


1 preserved. (ECF No. 127.) This is an unusual situation. It is not the situation that confronted the
2 court in Bittaker. There, the court considered a protective order issued during normal discovery
3 in the federal habeas proceeding. Second, the proceedings in the present case are stayed. That
4 stay was lifted solely for the limited purpose of proceedings related to petitioner's preservation of
5 evidence. (ECF Nos. 120, 127.) Finally, until the standards set out in 28 U.S.C. § 2254(d) are
6 satisfied, this court may not consider evidence that was not before the state court. See Cullen v.
7 Pinholster, 131 S. Ct. 1388, 1398-1401 (2011). Therefore, respondent's argument that he should
8 be permitted to include information gleaned through the discovery in his answer in this court is
9 premature. Accordingly, the court finds petitioner's proposed limitation on respondent's use of
10 the discovered files appropriate at this time.

11 Respondent further asks this court to rule in advance on any use petitioner might make in
12 state court of the preserved testimony. This court will not rule on a matter that is not before it.
13 The parties may seek amendments to the protective order if necessary.

14 For the foregoing reasons, and good cause appearing, IT IS HEREBY ORDERED that the
15 protective order proposed by petitioner in his December 6, 2013 filing (ECF No. 139) is adopted.

16 Dated: January 13, 2014

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19 CAROLYN K. DELANEY
20 UNITED STATES MAGISTRATE JUDGE

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