office
Memo: Ran all editions.

Edition: *FINAL*
Section: *LOCAL*
Page: *1B*
Index Terms: *TEENAGER WPB JUVENILE MURDER CHARGE PRODUCT*
Record Number: *PBP10220782*
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TEEN'S MONITOR WAS WORKING PROPERLY, COMPANY SAYS

Back To Results Previous **Article 15 of 43** Next

Exhibit 7

Sun-Sentinel, October 24, 1997 article titled Ankle Device Not a Jail Cell, Experts Find – '96 Hit –and-Run Case Reveals Time Lapses

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ANKLE DEVICE NOT A JAIL CELL, EXPERTS FIND - '96 HIT-AND-RUN CASE REVEALS TIME LAPSES

Sun-Sentinel - Friday, October 24, 1997

Author: SARAH LUNDY Staff Writer

To the delight of politicians and taxpayers, judges have been using ankle bracelets to monitor some criminals on house arrest instead of sending them to expensive prisons.

And taxpayers have assumed that the electronic gizmos alerted officials as soon as an offender stepped out of the house.

But news this week that a teen-ager wearing an ankle device took a neighbor's car, ran down his former girlfriend and returned home without being detected has shed light on the limitations of the technology.

Despite public perception, ankle devices are not designed to alert officials the moment an offender steps outside his or her home. There's a time lapse. Wily offenders could take off and never be detected, as long as they returned in time

Detectives investigating the Nov. 9, 1996, hit-and-run death of Kathleen "Kady" Wilt said that when they checked the monitoring logs on Ralph Jamie Hayes, 16, on the night Wilt was killed, nothing indicated he had left his home a few blocks from the scene.

At the time, Hayes was under house arrest for a 1995 burglary.

"After we saw the daily logs, it would appear on the surface that he was at home at the time," said Palm Beach County Sheriffs Investigator David Rander.

Officials of the Florida Department of Corrections handed over all information they had on the device to investigators, who were surprised to learn the monitor was not set to alert the company the moment Hayes left his home.

Instead, the DOC said the devices send an alert only when an individual wanders out of range for a specific period of time.

"Early on, we were not aware of any type of default time, and it was only after receiving the information from the inmates that we dug further," Rander said.

Two inmates at the Palm Beach County Jail told investigators that Hayes had said he ran over his former girlfriend with a car.

"I'm not going to comment on the default time," Rander said.

Nor will **BI Inc** . of Boulder, Colo., which supplies and monitors the devices. The company monitors the signals 24 hours a day, seven days a week, from offices in Indiana and Colorado.

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"It does not take the place of a jail cell," said Richard Nimer, of the DOC's Office of Community Corrections. "It does not provide that kind of confinement. ... I liken it to a security guard sitting on the doorstep during the evening hours."

The Palm Beach County Sheriff's Office sets its alert time at 10 minutes for pre-trial defendants and convicts who qualify. BI and state officials would not say how long they program the ankle bracelets for state prisoners.

They would only say that the bracelet worked.

"It was working as it was intended," said Donald Monroe, a DOC deputy administrator.

On Nov. 9, 1996, Wilt, 14, and her friend, Rosemarie Blanchard, left a friend's home in Jupiter Farms, a rural subdivision west of Jupiter. At 6:15 p.m, a car with its headlights off sped down the road cutting down Wilt and grazing Blanchard.

Charges were filed this week against Hayes for second-degree murder, manslaughter, hit-and-run involving death, hit-and-run involving bodily injury and driving a motor vehicle without a license.

There are 150 offenders electronically monitored in Palm Beach County. A device about the size of a pager is strapped to an ankle.

It sends radio signals to a receiver attached to the offender's phone. Offenders can have conditions that allow them to leave the home for certain reasons, such as work or school.

If offenders leave when they are not supposed to, the device sets off an alert at BI's offices, which faxes the information to the local probation office.

"We don't rely on that 100 percent," Monroe said.

"To make sure [offenders) are complying with the curfew, the [probation) officer goes by the house and goes to work to make sure they are complying with it."

Technology is always changing. State officials are now working with Protech Monitoring Inc. in Hillsborough and Pinellas counties on a tracking system that uses satellites.

The device will track offenders wherever they go. It also alerts officials if the offender enters a prohibited area, such as a victim's neighborhood.

It does more.

It costs more.

The Protech device costs between $10 to $20 a day, compared to $2.49 for the current ankle bracelets.

"It's a tremendous amount more," Nimer said.

"No way we can do it in big numbers.

Caption: CHART
Staff graphic/R.SCOTT HORNER Chart: Sequence of events the night and morning after Kathleen Wilt was ran down with a car in Jupitar Farms. {BOX} Sequence of events 1. Nov. 9, 1996:3:30 p.m. Kathleen Wilt, Rosemarie Blanchard and Courtney Schmitt leave a birthday party (A) and head for Schmitt's home (C). 2. Trio visits Ralph Hayes, who is under house arrest, at the fenceline along his lot (B). They talk about hoe the girls want to get to Jupiter but don't have a ride. 3. Girls leave and go th Schmitt's house (C). 4. 4 p.m. Wilt returns to Hayes' (B) house for a cigarette. 5. Blanchard and Schmitt's sister, Meredith, go to Hayes' house (B) to collect Wilt and return to Schmitt home (C). 6. Hayes calls Wilt at Schmitt's house and they again talk about how the girls need ride to Jupiter. 7. Blanchard and Wilt leave Schmitt's (C) for Wilt's home (D). 8. 6:15 p.m. Southbound car hits and kills Wilt and injures Blanchard (E). 9. 9:37 p.m. Deborah Cooley calls 911 and reports 1995 Mitsubishi Galant stolen from their residence (F). 10. Nov. 10, 1996: 7:30

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a.m. Palm Beach County Sheriffs Office recovers Cooley's car in front of a home under construction (G). Source: Palm Beach County SHeriffs Offic
Memo: Informational box at end of text

Edition: *PALM BEACH*
Section: *LOCAL*
Page: *IB*
Index Terms: *ELECTRONIC ANKLE DEVICE ; PRISON ; COST IMPROVEMENT ; COST ; HIT-RUN ; DEATH ; JUVENILE INVESTIGATION*
Record Number: *9710240117*
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Exhibit 8

Sun-Sentinel, June 6, 1998 article titled Monitor Company Petitions to Keep Its Secrets Sealed

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MONITOR COMPANY PETITIONS TO KEEP ITS SECRETS SEALED

Sun-Sentinel - Saturday, June 6, 1998

Author: *NICOLE STERGHOS Staff Writer*

Prosecutors and police have long accused a Wellington teen-ager of wiggling out of his house-arrest ankle monitor without detection _ just long enough to run over his former girlfriend in a stolen car, killing her.

Now the Colorado company that supplies and monitors the ankle device wants to keep the public from learning how Ralph Jamie Hayes could have manipulated its product.

In a hearing on Friday, an attorney for BI Inc. asked Circuit Court Judge Harold Cohen to close any portion of Hayes' June 22 trial and seal any court documents that detail how to slip out of the ankle monitor for a six- to seven-minute period and stray from home without alerting the company's computers.

BI is concerned that airing specifics about the company's technology would violate trade secret protections as well as show detainees how to break the law, attorney Bunni Jensen said.

Media attorney L. Martin Reeder, though, argued that if BI's house-arrest system has an inherent flaw that allows criminals to roam free, publicizing that flaw would put public pressure on BI to fix the problem.

Reeder also cast doubt on whether Hayes is the only person who knows how to wiggle out of the ankle monitor.

Though Cohen expressed concern that making the BI monitor technology public could pose safety problems, he said he did not have enough evidence to make a ruling. He assigned a special master to hold a hearing on the issues.

Hayes, then 16, was on house arrest for burglary on Nov. 9, 1996, when police say he slipped out of his monitor just long enough to take a neighbor's car and run down Kathleen "Kady" Wilt as she walked home from a birthday party.

He is facing charges of second-degree murder, leaving the scene of an accident and driving under suspension.

Edition: *Palm Beach*
Section: *LOCAL*
Page: *3B*
Index Terms: *RALPH JAMI HAYES ; MURDER ; JUVENILE ESCAPE ; BI INCORPORATED ; SECURITY PRIVACY*
Record Number: *9806060070*
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SOLVE BRACELET MYSTERY

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Exhibit 9

Sun-Sentinel, July 10, 1998 article titled House-Arrest Faults Exposed in Killing Trial-Inmate May Have Fooled Device, Prosecutors Say

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HOUSE-ARREST FAULTS EXPOSED IN KILLING TRIAL - INMATE MAY HAVE FOOLED DEVICE, PROSECUTORS SAY

Sun-Sentinel - Friday, July 10, 1998

Author: *NICOLE STERGHOS Staff Writer*

A dinner spoon and a bucket of water. That's all it takes to slip out of a house-arrest monitoring system, prosecutor Ellen Roberts told jurors on Thursday.

And that is only one of the tactics Ralph Jamie Hayes could have used to fool his ankle monitor when he slipped out of his Jupiter Farms house, took a neighbor's car and ran over his former girlfriend, Kathleen "Kady" Wilt, Roberts said.

In an opening statement that further exposed the frailties of a widely used house-arrest program, Roberts painted two scenarios that could have put Hayes at the scene of Wilt's murder on Nov. 9, 1996 _ despite his house-arrest alibi.

One possibility involves the use of common household tools: Stick your foot in a bucket full of water, use a spoon to snap the monitor off the bracelet, and the water prevents a signal from being transmitted to house-arrest supervisors, Roberts explained.

The monitor, which is fooled into "thinking" that it is still attached to the bracelet, stays at home while the offender can stray as far and for as long as he wishes.

Or you could use nothing at all.

Hayes could just have walked out of the house for up to seven minutes _ the time it takes before the device sends an alert to supervisors, Roberts said.

Either way, she said, Hayes almost got away with murder _ until he slipped up by bragging about his exploits to fellow jail inmates.

But Hayes' defense attorney, Paul Herman, refuted the state's case, saying Hayes may be guilty of foolish bravado but not the second-degree murder and other charges that have been lodged against the 17-year-old.

On the evening Wilt, 14, was run over on a darkened roadside as she walked home from a birthday party, Herman said, Hayes was several blocks away, serving house arrest on 1995 burglary charges.

Hayes spent the evening playing cards and noshing on burgers and macaroni salad with his sister and friends. No one lost sight of him for longer than several moments, while Hayes accepted several phone calls, and he never appeared winded, Herman said.

One of those calls came after sirens and helicopters were heard nearby. On the phone was a friend, who told Hayes the news of his former girlfriend's death.

"Jamie broke down and wept," Herman told jurors. "He lost it emotionally."

But Hayes, who was later jailed after violating house arrest on unrelated charges, would implicate himself.

Inmate Anthony Spence will testify that Hayes told him he "killed the bitch" because she was pregnant with his baby and had been cheating on him with another boy, Roberts said.

Roberts said the inmates knew certain facts that only those involved in the murder could have known, such as the lack of fingerprints in the 1994 maroon Mitsubishi that killed Wilt and the fact that Hayes had received the keys from the owner's daughter, Genelle Cooley, Hayes' girlfriend at the time.

Herman asked jurors to question the credibility of inmate informants. But he also admitted Hayes may have made the remarks, though only "to ingratiate himself and gain status in his 16-year-old mind."

Herman also cast suspicion on Cooley, saying she was seen driving the Mitsubishi the day of the murder and that her parents had hired an attorney and refused to cooperate with investigators.

Though the facts of the case are sufficient to capture public attention, they have more importantly shed light on the vulnerability of a house-arrest system widely used as an alternative to expensive prisons.

BI Inc ., the Colorado company that supplies and monitors the devices used by the 150 offenders on house arrest in Palm Beach County, successfully argued that the public should be barred from trial testimony detailing how the monitors can be removed and bypassed. But the company could not censor Roberts' comments to the jury.

Company officials did not return calls for comment late on Thursday.

Caption: PHOTO
Photo/RICHARD GRAULICH Ralph Jamie Hayes looks at jurors as they enter the courtroom on Thursday for his second-degree murder trial.

Edition: *Palm Beach*
Section: *LOCAL*
Page: *1B*
Index Terms: *MURDER ; RALPH JAMIE HAYES TRIAL ; BEGIN*
Record Number: *9807100049*
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Exhibit 10

Securities and Exchange Commission Form 10-K, Excerpts of BI, Inc.,
June 20, 1995 through June 30, 2000

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http://www.sec.gov/Archives/edgar/data/716629/0000927356-95-000252.txt

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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended: JUNE 30, 1995

Commission File Number: 0-12410

BI INCORPORATED

(Exact name of registrant as specified in its charter)

COLORADO

(State or other jurisdiction
of incorporation or organization)

84-0769926

(I.R.S. Employer Identification No.)

6400 LOOKOUT ROAD, BOULDER, COLORADO 80301

(Address of principal executive offices)(Zip Code)

Registrant's telephone number, including area code: (303) 530-2911

Securities registered pursuant to Section 12(b) of the Act:

NONE

Securities registered pursuant to Section 12(g) of the Act:

COMMON STOCK, NO PAR VALUE

Indicate by check mark whether the registrant (1) has filed all reports required
to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during
the preceding 12 months (or for such shorter period that the registrant was
required to file such reports), and (2) has been subject to such filing
requirements for the past 90 days.

Yes X No ___

At September 6, 1995, there were 6,759, 671 shares of Common Stock outstanding
and the aggregate market value of Common Stock held by non-affiliates was
$44,492,000.

2

ITEM 3. LEGAL PROCEEDINGS

On April 21, 1995, Clara Willis, special administrator of the Estate of Seke T. Willis, deceased, filed a complaint naming Michael Sheahan, Sheriff of Cook County, Gerald Hodges, County of Cook minicipality, Cook County Department of Corrections and BI Incorporated as defendants in the Circuit Court of Cook County, Illinois, alleging malfunction of a home arrest system causing wrongful death. This action is in early stages of discovery. However, the Company believes its equipment worked appropriately and intends to vigorously defend this action.

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http://www.sec.gov/Archives/edgar/data/716629/0000927356-96-000846.txt


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BUSINESS SERVICES [7380]
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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

Annual Report Pursuant To Section 13 Or 15(d) Of
the Securities Exchange Act of 1934

For the fiscal year ended: June 30, 1996

Commission File Number: 0-12410

BI INCORPORATED

(Exact name of registrant as specified in its charter)

Colorado

(State or other jurisdiction
of incorporation or organization)

84-0769926

(I.R.S. Employer Identification No.)

6400 Lookout Road, Boulder, Colorado 80301

(Address of principal executive offices)(Zip Code)

Registrant's telephone number, including area code: (303) 530-2911

Securities registered pursuant to Section 12(b) of the Act:

None

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, no par value

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes X No

At September 5, 1996, there were 7,046,000 shares of Common Stock outstanding and the aggregate market value of Common Stock held by non-affiliates was $81,056,000.

Item 3. Legal Proceedings.

On October 2, 1995, Joanne Case filed another complaint naming BI Monitoring Corporation and Salvation Army's Harbor Light Complex as defendants in the Court of Common Pleas, Cuyohoga County, Cleveland, Ohio, alleging negligence in monitoring and detention causing physical and emotional distress. The Plaintiff alleged damages in the amount of $25,000. The prior complaint was dismissed on October 21, 1994, because the Plaintiff was unable to prove wrong-doing by the Company.

On April 10, 1996, Jane Doe filed a complaint naming BI Monitoring Corporation, David M. Harley, and Oriana House, Inc. as defendants in the Court of Common Please, Summit County, Ohio, alleging negligence in monitoring and detention causing physical and emotional distress. The Plaintiff alleged damages in the amount of $3,000,000. The action is in early stages of discovery. The Company believes its equipment worked appropriately and intends to defend this action.

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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D)OF
the Securities Exchange Act of 1934

For the fiscal year ended: JUNE 30, 1997

Commission File Number: 0-12410

BI INCORPORATED

(Exact name of registrant as specified in its charter)

Colorado

(State or other jurisdiction
of incorporation or organization)

84-0769926

(I.R.S. Employer Identification No.)

6400 Lookout Road, Boulder, Colorado 80301

(Address of principal executive offices)(Zip Code)

Registrant's telephone number, including area code: (303) 530-2911

Securities registered pursuant to Section 12(b) of the Act:

NONE

Securities registered pursuant to Section 12(g) of the Act:

COMMON STOCK, NO PAR VALUE

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes X No
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At September 15, 1997, there were 7,422,241 shares of Common Stock outstanding and the aggregate market value of Common Stock held by non-affiliates was $54,749,429.

8

ITEM 3. LEGAL PROCEEDINGS.

On October 10, 1996, Melitta Beeson filed a complaint naming the State of California, California Youth Authority, Craig Brown, Director California Youth Authority, Greyland Winbush and BI Incorporated as defendants in the Superior Court of California County of Alameda alleging wrongful death resulting from general negligence. The Plaintiff is seeking unspecified damages. This action is in the early stages of discovery. The Company believes it monitored appropriately and intends to defend against this action and any potential liability is covered by the Company's insurance coverage.

On October 29, 1996, Jeremy Cohlhepp filed a complaint naming Allegheny County, Allegheny County Electronic Monitoring Program, Everett F. McElfresh, Michelle Batch, and BI Incorporated as defendants in the United States District Court for the Western District of Pennsylvania. The Plaintiff alleges a malfunction of the equipment which caused him to be held in a detention center for a period of time. The Plaintiff alleges damages in the amount of $150,000 against BI Incorporated. This action is in discovery. The Company believes its equipment worked appropriately and intends to defend against this action and any potential liability is covered by the Company's insurance coverage.

On May 6, 1997, Melody Trout filed a complaint naming State Farm Mutual Automobile Insurance Co., General Securities Services Corporation, Billy Wyatt, and BI Incorporated as defendants in the Circuit Court of Stoddard County, Missouri, alleging negligence in manufacturing by BI Incorporated, negligence in monitoring by General Securities Services Corporation and reckless and wanton behavior by Billy Wyatt resulting in a wrongful death. The Plaintiff seeks damages in the amount of $3,000,000. This action is in the early stages of discovery. The Company believes its equipment was manufactured correctly and intends to defend against this action and any potential liability is covered by the Company's insurance coverage.

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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF
THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended: JUNE 30, 1998

Commission File Number: 0-12410

BI INCORPORATED
(Exact name of registrant as specified in its charter)

Colorado
(State or other jurisdiction
of incorporation or organization)

84-0769926
(I.R.S. Employer Identification No.)

6400 Lookout Road, Boulder, Colorado 80301
(Address of principal executive offices)(Zip Code)

Registrant's telephone number, including area code: (303) 218-1000

Securities registered pursuant to Section 12(b) of the Act:

NONE

Securities registered pursuant to Section 12(g) of the Act:

COMMON STOCK, NO PAR VALUE

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes X No

At September 15, 1998, there were 7,641,685 shares of Common Stock outstanding and the aggregate market value of Common Stock held by non-affiliates was $62,105,233.

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ITEM 3. LEGAL PROCEEDINGS.

On January 29, 1998, a settlement was reached concerning a complaint filed by Jeremy Cohlhepp on October 29, 1996. The settlement amount was immaterial and within insurance coverage limits.

On February 6, 1998, Bill M. Kirby filed a complaint naming BI Incorporated as the defendant. The suit alleges negligence and misrepresentation resulting in a wrongful death. The plaintiff seeks damages of $3,977,500.

On March 12, 1998, Arturo Marines filed a complaint naming the State of Texas Board of Pardons and Paroles and BI Incorporated as defendants. The civil suit was filed for product liability, and misrepresentation, breach of warranty, and general negligence. The plaintiff seeks $250 million in damages.

On April 6, 1998, Joyce Cerda filed a complaint naming BI Incorporated as the defendant in the Court of Cook County. The suit was filed for product liability and negligence. The plaintiff seeks medical and funeral expenses in excess of $150,000.

On July 20, 1998, Joseph Gill Sr. filed a complaint naming Rudolph McGriff, City of Philadelphia and BI Incorporated as defendants in the Court of Common Pleas in Philadelphia County, Pennsylvania. The suit brings two counts, a survival action and a wrongful death action, and asks for damages in excess of $100,000.

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                FISCAL YEAR END:                         0630

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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

Annual Report Pursuant To Section 13 Or 15(d) Of

the Securities Exchange Act of 1934

For the fiscal year ended: June 30, 1999

Commission File Number: 0-12410

BI INCORPORATED

(Exact name of registrant as specified in its charter)

Colorado

(State or other jurisdiction
of incorporation or organization)

84-0769926

(I.R.S. Employer Identification No.)

6400 Lookout Road, Boulder, Colorado 80301

(Address of principal executive offices)(Zip Code)

Registrant's telephone number, including area code: (303) 218-1000

Securities registered pursuant to Section 12(b) of the Act:

None

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, no par value

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes X No ____

At September 15, 1999, there were 7,911,294 shares of Common Stock outstanding and the aggregate market value of Common Stock held by non-affiliates was $67,245,999.

Item 3. Legal Proceedings.

On February 6, 1998, Bill M. Kirby filed a complaint naming BI Incorporated as the defendant. The suit alleges negligence and misrepresentation resulting in a wrongful death. The plaintiff seeks damages of $11,600,000.

Subsequent to June 30, 1999, Sheila Kennerly filed a complaint on August 10, 1999, naming Montgomery, Ohio, Montgomery County Sheriff Department, and BI Incorporated as defendants. The complaint is for wrongful death, survivorship action and civil rights violation. The plaintiff seeks $10,500,000 in damages.

Source: SEC online database, Edgar Online, URL:
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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

Annual Report Pursuant To Section 13 Or 15(d)Of
The Securities Exchange Act of 1934

For the fiscal year ended: June 30, 2000

Commission File Number: 0-12410

BI INCORPORATED

(Exact name of registrant as specified in its charter)

Colorado

(State or other jurisdiction
of incorporation or organization)

84-0769926

(I.R.S. Employer Identification No.)

6400 Lookout Road, Boulder, Colorado 80301

(Address of principal executive offices)(Zip Code)

Registrant's telephone number, including area code: (303) 218-1000

Securities registered pursuant to Section 12(b) of the Act:

None

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, no par value

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes X No ____

At September 26, 2000, there were 7,974,612 shares of Common Stock outstanding and the aggregate market value of Common Stock held by non-affiliates was $64,544,516.

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ITEM 3. LEGAL PROCEEDINGS.

On July 20, 1999, Joe T. Young filed a complaint naming BI Incorporated and Tamara Anderson in the United States District court, Northern District of Georgia, for wrongful detention. Plaintiff seeks compensatory damages in the sum of $200,000 and punitive damages in the amount of $200,000.

On August 17, 1999, Jaby & Latonya Crews filed a complaint naming BI Incorporated, Pamela Goodfriend and Eric Longfellow in State Court of Fulton County, Georgia, for wrongful detainment. Plaintiff is seeking $300,000 in damages.

Exhibit 11

Pittsburgh Post-Gazette, October 23, 1996 article titled Man Sues Over Faulty Monitor

Services Inc.

"This route would dry us up on the vine," Munhall Mayor Ray Bodnar said.

DRAVOSBURG

Man sues over faulty monitor

A Dravosburg man who claims he was jailed for four weeks at the Shuman Juvenile Detention Center after his electronic monitoring bracelet malfunctioned has sued the Allegheny County Monitoring Program, its supervisor and the company that makes the monitors.

Jeremy Cohlhepp, 18, claimed in a suit filed yesterday in U.S. District Court that he was held at Shuman between Oct. 25 and Nov. 22, 1994. As a result, he said, he missed 24 days of classes during his junior year at McKeesport High School.

His attorney, W.J. Helzlsouer, said Cohlhepp graduated from McKeesport High School in June. He wouldn't say why Cohlhepp was in the juvenile justice system, and the lawsuit also didn't specify why Cohlhepp had to wear the electronic monitor.

Cohlhepp, who had been on monitoring since June 30, 1994, appeared for a detention hearing Oct. 27 after the device indicated he was not at home Oct. 25. Cohlhepp insisted that he was at home and that the device malfunctioned, and tests by the manufacturer later showed it produced false warnings.

Everett F. McElfresh, who supervises the county's monitoring program, declined comment yesterday.

Exhibit 12

De Soto Sun, August 5, 1999 article titled Ankle Monitors Can't Guarantee Criminals Won't Walk, Ex-Technician Says – Demonbruen Faced Repeat Offenders During Stint Installing Home-Arrest Bracelets

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Ankle monitors can't guarantee criminals won't walk, ex-technician says - Demonbruen faced repeat offenders during stint installing home-arrest bracelets

DeSoto Sun (Arcadia, FL) - Thursday, August 5, 1999

Author: GREG MARTIN ; Staff Writer ; You can e-mail Greg Martin at gmartin@sunletter.com

The fact that the suspect in the March 9 murder of a 19-year-old Punta Gorda woman is a convicted sex offender who was supposed to be under house arrest at the time doesn't surprise Darrell Demonbruen.

Area convicts routinely violate house arrest terms -- despite the fact they are required to wear electronic monitoring devices, he said.

Demonbruen ought to know.

The Charlotte County firefighter moonlighted from November 1998 to February 1999 installing the electronic monitoring devices.

The devices consist of an ankle shackle and a receiver connected to the defendant's home phone line. If the shackle travels beyond a certain range, an alarm signal is sent to a control center, which notifies area probation agencies.

Demonbruen earned $20 for every ankle shackle and receiver machine he installed. His district included five counties from Manatee to Collier.

He estimated as many as 75 percent of the juvenile defendants and an unknown number of adults he had contact with routinely violated the conditions of their house arrest terms.

"They're a waste of taxpayers' money," he said. "The kids will find ways to get out of them."

Often, parents and employers would provide excuses for the wayward defendants, he said.

"They wouldn't want their son to get in trouble," he said

About a dozen defendants merely cut off the ankle shackles and discarded them.

Others, however, were more sophisticated. They'd use special pliers available in hardware stores to remove the devices without setting off the alarms.

Demonbruen said they learn about those methods while in jail or juvenile detention.

Tampering with a monitoring device can send juvenile offenders back to juvenile hall for up to five days or longer if a judge deems it necessary, officials said.

Adult violators can also be sent back to prison.

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Electronic monitoring bracelets often in short sup...

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But sometimes, Demonbruen said, the juveniles found the 70-bed Juvenile Detention Center in Fort Myers a better home than their real homes. They'd violate house arrest in order to get sent back to jail, he said.

"One girl told me she wanted to go to jail because her home had no structure," the firefighter said. "She didn't know when she'd get thrown out, or evicted, or when her parents might be coming home."

Demonbruen said he knows of one armed robbery defendant who told his father he felt secure in jail. So, he used a shotgun during the commission of the crime in order to add five years to the prison term, the firefighter said.

"I feel like it's breeding career criminals," Demonbruen said of the system.

Demonbruen was interviewed a week after the arrest of Wayne Scott Harbison, 30, of Punta Gorda. He's accused of raping and stabbing to death 19-year-old Sonya Santiago of Punta Gorda.

Harbison was convicted in 1993-94 of burglary, forgery and an attempted rape with a deadly weapon. The crimes occurred in Monroe and Sarasota counties.

He was paroled to nine years of community control, which means house arrest, in June 1998. The conditions required him to leave home only for work at Monty's Restaurant, a pizza shop a mile away.

Harbison's probation file indicates that his monitoring device was frequently sending alarms indicating he was out past working hours -- both before and after the murder.

But, Harbison's boss at Monty's Pizza would provide documentation stating Harbison was working late, said a local probation supervisor, Manley Jacquiss.

Documents to indicate whether Harbison's monitoring device showed he was outside his house on the night of the murder were unavailable Wednesday, said Department of Corrections Spokeswoman Jo Ellyn Rackleff.

She said Charlotte County Sheriffs detectives have seized those records as evidence.

At least one of Demonbruen's former house arrest clients also went on to commit a murder.

"That's (Pedro) Pascual Francisco," Demonbruen said. "He was violating his house arrest two to three times per week."

Demonbruen said Francisco lived in a migrant camp in which there'd be 20 people living in a small house. He described the squalid facilities:

"There was a family of eight living in one room. They had a file cabinet for a dresser with a television for recreation.

"There were roaches crawling all over everything. And there was fight going on in another room while I was putting the bracelet on Pascual."

On May 17, however, Francisco, 18, was free to pick up a female and drive out on Country Lake Road in eastern Lee County.

Francisco apparently got his van stuck and went to a house for aid. The resident called police.

Francisco then told sheriffs dispatchers he thought his female passenger was a prostitute. She had asked him for money and began hitting him when he refused to pay.

"He said he did not mean to hurt the female," the report states.

The woman was found face down, strangled about 25 feet from where Francisco's van was stuck in the sand.

Another area firefighter who installs the monitoring devices said he feels the violations are few, however.

John McMahon, a battalion chief with the South Trail Fire Department in Lee County, took over Demonbruen's job when he left in February.

McMahon said of "hundreds" of installations, only a handful have walked away.

And Anita Pedersen, spokeswoman for **BI Inc** ., which supplies 70 percent of the monitoring devices used nationwide, pointed out that the devices are only as good as the state's will to enforce the penalties for violations.

In Charlotte County, only four of 88 registered sex offenders are electronically monitored.

Statewide, only 210 of 8,700 sex offenders are electronically monitored, according to the Florida corrections department.

Nationwide, a half-dozen companies are monitoring an estimated 50,000 convicts.

A 1997 federal study provides the reason for the popularity: the average cost of a federal prison bed was $64 per day, while the cost of home confinement supervision and monitoring cost only $18 per day.

The ankle bracelets used in Southwest Florida cost about $500 each and the monitoring machine as much as $2,200.

The state typically state rents the machines, from one of several private providers, for between $3 and $5 per day.

Record Number: *1082453A4D128A26*
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Ankle monitors can't guarantee criminals won't walk, ex-technician says - Demonbruen faced repeat offenders during stint installing home-arrest bracelets

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Exhibit 13

The Denver Post, October 2, 1994 article titled Device Revolutionizes Penal Industry Home Arrest Saves Space and Money

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Device revolutionizes penal industry Home arrest saves space and money

The Denver Post - Sunday, October 2, 1994

Author: Scott Maxwell The Associated Press

BOULDER - As old as civilization, jails originally once were built for punishment and banishment. Then, early this century, reform-minded leaders decided prisoners needed a dose of

rehabilitation.

Now, the day has arrived when many convicts may not have to spend time behind bars at all.

A rubber-coated bracelet adapted by BI Inc . of Boulder from technology used to track dairy cows is revolutionizing the prison industry.

The era of "Big Brother" has arrived - electronic home arrest and monitoring. Home-arrest prisoners wear an ankle bracelet with an electronic transmitter that tracks their movements and signals a monitoring center when they go astray.

Starting with its cow-monitoring technology, BI has become the nation's leading provider of both electronic arrest equipment and monitoring services. It provides 65 to 70 percent of the equipment and monitors 45 to 50 percent of the prisoners.

"It frees up prison space for the "three strikes and you're out' type of offenders," said David Hunter, president and chief executive officer of BI Inc . "So you're getting tough on the people who need tough and you're rehabilitating the people who at least still have a shot at getting back into society."

BI last year won an exclusive contract to provide equipment and monitoring services for the U.S. Probation Office, which has about 1,400 offenders under electronic monitoring. The company also has contracts with corrections officials in at least 46 states, said BI spokeswoman Joanna Manley.

The ankle transmitter sends an encoded signal to an electronic receiver installed in the offender's home whenever the offender is within range of the receiver - usually about 150 to 200 feet. The receiver uses a modem to signal a host computer at a monitoring center when the offender travels outside the range of the receiver.

The host computer, programmed with the offender's schedule (for work, counseling session and other court-approved activities) alerts the proper authorities - probation officers, police or the monitoring center staff - when an offender's activities dont match the schedule.

Federal, state and local corrections agencies across the country are using the system in increasing numbers. They say it reduces costs and recidivism rates, frees up prison space needed for more violent or hardened convicts and allows offenders to maintain community

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and family ties, corrections officials say.

"Certainly home arrest has revolutionized corrections," Hunter said. "To the degree that we've gone from an abacus to a 486 computer. I'd say that's revolutionary."

More than 67,000 people in all 50 states, Guam and Puerto Rico currently are under electronic monitoring.

One reason electronic arrest is so attractive is its low cost - less than half that of keeping the same offender in a federal prison, said Robert Altman, administrator of the U.S. Probation Office's home confinement program.

The cost per day, per offender of electronic monitoring, including equipment and supervision, is $19.55, Altman said. In 1992 (the latest year for which figures are available), the cost of keeping an offender in prison was $56.84 a day, he said.

Electronic home arrest allows prisoners to keep their jobs - which means they can pay restitution, child support and alimony; add to the local tax base, and pay at least part of the cost of their home arrest.

"Of all the money we spend on home confinement, we collect 43 percent from the offenders," Altman said of the federal probation program. "We are able to offset the cost by 43 percent. And (that percentage) is going up."

Hunter said electronic monitoring also reduces recidivism.

He said an Illinois Governor's Task Force report released last year drew a correlation between electronic home arrest and reduced recidivism.

"I'd hold that up as an example that people are taking a hard look at electronic home arrest. These are not free rides," Hunter said.

Hunter said BI's electronic arrest concept grew from technology first developed to identify dairy cows and keep track of their diet and milking schedules. The system uses radio frequency technology that allows a computer to communicate with remote radio chips, reading information from the chip and writing updated information to the chip as necessary.

BI also offers a line of companion products: a device that can detect alcohol on the breath of offenders in their homes; a hand-held device that can detect when electronic monitoring offenders are inside a building, such as a home, school or workplace; a monitoring service, and jail management software.

Caption: PHOTOS: Associated Press/Joe Mahoney KEEPING TAB: BI CEO and President David Hunter, above, holds alcohol level monitor his company supplies for home arrest programs. At left, employees at BI's control room in Boulder study the monitors that track parolees and home arrest prisoners.

Edition: *Rockies*
Section: *Denver & The West*
Page: *C-2*
Index Terms: *prisoners ; companies ; products ; computers ; metro*
Record Number: *DNVR229197*
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Device revolutionizes penal industry Home arrest saves space and money

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Exhibit 14

Trial Testimony of Fritz Ebenal, *State v. Jones*, June 23, 1998

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

STATE OF ARIZONA, Plaintiff, vs. ROBERT JONES, Defendant.	)	NO: CR-57526

BEFORE: HON. JOHN S. LEONARDO
Division 10
Pima County Superior Court

APPEARANCES:

FOR THE STATE: DAVID WHITE
Deputy County Attorney

FOR THE DEFENDANT: DAVID P. BRAUN
ERIC A. LARSEN

TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

June 23, 1998

REPORTED BY:

TONI HENSON
Official Court Reporter
Division Ten
Pima County Superior Court

DEFENSE

FRITZ EBENAL,

having been first duly sworn to state the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHITE:

Q. Sir, would you tell the jury your name and spell the last name for the court reporter.

A. It's Elfred Ebenal. The last name is spelled E-b-e-n-a-1.

Q. Do you go by Fritz sometimes?

A. I go by Fritz.

Q. What is your occupation?

A. I'm a parole officer.

Q. For what organization or jurisdiction?

A. For the State of Arizona Department of Corrections.

Q. And were you employed as a parole officer in January of 1996 and thereafter?

A. Yes.

Q. In that capacity, did you meet a person named David Nordstrom?

A. Yes.

Q. How did you meet David Nordstrom?

A. David Nordstrom was released to me as a

parolee.

Q. What were Mr. Nordstrom's conditions of parole?

A. Mr. Nordstrom had a special release. He was home arrest, which meant that he was going to be electronically monitored in addition to the normal parole conditions.

Q. Tell us about the -- may I approach, Your Honor?

THE COURT: Yes.

Q. Tell us about the electronic monitoring system. Describe that for us.

A. Okay. The electronic monitoring system is a two-piece unit. One is about the size of a cigarette pack attached to a bracelet that goes around a person's ankle on a rubber-type band, and it's called the transmitter.

And there's a computer with a modem in it that is plugged to the individual's wall in the house, and it picks up the transmitter signals to indicate whether or not the person is home and when he leaves.

Q. Okay. We don't have a picture of that and I forgot to ask you to bring one, so I'll see if I can diagram that, all right? You helped me with this before, right?

A. Yes.

Q. It's not like I am a genuine artist.

So first, the thing that the person on parole wears, what do you call that?

A. Just a bracelet. We call it just a bracelet.

Q. What does it look like?

A. It looks just like this. The band is the same color, it's about the same width, only there's a black box on it about the size of a cigarette pack.

THE COURT: The record will reflect that the witness is indicating his wristwatch.

THE WITNESS: This wristwatch, yes.

Q. Okay. So about the size of a cigarette pack and it's got a band around it?

A. A rubber band that's just about the width of my watchband.

Q. Like that? (Diagram.)

A. Yes, sir.

Q. And where does that go?

A. That goes around the individual's ankle.

Q. That's the monitor?

A. That's the transmitter. It's battery operated.

Q. And what's the other part?

A. The other part is a little computer with a modem in it. It has a phone line and a power cord for electricity.

Q. What does that look like?

A. It's about the size of a good-sized text book.

Q. Okay.

A. Eight-and-a-half by eleven and about an inch thick.

Q. Something like that? (Diagram.)

A. Yes, sir.

Q. All right. A little thicker than an inch. And what do you call that device?

A. I call it the FMD, field monitoring device.

Q. Field monitoring device, okay. And this is attached to a telephone?

A. It's attached to a phone outlet which is then attached -- the phone is also attached to that too. That goes to the wall and the phone goes to that.

Q. Okay. So this goes to the wall?

A. Yes, sir.

Q. And the phone is attached to this thing?

A. The phone is attached to that.

Q. All right. I'm going to draw a very bad picture of a phone. And the phone is attached to the

FMD?

A. Yes.

Q. So how does this work?

A. Well, what happens is the individual is attached to this device. Each one has a serial number.

Q. Attached to what device?

A. He has put on the bracelet, okay, and given the FMD and is told to go home. Once he goes home, he plugs it in, and as soon as he does, the transmitter is automatically picked up by the FMD and the phone line calls us and tells us that he's there and it's hooked up and whether or not it's a good connection or not.

Q. And this is all hooked to some kind of computer, is that the situation?

A. Yes.

MR. WHITE: What's the next number, Madam Clerk, 49?

THE CLERK: Yes.

Q. We'll put a 49 on here so we'll know what number we're talking about.

So does this transmit some kind of signal to the FMD?

A. It's just like a radio signal.

Q. Okay. And it gets picked up by the FMD?

A. Yes, sir.

Q. So how does that work? When the parolee wears this, you can tell where the parolee is as he moves around town, is that the way it works?

A. No, sir.

Q. Okay.

A. Only when he's in the proximity of that FMD will it indicate that he's there. Or when he's leaving, the same thing, he gets out of range and it tells us that he's gone.

Q. Okay.

A. Whether it's a legal movement or whether it was an unauthorized movement.

Q. So this will tell you when he leaves?

A. Yes, sir.

Q. And is the computer programmed to alert you if he leaves at a time that he's not supposed to leave?

A. It sure does.

Q. And what's that called?

A. Well, it's hooked up -- the way it works is we get a pager and a pager will notify us. It has a code on it to tell us what the individual just did and then we can look it up and see what the code actually is.

Q. Okay.

A. Or if it's after hours, we have Central

Communications that gets the same signal and then they turn it over to us.

Q. Can you get your computer to print out a report of the number of times a parolee left when they weren't supposed to leave?

A. Yes, sir.

Q. Now, what happens if -- is this placed around the parolee's ankle, did you say?

A. Yes, sir.

Q. What if they just slip it off? Can't they just slip it off and leave it at home?

A. No, sir, you can't slip it off.

Q. Why not?

A. You just can't. I've tried it and you can't do it.

Q. It's not elastic?

A. No, it's not. As a matter of fact, it's got some stainless steel wires that go through the center of the band, several of them, so it doesn't have any flexibility. It does not flex.

Q. Why can't they just cut it off?

A. Well, if they cut it off, we're going to get an alarm for tampering. It's going to notify us that they cut it off.

Q. Can't they just unplug the FMD from the

power or from the telephone?

A. Sure, they could, but we're going to get another alarm, another notification that there's a problem, that he just unhooked it or whatever he did.

Q. And is your computer programmed, then, to print out a list of the times you get someone leaving when they're not supposed to or a power loss or a loss of connection with the telephone?

A. Yes, sir.

Q. Have you seen that kind of printout as it relates to David Nordstrom?

A. Yes, sir.

Q. Your parolee.

Showing you State's 45. Is that a copy of a partial list of the printout related to David Nordstrom?

A. Yes, this is an alarm status report.

Q. Does that relate to David Nordstrom between the times that you started supervising his parole in January '96?

A. Yes.

Q. And what's the end date on that?

A. August '96.

Q. Now, he was supervised beyond that?

A. Yes.

Q. But at least as from January to August '96, is that an accurate list of the electronic monitoring violations as it relates to David Nordstrom?

A. Yes, I believe those are accurate.

Q. With the exception of the orange highlighting that we put on there, that's not on your copy, right?

A. Right. No.

MR. WHITE: Move the admission of 45.

MR. LARSEN: No objection.

THE COURT: Exhibit 45 is admitted.

MR. WHITE: Your Honor, I've made copies of 45 so that the jury and the Court and defense counsel can all look at them as we talk about them.

May I distribute them?

THE COURT: Yes, you may.

BY MR. WHITE:

Q. Now, Mr. Ebenal, we've highlighted in orange, and just so the record is clear, that's not something that appears on the original Parole Board records, right?

A. Right, sir.

Q. Just so the record is clear, we've highlighted just the first entry for each month so we can find things easier.

1 Can you tell us when you first started
2 supervision of David Nordstrom.
3 A. January 25, 1996.
4 Q. And that's highlighted there, the very
5 first entry. Do you see that?
6 A. Yes, sir.
7 Q. Walk us through that entry. Tell us what
8 all that stuff means on that January 25th entry.
9 A. That is when we hooked it up. And above
10 the highlight, which looking at it, it says "Hello,"
11 and that's what the computer tells us, saying that he
12 did get an accurate or a complete hookup and it was
13 good. And it tells us the time and the date that it
14 happened.
15 Q. And what time are we talking about, 13:56?
16 A. That was the time it was received. The
17 time that it actually happened was -- yeah, 13:56. We
18 got it at the same time.
19 Q. Now, is that military time?
20 A. Yes, it is. That would be 1:56 in the
21 afternoon.
22 Q. 1:56 p.m., shortly before 2:00 in the
23 afternoon?
24 A. Right, sir.
25 Q. Now, what's the next entry there? See

where it says 2-5-96?

A. Yes, sir.

Q. Tell us what that one is.

A. That was a curfew violation on 2-5-96. And let's see what time it happened. Our time was 5:52 and it was received at 5:59.

