IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

DAVID WILSON, Petitioner, v. JOHN Q. HAMM, Commissioner, Alabama Department of Corrections, Respondent.	))))))))))	CASE NO. 1:19-CV-284-WKW-CSC

ORDER

Before the court is petitioner's Motion for Full Disclosure of the Kittie Corley Letter and for a Hearing at the Court's Earliest Convenience (Doc. 70), in which petitioner seeks an order requiring respondent to disclose both sides of a letter respondent has already been ordered to disclose.[1] The District Judge has referred the motion to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 "for further proceedings and determination or recommendation as may be appropriate." Doc. 78. Respondent opposes the motion, contending that the undisclosed portion of the letter is not subject to disclosure because it is "both non-exculpatory and utterly immaterial for *Brady* purposes, and irrelevant to this Court's consideration

[1] In his reply in support of the motion, petitioner has withdrawn his request for a hearing. *See* Doc. 75 at 1.

of Petitioner's *Brady* claim." Doc. 73 at 8. For the following reasons, disclosure of the full letter will be GRANTED.

BACKGROUND

This order need not repeat the background information relating to petitioner's conviction and sentence or the factual and procedural predicate for petitioner's earlier motions to secure disclosure of the Kittie Corley letter. The District Judge's prior order (Doc. 67) granting disclosure of the letter imparts all such necessary context, in addition to discussing the prosecution's obligations pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and outlining the discovery standard that controls in this habeas proceeding. In all relevant respects, that order is incorporated herein.

This order picks up following respondent's disclosure pursuant to the prior order. Respondent has provided petitioner and the court with a single-page photocopy of a handwritten letter from Corley to an unknown attorney. *See* Doc. 69-2. The purpose of the letter appears to be Corley's solicitation of legal representation and advice concerning charges of "conspiracy to commit murder" and "2nd degree burglary" in the death of Dewey Walker. As was already known to petitioner, Corley claims in the letter that she hit Walker with a baseball bat "till he fell." As was unknown to all but respondent, the letter further describes the circumstances surrounding Corley's claim.

In pertinent part, those circumstances are as follows. Corley claims that she and petitioner entered Walker's home early one morning intent on stealing stereo equipment. Their accomplice, Matthew Marsh, waited outside the home in a truck. Walker was not at home when they entered. They were in the home for about an hour before Walker arrived and began yelling at Corley about calling the police. Corley froze; petitioner approached Walker from behind and began strangling him with an extension cord. When this failed to subdue Walker, Corley hit him with the bat "till he fell." With Walker thus neutralized, Corley and petitioner "loaded up all [they] could find" and spent a few days removing items from Walker's home. Corley "pawned everything we got, split the money 3 ways." She threw the baseball bat in a dumpster. It was, in her words, simply "Dewey's time to go." She also claims to have had "sex adventures" in Walker's home but declines to explain what that means because "that ain't no one's business."

Corley's account of her involvement in the murder of Walker directly and materially conflicts with the statement she provided to police, which was provided to the defense, and with the prosecution's theory of the case as revealed in the evidence and argument that was presented at petitioner's trial. Whether her confessional statement was suppressed, and whether it was material within the meaning of *Brady*, such that petitioner's due process rights were violated, are issues for another day. Instead, this order concerns respondent's decision to continue

withholding a portion of the letter notwithstanding the District Judge's order to disclose it. The withheld portion is previewed in the first line of the letter: "My name is Catherine Nicole Corley & I am involved in 2 murders[.]" Doc. 69-2. According to petitioner, this reference is the first petitioner has heard of Corley's involvement in a second murder. Corley concludes the front side of her letter by vouching for the veracity of her account of Walker's murder and assuring that the "story on other side [presumably, the 'story' of her involvement in another murder] is true also."

Continuing in his privileged position as the only party aware of its contents, respondent assures that the backside of the Corley letter describes a "separate criminal offense" that "does not mention Dewey Walker or his murder, does not mention Petitioner, does not implicate Petitioner in any additional crime, and does not exonerate Petitioner in any way." Doc. 73 at 8. "As such," respondent contends, "it is both non-exculpatory and utterly immaterial for *Brady* purposes, and irrelevant to this Court's consideration of Petitioner's *Brady* claim." *Id*. Despite that the Corley letter has been in the State's possession for nearly nineteen years, respondent maintains, somewhat remarkably, that the backside of the Corley letter concerns an "unrelated" "criminal matter that the State is *currently* evaluating." *Id*. at 10 (emphasis supplied).

In reply, petitioner argues that the backside of the Corley letter is subject to disclosure under *Brady* and the District Judge's prior order because it is potential impeachment material, it could have been used to discredit the police investigation of Walker's murder, and it is exculpatory, in part, because it may bolster the credibility of Corley's claim to have beat Walker with the baseball bat while he was alive. Doc. 75 at 3-10.

