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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

Curtis Lee ERVIN,  
Petitioner,

v.

Kevin CHAPPELLE, Acting Warden of  
San Quentin State Prison,  
Respondent.

Case Number 4-0-cv-1228-CW  
DEATH-PENALTY CASE

ORDER GRANTING PETITIONER'S  
MOTION FOR DISCOVERY OF  
RECORDED TELEPHONE CALLS

[Doc. No. 217]

In this capital habeas action, the Court granted  
Petitioner's request to depose fellow condemned prisoner Gary  
Hines because it determined that "Hines' testimony is relevant to  
Petitioner's claims of innocence." (Doc. No. 189 at 10.) The  
deposition took place on September 23, 2011. During the  
deposition, Hines testified regarding telephone calls between  
himself and staff attorneys at the California Appellate Project.  
(Doc. No. 217 at 2.) The calls were not confidential and were  
recorded by San Quentin State Prison; the recordings are to be  
destroyed or discarded later this year. (Id. at 3.) In the  
instant Motion, Petitioner seeks discovery of any audiotapes or  
transcriptions of pertinent phone calls "[i]n anticipation that

1 Mr. Hines' credibility may be called into question." (Id. at 2.)  
2 Neither Hines nor his counsel opposes Petitioner's request,  
3 (id.), and an authorization signed by Hines is attached to  
4 Petitioner's motion, (id. at 12).

5 Respondent contends that the records Petitioner seeks are  
6 not relevant. (Doc. No. 218 at 2-4.) However, recordings of  
7 phone calls are plainly relevant to the credibility of testimony  
8 regarding the calls, and they well may be relevant to the overall  
9 credibility of a person testifying about such calls. Petitioner  
10 therefore has established good cause for discovery of pertinent  
11 recordings, particularly in light of the fact that the records  
12 will be destroyed or discarded if the Court does not order their  
13 preservation.<sup>1</sup>

14 Accordingly, Petitioner's Motion is granted. San Quentin  
15 State Prison shall provide to Petitioner's counsel access to its  
16 recorded and transcribed telephone calls, and a copy thereof,  
17 between the California Appellate Project and death-row inmate  
18 Gary Hines (CDCR No. D-91000) for the period August 1-October 31,  
19 2011.

20 IT IS SO ORDERED.

21  
22 DATED: 4/11/2012



23 CLAUDIA WILKEN  
24 United States District Judge

25 <sup>1</sup> Respondent also argues that the admissibility of the Hines  
26 deposition has not been established and that the deposition testimony  
27 is not properly before the Court in light of Cullen v. Pinholster, 563  
28 U.S. \_\_\_\_, 131 S. Ct. 1388 (2011). (Doc. No. 218 at 2-3.) However,  
there is no support for the assertion that the admissibility of  
evidence is required for relevant discovery, and the Court already has  
determined that, "[c]ontrary to Respondent's contention, Pinholster  
does not bar discovery in this instance," (Doc. No. 189 at 10).