Q. What does that mean, 5:52? He left the house at 5:52 in the morning?

A. Yes, an unauthorized leave.

Q. Now, was he allowed to leave for work in the morning?

A. He was.

Q. All right. Was there a certain time that he was allowed to leave?

A. There was a certain time.

Q. If he left before that time, would you get a report of a violation?

A. Yes.

Q. And is that what this is?

A. That's what that is.

Q. He left a few minutes early?

A. It looks like: His ride showed up early.

Q. And you guys get notified of that?

A. Yes, sir.

Q. And there's a record of it?

A. Yes, sir.

Q. Let's go down to the first entry in March, March 1st. Do you see that, the second highlight that goes all the way across the page there?

A. Yes, sir.

Q. Tell us about that.

A. Another curfew violation for a leave at, let's see -- wait a minute, it's got two.

Okay. It happened at 7:42 and it was received at 7:49. So he left early again.

Q. Okay. So we could keep track of when he left when he shouldn't have left?

A. Right.

Q. Now, you talked about if somebody unplugs the phone or unplugs the FMD from the electrical outlet, is that going to show up on a report like this?

A. Yes, sir. If you look down to, what is that, 4-27-96, there was a power loss and that is what will happen if you unhook it or unplug it from its power source. And then he plugged it back in. It was a short period of time. Minutes, just a minute's worth of time he did it.

Q. The 4-27 --

A. Maybe he tripped over it or something.

Q. Now, when you get something like that, does

1 somebody from your department call to see what's going
2 on?
3 A. Yes, sir, we sure do.
4 Q. Now, in addition to this document, did you
5 keep track of what David Nordstrom's specific curfew
6 was?
7 A. Yes, sir, I did.
8 Q. Was it always the same?
9 A. No, sir, it was not.
10 Q. It changed?
11 A. Yes, sir.
12 Q. Is there a document that you use to keep
13 track of that?
14 A. Well, there's a report that the computer
15 can print if you want a copy of this curfew schedule.
16 Q. Did you try to print out all those copies,
17 all those reports?
18 A. When there was a change, we would print a
19 new one.
20 Q. Okay. Explain what you just said. I'm not
21 sure I understood.
22 A. Well, he has a weekly schedule that goes
23 from, say, Sunday to Saturday, and it would have his
24 whole work schedule, his programming schedule for
25 Alcoholic's Anonymous or whatever he was taking, and

maybe some personal time to take care of little things, shopping and whatnot. And we would adjust it every week according to what his needs were.

Q. When you adjusted it or changed it, would you then print out a copy of that so you would have it for your records?

A. Yes, sir.

Q. All right. I'm showing you 46. Is that an example of the kind of thing we're talking about?

A. Yes, sir.

Q. Showing you 46A. Is that an enlargement or a blowup of State's 46?

A. Yes.

Q. Is State's 46 an accurate copy of the curfew report that would be in your files regarding David Nordstrom?

A. Yes, sir.

MR. WHITE: Move the admission of 46.

MR. LARSEN: No objection.

THE COURT: Exhibit 46 is admitted.

MR. WHITE: And is 46A an accurate blowup, a copy of 46?

THE WITNESS: It is.

MR. WHITE: I move the admission of 46A.

MR. LARSEN: No objection.

THE COURT: Exhibit 46A is admitted.

MR. WHITE: May I publish that to the jury?

THE COURT: Yes.

BY MR. WHITE:

Q. I'll ask you while I'm at it, 49 is obviously a childish drawing of these devices, but does it sort of give us a picture of the way they interact?

A. Actually, it's pretty accurate.

MR. WHITE: I'd move the admission of 49 for illustrative purposes.

MR. LARSEN: No objection.

THE COURT: Exhibit 49 is admitted.

Q. Mr. Ebenal, I'm going to ask you to step up here and explain to the jury what we're looking at. I'll give you a pointer there.

A. Okay. This is weekly schedule. Sunday, Monday, Tuesday, Wednesday, Thursday, Friday and Saturday. (Indicating.)

Okay. The stars or the asterisks indicate that that's a period that is closed, which means that he's either home or is he home more or less. Unless something's really wrong, he's home.

The open areas are when he's out. For example, on Sunday from 10:00 a.m. until 4:00 o'clock.

Q. And this number across the top here?

A. That's the time.

Q. And, again, 14, 15, 16, you're talking military time?

A. Based on 24 hours.

Q. So 16 would be 16:00 or 4:00 o'clock in the afternoon?

A. Yes, sir.

Q. Just so we're clear, on 46, which is a copy, see how the margin is cut off here?

A. Yes, sir.

Q. Sunday, Monday, Tuesday --

A. Yes, sir.

Q. And that's been written in for clarity's sake, but is it accurate to what is written in there?

A. Right, it's accurate. This was printed on June 7, 1996.

Q. How do you kow that this was printed June 7, 1996?

A. Because the date is indicated in the right-hand corner here.

Q. Okay. Do you know what day of week -- does this indicate what day of week that is, June 7, 1996?

A. Normally, it ends on Friday and it does say Friday down here, but I don't know who wrote that there.

Q. That's not your handwriting?
A. No.
Q. All right. So we're looking at a curfew printout dated June 7th. For what week are we looking at here?
A. This would be the 8th, 9th, 10th, 11th, 12th, 13th and 14th. Or did I do that wrong? It's been a while since I've done this. I do regular parole now.
Q. So is June 7th this Friday here?
A. This starts on Friday. 6, 7, 8, 9, 10, 11, 12.
Q. Now, you're going backwards.
A. I'm sorry. The other way around. 8, 9, 10, 11, 12, 13. Sorry.
Q. That's all right.
Now, there's two screens shown on here or there's two parts to this. What's the deal with that?
A. Well, Mr. Nordstrom, this was for a curfew exception. He wanted to work on Sunday.
So what we do is we go in and make -- these are for an exception.
Q. These right here? (Indicating.)
A. On Sunday. He wanted to work from 7:00 to 10:00, all the way to like 4:15 or 4:30. I can't tell

exactly.

I put it in and it automatically takes it for one day only. And then once Sunday is over, it erases and it goes back to its regular 10:00 to 4:00.

Q. So if we're looking at this schedule, and is this Friday, the 7th of June?

A. Yes.

Q. So that's the Friday, the 7th. Where is the 8th? The Saturday, then?

A. Saturday.

Q. Where is the 9th?

A. Sunday.

Q. So it rolls that way. And then Monday is the 10th?

A. Yes, sir.

Q. Tuesday is the 11th?

A. Right.

Q. Wednesday is the 12th?

A. Right.

Q. Thursday is the 13th?

A. Right.

Q. Can you tell us, what was David Nordstrom's curfew on Thursday, the 13th of June?

A. It looks like -- well, exactly, it's 4:45.

Q. In the morning?

A. In the morning.
Q. He could leave at 4:45.
A. For work, right. And it ended at 7:15.
Q. In the evening?
A. Yes.
Q. He had to be home at 7:15?
A. Yes.
Q. What happens if he's not home at 7:15?
A. The computer would indicate that he's not there and there would be an alarm.
Q. Would that show up on the alarm report that we've admitted as State's 45?
A. Yes, sir, it would.
Q. Okay. Would you see if you can find a violation, where he violated his curfew on June 13th?
A. No, sir. There was not a violation for June 13th.
MR. WHITE: What's the next number going to be, Madam Clerk?
THE CLERK: I think we have used 49, so it would be 50.
Q. Off the top of your head, do you know what Mr. Nordstrom's curfew was on May 30th?
A. Not off the top of my head.
Q. Showing you what's going to be marked as

State's 50. Are we looking at the same kind of document, an updated curfew document just like State's 46A there?

A. Yes, sir.

Q. What is the date on that one?

A. This one was printed on May 3rd.

Q. If there are no other curfew exceptions in the file as relates to Mr. Nordstrom, up from May the 3rd to May 30th, would that tell you what his curfew was on May 30th?

A. What happens with curfews is, I don't print the new schedule until there's a change.

Q. Right.

A. If I need to make a curfew exception, I print a new curfew.

Q. Right.

A. Even though it's only going to be just an exception and it's going to be gone the next day. Either that, or I'm going to make a permanent schedule change, and I'm going to add a new change to it and print the whole thing.

Q. I understand.

A. Okay.

Q. What is his curfew, at least according to that document, in May?

A. In May?

MR. LARSEN: Object to relevance.

THE COURT: Sustained. Can you not limit it just to the date in question?

MR. WHITE: Sure.

THE WITNESS: Which date did you want?

BY MR. WHITE:

Q. The 30th.

A. Okay.

Q. The 30th is a Thursday.

A. Right. And without seeing the whole file, I can't give you that answer. But according to this --

MR. LARSEN: Objection to whatever that is because it would be speculation.

THE WITNESS: I don't know what the whole file is. This starts on the 3rd and only goes to 3, 4, 5, 6, 7, 8, 9. This goes to the 9th.

BY MR. WHITE:

Q. Okay. So you'd have to look at the whole file.

A. Have to see if there was any more --

Q. Let's go about it this way.

Can you tell us, is there a record that he was in violation of his curfew, according to the alarm report, on May 30th?

A. No. No violation on here.

Q. Mr. Ebenal, based on what you have looked at in your previous examination of David Nordstrom's file, do you have an opinion as to whether he was outside of his home June 13th past 8 o'clock?

MR. LARSEN: Objection. Irrelevant. The exhibits speak for themselves.

THE COURT: Sustained.

BY MR. WHITE:

Q Do the exhibits indicate whether he was out of his home on June 13th after 8 o'clock pm?

MR. LARSEN: Objection. Asked and answered.

THE COURT: Overruled. You may respond.

A The documents that I have indicate that he was home.

BY MR. WHITE:

Q That he was home?

A Yes, sir.

Mr. WHITE: Thank you. That's all I have.

THE COURT: You may cross-examine.

CROSS-EXAMINATION

BY MR. LARSEN:

Q Isn't it true that mistakes can be made?

A Yes, sir, they do.

MR. LARSEN: Thanks. Nothing further.

THE COURT: Redirect?

MR. WHITE: Briefly.

REDIRECT EXAMINATION

BY MR.WHITE:

Q Is there a possibility of a mistake in regard to whether David Norstrom was in violation of his curfew on June 13,1996?

MR. LARSEN: Objection. Calls for speculation.

THE COURT: Sustained.

BY MR. WHITE:

Q Well, what would have had to happen if it's a mistake to say he was at home?

What would have had to happen past June 7 and June 17?

A Okay. The curfew report indicates no violation. According to that, he was home.

Q Did Mr. Nordstrom not go to work for awhile?

A Yes, sir?

Q Showing you what has been marked as 51.

Is that your chronological log relating to Mr. Nordstrom?

A Yes, sir.

Q Just so the jurors know what we're talking about by chronological log, what do you mean?

A Any contact with him or others. We do our best to try to try to maintain this in our log.

Q Does your chronological log indicate something happened to him on 6-21?

A Yes, sir. We noted the assault, stabbing.

Q Where he got stabbed?

A Yes, sir.

Q Does it have in here when he might have gone back to work after the stabbing?

A I have him starting at Valezuela Drywall on the 27th of June.

Q June 27, he's starting at Valenzuela Drywall?

A Yes, sir.

MR. WHITE: Okay. Good enough. Thank you, Judge.

RECROSS-EXAMINATION

BY MR. LARSEN:

Q You indicated on June 21 Mr. Nordstrom was stabbed, correct?

A Yes, sir.

1 Q You got a couple of markedly different
2 versions from Mr. Nordstrom as to his stabbing incident
3 correct?
4 A That's correct.
5 MR. WHITE: That's irrelevant and I object.
6 THE COURT: Sustained.
7 MR. LARSEN: I have no further questions.
8 THE COURT: Any reason this witness can't be
9 excused?
10 MR. WHITE: No.
11 THE COURT: Thank you. You may step down,
12 sir. You are excused.
13 We'll take the evening recess now. ladies
14 and gentlemen. We'll ask you to return tomorrow
15 morning again at 10:30.
16 Our schedule tomorrow is going to be a
17 little bit different than what we have been doing.
18 There is something that I think both counsel and the
19 Court have to attend that's come up in the middle of
20 trial and that is at 2 o'clock.
21 So we will go tomorrow until about one
22 o'clock and then we recess for the day so that we can
23 take care of that as well as some other legal matters.
24 And then if it's necessary, we'll ask you to return
25 then on Thursday morning.

Exhibit 15

Minute Entry, *State v. Jones*, Pima Co. No. CR-57526, September 18, 2002

CC

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FILED
September 19, 2002
PATRICIA A. NOLAND, Clerk
PC Bruner
Deputy

ARIZONA SUPERIOR COURT, PIMA COUNTY

JUDGE: HON. JOHN S. LEONARDO

CR-57526

COURT REPORTER: NONE

DATE: September 18, 2002

THE STATE OF ARIZONA,
Plaintiff,
vs.

ROBERT GLEN JONES, JR.,
Defendant.

MINUTE ENTRY

Ruling on Petition for Post-Conviction Relief, in Chambers:

The Court has reviewed the Petition for Post-Conviction Relief filed February 15, 2002, the Memorandum in Support of Petition for Post-Conviction Relief filed February 15, 2002, the Response to Petition for Post-Conviction Relief filed June 21, 2002, the Supplement to Response to Petition for Post-Conviction Relief and the Motion to Permit Filing of Supplement to Response to Petition for Post-Conviction Relief both filed July 22, 2002, the Second Supplement to Response to Petition for Post-Conviction Relief filed August 15, 2002, the Reply in Support of Petition for Post-Conviction Relief filed August 27, 2002, and the record.

Following a trial by jury, Petitioner Jones was convicted of six counts of first-degree murder, one count of first-degree attempted murder, three counts of aggravated assault, three counts of armed robbery, and two counts of first degree burglary. The Trial Court awarded consecutive death sentences for the first-degree murder counts. The Arizona Supreme Court reviewed the case on direct, automatic appeal and, in an

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opinion dated June 15, 2000, affirmed all convictions and sentences. The decision was appealed to the United States Supreme Court and certiorari was denied on April 16, 2001. In his Memorandum in Support of Post-Conviction Relief, Petitioner contends: (1) that he is entitled to relief on the grounds that his constitutional rights to a fair trial and due process under the Fifth, Sixth, Eighth and Fourteenth Amendments were violated by misconduct by the Prosecution, (2) that material new facts exist that probably would have changed the verdict or sentence, (3) that he received ineffective assistance of counsel at trial in violation of his rights under the Sixth Amendment, (4) that no reasonable fact-finder would have found him guilty of these offenses beyond a reasonable doubt or that the court should not have imposed the death penalty, (5) that his appellate counsel was ineffective in violation of his rights under the Sixth Amendment, (6) that he was denied his rights under the Sixth and Fourteenth Amendments when he was denied a jury trial on aggravating and mitigating factors, (7) that the decision in *Spears v. Stewart*, 267 F.3d 1026 (2001) is unconstitutional and cannot be applied to this case, (8) that Arizona's Death Penalty Statute violates the Eighth Amendment because it does not sufficiently channel the sentencer's discretion, and (9) that his right to equal protection under the Fourteenth Amendment was violated when he received the death penalty for acts that would not have received so harsh a penalty in other states. Petitioner requests that his convictions be set aside but, at a minimum, that his sentences be reduced. Additionally, he requests an evidentiary hearing on each issue contained in the Petition.

Finding that Petitioner presents no colorable claim and that no purpose would be served by further Rule 32 proceedings, the Court hereby dismisses bis Petition pursuant to Rule 32.6(c), 17 A.R.S. Rules of

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Division Manager

Criminal Procedure.

I. Violation of Constitutional Rights to a Fair Trial and Due Process

Petitioner initially contends that the Prosecutor knowingly and intentionally engaged in egregious misconduct in order to obtain a conviction at any cost. Toward that end, he alleges that the Prosecutor presented perjured testimony, made a false avowal to the court, failed to disclose exculpatory evidence, mislead Petitioner's Counsel about the status of the investigations, and deliberately phrased his questions to witnesses so as to mislead the jury with the answers. Petitioner further alleges that the Prosecutor was willing to go to extreme measures in order to prop up the witness, Lana Irwin, whose testimony Petitioner argues was absolutely critical. Petitioner claims he was denied his rights to a fair trial and due process by having the jury impermissibly tainted against him.

Each of the six specific issues included in this section of the Petition is precluded under Rule 32.2(a)(3), Arizona Rules of Criminal Procedure, because they were not raised at trial or on direct appeal. Additionally, The Arizona Supreme Court has repeatedly held that a defendant must voice his objection to arguments that are objectionable, and failure to do so constitutes a waiver of any right to review. *State* v. *Holmes*, 110 Ariz. 494, 520 P.2d 1118 (1974). Also see *State v.* Taylor, 109 Ariz. 267, 508 P.2d 731 (1973) (listing cases in which the court refused to consider allegations of improper statements by prosecution when defendant failed to make timely objection). Moreover, even if the state did somehow mislead the jury, defendant waives his objection if he failed to make it at trial. *State* v. Kemp, 185 Ariz. 52, 912 P.2d 1281 (1996). Absent fundamental error, failure to object at trial renders a later objection moot.

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Division Manager

State v. Cook, 170 Ariz. 40, 821 P.2d 731 (1991). In order to constitute fundamental error, the prosecutor's comment had to be so egregious as to deprive the defendant of a fair trial, and to render the resulting conviction a denial of due process. *State* v. Dumaine, 162 Ariz. 392, 783 P.2d 1184 (1989) citing *United States ex rel. Shaw v. De* Robertis, 755 F.2d 1279 (7th Cir. 1985). In the alternative, the Court finds that, if each claim were considered on its merits, relief would also be denied based on substantive grounds.

A. Deliberate Subornation of Perjury Involving a Kicked-In Door

Petitioner initially argues that Prosecutor David White deliberately solicited testimony from Lana Irwin that he knew to be untrue and later in the trial further solicited false testimony from two detectives to corroborate the testimony given by Irwin. The testimony concerned a door to a storage area in the Moon Smoke Shop. Eight months earlier, in the Scott Nordstrom trial, *State v. Scott Nordstrom*, 200 Ariz. 229, 25 P.3d 717 (2001), Detective Godoy had testified that the subject door was kicked-in by police officers after they arrived at the Moon Smoke Shop. In the Jones trial, Irwin testified that she learned of the kicked-in door when she overheard a conversation between Jones and Coates. In his testimony the day before, Detective Godoy had established that he found a kicked-in door when he arrived at the scene. Later in the trial, Detective Woolridge apparently corroborated Irwin's testimony about the door by testifying that Irwin told her about the kicked-in door during a pre-trial interview. Woolridge also testified that there was no testimony in the Nordstrom trial about a kicked-in door. The Court is aware that both detectives were intimately familiar with the details of the two cases, both attended the separate trials yet, during their testimony in the Jones trial, neither detective mentioned the fact that the subject door was kicked-in by

police officers. No objection was raised either at trial or on direct appeal.

In his Response to the Petition, Prosecutor White admits to a mistake by connecting Irwin's information about a door being kicked-in with the one forced open by the police but avows that it was wholly unintentionaL White claims possible confusion about the door because, in fact, there are two doors located in the same vicinity and he cites some evidence (i.e. "the photo of the bathroom door shows some kind of mark at the right height to be a kick mark") that indicates the second door may have been kicked by one of the intruders. But the Prosecution offers the Court no further substantiation of that claim. Additionally, White admits that although "some of the questions and answers were not technically correct," they were "literally true" and "essentially correct."

Taken in context, the admissions and omissions of the State witnesses may be explained as unintentional but the mistake was exacerbated by White's opening and closing arguments in which he apparently emphasized the testimony about the kicked-in door in order to bolster Irwin's credibility. While Petitioner sees collusion between a prosecutor and his witnesses to secure a high-profile conviction, the Court is unwilling to reach that conclusion. However, the Court is troubled by the inconsistency in the testimony between the two trials. In the Nordstrom trial, there is uncontroverted testimony that the police kicked-in the door. In the later Jones trial, an implication is developed through witness testimony (Irwin, Godoy and Woolridge) and through the opening and closing arguments that one of the intruders kicked-in the door. Petitioner argues this is significant because it is one of the key details from the overheard conversations that serve to bolster Irwin's credibility. On the other hand, the Court is aware that the

testimony about the kicked-in door was but one of the many correlations between Jones' statements overheard by Irwin and the facts of the crimes. It is highly probable that the great weight of evidence elicited at trial would have resulted in Petitioner's conviction even if Irwin had not testified about the kicked-in door. In the overall context of the evidence presented at trial, the Court is convinced that the testimony concerning the kicked-in door likely did not prejudice the Petitioner nor affect the verdicts. Therefore, the claim must be rejected on the merits.

Petitioner also alleges that the Prosecution failed to disclose two police reports which document that the subject door was kicked-in by the police. Reports prepared by Officer Charvoz and Sergeant Grimshaw, both dated 5/30/96, establish that Sergeant Grimshaw instructed Officer Charvoz to kick in the door to the storage room because the door was locked and they were unable to determine if there was possibly another victim or suspect inside. Petitioner claims that, because his attorneys did not have the reports, they did not have reason to realize that Godoy and Woolridge's statements were false at trial. The Court notes that, although the subject testimony may have been misleading and may have included some omissions, the record contains no substantiation that it was false. In the bar complaint filed on this matter, S. Jonathan Young, Plaintiff's appellate attorney, alleged that Plaintiff's trial attorneys, Eric Larsen and David Braun, were adamant that they did not receive the reports. Additionally, both Larsen and Young stated in Affidavits that they did not recall the two police reports being included with the material that was disclosed by the Pima County Attorney's Office. However, the record contains correspondence from David L Berkman, Deputy County Attorney, which documents subsequent discussions he had with Braun and Larsen in which

the two attorneys expressed some uncertainty about whether the two police reports were included with the disclosure materials. Also, the County Attorney presented an Affidavit from the assigned Litigation Support Specialist who verified that the two reports were stamped "FIRST DISCLOSURE, July 28, 1997" and disclosed to Eric Larsen on that date. In his Reply, Petitioner comments that the fact that a document is stamped "disclosed" proves nothing about whether or not it was actually sent to opposing counsel. While that may be true, the Court considers that, because the stamping is part of an orderly and seemingly reliable, long-standing institutional process, it creates a rebuttable presumption that the documents were disclosed. Finding that Petitioner's unsupported allegations fail to overcome the presumption, his argument on this point must be rejected.

B. Misconduct Involving "Red Room" and the Position of Arthur Bell's Body

Petitioner next contends that White, with the complicity of the detectives, deliberately mislead the jury into believing that Bell's body was found leaning back when the police arrived. He argues this was necessary to correlate with the testimony given by Irwin. No objection was raised either at trial or on direct appeal.

A review of the record shows that White did not mislead. The record includes sufficient evidence to support a reasonable conclusion that, when the intruders departed the Fire Fighters' Union Hall, Arthur Bell's body was slouched in a chair at the bar with his head leaning back. Of the police officers who first arrived on the scene, two specifically stated in their report that Bell's head was leaning back. Officer Braun wrote "I could see a male in a chair at the bar. His head was leaning back." Officer Butierez was more

explicit in his report: "A man was in a bar stool up by the front of the bar. He was leaning back in the stool with his head leaning back also." Two other officers, Gallego and Parrish, describe the body position as "slouched over the bar stool" and "slumped over sitting at the bar" but there is no reference to the position of the head. Additionally, Nat Alicata, the first person to arrive at the Moon Smoke Shop after the murders, initially reported that Bell was "sitting at the chair . . . slumped on the chair on the bar sort of sideways." Later, Alicata stated to an investigator that he found Arthur Bell's body in a chair leaning backwards. The statements by Braun, Butierez and Alicata provide persuasive evidence that Arthur Bell was leaning backward when first found. Finding that there is no credible evidence to support Petitioner's theory that Mr. Bell's body was moved or that Lana Irwin was provided information so that her testimony would be consistent with the "changed" body position, the Court rejects Petitioner's argument.

Next, Petitioner contends that the State improperly sought to bolster Lana Irwin's credibility by claiming that the "red room" was another detail that Irwin supposedly overheard from Jones that was not released to the public. It is clear from the record that Irwin did not learn of the room's color from the police. The chance that she may have seen the color photograph of the Fire Hall published by the Arizona Daily Star on December 3, 1997 does not rule out the possibility that Irwin first learned that the murders occurred in a red room when she overheard the conversations between Jones and Coates in the Summer of 1996.

In the allegations concerning the "red room" and the position of Arthur Bell's body, Petitioner has only presented conclusory allegations of prosecutorial misconduct and no credible evidence to substantiate his claims. Moreover, even assuming that Petitioner had proven prosecutorial misconduct, he has not met his

burden of establishing that the purported misconduct resulted in actual prejudice at trial. Failing to establish the presence of fundamental error on this issue, Petitioner's claim of prosecutorial misconduct must be rejected. *State v. Bible*, 175 Ariz. 549, 858 P.2d 1152 (1993), *State v. Atwood*, 171 Ariz. 576, 832 P.2d 593 (1992).

C. False Suggestion Regarding Sketches

Next, Petitioner alleges that Detective Salgado gave testimony that was intended to deliberately mislead the jury by conveying the false impression that Jones, David, and Scott Nordstrom were the only people who had been identified from the police composite sketches. No objection was raised either at trial or on direct appeal.

The court would reject this argument. The objectionable testimony cited by Petitioner occurred during Prosecutor White's redirect examination of Detective Salgado. Earlier, in Mr. Larsen's cross-examination of the witness, he had established that other people had come forward identifying people other than Jones from the composites. The Court notes that Robert Jones was on trial. Jones was a known associate of the Nordstrom brothers. In an earlier trial, Scott Nordstrom had been convicted of first-degree murder for the same crimes. White's redirect of Salgado appears to the Court as a reasonable line of questioning given Jones' connection with the Nordstroms and the fact that the police identified the brothers as initial suspects in the investigation. Salgado's testimony did not prejudice Jones nor did it violate Jones' right to a fair trial and due process as claimed in the Petition. The Court further notes that, contrary to the State's assertion in its Response that Petitioner's counsel did not object to White's line of questioning, the

record shows that Mr. Larsen did object but was overruled by the Court.

D. Knowingly False Avowal to Court About Nordstrom's Phone

Next, Petitioner contends that White made a false avowal to the Court when he stated that Terri Nordstrom would testify that the phone used in the test of the monitoring system the State performed was the same phone that was in the Nordstrom home at the time the crimes were committed. No objection was made either trial or on direct appeal.

The Court finds no misconduct on the part of White and certainly not the egregious conduct required by *Dumaine*. While it is true that Terri Nordstrom did testify at the earlier trial that the phones were different, she provided no testimony on that point at the *Jones* trial. Petitioner's assumption that the testimony would have been the same is not supportable. She may well have testified as Mr. White avowed. Petitioner's counsel had the opportunity at trial to resolve that issue by questioning Mrs. Nordstrom about the phones but chose not to do so. The Court is also aware that testimony by Rebecca Matthews, Parole Supervisor, settled any question concerning the relevancy of the computer printout showing he results of the experiment. Her testimony established that the kind of phone used had no impact on the functioning of the monitoring system other than to cause an occasional busy signal. Because no misconduct by the Prosecutor has been established and because the Court is satisfied that the computer printout was properly admitted, the Petitioner's argument must be rejected.

E. Failure to Disclose Clothing Belonging to Jones

Next, Petitioner alleges that the State, during pretrial interviews, deliberately withheld a cowboy

hat and boots belonging to Robert Jones that had been obtained and tested, and kept this exculpatory evidence from Jones' counsel. No objection was made either at trial or on direct appeal.

The record shows that the State obtained a black cowboy hat and boots on March 18, 1998 and had them tested for blood. The tests were negative. On April 20, 1998, Petitioner's counsel interviewed Detectives Salgado and Woolridge who stated that the State did not have any clothing that they could link to the crime scene or to Jones. On April 23, 1998, the State disclosed the hat, boots and lab results to Petitioner. The State cites *Towery* and argues that judicial estoppel precludes Petitioner from gaining relief because his current position is different from that taken prior to trial. Petitioner argues that judicial estoppel does not prevent Jones from raising this claim because Jones' counsel's original position was taken without the benefit of additional information regarding perjured testimony by State witnesses which did not come to light until long after trial.

The Court agrees that judicial estoppel does not apply but not for the reason cited by Petitioner. One requirement that must exist before the court can apply judicial estoppel is that the party asserting the inconsistent position must have been successful in the prior judicial proceeding. *State* v. *Towery*, 186 Ariz. 168, 920 P.2d 290 (1996). Prior success is a prerequisite to the application of judicial estoppel because absent judicial acceptance of the prior position, there is no risk of inconsistent results. *Id.* at 183. The record reflects that Petitioner's Motion to Preclude the admission of certain evidence, to include the cowboy hat and boots, was never considered by the court. Rather, the court took up the Motion to Continue the trial and the Motion to Preclude became moot. Because Petitioner was not "successful" in precluding the hat and boots

from being admitted in the earlier proceeding, judicial estoppel does not establish grounds to bar Petitioner from requesting relief. On the other hand, the requested relief can be granted only if a sufficient basis has been established. The Court is not convinced that Petitioner has met that burden.

Although disclosure of the cowboy hat, boots and lab results was not accomplished in as timely a manner as Petitioner would have preferred, the items were revealed by the Prosecutor almost two months prior to the initiation of trial. That would seem adequate time for Petitioner's counsel to prepare for trial if the items were considered potentially exculpatory evidence. Additionally, Petitioner's allegation that White and the detectives worked in concert to misconstrue the evidence and mislead Jones' counsel is not supported by the record. Although the answers provided to Petitioner's counsel by the detectives were understandably less responsive than desired, White's explanation that the detectives responded in that way because, at that time, the State could not directly link the clothing to Jones appears reasonable. In the motion hearing conducted on May 4, 1998, Mr. Larsen agreed that he had no basis for an allegation of bad faith by the State in this matter and the Court agreed, finding that the need to do further discovery "is not the fault of either side." The Court further notes that the United States Supreme Court has pointed out that the touchstone of due process in cases of alleged prosecutorial misconduct is the fairness of the trial, not the culpability of the prosecutor. *Smith v. Phillips*, 455 U.S. 209, 102 S.Ct. 940 (1982). The Court sees no evidence that Jones was denied a fair trial. When viewed in relation to the totality of the evidence presented by the State, the delay in disclosing the cowboy hat, boots and lab test results to Petitioner is insufficient to sustain a claim for relief. Therefore, Petitioner's argument must be rejected.

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F. Pattern of Misconduct

Finally, Petitioner raises a "potpourri" of miscellaneous allegations ostensibly supporting his contention that the misconduct of the State and its representatives deprived Jones of his constitutional rights to due process and a fair trial. He cites a Bar Complaint against David White, an FBI investigation of David White, an FBI investigation of Detective Godoy, a Mohave County Grand Jury indictment of Detective Godoy, a Bar Complaint against Pima County Attorney Ken Peasley, and the Rule 32 Petition in the *Nordstrom* trial.

It appears to the Court that Petitioner and his counsel have lost their focus in this section of the Petition. The grounds for relief in a Rule 32 action are clearly delineated in Rule 32.1, Ariz.R.Crim.P. What Petitioner presents, in shotgun fashion, is a collection of peripheral actions which present none of these specific grounds for relief. Although each of the individual actions may stand on their own merits, Petitioner fails to show how any or all of them could have affected the outcome of the *Jones* trial. Because Petitioner has failed to present a colorable claim, the Court must reject his argument.

H. Material New Facts Warrant a New Trial

The next matter presented relates to claims of newly discovered facts that Petitioner claims meet the criteria established for relief in *State* v. *Apelt*, 176 Ariz. 349, 369, 861 P.2d 634, 654 (1993).

A. Jones Was Not in the Truck With Scott and David

Petitioner argues that a phone call made from Scott Nordstrom's cell phone, shortly after the Moon

Smoke Shop crimes were committed, to a pay phone near Jones' east-side apartment proves that Jones was in his home and not in the truck. The State contends that Jones made the call to his roommate, Chris Lee. Petitioner counters that Lee did not yet live with Jones at the time the call was made. On the basis of the newly discovered evidence, Petitioner asserts that he is entitled to a reversal of his convictions and sentences.

Arizona law governing newly discovered evidence is clear. In order to be entitled to post-conviction relief on the ground of newly discovered evidence, a defendant must show that: (1) the newly discovered evidence is material; (2) the evidence was discovered after trial; (3) due diligence was exercised in discovering the material facts; (4) the evidence is not merely cumulative or impeaching; and (5) that the new evidence, if introduced, would probably change the verdict or sentence in a new trial. Rule 32.1(e), 17 A.R.S. Rules of Criminal Procedure; *State v. Orantez*, 183 Ariz. 218, 902 P.2d 824 (1995). If any of the criteria is not satisfied, the motion must be denied. *Apelt* at 369. The Court finds that the Petitioner fails to meet four of the critical criteria.

First, although Petitioner claims that the information regarding the phone number for the pay phone that Jones used was not discovered until after trial, Petition Exhibits 25 and 26 show that Jones remembered using a phone at the Circle K (#520:298-9516) during May 1996 and that phone is still there and operational. Second, it is apparent that due diligence was not exercised in discovering the material facts. Not only did Jones know the location and number of the relevant phone, but Petitioner's trial counsel, Eric Larsen, examined cell phone records that were introduced in the *Nordstrom* trial. Third, the evidence is both

cumulative and impeaching. Petitioner's affidavit to the effect that Chris Lee was not living with him on May 30, 1996 does not dispositively establish that as fact especially in light of testimony in the *Nordstrom* trial to the contrary. At most, this evidence perpetuates a defense theory that Jones received a call from Scott Nordstrom's cell phone on May 30 and, therefore, could not have participated in the Moon Smoke Shop crimes. This possibility and its implications for Mr. Jones' credibility were fully explored during Petitioner's trial. Moreover, the jury was fully aware of the theory yet unanimously resolved the issue against Petitioner. Since this evidence would present no new information to the jury and could only be employed to attack the credibility of witnesses who linked Petitioner to the crime scene (David Nordstrom, Lana Irwin), the evidence is clearly both cumulative and impeaching. Finally, the new evidence, if introduced, would probably not change the verdict. The defense theory rests totally on the argument that only Petitioner could have been in the apartment or positioned at the Circle K phone on May 30. That argument is speculative at best and is contradicted by the trial testimony by several witnesses who connect Jones to the crimes. To accept Jones' alibi as credible, the jury would have had to discount the testimony of each of the State's witnesses. It appears to this Court that that would have been a highly unlikely result. Because Petitioner's claim fails to satisfy at least four of the established criteria, it is hereby dismissed.

B. Newly Discovered Letters Written by David Nordstrom

Next, Petitioner contends that letters written by David Nordstrom to Buddy Carson while both were in Pima County Jail, a transcript of an interview of Officer Mace, and a statement by Eddie Santa Cruz should be considered as newly discovered evidence and would greatly undermine the credibility of David

Nordstrom. This claim is also dismissed because it fails to satisfy at least three of the established criteria.

First, the Carson materials were not discovered after trial. The record shows that the material was disclosed to Petitioner's trial counsel on January 21, 1998, approximately six months prior to the trial. During a recent interview, Eric Larsen apparently acknowledged being aware of the Buddy Carson matter. The Mace interview was conducted by Scott Nordstrom's counsel and the Pima County Prosecutor's Office has no record of it in their files. Second, the evidence is merely cumulative or impeaching. Petitioner's purpose for making this claim was clearly stated in the Petition: it "would have greatly undermined his [David Nordstrom] credibility." During the trial, the defense mounted an aggressive attack on David Nordstrom's credibility including his prior felonies, his drug use, his probation violations, bis lack of steady employment, his possession of legal firearms, his curfew violations, his lies to the police, and his prior inconsistent statements. Evidence of scams perpetrated by David Nordstrom in jail would only add to the adverse characterization already painted by the defense and serve to enhance his impeachment. Finally, it is highly improbable that the Carson information would have changed the verdict. David Nordstrom was an important witness for the State and his credibility with the jury was essential to a successful prosecution. In spite of the defense's extensive attempts to impeach David and the multiple attacks on his veracity, the jury chose to convict Jones on every count of murder. It is unlikely that knowledge of the Carson matters would have influenced the jury to reach a different verdict.

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C. Misconduct Claims

Petitioner suggests that the Court can consider all the claims presented in Part I as claims involving material new facts. Each of the subject claims was dismissed above on procedural and substantive grounds. The Court finds that Petitioner presents no colorable basis on which to reconsider them as newly discovered material facts.

III. Jones Received Ineffective Assistance of Counsel at Trial in Violation of His Rights

Arizona courts apply the two-pronged test developed by the U.S. Supreme Court in *Strickland v. Washington*, 466 U.S. 68 (1985), to determine whether a conviction should be reversed on the grounds of ineffective assistance of counsel. First, the defendant must show that his or her counsel's performance fell below an objective standard of reasonableness as defined by prevailing professional norms. Second, the defendant must demonstrate that the deficient performance resulted n actual prejudice to the defendant. That is, defendant must show that, but for the ineffectiveness of counsel, the outcome of the case would have been different. *State v. Ramirez*, 126 Ariz. 464, 616 P.2d 924 (1980). Failure on the part of the defendant to meet either prong is fatal to a claim of ineffective assistance of counsel. *State v. Salazer*, 146 Ariz. 540, 541, 707 P.2d 944, 945 (1985). There is; however, a "strong presumption" that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." 466 U.S. at 690. See also *State v. Nash*, 143 Ariz. 392, 398, 694 P.2d 222, 228 (1985). Defense counsel is presumed to have acted properly. The burden is on the Petitioner to show that "counsel's decision was not a tactical one but,

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rather revealed ineptitude, inexperience, or lack of preparation." *State v. Goswick*, 142 Ariz. 582, 691 P.2d 673 (1984). The Petition alleges thirteen instances of ineffectiveness of counsel but the Court rejects each of these claims.

A. Failure to Properly Conduct Investigation Regarding David Nordstrom

Petitioner alleges that Jones' trial counsel did not properly investigate false reports by David Nordstrom that Scott Nordstrom had threatened his family and himself or his related letters to Buddy Carson to try to set up a scam to sue Pima County. Court is unwilling to find fault when conclusory allegations are not supported by substantive argument. To the contrary, the record reflects evidence that trial counsel gave attention to these matters but determined that other issues should take priority. Moreover, the record reflects at least two instances that establish that the reports that Scott Nordstrom threatened both David and his family were credible. The record also indicates that trial counsel was well aware of both Buddy Carson and Eddie Santa Cruz but decided that presentation of either individual would have been detrimental to his case. Which witnesses to present, or whether to present any witnesses, are strategic decisions left to the professional discretion of the attorney. *State v. Dalgish*, 131 Ariz. 133, 139-40 (1982). It is not likely that there was any prejudice to the defense. Both the trial court and the Arizona Supreme Court concluded in *Nordstom* that Carson's testimony could not have effected the outcome of that case and there is no reason to believe that he would have had any greater impact in *Jones*. Also, Santa Cruz' reputation as a notorious jailhouse snitch likely would have opened him up to a damaging impeachment by the defense.

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B. Failure to Properly Investigate Kicked-in Door

Next, petitioner alleges that Jones' trial counsel failed to fully investigate the conflicted testimony concerning the kicked-in door and to use it to vindicate Jones. This claim is without merit. The kicked-in door was but one of the dozen or so correlations with the facts of the crime that were adduced from the testimony of Lana Irwin about the conversations she overheard between Jones and Coates. The Court is not convinced that, had an issue been made of the kicked-in door, it would have shaken the credibility of Irwin or changed the outcome of the trial.

C. Failure to Challenge David Nordstrom's Alibi

Next, Petitioner alleges that Jones' trial counsel's decision not to properly investigate David Nordstrom's alibi and to call certain witnesses to testify was not a reasonable decision and likely impacted the verdict. It appears to the Court that Petitioner's issue is dissatisfaction with the method used by trial counsel to challenge David Nordstrom's alibi and not that a challenge was not mounted. The record shows that trial counsel did pursue a strategy of attacking the accuracy of the parole records and arguing that the alibi could not be supported. Petitioner argues that trial counsel should have attacked David's alibi by calling other witnesses. The Court is not willing to speculate on what results would have been achieved had trial counsel followed the approach now recommended by Petitioner. The standard articulated by *Strickland* is whether counsel's performance was deficient and that "but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U.S. at 694. Proof of effectiveness must be a demonstrable reahty rather than a matter of speculation. *State v. Meeker*, 143 Ariz. 256, 264, 693 P.2d 911, 919 (1984).

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The Court concludes that Jones' trial counsel's performance on this matter was not deficient and represented a reasonable strategy under the circumstances presented at trial.

D. Failure to Request Immunity for Zachary Jones

Next, Petitioner alleges that trial counsel's failure to make any objection or to seek immunity for Zachary Jones was ineffective assistance. Petitioner contends that, if immunized, Zachary Jones could have testified to statements made by David Nordstrom indicating he was laying blame on Robert Jones. The Court notes that there is some question whether a request for immunity would have been successful. Eric Larsen indicated in an interview that the prosecution clearly had no intention of granting immunity. Also, the record shows that Prosecutor White believed Zachary Jones conspired to falsely impeach David Nordstrom and probably would have withheld immunity. Absent any proof that immunity could have been obtained and, consequently, that the result of the trial would have been different, the Court is unwilling to conclude that trial counsel was ineffective. Also, the Court is not convinced that Zachary Jones would have provided exculpatory evidence. In fact, the record shows that Zachary Jones' attorney indicated his client's testimony "could be of a prejudicial nature and little, if any, probative value." Failing to meet either prong of the *Strickland* test, the claim is rejected.

E. Failure to Investigate Telephone Call

Petitioner contends that trial counsel's failure to fully investigate the call made from Scott Nordstrom's cell phone on the night of the Moon Smoke Shop murders constitutes ineffective assistance of counsel. But Petitioner never articulates with any specificity evidence that the call was not investigated. In

fact, there are indications in the record that Mr. Larsen did look at Scott Nordstrom's cell phone and pager records. The Court notes that Petitioner's theory that the call could not have been placed by Jones calling his roommate, Chris Lee, is challenged by evidence in the record that Chris Lee admitted hving with Jones on May 30 and that Jones admitted to Eric Larsen that he had participated in the Moon Smoke Shop crimes. Therefore, it is not likely that the outcome of the case would have been different had trial counsel pursued Petitioner's current theory concerning the phone call. Because neither prong is satisfied, the claim is rejected.

F. Failure to Properly Research Pretrial Publicity and Use in Cross-Examination

Next, Petitioner contends that, had trial counsel investigated information that two of the details allegedly overheard by Lana Irwin were released in the media, he would have been able to impeach Irwin's story and likely cause a different verdict to result. Petitioner's conclusory assertions do not prove that Larsen was unaware that these details were publicly released; in fact, the record contains evidence that Eric Larsen was acutely aware of the extensive amount of pretrial coverage that appeared in the media (see Motion for Change of Venue dated 4/15/98). The record also presents strong indications that Eric Larsen conducted an aggressive cross-examination of Lana Irwin including impeachment on a number of matters. The Court considers it unlikely that Jones was prejudiced by trial counsel's decision not to ask the additional questions. Impeaching Irwin concerning media publication of the fact that the victims were shot in the head or that the room was red would not necessarily have been effective. At trial, Irwin testified that she lived in Phoenix and had not read anything or heard anything on the news about the Tucson murders. Whether she

had or not is not dispositive. Release of the article in the Arizona Daily Star on December 3, 1997 does not rule out the possibility that the jury would have believed that Irwin first learned of the details of the crimes during the conversations she overheard. Petitioner's argument fails both prongs and is rejected.