DISCUSSION

The District Judge's order requiring disclosure of the Corley letter is unambiguous, stating, "respondent shall provide the Corley letter to petitioner." Doc. 67 at 23. The District Judge reached that conclusion after considering, and rejecting, each of the bases respondent offered to avoid disclosure of the letter. Respondent did not contend among those bases that a part of the letter need not be disclosed because it concerns separate, unrelated criminal activities of Corley. Had respondent done so, the court and petitioner could have engaged with such argument at that time. Respondent might even have prevailed on that point.

But, despite being aware of the letter's contents, respondent did not make that argument, choosing instead to argue that the State's *Brady* obligations vanish in postconviction and that, ultimately, no disclosure was warranted because petitioner's *Brady* claim is without merit. When the District Judge declined to rule on respondent's merits-based arguments without disclosure of the letter, the content of

the letter not referenced in the previously disclosed police reports—including, apparently, Corley's confession to being involved in another murder—could no longer be hidden. This was always the risk of respondent's approach of maximal resistance to showing any of his cards. Respondent should not now be heard to conjure wholly new grounds to avoid disclosure of the letter.[2]

How does respondent purport to comply with a clear, unambiguous order to disclose the letter to petitioner while not disclosing the entirety of the letter and also not being found to have waived his new argument against disclosure? At least in part, respondent employs a rhetorical sleight of hand, somehow converting what has to this point been described by all parties as a unitary "Corley letter" into multiple letters. For example, respondent now posits that "the Corley letter refers to a separate letter regarding a separate criminal offense that was handwritten on the backside of the Corley letter." Doc. 73 at 8; *id*. at 9 (describing the backside of the Corley letter as a "second letter"). In other words, it appears respondent now reduces "the Corley letter" to only the frontside of the letter, which has been disclosed, while

[2] In general, "[a]n argument not made is waived[.]" *Cont'l Technical Servs., Inc. v. Rockwell Intern. Corp.*, 927 F.3d 1198, 1199 (11th Cir. 1991). Nothing prevented respondent from previously arguing, as he now does, that a substantial portion of the Corley letter is immaterial to petitioner and should not be disclosed. Respondent has cited no authority that would countenance his getting another bite at the apple on an argument he could have presented before disclosure was ordered.

maintaining that the backside of the letter is a "separate" or "second" letter because, ostensibly, its content concerns a separate criminal offense.

The problem for respondent is that the frontside of the Corley letter makes clear that the Corley letter, front and back, is a single letter, intended for a single recipient, with both sides written and dispatched contemporaneously, in which Corley describes on one side her involvement in the Dewey Walker murder and, on the other side, her purported involvement in another murder. It is this one letter that respondent was unambiguously ordered to provide to petitioner. While respondent asserts that the "backside" murder is "unrelated" and "irrelevant" to the "frontside" murder, it does not appear that Corley herself viewed them as unrelated. In any event, the time to argue that a whole portion of the letter is irrelevant and unrelated to petitioner, and thus should not be disclosed, has passed.

Even if this court indulged the fiction that there are now two Corley letters, it does not follow that the court should accept at face value respondent's contention that "the second letter is not exculpatory for *Brady* purposes." Doc. 73 at 10. There are at least two reasons for this: nothing on the frontside of the letter establishes that the backside obviously is not favorable or "advantageous"[3] for petitioner, and

[3] *Banks v. Dretke*, 540 U.S. 668, 691 (2004) (remarking that "advantageous" evidence satisfies *Brady*'s favorability component).

respondent has demonstrated that he is not entitled to the benefit of any doubt when ascertaining whether evidence is favorable for *Brady* purposes.

As to the first of these reasons, to be sure, based on what is presently known, petitioner's asserted grounds for finding the backside of the letter subject to *Brady* are more attenuated than those pertaining to the frontside. But they are not frivolous. Indeed, without having seen the backside, it is plausible that, had it been known to petitioner's trial counsel, Corley's involvement in another murder, coupled with her confession to substantially greater involvement in Walker's murder, would have presented avenues for further investigation for the defense in preparation for both the guilt and penalty phases of trial.

Such avenues might have included attacking the State's investigation of the Walker murder and/or impeachment of the State's lead investigator for the apparent decision to focus primarily on petitioner despite evidence that Corley was at the scene at the time of the murder, that she beat Walker with a bat, *and* that she was involved in another murder. First and foremost, the Corley letter disrupts "the State's narrative of the crime." *Bies v. Sheldon*, 775 F.3d 386, 398 (6th Cir. 2014). The Corley letter obviously undermines the State's theory that petitioner alone entered Walker's home and, when confronted by Walker, beat and strangled Walker to death. Such evidence is broadly favorable, even if it may not prove material in the final analysis. *See, e.g.*, *Spirko v. Mitchell*, 368 F.3d 603, 611 (6th Cir. 2004)

(citing *Jamison v. Collins*, 291 F.3d 380 (6th Cir. 2002)) (reciting *Jamison*'s holding that withheld evidence was favorable to the defendant because, "while it did not eliminate him as the perpetrator of the crime, it did contradict the testimony of the chief prosecution witness" and "undermine the prosecution's theory of how the murder was committed"). Minimally, Corley's possible involvement in another murder, coupled with her confession to beating Walker while he was alive, suggests that she should have been subject to greater scrutiny for her role in Walker's murder.

