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**IN THE UNITED STATES DISTRICT COURT**

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**FOR THE DISTRICT OF ARIZONA**

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9 Murray Hooper,

No. CV-98-02164-PHX-SMM

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Petitioner,

DEATH PENALTY CASE

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v.

**ORDER**

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Charles L. Ryan, et al.,

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Respondents.

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Pending before the Court is Murray Hooper's Stipulation for Order Allowing Confidential Contact Visit with Petitioner. (Doc. 153.) Mr. Hooper's counsel and counsel for the Arizona Department of Corrections ("ADOC") have now stipulated to the terms of the order allowing a confidential contact visit between Mr. Hooper and Dr. Robert Heilbronner, a psychologist.

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Mr. Hooper, through counsel, has requested that ADOC allow Dr. Heilbronner to have a confidential contact visit with Mr. Hooper. Mr. Hooper, a death row inmate, is currently housed in the 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

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

14 IT IS ORDERED that the Stipulation for Order Allowing Confidential Contact  
15 Visit with Petitioner is GRANTED.

17 IT IS FURTHER ORDERED that Dr. Robert Heilbronner be permitted to have a  
18 confidential contact visit with Mr. Hooper for psychological evaluation under the  
19 following terms:

20 1. Visitation shall take place on June 11, 2015, from 9:00a.m. to 3:00p.m.  
21 each day.

23 2. Mr. Hooper's counsel affirms that he made advance arrangements with  
24 Warden James O'Neil ("the Warden"), Arizona State Prison - Eyman Complex  
25 Browning Unit, or his designee, to schedule such visits.

27 3. Mr. Hooper's counsel affirms that Warden O'Neil, or his designee has  
28 agreed that Dr. Heilbronner is permitted to bring pens and pencils, a notepad, clipboard,

1 stopwatch, test manuals, response sheets, cardboard cards, a finger tapping apparatus,  
2 grooved pegboard. The Warden, through his staff, may require Dr. Heilbronner to  
3 subject all instruments, equipment, manuals and the like to an inspection and inventory  
4 prior to and subsequent to any meeting with Mr. Hooper.  
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6 4. If requested by Dr. Heilbronner, the Warden, through his staff, shall  
7 remove handcuffs from Mr. Hooper so that Mr. Hooper may complete certain tests.  
8 However, Mr. Hooper shall at all times remain in leg irons. ADOC may require Mr.  
9 Hooper to wear a stun belt during the meetings.  
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11 5. Both Mr. Hooper and ADOC recognize that Mr. Hooper's decision not to  
12 contest ADOC's practice of using a stun belt on Mr. Hooper is due to the time  
13 constraints placed upon Mr. Hooper's counsel and in no way constitutes a waiver of the  
14 "stun belt issue" in any future request for a contact visit in this case or in another case.  
15 ADOC's willingness to stipulate hereto should not be considered a waiver of any aspect  
16 of ADOC's non-contact visitation policy.  
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18 6. Dr. Heilbronner will be required to wear all protective gear, including any  
19 protective vest and/or safety goggles provided by ADOC. Dr. Heilbronner will be  
20 allowed to wear a suit jacket over the protective vest. If requested, Dr. Heilbronner  
21 shall be allowed to remove the protective vest and safety goggles if, in his opinion, the  
22 vest and/or the goggles interfere with the testing and evaluation of Mr. Hooper.  
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24 7. The meetings between Mr. Hooper and Dr. Heilbronner shall be  
25 confidential and take place in a room that allows for privacy. The room in which the  
26 meetings take place shall have a door that remains closed during the meeting. The  
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1 room may have windows which allow the Warden, through his staff, to observe the  
2 meeting. Dr. Heilbronner shall sit in the chair closest to the door, and Mr. Hooper shall  
3 not go between him and the door without permission. The room in which the meetings  
4 take place shall have three chairs and a table no larger than three feet in width.  
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6 8. Dr. Heilbronner shall be allowed to have physical contact with Mr.  
7 Hooper as is necessary to conduct testing.  
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9 9. Before being allowed the contact visit authorized herein, Dr. Heilbronner  
10 shall certify in a written release to ADOC that he has investigated and ascertained the  
11 risks to his personal safety associated with the visit as authorized by and under the  
12 circumstances described in this order; that he agrees to assume those risks; that he  
13 releases and holds harmless ADOC, the state of Arizona, and their officers and  
14 employees from any claim arising from death or injury associated with the risks  
15 assumed. However, such release shall not operate as a release of gross negligence on  
16 the part of ADOC.  
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19 10. Dr. Heilbronner has submitted his full name, date of birth and social  
20 security number to ADOC. In the event that he has had a prior arrest or conviction for  
21 any felony offense, he will not be permitted into the institution.  
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23 11. ADOC's willingness to stipulate to the contact visit hereto shall not be  
24 considered a waiver of any aspect of ADOC's non-contact visitation policy.  
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26 IT IS FURTHER ORDERED that the Clerk of Court forward a copy of this Order  
27 to counsel of record; and to Michael Gottfried, Assistant Attorney General, Arizona  
28 Department of Corrections, 1275 West Washington, Phoenix, AZ 85007; and to Warden

1 James O'Neil, Arizona State Prison, Eyman Prison Complex, Browning Unit, 4374 East  
2 Butte Avenue, Florence, Arizona 85232.

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4 DATED this 14th day of May, 2015.

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7 Honorable Stephen M. McNamee  
8 Senior United States District Judge  
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