G. Failure to Interview Jones' Parole Officer and Call Him as a Witness

Petitioner alleges that an interview with Jones' parole officer, Ron Kirby, would have established that, in June 1996, Jones still had a full beard and long reddish-blond hair, which would have attacked the credibility of the State's contention that Jones changed his appearance following the crimes. Again, Petitioner provides no evidence that Eric Larsen did not investigate this aspect. Evidence in the record indicates that the sketches of the two suspects were released in the Arizona Daily Star on June 24, 1996 and that Jones cut and colored his hair sometime after that, most likely sometime in July. Because Ron Kirby's last contact with Jones was June19, it is clear that he could not have known about the appearance change and testimony that Jones still had a full beard on that date would not have been dispositive. Petitioner was not prejudiced by trial counsel's failure to interview Ron Kirby or call him as a witness. The claim of ineffective counsel is therefore rejected. The Court also rejects any claim of newly discovered evidence.

H. Failure to Review *Nordstrom* Trial Transcripts

Petitioner alleges that Jones' trial counsel failed to review the transcripts from the ***Nordstrom*** Trial but provides no evidence to substantiate his claim. Additionally, Petitioner offers only the issue of the kicked-in door as an example of resulting prejudice. The Court has concluded above that the testimony about the kicked-in door did not prejudice Petitioner nor affect the verdicts. Contrary to Petitioner's assertion, the

record contains numerous entries that document that Jones' trial attorneys accessed the *Nordstrom* materials. In addition to obtaining selected transcripts, it is clear that either Larsen or Braun: (1) reviewed some of the *Nordstrom* trial transcripts (2) attended some of the *Nordstrom* trial sessions, (3) reviewed telephone records, (4) reviewed transcripts of *Nordstrom* witnesses, (5) entered into a "common defense" agreement and exchanged information with Nordstrom's counsel, (6) assigned an investigator to conduct a "tremendous" amount of investigation concerning the *Nordstrom* trial, and (7) used *Nordstrom* trial transcripts to cross-examine some of the *Jones* witnesses.

The court has seen no evidence that Jones' trial counsel acted incompetently or failed to utilize opportunities afforded by the prior trial to develop a defense. If, in fact, counsel did not review all *Nordstrom* trial transcripts or that Petitioner's counsel "now disagrees with the strategy or claims errors in the trial tactics is not enough to support a finding that the trial lawyer's conduct was incompetent." *State v. Oppenheimer*, 138 Ariz. 120, 123 (App. 1983). The Court is satisfied that Jones' trial counsel performed to a reasonable standard. Because Petitioner's claim fails the first prong of *Strickland*, it is hereby dismissed.

I. Representation of Jones Despite Conflict of Interest

Petitioner alleges that Eric Larsen's friendship with the sister of one of the murdered victims created a conflict of interest that prejudiced Jones' defense. Alternately, Petitioner alleges that, even if Jones was not prejudiced by the relationship, Larsen should have disclosed the relationship to Jones. The Court has reviewed available case law on this subject and finds no authority that suggests that friendship with the

relative of a victim, absent proof of an actual conflict, disqualifies an attorney from representing the defendant. Our system of justice relies on conscientious attorneys and judges to address potential conflicts of interest and take appropriate action. Although in his opening argument Eric Larsen mentioned the relationship, he did so for tactical reasons and not because he considered there to be a conflict. Under the circumstances, the trial judge had no reason to initiate an inquiry. *Cuyler v. Sullivan*, 446 U.S. 335, 347 (1980). Because there was no objection raised at trial, Petitioner has the burden of demonstrating that an actual conflict of interest adversely affected his lawyer's performance. 446 U.S. at 348. Given the absence of proof of actual conflict or prejudice, the claim is dismissed.

J. Failure to Properly Handle Preliminary Hearing Information

Next, Petitioner alleges that, at the preliminary hearing, Jones' counsel failed to object to False testimony about Jones' clothing and also failed to adequately cross-examine the State's witnesses. The court notes that both the State's Response and Petitioner's Reply have annotated the heading to correctly identify the proceeding as a grand jury rather than a preliminary hearing. As such, Petitioner's counsel would not have been present and could not have objected or cross-examined witnesses. Petitioner's claim focuses on allegedly false statements by Detective Salgado indicating that several witnesses had said that Jones gave up wearing western garb after the composite sketches were published in the newspaper. The record reflects that Detective Salgado had received information from at least two witnesses (David Nordstrom and Chris Lee) that Jones stopped wearing western garb. Salgado's reference to "several" people may be characterized as an exaggeration but not a falsehood as Petitioner claims nor does it provide a reasonable basis for a

motion to remand. Additionally, as the State points out, the failure to seek a remand was mooted by Petitioner's conviction of the charges beyond a reasonable doubt. *State v. Charo*, 156 Ariz. 561, 566, 754 P.2 288, 293 (1988). Since Petitioner presents no credible evidence of ineffective assistance, the claim is dismissed.

K. Failure to Properly Make a Record

Petitioner again makes reference to the issue of immunity for Zachary Jones but repackages it in a different context. The Court has already addressed the Zachary Jones claim and found it to be without merit. Vague references to "other instances in which Jones' counsel failed to properly record objections at trial" do not present a colorable claim and furnish no basis for relief. *State v. Borbon*, 146 Ariz. 392, 399, 706 P.2d 718, 725 (1985). Therefore, the claim is rejected.

L. Failure to Thoroughly Cross-examine and Impeach Witnesses

Next, Petitioner alleges that Jones' trial counsel failed to utilize prior inconsistent statements made by State witnesses to properly cross-examine them. The Court rejects this claim. Petitioner never articulates with any specificity how counsel's performance was less than objectively reasonable or how his defense was prejudiced by this performance. Additionally, because "matters of trial strategy and tactics are committed to defense counsel's judgment, and claims of ineffective assistance cannot be predicated thereon," *State v. Beaty*, 58 Ariz. 232, 20, 762 P.2d 519, 537 (1988), trial counsel's performance does not constitute ineffective assistance of counsel.

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M. Failure to Take Pictures of Getaway Truck

Petitioner alleges ineffective assistance of counsel because Jones' trial counsel did not present photographs to show how unlikely it would have been for a witness to observe only two individuals in the truck when three were present. The State had presented the results of an experiment that demonstrated it was possible. *State* v. *Beaty*, supra, held that matters of trial strategy are not grounds for ineffectiveness claims. Eric Larsen chose to challenge the State's argument by devoting two pages of his closing argument to attacking the experiment and the witness's credibility. Petitioner's speculation as to the possibility of an alternate experiment is noted but there is no evidence that it would have achieved any greater degree of success. Therefore, because the claim involved trial tactics and no prejudice has been demonstrated, the claim is rejected

IV. No Reasonable Fact-Finder Would Have Found Jones Guilty of These Offenses Beyond a Reasonable Doubt, or the Court Would Not have Imposed the Death Penalty

Petitioner contends that the issues discussed above in Parts I, II, and iII qualify Jones for relief equally under Rule 32.1(h). According to that portion of the rule, a defendant is entitled to post-conviction relief if he "demonstrates by clear and convincing evidence that the facts underlying the claims would be sufficient to establish that no reasonable fact-finder would have found defendant guilty of the underlying offense beyond a reasonable doubt, or that the court would not have imposed the death penalty."

Having disposed of all of the claims Petitioner presented in Parts I, II and III on procedural and/or substantive grounds, the Court finds that no basis exists for relief under Rule 32.1(h). Therefore, the claim is

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dismissed.

V. Jones' Appellate Counsel Was Ineffective in Violation of Jones' Rights Under the Sixth Amendment

A. Any Issues Found Precluded Because Not Raised on Direct Appeal

Petitioner contends that Jones' appellate counsel provided ineffective assistance if any issue raised in the Petition is found precluded for failure to raise it on direct appeal.

Because each of the claims in Parts I, II and III of the Petition that were denied relief based on preclusion under Rule 32.2 were also dismissed based on substantive grounds, Petitioner cannot establish that he suffered prejudice because of the ineffective performance of his appellate counsel. Therefore, the claim is dismissed.

B. Failure to Raise Mitigation Issues on Appeal

Next, Petitioner alleges that the failure of Jones' appellate counsel to investigate and present mitigation issues on direct appeal constitutes ineffective assistance of counsel because, had additional mitigation evidence been presented, Jones might have received a life sentence rather than the death penalty.

A trial court has jurisdiction under Rule 32 to determine a claim of ineffective assistance of appellate counsel. *State* v. *Herrera*, 183 Ariz. 642, 644, 905 P.2d 1377, 1379 (App. 1995). To prove ineffective assistance of counsel, a petitioner must show both deficient performance and prejudice. 466 U.S. at 687. Failure on the part of a defendant to meet either test is fatal to a claim of ineffective assistance of counsel. *State* v. Salazar, 146 Ariz. 540, 541, 707 P.2d 944, 945 (1985). Whether Jones' appellate counsel

offered additional mitigation evidence on direct appeal is not at issue. In its decision in *Jones*, the Arizona Supreme Court stated "Jones did not raise any issues regarding mitigating factors on appeal." *State v. Jones*, 197 Ariz. 290, 311, 4 P.3d 345, 366 (1998). However, that fact alone is not dispositive of ineffective assistance. The second prong of *Strickland* requires prejudice. In *Anderson*, an Arizona Appeals Court found that a defendant was not prejudiced by his counsel's failure to request a mitigation hearing where the court had considered defense counsel's sentencing memorandum addressing mitigating circumstances, and defendant did not establish that anything more would have been accomplished by a formal mitigation hearing. *State* v. *Anderson*, 177 Ariz. 381, 386, 868 P.2d 964, 969 (App. 1993). Also, the U.S. Supreme Court has suggested that there is no constitutional violation when a defendant chooses to put on no mitigation evidence. *Blystone v. Pennsylvania*, 494 U.S. 299, 306 (1990). Here, Petitioner claims that his appellate counsel offered no mitigation; however, he fails to suggest what mitigation, if any, could have and should have been offered. Neither does Petitioner submit any evidence from which the Court could reasonably conclude that, had other mitigation issues been raised, the appeal would have been resolved differently. To achieve a hearing on an ineffectiveness claim, a petitioner must satisfy an evidentiary burden by a preponderance of the evidence. *State* v. Prince, 142 Ariz. 256, 260, 689 P.2d 515, 519 (1984). Here, Petitioner's conclusory assertion does not meet that burden. Thus, Petitioner's allegation that his appellate counsel provided ineffective assistance does not present a colorable claim.

The Arizona Supreme Court has a duty to independently review the existence of aggravating or mitigating factors to determine if imposition of the death penalty is proper. *State v.* Richmond, 114 Ariz.

186, 560 P.2d 41 (1976). On appeal, the Arizona Supreme Court had before it the Petitioner's Pre-Sentence Mitigation Memorandum, which included a number of mitigation factors pursuant to A.R.S. § 13-703. After an independent review of all statutory and non-statutory mitigation factors, the Court affirmed Jones' convictions and his sentences.

Having determined that the required showing of prejudice has not been met, the Court rejects Petitioner's claim that his appellate counsel provided ineffective assistance.

VI. Jones Was Denied His Rights Under the Sixth and Fourteenth Amendments When He Was Denied a Jury Trial on Aggravating and Mitigating Factors

Petitioner contends that the U.S. Supreme Court's recent decision in *Ring v. Arizona* has rendered Arizona's death penalty sentencing scheme unconstitutional because it requires a judge, rather than a jury, to determine the aggravating factors that make a defendant death-eligible. *Ring v. Arizona*, 122 S. Ct. 2428, 153 L. Ed 2d 556 (2002). Petitioner requests that this Court stay a decision on the *Ring* issue until such time as the Arizona Supreme Court issues a ruling on the applicability of *Ring* to post-conviction cases. Petitioner also requests permission to file a separate Memo within thirty days of the filing of his Reply to address *Ring*.

The Court is not inclined to stay a decision on this matter pending a decision by the Arizona Supreme Court on the *Ring* issue. In *State v. Slemmer*, 170 Ariz. 174, 182, 823 P.2d 41, 49 (1991), Arizona adopted and applied the retroactivity analysis that had been announced by the U.S. Supreme Court two years earlier. See *Teague* v. *Lane*, 489 U.S. 288, 109 S. Ct. 1060 (1989). *Teague* held that a new rule can be retroactive to cases on collateral review only if it falls within one of the two narrow exceptions to the general rule of non-

retroactivity. *Id.* at 311. The present case satisfies the criteria for non-retroactivity. First, Petitioner's direct appeal is complete and he is now engaged in a collateral post-conviction process. Second, neither of the specified exceptions are applicable to the facts of *Jones*. Therefore, this Court has no basis to apply *Ring* retroactively to this case.

This Court's position is supported by a recent decision in the Tenth Circuit Court of Appeals. In *Cannon*, the Circuit Court ruled that *Ring* was not made retroactive to cases on collateral review. *Cannon* v. *Miller*, 297 F.3d 989 (10th Cir. 2002). The Court reasoned that the Supreme Court decision in *Ring* did not announce a new rule of substantive criminal law under the Eighth Amendment thus barring retroactive application of the rule for purpose of collateral review without the Supreme Court's express holding that the rule applied retroactively.

Because *Ring* provides no basis for relief, the claim is rejected and Petitioner's request to file a separate Memo to address *Ring* is moot.

VII. The *Spears* Decision is Unconstitutional and Cannot be Applied

Next, Petitioner contends that the recent Ninth Circuit opinion in *Spears* v. *Stewart*, 267 F.3d 1026 (2001), unconstitutionally infringes on Jones' rights to due process by severely limiting the time frames in which his federal habeas corpus petition, and therefore this Petition, can be prepared and filed.

Petitioner's conclusory assertion does not provide a basis to challenge the constitutionality of the Ninth Circuit decision. Therefore, the claim is dismissed.

Louise Beitel/jmc
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VIII. Arizona's Death Penalty statute Violates the Eighth Amendment to the U.S. Constitution Because it Does Not Sufficiently Channel the Sentencer's Discretion

Petitioner contends that the Arizona Death Penalty Statute is unconstitutional because it provides little or no direction on how to weigh and compare the mitigating versus aggravating factors.

This claim was not raised at trial or on direct appeal and, therefore, is precluded under Rule 32.2(a)(3), Ariz. R. Crim. P. Moreover, the Arizona Supreme Court has previously ruled on this issue and rejected the argument now raised by Petitioner. *State v. White*, 194 Ariz. 344, 355, 982 P.2d 819, 830 (1999).

Therefore, the claim is dismissed.

IX. Jones' Rights to Equal Protection Under the Fourteenth Amendment to the U.S. Constitution Were Violated When He Received the Death Penalty for Acts That Would Not Have Received So Harsh a Penalty in Other States

Finally, Petitioner contends that it is a violation of the Equal Protection Clause of the Fourteenth Amendment for him to be subject to the death penalty in Arizona when other states do not authorize it for the same crimes.

Because it was not raised on trial or on direct appeal, the claim is waived pursuant to Rule 32.2(a)(3), Ariz. R. Crim. P.

Petitioner presents no basis for an Equal Protection challenge other than Arizona's approach is different than other states. But the U.S. Supreme Court has ruled that the States enjoy latitude to prescribe the method by which murderers shall be punished. *Blystone* at 309. And as long as the death penalty is not

imposed in an arbitrary and capricious manner, it is not unconstitutional by federal or state standards. *Gregg v. Georgia*, 428 U.S. 153, 96 S. Ct. 2909 (1976). The Arizona Supreme Court has held that the death sentence is not cruel and unusual. *State v. Blazak*, 131 Ariz. 598, 601, 643 P.2d 694, 698 (1982).

An Equal Protection argument rests on the premise that a given statute provides different treatment for similarly situated individuals. Arizona's death penalty statute applies equally to everyone within its jurisdiction. *State v. White*, 168 Ariz. 500, 513, 815 P.2d 869, 882 (1991). That Petitioner would not be subject to the same punishment in other states is irrelevant. "[I]ndividual persons convicted of the same crime can constitutionally be given different sentences." *Id.* at 514.

Petitioner's equal protection claim is without merit and is hereby dismissed.

Hon. John S. Leonardo

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Exhibit 16

Pretrial Interview of Fritz Ebenal, June 24, 1997

Requested Documents
for Rule 32 - June 14,

STATE OF ARIZONA VS. SCOTT NORDSTROM

RECORDED INTERVIEW OF

FRITZ EBENAL

06/24/97

MR. KURLANDER: Today's date is June the 24th, 1997. Tape-recorded interview with Parole Officer Fritz Ebenal. Fritz, do you want to spell your last name, please?

MR. EBENAL: It's, uh, E-B-E-N-A-L.

MR. KURLANDER: And this interview is taking place in the Attorney General's Office, Transamerica Building, Law Office --

(Break in conversation).

MS. STUART: Yeah.

MR. KURLANDER: Okay.

MS. STUART: And Fritz Ebenal.

MR. KURLANDER: And -- and Fritz Ebenal.

EXAMINATION

BY MR. KURLANDER:

Q: Mr. Ebenal, as I understand it, for the most part, you were David Nordstrom's parole officer once he was released early in 1996; is that correct, sir?

A: While he was on home arrest, yes.

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Q: While he was on the home arrest. And, so you were his initial parole officer for that release; correct?

A: Yes, sir.

Q: And for how long a period of time did that last?

A: Uh. Let's take a look here. Looks like my last entry in my -- my log book was 7 29, '96.

Q: And do you have when your first entry in your log would have been?

A: January 25th, 1996.

Q: So approximately just a couple of days over six months is when you were responsible as being his parole officer?

A: That's approximately right.

Q: And you prepared what's called a chronological log which would refer to your involvement contact with him, as well as other people associate with him while he was o-- under your supervision?

A: As required by the Department of Corrections.

Q: Right. And this activity log would have been done contemporaneous with the events that

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were taking place that you were recording in there?

A: Yes, sir.

Q: And this is in your handwriting; is that correct?

A: Right. Most of it is, yes. There's -- there might be a couple entries (inaudible) I didn't look to see. Anybody's allowed to make an entry if they're doin' a contact with that person, or if they know something about that person.

Q: So as of July the 29th, is it? Some other parole officer would have taken over on his case log?

A: That's right. He was, uh, I was -- I was moved to a new parole position and, uh, my case load was left behind for some -- another parole officer.

Q: And do you have any idea who that was that would have been responsible for his supervision at that point?

A: And that would have parole officer Earl Phillips.

Q: Earl Phillips?

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A: Right.

Q: And was he his parole officer, to your knowledge then up unto the time of his arrest on January the 16th of '97?

A: No, I believe there was another parole officer involved. Looks like September 10th another parole officer took over and I don't recognize the -- the handwriting. I believe that's, uh, Debbie Hegedus, or Ron Kirby or somebody.

MS. STUART: Fred Gust.

A: Fred Gust? Okay. May have been Fred Gust. I don't -- I don't know who it went to after.

Q: All right. So what you've -- the -- is there any others up to his arrest of January 16th?

A: Let me see. (Inaudible) like the same person's handwriting all the way up until January 21st.

Q: Okay. So from your knowledge of the chron and the handwriting of the parole officers, it appears as if three parole officers were responsible for his supervision from the time he was released on January the 25th basically for about a year, up to January 21st --

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A: (Inaudible, speaking simultaneously) --
Q: -- of '97; correct?
A: Yes, sir.
Q: All right. Now, was he initially released on parole or was he released on some other form of supervision?
A: Now, this is a board released to home arrest.
Q: Okay.
A: The board granted this release.
Q: This is technically not parole; is it?
A: No, he's still considered an inmate.
Q: He's still considered an inmate. So, and this would be, uh, so he can be yanked back for any reason that you have at any time without a hearing; is that your understanding?
A: No, sir, that's not true.
Q: Okay. How does it work/
A: Well, depending on his violations, his technical violations, then the board is the -- is the one who granted him that release and the board is the only one who can take it away. I supply the information and the reasons and he goes to a hearing and they

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1 decide what he gets, if they're gonna take it
2 away from him or if he continues to (inaudi-
3 ble). A lotta times they'll go there and
4 then, say, well, yeah, he did it and they --
5 and they -- and they revoke him. However,
6 they continue his supervision and they send
7 him back out. It depends.
8 Q: I see. Well, is, uh, are there stricter
9 requirements with regard to home arrest as
10 opposed to bein' on parole in the way of
11 supervision, in a general sense, not as to
12 this specific person?
13 A: Well, it's -- it's more strict i-- in a sense
14 that he's only authorized to leave his house
15 at certain times and has to be home by
16 certain times, pretty much, and his contact
17 frequency is -- is more. It's once a week as
18 opposed to, whatever, if two, thr-- two --
19 twice a month, once a month, once every three
20 months, you know, I mean, it -- it drops
21 quite a bit after you leave that.
22 Q: And when to your knowledge from reviewing the
23 records was he placed actually on parole, and
24 taken off home arrest?

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A: Let's see.
(Pause).
Yeah, he was going to general parole and I -- I, uh, program, and (inaudible) --
(Pause).
Looks like he ended home arrest on 9 3 and began, uh, he sees his first contact with a regular parole officer on September 10th. That must have been -- they give 'em seven days to process everything and that was just right.

Q: I think I have s-- a -- what's called a certificate of parole that I saw in his packet.

A: Right.

Q: Would that then -

A: That'd be the one.

Q: -- note the official date that he was granted --

A: Right.

Q: -- parole?

A: Right.

Q: All right. So -- some fancy lookin' sheep-skin here.

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(Pause).
Uhm.
A: It's a proclamation (inaudible).
Q: Okay.
A: Proclamation for community parole.
Q: And when was that, uh --
A: I received it back on June 24th.
Q: June 24th.
A: Is when I received it.
Q: Is that the one I'm talkin' about. The Arizona Board of Executive Clemency?
A: That's the one.
Q: Okay. So this is (inaudible) -- that's when he was officially re-- released on parole?
A: (Inaudible).
Q: June 24th, 1996.
A: No. That's when I received it, and that's when I have 'em sign it.
MS. STUART: Yeah, 'cause he remains on home arrest.
A: Oh, he remains arrest un-- un-- until -- does it say in here what date? Let's see if they give a date in here somewhere I guess (inaudible) --
(Pause).

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Okay. It's -- my -- my records indicate that his parole eligibility date wasn't until 11 22, '96, which means that he got a temporary release, a -- a 90 day early release, okay? So, 11, 10, 9, 8, so he may have got out in August, on that parole.

Q: Okay, well --

A: That would have been his earliest release.

Q: -- I've been doing this for some 25 years and I've still yet to understand your system in terms of these releases. Could ya' simplify it for me and tell me what the history was with regard to his release, through January, if you're able to, of 1997?

A: I'll go up until the time I stopped supervising him.

Q: Okay.

A: Okay? And then I can -- I can try to explain to you what he was eligible for but that's -- that's all I'd know.

Q: All right.

A: Okay. So, he was remanded to home arrest, okay? And what they do is, they figure out when he's eligible for parole. Okay? He's

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eligible for two things at this point. He's eligible for parole and he's eligible for provisional release. Okay? Now, his provisional release, actual release was in May of '97, which we just passed. So, for him to get off of home arrest he had to select his -- his, uh, board release which would have been parole, okay? And that's why he went onto parole instead of choosing his provisional, 'cause it's much, much earlier.

Q: Well, what's the difference between provisional?

A: Well, provisional release is an administrative release granted by the Department of Corrections, and has no, uh, board on th-- ub, no Department of Clemency conditions, no parole board clemency conditions, okay? The -- the administrative release only has a parole officer (inaudible). Those are the two basic -- and the-- and then, of course, he doesn't pay any fees on provisional administrative release either, okay? So this is to his advantage if he can is wait for the provisional administrative release. But,

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because it was so far away, I mean several months away, he opted to take (inaudible) parole.

Q: Is he still on parole right now?

A: Yes.

Q: Through when?

A: He's -- he -- he is done in, uh, March 24th of '99.

Q: Are you aware of --

A: Based on this.

Q: Based upon this. Are you aware of anybody from your department seeking to take action on his parole at this time?

A: Well, what they do is they'll wait for the results of, uh, of this to occur and then they'll probably revoke his parole (inaudible).

Q: So, to your knowledge, do they accept recommendations or plea offers, or bargains from any law enforcement or county attorney's office with regard to revocation of parole --

A: No, sir.

Q: -- or conditions involving parole?

A: No, sir. It doesn't happen.

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Q: So, what you're telling me is, you can assure me from your training and experience, that if David Nordstrom's case is over before May of '99; is that what you said?

A: March.

Q: March of '99, by way of entry of some sort of plea which would cause him to be incarcerated, he still faces a parole violation?

A: That's right.

Q: Do you know from your experience as to -- is that separate and apart? In other words, is -- is it consecutive with regard to the time facing additional or what we call street time?

A: His parole violation, you know, has a (great?) bearing on what happens to him, you know, 'cause the parole board, like I was saying before, the board of executive clemency is the only one who can take that away from. And when they do that they have all kinds of options. I mean they can take away the street time, they can take away (inaudible) time, continue him on parole, uh --

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Q: So the-- they have the discretion as to what to do in any sort of parole hearing with regard to this matter, even if he would enter a plea an-- and do some additional time.

A: Right.

Q: Okay. All right. I want to get to his conditions of release that you'd understood. I've got this document here, which is dated August -- no. There's -- at the initial intake, you review the conditions of his parole, do you not, sir?

A: Right.

Q: And, what is the form that's utilized in doing that?

A: To review his conditions?

Q: Yes. To assess his conditions, let me put it that way.

A: What we do is we look at the computer to determine what the board has granted him for conditions. If you're talkin' about special conditions. General conditions all apply.

Q: Okay. And --

A: That would be number 12 and on. See number 12 there? And -- and A, B, C, D, whatever.

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Q: Right. Well this one is dated from September of '96, so these become modified from time to time?

A: Each time that a person is granted another release, different conditions may or may not apply.

Q: Do you have his initial conditions of supervision and release in the packet that you have in front of you?

A: I didn't see them in there. They're not in here.

Q: Rick --

MR. BOCK: (Inaudible).

Q: -- can you help me out on this (inaudible).

??: (Inaudible).

Q: Okay. Before that's done are -- is some pre-release information generally filled out as well.

A: Right. Pre-home investigation was done on David Nordstrom. Based on the investigation results of the program, that's what we call it, pre-release investigation sheet, it was sent back to Phoenix for approval.

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Q: Would this page that I'm showing you right here be the pre-release information form that appears to have been --

A: That -- that's the one that comes from the institution.

Q: That would have been generated by David Nordstrom in this instance?

A: No, no. His -- his -- his -- what they called it at that time is correctional program officer generated that, and provided the information to him so that this could be given to me so that I could investigate his -- his placement.

Q: I see. And so then once you get this, you investigate the placement, in this instance at Richard Nordstrom's 5725 South Helena Stravena [sic] in Tucson; is that correct?

A: That's correct.

Q: And so sometime after November of '95 you would have gone out to Mr. Nordstrom's house to investigate whether it would be appropriate for him to stay there; correct?

A: Right. It should be somewhere in that packet (inaudible) that stuff.

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Q: Well . . .

A: There should be another form, similar looking to this with, uh, information about -- at least it'll say when I finished it. It'll have a date on when I finished that assignment. And I don't know what else, you don't have the --

Q: Maybe you can help us out here with this in terms of the packet I have. It does not appear to be in any sort of order whatever.

A: Let me see a sec, okay?

Q: Sure.

A: This is it right here.

Q: Good. All right. So this is investigation as being completed?

A: Right. This is it and I finished it on, uh, 6 19 '96.

Q: Where's the paper I just had, Rick?

A: Oh, wait a minute, hold on a minute, let's check this out. (Inaudible) this is the one that goes in for his at -- you know what this is, this is for his proclamation. You got one more before this one. You have to do one (inaudible). It's just like a -- a pre-home

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release? A pre-- pre-- regular -- for a reg-- a regular investigation.

Q: 'Kay.

A: Okay? So he can continue on with the next release, which would have been his pa-- parole. I had to do one just like this for home arrest, looks just like this.

Q: Okay.

A: It's just a different date.

Q: And the date would -- would --

A: Is it on there -- yeah. That -- that -- that -- well, wait a minute (inaudible). Yeah, that's mine, okay. That's it. That's it. That's the one. So that was 1 4 '96?

MS. STUART: Uh-huh (Affirmative answer).

Q: 1 4, '96, is when you did that. Let me see that, yours real quickly, Cathy.

A: That sounds about right. That sounds about right.

Q: I'm sure I have it but . . .

A: I remember it was right around the holidays, and they were surprised to see me.

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Q: Okay. And, you verified that would be an appropriate place for him to be released to; is that correct?

A: That's correct.

Q: Any -- what e-- what else do you do in this kind of field investigation?

A: Uhm. Whole lotta things, but, uhm, first we, uh, (inaudible) go there. I sit down with whoever's, uh, like i-- for him, it was his -- Mr. Nordstrom and his -- his wife (inaudible) there, so -- and that was important that they were both there so that I could ask them questions also. But, uhm, I find out who's all living there at the time, find out there ages. I find out if any of (inaudible) felons, uhm, I look at the overall living situation as far as, you know, uh, if there are a-- if there were any felons, what were they. If they weren't, you know, what type of life these people have lived and I, you know, I -- I realized at the time, I asked, you know, if -- and they had indicated to me that their son, other son, had been in prison, okay? And we looked at that and I'm

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pretty sure that back when we did it I told somebody about that, that there was a possibility of their son comin' out and there wasn't a problem with it because, uhm, it's his brother, and their son. There's not a whole lot we can do about it, you know what I mean, as far as that goes (inaudible). It's pretty tough to -- to stop somebody --

Q: Did -- did you remember whether there was a -- a girl in the home about 20, 22 years old that was the, uh, the niece of Theresa Nordstrom?

A: Theresa Nordstrom only had a -- a, I think it was a granddaughter there when I was there.

Q: A granddaughter?

A: Yeah.

Q: Do you remember her name?

A: She was young, like, uh, 10, 8, somewhere in there.

Q: That was the extent of it?

A: That's it.

Q: You don't -- you don't remember somebody older, 22, 20?

A: Oh, no.

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Q: A female.
A: Huh-uh (Negative answer). I would have -- I would have noted that somewhere.
Q: 'Kay.
A: I mean I don't recall from now. I mean those records -- I mean 1'd have to go back --
Q: Sure.
A: -- and look at my original notes.
Q: Okay. Now, you --
MS. STUART: (Inaudible).
A: Yeah, that's part of it. That's my (inaudible) -- what is that? Let's see the date, 1 2. Yeah, that's when I went there, exactly.
Q: Okay. He's, uh, he's released and now there's specific conditions which you set forth as you noted, A, B, C, D, E, F, et cetera.
A: Right.
Q: Specific to him; correct?
A: Right.
Q: And, do we have that one on his release, itself?
MS. STUART: (Inaudible).

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A: I don't -- you have it.

MS. STUART: (Inaudible). Looks like this. (Inaudible).

Q: What's the date of that?

MS. STUART: 1 25 (inaudible).

(Pause).

Q: Well, could I see yours for a second, Cathy?

MS. STUART: It's right before, if you see this, it's immediately before (inaudible).

Q: Yeah. (Inaudible) been shuffled around about 14 times. Thanks. Okay. So, you set forth the conditions in a form known as a Home Arrest Authorization and Conditions of Supervision; is that correct?

A: Right.

Q: Okay. And just to review the other -- the -- the conditions other than the standard ones, he was not to have any alcohol; is that correct, sir?

A: Right.

Q: He was to have random tests for drugs and alcohol; is that correct?

A: Right.

Q: And he was -- all mandatory DOC conditions; correct?

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A: Right.
Q: Which included in this instance not having any contact with any convicted felons?
A: Without his -- prior approval from his parole officer.
Q: Okay.
A: And he did in-- ind-- indicate to me that his brother was getting out and I did -- did -- did talk to somebody about that. Like I said before, not a whole lot you can do as far as keeping them apart.
Q: Did he ever indicate to you that he was, uh, at any time during the course of his parole that he was having contact with a person by the name of Robert Jones?
A: Never heard of him 'til this occurred.
Q: And you know today that he was a convicted felon on -- on release?
A: Jones?
Q: Yes.
A: Right.
Q: So that would have been a violation of the conditions of his release.

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A: Right. If I'd have found that out, at least a (inaudible) with the supervisor.

Q: And he was -- you've already said he's not have any alcohol, random tests for drugs, and in this instance he was to be placed on home arrest; correct?

A: Right.

Q: Now, were you actually the one responsible or do you have a -- a -- a field supervisor or something that supervises the -- the actual home arrest situation?

A: We have a supervisor that supervises home arrests specifically.

Q: Ju-- okay, just that portion of his release then in this instance.

MS. STUART: (Inaudible) --

A: (Inaudible).

MS. STUART: -- each other here.

A: Yeah. (Inaudible, speaking simultaneously).

Q: Well, he'd be doing the supervision as to the home arrest portion, you'd be doing the supervision as to the --

A: No, you mean -- you -- there wasn't -- there wasn't a dual team or anything. I was the

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only supervising on home arrest. And there was a supervisor over home arrest.

MS. STUART: Over the whole --

A: Over the whole thing.

MS. STUART: -- program.

A: Over the whole program.

Q: And who would that have been?

A: Rebecca Matthews.

Q: Now, would there have been some sort of person, for instance, if there's a problem with a monitor involving a -- a home arrest unit, electronic monitoring unit, other than yourself, that would go out and check to see where somebody, for instance, like David Nordstrom, was.

A: More specific would be a mon-- a -- a -- an expert in the monitoring and go out and check. No, all of us did that, but other officers were used. If they were in the area, hey, so-and-so, could you stop by and can you check this out for me, you know. We all have that -- be our own, uh, police.

Q: Okay. A-- as long as we're into this subject, uh, do you recall the date when you

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actually -- when this was placed on David Nordstrom (inaudible, speaking simultaneously) --

A: Same -- same day.

Q: The same day.

A: Oh, yes.

Q: So tha-- that day would have been --

A: The 25th.

Q: -- the 25th of January, 1996; correct?

A: That's right.

Q: Would he have be-- was that the day of his release or his release had been the day before?

A: Same.

Q: Okay. He gets released and he comes directly to your office.

A: That's the way we do it.

Q: And you're certain it occurred that way in this instance?

A: Oh, yes.

Q: And, uhm, are you the one actually responsible for placing the unit on him?

A: That's correct.

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Q: Do you have any idea where the particular unit has been before you -- you get it to place it on him?

A: It was on somebody else, probably.

Q: But you're not sure in this instance?

A: No.

Q: There's no records of that?

A: No, I don't have any records, no. But, I'm saying they're -- they're reused and reused and reused.

Q: I understand. Do you have any idea as to how many were in operation through your office as of January the 25th of last year, 1996?

A: Each officer in home arrest was mandated by law not to have more that 25. So each officer has a maximum of 25 pieces of equipment and, let's see, we had one, two, three, four officers. So we had a hundred pieces of equipment in our office, approximately.

Q: Do you keep -- if -- if you don't have 25 parolees on electronic monitoring, where are the devices -- strike that. Are you responsible for certain devices?

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A: Are they assigned? It's -- you know what? It's up to the supervisor. They changed it so many times that there was times while I was home arrest that there was a pool of them to select from and then there was that -- there was a time on home arrest when they assigned you 25 or 20 or whatever they --

Q: I see.

A: -- (inaudible).

Q: And you're not sure when --

A: I'm sure --

Q: What your --

A: -- I -- I -- I think at the time, because, see we were doin' a transitional. I was coming in, another parole office-- this is almost th-- the -- around the time when some other officers left and we were comin' in. That was me. So, I -- I -- I inherited somebody else's equipment, and case load, and desk and chair and the whole nine yards. So, uhm, I -- I believe I was assigned whatever was in there.

Q: Are there any records of that to your knowledge?

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A: No, I don't think there are actually. I think they got rid of all that stuff. After a certain period of time, because it changed, they just, you know, after the parole officers left they got (inaudible).

Q: You said you were new coming in. Were you new as a parole officer coming in?

A: Right.

Q: Okay. How long had you been a parole officer before January the 25th of '96?

A: Approximately two months.

Q: Okay. And where had you been a parole officer?

A: Just there.

Q: Had you had other clients, other people that are -- were under your supervision who were using electronic monitoring devices during that two period of time?

A: Other clients?

Q: Yeah.

A: Sure.

Q: Okay. And, again, you're not sure in this instance 'cause there's no records as to whether David Nordstrom's monitoring device

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was taken off another person who had completed the program or whether this was simply one that had been left over, available for use, assigned to you that you -- that you put on him at that time.

A: I'm almost certain it was -- was used -- used. There was no new equipment there.

Q: No, I understand, but I -- I -- (inaudible, speaking simultaneously) --

A: And it was on somebody else before that. But let me explain that. When a -- when a piece of equipment comes off of a person when he's released to another release or if he's done with his sentence, it's -- it's serviced, okay? We clean it, we reset it and we put it back in the box and it's -- and it's in storage until the next person gets it. And then when that person gets it, it -- it goes back into the computer system and they have to reinitiate all the, uhm, data fields.

Q: And as I understand it, you don't have any records --

A: No.

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Q: -- to track who this particular one came off of, when it came off that person? We know when it was put on David Nordstrom --

A: Right.

Q: -- but we -- you don't have any records prior to that?

A: No, I don't.

Q: Okay.

A: Department of corrections might somewhere, but I don't.

Q: And you're not aware of any -- do you maintain any maintenance records as you described when i-- when it's cleaned and, uh, and checked? Somehow verify?

A: The only -- the -- that occurs when they're taken off. It's a practice to take it off, and service it, put it away.

Q: Who's the one responsible?

A: It's accountability. It's accountability. (Inaudible).

Q: Who's the one responsible for servicing?

A: We are.

Q: By we, ya' mean . . .

A: That parole officer.

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Q: Okay. Do you maintain any records with regard to its maintenance?

A: No. Unless it has to be sent to the shop for a major repair. And I'm saying other than service, but cleaning, normal maintenance type of thing. But if it-- it's damaged, or it's not functioning properly, it goes in to be repaired to the company, but we (inaudible).

Q: Does that occur from time to time?

A: Sure. People get violent with their equipment and they (inaudible) they throw it up against the wall or whatever and -- they don't want to be on home arrest any more and we gotta fix 'em.

Q: Okay.

A: (Laughs).

Q: Now -- now what is your maintenance and your ge-- general cleaning consist of? Just cleaning it?

A: Well, what it is is, you take it u-- you -- you clean it, okay?

MR. BOCK: Is this the ankle bracelet itself?

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A: They're bo-- there's th-- two -- two pieces (inaudible).

MR. BOCK: And the -- the box that goes by the phone.

A: Right.

MR. BOCK: Okay. So we're talking about two separate pieces.

A: Two pieces of equipment.

MR. BOCK: And do they -- and does the ankle bracelet stay with the same box, also?

A: Right. The -- the actual -- the bracelet part's thrown away. The -- the box that goes on the bracelet is retained.

MR. BOCK: That little square thing.

A: The little square part.

MR. BOCK: And the box by the phone is --

A: Is retained.

MR. BOCK: Okay. And the box --

A: That's (inaudible, speaking simultaneously) --

MR. BOCK: -- on the ankle bracelet and the box and the -- the phone box, those two are a --

A: They're main-- they're maintained together.

MR. BOCK: And so when someone else gets both of -- gets a new piece of equipment or a used piece of

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equipment, the box and the square thing on the ankle bracelet go together again.

A: Generally that's true, because -- the only way that wouldn't happen is if one or the other was damaged. Let's just say for the example the bracelet, the box, the transmitter, is damaged? They may replace it with it a new one and then it picks it up in the computer as that one.

MR. BOCK: And you clean the box, too, that goes by the phone?

A: Ya' clean both.

MR. BOCK: Uh, w--

A: Dust and stuff like that. And the other one has to co-- the bracelet has to come all apart. There's a battery in there that comes out of there because we can't leave the battery in it. Take the battery out, ya' clean it. You take the bracelet part off, you throw that away and you clean the rails, those little rails that go on the end of the bracelet to keep it together all one piece. That's what holds it together. And, uh, those are cleaned and put away.

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Q: Are you trained as to how to clean this and -- and --

A: Not until you get there, sir. And your fir-- on your first day and --

Q: So, sort of on-the-job training.

A: On-the-job training, and, uh, you know, actually what happens is another parole officer, when we did it, did it for us and showed us how to do it, and then after that they walked us through it and then after that we were on our own.

Q: Do you have any idea how many times you woulda done it before you were involved with David Nordstrom?

A: Mm. I -- I couldn't tell you without actually lookin'.

Q: Well, given -- given your normal case load, give the fact that you were there for two months, do you have a guess estimate? A range.

A: Uh, less than a dozen, more than five, somewhere in there.

Q: And is there a key that allows you to release the bracelet itself?

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A: No.
Q: How does it get released?
A: I cut it off.
Q: You just simple cut it off.
A: I cut it off. It's not re-- it's not reusable anyway.
Q: Okay.
A: And then you unscrew the rails, like I was saying before, that hold the bracelet to the box. There's screws on the back of it. Okay? And the only way you can access those screws are from behind so it's impossible to unscrew the box.
Q: So you have to go the location of the box?
A: (Inaudible).
Q: Okay. You unscrew --
A: You unscrew the bracelet.
MR. BOCK: The bracelet has a little square thing that's the transmitter.
Q: Right.
MR. BOCK: And he's saying to unscrew the back of the transmitter, you go behind it to unscrew --
A: It's true.

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MR. BOCK: -- to get to the batteries and stuff in the little box that's -- that's held by these straps; right?

A: Right. Yes, sir.

Q: Okay. And then, what, do you put new straps on there, or . . .

A: Brand new. It's a -- it's a hygiene thing. Besides that, you know we -- i-- if a guys been on it for any length of time at all it's stretched out and you know (inaudible).

Q: They can -- they can stretch.

A: They're expendable. The rubber stretches but there's metal -- not metal, a cable through the middle, does not stretch.

Q: Okay.

A: That's to give 'em a little bit of, you know comfort.

Q: Do you ever put it on any place other than an ankle?

A: No.

Q: And, do you remember specifically placing it on David Nordstrom?

A: Oh, yes.

Q: Do you remember what leg you pla-- put it on?

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A: No, I can't recall (inaudible). We give them the option. Some people (inaudible) one leg or the other. Some people have swelling and (inaudible).

Q: And, I take it it's obvious you don't remember that particular day that he did this?

A: No, but chances are he was wearing what he got released from prison in and that would be jeans.

(Laughter).

Q: Okay.

