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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

**DARNELL LUCKY,**  
  
Petitioner,  
  
v.  
  
**VINCENT CULLEN, Warden of  
California State Prison at San  
Quentin,**  
  
Respondent.

Case No. CV 91-0583-TJH

**DEATH PENALTY CASE**

**PROTECTIVE ORDER  
REGARDING DISCOVERY[195]**

In *Bittaker v. Woodford*, 331 F.3d 715, 727-28 (9th Cir. 2003) (En Banc), the United States Court of Appeals for the Ninth Circuit ruled that “district courts have the obligation, whenever they permit discovery of attorney-client materials as relevant to the defense of ineffective assistance of counsel claims in habeas cases, to ensure that the party given such access does not disclose these materials, except to the extent necessary in the habeas proceeding, i.e., to ensure that such a party’s actions do not result in a rupture of the privilege.” Pursuant to *Bittaker* and pursuant to the agreement and stipulation of the parties, the following protection to all such privileged information disclosed during discovery in this case is hereby

1 ordered:

2 (1) This protective order applies to all information that is subject to the  
3 attorney-client and/or work product privileges produced by Petitioner’s counsel to  
4 Respondent in accordance with the limited waiver held in *Bittaker* to apply in the  
5 context of certain claims – including but not limited to such materials located in  
6 trial counsel’s file, materials located in the files of investigators or experts  
7 employed by trial counsel to assist in Petitioner’s defense, or materials obtained  
8 through a deposition of trial counsel or any members of the trial defense team. This  
9 protective order also applies to all such information trial counsel or a member of the  
10 trial defense team may produce to Respondent in response to a subpoena for such  
11 information.

12 (2) Except as stated in paragraph (4), materials described in paragraph (1)  
13 only may be used by Respondent for the sole purpose of litigating the instant  
14 federal habeas corpus case and may not be used against Petitioner for any other  
15 purpose, specifically including any criminal retrial that might occur.

16 (3) Except as stated in paragraph (4), Respondent shall not disclose the  
17 materials described in paragraph (1) or their contents to any person or entity outside  
18 of the California Department of Justice, excluding any expert consultants/witnesses  
19 retained by a party for the express purpose of assisting in the resolution and  
20 adjudication of the claim or claims, the assertion of which compelled the limited  
21 waiver. Retained expert consultants or witnesses shall agree in writing to the terms  
22 of the protective order and shall be bound by it. Respondent shall not disclose any  
23 protected materials or their contents to any other person or entity, including law  
24 enforcement personnel not employed by the California Department of Justice or  
25 criminal prosecutors not employed by the California Department of Justice, without  
26 the express written permission of counsel for the Petitioner or an order from this  
27 Court.

28 (4) This protective order shall not extend to documents or information

1 previously disclosed to a third party without a protective order, otherwise available  
2 to the public, or filed in an unsealed condition in any prior California state court  
3 proceeding. The parties do not express an opinion about or waive the ability to  
4 seek a further protective order for documents previously filed, disclosed or  
5 otherwise made public but that may be properly sealed if the document were filed  
6 pursuant to this protective order. The parties, therefore, expressly reserve the right  
7 to apply to the Court by means of a noticed motion and seek to seal any document  
8 previously disclosed or filed; Respondent does not waive any argument in  
9 opposition to such an application.

10 (5) If the parties determine protected documents must be filed as part of  
11 any pleading, so that the protected materials would normally become part of the  
12 public record, in advance of the filing the parties will meet and confer and attempt  
13 to reach a stipulation concerning the procedures to be used and, if one is reached,  
14 submit that stipulation to the Court for its consideration. If the parties cannot agree  
15 and reach a stipulation concerning the procedures to be used, the party seeking to  
16 file the document may lodge the supporting documents with the Clerk of the Court  
17 in a sealed envelope with an application requesting that the Court accept the  
18 document for filing under seal or permit public filing of the document. The other  
19 party may file an opposition or notice of non-opposition to the application within  
20 fourteen days; the moving party may file a reply within seven days of any  
21 opposition. The Court will rule on the application with or without a further hearing,  
22 at its discretion.

23 (6) Should the Court order an evidentiary hearing, the Court will afford  
24 the parties an opportunity to brief what further protective measures, such as sealing  
25 orders, potential closed courtroom proceedings, or other such measures that will be  
26 necessary to adequately protect Petitioner's rights.

27 (7) This order shall remain in effect after the conclusion of the habeas  
28 corpus proceedings and shall apply in the event of a retrial of all or any portion of

1 Petitioner's criminal case. Any modification or vacation of this order shall only be  
2 made upon notice to and an opportunity to be heard from both parties.

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4 **IT IS SO ORDERED.**

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6 Dated: April 7, 2011

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CC:DEATH PENALTY LC

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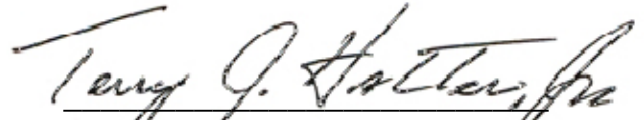
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The Honorable Terry J. Hatter, Jr.  
United States District Court Judge