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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THOMAS FRANKLIN WHEELLOCK,

Petitioner,

No. C 05-3878 PJH

v.

SCOTT M. KERNAN, Warden,

Respondent.

**THIRD ORDER RE RECORD**

On September 27, 2011, this fully-briefed habeas case was reassigned from the Honorable Jeremy Fogel to the undersigned judge. On November 17, 2011, pursuant to the court's request, respondent lodged portions of the record that the court found were missing, and the court appears to now have the entire record as lodged previously with Judge Fogel. However, the court's review of the briefs and record revealed that the reporters transcripts provided to the court did not specifically include (or identify, as respondent now clarifies) the actual voir dire and responses from Juror No. 8. Instead, the only transcripts the court was able to locate regarding Juror No. 8's voir dire responses are from July 23, 2001, following jury selection, when the trial court noted for the record discussions that transpired at sidebar conferences during voir dire. R.T. 4077-78. Nor does the record include Juror No. 8's questionnaire, referenced in the trial court's discussion at R.T. 4077-78.

Because the court concluded that the voir dire transcripts and questionnaire are necessary for its adjudication of the related habeas claim, on December 12, 2011, the court ordered respondent to submit them to the court.

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On December 16, 2011, respondent notified the court that it does not have in its case file the "key" necessary to identify for the court Juror No. 8's voir dire responses or Juror No. 8's questionnaire. Respondent has requested those documents from the Alameda County District Attorney's Office, but does not know at this time whether the documents are still in existence and/or how long it will take that office to locate the documents.

Given the age of the case, the impending holidays, and the importance of the documents to this court's adjudication of the related claim, the court will afford respondent additional time to locate the documents and/or information. Respondent is ORDERED to submit the documents and/or a status report advising the court regarding the status of the Alameda County District Attorney's Office's search for the documents **as soon as such information becomes available but no later than Friday, January 20, 2012.**

**IT IS SO ORDERED.**

Dated: December 19, 2011



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PHYLLIS J. HAMILTON  
United States District Judge