A: Jeans and boots.

Q: He would have been wearing boots?

A: Probably. (Inaudible) he was, but ya' know he's out (inaudible). I don't know. I (inaudible, speaking simultaneously) --

Q: Is that prison-issue boots?

A: Yes, those low boots, they're low cut boots.

Q: Uh-huh. And, how is this system monitored? Can you give me an overall view on it?

A: All right. We're a remote site, in Tucson, and this is done through the phone lines. And the main computer is in Phoenix, okay?

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So everything -- everything depends on that phone line being (inaudible), okay? And that --

Q: The phone line where he's gonna be located.

A: -- re-- between -- well, between us and their home and between us and Phoenix, 'cause Phoenix is the one actually doing the computer, a-- they have a computer that actually checks the system, then you just go on. So, the guy puts on a bracelet which is a transmitter and the box which goes in their house is a receiver, okay? It's just like a modem with a little bit more s-- has a little more capabilities than a modem does. The modem is automatically cued, or I sh-- automatically, randomly cued through Phoenix to check if the system is still working and if the client's still there. The -- the transmitter transmits a signal as soon as the person gets within range of what -- of the receiver and it indicates whether he is home or not. And the same as when he leaves. Soon as he gets out of range, it indicates that he left. Pretty simple.

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Q: So, and where is that -- that's monitored from Phoenix?

A: That -- the computer -- w-- any transaction that occurs with that client goes to Phoenix and then comes to us.

Q: Okay. So, do you then first -- let-- let's say hypothetically, uh, he's supposed to be in at 7:15 and it's now 8:00 o'clock, what happens?

A: It'll -- we'll get an alarm from him. And what happens at 7:15 (inaudible) in the morning, we don't get the alarm at 7:15 at night, Central Communication gets the alarm, because it's a s-- it's a -- it's a two-shift thing. We go from 8:00 to 5:00 and they go from 5:00 to 8:00, and they pick up all the alarms in Phoenix. And then we get a -- we get a report in the morning saying what happened, if there's a warrant issued or it was a curfew violation. If they -- if th-- if they're unable (inaudible) to contact that client, if they're unable to, whatever.

Q: So, let's say that it's 7:15 at night. Let's say it's 8:00 o'clock at night, okay? And

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they're supposed to be in and it-- and it's cued to them being there at 7:15. You with me so far?

A: Right.

Q: Now, what happens to -- does a-- an alar-- what happens in the home, in that type situation?

A: Nothing.

Q: Okay. There's no phone that rings in the home?

A: It -- it's just like a -- what'll happen is, the thing'll go -- he'll walk out the door. Soon as he walks out the door, the computer is gonna indicate -- it's gonna -- it's gonna start working. The modem's gonna call Phoenix and tell him that he's gone.

Q: Oh.

A: And then, when -- when -- when they do that they'll send an -- a-- an alarm to either us or they're gonna send one to Central Communications in Phoenix. And then we act on whatever that alarm is.

Q: Well let's say, he's gotta be home at 7:15 (inaudible, speaking simultaneously) --

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A: And he doesn't get home until late.
Q: He doesn't get home until late.
A: So then we're gonna get an alarm.
Q: You're gonna get an alarm.
A: Uh-huh (Affirmative answer).
Q: But nothing is gonna occur at his house. Nothing --
MS. STUART: (Inaudible).
A: Nothing -- you me nothing that we're gonna go to his house or something, is that what you mean?
Q: Nothing that's -- nothing that's gonna occur at his house --
MR. WHITE: No sirens, no lights.
A: No, nothing like that.
Q: Nothing at all?
A: No.
Q: No telephone call to automatically call him?
A: Automatically call Phoenix. But -- and then what'll happen, as soon as that alarm is registered at Phoenix they're gonna call and see where he's at if -- if it was him. If -- if it's their shift. If it's not it's gonna

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be -- if it'll -- if it's during the shift, that we're on --

Q: I --

A: -- then we call.

Q: I understand, sir.

A: Okay. Okay.

Q: Let's say it -- it's not during your shift. Let's say it's 8:00 o'clock at night, 9:00 o'clock at night. You're off at 5:00 or so?

A: Right.

Q: All right. So now, some sort of alarm goes off. It gets monitored into Phoenix. And now Phoenix then would call the receiver?

A: Right.

Q: Is that correct?

A: Right. Call th-- that client's home.

Q: Call that client's home to determine whether that person is there.

A: Right.

Q: Is there a voice verification?

A: No.

Q: Okay. You don't have that type of system?

A: No.

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Q: You're -- you're aware of systems out there that do exist like that?

A: I've heard of them.

Q: Okay. What is the -- the name and the style and the model, if you know, of this particular system?

A: This here -- this -- the system that we use is VI. I don't know what it stands for, but the one we have the 9000, the model 9000.

Q: Is that -- that's the same system that was in use in January of '96 is presently still in use or is there a different type of model that's in use presently?

A: No, that's the same system we're using now.

Q: Okay. So there's no voice verification.

A: No, sir.

Q: What other ways would they -- so, let-- let's say from your experience and your understanding, they now call. Somebody answers the phone and says, oh, I'm here. So-- you know, I don't know what happened, whatever. Would that cause a field person then to go out and see if that person is, in fact, there.

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A: They may call my house, okay? And tell me they, look, we got an alarm on him, he's -- and he's not at home -- we -- and -- and -- and that point we may make a decision to go (out to the house?), know what I mean? And the other thing ya' gotta remember, as soon as that alarm occurs, there's a data sheet, or a data screen --

Q: Uh-huh.

A: -- in the computer that gives them questions to ask, you know (inaudible).

Q: Do you know what questions there -- those are?

A: Date of birth, his social security number, his addresses' phone number, what his crime was, what his DOC number is. I mean, not everybody's gonna know all that stuff.

Q: Okay, s--

A: So, if they use their head and they -- and they ask those questions, they can (inaudible).

Q: Are you awa-- w-- --ware of any situations that have occurred where, in fact, somebody who was required to be called at a certain

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time pursuant to their conditions and as set up through their monitoring system, and they were not found to be at home through some sort of independent means, they got arrested for something, something occurred, and yet the alarm did not go off to Phoenix?

A: No.

Q: 'Kay.

A: There is no way around that. There's no way around that. The guy can s-- if a-- the alarm is gonna go off. Whether he's there or not i-- i-- you know, somebody could be lying for him or whatever. What -- what they should do is ask for the sponsor, too, to ask, you know, like if it's his parents, chances are his parents are not gonna lie for him.

???: Maybe.

A: Okay. Chances are they're not.

Q: If a person is cap-- just accept these as facts for purposes of the hypothetical. If a person is capable of taking the electronic monitoring device off, without cutting it, if they left it at home, they could walk out the

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door and there would no -- there would be no alarm that would ever go on.

A: If he could take it off? My understanding is that this system has built into it that it has to be next to skin.

Q: Who told ya' that?

A: Uh.

Q: 'Cause I heard something different than this --

A: The VI people told us that, and, uh, and that's the way I (inaudible). It has to be next to skin.

Q: Who's that person (inaudible)? So you're saying it's heat based?

A: No, I don't know what it is. I'm just saying that fro-- from what I was told it has to have skin contact, whether it's chemical or it's heat.

Q: There's --

A: Whether it's just a measurement of pressure, I don't know.

Q: This was something you were told --

A: During training.

Q: -- during training.

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A: Right.

Q: Was it ever tested, uh, in your training classes to determine or corroborate that that is indeed the way it works?

A: I don't know that -- th-- that's a -- that's a fact.

MR. BOCK: Have you read any materials from the VI system? Have you read their manuals? Have you looked at their manuals at all as --

A: I didn't get a manual, but, uh, I have looked over some of their things that have come down from time to time. They'll send out like a little notice, you know, an updated thing, or --

MR. BOCK: Did they send out any cautionary publications as tc how people can beat the monitor?

A: Nope.

MR. BOCK: Excuse me?

A: No, they haven't.

Q: (Inaudible).

MR. BOCK: Who's the -- who's the supervisor over there?

A: Mr. Hinkey (ph).

MR. BOCK: Hinkey.

Q: Yeah.

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1 MR. BOCK: That's who you're talking --
2 Q: Have you ever spoken to Mr. Hinkey as to
3 whether in fact this is skin based?
4 A: No.
5 Q: Would he be more of an expert in this
6 particular area of electronic monitoring
7 device than you would be?
8 A: Than I would be? I don't know what his
9 experience is, uh, home arrest. Okay? While
10 I was there he was never on home -- never
11 supervised home arrest.
12 Q: Do you know what he's doing presently?
13 A: Right now he's got, I think (inaudible).
14 MR. BOCK: What about Becca Matthews do you think she
15 would ha-- know --
16 A: Yeah, she's pretty good about that.
17 MR. BOCK: So she -- she -- we can ask her similar
18 questions.
19 A: She -- she would know, uh, you know, and --
20 call VI and ask them. You know, they're the
21 e-- they're the ones who designed this thing.
22 Q: Did any law enforcement officer ever come to
23 you within the last year at any time and ask

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you is there a way to, quote, beat, the electronic monitoring device?

A: Think somebody did ask me that. (Inaudible).

Q: Did you record that information at all in your -- in your chronological or any other place to verify or document the conversation?

A: I don't recall the conversation so I don't know if I documented it.

Q: You have some sort of vague memory of somebody --

A: Yeah, somebody asked me, you know -- I mean, there are so many people to talk, okay? And fo-- officers who are interested also just to see how the equipment works, I mean people to you about the equipment constantly, so --

Q: Yeah, but I --

A: -- I mean, I -- I know what you're sayin', an official thing. I think, uh, somebody came and talked to us about the -- the equipment on David Nordstrom in particular a while back. (Inaudible, speaking simultaneously) --

Q: Do you think that was before his arrest or after his arrest?

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A: It was after they arrested him.
Q: It was after his arrest?
A: Right.
Q: And, if you heard a name, do you think that might cause you to remember the person?
A: Try me.
(Laughter).
Q: Either Ed Salgado or Brenda Woolridge?
A: Yeah, okay. Yeah, I remember (inaudible).
Q: Ed Salgado?
A: Yeah, they talked about the equipment.
Q: Okay. And when do you believe that was?
A: (Inaudible). This winter. January, February, somethin' like that.
Q: But it's your impression this was sometime after he had been a-- David Nordstrom had been arrested?
A: (Inaudible).
Q: And again, you didn't document that anywhere.
A: No, I wouldn't. I didn't have this case at that time. You know, if I was monitoring him, specifically, I would have indicated somethin' in his case, uh, log that I talked to someone (inaudible).

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Q: Do you recall whether he had been formally charged or not?

A: No, I don't.

Q: Do you recall what ya' told them? What you told Ed Salgado?

A: No. I don't recall. It's been too long. I know we talked about the equipment. We talked about David Nordstrom. I think we went over (inaudible) schedule (inaudible) that's it.

Q: Do you think, given your understanding of the system, and given what you've told us here today about the system, you would have ever communicated to them that there is a certain way in which the system, the machine could have been beaten?

A: Oh, I have heard is ways, and I may have relayed that. But I don't -- I don't know of any ways. I can't think of any ways (inaudible).

Q: What ways have you heard that there are?

A: Well, i-- and even if it happened --

Q: Well, just -- just --

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A: I know, I'm just sayin' that even if the system was beat, it's still gonna give an alarm that one -- one time, okay? 'Cause the could take it -- his FMD, which is battery operated?

MR. WHITE: What's the FMD?

A: That's the computer (inaudible) that's plugged into the phone and stick it in a backpack and take off. But what's gonna happen is they're gonna get a phone disconnect and you're gonna get a power -- power failure. And, ya' know, because of the lightning storms that we get, that could occur and then the guy has, ya' know, puts two and two together, and just takes it off and throws it away, we're thinkin' that it occurred during a storm. Without checkin' all, you figure, okay, we've got a hundred people on supervision, are you gonna call everyone of 'em? We have. I'm not sayin' we don't, but we do do that, but generally we don't, for every -- every one of them.

Q: I'm not sure (inaudible, speaking simultaneously) understand --

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A: The guy could've -- the guy could've walked out the door with this in his backpack, do anything he wants, 'cause he's with the piece of equipment that monitors whether or not he came in and out of that --

(END OF TAPE ONE, SIDE ONE).

Q: I didn't quite understand your last answer, so let me back up a bit and ask you this. In what you've just heard, in terms of that example you just gave us, from personal experience, are you aware of electric-- electrical storms that have knocked out the system?

A: Right.

Q: And from your experience, because so many people are on the, uhm, that it would be impractical, and in fact you know that not each and every one of them would have been called in that scenario?

A: No, I'm not saying that. I'm saying that it could happen that somebody could have not been called, but we -- we -- we attempt to contact everybody. Let's just say that it happens toward quitting time, you know, where

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1 people normally are getting finished with
2 work. You may or may not be able to get a
3 hold of that indi-- individual right then and
4 there. You know. And you may be able to get
5 hold of 90 percent of them, 50 percent of
6 them, (inaudible), you know, so, there's
7 roo-- there's room for error.
8 Q: What other ways have you heard --
9 A: That's it.
10 Q: That's the extent of it?
11 A: Yeah, I believe so.
12 Q: You never heard of a situation where a person
13 could cut the bracelet and then take it with
14 them?
15 A: No. As soon as you cut that wire inside,
16 which is maintaining the electrical connec-
17 tion that's when you're gonna get a tamper
18 and the alarm's gonna go off.
19 Q: So you don't think you would have ever told
20 somebody like Ed Salgado that there's a way
21 to beat the system by cutting it?
22 A: No.
23 Q: Taking it with you?

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A: You can take it with you, but you're still gonna get that one initial alarm, the power and the phone line.

Q: Listen to the question, carefully.

A: Yes, sir.

Q: Okay. Do you think you might have told Mr. Salgado at any time, yeah, there's a possibility you could beat the system, but an alarm still would go off in the scenario where you cut the bracelet and took it with you.

A: No.

Q: You feel certain of that?

A: (Inaudible).

Q: Were you ever present when Ed Salgado might have spoken to Rebecca Matthews?

A: No.

Q: Now, these papers that I have, and I'll briefly just go over them.

MR. BOCK: Let me -- let me just ask one other follow up question. There was an article, Mr. Era (ph) of the Department of Corrections, said he was -- it was in the newspaper that he was going to investigate the electronic monitoring. Do

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you know anything about that or have you ever talked to him about that? Mike (inaudible) Era?

A: Mr. Era was gonna investigate? I don't know if he -- what he investigated. If -- if he did he never talked to me.

Q: Are you aware of any reports or summaries done by any supervisors within Department of Corrections who conducted an independent investigation to determine whether in fact David Nordstrom had been on electronic monitoring device on May the 30th and on June the 13th?

A: Within the -- a-- an investigation to see if he was? No, I -- I don't know (inaudible, speaking simultaneously) --

Q: You're not aware of any independent investigation?

A: There is a -- well, there was a -- there was.

Q: Just --

A: There was (inaudible) an investigation, internal affairs did some kind of investigation. Then they canceled it and they started it again, and I don't know what they all did

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with that. It was really confusing what they did, so. I mean, I got a notice in the mail that said it was canceled as I recall. Then I -- then I ended up going back down to Phoenix to answer some more questions and I -- and I had asked him and he said, no, it was never canceled. And I showed him my copy of my letter that it was canceled and he said, well, they restarted it. So, I don't know.

Q: Well, who did you speak to o-- over there?

A: Salgado guy. I don't -- who's that -- is that his name? Salgado? I think it was I believe. No wait, wait, wait. (Inaudible). I can't remember his name. (Inaudible). It was--

Q: Well, was it law enforcement or was it internal a--

A: It was internal --

Q: -- affairs in -- within the department of corrections?

A: It was in the department, right.

Q: Okay. Do you remember who ya' spoke to there?

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A: No, that's the same guy.
Q: What's the same guy?
A: It was the same name. I can't remember his name.
Q: Does the name Michael Era sound familiar to you?
A: No, it was not him. It was internal affairs. Michael Era's -- has to do with public affairs.
Q: Okay. So, to your knowledge at this time, there is no continuing independent investigation in the department as to the verification as to whether David Nordstrom was on electronic monitoring on those two days I just mentioned?
A: I think there is.
Q: There is one going on presently?
A: Right.
Q: Do you have any idea who I might contact to verify or seek that information from?
A: Internal affairs, Department of Corrections. I don't know the person's name. And I don't know -- see, the person that was doing it, found some kinda other job and left.

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Q: I see.
A: And they had assigned somebody else, and I don't know who that was. See? And they did this a while back, too, so I don't remember the guys name. It was like --
MR. BOCK: Does the attorney --
A: -- it sounded like Salgado though, it was d-- Desalgado or D something. Depoli, something like that I don't know (inaudible).
Q: Somebody obviously different than the law enforcement officer d-- who spoke to you about David Nordstrom?
A: The police, right, no.
Q: Right.
MR. BOCK: Does the attorney general's office represent internal affairs at the Department of Corrections?
MS. STUART: We've got the whole department.
Q: Yeah, it's the whole department. Okay. Now, I want to show you a two-page document. Let's see (inaudible). They both say page two on them. Gonna ask you if you recognize what that is?

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A: This is, a query report. Somebody queried this report. This is not a -- an alarm generation report, 'cause they're different types. Somebody actually went in and said I want this specific report.

Q: Could somebody like law enforcement go in and ask for that specific information, that re-- that kind of report that's in front of you, that -- those two pa-- two pages?

A: Right. I don't know if they did. They'd have to go through a supervisor for that.

Q: Okay. Let-- let's just assume that they got it, okay? This is not actually then a logging of what it purports to be from your department. Do you understand the question?

A: No.

Q: Okay. This is not actually some sort of record that's kept by your department?

A: It's not a record, no, we don't (inaudible).

Q: It's not a record.

A: We don't -- we don't keep this record.

Q: Okay. Do you know where it would be generated from?

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A: Well, we can generate that from our terminal or this can be generated in Phoenix.

Q: Okay, and, where would it be based from?

A: (Inaudible, speaking simultaneously) --

Q: The information that caused this in-- in formation to be taken out of. Where would it -- where -- where would it be gen--

A: The computer -- the mainframe is in Phoenix.

Q: Okay. And can you tell us what it is?

A: You know sayin' (inaudible). Somebody wanted to see what the last 99, or I haven't looked, y-- you can pick how many messages that you want to view, wanted to see what they were. Okay, so in this case, I don't know how many are here or even if these belong together.

Q: A-- as to what? As to the alarm going off or what?

A: As to his transactions in the last so many messages, okay? Over a period of time. He -- you have to pick a date and you have to pick a time and then you pick how many messages you want to view, okay? And then it'll run these messages for you, of course you pick the client, too. And then you see

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what -- what he's done in that given period of time for that many messages. It can only report up to 99 messages, so however many you see there plus, minus that from 99, that's all that was left in there.

Q: Well, it purports to reflect alarm -- a message with regard to alarms, and I assume with -- concerning electronic monitoring.

A: Right.

Q: Is that -- is that what it is?

A: No. I mean, it ca-- it can be. It'll show an alarm if there was an alarm. It's showing all the transactions that occurred. If the computer called randomly to check to see comi-- the equipment was there, if there was a curfew violation, if there was a tamper, whatever.

Q: But it's all related to the electronic monitoring --

A: Oh yeah.

Q: -- device concerning David Nordstrom; is that correct?

A: If this is his, right. I don't know (inaudible, speaking simultaneously).

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Q: Well, let's assume it is.
A: Okay.
Q: That would be correct?
A: Yeah. If this -- if this is the right guy.
Q: So, i-- it's all instances where there's some sort of occurrence where Phoenix woulda generated something on their computer 'cause they had to do something concerning his electronic monitoring device?
A: Right.
MR. WHITE: L-- is that a f-- can I ask him? Is this all of 'em or just -- this just the last --
A: This is --
MR. WHITE: -- 20 or the last however many.
Q: Well.
A: This is the date that it -- that -- this -- this happened -- let me just see if I can figure out if they got any dates on here (inaudible).
Q: Y--
A: See this was faxed to us from -- from Phoenix 'cause I can see the fax numbers on here. Okay, so we didn't generate this, Phoenix did. So they must have occur-- this must

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1 have occurred during their duty shift, okay?
2 Something musta happened. All right. And
3 then they want to find out what happened,
4 so --
5 Q: Well, as--
6 A: -- they didn't make any notes on here and
7 they usually do.
8 Q: Well, I assume, you know, just for --
9 hypothet-- I assume somebody's investigating
10 whether in fact David Nordstrom was actually
11 in violation of his conditions involving his
12 monitor so they'd want to generate some sort
13 of record, law enforcement?
14 A: No. That's not why it generated.
15 Q: Well.
16 MS. STUART: You -- you don't know why these --
17 A: Right.
18 MS. STUART: -- specific ones were (inaudible).
19 A: I don't know, but I'm sayin' that's not why
20 we generate 'em though.
21 Q: I didn't ask why --
22 A: Okay.

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Q: -- you would have generated them. But let's just assume that that's how it comes in the form in which it comes, okay?

A: Okay.

Q: This then would -- what you're saying is that c-- every time they had something occur, some situation involving a monitoring device that would be on the hard drive; is that correct? U-- up in Phoenix?

A: You mean the hard -- you mean his computer system that he has, his mon-- his modem?

Q: Yeah.

A: All right. They -- they can print this report or they can print different reports. This is a formula, so you know.

Q: Thi-- this --

A: This one here, they print it at this point to see what he was doing.

Q: All right. Does that appear to be every time that for instance the alarm would have gone off and perhaps the reason why?

A: Well, in this particular case an alarm -- looks an alarm went off, okay? And they generated this particular report to -- report

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to see what -- what it was. And they -- there's other ones that could have chosen (inaudible).

Q: What other ones could they have chosen?

A: There are different reports.

Q: Well, can you explain to me the different reports?

A: They're similar, but they -- they can narrow it down a little more. As far as they s-- pick the fields that they want to -- on there.

Q: Can it be -- is it more expansive than -- I guess what I want to know is, from your familiarity with the system, okay? And what this two-page (inaudible) appears to report -- to reflect, would there be some other way in which I could bring up through the system information that may reflect more violations, mo-- more times when the alarms when the alarms went than this, during the dates of which they'll purport to allege reflective.

A: On the date that -- on the date --

Q: I have no idea what I just said.

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(Several people speaking simultaneously, unable to determine what was said).
(Laughter).
MR. WHITE: Jesus.
A: The date this happened they selected this report. After that there is no more since we're not near that date we can't select any more reports. And if there was something that you wanted specifically to try to cue in on, we can try to focus your report on that, but this is what they picked. So there's nothing more detailed than this.
Q: With reference to what this has in it.
A: Right. Right.
Q: Nothing more detailed than this.
A: No.
Q: Do you understand the -- thi--
A: I have to loo-- I'd have to --
Q: Well, hang on a second.
A: -- go through this again to figure this out.
Q: You haven't heard the full question.
A: I know.

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Q: Do you understand what it would mean where there's a message that says call back and a message leave.

A: Right.

Q: And a message enter. Do you understand what this terminology means --

A: Sure.

Q: -- within the system?

A: Sure.

Q: Can you explain it to us.

A: All right. This person here left and it was an unauthorized, well I-- yeah, left and it was unauthorized leave. And the same for the next three. And then the computer called to see what was goin' on. And this call back thing? Somebody was on the phone and it wouldn't allow them to put on the next message. Each time it calls back, when you see a call back and you see, I don't even show one on here, when you see -- it didn't complete (inaudible). It'll show location verified after a call back if it made its connection. (Inaudible). It calls until it gets through to the modem and the modem

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answers. Then it goes location verification saying that it did connect.

Q: All right.

A: Okay? So it never connected, here, here and it went all the way down. 'Cause see there was a problem somewhere with this power gain and power loss.

Q: Let's take the one -- okay. That's a rather long one. This one all involves a history as to something occurring -- well, these are different dates, aren't they?

A: Uuhhh.

Q: Let-- let's just take one scenario. Le-- let's just take a hypothetical for instance for --

A: Well, I'm just tryin' to figure what these -- see 'cause I gotta -- I gotta refresh my memory on how all these work 'cause I -- I re-- there -- there are differences in these times, and dates --

Q: Okay.

A: -- and what they mean.

Q: All right. Let-- let's just go to the top, just briefly. This purports to be from May

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the 4th, 19, I think, 96, okay? Now the alarm time appears to be at 8:57 Mountain Standard Time; correct?

A: Hold on a minute. Let me -- let me just review this a minute because I haven't seen one in a long time. And I'm telling you, these different columns are not (inaudible, speaking simultaneously) --

Q: All I'm tryin' to do is get educated. (Laughs).

A: I know.

(Inaudible background conversation).

(TAPE TURNED OFF).

Q: Let's -- let -- let's go through the first column here. We got May the 4th of '96, it looks like on mine. It's got 8:57 Mountain Standard Time.

A: Uh-huh (Affirmative answer).

Q: Now that's the time that the alarm would go off in Phoenix; correct?

A: The alarm time is different from the actual time that the message got there. See, they didn't get this alarm until it was received at this -- the same time, I mean down here.

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1 I'm pretty sure that's how it works. That's
2 what I was tryin' to tell ya' before. If the
3 alarm went off at 8:57, okay? And the
4 message comes in, see that's why -- that's
5 why I need to go back and figure this out.
6 Time received was 8:57 and then message time
7 was 8:50. See that's why I (inaudible)
8 figure out.
9 MR. WHITE: They got the message seven minutes before the
10 alarm went off.
11 A: Right. That's what I'm tryin' to say. I
12 don't remember why --
13 MR. WHITE: That's a good system.
14 (Laughter).
15 A: The -- the na-- the title's across the top --
16 Q: (Inaudible, speaking simultaneously).
17 A: -- are not consistent with what -- what's on
18 here, you know what I'm saying. So I need --
19 I need to see, ask, maybe some questions of
20 somebody else too to find out exactly how
21 that thing worked (inaudible). I knew you
22 had to jump around a little bit to make it
23 understandable.

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Q: So thi-- this is even confusing to you as to what --

A: Right now, yeah, but --

Q: -- this means? A-- a-- as to --

A: I mean you can get the gist of it. The guy had an alarm somewhere around 8:57, 8:50, somewhere in there. The time got to -- it -- it -- it was sent to Phoenix on that same day that it occurred around the same time, whether it was seven minutes before or it was 10 minutes 'til, or I don't know. (Inaudible).

Q: Okay. Let -- let's just say the alarm goes off. Now, Mountain Standard Time; correct?

A: Right.

Q: Which is, uh, our time.

A: Right.

Q: All right. Now, and this is being -- the alarm then would go off in Phoenix, from what I understand you're saying; right? Is that right? Yes.

A: Right. The alarm'll go off.

Q: Okay. Now, you're obviously, uh, this is in the morning, this is all -- 9:00 o'clock in

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the morning? Somewhere around 9:00 o'clock in the morning.

A: This is on -- but what day? Is it a weekend, 'cause we're not there on the weekend. So it makes a difference.

Q: Okay.

A: 'Cause see they did get this message because they did send it to us.

Q: Well, it simply says curfew violation and then it says, leave.

A: Right.

Q: Now what -- what would this tell you about this situation, where the alarm went off on May the 4th, somewhere around 9:00 in the morning?

A: That he went outside his range. Either he left his home or he went outside to get the mail or he went into his back yard where he's not supposed to be.

Q: Okay. The next entry he's got five, and it's again pretty poor quality, 5:26 or somethin'. What happens -- I mean, don-- isn't there some sort of verification that everything is

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1 okay on May the 4th? Don't they verify that
2 some way?
3 A: Right but they -- I mean, we don't have all
4 the information. We don't have the report
5 that they generate and send to us, that tells
6 us that there was a curfew violation and what
7 happened to it. Usually on that report there
8 is a -- they call. They say that they called
9 or they called us and we checked it out. And
10 there's stuff that we don't have here.
11 There's information that we don't have. All
12 we have is the report that showed a consoli-
13 dated list of what occurred on that time and
14 that day.
15 MS. STUART: Harley, I was certain last week that these
16 were sent (inaudible) --
17 Q: Well, I wasn't here last week, so, you know,
18 I didn't (inaudible) total about --
19 ???: There's more stuff.
20 Q: -- a half-an-hour before I came here,
21 so . . .
22 MS. STUART: Yeah.
23 Q: Could I take a look at that, Cathy?
24 MS. STUART: Yeah.

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Q: Let's go . . . is --

MS. STUART: Let me just tell you what --

Q: This looks like --

MS. STUART: -- I understand this represents. At any given time any -- a-- a number of different kinds of reports can be printed off the computer related to data from the electronic monitoring. This is the sum total of printed reports concerning David Nordstrom that were retained. Different of-- and this was (inaudible). Different officers have different practices as to when they actually print something and how they retain it. So these are what have been retained concerning David Nordstrom from the beginning to the end. I-- i-- it wouldn't be continuous --

Q: So --

MS. STUART: -- because there wouldn't be a reason to print something every day and to print different things depending on what's happening.

Q: So are you printi-- are you re-- then responsible i-- if you're supervising him

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then in May, you're responsible for printing this in May.

A: (Inaudible).

Q: So that the computer has this information and --

A: I'm not the only one that's able to print this stuff. (Inaudible) the -- the people in Phoenix are also printing this and this is where this one came from 'cause it was faxed to us. I didn't -- this is not one that I printed, okay?

Q: Well, when you print one you print it in the computer and it -- and you can find it in the Phoenix terminal as well; correct?

A: It's all the same.

Q: Correct.

A: Right.

Q: So --

MS. STUART: It doesn't print into the computer he runs a print of whatever is on the screen, which could be done in either location.

Q: Right.

MS. STUART: And there are different fields.

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A: (Inaudible) select print out what you want (inaudible).

MS. STUART: I -- I -- I think the way to clarify this is that sometime around November, which is when the officers were questioning folks, somebody went in and said, give me this kind of a printout running from 5 4, '96, to -- actually, it looks like he did twice. First time you do it from 5 -- 5 '96 to 7 '96. This is the same thing, it just has a later date.

Q: But did I understand you to say that if an officer chooses not to enter it into the system --

MS. STUART: No, it has nothing --

A: (Inaudible, speaking simultaneously) --

Q: -- (inaudible, speaking simultaneously) violation.

MS. STUART: It has nothing to do with entry. This is all being entered because you've got an ongoing entering thing.

A: It's automatic.

MS. STUART: At any given time they're getting messages about what's going on, they can go in and

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1 print that screen to show what the computer
2 is receiving --
3 Q: Okay.
4 MS. STUART: -- or has received.
5 Q: Refresh me then as to what ya' said, I didn't
6 quite understand, about an officer's ch--
7 choice as to --
8 MS. STUART: What he prints and what he retains in his
9 file.
10 A: This is what (inaudible, speaking simulta-
11 neously) --
12 MS. STUART: You know, you can go into your computer --
13 Q: Oh.
14 MS. STUART: -- and there's any --
15 Q: You -- you mean in the DOC file.
16 MS. STUART: Right. Right.
17 Q: Okay.
18 MS. STUART: So this is all that has ever -- was ever
19 printed and retained with respect to David
20 Nordstrom. Which doesn't mean that you cover
21 everything that ever --
22 A: Right.
23 MS. STUART: -- that was in the computer.

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A: Right. It's only what we wanted at the time. There was something that cued us to print -- or, I never printed this -- printed --

MR. WHITE: Print it and save it.

A: Right.

MS. STUART: Right.

A: (Inaudible).

Q: Okay.

MR. WHITE: Can I ask a question?

Q: Yeah.

MR. WHITE: So how long does the computer save the information?

A: Ninety-nine messages. If they don't find 'em in --

MR. WHITE: So at the hundredth message, then the first message of that 99 --

A: Drops off.

MR. WHITE: -- gets deleted.

A: (Inaudible, speaking simultaneously) --

MR. WHITE: Second one becomes the first one, the hundredth becomes the 99th.

A: That's right.

MR. WHITE: And so on.

A: (Inaudible).

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Q: Okay.
MR. WHITE: Cathy, did you send me a copy of that as well, or . . .
MS. STUART: I don't -- I don't know that for sure.
MR. WHITE: Do you mind if I have one?
MS. STUART: No.
Q: So, if we don't have an entry then. If -- if this purports to generate, give me everything for a two month period of time. Well, let-- let's say you call in November for -- for something, okay? And he's been off electronic monitoring for a period of time, and so, this purports to run out from --
A: The last time he was on.
Q: -- the last time he was on, July the 8th of '96. And it only runs out up to May the 4th of '96, 'cause that's the 99 entries?
A: (Inaudible).
Q: It doesn't seem like 99 entries to me but it --
A: No. Remember I said you can select how many entries he wants to look at, and that could have been it. Or, it could have been that

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this was the -- the total amount of entries that were there.

Q: I see.

A: Okay?

Q: I see.

A: So this guy here was -- see this covers three months, May, June --

Q: Yeah.

A: -- July, August. So, these are all the transactions that happened during that period of time, and that was it.

Q: So these are all the transactions where the alarm went off to generate --

A: No. The transactions. Don't -- don't co-- call 'em alarms. They're not all alarms.

Q: Well, cant--

A: They're random -- they're random computer checks, also, okay?

Q: Oh.

A: Like this power loss, power gain? That's -- that's not really an alarm. It tells us that that happened. Whether it's an alarm has to be determined, okay? And these call backs are a-- are random call backs that the

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1 computer doesn't verify that the equipment is
2 working or this guy is there.
3 Q: What is this curfew violation?
4 A: Those are indicating that he had either come
5 in late or early, or other curfew violations.
6 Q: You can come home early can't ya'?
7 A: Yes. Well, let's see, you leave early. You
8 can leave early also. (Inaudible).
9 Q: Okay. I think I understand what that is.
10 Rick, do you have -- I've got -- I wanted to
11 show you what we also got.
12 (Pause).
13 Do you have the week of -- for the week of --
14 well, let me ask you this.
15 MR. BOCK: Here, I've got it.
16 Q: Are -- are you aware of his conditions as to
17 his curfew in May and in June of 1996?
18 A: No, not without lookin' at 'em. They change
19 so much. They change daily sometimes.
20 Q: (Inaudible).
21 MR. WHITE: Generally, or David's changed daily?
22 A: Everybody's changed, you know (inaudible) I
23 mean. The guys maybe ready to go out for a
24 job interview and the employer calls back and

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1 says, hey, look, I'm gonna change it to
2 another day, you're back in there changing
3 (inaudible). Stuff changes all the time.
4 Q: We have what's known as an update curfew,
5 slash, exception information. Looks like
6 almost like a calendar, real poor quality.
7 A: That would have been a weekly schedule.
8 Q: That's a weekly schedule?
9 A: Uh-huh (Affirmative answer).
10 Q: Okay.
11 MR. BOCK: Do you have the weekly schedule for June the
12 13th? Is that the right one?
13 A: I-- do I have it?
14 MR. BOCK: Yes, is that -- is -- is --
15 A: Is this it?
16 MR. BOCK: I'm -- I'm -- I want to make -- I don't know.
17 A: Holy Moses, you can't hardly read it, can
18 you? (Inaudible). (Makes noises). No, wait
19 a minute.
20 (Pause).
21 Well, it was printed on 6 7, okay?
22 MR. BOCK: Okay. This is the document that w--
23 A: (Inaudible) appears down on the bottom.
24 MR. BOCK: This is the document that was next to it.

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A: No, those are different though. That's a different type of printing.

MR. BOCK: But can you -- do you remember --

Q: What kinda print out is --

A: This is where we add or -- or change his (inaudible) schedule or schedule.

Q: All right. Well --

MR. BOCK: Do you know if this one is for the week of Thursday, June the 13th?

A: It says, uh, s-- let's see, 6 9 to 6 9. So we started it, and somebody made an entry on 6 9 and (inaudible). And they printed it on 6 7.

MS. STUART: (Inaudible).

Q: Sure.

????: (Inaudible).

MS. STUART: Does the number show (inaudible) starting here on the 7th, 8th, 9th --

A: Well --

MS. STUART: -- (inaudible).

A: -- if that's a factor right then. I mean, I don't know what dates these are. This could have been printed on 6 7 and w-- it would have started up here somewhere. Then that

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date would have been whatever day that was. If 6 7 woulda been Monday then that (inaudible). See what I'm sayin' it woulda been (inaudible, speaking simultaneously).

Q: (Inaudible, speaking simultaneously).

MR. BOCK: I don't have that (inaudible, speaking simultaneously).

MR. WHITE: Can I ask a question?

Q: Yeah.

MR. WHITE: So, is there anywhere where you have a record, you being Department of Corrections, Parole, of what David Nordstrom's curfew was the week of June the thir-- June the 10th through June the 15th or 16th? Is there any place we can go back and say, yeah, he -- he shoulda been heme at this time and gone out at this time.

MS. STUART: You could only -- you could only verify that if it was printed on a particular day.

A: Uh-huh (Affirmative answer).

MS. STUART: That's my understanding of this. Isn't it yours? (Inaudible).

A: No.

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MS. STUART: 'Cause someone went in to try to verify that, I guess, and they (inaudible).

MR. WHITE: Okay, I guess I'm not --

MS. STUART: I don't know. I --

MR. WHITE: -- so -- but -- but obviously at some point, Mr. e-- Mr. Ebenal, you -- you said, so David Nordstrom, you have to be home by X p.m.; right?

A: (Inaudible).

MR. WHITE: I assume you -- you made a note of that somewhere, you wrote that down somewhere, so if you died or got hit by a bus (inaudible, speaking simultaneously) --

A: Well, see what happens is, that's why it's in the computer.

MR. WHITE: So, it's on a computer screen.

A: Right. It's on a computer screen. If somebody wanted at any given time just to walk and punch it up and see what he was doin' or --

MR. WHITE: Okay.

A: -- what he was available to do.

MR. WHITE: Okay.

A: They could do that.

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MR. WHITE: Bu-- but -- but --
A: And I didn't write it down --
MR. WHITE: Right.
A: -- because you could be changing -- you'd be writing (inaudible) --
MR. WHITE: I understand.
A: -- paperwork.
MR. WHITE: So if you changed it, does the computer keep a record of what it previously was or does the computer --
A: No.
MR. WHITE: -- just record what it is now, since you've changed?
A: That's right.
MS. STUART: That's my understanding.
MR. WHITE: Okay.
MS. STUART: It's gonna stay the way it is --
MR. WHITE: Until you change it.
MS. STUART: -- until you change it. Then once you make that change, that's incorporated and then if you change it back --
MR. WHITE: Okay.
MS. STUART: -- you depending what day of the week it is.

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MR. WHITE: Okay. So we cannot go back into the computer and say, tell me David Nordstrom's curfew on February 7th, or March the 3rd, or -- right?

A: Not unless it was printed.

MR. WHITE: Okay. (Inaudible).

Q: Well, do you know, was it ever printed?

MR. BOCK: (Inaudible).

Q: Or is that what we have?

MR. BOCK: (Inaudible).

MR. WHITE: I've never seen these documents, Harley.

Q: Thi-- thi-- this one came from you.

A: See, this one -- this one -- this particular one here was --

Q: (Inaudible, speaking simultaneously) different -- it -- it didn't -- it came like this --

MR. BOCK: Had writing on it though.

Q: But it had writing on it. I could go to my office and get it.

MR. WHITE: (Inaudible) go look at it. I've not -- that one I have not seen.

Q: Well, let's break until I can run up and get it 'cause it's important enough that we need to discuss it.

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MR. WHITE: Well, if you've got a better quality (inaudible) --

Q: It's actually not. It's cut off at the edges on the -- on the disclosure on it.

MR. BOCK: Why don't we take a five minute break and just --

MS. STUART: That's a good idea.

(TAPE TURNED OFF).

Q: -- was there.

MR. BOCK: Okay. We're back on tape.

Q: Okay. I want to show you what I'm gonna mark as just a disclosure received by the County Attorney's Office in part, a copy on the top and ask you if you can summarize for us what this is?

A: This is a curfer-- curfew exception to David Nordstrom's schedule. He wanted to -- or his boss called me, I don't know at, you know, this point, asking that we allow him out earlier on Sunday and back just a little bit later on Sunday, so we made it a-- we made an exception for originally it was, looks like 10:00 o'clock until 4:00 and we changed it to 7:00 until 4:00.

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Q: And this would have been on June the 9th, 1996; correct?
A: That's correct.
Q: And you would have entered that in the computer?
A: On the 7th.
Q: On the 7th you would have entered that in the computer for his extension.
A: For his exception.
Q: All right. And then, the rest of his calendar, unless there was an exception, would have remained the same.
A: Right.
Q: And, these two, uh, s-- these are actually two screens on -- on (inaudible); is that correct, sir?
A: Right. This is two different screens.
Q: Okay. And the second screen is your -- your entry of it making an exception for June 9th.
A: Right.
Q: To allow him to continue to remain out -- well, uh --

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A: He was originally let out te-- til -- at 10:00 o'clock in the morning, but we opened him so that he could leave at 7:00.

Q: Right.

A: Then, he needs to be back at 4:00 in that situation (inaudible).

Q: And that would have been on the summary, June the 9th.

A: Right. Right.

Q: And, you have no knowledge as to whether this -- this is basically then just simply a -- a -- a curfew planning calendar for the week coming up?

A: No.

Q: What is it?

A: This is a curfew exception for that day.

Q: Well, it's for the whole week, though, isn't it, sir?

A: No, no. What you're seeing is, I printed out the normal weekly schedule, okay, on the 7th, and he wanted a curfew adjustment for the 9th, okay? Now past the 7th, or past -- past that weekend that occurred, on Monday, who knows what happened after that. Okay?

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1 Anything could have changed. Monday coulda
2 changed, Tuesday coulda changed, Wednesday
3 coulda changed, anything could have changed.
4 ???: (Simultaneous conversation).
5 A: Without having another the -- the -- the day
6 following this, I won't know.
7 Q: Okay. So, and you don't know if you can
8 retrieve from the system for instance, June
9 the 13th, 1996's exceptions, if they existed
10 at all?
11 A: If they're not printed, then I don't know if
12 you can get (inaudible) system or not.
13 MR. BOCK: So he coulda been out as late as 9:30 on the
14 June the 13th? Or 10:00 o'clock? Is that a
15 possibility?
16 A: He could have been, but it's not likely.
17 MS. STUART: (Inaudible, speaking simultaneously) --
18 Q: Well, why is --
19 MS. STUART: (Inaudible, speaking simultaneously).
20 A: I'm just looking at his schedule. This is
21 his normal schedule.
22 Q: Well --
23 A: Without seeing any other adjustments, I would
24 say that this is a normal schedule.

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MR. WHITE: Normal meaning he gets -- he gets to leave --
A: (Inaudible, speaking simultaneously) --
MR. WHITE: -- at 4:45 --
A: Right.
MR. WHITE: -- and comes home at 8:00 o'clock.
A: Without seeing any other data on his curfews, I can't tell you that he was -- this is his normal stuff right here.
Q: All right.
MR. WHITE: (Inaudible, speaking simultaneously) --
Q: As I understood it, one of the conditions of his release was that he attend some drug rehab screen? He had to be screened to determine whether he was gonna go to AA meetings or --
A: Oh, okay, yes.
Q: Is that correct?
A: Right.
Q: And weren't those on Tuesdays and Thursdays?
A: I don't recall the dates they turned out to be.
MR. WHITE: The screening or the AA meetings?
A: Yeah.
Q: The AA meetings.

