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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Daniel Wayne Cook,
Petitioner,
vs.
Charles L. Ryan, et al.,
Respondents.

Case No. CV-97-146-PHX-RCB
Death Penalty Case
Order Allowing Confidential Contact Visit
with Petitioner

Pending before the Court is Daniel Wayne Cook’s Stipulation for Order Allowing Confidential Contact Visit with Petitioner. Cook’s counsel and counsel for the Arizona Department of Corrections (“ADOC”) have stipulated to the terms of the Order Allowing a Confidential Contact Visit between Daniel Wayne Cook and Dr. Tora Brawley, a neuropsychologist retained by Cook’s counsel.

Cook, through counsel, has requested that ADOC allow Dr. Brawley to have a confidential contact visit with Cook to gather information necessary for the preparation of Cook’s clemency petition. Cook, a death row inmate, is currently housed in Browning Unit, a maximum security prison facility located in the Arizona State Prison Complex, Eyman, in Florence, Arizona. Because of the nature of the prisoners housed in this facility, Browning Unit has a no-contact-visit policy absent a court order. The Ninth Circuit has held that ADOC’s non-contact visitation policy at its high security prisons is rationally related to its

1 legitimate penological concerns. *Casey v. Lewis*, 4 F.3d 1516, 1523 (9th Cir. 1993) (“The
2 ADOC policy is a reasonable response to the legitimate institutional concerns posed by full
3 contact visitation: prevention of escape, assault, hostage-taking, and the introduction of
4 contraband.”). Cook, through counsel, acknowledges that ADOC has a legitimate
5 penological interest in requiring that any contact visit be conditioned on following certain
6 security measures. To assist this Court in determining the extent of the
7 visitation/examination, as well as to protect ADOC’s interest in securing its prisons, the
8 limitations on the visit are listed below.

9 **IT IS ORDERED** that Petitioner’s Stipulation for Order Allowing Contact Visit
10 between Daniel Wayne Cook and Dr. Tora Brawley is **GRANTED**.

11 **IT IS FURTHER ORDERED** that Dr. Brawley be permitted to have a confidential
12 contact visit with Daniel Wayne Cook for neuropsychological testing under the following
13 terms:

- 14 1. Visitation shall take place on May 6, 2010, from 9:00 a.m. to 3:00 p.m.
- 15 2. Cook’s counsel shall make arrangements with Warden Ernest Trujillo (“the
16 Warden”), Arizona State Prison - Eyman Complex Browning Unit, or his
designee, to schedule such visits.
- 17 3. The Warden, through his staff, may require Dr. Brawley to subject all
18 instruments, equipment, manuals, and the like to an inspection and inventory
prior to and subsequent to any meeting with Cook.
- 19 4. If requested by Dr. Brawley, the Warden, through his staff, shall remove
20 handcuffs from Cook so that Cook may complete certain tests. However,
Cook shall at all times remain in leg irons. ADOC may require Cook to wear
21 a stun belt during the meetings.
- 22 5. Both Cook and ADOC recognize that Cook’s decision not to contest ADOC’s
23 practice of using a stun belt on Cook is due to the time constraints placed upon
Cook’s counsel and in no way constitutes a waiver of the “stun belt issue” in
24 any future request for a contact visit in this case or in any other case. ADOC’s
willingness to stipulate hereto should not be considered a waiver of any aspect
of ADOC’s non-contact visitation policy.
- 25 6. Dr. Brawley will be required to wear all protective gear, including any
26 protective vest and/or safety goggles provided by ADOC. Dr. Brawley will be
allowed to wear a suit jacket over the protective vest. If requested, Dr.
27 Brawley shall be allowed to remove the protective vest and safety goggles if,

1 in her opinion, the vest and/or the goggles interfere with the testing and
2 evaluation of Cook.

- 3 7. The meetings between Cook and Dr. Brawley shall be confidential and take
4 place in a room that allows for privacy. The room in which the meetings take
5 place shall have a door that remains closed during the meeting. The room may
6 have windows which allow the Warden, through his staff, to observe the
7 meeting. Dr. Brawley shall sit in the chair closest to the door, and Cook shall
8 not go between her and the door without permission. The room in which the
9 meetings take place shall have three chairs and a table no larger than three feet
10 in width.
- 11 8. Dr. Brawley shall be allowed to have physical contact with Cook as is
12 necessary to conduct testing.
- 13 9. Before being allowed the contact visit authorized herein, Dr. Brawley shall
14 certify in a written release to ADOC that she has investigated and ascertained
15 the risks to her personal safety associated with the visit as authorized by and
16 under the circumstances described in this order; that she agrees to assume
17 those risks; that she releases and holds harmless ADOC, the state of Arizona,
18 and their officers and employees from any claim arising from death or injury
19 associated with the risks assumed. However, such release shall not operate as
20 a release of gross negligence on the part of ADOC.
- 21 10. Dr. Brawley shall submit her full name, date of birth, and social security
22 number to ADOC at least ten days before the scheduled examination of Cook.
23 In the event that she has had a prior arrest or conviction for any felony offense,
24 she will not be permitted into the institution.
- 25 11. ADOC's willingness to stipulate to the contact visit hereto shall not be
26 considered a waiver of any aspect of ADOC's non-contact visitation policy.

27 **IT IS FURTHER ORDERED** that the Clerk of Court forward a copy of this Order
28 to counsel of record; and to Michael Brodsky, Assistant Attorney General, Arizona
Department of Corrections, 1275 West Washington, Phoenix, AZ 85007; and Warden
Trujillo, Arizona State Prison, Eyman Prison Complex, Browning Unit, 4374 East Butte
Avenue, Florence, Arizona 85132.

Dated this 16th day of April , 2010 .

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26 Robert C. Broomfield
27 Senior United States District Judge