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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LARRY ROBERTS,

No. CIV S-93-0254 GEB DAD DP

Petitioner,

CAPITAL CASE

v.

ORDER

ARTHUR CALDERON, Warden,

Respondent.

_____ /

Pursuant to the court's discovery order in this action (Doc. No. 305), counsel for respondent submitted four banker's boxes of documents for in camera review. In addition, respondent's counsel provided a letter explaining, to some degree, the basis for respondent's assertion of privilege with respect to those voluminous documents. In addition, pursuant to petitioner's later unopposed motion, the Solano County Superior Court submitted three envelopes containing the bench notes of The Honorable Franklin R. Taft¹ for in

¹ Judge Taft presided over the state habeas corpus proceedings in petitioner's case on referral by the California Supreme Court.

1 camera review by this court. (See Doc. No. 364.) The court has
2 finally completed its review of those documents.²

3 In many respects, it turned out to be quite difficult for
4 this court to determine what specific documents among the boxes of
5 records submitted for review might be relevant to petitioner's broad-
6 ranging habeas claims. Having engaged in that time-consuming task the
7 court has doubts whether many of the documents reviewed, particularly
8 those in the central files of the various inmate witnesses, have
9 significant relevance to the presentation and consideration of
10 petitioner's claims. However, the court is mindful that it clearly
11 cannot have the same appreciation of potential relevance of
12 information that counsel for the parties would have. Accordingly,
13 where a doubt existed, the court has erred on the side of ordering
14 production under the terms of the protective order set forth below.

15 Accordingly, respondent will be directed to provide to
16 petitioner's counsel the following documents, identified by their
17 Bates-stamped numbers, subject to the protective order detailed below.

18 **R Documents**

19 1
20 3-7
21 29-66
22 71
23 72-74

24 ² In retrospect, the court erred in agreeing to review such
25 voluminous documents in camera. The unprecedented nature of the
26 caseload in the Eastern District of California has been well-
documented in recent years. In light of the demands that such a
caseload places on the court, it was simply not practical to undertake
an in camera review of this magnitude. The unfortunate result of the
court's error in agreeing to do so, has been the delay of these
proceedings. It is not an error that the undersigned will repeat in
the future.

1 **R Documents (cont.)**

- 86-105
- 2 114-203
218-231
- 3 337-392
432-450
- 4 505-552
559-567
- 5 594-610
615
- 6 619-621
710-712
- 7 717-1033
1052-1064
- 8 1098-1119
1143-1182
- 9 1185-1293
1419-2203
- 10 2245-2653
2821-2857
- 11 2926
2972
- 12 2974
2984-2985
- 13 4337-38

14 **L Documents**

- 15 1-42
66-95
- 16 104-107
137-141
- 17 148-154
178-473
- 18 478-481
485
- 19 495
503
- 20 507-510
512-516
- 21 519-525
527-530
- 22 535-539
545-551
- 23 556-559
563-566
- 24 569
572-577
- 25 580-617
620-621
- 26 631-702

1 **L Documents (cont.)**

- 2 733-780
795-812
- 3 821-878
920-970
- 4 992-1239

5 **RK Documents**

- 6 782-1156
1203-1213
- 7 1255-57
1262-64
- 8 1267-1273
1277-1281
- 9 1289-1306
1338-1367
- 10 1371-1394
1421-1573
- 11 1580-1583
1586
- 12 1589
1591-1598
- 13 1600
1620-1622
- 14 1625
1627-1635
- 15 1778-1781
1783-1817
- 16 1823-1827
1833-1926
- 17 1931-1952
1954-2088

18 **H Documents**

- 19
- 20 1
42
57-58

21 **C Documents**

- 22
- 23 1-3
22-25
28
- 24 43-46
52-83
- 25 92
118-123
- 26 /////

1 **C Documents (cont.)**

2 134-145
3 189-193

4 **Y Documents**

5 1-15
6 84-106
7 134-178
8 181-434
9 436-453
10 458-478
11 481-492
12 507-583
13 591-630
14 633-643
15 665-676
16 680-688
17 701-927

18 **In Camera Hearing Transcripts**

19 February 5, 1982 & February 19, 1982
20 February 26, 1982
21 October 21, 1982
22 October 22, 1982
23 October 25, 1982
24 November 2, 1982
25 January 6, 1983
26 January 24, 1983

27 None of the documents produced to petitioner's counsel shall
28 be revealed to any person other than counsel for petitioner and
29 experts or other persons working under counsel's direct supervision in
30 connection with these habeas corpus proceedings or otherwise without
31 prior authorization of the court ordered on motion pursuant to twenty-
32 one days notice, filed and served on counsel for the State. Absent
33 such prior authorization, all of the documents ordered produced by
34 this order, and information contained in those documents, shall be
35 kept confidential and not made public. Absent such prior
36 authorization of the court, none of these documents, or information

1 contained therein, shall be transferred, revealed or used in any way
2 or for any purpose except in connection with the litigation of the
3 claims presented in the petition for writ of habeas corpus pending
4 before this court. Petitioner's counsel shall insure that any person
5 working under their direct supervision to whom counsel reveals
6 documents and information covered by this protective order is provided
7 a copy of this protective order and signs a statement that he or she
8 has read and understands their obligations with respect to this
9 protective order. Counsel for petitioner shall retain these signed
10 statements. Nothing in this order prohibits any person or agency
11 acting on behalf of the State from notifying any individuals to whom
12 to whom the discovery documents pertain that the documents have been
13 produced pursuant to this discovery order. California Civil Code §
14 1798.24(k).³

15 The court has reviewed all of the remaining documents
16 submitted for in camera review, including the bench notes of the
17 Honorable Franklin R. Taft submitted by the Solano County Superior
18 Court (see Doc. No. 364), and has concluded that those documents do
19 not contain information relevant to the presentation or resolution of
20 petitioner's claims in these federal habeas proceedings.

21 Counsel for respondent shall produce the documents
22 identified above to petitioner's counsel within twenty-one days of the
23 date of this order. It was originally contemplated that counsel for
24

25 ³ In the event counsel believe that the appropriate protective
26 order with respect to these documents should include additional or
different terms, counsel are encouraged to meet and confer and submit
to the court a stipulated protective order for consideration.

1 petitioner would file a motion for evidentiary hearing within 180 days
2 after the production of any documents ordered produced following this
3 in camera review. However, in recent correspondence counsel for
4 petitioner has indicated that they now intend to file their motion for
5 evidentiary hearing much sooner. Accordingly, for the purpose of
6 setting a briefing schedule with respect to petitioner's anticipated
7 motion for evidentiary hearing, the case is also now set for status
8 conference, with telephonic appearance authorized, on Thursday,
9 September 16, 2010, at 9:30 a.m. before the undersigned.⁴

10 IT IS SO ORDERED.

11 DATED: August 12, 2010.

12
13 
14 DALE A. DROZD
15 UNITED STATES MAGISTRATE JUDGE

16 ddad1/orders.capital
17 robertsincamerareview.wpd

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25 ⁴ If counsel wishes to set the briefing schedule by way of
26 proposed stipulation and order, they may do so after consulting with
Courtroom Deputy Pete Buzo regarding available hearing dates. If such
a proposed stipulation and order is submitted, the status conference
will be vacated.