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A: The AA meetings? They were -- I think they were twice a week. I don't recall what days.

Q: Did you ever receive in your packet, and maybe I'm wrong, but I didn't see anything in either the packet provided by DOC or the packet provided by Laura Udall through the attorney general, of any record which would verify his going to AA meetings and the dates and times when he went to those AA meetings.

A: I don't have the -- the times. But if you look at my chronological that I wrote. I logged every AA (he?) went to that I had seen.

Q: Was he r--

A: You know, he showed me --

Q: Was he required to go twice a week.

A: Right, twice a week.

Q: Okay. And from what I understand it was on Tuesdays and Thursdays, does that sound familiar to you?

A: It coulda been Tuesdays and Thursdays. They have 'em -- AA's run every day of the day of the week they run from midnight to whenever, you know, they most-- they go all -- 6:00

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o'clock in the morning to midnight at night. (Inaudible).

Q: So a person could get an exception to go to an AA meeting, 9:30, 10:00 o'clock at night?

A: Sure. But I wouldn't let 'em do it. It's just me, I would never let them be out that late.

MR. WHITE: So if David Nordstrom said I want to go to an AA meeting at 9:00 o'clock at night?

A: Tough luck.

Q: But, you don't have any records to -- to verify that one way or the other.

A: No, but if you look in there you'll see that he never went -- well, I think you'll find in his curfew (inaudible) he never went to an AA meeting that late.

Q: Well, sir, if I --

A: 'Cause I never -- I never let him go out that late.

Q: -- if I tell ya' his conditions were that he attend twice a week --

A: Right.

Q: -- do you have verification that he actually attended AA meetings twice a week?

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A: It's anonymous. I can't -- I can't go there. That's what it's all about. I -- I -- I'd be followin' all these guys around to every AA meeting they went to and I just can't do it.

Q: So -- well --

MR. BOCK: Do they have to give you a signature sheet?

Q: Yeah.

A: No. No, I wrote down what he provided to me as proof that we require to see in my -- my chronological.

Q: And what kind of proof would he provide you?

A: A sign-in sheet.

Q: A sign-in sheet from AA that he would --

A: Have attended.

Q: -- have attended.

A: Right.

Q: This is a sheet you get from AA. It's self-generating. Ya' sign it yourself, nobody else verifies or co-signs?

A: No, we provide the sheet from the Department of Corrections.

Q: Okay.

A: Okay? They take it with them. They go to the AA, they get it signed there, they bring

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it back and show me, and then I log it down there. (Inaudible).

Q: Don't you have somewhere in here --

A: And, also in there, just so you know, those AA's that he attended, he missed some and I made him make them up. So he knew -- he was honest with me, saying that, yeah, I didn't make -- he coulda just signed anything he wanted to in there as far as the AA sheet goes.

Q: Well, let's just talk about, for instance, uh, here's an entry on March the 6th, '96. Proof of AA, 2 21, '96, dash, 2 22, '96, dash 2 29, '96, dash, 2 29, '96.

A: Right. I made him make those up. He missed some.

Q: Tell me what this entry means as of March the 6th?

A: (Inaudible).

Q: Well, why don't you just --

A: (Inaudible) --

Q: -- just interpret that for us. As to the AA meetings.

A: On this one here?

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Q: Yeah.

A: Okay, so while this doesn't make any dif-- this was -- this is for -- for the parole officer. I had a face-to-face contact, with him. Okay?

Q: Yes.

A: At an, uh, at an un-- at a different location (inaudible).

Q: And what does your note indicate with regard to what took place concerning the AA information at that time?

A: He showed me his AA sheet that said he completed AA on the 21st, 22nd, 29th, or is it the 29th? Yeah. And two on the 29th.

Q: So, it's the sheet that you apparently provided him initially and he then shows it back to you with his signatures on it; is that right?

A: Right.

MR. WHITE: Does he have somebody else sign it?

A: Right, the -- the, uh, facilitator of the meeting signs.

MR. WHITE: How do you know that that's a -- really a facilitator and not his uncle or . . .

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A: Oh, that' true. But (listen, though?) on those, we see so many of them, I see the same name so many times and (inaudible) look and see, you know, that it was --

MR. WHITE: Uh-huh (Affirmative answer).

A: -- you can tell if it's legitimate or not, more times than not.

Q: Can you -- can you tell if it's legitimate with regard to verification of work employment, as well, from your experience?

A: Well, he shows me just the paycheck stubs. I mean, they're not -- pay-- paycheck stubs. I don't know -- take his word that he did 40 hours a certain week.

Q: Did you, uh, put all of his paycheck stubs that you had into his file? Did you make copies of them?

A: No.

Q: What about if a person didn't use paycheck stubs and paid cash under the table?

A: No, can't do it.

Q: So in your understanding, that never occurred in a situation involving David Nordstrom.

A: Far as I know.

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MR. WHITE: How would you know if it occurred? (Inaudible, speaking simultaneously) --

A: Well, he didn't tell me. I mean, I want to see -- I -- I -- we ma-- in -- in home arrest, in particularly, we mandate that they have a job that deducts all the deductions and pays 'em a paycheck so that we can verify it.

Q: You have something here from Star that I saw, Star Masonry. Did you ever speak to a man, to your knowledge by the name of John Mikiska?

A: Sounds familiar (inaudible).

Q: John Mikiska didn't tell you that he paid him cash for the times that he worked?

A: I don't recall what he did. I-- if he was payin' him cash and he told me, I told him that he needed to have -- have the -- pay-- payroll deductions taken out.

Q: We have some copies of payroll receipts from, for instance, Liberty Dry Wall that's, uh, occurred November. You wouldn't make copies for verification for the file of other work employment information?

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A: No.

Q: Okay. Getting back to this then, the entry as to -- and this is the one closest, can you show me the one closest to June the 13th for verification o-- of AA? Which would be after June the 13th?

A: (Inaudible). The next entry was June 21st.

Q: Is there any verification of AA meetings attended?

A: Well, I didn't write any-- anything down. There was a period of time in there also where he injured and I didn't (inaudible).

Q: Well, if I tell you that he was injured on June the 21st, do you think you would have stopped asking for the verification that might have occurred the week or two before?

A: No, and if he did miss some the week or two before, he was to make them up. That's how we worked it. It was con-- especially with the construction guys. They have different hours. They -- they work longer sometimes and I know you can't make it, so I tell 'em, you need to make 'em up. That doesn't give you an excuse not to go.

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Q: And --

A: He didn't make up several.

Q: -- do you have any proof of any documentation, reflective of any notes, that he attended an AA meeting on June the 13th?

A: (Inaudible).

MR. WHITE: What does VO mean, by the way?

A: Violent Offender group (inaudible).

????: (Inaudible).

MR. WHITE: (Laughs). Sorta like a how to course (inaudible).

A: Well, you know what? I -- and -- and (inaudible) this happened -- this happened, I'm not 100 percent sure, but if he missed some AA's prior to the s-- 21st and then he got injured, I'm not gonna go all the way back. (Inaudible, speaking simultaneously).

Q: That's what I asked you before. Well, do you have any documentation that he attended an AA meeting on June the 13th?

A: Oh, di-- I don't -- I don't know. Well, it looks like his last AA (inaudible) his last AA before, uh, before the 21st was a -- was 5 23.

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Q: Now let me ask (inaudible).
A: (Inaudible).
Q: Well, let me ask you this question. Are w-- from the information you have, or that you're aware of, are you able to document in your reports or file, anything you have, that he would not have been allowed out up 'til 10:00 o'clock at night on June the 13th?
A: No, I don't have anything documented.
Q: And he was allowed o-- out until that time, then obviously an alarm would not ring.
A: If (inaudible).
Q: If he was authorized to be allowed out --
A: Oh, right.
Q: -- on the 13th, an alarm would not ring.
A: Right.
MR. WHITE: But you wouldn't let him go to -- to an AA that late.
A: No, I wouldn't. Generally, you know, I mean, 99 percent of 'em never go late.
MS. STUART: It's your interview but, I just wondered, was it your practice when you did go (inaudible) save.
A: Right.

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MS. STUART: So, you know, there are several of these spread throughout here.

A: And -- and not all of them were saved because (inaudible). You don't realize how much -- how tedious this is to go in and out of that computer, print them all, too.

MR. WHITE: I'm a -- I've got to go --

Q: I just want to ask him some mo--

(TAPE TURNED OFF).

Q: -- your chronology. Do you believe your chronology to be accurate?

A: Yes.

Q: You make an entry in your chronology that on June the 15th, 1996, he's ordered to drop UA.

A: Uh-huh (Affirmative answer).

Q: In fact, didn't he drop a UA on June the 13th?

A: I don't know.

Q: J-- I mean, actually on June 15th. Why would you make that entry on the 15th?

A: If he dropped it on the same day?

Q: Yeah.

A: 'Cause he does.

Q: What time did you make that entry for?

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A: I don't have a time.
Q: Do you have then any tracking or history in your chronology as to what then occurred?
A: Do you have that one because the ti-- times should be on here of when he did his (inaudible, speaking simultaneously).
Q: Yeah. I -- I have that. Don't you have a notation here --
(Pause).
-- of 6 24, 1996, UA results negative 6 15, '96?
A: Yes.
Q: Do you believe that to be accurate?
A: I understand that there was one UA that was mislogged.
Q: Well --
A: I don't know if this is the one or not.
Q: -- didn't you get a copy of these TMCHE Laboratory results?
A: Correct.
Q: Okay. When you say mislogged, you would have written down incorrectly; is that what you're saying?
A: (Inaudible, speaking simultaneously).

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Q: And if I show you this from June the 15th which was received by the lab on June the 17th, what does that tell you with regard to the testing?

A: That he was positive for amphetamines.

Q: Does it also make another note there on the bottom of it?

A: Right. (Inaudible) that the specific gravity, (reaction?) level of the urine are both below acceptable limits, possibly indicating an altered or diluted urine specimen. (Inaudible).

Q: Well, would it be fair to say then on the June 21st you certainly would have had in your possession this particular piece of paper?

A: I got it on the 24th, that's when I wrote it down. That's how I know.

Q: Did you take any action then?

A: I didn't know.

Q: When you got -- well --

A: I wrote it down negative, that's why I didn't take any action.

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Q: Do you have any memory as to where you got the information that caused you to write down negative on the twenty fir-- uh, on the twenty --

(END OF TAPE ONE, SIDE TWO)

Q: We've got an entry you made on June the 24th (inaudible) a UA was avo-- results of June the 15th. Now you also got the sheet of paper which reflected the results on the 24th as well; isn't that correct, sir?

A: Right.

Q: Would you have had this piece of paper in your possession at the time you made this entry?

A: I made it on the 24th after I got it.

Q: Right. So, you simply logged it in incorrectly?

A: (Inaudible). I didn't even -- I wasn't even aware of it being -- somebody had come and said, hey, (inaudible) a dirty UA. No. So.

Q: So what you're saying is, even though you had this sheet of paper from TMCHE in your possession when you entered negative, you simply read this sheet of paper wrong.

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A: Right. I get stacks of those. That's probably what happened.

Q: Did you ever go to any of his employers to verify the times and dates that he had presented to you to support when he was working?

A: I talk to them on the phone all the time.

Q: Did you verify with them the dates that he had given you as to when he was working?

A: Well, this is they way it worked. They wanted a -- if they want a curfew change for their employer, their employer has to call me and tell me. (Inaudible).

Q: Well, I understand. But, what I'm saying is, as I understand the system, he presented to you information to document hi-- his work schedule; correct?

A: Uh-huh (Affirmative answer).

Q: Is that right?

A: Right.

Q: Okay. And, did you ever go to the employer and have the employer support it for you?

A: No, I would call 'em. I don't go there.

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Q: This didn't -- when was this brought to your attention as to the dirty UA?

A: When he got arrested. After the investigation.

Q: So far to say that it didn't generate any violation or re-- requirement for him to do additional (inaudible, speaking simultaneously).

A: (Inaudible) violated (inaudible).

Q: Well, I didn't ask you that.

A: I know.

Q: You -- you -- you -- you didn't no--

A: We didn't do anything -- we didn't do anything 'cause we didn't -- we weren't aware of it, right.

Q: Were there any other dirty UA's during the course of when he was on --

A: Nope.

Q: -- probation?

MS. STUART: While he was supervising?

Q: Yeah.

A: No.

Q: Do you have any idea how long amphetamines stay in the system, from your experience?

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A: Seventy-two hours, or less.

Q: So if you got a dirty a UA on June seven-- 15th results, it very well could have supported the fact that he could have had in his system amphetamines on June the 13th, from your understanding and experience?

A: (Inaudible) sure.

Q: So he had been, by your memory also in violation of his conditions as to not attending AA meetings as regularly required?

A: He was attending AA meetings as regular-- a-- regularly otherwise he would have been violated. I mean --

Q: Well, fair to say, you only have document-- how many U of A, uh, UA, excuse me, AA meetings do you have documented in your chron-- chronology?

A: I don't know. He attended 'em regular in my estimation. They may have not been everyday, they may not have been twice a week. But he attended regular. Depends how you define regular.

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Q: Well, when do you have him -- when do you have documented that he started in your chronology? Go ahead and take a look.

A: When he started?

(Pause).

A-- his first U-- his first AA was on 2 7.

Q: Do you have any other documentation as to any other dates? I know ya' do, so can ya' tell me those dates?

A: All of 'em? (Inaudible).

Q: Yeah.

A: All the -- okay.

Q: Yeah.

A: 2 7, 2 8, 2 8, 2 14, 2 21, 2 22, and 2 29.

MR. BOCK: A mini-- just a minute, sir.

Q: Two -- 2 21, ya' say?

A: 2 21, 2 22.

Q: Yeah.

A: 2 29, twice.

Q: Yes.

A: 3 6, 3 7.

(Pause).

3 13, 3 14.

(Pause).

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3 27, 3 27, 3 30, 4 3, 4 4.

Q: Just a minute. Could we back up?

A: To where?

Q: If you will, to the 3 30. Oh, I'm sorry. Go ahead. 3 30, 4 4.

MS. STUART: 4 3.

A: 4 3, 4 4.

Q: Yes.

A: And then, let's see here. Uhm, 4 1.

Q: 4 1?

A: Yeah, I musta one in the -- in the (inaudible).

(Pause).

5 15, 5 16, 5 22, 5 23.

(Pause).

And I had him stop, and I -- I show here on 7 17 that I have him start AA again. Musta gave him a verbal to stop somewhere up there. I think it was right, you know, at his accident or his accident, for his injury.

MR. BOCK: Were there any -- any meetings in --

Q: His injury was June the 21st, 6 21. Do you have anything between 5 23 and 6 21?

A: No. I don't see any.

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Q: No? Would he be in violation of his requirements of attending U-- AA meetings by not providing you verification for over a month period of time?

A: Would he be? Well, that's a-- that's a PO discretion thing, if I wanted to. And then I'm -- and I think I told him (inaudible) somewhere, he lost his AA sheet. He told me that he'd been going and he'd lost the thing, and, uh, okay. (Inaudible).

Q: And we're talkin' about for an entire -- we're talkin' about for five weeks?

A: Well, he -- he coulda lost it (inaudible).

Q: But you don't have that documentation?

A: That he lost it?

Q: No, that he lost five weeks worth of documentation.

A: No, I don't have it.

Q: And again there's no -- you don't separately confirm that a person has attended?

A: No.

Q: How many home visits did you pay -- did -- did you make to Mr. Nordstrom's home?

A: Well, I don't know exactly how many.

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(Pause).
Q: Up through June the 21st let's put it.
A: Oh, just one.
Q: One?
A: (Inaudible). Two.
Q: Two?
A: Yeah.
Q: So from January 24th through June 21st you made two home visits?
A: (Inaudible). I've got another one here. No, I don't -- that two.
Q: From that time period I just mentioned.
A: Right.
Q: Isn't that unusual?
A: No.
Q: Is it your information that sometime shortly after he was released, within a week or two, until he was stabbed June the 21st he was working on a continuous -- continuous basis?
A: Pretty much.
Q: Thir-- 30 to 40 hours a week?
A: Pretty much.
Q: Do you have the places he worked during that time frame that he gave you?

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A: Let's see. Now, keep in mind, these were the primary. He mighta started somethin' and didn't work out or something like, so minor stuff (inaudible) checkin' into, he worked a day or so, but these are the -- the two locations that I have is Star Masonry and Valenzuela Dry Wall. I know he tried a couple (inaudible, speaking simultaneously).

Q: When do you have him working at Star Masonry?

A: Started 2 5, '96.

Q: And when do you have him ending at Star Masonry?

A: I believe it was seven twenty s-- well, actually it was before that because he got injured and then he started up at the Valenzuela.

Q: So when do ya' -- when do ya' verify his -- from February?

A: About when he got injured, so he w-- I'd say the 21st he stopped.

Q: Okay. So you have him on your notes working on a pretty continual basis 30, 40 hours a week, full time, from February the 5th through June the 21st?

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A: Right.
Q: At Star Masonry.
A: Right.
Q: And what do you have as to your notes as to when he worked at Valenzuela?
A: He started there the 22nd of July.
Q: Okay. So, the only verification you had as to any work on a continual basis from his release up to his stabbing would have been at Star Masonry.
A: Right.
Q: Did you ever, uh, speak to -- did you -- did you know how he go-- was one of his conditions that he not drive a vehicle?
A: His conditions? I don't think so.
Q: Do you have any knowledge if he had a valid driver's license?
A: (Inaudible). I have a license that was suspended on here.
Q: When was that from?
A: I don't know.
Q: Did you assist him in writing a letter to a judge so that he could get off fines?
A: His aunt did. His aunt wrote the letter.

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Q: That's Connie Altieri?
A: I think so.
Q: Is this the letter? March the 4th of '96?
A: I think so. (Inaudible).
Q: Is that right?
A: Yes, that's it.
Q: Were you aware that when he was released -- strike that. Did you become aware after he was released of the fact that there was a warrant for him out of the state of Texas?
A: Right.
Q: When did you be--
A: He told me that.
Q: So to your knowledge -- the Department of Corrections would have never released a person on home arrest had they known that there was an outstanding warrant for somebody in another state for a felony, would they?
A: If they'd known of this, they wouldn't have (inaudible).
Q: So in this instance, he was the one that advised you of that?
A: Right.
Q: And when did he advise you of that?

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A: I don't know.
MS. STUART: 3 21.
A: 3 21. Okay, 3 21.
Q: Do you recall what was done about that?
A: I sent a -- a request through -- through the central communications in Phoenix for ACJIS (inaudible) check on, came back negative.
Q: Came back that there were no wants or warrants for him out of Texas?
A: Right.
Q: Nothing else in a -- of an affirmative nature was done to -- to check into that?
A: That's all I can do.
Q: Well, were there war-- wants or warrants for misdemeanors which would have generated this letter by his -- his aunt for failure to pay some fines?
A: Right.
Q: Did the Department of Corrections had know about that at the time of the home arrest situation?
A: (Inaudible).
Q: And they would have still released a person without having paid these fines?

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A: For misdemeanors, you know. They won't ho-- you know, they need to let somebody have some leeway to fix them, so in order for him to do that they release him.

Q: Did Judge Hoffman, to your knowledge, take any action in setting aside this matter?

A: Never heard (inaudible).

Q: So you have no idea if the w-- the want or the warrant from City Court was ever removed during the period of time that you were supervising him?

A: No, I didn't.

Q: That wouldn't concern you as his parole officer?

A: I -- I check up on him from time to time. Those are his responsibilities there, to make sure that he is clear. And he -- he would not be allowed to, you know, or whatever 'til he fixes 'em.

Q: Well, I'm -- you understand that he had the potential for bein' arrested if somebody stopped him out there, did you not, sir?

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A: He could have been if he hadn't gone down there. Now, I don't know if he did or not. Okay?

Q: You just don't have any idea one way or the other.

A: I directed him -- I directed him to go there. Whether he did, you know, I'm not gonna take him by the hand and take him down there.

Q: And you're not gonna verify in your report that that had been taken care of one way or the other.

A: If I -- if I directed him to go down there and then he came back and said, yes, I did, and this is what I have, I would have recorded it. He didn't do that, so I didn't record anything (inaudible).

Q: Isn't part of t-- part of his conditions o-- of special conditions of his release that he pay all of his fines?

A: It's not a special condition, it's just a regular condition.

Q: So this is something you would normally monitor, wouldn't it?

A: Maybe.

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Q: Did you go -- you -- fair to say you never went out to any job site connected with Star masonry?

A: No.

Q: To your knowledge and memory his -- his weight never appeared to change during the period of time, uh, i-- within -- within minor discrepancies, it never appeared to change. In other words he never appeared to have some unusual gain of weight or some loss of weight during that time frame when you were, uhm, supervising him?

A: No.

Q: Do you recall whether he had a beard or mustache during that period of time?

A: He di-- he had a mustache.

Q: Would he have a tendency as some people do sometimes to have a day or two's worth of growth of unshaven beard?

A: Yeah, once in a while. (Inaudible) unshaven. Shaven.

Q: And --

(Pause).

Do you recall what color his hair was?

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A: Red.
Q: Always seem to be the same tone of red color to you?
A: Pretty much.
Q: Well, what's that mean?
A: I mean, I didn't notice a difference.
(Pause).
Q: Was there a -- I think I'm just about done here. Did he ever miss any appointments with you?
A: No. I think, uh, if they were missed we ma-- we met -- we met somewhere. It was a -- it was a thing we agreed on. He knew that he had to make every appointment unless it was prearranged, so, if there was a reason that he missed we agreed that it was -- it was -- we -- we adjusted it for another day. So he didn't miss any appointments.
MR. BOCK: Did ya' ever have any feedback on this Violent Offenders program that he went to (inaudible) from his counselors?
A: It -- it continued into the next guy's supervision, so I didn't get a chance to -- we were too close to that period so I -- they

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usually don't -- they're -- that's one thing they're real bad at is -- is getting the report back to us. We usually don't get one for a month after they start, or more even.

MR. BOCK: So Earl Phillips would have had more knowledge on how it --

A: It shoulda been somewhere in the (immediate) he got one.

MR. BOCK: So there -- it shoulda been in this package if there was anything --

A: Yeah.

MR. BOCK: -- from the Violent Offenders Program.

A: Or he should have -- or he would have made mention to it, ya' know (inaudible).

Q: When he would come in would you check his monitoring equipment?

A: Would I check ti?

Q: Yeah.

A: Not unless I knew -- knew that there was a problem.

MR. BOCK: You can -- somewhere in here I saw one.

A: From La Frontera.

Q: Wh-- what's that, Rick?

A: (Inaudible).

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MR. BOCK: They say he is -- Jim Stuart has some concerns and offender is at a medical relapse risk? Is that -- is that what -- that's what it's saying to you?

A: I don't know. This is not my handwriting.

MR. BOCK: Is that Mr. Phillips' handwriting?

A: Yeah. Someone (inaudible).

MR. BOCK: Some -- Jim Stuart or --

A: (Inaudible) problem.

MR. BOCK: -- has some concerns.

A: (Inaudible, possibly reading from report).

MS. STUART: Medium relapse risk.

A: (Inaudible), yeah.

MR. BOCK: Oh, medium relapse.

MS. STUART: He -- these report's have a place to rate that.

A: Yeah, probably medium.

MR. BOCK: Do we have those reports?

A: (Inaudible).

MR. BOCK: Did you co-- and --

MS. STUART: Yeah, they're in there.

MR. BOCK: -- gave Harley a copy of those? Okay.

MS. STUART: (Inaudible). Starting in July.

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Q: You had him do about -- about once a month he was droppin' urines for you; is that right? Yes.

A: Yes, I'm sorry. I keep forgettin' we're being recorded.

Q: Would he -- would he know the day or around the time frame when he was required to drop the urine?

A: Never. Matter of fact, I -- I called on Saturday, so . . . He knew it would probably be a Saturday, that's all he -- he might have known.

Q: He would know it would be a Saturday.

A: He would -- he would suspect that it would be dropped on Saturdays.

Q: Okay. So all of his drops were on a Saturday when you were supervising him.

A: I don't know if they were all Saturdays, but I would say a -- a good deal of them were.

Q: And so what would be the usual scenario? What day would you call him? He's -- it's only once a month he would dropping; correct?

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A: Right. Unless I found -- unless I suspected or have reason to drop them more often, and then --

Q: In this instance you did not because you didn't know that he had had a problem in June.

A: Right. Didn't know i-- wasn't aware of it. Prior to that all his UAs had been negative. (Inaudible).

Q: You would ask him as to whether he was using typically, wouldn't ya'?

A: Right.

Q: And they would fill out a form also when they come to see you indicating as to whether they had any police contact, as well as whether they still had (inaudible).

A: No, not on home arrest.

Q: Would it say whether they had any police contact?

A: No, there was no form for that.

Q: No form at all.

A: Right.

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Q: Is that a requirement that if ya' have police contact he was to affirmatively let you know that?

A: Right.

Q: Did he ever let you know that in the course of his supervision?

A: When, uh, they had that incident when he got stabbed.

Q: Did you have a situation where somebody by the name of David or Tony Kapp spoke to you because he was concerned because David Nordstrom was threatening him?

A: He -- no, I -- he -- I think he talked to me. I can't remember if I got it from David or if I got it from him, it's been a while back, but, uh --

Q: Would you have verified that in your repor-- chronology?

A: I mi-- I might have. I might have. There mighta been a quick call in there somewhere. I know that David said that -- oh, I know what it was, David said that he saw him at a store or something, okay? And that this guy was gonna be callin' me. Somethin' to that

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1 effect. And I don't remember any the-- any
2 threats being made. And I don't remember Mr.
3 Kapp verifying that any threats were being
4 made.
5 Q: Do you remember Mr. Kapp even calling?
6 A: I'm not sure. (Inaudible). I mighta tried
7 to call him, I don't remember.
8 Q: Well, don't speculate. Let's see what we
9 ha--
10 MS. STUART: On 6 21.
11 A: 6 21? 6 21? I was thinkin' it was early in
12 the (inaudible). Yeah, nothing -- said
13 nothing happened.
14 Q: Who said nothing happened?
15 A: David.
16 Q: David Nordstrom?
17 A: Right.
18 Q: What does that note indicate to you that he
19 had contact with who? David Nordstrom.
20 A: David Nordstrom had contact. He reported to
21 me.
22 Q: And what did he report to you? I don't have
23 a (inaudible, speaking simultaneously).

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A: Said that he had contact with him and -- or the person that testified against him (inaudible) and that. And he was simply informing me that he had contact with him and that nothing happened.

Q: He didn't -- do you have any notes, you were thinkin' it w-- occurred earlier. Is there some suggestion or not in there about having any contact with David Kapp? I'm sorry, David -- Tony Kapp I should say, Tony or Larry Kapp.

A: Larry. Tony, Larry Kapp. I think Larry's his middle name.

Q: Uh-huh. No, Larry's his real name.

A: Okay.

(Pause).

(Inaudible).

Q: Nothing in there to verify that?

MS. STUART: Verify what did you say?

Q: That Tony Kapp had contact with you with reference to David Nordstrom harassing him?

A: (Inaudible). No, I can't find anything.

Q: All right. You got a -- somebody has generated a treatment record work sheet from

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La Frontera. It's in the file. Have you see that?

A: No, this was after I was gone already. (Inaudible).

Q: So you -- you don't know anything about that.

A: Mr. Gust, it says right here.

Q: Had you sent anything to -- had you sent David Nordstrom over to La Frontera?

A: Right. (Inaudible).

Q: And that was for anger counseling.

A: Anger management.

Q: And how many times was he required to be there in a month, a week? How often was it?

A: I think it was once a week. I don't recall.

Q: Do you have verification that he actually attended once a week?

A: (Inaudible). And I don't know, let's see -- (inaudible).

Q: Well, let's go first with when you sent him over there.

A: Yeah, back when that -- I know when it was. It was back when he had the incident, the stabbing incidents, uh, sometime thereafter he was recovering.

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Q: Where's that initial sheet, Cathy, that you had had as to his conditions and . . . (Inaudible).

(Pause).

A: Okay, uh --

Q: Okay, and you've got here needs assessment/referral. Would that be for potential anger counseling?

A: No, that's that ITP. That's that initial treatment plan that they want all the defendants to go to once they -- the come out of prison.

Q: I see.

A: That's an initial -- and then they, uh, evaluate the person's needs.

Q: Well, here ya' have also conditions, must attend Violent Offenders Group, must attend ITP as directed. So here it state--

A: I already told him he to go, right.

Q: All right. So he --

A: I knew he was going to be going to --

Q: So one of the initial conditions that you set forth is that he attend the Violent Offenders Group as of January 21st, '96.

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A: Right.
Q: Ja-- 25th '96.
A: Right.
Q: Okay. How many times do you have verification that he attended up through the stabbing of June the 21st?
A: Well, he never attended. Well, he might have attended once or twice but they only al-- they only allow you, if you miss the first one you cannot attend the second one.
Q: Well, was in violation of his conditions by failing to report?
A: No.
Q: Why not?
A: Because I said it was okay.
Q: Didn't you say it was okay after June the 21st? After the stabbing not to attend?
A: No. I didn't say it wasn't -- wasn't okay for him not to attend.
Q: Well, I'm confused here, okay. As I understand it, one of the conditions set that you wrote down as of January 25th is that he attend Violent Offenders Group.
A: Right.

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Q: And this is signed January 25th, '96.
A: Right.
Q: Is there something where you told him between the-- January 25th and the stabbing that he didn't have to attend?
A: Verbally.
Q: When was that?
A: I don't know. I don't recall.
Q: Do you have any documentation in your records of that?
A: Well, y-- see this is the -- the thing with this particular person. He has never completed anything he's ever started according to what I understand on his record, from the presentence report and his criminal history so I was working with him to go. He would ma-- he would make one he would miss the second one so he wasn't able to complete, and then he got stabbed. And then I said, well, since you're not gonna go to the two day one, we're gonna make you go to the 14 week one, okay? In -- in part of his punishment. So that's when we mandated to go to the other one.

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Q: Well, when (inaudible, speaking simultaneously).

A: And as long as he was attempting to attend then I -- then I wasn't goin' (inaudible, speaking simultaneously).

Q: Le-- let's back up in the history.

A: See, he began one here and he began on -- he -- I knew he began 'em two times throughout but he was never able to get to that second one.

Q: Hang on a second.

A: Okay.

Q: I want to see what we're defining. Okay? Is the Violent Offenders Group a two day session.

A: Right.

Q: And when does it begin?

A: Six hours.

Q: Six hours.

A: Yeah.

Q: It's two days per week.

A: No, it's, uh, it's one Saturday and then another Saturday.

Q: Okay, so it's a class.

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A: Right.
Q: For three hours --
A: (Inaudible, speaking simultaneously) --
Q: -- and then another three hours.
A: Right, a group session.
Q: That's a group session.
A: Two group sessions.
Q: And then there would be other group sessions.
A: No, that's it.
Q: So, in other words, the Violent Offenders Group that he had to attend was a total, basically of six hours worth of sessions.
A: That's it.
Q: Is that correct?
A: That's correct.
Q: And he never did that fully from January 25th through June the 21st?
A: He never completed it but he attended more than six hours I think (inaudible).
MS. STUART: (Inaudible).
A: He tried three times or four times.
MS. STUART: There's one here on the 23rd.

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A: So. He just never got to the second one and finished. Work would come up or something would come up.

Q: And you told him at some time that he didn't have to attend before the stabbing?

A: No, I didn't tell him he didn't have to attend. I said that we're gonna complete this or you're not getting off of home arrest, that was what I said.

Q: I thought you said at some time during the period before his stabbing you told him he didn't have to go to Violent Offenders Group any more.

A: I said it was okay that he go to the program. I didn't finish what -- he -- he has to finish, he has to complete that. I -- I allowed it to happen so it was okay, you see what I'm saying. That was okay for him to do. It was okay, because I allowed it to happen that he couldn't go, that he didn't complete his second, all right? But he was gonna complete that before he finished and he knew that. And I think I s-- probably reiterated on it a couple times in here, a

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1		few times, that he must attend and he will
2		have to complete it. And I was working with
3		him the -- in -- in that direction.
4	Q:	Were you awar-- ever aware that he showed up
5		in your office having drank alcohol?
6	A:	No.
7	Q:	Did ya' ever have him blow into a breath-
8		alyzer or some sort of machine which would
9		register the alcoholic content in his breath?
10	A:	No.
11	Q:	Do you have those available?
12	A:	The -- the machines?
13	Q:	Yeah.
14	A:	Sure.
15		(Pause).
16	Q:	And the home a--
17	MS. STUART:	(Inaudible).
18	???:	I'm a (inaudible).
19	Q:	We're -- we're almost done in here.
20	???:	Good.
21	Q:	His sponsor, supervisor, was his father,
22		Richard?
23	A:	Right.

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Q: Okay. And did there come a time when he changed his addresses as to where he was going to be living?

A: Not on my supervision (inaudible).

Q: Okay.

A: I wouldn't allow it.

Q: Did he ask you for that?

A: Several times.

Q: Did you check to verify at all whether he had in fact changed his living arrangements contrary to your statements that he wasn't supposed to?

A: I checked with -- the only verification that I have is that, of course, the electronic monitoring equipment, okay? And then of course I've talked with parents I don't know how many times, you know, throughout the supervision, and they never indicated to me that (inaudible), so . . .

Q: One last thing on electronic monitoring that comes to my mind. Was the electronic monitoring device taken off him at the time of the stabbing?

A: No.

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Q: Did he continue to have that on him, uh, through July the 8th or so, when I think he was off, I think according to the records?

A: He had it on the whole time I was there.

Q: Right. So you're not aware of anybody having cut it off?

A: (Inaudible).

Q: And of course, you obviously then didn't have to make any new plastic band for it or anything?

A: (Inaudible). I think somewhere in there we might have a battery (inaudible).

Q: Do you know when that was? Is there any documentation of when the battery replaced?

A: If there wa-- if the battery was replaced on it, it'd probably be in my notes.

Q: You don't have a memory though, as you sit here today that the battery was replaced at least once during the period he was on electronic monitoring?

A: I can't say for sure. It's just something that occurs kinda commonly (inaudible).

Q: Were you the one that actually placed it on him, exactly?

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A: Yeah.

Q: Is it possible you coulda pi-- placed it around his boot?

A: No.

Q: Why is that not possible?

A: (Inaudible).

Q: Do you know of instances from your familiar-- from your experience where a bracelet has been found somewhere out there on the street that was associated with a person and it was -- a-- and it was not cut off?

A: Not to my knowledge.

Q: You never heard of anybody finding one in that situation?

A: Seen 'em bring 'em back many times. They're always cut though. (Inaudible).

(Pause).

MR. KURLANDER: I don't have any further questions. What do you think, Rick? Do you have an--

MR. BOCK: No.

MR. KURLANDER: Okay. This concludes the interview at this time, thank you very much. 12:35.

Exhibit 17

Memorandum in Support of Petition for Post-Conviction Relief, *State v. Jones*, Pima Co. No. CR-57526, February 15, 2002

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

THE STATE OF ARIZONA, Respondent, vs. ROBERT GLEN JONES, JR., Petitioner.	No. CR-57526 **MEMORANDUM IN SUPPORT OF PETITION FOR POST-CONVICTION RELIEF** (Assigned to the Honorable John J. Leonardo)

Petitioner Robert Glen Jones, Jr. (" Jones"), by and through undersigned counsel, files this Memorandum in Support of his Petition for Post-Conviction Relief to highlight and explain the issues contained in the Petition.

I. FACTS

Jones was convicted of murders that occurred in Tucson at the Moon Smoke Shop on May 30, 1996 and the Fire Fighters Union Hall ("Fire Fighters Hall") on June 13, 1996. The verdict was based primarily on the testimony of two key witnesses: David Nordstrom ("David") and Lana Irwin. David testified that he was released from prison in January 1996 and reestablished his friendship with Jones. R.T. 6/23/98, 83, 87-88, Ex. 1. David, Jones, and David's brother Scott Nordstrom ("Nordstrom") would spend time together. R.T. 6/23/98, 88-

89, Ex. 1. David testified that on the day of the Moon Smoke Shop incident, Nordstrom and Jones picked up David in Jones' truck, an old white Ford pickup truck. David testified that the three stopped in a parking lot near the Tucson Medical Center where Jones saw a car that he thought he could steal. According to David, Jones was unable to steal the car but found a 9mm pistol under the seat in the car and took it. R.T. 6/23/98, 97-104, Ex. 1. David claims that the three then continued driving and decided to rob the Moon Smoke Shop. R.T. 6/23/98, 107-109, Ex. 1. David's story is that he sat in the truck while Jones and Nordstrom went inside the Moon Smoke Shop. R.T. 6/23/98, 110, Ex. 1. David claims that he heard gunfire from inside and shortly afterwards, Jones and Scott jumped back in the truck. R.T. 6/23/98, 110-111, Ex. 1. David claims that Jones stated that he shot two people and Nordstrom stated that he shot one. R.T. 6/23/98, 113, Ex. 1. David shared in the robbery proceeds. R.T. 6/23/98, p. 113, Ex. 1.

One of the employees of the Moon Smoke Shop, Mark Naiman, met with a police sketch artist two weeks after the robbery, and provided a very minimal description of the one suspect he had been able to only briefly see. R.T. 6/18/98, 70-71, Ex. 2. A second employee, Noel Engles, had run out of the store once the intruders had left and ran up the back alley. Engles came, as he claimed, "within touching distance" of a pickup truck that he claimed was light "blue or grey." R.T. 6/18/98, 51-54, Ex. 2.

On June 13, 1996, the Fire Fighters Hall was robbed. At 9:20 p.m., Nat Alicata, an associate member of the Fire Fighters Hall, arrived and discovered the bodies of his girlfriend, Maribeth Munn; the bartender, Carol Lynn Noel; and a couple, Judy and Arthur "Taco" Bell. R.T. 6/18/98, 127-128, Ex. 2. There were no eyewitnesses to the Fire Fighters Hall crimes.

There was no physical evidence linking Jones to either crime scene. Several months after these events, David told his girlfriend, Toni Hurley, some information about these crimes. R.T. 6/23/98, 133, 146, 215-218, Ex. 1. Hurley then made an anonymous 88-CRIME call to the police. R.T. 6/23/98, 221, Ex. 1. Hurley's story to the police did not add up and David

ended up talking to the officers. Over the next several months, David provided bits and pieces of information to police which tended to minimize his own involvement in the crimes and place the blame on Jones. R.T. 6/23/98, 150-151, Ex. 1. There were numerous problems with David's information, including the fact that, as the police officers admitted, he kept changing his story and providing new or different information little by little. R.T. 6/24/98, 92, Ex. 3. At one point, he was refusing to continue to speak to the officers until they offered him a $5,000.00 inducement to help attempt to retrieve the guns used in the crimes. R.T. 6/24/98, 100, Ex. 3; R.T. 10/30/97, Trial of *State v. Scott Nordstrom* ("*Nordstrom* Trial"), 168-79, Ex. 4; R.T. 11/20/97, *Nordstrom* Trial, 84, Ex. 5. The guns were never found. R.T. 11/21/97, *Nordstrom* Trial, 3-4, Ex. 6.

David's testimony against Jones was bolstered by that of another witness, Lana Irwin. Irwin was acquainted with Stephen Coates. R.T. 6/19/98, 40-41, Ex. 7. Irwin claimed to have overheard conversations between Coates and Jones where Jones discussed the killings. R.T. 6/19/98, 43-47, Ex. 7. Irwin had originally told the police that she had a "dream" about certain pieces of information. R.T. 6/25/98, 32-33, Ex. 8; R.T. 6/19/98, 51, Ex. 7. She was unclear on most details and could not pinpoint any time frames. R.T. 6/19/98, 67-76, Ex. 7. The state dismissed drug charges against her and provided numerous other inducements for her to testify. R.T. 6/19/98, 58, Ex. 7. Her story was not coherent and provided very little infonnation; however, the state seized upon certain details that Irwin allegedly overheard from Jones. David White, the prosecutor, argued that she must have heard these details from Jones because they were not released to the media and therefore, because Jones knew these details and conveyed them to Coates, Jones must have been involved in the crimes. R.T. 6/25/98, 129-133, Ex. 8.

II. LEGAL ARGUMENT

A. Jones' Constitutional Rights to a Fair Trial and Due Process Under the Fifth, Sixth, Eighth and Fourteenth Amendments Were Violated by Misconduct of the Prosecutor and the Detectives.

White knowingly presented perjured testimony, made a false avowal to this court, and deliberately phrased his questions so as to mislead the jury with the witnesses' answers. He failed to disclose exculpatory evidence and misled Jones' counsel about the status of the investigations. As will be shown by the evidence, White's conduct, and that of the detectives with whom he colluded, was not merely negligent or careless. The only reasonable conclusion that one can reach is that White knowingly and intentionally suborned perjury and engaged in other egregious misconduct in order to obtain this conviction at any cost. White had to go to extreme measures in order to prop up his key witness, Irwin, whose testimony was absolutely critical for the jury to believe. Jones was denied his rights to a fair trial and Due Process by having the jury impermissibly tainted against him. Each instance, as described below, was significant enough to have had a major impact on the outcome of the trial.[1]

1. Deliberate Subornation of Perjury Involving Kicked In Door.

In response to leading questioning by White, Irwin testified that she had overheard in the alleged Jones/Coates conversation: "[o]ne door was open and one had to be kicked in." R.T. 6/19/98, 47:5-11, Ex. 7. Irwin's information concerning the kicked in door *did not* come from the perpetrator of the crimes, because the perpetrators *did not* kick in a door. Rather, the police officers kicked in a door after they arrived on the scene. White knew this fact, and deliberately solicited Irwin's testimony and false testimony from Detectives Godoy and Woolridge to corroborate Irwin's story. Godoy had given contradictory testimony eight months earlier in Scott Nordstrom's trial where he testified truthfully that police officers had kicked in the door. White undertook these extreme measures because his new witness, Irwin, was

[1]The claims contained in Part 11(A) are appropriate for this court to consider pursuant to Rule 32.1(a), Ariz. R. Crim. P. The information in support of these claims did not come to light in time to be included in Jones' direct appeal. They therefore are not precluded under Rule 32.2. In addition, the information supporting these claims is appropriately considered as newly discovered material facts under Rule 32.1(e) and as facts establishing actual innocence under Rule 32.1(h). Jones is entitled to relief under those parts of the rule as well.

absolutely critical to his case against Jones. Unlike in Nordstrom's trial, there was no eyewitness to place Jones at the crime scenes. Irwin was the only person who could give the jury a link between Jones and these crimes, based on bits and pieces of the conversation she allegedly overheard. Irwin's testimony actually appears to have been fabricated by White.

The passages of testimony at issue are as follows. Referring to the Moon Smoke Shop, White stated in opening: "One of these doors has been kicked in. Apparently the shooter kicked in the door, ordered Tom Hardman to come out and lie on the ground and executed him, two shots." R.T. 6/18/98, 11, Ex. 2. Godoy testified that he was assigned to process the scene at the Moon Smoke Shop. R.T. 6/18/98, 85-86, Ex. 2. In response to White's specific questioning, Godoy testified as follows:

> Q Let me show you two other photographs. Did you find any damage to one of the doors in the back area?
> A Yes.
> Q Showing you what has been marked State's 15 and 16, do those represent a door that you saw that was damaged?
> A Yes.
> MR. WHITE: Move the admission of 15 and 16.
> MR. BRAUN: No objection, Your Honor.
> THE COURT: Exhibits 15 and 16 are admitted.
> Q (By Mr. White) There are numbers written on, there appears to be a number 58 written on that door. Was that a number you put there?
> A Yes.

R.T. 6/18/98, 96-97, Ex. 2. Through this testimony, two state's exhibits were admitted showing the rear door of the Moon Smoke Shop kicked in. *Id.*; State's Exhibits 15 and 16.

Irwin testified that in the summer of 1996, she was living in Phoenix when she met Robert Jones. R.T. 6/19/98, 39-40, Ex. 7. Jones came to her apartment with an acquaintance of Irwin's, Stephen Coates. R.T. 6/19/98, 40-41, Ex. 7. She stated that Jones came over a number of times and stayed overnight sometimes. R.T. 6/19/98, 41, Ex. 7. Irwin's most damaging testimony concerned her allegations that she overheard "many conversations"

between Jones and Coates at her apartment. R.T. 6/19/98, 43-45, Ex. 7. According to Irwin, she overheard Jones telling Coates that he had killed people in Tucson. R.T. 6/19/98, 45-46, Ex. 7. She claimed that Jones stated that he had killed four people and "his partner" had killed two. R.T. 6/19/98, 46:17-21, Ex. 7. In response to White's leading questions, Irwin gradually recounted for the jury additional details about the crimes that she had supposedly overheard, as follows:

> Q Do you remember – you started to say something about a door.[2] Do you remember hearing any conversation about doors?
> A. One door was open and one had to be kicked in.
> Q I'm sorry. One had to be kicked in?
> A Yes. One was kicked, one was open.
> Q And you said something about somebody shot by a door. Was that - -
> A Someone was standing by a door and was shot.
> Q Do you remember him saying anything about people in a back room or somebody going to a back room?
> A They ran to the back room. His partner chased them and they were shot.

R.T. 6/19/98, 47:5-19, Ex. 7. She further testified:

> Q These people that were killed, did he indicate whether or not there were any women killed?
> A Yes, he did.
> Q I want to talk about the women who were killed. Did you overhear any conversation about the place where the women were killed?
> A A bar or maybe a restaurant. I don't know.
> Q One or the other of those two?
> A Yes.
> Q Did you overhear him describe what this bar or restaurant looked like?
> A I only heard him say a red room, everything was red, was like red.

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[2] White coaxed his way into the question by saying "Do you remember – you started to say something about a door. R.T. 6/19/98, 47:5-7, Ex. 7. However, Irwin's only mention of a "door" occurred a full ten questions earlier, in response to White's question, "Do you remember him saying how many people he killed?," when she responded "a man by the door --" and White cut off her response because, apparently, it was not what he wanted to hear. R.T. 6/19/98, 46:3-5, Ex. 7.

R.T. 6/19/98, 48:7-19, Ex. 7. Also in response to the prosecutor's prompting, Irwin testified about the alleged positions of the bodies, in particular, Arthur Bell's body, following the crimes:

> Q Did he ever describe – and was there a man or some men involved also who were shot?
> A One by the door and one with his head back.
> Q When you talk about the one with his head back, can you describe the age of that person?
> A Older.
> Q An older man?
> A Yes.
> Q With his head back?
> A His head – his head, I can't put my head in that position because of my neck, but he said his head was back, but I can't do the same thing.
> Q Was this person standing or sitting?
> A Sitting in a chair.
> Q Sitting in a chair with his head back?
> A Yes.
> Q Did he say what place – did he give a description of the place where the man was sitting in the chair with his head back?
> A I don't remember.
> Q Was that in that same red room?
> A That was – I think it was in the same red room.

R.T. 6/19/98, 49:13-50:10, Ex. 7.

Irwin admitted that, when she was initially contacted by the detectives, she did not give them this same information, but that she eventually told the detectives that she "had a dream about a red room where people were killed." R.T. 6/19/98, 50:24-51:17, Ex. 7. At the time, she was in jail on marijuana possession charges. R.T. 6/19/98, 51:18-21, Ex. 7. In exchange for her testimony against Jones, the state was providing her with a place to live, and had promised to relocate her. R.T. 6/19/98, 52:12-19, Ex. 7. In addition, the state agreed to dismiss the marijuana charges against her. R.T. 6/19/98, 53:9-16, Ex. 7.

On cross-examination, Irwin admitted that she had been treated psychiatrically for manic depression and that she was on several different medications for this condition. R.T. 6/19/98, 56:9-57:1, Ex. 7. In addition, she had suffered some head injuries in the past that had

required brain surgery. R.T. 6/19/98, 57:15-19, Ex. 7. In the summer of 1996, when she allegedly overheard these conversations between Coates and Jones, she was using marijuana as well as crystal meth. R.T. 6/19/98, 58:3-11, Ex. 7. She further admitted that in her interview with White, Detective Salgado, and Detective Woolridge on May 5, 1997, she told the detectives that her memory comes and goes and that "memories, they come and go like nightmares you know." R.T. 6/19/98, 63:16-66:22, Ex. 7.

Woolridge corroborated Irwin's story about the door:

> Q Did Lana Irwin tell you something about a door being kicked in?
> A Yes, she did.
> Q Was there a door kicked in, in one of these cases?
> A Yes, in the back room at the Moon Smoke Shop.
> Q As shown in State's 50.
> A Yes, it is.
> Q The fact that a door was kicked in, was that ever mentioned at the first trial in this case?
> A No, it was not.
> Q Lana Irwin, did you ever see her in the audience at that first trial?
> A No.

R.T. 6/25/98, 38:5-19, Ex. 8.

in his closing argument, White emphasized that Irwin had information about the kicked in door at the Moon Smoke Shop that was not released to the public, and therefore she must have overheard this from Jones. R.T. 6/25/98, 130-131, Ex. 8.

The testimony of Woolridge and Godoy concerning the door being kicked in by the intruders is blatant perjury solicited by White. As shown by two police reports, when officers responded to the scene of the Moon Smoke Shop, there was a locked room adjacent to the back area. Officer Charvoz attempted to locate a key for the door but was unable to. Sergeant Grimshaw brought him a set of keys, but none opened the door. Sergeant Grimshaw then instructed Officer Charvoz to kick in the door because they were unable to determine if there was possibly another victim or suspect inside. Officer Charvoz then kicked in the door himself.

Tucson Police Department Report No. 9505300531 of Office Charvoz, dated 5/30/96; Tucson Police Department Report No. 9605300531 of Sergeant Grimshaw, dated 5/30/96, Ex. 9.

White, Godoy, and Woolridge were well aware that the testimony that they were providing to the effect that the intruders had kicked in the door was false. At Nordstrom's trial a few months earlier, Godoy testified as follows:

> Q Tell us what you found?
> A In the back room there are three different areas where I found money. One was inside a drawer, one inside a brief case. Then we broke down the door. Actually broke a door, found some money in this other room back here.
> Q Okay. Let's talk about those places one at a time. The door that had to be broken into, uniform officers did that?
> A Yes.
> Q The intruders didn't do that?
> A No, they did not.

R.T. 10/28/97, Trial of *State v. Scott Nordstrom*, 200:3-14, Ex. 10. Woolridge was present through all of Nordstrom's trial and heard Godoy's testimony there. Further, as one of the lead detectives in the investigation, it can certainly be presumed that she was familiar with key details about the crime scene contained in the officers' reports.

White induced these false statements at Jones' trial in order to boost the credibility of Irwin, his key witness. This information was critical because it was one of the key details that Irwin "learned" from the conversation she supposedly overheard from Jones. The state did not call Officers Charvoz or Grimshaw, the officers who cleared the scene, to testify. Not only did White deliberately elicit these false statements, he then emphasized them in his closing statement. All this time, White, Godoy, and Woolridge knew that the information was false and it was actually the police that had kicked in the door. The seriousness of White's conduct is underscored by the fact that the FBI launched an investigation into this matter and a State Bar complaint was filed and has progressed to the probable cause stage. *See* Affidavit of S. Jonathan Young, Ex. 11; State Bar Probable Cause Order, Ex. 12.

"The prosecution may not use perjured testimony in order to obtain a conviction, nor may it permit false or misleading testimony to go uncorrected." *United States v. Agurs*, 427 U.S. 97, 103-04 (1976); *Napue v. Illinois*, 360 U.S. 264, 271 (1959) ("if there is any reasonable likelihood that false testimony could have affected the jury's verdict, the conviction (or sentence) must be set aside)." If the state influences witnesses into testifying in a certain way, or into not testifying at all, this is a denial of Due Process and may be an interference with the right to counsel under the Fifth, Sixth, and Fourteenth Amendments. This is also an Eighth Amendment violation as it affects the issue of the penalty as well.

As if the perjury were not shocking enough, White's misconduct was compounded by his failure to disclose Charvoz or Grimshaw reports to Jones' counsel. *See* Affidavit of Eric Larsen, Ex. 13; Affidavit of S. Jonathan Young, Ex. 11. Thus, Jones' attorneys did not have reason to realize that Godoy and Woolridge's statements were false at trial. The knowledge of these three key players, combined with the fact that the Charvoz and Grimshaw reports were not disclosed to the defense, leads to the inescapable conclusion that Godoy, Woolridge and White conspired to present this false evidence at trial about a key fact supposedly known by the state's key witness. Because Irwin's credibility was bolstered in this manner, the jury necessarily gave sufficient weight to her story to enable it to convict Jones, in violation of Jones' rights to Due Process and a fair trial. Regardless of any criminal and ethical sanctions that may ultimately be imposed on the prosecutor and detectives, the extreme violations of Jones' constitutional rights by the state obtaining his conviction through perjured testimony mandate a reversal of his convictions.

2. **Misconduct Involving "Red Room" and the Position of Arthur Bell's Body.**

White, with the complicity of the detectives, deliberately misled the jury into believing that Bell's body was found leaning back when the police arrived. This was another of the key details that Irwin supposedly overheard from Jones about the crimes. In fact, the evidence

suggests that Bell was actually found slumped over the bar. At some point *after the police arrived*, his head was moved back over his chair and photos were taken in that position. As quoted *supra* on p. 7, Irwin testified that she overheard that there was an "older" man "sitting in a chair" "with his head back," which she thought was in the red room. R.T. 6/19/98, 49:3-50:10, Ex. 7. Woolridge corroborated Irwin's "dream" story:

> A She said that she, in her dream she saw a red room with a dead man who had been shot in the head, sitting in a red chair. And then she demonstrated how he was sitting.
> Q Did that information have any significance to you?
> A Yes, it did.
> Q Why was that?
> A Because she basically was describing Arthur Bell.
> Q I'm showing you State's 8; the way Arthur Bell looked like the night of the Fire Hall?
> A Yes, that's correct.
> Q Now, when you went and talked to Lana Irwin on April 16, 1998, did you give her any information about these crimes?
> A No, I did not.
> Q Did you tell her where the crimes occurred?
> A Only that we were from Tucson.
> Q Did you tell her that there was a guy in a chair dead and you wanted to talk to her about that?
> A No, not at all.
> Q When she tells you about this dream, a man sitting in a chair in a red room, you had not given any of that information to her?
> A No, I had not.

R.T. 6/25/98, 32:25-33:25, Ex. 8.

And further:

> Q Was there a victim with some signs of injury, blunt force trauma to his head in this case?
> A Yes, there was.
> Q Who was that?
> A Arthur Bell.
> Q Did Lana Irwin tell you about that?
> A Yes, she did.
> Q Was that in the press release anywhere?
> A No, it was not.

> Q How about this leaning back thing that she describes to you, is that in the press release anywhere?
> A No, it was not.

R.T. 6/25/98, 35:24-36:11, Ex. 8. State's Exhibit 8, introduced through Woolridge, was a picture showing Bell leaning back in his chair.

Detective Salgado, likewise, testified that the information that the Fire Fighters Hall was red and that the victims were shot in the head was not released to the media. However, the day after Scott Nordstrom's conviction, on December 3, 1997, the Arizona Daily Star ran an article showing a picture of the Fire Fighters Hall clearly showing the red room. *See* Arizona Daily Star, December 3, 1997, Section A, p. 18, Ex. 14 and Affidavit of Wendy Zepeda, Ex. 36.

The person who found the bodies and called the police at the Fire Fighters Hall was Nat Alicata. R.T. 6/18/98, 127-128, Ex. 2. After the police arrived on the scene that night, they interviewed Alicata. According to Alicata's statements in that interview, the bodies were in the following positions when he found them:

> A .. as you walk in the door here Mary Judy was laying right about here..Taco is sitting at the bar right over here..he was talking maybe there was a chair here and a chair here or between here and here and Judy was laying..Jesus, down here, two thirds of the way down the bar from Lynne.
> ES Lynne?
> BW On the floor _____. . .?
> A On the floor face down.
> BW ..behind the bar.
> ES I thought Taco was on the floor.
> A No no, Taco was sitting at the chair.
> ES Okay.
> A Slumped on the chair on the bar sort of sideways like this..his wife was on the floor face up and Maribeth was leaning on the bar here and I took her and set her down on the floor.
> BW Okay could you tell where Taco was hit..
> A No
> BW ..just blood around his head?
> A ..just blood around everything..Judy had it coming out of her mouth, out of her ears and out her out her nose..Taco I seen the blood down the side of his face and Maribeth's

> was coming out her nose and her mouth and her ear on the one side..probably the left side..the left side.

Transcript of 6/13/96 interview with Nat Alicata, 13:14-37, Ex. 15.

At trial, Alicata responded to White's questions as follows:

> Q What did you see when you went into the bar area, sir?
> A I pulled open the door. Judy Bell was laying with her head right by the door. You take one step and you would be stepping on her. She was face up.
> Arthur Bell was sitting in a chair about four chairs, five chairs from the turn of the bar. He was sitting in a chair. Maribeth was in the end chair around the cure with her head down on the bar.
> Q Can you show the jury how she was with her head down on the bar?
> A Like that (indicating).
> And then Lynn, the bartender, she was laying face down behind the bar.

R.T. 6/18/98, 127-128, Ex. 2. That is the full extent of Alicata's testimony regarding the position of Bell's body. Notably, White did not ask Alicata to explain or "show the jury" how Bell was sitting as he did with Maribeth Munn.

Detective Godoy testified that he conducted a scene search when he was called to respond to the homicides at the Fire Fighters Hall. R.T. 6/18/98, 130-131, Ex. 2. Godoy did not explain the position of Bell's body, other than to say that Bell was found "still in the chair." R.T. 6/18/98, 132, Ex. 2. Through Godoy, the prosecutor introduced state's photographs of the scene depicting Bell leaning back in his barstool. R.T. 6/18/96, 132; 137, Ex. 2. Godoy stated that he was one of the first officers into the Fire Fighters Hall and that it was his job, along with Detective Fuller, to process the scene and take photographs of "everything that could possibly be of evidentiary value." R.T. 6/18/96, 146, Ex. 2.

Godoy's testimony was corroborated by Cynthia Porterfield, the forensic pathologist who arrived at the Fire Fighters Hall at approximately 1:00 in the morning. R.T. 6/19/98, 6:16-24, Ex. 7. White expressly asked Porterfield about Bell's posture in his chair and even asked

Poterfield to demonstrate the position of his body for the jury:

> Q Now, when you observed the body of Mr. Bell, you said he was seated in a chair.
> How was he seated? What was his posture?
> A He was leaning backwards over the back of the chair.
> Q I hate to ask you to do this, but could you demonstrate that for us so we an get a view of how that looked.
> A (Indicating.)

R.T. 6/19/98, 7:13-21, Ex. 7.

Despite the testimony of Irwin, Woolridge and Porterfield, at least three police reports, prepared by officers who cleared the scene but did not testify at trial, state that Bell was found "slumped over" at the bar. *See* Reports of Officers Gallego, Parrish, and Poblocki, 6/13/96, attached as Ex. 16. Defects from bullets were found in the bar near his head and blood was on the bar. R.T. 6/18/98, 135-36, Ex. 2. Reports prepared by officers who apparently arrived on the scene later state that Bell's head was leaning back when they arrived. *See* Reports of Officers Braun and Butierez, 6/13/96, Ex. 17. Alicata did not move any of the bodies, other than that of his girlfriend, Maribeth Munn. Transcript of 6/13/96 interview of Nat Alicata, 8:17-25, Ex. 15. Somehow, however, Bell's body was moved from the slumped forward position, and was leaning back at the time the photographs were taken.

In both his opening and his closing, White emphasized Irwin's testimony as linking Jones to the crime, and in particular, the fact that Irwin allegedly knew the following details that had not been released to the public: the perpetrators of the crime had kicked in a door, a man was leaning back in his chair, the Fire Fighters Hall was red, and the victims there were shot in the head. R.T. 6/25/98, 130-133, Ex. 8; R.T. 6/18/98, 28-30; Ex. 2. By refraining from asking Alicata or Godoy about the position of Bell's body when they arrived, after asking detailed questions about the positions of the other bodies and asking both Poterfield and Irwin to describe and/or demonstrate the position of Bell's body, and by carefully asking Porterfield

to demonstrate the position of the body *when she observed it* hours after the murders, White was able to corroborate Irwin's story. The blood found on the bar and the bullet defects in the bar support the theory that Bell's head was shot on the bar. White had obviously examined this issue in detail when preparing for trial because he emphasized in his opening and his closing that the "fact" that Irwin knew that Bell's head was leaning back established that she had overheard details of the crime from Jones. The unmistakable conclusion is that the prosecutor and detectives deliberately misled the jury, which denied Jones his constitutional rights to Due Process and a fair trial.

3. <u>False Suggestion Regarding Sketches.</u>

During the police investigation, two composite sketches were prepared of the suspects in the Moon Smoke Shop crimes. Regarding those sketches, Detective Salgado testified as follows:

> Q The composites that were done, you put in a search warrant that the Nordstroms had been identified as resembling the composites, did you not?
> A Or words to that effect, yes.
> Q So it would be fair to say that other people had come forward identifying other people other than Mr. Jones from those composites, correct?
> A Oh, yes.
> MR. LARSEN: Thanks. Nothing further.
> THE COURT: Any redirect?
> REDIRECT EXAMINATION
> BY MR. WHITE:
> Q There were two composites or what we refer to also as sketches?
> A Yes.
> Q There were two sketches?
> A Yes, there were.
> Q The one that we've seen with the person wearing a black hat, a cowboy hat, and sunglasses?
> A Yes.
> Q And the other sketch.
> A Correct.
> Q Was that person wearing a black hat and sunglasses?
> A No.
> Q How would you describe the other sketch, the person's face?

A Slim, slim face, narrow face, long face.
Q Do either one of the Nordstroms have a long face?
A They both have long faces.
Q Is that the similarity that people were telling you about?
A Yes.
MR. LARSEN: Objection, unless they differentiate them.
THE COURT: Overruled.

R.T. 6/24/98, 101:17-103:4, Ex. 3.

With this testimony, Salgado deliberately misled the jury, as follows. First, the informant had said that the sketches looked like the *Nordstrom brothers*, not that one of the sketches looked like both of the brothers. R.T. 11/20/97, *Nordstrom* Trial, 103-09, Ex. 5. Witness Mike Kapp testified about the sketches as follows at Scott Nordstrom's trial:

Q Exhibit 208 and 209. Those are the profiles you saw when you were in the Yuma prison, is that correct, sir?
A Yes, it was.
Q And you said that the one with the hat was Scott; is that correct?
A I said looked like Scott.
Q You said it was a good – you said more than it look like Scott?
A Yeah, I said –
Q You are pretty certain that it was Scott from looking at that profile; is that correct?
A I can't be completely for sure that was Scott. I said it looked like Scott. This really looks like David a whole lot.
Q So you're saying that the other profile number 208 really looks like David?
A Yes.

Exhibit 208 showed a sketch of a man without a hat while Exhibit 209 showed one with the cowboy hat. R.T. 10/29/97, Trial of *State v. Scott Nordstrom*, 69:1-17, Ex. 18. In a pretrial interview, Kapp had stated:

Q I see. And uh, who did it, do I (INAUDIBLE) you're referring to the firehall?
A Yeah, to the firefighters hall.
Q Okay.
A The Smoke Shop, I really uh, I just knew.

> There's only so many uh, so many that could do that, so (INAUDIBLE) and the way the pictures looked in the paper.
> Q I see.
> A I knew who it was.
> Q I see.
> A The pictures were pretty good.
> Q Yeah?
> A You know uh, it showed DAVID real good, the cowboy hat was SCOTT.
> Q (INAUDIBLE)
> A You know?
> Q You think the cowboy hat was SCOTT?
> A Yeah, I know. 'Cause there, they were, prior to that, prior to that, my brother had seen them, and SCOTT was wearing a black cowboy hat.

Transcript of 3/7/97 interview of Mike Kapp, 3:24-4:8, Ex. 19.

Thus, Salgado's testimony inaccurately suggested that there had been discrepancies over *which* of the Nordstrom brothers looked like the hatless suspect because they both resembled him, thus suggesting that the suspect with the hat was identified as Jones, not that the witnesses who came forward actually identified *both* Nordstroms as the suspects, and did *not* identify Jones as either one, which was the truth. Salgado's misleading testimony, elicited by White, violated Jones' rights to a fair trial and Due Process by allowing the jury to place unjustifiable emphasis on any possibility that witnesses thought Jones resembled one of the sketches.

4. Knowingly False Avowal to Court About Nordstroms' Phone

White called Fritz Ebenal, David's parole officer, and Rebecca Mathews, another parole officer with the Department of Corrections, to testify regarding David's home arrest electronic monitoring system in order to establish David Nordstrom's alibi that he could not have been involved in the Fire Fighters Hall incident as it occurred after his curfew time. Matthews testified at great length both about the workings of the system in general and about the test of the system that the state had performed, using Detective Woolridge, eighteen months later, from the Nordstrom home. R.T. 6/24/98, 34-69, Ex. 3. Jones' trial counsel objected to

the introduction of the printout of the results of the state's test of the system. The court stated that it was concerned about the foundation for the evidence, and said that Mathews "didn't testify as to whether it was the same phone. That, to me, is the missing link." R.T. 6/24/98, 36:4-6, Ex. 3. The court, thus, would not have been inclined to allow this evidence to be introduced unless the state could establish that the phone used for the test was the same phone at the Nordstrom residence connected to David's monitor in the summer of 1996.

The court eventually conditionally allowed the admission of the evidence and the whole line of questioning based on White's avowal that Terri Nordstrom (David's stepmother) would testify that it was the same phone:

> MR. WHITE: Terri Nordstrom is going to testify. I'll avow she will testify it's the same phone.
> MR. LARSEN: The State's not calling Terri Nordstrom.
> MR. WHITE: You're going to call her.
> MR. LARSEN: Probably. Maybe not now. Actually, I will be calling her.
> THE COURT: Well, I'll conditionally allow this whole line of questioning as well as the admission of 52, conditional upon that answer.
> MR. WHITE: I understand.
> THE COURT: And assuming also that during the course of the rest of this testimony, she establishes that the testing she did was as close as she could to the situation that was in place.
> MR. WHITE: I'll probably do that with another witness. Detective Woolridge will testify it was the same time of night as the Fire Hall, that kind of thing.
> THE COURT: All right.
> MR. LARSEN: I guess I have a continuing objection to one day, 18 months later, not having any relevance to the time period in question.
> THE COURT: *That's why the Court is insisting on foundation.*

R.T. 6/24/98, 36:7-37:7, Ex. 3.

White's avowal was disingenuously made, as he knew, based on Terri Nordstrom's testimony at Scott Nordstrom's trial, that Terri Nordstrom would testify that the phone used during the time of the test was *not* the same phone that they had during the time that David was

on parole in the summer of 1996. R.T. 11/19/97, *Nordstrom* Trial, 67:15-21; 68:5-14, Ex. 20.

White made the false avowal regarding Terri Nordstrom's testimony in order to force this key printout into evidence without foundation. The printout of the test performed by the detectives, as well as their testimony to explain it, was very important to the prosecution. The evidence provided the sole basis for David Nordstrom's alibi defense, that he was home on the night of the murders, because no curfew violations were reported on the printout. This conduct is further proof of White's willingness to break all ethical rules and violate Jones' constitutional rights in order to obtain a conviction at any cost.

5. Failure to Disclose Clothing Belonging to Jones.

At trial, Woolridge testified that she had obtained a black hat and a pair of western boots from Carol Stevenson on March 18, 1998, and that she had those materials transported to the lab to have them screened for blood. R.T. 6/25/98, 43:25-45:9, Ex. 8. Stevenson had obtained the boots and hat from Jones' mother. R.T. 6/25/98, 66-68; State's Exhibits 31 and 32, Ex. 8. The Crime Laboratory Report shows that the items were received at the lab on March 25, 1998 for testing. The parties then stipulated that the hat and boots in state's Exhibits 31 and 32 were tested by the Tucson Police Department Crime Lab and that they tested negative for the presence of blood. R.T. 6/25/98, 84:14-22, Ex. 8.

During pretrial interviews, White, Salgado, and Woolridge deliberately hid the fact that this hat and boots had been obtained and tested, keeping this exculpatory evidence from Jones' counsel. In an interview on April 20, 1998, with White present, Salgado specifically told Jones' attorney that the detectives did not possess, at that time, any hat, sunglasses, boots, or clothing belonging to Robert Jones. In fact, Salgado's answers to Larsen's questions are deliberately evasive and incomplete, and at several points, White ("Q1") intervened to throw the questioning off course, while Woolridge eventually gave blatantly false statements.

> Q Alright. Any hats, sun glasses, cowboy boots anything like that?
> A That link into the crime scene?

Q Yes.
A Not at this time, no.

* * *

Q Okay. Um, you, you, you, you gave me an interesting response on the hat, sun glasses, clothing, um, questions, you said, "Not at this time that link him directly to the scene." Do you have any, uh - 1 know that they, they put out a composite drawing over the T.V. - uh, do you have any hats, sun glasses or clothing that are linked to him, that would assist in identification, indicating he owned . . . let me ask it this way - you, you're giving me a curious look and it was probably a poorly phrased questions anyway. Do you have any hats that belong to Robert Jones?
A I'm not sure.
Q Okay. Do you have any hats?
A Oh yes, we, we've got hats, we had hats.
Q1 There was a black hat found at David Nordstrom's for example.
A Right.
Q1 Which David says is his hat.
Q Okay. So you don't have any hats that you've been able to link, belonging to Robert Jones?
A No, not at this time.
Q Any sunglasses belonging to Robert Jones?
A No.
Q Any boots belonging to Robert Jones?
A I don't believe so, no.

4/20/98 Interview by Eric Larsen of Detective Ed Salgado, 3:11-15; 4:12-5:10, Ex. 21. At the end of the interview, the following exchange occurred:

Q Okay, Um, since the Scott Nordstrom trial, has any new information been developed regarding Robert Jones' participation?
A As you know, it's an ongoing investigation, but, uh.
Q As of, uh, three minutes of two on Monday, the 20th?
Q1 Just the person, the one you told me about today.
A Oh, okay. Uh, a woman by the name of, uh, Debbie Taylor. I learned of Debbie Taylor through, uh, David Evans. And I just spoke with Debbie Taylor today, and, uh, she verified what Evans had told me about he being over there. . .

4/20/98 Interview by Eric Larsen of Detective Ed Salgado, 13:22-14:6, Ex. 21.

Immediately following Salgado's interview, Eric Larsen interviewed Woolridge, with White still present.

> Q Hat?
> A Um, I don't know.
> Q1 Well obviously you have witnesses who identified the shooter wearing a hat - we have pictures of Robert Jones wearing that hat.
> Q But you don't have a hat, saying this is Robert Jones' hat, ___ the day, here?
> Q1 We have a number of hats - we right now today do not have a hat that we're going to say is Robert Jones' hat.
> Q Okay. Um, same with sunglasses, boots, any clothing - don't have anything saying, this is Robert Jones' clothing worn, worn on the day of either incident?
> A No I don't.

4/20/98 Interview by Eric Larsen of Detective Brenda Woolridge, 3:17-4:4, Ex.22. Woolridge had in fact obtained Jones' hat and boots several weeks earlier and had sent them to the lab for testing. Again, White and the detectives worked in concert to misconstrue the evidence and mislead Jones' counsel. The actions of these individuals, one of whom is an officer of the court, and all of whom have taken oaths to uphold the law, shock the conscience. Rather than observe their duty to seek justice, the prosecutor and detectives took every opportunity to lie and cheat in order to obtain a conviction at the price of Jones' constitutional rights.[3]

6. Pattern of Misconduct.

Jonathan Young, Jones' attorney on direct appeal, filed a bar complaint against White regarding White's conduct in Jones' trial. On May 8, 2001, the State Bar made a probable cause finding against White, which indicates that the Bar has found grounds to proceed with the complaint and may file a formal complaint against White. State Bar Finding of Probable Cause, Ex. 12. Jones reserves the right to supplement this Petition with additional information

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[3]An additional example of misconduct is shown by Salgado's false testimony to the grand jury, which led to Jones' indictment, as discussed *infra* in Part C(10). Salgado's misconduct with the grand jury, with White's knowledge, should also be considered as a violation of Jones' constitutional rights to Due Process and a fair trial in this section.

that may arise out of the Bar proceedings.

In addition, the FBI has apparently launched an investigation into this case. The investigation is believed to be under the control of Special Agent Clifford Goodman. *See* Affidavit of S. Jonathan Young, Ex.11; Arizona Daily Star articles, Ex. 23. Undersigned counsel has contacted Agent Goodman regarding this case, but Agent Goodman stated that he is unable to comment on the status of any investigations. Goodman has also handled an FBI investigation of Godoy. *See* Arizona Daily Star articles, Ex. 23. The Mohave County Grand Jury actually indicted Godoy on charges of lying under oath in murder trials, including the prominent El Grande Market triple murder case and in the 1993 robbery trial of Andre Minnitt and Christopher McCrimmon, although the indictment has inexplicably been dismissed. *See* Indictment, Ex. 24; Arizona Daily Star Articles, Ex. 23.

In five of the six trials that came out of the El Grande triple murder case, Godoy worked as a team with another Pima County attorney, Ken Peasley. A State Bar complaint was filed against Ken Peasley in May 2000 accusing Peasley of eliciting false testimony in various murder trials. Failure to disclose exculpatory evidence and deliberately presenting perjurious testimony may thus be a systemic problem among the Pima County Deputy County Attorneys and the homicide detectives with whom they work in tandem. Jones reserves the right to supplement this Petition with additional information that may arise out of the criminal investigations of the detectives or prosecutors.

An issue raised in Scott Nordstrom's direct appeal suggests that the state may have failed to timely disclose an exculpatory post-trial interview of witness Buddy Carson to Nordstrom's trial counsel. *State v. Nordstrom*, 200 Ariz. 229, 25 P.3d 717 (2001). Nordstrom's Rule 32 petition may illustrate whether there was a pervasive failure to disclose evidence in this case. Jones reserves the right to supplement his Petition on this issue should newly discovered information arise out of Nordstrom's case. At any rate, the clear misconduct of the prosecutor and of the detectives in this matter deprived Jones of his constitutional rights

to Due Process and a fair trial and require that his convictions and sentences be reversed.

B. Material New Facts Exist that Probably Would Have Changed the Verdict or Sentence.

A colorable claim of newly discovered evidence is established if the following requirements are met:

(1) the evidence must appear on its face to have existed at the time of trial, but be discovered after trial;
(2) the defendant must have exercised due diligence in discovering the facts and bringing them to the court's attention;
(3) the evidence must not be merely cumulative or impeaching;
(4) the evidence must be relevant to the case; and
(5) the evidence must be such that it would likely have altered the verdict, finding or sentence, if known at the time of trial.

State v. *Apelt*, 176 Ariz. 349, 369, 861 P.2d 634, 654 (1993). There are several categories of newly discovered facts that meet this criteria and mandate a reversal of Jones' convictions and sentences.

1. Jones was not in the Truck With Scott and David.

According to David Nordstrom's testimony, David, Scott and Jones all drove away from the area of the Moon Smoke Shop right after the crimes at on May 30, 1996. R.T. 6/23/98, 111-13. Ex. 1. The records for the cell phone that Nordstrom was using during this time period, which were introduced at Nordstrom's trial, show that a call was made from that cell phone to the phone number 520-298-9516 at 12:04 p.m. on 5/30/96 for three minutes and at 6:24 p.m. on the same date for one minute and that phone number belongs to a pay phone that was near the apartment where Jones was living at the time. *See* Affidavit of Robert Jones, Ex. 25; Cell Phone Records and Memo from Investigator, Ex. 26. At Nordstrom's trial, White argued that the 6:24 p.m. call was made by Jones from the truck to return a page from his roommate Chris Lee. R.T. 11/25/97, *Nordstrom* Trial, 69-70, Ex. 27. Jones' would use that pay phone and receive calls on it in May 1996 because he did not have a phone in his apartment. Affidavit of Robert Jones, Ex. 25.

Although Chris Lee eventually moved in with Jones that summer, Lee had not yet

moved in on May 30, so there would have been no reason for Jones to call home if he was in fact in the truck. R.T. 11/18/97, *Nordstrom* Trial, 39-40, Ex. 28; Affidavit of Robert Jones, Ex. 25. Furthermore, if the state's theory is correct and Jones was in the truck with the Nordstroms driving down I-10 near the Moon Smoke Shop at 6:15 p.m. on May 30, 1996, then it does not make sense that one of the Nordstroms would have called Jones a few minutes later at his apartment at Pima and Wilmont, many miles away. The only logical explanation for the 6:24 p.m. phone call from Nordstrom's cell phone is that Nordstrom was calling Jones following the Moon Smoke Shop incident. The information regarding the phone number for the pay phone that Jones used, which is no longer in existence, was not discovered until after trial. *See* Affidavit of Robert Jones, Ex. 25; Cell Phone Records and Memo from Investigator, Ex. 26. This newly discovered information would have changed the verdict because it would have conclusively established that Jones was not with David and Nordstrom on the day of the Moon Smoke Shop killings!

2. <u>Newly Discovered Letters Written by David Nordstrom.</u>

Buddy Carson, an inmate at the Pima County Jail who was incarcerated near David Nordstrom in 1997, called DPS officers in Tucson in the early part of December 1997 and informed them that he needed to speak with them about David. Transcript of Recorded Interview of Officer Mace ("Interview"), *Nordstrom* Trial, 3/19/98, p. 7, Ex. 29. When Mace met with Carson, on approximately the following day, Carson gave him three handwritten notes that Carson claimed he had received from David. Interview, pp. 15-23, Ex. 29. One of the notes appears to concern a scheme that David had devised to have someone assault him while he was in prison so that he could sue Pima County. Interview, Ex. 29. This scheme was repeated in a second coded note given to Carson from David, and turned over to Mace at the same time. Interview, Ex. 29. The materials given to Mace were analyzed by a forensic document analyst employed by Nordstrom's attorney. All of the documents were found to be authored by David. Report of John Hale, Jr. dated April 7, 1998. Ex. 30.

The transcription of the interview of Mace and the documents he received from Carson were not provided to Jones' trial counsel prior to this trial and Jones' counsel would have had no way of knowing of this information. In addition, another inmate, Eddie Santa Cruz, gave a statement corroborating Carson and implicating David, rather than Jones, in the murders. Interview of Eddie Santa Cruz, 10/16/97, Ex. 31. It thus qualifies as newly discovered evidence. This evidence provides a significant attack on the credibility of David which would likely have impacted the verdict. It further goes to show David's manipulation of the evidence and documents in the entire case, beginning with his attempt to have Toni Hurley provide information without himself becoming involved, and then his ever-changing stories to the police detectives in which he provided information at his own pace, on his own schedule, little by little, as it suited him, and, as he hoped, in exchange for money.

As noted in the Comment to Rule 32.1(e):

> Impeachment evidence will rarely be of a type which would probably have changed the verdict at trial. However, where newly-discovered impeachment evidence substantially undermines testimony which was of critical significance at trial, the court should evaluate whether relief should be granted on the grounds that the evidence probably would have changed the result. Dicta in cases such as *State v. Fisher*, 141 Ariz. 227, 250-51, 686 P.2d 750, cert. denied, 469 U.S. 1066, 105 S.Ct. 548, 83 L.Ed.2d 436 (1984), suggesting that a defendant will always be barred from relief if newly-discovered evidence is solely for impeachment, have never been incorporated into the Arizona Rules of Criminal Procedure and should not preclude relief deemed necessary in the court's discretion to avoid a miscarriage of justice.

See also State v. Orantez, 183 Ariz. 218, 223, 902 P.2d 824, 829 (1995) (previously unknown evidence of drug usage would have given the jury more reason to question of state's key witness' testimony and justified a new trial although this was impeaching only). David's testimony was of critical significance at trial. David was admittedly involved in the Moon Smoke Shop and provided the most information about this crime. The information that he was

devising scams to sue Pima County even while in prison would have greatly undermined his credibility and shown the jury his tendency to manufacture and manipulate people and evidence to his own end.

3. Misconduct Claims

Furthermore, the court can consider the claims in part II(A), supra, as claims involving material new facts, which qualify Jones to relief under this part of Rule 32, in addition to causing violations of his constitutional rights.

C. Jones Received Ineffective Assistance of Counsel At Trial in Violation of His Rights Under the Sixth Amendment.

To demonstrate ineffective assistance of counsel, the petitioner must show that his counsel's performance was deficient and that such deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984). The Ninth Circuit has adopted a "reasonably competent and effective representation" standard. *Cooper v. Fitzharris*, 586 F.2d 1325, 1328 (9th Cir. 1978). Jones' trial counsel's performance fell below this standard in several ways.

1. Failure to Properly Conduct Investigation Regarding David Nordstrom.

David was one of the state's key witnesses and his testimony could have been thoroughly attacked by Jones' trial counsel had they done a proper investigation prior to trial. This investigation would have included, among other avenues, an investigation into David's false report that Nordstrom had threatened his family and his related letters to Carson try to set up a scam to sue Pima County. If this material, as discussed *supra* in part 2(B), does not constitute newly discovered evidence, then it must establish ineffective assistance of counsel on the part of Jones' trial counsel. David's credibility then could have been further attacked by his false allegations regarding his brother threatening him and his attempt to set up a scam to sue the prison, and this, coupled with all the other impeachment evidence against David, would surely have caused the jury to find Jones not guilty beyond a reasonable doubt.

It is obvious that Carson had a good deal of contact with David in the Pima County Jail. In addition, another inmate, Eddie Santa Cruz, gave a statement corroborating Carson and implicating David, rather than Jones, in the murders. Interview of Eddie Santa Cruz, 10/16/97, Ex. 31. Defense counsel should have interviewed Carson and Santa Cruz to explore the significant additional area of defense evidence.

Jones' trial counsel could have discovered these issues simply by making a phone call to Nordstrom's attorneys a few months before Jones' trial. Had they undertaken this minimal effort, they would have not only uncovered the above information but most likely would have found other avenues of infonnation to investigate that could have also been helpful to Jones.

2. Failure to Properly Investigate Kicked In Door Issue.

As described *supra* in part 11(A), Irwin's testimony that she overheard Jones describing the fact that they had kicked in a door at the Moon Smoke Shop, which was bolstered by Woolridge and Godoy confirming that they had found a door kicked in, was crucial testimony that established the alleged validity of Irwin's story and convicted Jones. In fact, Irwin's story was false and appears to have been fabricated by the state. Although the police reports of Officers Charvoz and Grimshaw were not disclosed, Jones' trial counsel, knowing that Woolridge and Godoy had testified in Scott Nordstrom's trial and were potential witnesses in Jones' trial, should have reviewed these witnesses' prior testimony in preparation for trial. Counsel would have realized that there were conflicts in the evidence and would have been able to further examine this issue. Then, if the testimony at trial had come out as it did, consistent with the police reports that were disclosed, then this would have permitted a very serious attack on not only Irwin's story, but in addition, on the credibility of the two main detectives involved in the case. Jones was prejudiced by this failure because had Irwin's, Godoy's, and Woolridge's testimony been shown to have been false in this manner, then the verdict would likely have been different.

3. Failure to Challenge David's Alibi.

The Fire Fighters Hall allegedly took place past the time of David's curfew. David's alibi held up solely because Jones' trial counsel failed to adequately investigate and present evidence to contradict this.

First, crucial information could have been gleaned had Jones' counsel read the trial transcripts from Scott Nordstrom's trial. There, Rebecca Mathews testified that David's parole officer could have changed the monitoring reports, or that the duty officer, the parole officer, or someone else could have granted David an exception so he could have stayed out later on a particular night, and that this exception might not have been recorded. R.T. 11/21/97, *Nordstrom* Trial, 10, 65, 68-69, Ex. 32. There was extensive testimony that showed that Fritz Ebenal, David's parole officer, did not diligently record infonnation relating to exceptions. R.T. 11/21/97, *Nordstrom* Trial, 75-78, Ex. 32.

Other witnesses corroborated that David would be out at night after dark (after his curfew). Debra Collins testified that David babysat her friend Connie's daughter on two occasions in May 1996 after dark when she and Connie went out. R.T. 11/19/97, *Nordstrom* Trial, 7-9, Ex. 33. John Mikiska, David's employer, stated that David sometimes worked after dark during this same time period. R.T. 11/11/97, *Nordstrom* Trial, 6:20-7:16, Ex. 34. This would have been significant evidence to present to the jury in Jones' trial, especially in light of the state's considerably weaker case against Jones and the additional attacks on David that were available. David testified that, with the electronic monitoring system, "[i]t was pretty much if you break curfew, you're going to get caught. There is really no way to get around it." R.T. 6/23/98, 114:19-116:8, Ex. 1. Jones' counsel could easily have been gleaned the necessary information to destroy David's entire alibi by showing that he was not necessarily home on the night of the Fire Fighters Hall murders.

Numerous decisions made by a trial attorney, such as whether or not to present certain evidence and whether or not to make certain objections at trial, will not constitute ineffective assistance of counsel, even if, once the proceedings have ended, it appears that the choices

made were not the best ones in light of the circumstances. In making a determination on the issue of ineffective assistance of counsel, the adequacy of the representation is not to be judged "by the harsh light of hindsight." *State v. Salazar*, 122 Ariz. 404, 407, 595 P.2d 196, 199 (App. 1979). However, in order to adequately represent a client, an attorney must, prior to trial, diligently investigate potential sources of defense for his client. This would include interviewing potential witnesses that could assist in the defense of the claims and asking questions of his client to determine whether there are objective facts that can be used to support the defendant's version of the facts.

The choice whether or not to call certain witnesses may be a strategic and tactical decision made by trial counsel. "However, when counsel's choices are uninformed because of inadequate preparation, a defendant is denied the effective assistance of counsel." *United States* v. *DeCoster*, 487 F.2d 1197, 1201 (D.C. Cir. 1973). As stated in *DeCoster*, defense counsel should be guided by the American Bar Association Standards for the Defense Function, which represents the legal profession's own articulation of guidelines for the defense of criminal cases. Under these guidelines, counsel should confer with his client without delay and as often as necessary to elicit matters of defense, or to ascertain that potential defenses are unavailable. *DeCoster*, 487 F.2d at 1203. "Counsel must conduct appropriate investigations, both factual and legal, to determine what matters of defense can be developed." *Id.* at 1204. If a defendant shows a substantial violation of any of the requirements of competent counsel, then the court must find that he has been denied effective representation unless the government, "on which is cast the burden of proof once a violation of these precepts is shown, can establish lack of prejudice thereby." *Id.* (citing *Coles* v *Peyton*, 389 F.2d 224, 226 (4th Cir. 1968)).

Generally, the strategic and tactical decisions of trial counsel are to be respected and not questioned in the view of hindsight. However, although "trial counsel is afforded tremendous deference over matters of trial strategy, the decision to select this trial strategy must be reasonably supported and within the wide range of professionally competent assistance."

Strickland v. Washington, 466 U.S. 668, 690, 104 S. Ct. 2052, 2066 (1984). An attorney is not ineffective merely because he fails to follow every evidentiary lead, but the attorney must make a significant effort, based on reasonable investigation and logical argument, to ably present the defendant's case to the jury. *Smith*, 1998 WL 899362, at * 21. A strategic decision is not reasonable when the attorney has failed to investigate his options and make a reasonable choice between them. *Id.* Here, trial counsel's decision not to properly investigate David's alibi was not a reasonable decision and likely impacted the verdict.

4. Failure to Request Immunity for Zachary Jones.

In a defense interview prior to trial, Zachary Jones, another inmate who was being held in the Pima County jail at the same time as David, told Jones' investigator that he overheard David tell another inmate, "yeah, there's someone out there who's almost my twin brother who I can lay all my bad deeds on, so I can have a second chance at life." 4/27/98 Letter from Martin Investigations to Eric Larsen and 6/10/98 Pima County Attorney's Office Investigative Report dated 6/19/98, Ex. 35. Although Jones' counsel had intended to call Zachary Jones as a witness, they learned prior to trial that Zachary Jones had retained counsel and intended to assert his Fifth Amendment rights rather than testifying. The court held a hearing on the issue of whether or not Zachary Jones had a valid Fifth Amendment claim, and, following the prosecutor's explanation that Zachary Jones could be liable for perjury whether he confirmed or denied the statements he made in the interview, the court found that he had a valid Fifth Amendment claim. R.T. 6/25/98, 9-10, Ex. 8.

On direct appeal, Jones' counsel argued that the prosecutor's assertions regarding Zachary Jones' potential liability for perjury were threats that constituted prosecutorial misconduct. The Arizona Supreme Court held that the prosecutor's statements were merely made to inform the court of the reasons Zachary Jones might refuse to testify and that, without substantial governmental action preventing Zachary Jones from testifying, the Fifth Amendment concerns of prosecutorial misconduct were not invoked. 197 Ariz. 290, 301-02,

4P.3d 345, 356-57 (2000).

However, The Court further stated that it could not consider the issue of whether the trial court erred by failing to *sua sponte* grant immunity to Zachary Jones, because Robert Jones' trial counsel failed to make any objection or motion to this effect. *Id.* at 302, 4 P.3d at 357. The failure to make any objection or motion to have the court grant Zachary Jones immunity was ineffective assistance. A defendant has the right under the Sixth Amendment Confrontation Clause to present witnesses in his defense. With immunity, Zachary Jones would have been compelled to testify. Obviously, Zachary Jones' statements would have been very significant and would likely have impacted the verdict, because they would have shown that David had in essence admitted that he was responsible for the murders and that he was trying to pin these acts on Jones so that he could have "a second chance at life."

5. Failure to Investigate Phone Call

As discussed *supra* in part 11(B), a very significant piece of evidence was the fact that the call was made from the cell phone that Nordstrom always carried to the pay phone that Jones used at 6:24 p.m. on the night on the Moon Smoke Shop murders. The call could not have been placed by Jones attempting to call his roommate, Chris Lee, because Lee had not yet moved in with Jones. The only reasonable explanation for the call was that Scott was calling Jones, and therefore, Jones was not with them as David had testified. If the court does not find that the evidence regarding the date of Lee's residence with Jones and the pay phone records constitute newly discovered facts, then this certainly constitutes ineffective assistance of counsel because had Jones' counsel investigated these issues and properly presented them to the jury, Jones would not have been convicted.

6. Failure to Properly Research Pretrial Publicity and Use this in Cross-examination.

As discussed *supra* in parts I and II, two facts emphasized by the prosecution and testified to by Irwin were that the victims at the Fire Fighters Hall were shot in the head and

that the room where those crimes occurred was red. According to White and the detectives that testified, this information was supposedly not released to the media; however, on the day after Scott Nordstrom's verdict was reached, December 3, 1997, the Arizona Daily Star ran a prominent article in section A about the trial. The article was accompanied by a picture showing the red furnishings at the Fire Fighters Hall, as well as the headlines stating "shot him twice in the back of his head." *See* Affidavit of Wendy Zepeda, Ex. 36. Trial counsel's failure to investigate this information was significant because this would have impeached Irwin's story about the details she supposedly overheard from Jones and likely caused a different verdict to result.

7. Failure to Interview Jones' Parole Officer and Call Him as a Witness.

The state presented numerous witnesses to claim that at some point in time, Jones had shaved his facial hair, and cut and dyed his hair, allegedly to disguise his appearance following the crimes. However, Jones visited his parole officer, Ron Kirby, on various occasions in June 1996 and Kirby have been able to testify that Jones still had a full beard and long reddish-blond (his natural color) hair at that time. This information would have further attacked the credibility of the state's witnesses and shown that Jones was not taking steps to disguise his appearance, such that the jury would have been more likely to believe the defense theory that David committed the crimes, rather than Jones. This can also be analyzed as newly discovered evidence.

8. Failure to Review *Nordstrom* Trial Transcripts.

Nordstrom's trial was completed approximately seven months before Jones' trial commenced. There was sufficient time for Jones' counsel to have the transcripts prepared and review them. Their failure to do so, here, where Nordstrom was Jones' co-defendant charged with the same crimes, and many of the same witnesses would have been called in both cases, was ineffective assistance. Among other things, had Jones' counsel read the transcripts, they

would have discovered the discrepancies in the evidence regarding the kicked in door. This would have likely affected the verdict.

9. **Representation of Jones Despite Conflict of Interest.**

Eric Larsen was good friends with the sister of one of the victims of these murders. R.T. 6/18/98, 35:18-19, Ex. 2. His representation of Jones was necessarily compromised by this friendship. Larson's continued representation of Jones despite the conflict of interest constitute ineffective assistance and prejudiced Jones' defense.

10. **Failure to Properly Handle Preliminary Hearing.**

At the preliminary hearing, Jones' counsel failed to object to inadmissible testimony or evidence and failed to adequately cross-examine the state's witnesses. This constitutes ineffective assistance of counsel. For example, a grand juror asked Salgado the following:

> GRAND JUROR USHIRODA: So all we're basing this on is the statement from Mr. Nordstrom?
> THE WITNESS: That's part of it. And the fact that Robert Jones had had a vehicle that was similar to the suspect vehicle at the scene.
> The other witnesses that knew both David and Robert Jones, stating that Robert Jones always wore the cowboy hat and the western wear, and liked to wear sunglasses. **And once the photographs were published, he immediately stopped wearing that type** of clothing.

R.T. 7/2/97, 18:19-19:3, Ex. 37. The critical last sentence of Salgado's testimony was false because the "information" that Jones had stopped wearing Western clothing had in fact come solely from David. *See* Transcript of 6/4/97 Free Talk of David Nordstrom, Ex. 38. Nowhere in the police reports to that date is there any information regarding any change in clothing by Jones other than David's story. This misrepresented fact was crucial to the grand jury's decision to issue the indictment. Obviously, the jurors were concerned about the fact that all of the information was coming from David, who had a strong motive to lie. Equally obviously, the fact that Jones had a similar model pickup truck and wore western style clothing in Tucson could not have been anywhere near substantial enough to provide probable cause to charge him

with the murders. The lie by Salgado led to the indictment and Jones' counsel's failure to expose it by being familiar with the contents of the police reports was ineffective assistance.

11. Failure to Properly Make a Record.

Jones' counsel, as noted above, failed to make a motion that the trial court grant Zachary Jones immunity, or to properly continue to object to Zachary Jones asserting his Fifth Amendment rights. This failure to make a record, coupled with other instances in which Jones' counsel failed to properly record objections at trial, constitutes ineffective assistance.

12. Failure Thoroughly Cross-Examine and to Impeach Witnesses With Prior Inconsistence Statements.

Even in those instances where Jones' counsel was aware or should have been aware of prior statements made by witnesses at trial, such as with Godoy, he failed to investigate and utilize these statements to properly cross examine these witnesses for impeachment. Undermining the credibility of the detectives would have affected the verdict. *See, e.g. Smith* v. *Wainwright*, 741 F.2d 1248, 1255 (11th Cir. 1984).

13. Failure to Take Pictures of Getaway Truck.

The state presented pictures of a pickup truck with three officers seated inside in an attempt to show that Nordstrom, Jones, and David could all have sat inside Jones' pickup truck when they left the scene of the Moon Smoke Shop and further, that if the person in the middle (allegedly Jones), had been bending down, then Noel Engles might have only seen two people in the truck. This testimony could have and should have been refuted by pictures presented by Jones' counsel of their own demonstration of the truck, using individuals of the sizes of the Nordstroms and Jones, with the person in the middle wearing a black Stetson hat similar to the one owned by Jones. If they had done so, and taken the pictures from the prospect of where Engles claimed to have been when he saw the truck (he said he was within touching distance of the truck) then this would have shown that Engles' testimony was ridiculous because he would have clearly seen that there were three people in the truck even

if one was bending down at the time, and that he would have been able to conclusively state the color of the truck.

D. **No Reasonable Fact-Finder Would Have Found Jones Guilty of These Offenses Beyond a Reasonable Doubt, or the Court Would Not Have Imposed the Death Penalty.**

The issues discussed above in Parts (A), (B), and (C) qualify Jones for relief equally under Rule 32.1(h). According to that portion of the rule, a defendant is entitled to post-conviction relief if he "demonstrates by clear and convincing evidence that the facts underlying the claims would be sufficient to establish that no reasonable fact-finder would have found defendant guilty of the underlying offense beyond a reasonable doubt, or that the court would not have imposed the death penalty." As discussed *supra* in Part 11(A), the misconduct of the prosecutor and the detectives kept the true facts from being revealed to the jury. The facts were that Irwin's story did not match the true facts of the crime scenes. Therefore, Irwin could not have overheard information from the true killer because the true killer would have known how the crime scene looked when they left. Wherever Irwin got her information, be it from a detective or some other source, she did not get it from Jones and Jones was not involved in the crimes.

Further, David's story was subject to great attack because of the fact that he had no real alibi because it could not be verified that he was home on the night of the Firefighters Hall murders. David had been trying to set up scams in prison and to sue the state and manipulate evidence. Finally, testimony of Zachary Jones should have been admitted and would have cast serious doubt on David's entire story because the statement that Zachary Jones heard from David was that David had an almost "twin brother" who he could "lay all his bad deeds on and get a second chance at life." The true facts establish Jones' actual innocence and mandate a reversal of his convictions. At an absolute minimum, the true facts would have required the court to find so much significant residual doubt at sentencing that the death penalty could not have been imposed.

E. Jones' Appellate Counsel Was Ineffective in Violation of Jones' Rights Under the Sixth Amendment.

1. Any Issues Found Precluded Because Not Raised on Direct Appeal.

None of the issues raised in this Petition should be found precluded for failure to raise them on direct appeal. However, if the court should find that any of these issues are precluded for that reason, then Jones' appellate counsel was ineffective for failing to raise these issues. "If defense counsel's failure to raise an issue at trial, on appeal, or in a previous collateral proceeding is so egregious as to result in prejudice as that term has been constitutionally defined, such failure may be raised by means of a claim of ineffective assistance of counsel." As described, each issue raised in this Petition caused prejudice because it would have undermined crucial evidence against Jones. *State v. French*, 198 Ariz. 119, 121, 7 P.3d 128, 130 (App. 2000).

2. Failure to Raise Mitigation Issues on Appeal.

As noted in the Arizona Supreme Court opinion on Jones direct appeal, appellate counsel failed to raise any issues relating to mitigation at sentencing in Jones' direct appeal. The failure to investigate and present these issues constitutes ineffective assistance because had additional mitigation evidence been presented, this could have permitted Jones to receive a life sentence rather than the death penalty.

F. Jones Was Denied His Rights Under the Sixth and Fourteenth Amendments When He Was Denied a Jury Trial on Aggravating and Mitigating Factors.

In capital cases, sentencing is left to the trial judge to weigh and consider mitigating and aggravating factors. The United States Supreme Court's recent decision in *Apprendi v. New Jersey*, and subsequent cases, demonstrates the unconstitutionality of Arizona's sentencing scheme and requires that Jones' sentence be vacated.

In *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000), the Supreme Court held that because the application of the hate crime enhancement increased the penalty for the

unlawful possession of a firearm beyond the prescribed statutory maximum for the crime, the facts which led to the increased penalty must be submitted to the jury and proved beyond a reasonable doubt. *Id.* at 496-97, 120 S. Ct. at 2366-2367. In so holding, the Court stated that "it is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt." *Id.* at 490, 120 S. Ct. at 2363.

Under Arizona's death penalty statute, the judge must make both factual determinations and determinations about the defendant's state of mind. Included in these considerations are whether in the commission of the offense the defendant knowingly created a grave risk of death to another person in addition to the person murdered and whether the defendant committed the offense in an especially heinous, cruel or depraved manner. A.R.S. § 13-703(F). So, in order to impose death, a judge must determine issues of *actus reus* and *mens rea* beyond a reasonable doubt by making inquiries into a defendant's state of mind -- before, during, and after the perpetration of a crime -- the equivalent to the kind of factual determination made by juries in finding elements of a criminal offense.

As noted in the dissenting opinion in *Apprendi*, the holding in *Walton v Arizona*, 497 U.S. 639, 110 S. Ct. 3047 (1990), which previously upheld Arizona's death sentencing scheme, has now been called into question. As Justice O'Connor pointed out: "A defendant convicted of first-degree murder in Arizona cannot receive a death sentence unless a judge makes the factual determination that a statutory aggravating factor exists. Without that critical finding, the maximum sentence to which the defendant is exposed is life imprisonment, not the death penalty." *Apprendi*, 530 U.S. at 538, 120 S. Ct. at 2388. Justice O'Connor goes on to state: "In real terms, however, the Arizona sentencing scheme removes from the jury the assessment of a fact that determines whether the defendant can receive that maximum punishment [death]. The only difference, then, between the Arizona scheme and the New Jersey scheme we consider

here – apart from the magnitude of the punishment at stake – is that New Jersey has not prescribed the 20-year maximum penalty in the same statute that it defines the crime to be punished." *Apprendi*, 530 U.S. at 541, 120 S. Ct. at 2389-2390.

In addition to *Apprendi*, other United States Supreme Court Cases have emphasized the need for a jury to make factual determinations as to those aspects of a crime which impose higher penalties. One such case was *Jones v. United States*, 526 U.S. 227, 119 S. Ct. 1215 (1998), where a judge sentenced the defendant to an enhanced sentence term based upon a presentence report which stated that one of the victims of the carjacking had suffered serious bodily injury. *Id.* at 231, 119 S. Ct. at 1218. Reversing the determinations of lower courts, the Supreme Court held that provisions of the statute that established higher penalties when the offense results in serious bodily injury or death were additional elements of the offense, and not mere sentencing considerations. *Jones*, 526 U.S. at 252, 119 S. Ct. at 1228. As "elements," the penalty provisions had to be decided by a jury beyond a reasonable doubt rather than by a judge. *Jones*, 526 U.S. at 231, 119 S. Ct. at 1218.

Recognizing the conflict between the decisions in *Walton v. Arizona* and *Jones v. United States*, Justice Stevens invited a reconsideration of *Walton* in light of *Jones* in his opinion:

> I am convinced that it is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt. . . .

Jones, 526 U.S. at 252-53, 119 S. Ct. at 1228-29 (Stevens, J., concurring).

The United States Supreme Court has recently accepted certiorari in *Ring v. Arizona*, 200 Ariz. 267, 25 P.3d 1139 (2001), another case in which the Arizona Supreme Court upheld the Arizona capital sentencing scheme. *Ring v. Arizona*, 122 S. Ct. 865 (January 11, 2002). The Court stayed two executions in Florida a few weeks later, presumably to allow it time to determine the constitutionality of this type of sentencing scheme (Florida has a similar capital

sentencing scheme). *Bottoson v. Florida*, 2002 WL 181142 (February 5, 2002); *King v. Florida*, 2002 WL 85116 (January 23, 2002). Jones' sentence must be set aside because the constitutionality of Arizona's death sentencing scheme is seriously in doubt.

G. *Spears* Decision Unconstitutional and Cannot be Applied.

The recent Ninth Circuit opinion in *Spears v. Stewart*, 267 F.3d 1026 (2001) unconstitutionally infringes on Jones' rights to Due Process by severely limiting the time frames in which his federal habeas petition, and therefore this Petition, can be prepared and filed. The *Spears* decision is unconstitutional, or it must not be applied to Jones.

H. Arizona's Death Penalty Statute Violates the Eighth Amendment to the United States Constitution Because it Does Not Sufficiently Channel the Sentencer's Discretion.

Within the present case, there were numerous mitigating factors found by the court, however there is little or no direction given on how to weigh and compare the mitigating versus aggravating factors. For this reason, the Arizona Death Penalty Statute is unconstitutional.

I. Jones' Right to Equal Protection under the Fourteenth Amendment to the United States Constitution Were Violated When He Received the Death Penalty for Acts That Would Not Have Received So Harsh a Penalty in Other States.

The Equal Protection Clause of the Fourteenth Amendment as adopted in 1868 provides equal protection for all people. The fundamental right is to life. It is a violation of the Equal Protection Clause for some states to be permitted to terminate a life for certain acts, when, if those same acts were done on the other side of an artificial, arbitrary boundary, that right would not be taken away.

HI. JONES IS ENTITLED TO AN EVIDENTIARY HEARING ON THE ISSUES RAISED IN THIS PETITION.

Rule 32.8 of the Arizona Rules of Criminal Procedure authorizes an evidentiary hearing on all issues of material fact raised in this Petition. Although all the issues raised demand a reversal of his convictions on their face, at the very least, Petitioner has raised sufficient fact questions entitling him to have an evidentiary hearing. As Rule 32.6 states, "the

court shall set a hearing . . . on those claims that present a material issue of fact or law." To be "colorable," a claim has to have the appearance of validity. That is, if the appellant's contentions are taken as true, do they show ineffectiveness? *State* v. *Watson*, 114 Ariz. 1, 15, 559 P.2d 121, 135 (1976), quoting *State v. Suarez*, 23 Ariz. App. 45, 46, 530 P.2d 402, 403(1975). If the court harbors any doubt about the issues raised, a hearing should be held to allow Jones to raise all relevant issues to resolve the matters and make the record for review. *State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1045, 1057 (1986).

IV. CONCLUSION

A newly-released Columbia University study has found that seven out of every ten death penalty cases between 1973 and 1995 were reversed because of errors made by judges, juries, and prosecutors. "Study: U.S. Capital Punishment System Flawed," CNN.com article dated 2/11/02, Ex. 39. Notably, Arizona is one of the ten states specifically examined in the study, which concluded that Arizona's error rate in death penalty cases is a whopping 79 percent. "Study: Arizona among 10 worst states for errors in death penalty cases." Arizona Republic 2/11/02, Ex. 40. Even Arizona prosecutors admit that the error rate is "closer to 50 percent." *Id.*, Ex. 40. Whether the error rate in capital cases is 79 percent or "only" 50 percent, this is far too great a problem to ignore.

Here, there can be no doubt that Jones was denied his constitutional rights to Due Process and a fair trial through misconduct and perjury. Further, several categories of material new facts exist that would have impacted the verdict or sentence had they been known. Jones received ineffective assistance of counsel at trial and on direct appeal, and numerous other constitutional violations tainted the process. For these reasons, Jones' convictions must be set aside. At a minimum, Jones' sentences must be reduced. Jones additionally requests an evidentiary hearing on each issue contained in this Petition.

. . . .

RESPECTFULLY SUBMITTED this 15th day of February, 2002.

MAYNARD MURRAY CRONIN
ERICKSON & CURRAN, P.L.C.

By Jennifer A. Sparks
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ORIGINAL of the foregoing hand delivered for filing this 15th day of February, 2002 with:

Clerk of the Court
Pima County Superior Court
110 West Congress
Tucson, Arizona 85701

COPY of the foregoing hand delivered this 15th day of February, 2002, to:

The Honorable John J. Leonardo
Pima County Superior Court
2225 East Ajo Way
Tucson, Arizona 85713

COPY of the foregoing mailed this 15th day of February, 2002, to:

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Jonathan Bass
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LEGAL MAIL
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Eyman Complex, SMU II
Arizona State Prison
Post Office Box 3400
Florence, Arizona 85232

By _____

Exhibit 18

Declarations of Stephen Coats and John Castro

DECLARATION OF STEPHEN COATS

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

1. I met Robert Jones at the Arizona State Prison Complex – Douglas prior to getting out of prison in 1995. I was later arrested in Phoenix in August of 1996 along with Robert Jones, and I am currently serving a life sentence at ASPC – Lewis.

2. I met Lana Irwin in Phoenix through my half-brother Shenandoah Coats, and I moved into her apartment shortly after meeting her. i was living with Lana Irwin and her daughter Brittany Irwin when Chris Lee brought Robert Jones to our apartment in Phoenix in late June or July of 1996. Robert Jones moved into the apartment with me, Lana Irwin, and Brittany Irwin around that time.

3. I am aware that Robert Jones was sentenced to death for something that happened in Tucson around May or June of 1996. I do not know the details of those incidents, and Robert Jones never talked to me about them. I am aware that both Lana Irwin and Brittany Irwin testified against Robert Jones in his Tucson trial. I was never interviewed by anyone from the defense prior to Robert Jones's trial in Tucson. if I had been called as a witness by the defense, I would have been willing to testify to everything that is stated in this declaration.

4. Lana Irwin and Brittany Irwin were often in the apartment when Robert Jones and I were there having conversations. The layout of the apartment was such that conversations in the living room could probably be heard from the kitchen area or hallway if you spoke loud enough. Lana Irwin and Brittany Irwin may have heard Robert Jones and me discussing criminal activities involving drugs or related stuff like that in the Phoenix area.

5. Lana Irwin and Brittany irwin could not have heard Robert Jones telling me about any incidents in Tucson because Robert Jones and I never had any conversations about that. Specifically, I never heard Robert Jones talk about the following, with or without Lana Irwin or Brittany Irwin being present:
    a) There were no conversations with me and Robert Jones regarding any murders that took place at places known as The Moon Smoke Shop or Firefighters Union Hall in Tucson.
    b) I never heard Robert Jones describe a "bar" or "restaurant" in reference to the locations of any murders involving women in Tucson.

c) I never heard Robert Jones use the phrase "the bitches weren't supposed to be there" or words to that effect in reference to women being present at a crime scene in Tucson.
d) I never heard Robert Jones use the phrase "their head blew up like a pumpkin" in reference to shooting anyone in the head in Tucson.
e) I never heard Robert Jones talk about having a partner in any incidents in Tucson.
f) I never heard Robert Jones mention that there were two people helping him in any Tucson related shootings.
g) I never heard Robert Jones say that he killed four or five people, or that he killed 3 women and an older man in any incidents in Tucson.
h) I never heard Robert Jones mention any incidents involving a "red room" that occurred in Tucson.
i) I never heard Robert Jones describe a pistol whipping incident in Tucson that sounded like "a bat hitting a baseball."
j) I never heard Robert Jones say that "the bitches can't run their necks" relating to any incidents in Tucson.
k) I never heard Robert Jones state that there was not enough money at a bar or other location in reference to an incident in Tucson.
l) I never heard Robert Jones say that a door had to be kicked in during an incident in Tucson.
m) I never heard Robert Jones say that two people ran into a back room and his partner shot them during an incident in Tucson.
n) I never heard Robert Jones say that he shot 4 men in the front room of a business in Tucson and that he killed one of the men.
o) I never heard Robert Jones say that he shot an older man who was sitting up in a chair in an incident in Tucson.

I declare that the foregoing is a true and correct statement. Signed this ____ day of July, 2013.

Stephen Coats

DECLARATION OF JOHN CASTRO

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

1. My name is John Castro. I am an investigator for the Federal Public Defender in the Phoenix, Arizona office. I visited a witness on behalf of Robert G. Jones, who is being represented by our office, specifically by attorney Tim Gabrielsen.

2. The witness I visited was Stephen Coats, prisoner number 072007, who is incarcerated in the Arizona State Prison Complex at Lewis. I had previously interviewed Mr. Coats on July 11th, 2013. I met with Mr. Coats on July 25th, 2013 at approximately 10:40 am in the Barchey Unit, where he is currently being held.. I had written a declaration based on our interview, and Mr. Coats reviewed and signed the declaration in my presence as I watched.

3. On today's date, I learned that Mr. Coats signed but did not date the declaration on July 25th, 2013. I am witness to the fact that Mr. Coats did in fact sign the declaration, and I aver by this declaration that he signed it on the date as stated above, to wit July 25th, 2013.

I declare that the foregoing is a true and correct statement. Signed by me this 26th day of July, 2013.

John Castro

John Castro

Exhibit 19

Sentencing Hearing Transcript, *State v. Jones*, Pima Co. No. CR-57526, December 7, 1998

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA Plaintiff, vs. ROBERT JONES Defendant.	)	No. CR-57526

BEFORE: HON. JOHN S. LEONARDO
Judge of the Superior Court
Division Ten

APPEARANCES:

DAVID WHITE
Attorney General's Office
For the State

ERIC A. LARSEN
DAVID P. BRAUN
Attorneys at Law
For the Defendant

SENTENCING

December 7, 1998

TONI HENSON
Official Court Reporter
Pima County Superior Court

DEFENSE

THE COURT: Good morning. This is the time set for sentencing in State of Arizona versus Robert Jones, CR-57526.

Mr. Jones, what is your true name, sir?

DEFENDANT JONES: Robert Jones, Jr.

THE COURT: Your date of birth?

DEFENDANT JONES: 12/25/69.

THE COURT: The Court will allow the State to make whatever statements they wish as to sentencing. During that time period -- also any statements that members of the victims' families wish to present.

Then the Court will allow the defense counsel and the defendant to make whatever statements they wish.

Then the Court will read its Special Verdict. The Special Verdict has already been decided and committed to writing and it will be read after the Court allows for the statements that I have already mentioned.

MR. LARSEN: By way of practicality here, Eric Larsen and David Braun on behalf of Mr. Jones. He is present in custody.

The State is intending to play a video tape. Obviously, my client has the right, as would counsel, to see it. The video tape is obviously facing our backs, so we would like the opportunity to move to counsel table.

THE COURT: You may.

The Court also notes at this time that it has received a letter from the defendant which it has read and considered this morning.

MR. LARSEN: Thank you.

THE COURT: The State may proceed.

MR. WHITE: Thank you, Your Honor.

May he speak from here?

THE COURT: Yes, you may speak from there. If you will state your name for the record first, please.

MR. PLUMB: My name is Jerry Plumb, P-l-u-m-b.

On May 15th, 1950 my sister Judy Bell was born. I have many fond memories of the chubby, little girl, following her big brothers around and trying to be included in the many activities we were involved in.

Then on June 13th, 1996 her life was snuffed out by a senseless, stupid robbery.

This has literally torn our family apart. Our mother moved out of Tucson because of the bad memories here. (Crying)

I always took pride in the fact that because of me, Judy and Taco met. Taco and I worked together for many years. He was my chief mechanic on my race car back in the 1960s. We were quite a team back in those days.

We miss them a great deal at this time of year. They used to visit us every Thanksgiving and

Christmas. Now they are both gone.

Mr. Jones, you may have been able to take them away from us physically, but you can't take away the memories.

I can't understand how a person can live with himself after such a horrendous thing. I only hope when you go to sleep each night that those faces are there to haunt you for the rest of your miserable life.

Thank you, Judge.

THE COURT: Yes.

MS. ANAGNOSTOS: My name is Teresa Anagnostos. I am the daughter of Maribeth Munn.

On June 13th, 1996 you walked into the Firefighters' Union Hall and murdered four good and decent, hardworking people.

One of those people was Maribeth Munn, my mother. You shot her in cold blood and you killed her. You know what you did to her.

Now I'm going to tell you what you have done to me. I was eight months pregnant with her first grandson and on that very day you killed her she was planning a baby shower.

You have left me with feelings of guilt and thoughts of "what if."

What if she hadn't been out that night

planning the baby shower. She might have been home that night on June 13th, 1996 and she would still be alive.

I hurt every time I think about the fact that she never got to see or hold her grandson that was born only several weeks later.

I am now on medication to help me deal with what you have done to her.

I am afraid to go out at night. I am afraid of strangers. And as a new mother I have questions that only a mother could answer for me. I don't have that because of you. You put me through hell these past two and a half years and now it is your time to live in hell and I hope you do.

THE COURT: Thank you.

MS. SCHNEIDER: My name is Toni Schneider. My sister Lynn was the bartender at the Union Hall and it was actually Scott Nordstrom that pulled the gun on my sister and killed her.

I have gotten to know these people here, these families here. In thinking about this and how could this kind of thing happen, I mean, how did it come together?

I sat through the trials and watched some things.

The prosecutor and the defense attorneys talk about puzzles. We have pieces of the puzzle. And when

all the pieces are there, we'll have a picture.

There was three puzzle pieces going on here. There was Scott Nordstrom and David Nordstrom and Robert Jones.

You know, it seems to me that maybe Robert and David Nordstrom didn't make that kind of puzzle fit, but Robert Jones and Scott Nordstrom, when they got together, were the puzzle that made a complete picture of everything.

I can see the grief and devastation that they left. They didn't have to kill six people.

David and Red, David Nordstrom, had robbed cleaners and they weren't even caught. A red-headed guy, they didn't kill anybody. They made it through and they weren't caught (indicating) but then Scott Nordstrom and Red Jones got together and went in and killed people.

Chip Odell probably didn't even see the evil coming up behind him. The Medical Examiner has said that he didn't suffer before he died. How does anyone know that?

Was he cognizant of the yelling and gunshots after he received that bullet?

I think of the beautiful and wonderful group of people here that I have had the honor to get to meet.

And at the Union Hall, you know, Scott knew

there was a chance he would know at least one of the customers and they went inside. I am sure he told Red that also.

The Union Hall was always a friendly, cheery type of bar. It had regulars, Taco, Judy and Maribeth were regulars who were there that night. They were probably laughing and talking and having a good time with my sister who was behind the bar.

Scott and Red entered the hall with plans to kill anyone they found inside. It didn't matter who.

The money they would get was only a fringe benefit and they didn't even get that much.

You know, at what point did Lynn, Taco, Judy and Maribeth know they were going to die?

Both Lynn and Taco showed signs of having been assaulted. We will never know the extent of their suffering before the bullet entered their brain.

It has been theorized that Scott shot Lynn twice after having her lay on the floor.

Red's victims had their heads down on the bar, probably at his instructions.

The time between gunshots was probably short, like people see at the movies. Pow. Pow. Pow.

But what an eternity it must have seemed to Taco, Judy and Maribeth.

What were their thoughts? What was their suffering at the hands of pure evil, premeditated evil?

Robert Jones does not deserve to be in society. He should be locked up and away from opportunity to meet up with somebody else like Scott Nordstrom, to make that perfect puzzle of evil.

He can never be in a position where he can be part of killing one person much less than six people. He will never be in a position to ruin the lives of six families, including his own.

As I told Scott Nordstrom at his sentencing, you made a conscious, premeditated choice, Mr. Jones, to personally take the lives of four people. My choice is not to have my life be about you. You will be locked away and out of my life.

Don't find any perverse pleasure in thinking that I am choosing to think about you. I will choose to think about the victims that died that day, the survivors they left behind, and hopefully the survival and healing that is going on in their lives. Thank you, Judge, for the opportunity.

THE COURT: Thank you.

CARSON NOEL: My name is Carson Noel. My mom was the bartender at the Firefighters' Union Hall. I'd like to introduce you to her. This is all I have left.

My mom (crying) was a very caring person. She loved everybody. And now she is gone. I have a huge hole right here (indicating) because so much is going to be missing later on in my life.

She will never get to see me be married. She will never see my children. My children both don't have a grandmother.

I have been lucky enough to have met all of my grandparents and almost all of my great-grandparents.

It is hard for me to sum up in words exactly how I feel. I have created a tape which a very good friend of mine sings. His name is Garth Brooks. I'd like to play it for you if I could.

THE COURT: You may.

(Whereupon, Carson Noel played a video of his mother, with Garth Brooks' "The Dance" playing in the background.)

Thank you.

THE COURT: Thank you.

CHRISTOPHER BELL: My name is Christopher Bell. I am the son of Arthur and Judy Bell.

June 13th, 1996 I went through a lot of "what ifs."

I was on my way to the Firefighters' Hall. I lived with my parents at the time.

It was a ten minute drive. I was on my way there.

Instead of making a left hand turn on Benson Highway, I made a right hand turn toward the freeway. I was less than two minutes away.

Ever since I have had "what ifs."

What if I would have been there. It could have been me.

What if?

I have had two years of grief. My sister, she is a mental case now. She is in and out of the hospitals all the time. She is a manic depressive.

I try and help her as much as I can.

I have to look at my son and I have another child on the way now.

No grandparents to look up to.

Mr. Jones, you have ruined lives in worse ways that you can think of.

It is senseless, stupid acts that you have done.

If the sentencing were up to me, it would be you and me five minutes together in a dark room, to be quite honest.

But you are going to get off easy on this one, no matter what they put to you.

That is all. Thank you.

THE COURT: Thank you.

MR. WHITE: Your Honor, I have nothing to add.

THE COURT: I thank all of you who have taken the opportunity to speak. I know it is a difficult time for you.

Mr. Larsen?

MR. LARSEN: Your Honor, the defense submits, based on the presentence package.

THE COURT: Mr. Jones, is there anything you wish to say?

DEFENDANT JONES: No, sir.

THE COURT: Then if you would join counsel over in the jury box, please.

The Court, prior to imposing sentence, admonishes those present in the courtroom to refrain from emotional displays; and, as previously mentioned, the Court advises that its Special Verdict was prepared in advance of and independent from the victim input entered this date.

There being no cause to delay entry of judgment and sentence, the Court, having ascertained the true name and date of birth of the defendant as being Robert Jones, born December 25, 1969, finds as follows and enters judgment in the following Special Verdict:

The determination of guilt was based upon a verdict of guilty after a jury trial on June 26, 1998.

Based on the jury's verdict, it is the judgment of the Court:

That the defendant is guilty of the crime of first-degree murder as to Thomas Hardman as charged in Count 1 of the indictment, in violation of A.R.S. 13-1105 (A) (1) and (2), the offense committed on May 30, 1996;

That the defendant is guilty of the crime of first-degree murder, as to Clarence Odell, as charged in Count 2 of the indictment, in violation of A.R.S. 13-1105 (A) (2), the offense committed on May 30, 1996;

That the defendant is guilty of the crime of first-degree murder, as to Maribeth Munn, as charged in Count 9 of the indictment, in violation of A.R.S. 13-1105 (A) (2), the offense committed on June 13th, 1996;

That the defendant is guilty of the crime of first-degree murder, as to Carol Lynn Noel, as charged in Count 10 of the indictment, in violation of A.R.S. 13-1105 (A) (1) and (2), the offense committed on June 13th, 1996;

That the defendant is guilty of the crime of first-degree murder, as to Arthur Bell, as charged in Count 11 of the indictment, in violation of A.R.S. 13-1105 (A) (2), the offense committed on June 13, 1996;

That the defendant is guilty of the crime of

first-degree murder, as to Judy Bell, as charged in Count 12 of the indictment, in violation of A.R.S. 13-1105 (A)(2), the offense committed on June 13th, 1996.

The defendant stands convicted of premeditated murder for the killing of Clarence Odell at the Moon Smoke Shop on May 30th, 1996, and for the killing of Maribeth Munn, Arthur Bell and Judy Bell at the Firefighters' Union Hall on June 13th, 1996. These murders comprised Counts 2, 8, 10 and 11 of the indictment. The defendant was convicted of felony murder for the killing of Thomas Hardman and Carol Lynn Noel, Counts 1 and 9.

Felony murder convictions for which the State seeks the death penalty require a threshold inquiry. The death penalty may not be imposed absent a finding that the defendant killed, attempted to kill or intended to kill.

"Intent to kill" includes the situation in which the defendant intended, contemplated, or anticipated that lethal force would or might be used or that life would or might be taken in accomplishing the underlying felony.

The death penalty also may be imposed where a defendant's participation in the underlying felony is major and where he displays reckless indifference to human life.

A finding satisfying this inquiry must be made

beyond a reasonable doubt.

The evidence showed beyond a reasonable doubt, based on the trial record, that on May 30th, 1996, Scott Nordstrom and David Nordstrom were with Robert Jones when Jones burglarized a car in a hospital parking lot.

From that car, Jones acquired a 9 millimeter semiautomatic pistol. The three then proceeded in Jones' pickup truck to the Moon Smoke Shop, where the three intended to commit an armed robbery using the two handguns.

David Nordstrom waited in the truck as a lookout or getaway driver while Scott Nordstrom and Jones entered the Smoke Shop.

Ballistics evidence and witness accounts present a picture consistent with the jury's findings:

Jones, dressed in western attire, killed customer Clarence Odell near the front door with a single close range shot to the head using the 9 millimeter, as Scott Nordstrom proceeded to the back room, where he killed employee Thomas Hardman with two shots to the back of the head, using the .380 firearm.

Jones fired again, wounding Steven Vetter and missing Noel Engles, the two remaining employees who lay on the floor behind the display counter.

After Jones rifled the cash register, he left

the store through the front door, as did an employee who managed to escape. Scott Nordstrom and Jones shared the cash with David Nordstrom as they departed the scene.

Two weeks later, on June 13th, 1996, an armed robbery occurred at the Firefighters' Union Hall. Four people were present. All were murdered and money was taken from the business.

The three patrons, seated at the bar near the entrance, were each killed by Jones. Jones killed each person seated at the bar with a single shot to the head, using the same 9 millimeter handgun he used at the Smoke Shop.

Scott Nordstrom took employee Carol Lynn Noel to the back room, where the cash lock box was located. Mrs. Noel did not know the combination. Scott Nordstrom kicked her in the face, then forced her to the cash register behind the bar, where he killed her with one shot to her back and one shot to the back of her head, using the same .380 caliber pistol he used at the Smoke Shop.

The Court finds, beyond a reasonable doubt and consistent with the jury's verdict, that the defendant himself killed Clarence Odell, Maribeth Munn, Arthur Bell, and Judy Bell. In itself, the jury's verdict of premeditated murder on these counts serves as a finding sufficient to meet the Enmund-Tison requirements of the

law.

The Court further finds, beyond a reasonable doubt, that as to Carol Lynn Noel and Thomas Hardman, the defendant intended the deaths of these people in that he surely anticipated lethal force would be used in accomplishing the armed robberies.

After the murders during the Smoke Shop robbery two weeks earlier, the defendant was surely on notice that similar results would likely occur at the Firefighters' Union Hall.

The Court further finds, beyond a reasonable doubt, that the defendant intended the death of Thomas Hardman in that he must certainly have anticipated that lethal force would or might be used, or that life would be taken in accomplishing the armed robbery of the Moon Smoke Shop, a crime in which the defendant was clearly a major participant and during which he displayed, at least, a reckless indifference to human life.

The inquiry required under Enmund-Tison is therefore satisfied, and the defendant is eligible for the death penalty as to each of the two felony murder counts for which he stands convicted, in addition to the four counts of premeditated murder.

AGGRAVATING FACTORS:

The Court has considered the evidence

presented at the aggravation/mitigation hearings conducted pursuant to A.R.S. 13-703 (B) on November 23, 1998, and the trial record, the sentencing memorandum of the defendant and the State, and has heard the arguments of counsel.

Both sides have had the opportunity to present evidence concerning the existence or non-existence of the aggravating and mitigating circumstances enumerated in A.R.S. 13-703 (F) and (G), and both sides have been given the opportunity to present any other relevant non-statutory mitigation.

No presentence report or victim impact information has been considered by the Court as pertaining to any aggravating factor, but these items have been disclosed to the defense and the prosecution.

The Court has considered the presentence report and prior presentence reports as part of its independent inquiry for statutory and non-statutory mitigating factors, as well as in support of those factors proffered by the defense.

The Court has also read letters submitted on behalf of the defendant and examined the exhibits to which the defense counsel called attention during his presentence.

Pursuant to A.R.S. 13-703 (D) and 13-703 (F),

the Court makes the following findings:

As to A.R.S. 13-703 (F) (1):

1. "The defendant has been convicted of another offense in the United States for which under Arizona law a sentence of life imprisonment or death was imposable."

As to each of the murders at the Moon Smoke Shop on May 30th, 1996, each of the murders at the Firefighters' Hall on June 13th, 1996 satisfies this factor; as to each of the murders at the Firefighters' Hall on June 13th, 1996, each of the murders at the Moon Smoke Shop on May 30th, 1996 satisfies this factor.

This aggravating factor has been proven beyond a reasonable doubt.

As to circumstance 2 "the defendant was previously convicted of a serious crime, whether preparatory or completed."

Each of the other counts of the indictment constitutes a "serious offense" except Count 3, the attempted first-degree murder.

However, since the Court has already considered the first-degree murder convictions in its 13-703 (F) (1) analysis, those convictions will not be again considered in the determination of this factor.

The defendant's convictions on Counts 4, 5, 6, 7, 12, 13, 14 and 15 each constitute a "serious offense"

under 13-703 (F) (2) and defined in 13-703 (H).

This aggravating factor has been proven.

As to the third statutory circumstance "in the commission of the offense, the defendant knowingly created a grave risk of death to another person or persons in addition to the victim of the offense."

This aggravating factor has not been proven.

As to circumstance 4 "the defendant procured the commission of the offense by payment or promise of payment of anything of pecuniary value."

This aggravating factor has not been proven.

As to statutory circumstance 5 "the defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value."

Each of the two incidents for which the defendant stands convicted was primarily an armed robbery. Money was taken at each place of business.

This aggravating factor has been proven beyond a reasonable doubt.

As to statutory circumstance 6 "the defendant committed the offense in an especially heinous, cruel or depraved manner."

Proof this factor requires evidence showing prolonged physical or mental anguish, gratuitous violence

beyond that necessary to kill, that the defendant relished the killings, torture or the like. In other words, it requires a showing of conduct clearly beyond the norm of first-degree murders.

Here, the evidence is that both robberies were accomplished in a very few minutes of time, and most victims were probably killed within seconds of the defendant's entrance onto the premises. Each victim died of a gunshot wound to the head; and with the exception of facial blows to Carol Lynn Noel and Arthur Bell, no additional violence beyond the fatal gunshots was inflicted.

The Court has considered the possibility that the victims were killed at least in part to eliminate them as witnesses, but finds this evidence alone insufficient for a finding as to this factor.

While these murders were clearly brutal, savage, calculated and committed without remorse, the State concedes, and this Court agrees, that the special standards required by law for proof of this aggravating factor have not been met.

The seventh statutory aggravating circumstance "the defendant committed the offense while in the custody of or on authorized or unauthorized release from the State Department of Corrections, a law enforcement agency or a

county or city jail."

Defendant was on parole from the Arizona Department of Corrections at the time of this offense.

This aggravating factor has, therefore, been proven.

Statutory aggravating circumstance 8 "the defendant has been convicted of one or more other homicides which were committed during the commission of the offense."

Each of the two murders at the Moon Smoke Shop constitutes proof of this factor as to the other. Each of the four murders at the Firefighters' Hall constitutes proof of this factor as to each of the others.

This aggravating factor has been proven beyond a reasonable doubt.

As to statutory aggravating circumstance 9 "the defendant was an adult at the time the offense was committed or was tried as an adult and the victim was under 15 years of age or was 70 years of age or older."

This aggravating factor has not been proven.

As to aggravating circumstance 10 "the murdered individual was an on duty peace officer who was killed in the course of performing his official duties and the defendant knew or should have known that the victim was a peace officer."

This aggravating factor has not been proven.

The Court therefore finds as to Count 1, first-degree murder as to Thomas Hardman:

That the State has proven beyond a reasonable doubt the aggravating circumstances as set forth in A.R.S. 13-703 (F) (1), that the defendant has been convicted of another offense for which a sentence of life imprisonment or death is imposable, that offense being any or all of the convictions in Counts 2, 8, 9, 10 or 11 in this indictment;

That the State has proven beyond a reasonable doubt the aggravating circumstances as set forth in A.R.S. 13-703 (F) (2), that the defendant was previously convicted of a serious offense, that offense being each of Counts 4, 5, 6, 12, 13, 14 and 15 of the indictment;

That the State has proven beyond a reasonable doubt the aggravating circumstances as set forth in A.R.S. 13-703 (F) (5), that the defendant committed this murder in the expectation of the receipt of pecuniary gain;

That the State has proven beyond a reasonable doubt the aggravating circumstance as set forth in A.R.S. 13-703 (F) (7), that defendant committed the offense while on authorized release from the State Department of Corrections;

That the State has proven beyond a reasonable

doubt the aggravating circumstances as set forth in A.R.S. 13-703 (F) (8), that the defendant has been convicted of one other homicide, that of Clarence Odell, during the commission of the offense.

The Court further finds the same aggravating circumstances have been proven as to all other capital counts, that being: Counts 2, 8, 9, 10 and 11.

As to mitigating factors:

Mitigating factors, pursuant to A.R.S. 13-703, must be proven by a preponderance of the evidence. The Court considers initially those statutory mitigating factors contained in A.R.S. 13-703 (G):

The first being, "the defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired, but not so impaired as to constitute a defense to prosecution."

The Court has considered evidence of the defendant's antisocial personality disorder, a history of amphetamine use, and dysfunctional family upbringing.

No evidence exists that any of these factors was a major and contributing cause of the defendant's conduct, or that any of them rendered the defendant incapable of conforming his conduct to the requirements of the law, or that any one of them inhibited his

understanding of the wrongfulness of his conduct.

The calculated and repetitive nature of the offenses weighs strongly against any one of these factors, alone or cumulatively, having affected the defendant to any significant degree.

This mitigating circumstance has not been proven.

As to the second statutory mitigating factor "the defendant was under unusual and substantial duress, although not such as to constitute a defense to prosecution."

This mitigating circumstance has not been proven.

As to statutory mitigating circumstance 3 "the defendant was legally accountable for the conduct of another under the provisions of A.R.S. 13-303, but his participation was relatively minor, although not so minor as to constitute a defense to prosecution."

The discussion of the facts contained in the Enmund-Tison analysis above is pertinent to this issue. The giving of a felony murder instruction and the subsequent conviction for felony murder as to two counts does not constitute mitigation in light of the prominent role of the defendant in this case.

This mitigating circumstance has not been

proven.

As to statutory mitigation circumstance 4 "the defendant could not have reasonably foreseen that his conduct in the course of the commission of the offense for which the defendant was convicted would cause, or would create a grave risk of causing, death to another person."

This mitigating circumstance has not been proven.

As to statutory mitigating circumstance 5 "the defendant's age."

The defendant was well into adulthood at the time these offenses were committed. His age is not a mitigating factor.

Non-statutory mitigating circumstances include any factors proffered by either side relevant to whether to impose a sentence less than death, including any aspect of the defendant's character, propensities or record, and any of the circumstances of the offense.

The defendant has proffered the following non-statutory mitigating factors:

1. Good Character. There is evidence that the defendant was able to relate to some people in an affable, socially acceptable way.

Given defendant's criminal record, lack of significant employment history, and Dr. Caffrey's

characterization of his history as one of "deceitfulness, impulsivity, reckless disregard for safety, irresponsibility and lack of remorse," the Court finds this non-statutory mitigating circumstance not proven.

2. Dysfunctional Family. The defendant has presented evidence on this issue including but not limited to the fact that he and his mother suffered physical and psychological abuse at the hands of his stepfather, Ronald O'Neil, who also introduced the defendant to drug use at an early age.

There is also evidence that the defendant's mother also abused him and that the defendant moved often from place to place and dropped out of school at an early age.

At the same time, the photos submitted of the defendant as a child depict a seemingly happy child in normal childhood circumstances.

Overall the evidence established that the defendant's childhood was marked by abuse, unhappiness and misfortune. However, there seems to be no apparent causal connection between any of the defendant's dysfunctional childhood elements and these murders which he committed at age 26.

This non-statutory circumstance has been proven by a preponderance of the evidence, but the Court

finds it is not mitigating.

3. Doing Good Before Murder. The defendant has presented evidence of his "good deeds" prior to the offenses which included emotional and financial support to his mother and sister.

This is scant evidence of good deeds before the murders in view of the overall history of the defendant in the first 26 years of his life.

The Court finds this non-statutory mitigating circumstance not proven by a preponderance of the evidence.

4. Family Support. The defendant has presented evidence that he enjoys the love and support of his mother and sister.

This non-statutory circumstance has been proven by a preponderance of the evidence but is only slightly mitigating.

5. Good Demeanor, Conduct During Trial. The defendant has argued that his good behavior and demeanor during trial is a mitigating circumstance.

The Court's own observations established this circumstance by a preponderance of the evidence, but the Court notes Dr. Caffrey's observation during her interview of defendant concerning his "tendency to minimize adverse information in an apparent attempt to make himself look

less socially deviant."

Defendant would be no less motivated at trial to behave in a way that would appear "less socially deviant."

This mitigating circumstance has not been proven.

6. Potential For Rehabilitation. The defendant presented evidence of his potential for rehabilitation in the form of the statements of his mother and sister and comments of Dr. Caffrey.

It is understandable that the defendant's family members would represent his character in a positive light when interviewed concerning the appropriate sentence to be imposed upon him.

The Court, however, notes the conclusions of Dr. Caffrey that "Mr. Jones' history is consistent with an individual with marked psychopathology and inability to live successfully in accordance with societal rules" and that "he has a history of failing to conform to social norms, deceitfulness, impulsivity, reckless disregard for safety, irresponsibility, and lack of remorse."

The Court finds this mitigating circumstance not proven.

7. Defendant's Devotion To Family. The defendant has presented evidence of his devotion to his mother and

sister.

This circumstance, like that discussed under "family support" above, relates to the defendant's relationship with those two members of his family.

For mitigation purposes, the Court finds this non-statutory circumstance has been proven by a preponderance of the evidence but is deserving of no additional mitigation that already accorded to the circumstance of family support.

8. Residual Doubt As To Guilt. The defendant has been found guilty beyond a reasonable doubt.

"Residual doubt" is any doubt that exists between "beyond a reasonable doubt" and "absolute certainty" at the time of the verdict.

The defendant has presented evidence by reference to the trial record, and argument for the proposition that residual doubt as to the defendant's guilt lingers.

The evidence and argument represent a continuation of the attack on the credibility of David Nordstrom that was exhaustively and skillfully pursued at trial.

The clear defense position has been that David Nordstrom lied, and that he was a shooter at both locations.

The State's position has been that David Nordstrom was the driver at the Moon, and that the Firefighters' Hall murders were committed by Scott Nordstrom and the defendant while David Nordstrom was at home on electronic monitoring.

No evidence suggested that more than two persons were involved at the Fire Hall.

Faced with this clear alternative, the jury found unanimously, and beyond a reasonable doubt, that Robert Jones was guilty of all counts.

While David Nordstrom was central to the State's case, he did not comprise the State's entire case, and the core of his testimony was corroborated at least circumstantially by other witnesses and items of evidence.

The eye witness at the Moon, the defendant's friendship with Scott Nordstrom, the physical description given by the Moon witnesses, defendant's display of approximately two hundred dollars in twenty dollar bills within a week of the Firefighters' Hall robbery, defendant's comments to Lana Irwin concerning the details of the Firefighters' Hall murders, the inculpatory statements made to David Evans and the electronic monitoring of David Nordstrom's whereabouts, are but a few examples illustrating this point.

While the defense vigorously contested each

element of the State's proof, the fact remains that David Nordstrom was thoroughly impeached by his prior felony convictions, past examples of dishonest conduct, dishonest statements, and the benefits he received by testifying.

The jury chose, nonetheless, to rely on the core of his testimony and the attendant corroboration.

Under the circumstances, their reliance was justifiable.

The statements of Edward Santa Cruz were known to defense counsel prior to trial and were not used to impeach David Nordstrom at trial.

This was due in all likelihood to their total lack of credibility given their internal inconsistencies when considered as a whole, the context in which they were given, and the character of Mr. Santa Cruz.

Offering these statements now to impeach David Nordstrom do nothing to undermine the validity of David Nordstrom's testimony.

The issue of guilty has been determined beyond a reasonable doubt. No higher level of proof is required.

While it may be possible that in some cases where the State's proof is entirely based on one witness of questionable veracity, residual doubt may constitute mitigation.

On the facts of this case the totality of the

evidence offered by the defendant as to "residual doubt" does not constitute mitigation, because it does not to any reasonable degree call into question the validity of the verdict.

This non-statutory mitigating circumstance is not proven.

In addition to those non-statutory mitigating factors proffered by the defendant, the Court has conducted an independent review of the evidence, including but not limited to the trial record and the presentence reports to see if any additional statutory or non-statutory mitigating circumstance exists.

The Court makes the following findings:

9. Mental Health Issues. The Court has carefully considered the report and testimony of Dr. Jill Teresa Caffrey, especially findings that the defendant suffers from antisocial personality disorder, has a history of drug use, and a somewhat low IQ.

Dr. Caffrey noted an overall intellectual functioning in the "low average" range compared to the general population and "performed in the average range on tests designed to measure learning and memory."

She also noted that defendant performed "extremely well" on "a conceptually difficult sorting task requiring novel problem solving, trial and error learning,

mental flexibility, at focused attention."

As previously noted, Dr. Caffrey found that defendant suffered from an antisocial personality disorder exhibited by his inability to live successfully in accord with society's rules.

Concerning defendant's substance use history, Dr. Caffrey, based her findings entirely upon the defendant's own statements, found that he began drug use as a child, that amphetamines are his drug of choice, and that his drug use has continued to the present. There is no evidence of defendant's use of drugs at or near the time of these murders.

In fact, Dr. Caffrey quotes the defendant as candidly reporting to her that he committed crimes both when he was and when he was not under the influence of drugs.

Counsel has presented and the Court has found no evidence of any causal connection between any of these problems and the commission of the offenses in this case.

This non-statutory mitigating circumstance is not proven.

The State has proven beyond a reasonable doubt the aggravating factors as set forth in A.R.S. 13-703 (F) (1) (2) (5) (7) and (8). The defendant has proven by a preponderance of the evidence non-statutory mitigating

factors referenced above, numbers 4 and 7.

The court has considered all mitigating factors referenced above, both individually and collectively, whether statutory, non-statutory, or a combination thereof, as to each count for which the defendant stands convicted, to determine whether, considered individually or as a whole, there is sufficient mitigation to call for leniency as to any or all counts.

The Court has weighed, both individually and collectively, all mitigating circumstances found by a preponderance of the evidence against the five aggravating circumstances applicable to each count.

Whether individually or collectively weighed, the mitigating circumstances, when weighed against the five aggravating circumstances found as to each count, are insufficient to call for leniency.

The finding made pursuant to A.R.S. 13-703 (F) (1) or (8) as to all counts is sufficient in itself to greatly outweigh the totality of mitigation shown.

Upon due consideration of the facts, the law, and the circumstances relevant here, the Court finds the following sentences to be appropriate on the capital counts:

It is ordered therefore, that as to:

Count 1: For the murder of Thomas Hardman,

that the defendant, Robert Jones, be put to death;

Count 2: For the murder of Clarence Odell, that the defendant, Robert Jones, be put to death;

Count 8: For the murder of Maribeth Munn, that the defendant, Robert Jones, be put to death;

Count 9: For the murder of Carol Lynn Noel, that the defendant, Robert Jones, be put to death;

Count 10: For the murder of Arthur Bell, that the defendant, Robert Jones, be put to death;

Count 11: For the murder of Judy Bell, that the defendant, Robert Jones, be put to death.

It is ordered the sentences imposed herein are consecutive, one to the other, in the above-listed order, and date from December 7, 1998. These sentences are to be carried out in the manner prescribed by law.

As to the non-capital counts, based on the jury's verdict, it is the judgment of the Court that the defendant, Robert Jones, is, as to:

Count 3: Guilty of attempted first-degree murder as to Steve Vetter, a Class 2 dangerous, non-repetitive felony violation of A.R.S. 13-1001, 13-1105 and 13-604 (B) and (I) and 13-604.02 (A), committed on May 30th, 1996.

Count 4: Guilty of armed robbery as to Steve Vetter, a Class 2 dangerous, non-repetitive felony

violation of A.R.S. 13-1902, 13-1904 and 13-604, committed on May 30th, 1996.

Count 5: Guilty of armed robbery as to Mark Naiman, a Class 2 dangerous, non-repetitive felony violation of A.R.S. 13-1902, 13-1904 and 13-604, committed on May 30th, 1996.

Count 6: Guilty of armed robbery as to Noel Engles, a Class 2 dangerous, non-repetitive felony violation of A.R.S. 13-1902, 13-1904 and 13-604, committed on May 30th, 1996.

Count 7: Guilty of burglary in the first-degree as to the Firefighters' Union Hall, a Class 3 dangerous, non-repetitive felony violation of A.R.S. 13-1902, 13-1904, 13-604, committed on June 13, 1996.

Count 12: Guilty of burglary in the first-degree as to the Moon Smoke Shop, a Class 3 dangerous, non-repetitive felony violation of A.R.S. 13-1902, 13-1904, 13-604, committed on May 30th, 1996.

Count 13: Guilty of aggravated assault, deadly weapon/dangerous instrument, as to Steve Vetter, a Class 3 dangerous, non-repetitive felony violation of A.R.S. 13-1204 (A) (2) and (B), and 13-604, committed on May 30th, 1996.

Count 14: Guilty of aggravated assault, deadly weapon/dangerous instrument, as to Mark Naiman, a

Class 3 dangerous, non-repetitive felony violation of A.R.S. 13-1204 (A) (2) and (B), and 13-604, committed on May 30th, 1996.

Count 15: Guilty of aggravated assault, deadly weapon/dangerous instrument, as to Noel Engles, a Class 3 dangerous, non-repetitive felony violation of A.R.S. 13-1204 (A) (2) and (B), and 13-604, committed on May 30th, 1996.

The Court finds as aggravating factors the same factors referred to on the capital counts as well as the defendant's three prior felony convictions.

The Court has also considered all information contained in the presentence report, the victim impact information, and all evidence, arguments and statements made during the mitigation presentation.

Based on the above, the Court finds the following sentences to be appropriate on the non-capital counts:

As to Count 3, attempted first-degree murder, it is the judgment and sentence of the Court that the defendant be incarcerated in the Arizona Department of Corrections for the partially aggravated term of 15 years with consecutive community supervision of 26 months.

This sentence is to be served concurrently with the sentence imposed herein on Counts 4 and 13, but

consecutively to all other counts;

As to Count 4, armed robbery, that the defendant be incarcerated in the Arizona Department of Corrections for the partially aggravated term of 15 years with consecutive community supervision of 26 months.

This sentence is to be served concurrently with the sentence imposed herein on Counts 3 and 13, but consecutively to the sentence imposed herein on all other counts;

As to Count 5, armed robbery, that the defendant be incarcerated in the Arizona Department of Corrections for the partially aggravated term of 15 years with consecutive community supervision of 26 months.

This sentence is to be served concurrently with the sentence imposed herein on Count 14, but consecutively to the sentence imposed herein on all of the counts;

As to Count 6, armed robbery, that the defendant be incarcerated in the Arizona Department of Corrections for the partially aggravated term of 15 years with consecutive community supervision of 26 months.

This sentence is to be served concurrently with the sentence imposed herein on Count 15, but consecutively to the sentence imposed herein on all other counts;

As to Count 7, burglary in the first-degree, that the defendant be incarcerated in the Arizona Department of Corrections for the aggravated term of 15 years with consecutive community supervision of 26 months.

This sentence is to be served consecutively to the sentence imposed herein on all other counts;

As to Count 12, burglary in the first-degree, that the defendant be incarcerated in the Arizona Department of Corrections for the aggravated term of 15 years with consecutive community supervision of 26 months.

This sentence is to be served consecutively to the sentence imposed herein on all other counts;

As to Count 13, aggravated assault, that the defendant be incarcerated in the Arizona Department of Corrections for the partially aggravated term of 10 years.

This sentence is to be served concurrently with the sentence imposed herein on Counts 3 and 4, but consecutively to the sentences imposed on all other counts;

As to Count 14, aggravated assault, that the defendant be incarcerated in the Arizona Department of Corrections for the partially aggravated term of 10 years with consecutive community supervision of 17 months.

This sentence is to be served concurrently with the sentence imposed here in on Count 5, but

consecutively to the sentences imposed on all other counts;

As to Count 15, aggravated assault, that the defendant be incarcerated in the Arizona Department of Corrections for the partially aggravated term of 10 years with consecutive community supervision of 17 months.

This sentence is to be served concurrently with the sentence imposed on Count 6, but consecutively to the sentences imposed on all other counts.

It is ordered that the defendant pay restitution to Victim 5 in the amount of $10,000 and to Victim 12 in the amount of $38,809.45.

It is ordered that the defendant receive credit for 507 days of presentence incarceration.

The defendant having received a capital sentence, it is ordered that an appeal will be automatically entered and filed with the Arizona Supreme Court.

It is ordered that S. Jonathan Young, Esq., be appointed to represent the defendant on direct appeal.

It is ordered authorizing the Sheriff of Pima County to deliver the defendant to the custody of the Arizona Department of Corrections, and authorizing the Department of Corrections to carry out the term of imprisonment set forth herein.

It is ordered that the clerk of the court shall remit to the Department of Corrections a copy of this order together with all presentence reports, probation violation reports, medical and psychological reports relating to the defendant and involving this case.

Let the record reflect that the defendant's thumbprint will be permanently affixed to this sentencing order in open court. That concludes the sentencing. Of course, there is nothing that can be done to bring back the victims of this offense.

I hope that in this final sentencing matter that all the members of the victims' families will be able to find some closure.

The Court will be in recess.

* * * * *

C E R T I F I C A T E

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

I, TONI HENSON, do hereby certify that as Official Court Reporter in the Superior Court of Pima County, Arizona, I was present at the proceedings of the foregoing entitled case; that while there I took down in shorthand all the oral testimony adduced and/or proceedings had; that I have transcribed such shorthand into typing, and that the foregoing typewritten matter contains a full, true and correct transcript of my shorthand notes so taken by me as aforesaid.

Toni Henson

TONI HENSON
Official Court Reporter

Dated: 1.15.99

FILED
Dec. 7, 98
RLCx

SUPERIOR COURT OF ARIZONA

[James N. Corbett]

PIMA COUNTY

TUCSON, AZ

26	December 7, 1998	Hon. Edgar B. Acuña	R. L. Cox
Div	Date	Judge	Deputy

NO. **CR-60709**

STATE OF ARIZONA — Mark Diebolt

VS

ROBERT (NMN) JONES, aka Robert Glen Jones — Eric Larsen

DATE OF BIRTH: 12/25/69

RECEIVED DEC 14 1998

ENTENCE OF IMPRISONMENT

The State is represented by the above named Deputy County Attorney; the Defendant is present with counsel named above.

COURT REPORTER: Mary Jo Bair

The Defendant is advised of the charge, the determination of guilt and is given the opportunity to speak.

Pursuant to A.R.S. Section 13-607, the Court finds as follows:

JURY VERDICT The determination of guilt was based upon a verdict of guilty after a jury trial.

Having found no legal cause to delay rendition of judgment and pronouncement of sentence, the Court enters the following judgment and sentence:

IT IS THE JUDGMENT of the Court that the Defendant is guilty of the following crime, that upon due consideration of all the facts, law and circumstances relevant here, the court finds that suspension of sentence and a term of probation are not appropriate and that a sentence of imprisonment with the Department of Corrections is appropriate.

26	December 7, 1998	Hon. Edgar B. Acuña	R. L. Cox
Div	Date	Judge	Deputy

NO. **CR-60709**

STATE VS. ROBERT (NMN) JONES, aka Robert Glen Jones

AS PUNISHMENT, IT IS ORDERED that the Defendant is sentenced to a term of imprisonment and is committed to the Arizona Department of Corrections as follows:

OFFENSE:	Count One, Promoting Prison Contraband
FELONY CLASS:	FIVE (5), NONDANGEROUS, REPETITIVE PURSUANT TO A.R.S. 13-604
IN VIOLATION OF A.R.S. SECTIONS:	13-2505(A)(3) and (C); 13-604(C)
DATE OF OFFENSE:	March 3, 1998
ENTENCE:	Five (5) Years, with consecutive community supervision of one day for every seven days of the prison sentence imposed.
TERM IMPOSED:	PRESUMPTIVE
REPETITIVE PER A.R.S. 13-604 OR 13-604.01:	The Court finds that the defendant was previously convicted of: Burglary in the Second Degree and Theft in Maricopa County Superior Court Cause Number CR-9101078 on January 28, 1991; and Attempted Burglary in Maricopa County Superior Court Cause Number CR-8802936 on September 14, 1988.

This sentence is to date from December 7, 1998 . The Defendant is to be given credit for 238 days served prior to sentencing.

IT IS ORDERED authorizing the Sheriff of Pima County to deliver the Defendant to the custody of the Arizona Department of Corrections and authorizing the Department of Corrections to carry out the term of imprisonment set forth herein.

26	December 7, 1998	Hon. Edgar B. Acuña	R. L. Cox
Div	Date	Judge	Deputy

NO. **CR-60709**

STATE VS. ROBERT (NMN) JONES, aka Robert Glen Jones

IT IS ORDERED that the Clerk of the Court shall remit to the Department of Corrections a copy of this order together with all pre-sentencing reports, probation violation reports, medical and psychological reports relating to the Defendant and involving this cause.

Let the record reflect that the Defendant's fingerprint is permanently affixed to the signature page of this sentencing order in open Court.

The Defendant is advised concerning rights of appeal and written notice of those rights is provided.

FILED IN COURT: Order of Confinement, Pre-Sentence Report, Rights of Appeal.

HON. EDGAR B. ACUÑA

cc: Hon. Edgar B. Acuña
Criminal Calendaring
County Attorney - Mark Diebolt (2 copies)
Eric Larsen, Esq.✓
Adult Probation (1 certified + 2 copies)
Clerk of Court - Collections (SSN 463-59-4465; DOC)
Clerk of Court - Appeals
Sheriff (3 certified)
DOC (1 certified)

Exhibit 20

Tucson Weekly, August 17, 2009 article titled Compromised Conviction?

Tucson Weekly

CURRENTS » CURRENTS FEATURE

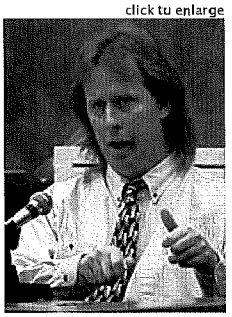
August 27, 2009

Tweet 0 Share

Compromised Conviction?

Death-row inmate Scott Nordstrom maintains he's innocent and plans an appeal

by A.J. Flick



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David Nordstrom, as he appeared during the 1997 murder trial.

Scott Nordstrom has been eagerly waiting for his day in court. However, that day will not come this month.

Nordstrom, 41, arrived in Pima County Superior Court last week looking more like a lawyer than an 11-year resident of Arizona's death row. Nordstrom was one of two defendants convicted and sentenced to death for the brutal 1996 slayings of six people at the Moon Smoke Shop and Firefighters Union Hall. His case returned to Superior Court for resentencing after a 2002 U.S. Supreme Court ruling required juries, not judges, to impose death sentences.

Long before the jury was seated, Nordstrom suspected he was going back to death row.

"It's a foregone conclusion," he said Friday morning, Aug. 21, during an interview at the Pima County Jail. (Resentencing proceedings were still underway as of the Tucson Weekly's press deadline.)

Since the day he was arrested, Nordstrom has proclaimed his innocence. Back then, he said he trusted the system to do the right thing and determine that his main accuser—his younger brother, David—was the real killer. Now, Nordstrom said, he is convinced that newly discovered evidence will prove his innocence.

"The way that I can really prove it to you is this right here," Nordstrom said, patting a stack of papers that's the basis for his upcoming appeal.

In exchange for testimony against his brother and co-defendant Robert Jones, David Nordstrom claimed that he was the getaway driver in the May 30, 1996, Moon Smoke Shop robbery in which Thomas Hardman and Clarence O'Dell were slain, but that he wasn't involved in the June 13, 1996, Firefighters Union Hall robbery in which Maribeth Munn, Carol Lynn Noel, Arthur "Taco" Bell and Judy Bell were slain.

Nordstrom's claims of innocence include allegations that his brother's so-called "air-tight" alibi was anything but; that David Nordstrom was courted by prosecutors—including being let out of jail for a steak dinner and a visit with his then-girlfriend; that Scott Nordstrom's alibis weren't investigated adequately by his attorneys; and that prosecutors knew David Nordstrom lied.

Prosecutors declined to be interviewed, but they, as well as Judge Richard Nichols, have noted that Nordstrom's convictions haven't been overturned, and the only matter before them right now is the sentence.

"Once he was found guilty, the remaining question is the degree of his participation, not whether he participated," senior prosecutor Rick Unklesbay has said.

Nordstrom's current attorney, David Alan Darby, also declined to be interviewed. But defense investigator Chuck Laroue, who was an ardent death-penalty supporter when he worked in the Pima County Attorney's Office, said Scott Nordstrom is telling the truth.

"Every time I hear somebody say, 'I'm innocent,' I said, 'Yeah, right,'" Laroue said. "But as I started investigating this case, I very quickly saw that there were serious problems with the way this case was handled, from the police to the prosecutors. I am shocked and amazed to know that my former colleagues were engaging in this disgusting behavior, hiding critical evidence, basically cheating. Never in my career have I been so firmly convinced that an innocent man is being railroaded."

When Nordstrom was convicted, Pima County had the highest per-capita rate of sending defendants to death row in the nation. Prosecutors were given carte blanche in capital cases.

"An unlimited budget—anything they wanted," Laroue said.

Meanwhile, court-appointed defense attorneys were limited in what they could spend. Nordstrom said he was often told that there were no resources to investigate his innocence claims.

Pima County prosecutors also had, in the words of former Arizona Supreme Court Chief Justice Stanley Feldman, a "win-at-all-costs" attitude when it came to high-profile cases. In those days, many of the county's murder cases were prosecuted by Kenneth Peasley and David White. Peasley was disbarred in 2004 after the Arizona Supreme Court found that he solicited perjured testimony from a police officer in the 1992 El Grande Market triple slaying.

White, who died in 2003, was blamed posthumously for withholding hundreds of pages of documents that could have helped the defense for a Tucson woman, Carolyn Peak, who was charged with killing her husband. When the documents were found, Pima County Attorney Barbara LaWall dropped Peak's murder charge.

Nordstrom, a high school dropout who has accumulated a jailhouse education in law, said White committed similar misconduct in his case. With Scott Nordstrom's conviction so heavily dependent on David Nordstrom's testimony, White admitted to jurors that the star witness was a liar—except when he was on the stand. David Nordstrom's alibi was that he was on probation at the time and under electronic monitoring, which White said was infallible.

Donna Boykin, whose mother-in-law was slain at the Union Hall, gave a sworn statement this month saying she told White before the trial that electronic monitoring could be beaten based on her own experiences. Boykin turned over records to show she was "out of pocket," or not at home when she was supposed to be, and the monitor failed to detect her slips.

"In June 1997, I initiated contact with the Pima County Attorney's Office because I heard the prosecution was basing its case against the alleged defendants on what (prosecutors) claimed to be solid evidence that their key testifying witness could not have been involved in the Union Hall slayings," Boykin said in her sworn statement.

"I knew the electronic monitoring was not accurate," she said, "and that I had information to prove it."

Boykin, who was angry that David Nordstrom received such sweet plea deal, spoke to White's investigator, Steve Merrick. Merrick's reports weren't discovered by Nordstrom's defense team until LaWall initiated an "open-file" system that allowed defense attorneys to examine prosecutors' files in wake of the Peak case.

David Nordstrom got a four-year sentence and reportedly lives in Sacramento, Calif.

Their mother, Cynthia Wasserburger, said David has threatened her over the years, because she remains steadfastly in Scott's corner.

"I will never say Scott is or was a saint," she said. "He's done bad. He's been bad. ... But there's no way—and I believe that the evidence is there to prove it—that he did what they're saying he did."

Scott Nordstrom said he is confident he will be able to prove his innocence.

The U.S. Supreme Court recently granted an evidentiary trial for Troy Davis of Georgia, who maintained his innocence in the 1989 slaying of a police officer. Justice John Paul Stevens said the risk of executing a potentially innocent man "provides adequate justification" for a new hearing.

"If the justice system's purpose is justice," Scott Nordstrom said, "we will prevail."

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Exhibit 21

Investigative Report Supplement of Steve Merrick, June 6, 1997

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PIMA COUNTY ATTORNEY'S OFFICE

INVESTIGATIVE REPORT
Supplement

CRIME	CR#	DEFENDANT(S)	DATE
Murder	#55947	David Nordstrom Scott Nordstrom	06/16/97

AGENCY	CASE #	INVESTIGATOR
PCAO	TPD #9605300531 #9606130784	Steve A. Merrick 1338 SM

WITNESS: Donna Munn
Home Address: [redacted]

Home [redacted]

Work [redacted]

On 06/06/97 at 1600 hours I interviewed subject Donna Munn at her place of employment, [redacted] where Mrs. Munn is [redacted] Mrs. Munn had contacted the Pima County Attorney's Office on 06/05/97 regarding information she wanted to share about the house arrest program. Mrs. Munn advised that she was placed on house arrest by the Pima County Adult Probation Department, IPS, on 05/07/97 after a criminal conviction in Pima County. Mrs. Munn's house arrest [redacted] Mrs. Munn was required to wear a electronic monitoring device, an ankle bracelet, which electronically monitored when she was present at her residence.

Mrs. Munn claimed that during the time period that she was on house arrest she often left her home earlier, or arrived home later, than was allowed by her IPS schedule, but she was never contacted or questioned by her probation officer, or anyone connected with the Pima County Adult Probation Department about these apparent deviations from her schedule. Mrs. Munn was asked to check her work schedule and if possible to provide dates and times when she had to go to work early or stayed late.

Mrs. Munn said that the monitoring equipment was set up on her home telephone, and the equipment included a "box" which had a red light. Mrs. Munn said that although the monitoring equipment and it's function was never fully explained to her, she noted that the red light on the monitoring box seemed to be activated whenever she was in her residence, so she assumed the monitoring box was picking up the signal from her ankle bracelet when she returned

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home, activating the red light.

Mrs. Munn said she was told [redacted] that the red light on the monitoring box would often come on five to ten minutes before Mrs. Munn arrived home, and sometimes Mrs. Munn noticed that after arriving home from work at approximately 2200 hours the red light would not come on until 2300 to 2330 hours. Mrs. Munn said she contacted the probation department once to inquire about the red light coming on before she arrived home from work, and was told that possibly it had something to do with her travel time, which Mrs. Munn did not fully understand.

Mrs. Munn also showed me a copy of her IPS weekly schedule, dated 05/23/97, which Mrs. Munn filled out, and which indicated the days and times that Mrs. Munn would be away from her residence. Mrs. Munn pointed out that she had written her work schedule down as 1300 to 2130 hours. Although she had been told by her probation officer to include travel time on this schedule she had not included travel time. Therefore Mrs. Munn would actually leave her residence at 1215 to 1230 (not 1300 hours), and would not arrive home until 2200 to 2215 hours (not 2130 hours).

In addition to the deviation from the schedule due to travel time, Mrs. Munn said she had to work late on several occasions, getting off work at approximately 2215 hours. When travel time is added Mrs. Munn would have not gotten home until 2245 to 2300 hours, which was up to an hour and a half later than her scheduled time of 2130 hours. Mrs. Munn said she was instructed to page her probation officer whenever she had to deviate from her schedule, such as working late. The first time she had to work late Mrs. Munn said she tried to contact her probation officer by paging him, but he did not return her pages, so after that she never bothered to try and contact her probation officer if she had to work late. Despite these apparent deviations from the IPS weekly schedule Mrs. Munn claimed that she was never contacted or questioned by her probation officer or the probation monitoring personnel.

Mrs. Munn said the only time the probation monitoring personnel made any contact was a telephone call they placed to her residence on 06/05/97. Mrs. Munn said that she was having cable T.V. installed on that day and the cable installer accidentally unplugged the home arrest monitoring equipment hooked up to her telephone. Mrs. Munn was at work and the only person home was [redacted] Mrs. Munn said she was never contacted at work, but apparently the probation monitoring personnel placed a telephone call to the residence and spoke to

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[redacted] advising him that the monitoring equipment had been turned off for eleven minutes (1441 to 1452 hours). [redacted] explained to the probation monitoring personnel what had occurred, and apparently no further follow-up was conducted.

On 06/11/97 at 1630 hours I met with Mrs. Munn at [redacted] at which time she provided me with copies of her IPS weekly schedules; a copy of her "Electronically Monitored House Arrest Contract"; a computer print-out of her work schedule [redacted] from 04/28/97 to 06/06/97; and handwritten notes she had made on her work schedule, her community service schedule, and other activities during her house arrest period.

On 06/12/97 at 1330 hours I met with Mrs. Munn's probation officer, Jeff Knox, at his office (1931 W. Grant Rd, suite #310, W#623-4809). Officer Knox provided me with copies of Mrs. Munn's "IPS Weekly Schedule" and the "Electronically Monitored House Arrest Program Probationer Schedule", as well as a print out of all curfew violations for Mrs. Munn during the time she was on house arrest.

Officer Knox explained that the probation department has a separate electronic monitoring team that handles setting up the monitoring equipment in a probationer's home, and then provides the monitoring services. Officer Knox stated that he has the probationer submit a IPS Weekly Schedule, which in this case was filled out by Mrs. Munn. Then utilizing the times provided on that schedule Officer Knox completes a Electronically Monitored House Arrest Program Probationer Schedule which he then sends to the monitoring team. If it is brought to Officer Knox's attention that there needs to be a change to the schedule, such as a doctor's appointment or overtime at work, then Officer Knox would either telephone the monitoring team with the changes, or fax a revised schedule to them. Officer Knox noted that although Mrs. Munn had not included travel time on her schedule he had added travel time to the schedule which he made up and sent to the monitoring team.

When the monitoring equipment alerts the monitoring team of a curfew violation the monitoring team can elect to contact the probationer themselves by telephone or in person, or they can contact the assigned probation officer or surveillance officer. Officer Knox acknowledged that Mrs. Munn was never contacted by him or the monitoring personnel about any curfew violations, even though one curfew violation on 05/21/97 showed that Mrs. Munn had left her residence without authorization for almost one hour. Officer Knox advised that on that date Mrs. Munn was suppose to be home at 1600 hours and the print-out on curfew violations showed

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that she left her residence at 1605 hours, returning at 1703 hours. Officer Knox said he was not contacted immediately by the monitoring personnel about this violation, for unknown reasons, and instead he was sent a hard copy notification of the violation the next day. Officer Knox advised that he never spoke to Mrs. Munn about this violation.

The other curfew violations noted for Mrs. Munn were for 05/27/97 when she left her residence fifteen minutes early, and for 05/17/97 which showed a curfew violation for leaving her residence during a time period that according to the schedule which Officer Knox had submitted for that week, she was allowed to be away from the residence (schedule showed she would be away from her residence from 1430 to 2250 hours and the alarm was at 2005 hours).

Upon examining the schedules and the material provided by Mrs. Munn it was noted that with few exceptions the schedules Officer Knox had provided to the monitoring team matched Mrs. Munn's work/community service/ and other activities schedules. There were a few discrepancies which are as follows:

- Officer Knox could not find the schedule he had prepared for the week of 05/04/97 through 05/10/97. The alarm status report shows an enter alarm for 05/07/97 at 1611 hours. The IPS weekly schedule that Mrs. Munn provided for that week showed [redacted] from 1100 to 1200 hours. Going by that schedule she should have been home shortly after 1200 hours, so it is unknown why there would be an enter alarm for 1611 hours.

- Mrs. Munn had unexplained curfew alarms on 05/17/97. According to the schedule that Officer Knox filled out he showed that Mrs. Munn would be away from her residence at work from 1430 to 2250 hours. On the IPS weekly schedule filled out by Mrs. Munn, she noted for 05/17/97 that she would be working from 0930 to 1730 hours, and then [redacted] from 1730 to 1930 hours.

- On 05/21/97 Mrs. Munn put down on her schedule that she would be working community service from 1100 to 1300 hours, then [redacted] at 1500 hours, [redacted] at 1400 hours. Officer Knox included all of this in his schedule by showing her at community service from 1030 to 1600 hours. Mrs. Munn said she did not go to [redacted] and according to the handwritten schedule that she provided to me for her community service work hours she did not work any community service on 05/21/97.

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- On 06/04/97 Mrs. Munn put down on her schedule that she was going to [redacted] at 1300 hours to [redacted], which Officer Knox included in his schedule by showing her at community service from 0930 to 1500 hours. Mrs. Munn said she did not go [redacted] that day, but there were no curfew alarm violations for that day, and apparently no one questioned Mrs. Munn about her whereabouts. Therefore if Mrs. Munn did not go to [redacted] as scheduled she had three hours that she was unaccounted for.

- Mrs. Munn wrote on her schedule, which was then also placed on the schedule that Officer Knox prepared, that she worked community service hours several days during each week. However, upon comparing the hours on these schedules to the dates and hours provided to me by Mrs. Munn on 06/11/97, when she prepared handwritten notes on her work and community service hours, it was noted there were several discrepancies in which Mrs. Munn now claims to have not done any community service hours on a particular date, or is now claiming that she worked different hours than what was shown on her IPS weekly schedule and the schedule that Officer Knox submitted to the monitoring team. It is uncertain how accurate these community service hours are at this time because I am going strictly by the hours shown on the IPS and Monitoring schedules and those hours provided to me by Mrs. Munn in her handwritten notes.

Pima County uses the same company, BI, for the equipment and computer software, as does Arizona DOC. I had previously spoken to Leo Henke, the Tucson supervisor for their house arrest program and he had shown me the equipment utilized and how the equipment works. The receiver/transmitter box which is hooked up to the parolee/probationer's telephone has a battery back-up which can store up to 99 messages if the power and/or phone service is interrupted. The receiver/transmitter box has three lights on the front panel: a green light, which is the power light; a red light which is labeled telephone and which flashes red whenever the main computer is calling the transmitter in the parolee's/probationer's home to check on its working condition and/or location; and a yellow light which is labeled range and which come on and stays on whenever the parolee's/probationer's transmitter (the ankle bracelet) comes within the 150 foot range of the transmitter hooked up to the parolee's/probationer's telephone. The red light that Mrs. Munn referred to was coming on whenever the main computer was randomly calling the receiver/transmitter in Mrs. Munn's home checking to make sure the equipment was still at the correct location and working properly.

The transmitter, ankle bracelet, that the parolee/probationer

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wears is attached with a heavy rubber strap which has an wire running through it, so if the strap is cut the electrical circuit is broken and the bracelet transmits an alarm to the main computer. The bracelet transmitter uses a variable frequency to defeat any attempt to copy the transmitter's frequency and mask the signal from the bracelet transmitter. If the bracelet transmitter malfunctions or if the transmitter's battery goes dead then a "leave violation" signal is sent to the main computer, the parole officer is alerted to a violation, and the parole officer then makes contact with the parolee.

Mr. Henke explained that the parole officer will follow-up on all alarm/violations alerts that the computer receives, and will also approve and monitor any changes in the parolee's schedule, such as overtime at work, doctor appointment's, etc. The parole officer will also figure travel time into the parolee's schedule and then add an extra fifteen minutes to cut down on the number of violations when the parolee is only a couple of minutes early upon leaving the residence or a couple of minutes late in returning. The parolee is not told that this extra fifteen minutes is added to the calculated travel time.

The parolee is required to make prior notification of any requested changes in their schedules and emergency deviations from the schedule, such as taking a child to the emergency room, will be followed-up by the parole officer to verify the emergency and whereabouts of parolee during that time period. Mr. Henke advised that parole officers continually check with employers to verify the parolee's working hours, and attendance at work. Mr. Henke said that approved activities which allow a parolee to leave his or her residence are: employment, counseling, visits to parole officer, medical services, attendance at church, and "family time".

Family time, pre-approved activities with family members, is given to a parolee who has been on the program for some time and has adhered to the program's rules. Although family time is still an approved activity for the DOC house arrest program, Mr. Henke, has chosen to not allow parolees which his office manages to have family time.