The defense also might have developed and presented evidence of petitioner's possibly lesser culpability relative to Corley. Armed with her letter, the defense might have called Corley to the stand and impeached her police statement, in which she did not admit striking Walker or even being present at the time of his attack, with her letter's claim that she beat walker with a bat "till he fell" because petitioner's effort to subdue Walker apparently was not succeeding. The defense might even have explored whether petitioner was being manipulated or dominated by Corley such that he chose to shield her from greater police scrutiny by implicating only himself in the physical confrontation that caused Walker's death.[4] Assuming its

[4] Corley's reference in her letter to "sex adventures" in Walker's home, which is not referenced in the previously disclosed police reports, is telling in this regard. Petitioner and Corley are known to have entered Walker's home unaccompanied, possibly several times over a period of days. Petitioner even argues that, had Corley's letter been known to the jury, "[a] reasonable juror could have concluded that David Wilson lied to the police to protect Kittie Corley, rather than to protect himself, and that Corley was the one who killed Mr. Walker." Doc. 75 at 13. The record suggests this premise—that petitioner

admissibility—which is not at issue in this discovery order—evidence of Corley's apparent propensity to involve herself in murders, especially if the "backside" murder bears any similarity to the circumstances of the "frontside" murder, likely would be "advantageous" in a defense effort to apportion greater culpability onto Corley and away from petitioner.

In general, evidence probative of these guilt and punishment lines of investigation is "favorable" such that it falls within the reach of *Brady*. *See Kyles v. Whitley*, 514 U.S. 419, 442 n.13 (1995) (evidence that police informant, and possible suspect, was involved in criminal activity similar to that for which defendant was convicted constituted "*Brady* evidence on which the defense could have attacked the investigation as shoddy"); *id*. at 445-449 (defense could have used non-testifying police informant's suppressed statements to challenge "the reliability of the investigation" and "laid the foundation for a vigorous argument that the police had been guilty of negligence").

The point at this stage is not to determine whether such defenses could have been sustained or if the failure to provide the letter prejudiced the outcome of

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sought to protect Corley—is not just idle speculation. At a hearing more than a year before trial, petitioner's attorneys sought to be withdrawn because of a conflict with petitioner. One of the appointed attorneys informed the trial court that she had "suspicions about a co-defendant and a possible relationship [petitioner] has with that co-defendant that might be influencing his decision and influencing the reason why he doesn't want us to be his lawyer." Doc. 76-6 at PDF 23, Bates 1028.

petitioner's trial.[5] Rather, as discussed in the District Judge's order, the court's present inquiry is limited to whether there is "good cause" to order discovery of the backside of the letter, *i.e.*, has petitioner presented specific allegations giving reason to believe that, if the facts are fully developed, he might be able to demonstrate that he is entitled to relief? The prior order explained why there existed good cause for disclosure of the letter under Rule 6 of the Rules Governing Section 2254 Cases. Nothing on the frontside of the letter dispels the good cause articulated by the District Judge for disclosure of the full letter. Indeed, as set forth above, the frontside of the letter arguably establishes independent "good cause" for disclosure of the backside. Because petitioner therefore has met Rule 6's threshold, it is incumbent on this court to "provide the necessary facilities and procedures for an adequate inquiry." *Bracy v. Gramley*, 520 U.S. 899, 909 (1997). Here, ensuring such an "adequate inquiry" entails once again ordering respondent to produce the Corley letter to petitioner.

Beyond this point, it bears mentioning that respondent's conception of what constitutes exculpatory or favorable evidence is of steadily diminishing value in this matter. The Supreme Court has long recognized that *Brady* does not "create a broad,

[5] It appears petitioner himself would have posed a substantial obstacle to the success of some of the defenses that might have been supported by further investigation based upon the leads afforded by the Corley letter. This aspect of materiality, however, is not due to be resolved in the discovery stage.

constitutionally required right of discovery[.]" *United States v. Bagley*, 473 U.S. 667, 675 n.7 (1985). So, for example, *Brady* does not allow a defendant "the unsupervised right to search through the government's files" and it does not "require the prosecution to deliver its entire file to the defense." *United States v. Jordan*, 316 F.3d 1215, 1251-52 (11th Cir. 2003) (internal quotations and citations omitted).

The flip side of this coin, however, is that, in order to have any real efficacy, *Brady* does establish a "broad obligation to *disclose* exculpatory evidence." *Strickler v. Greene*, 527 U.S. 263, 281 (1999) (emphasis supplied). This "broad" prosecutorial disclosure obligation derives from the "special role played by the American prosecutor in the search for truth in criminal trials." *Id*. That role, as *Strickler* recites in the magisterial language of *Berger v. United States*, 295 U.S. 78, 88 (1935), positions the prosecutor as "the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Id*. By interpreting *Brady*'s favorability requirement broadly in accordance with *Strickler*, a prosecutor ensures that he or she serves *Berger*'s ethical maxim and does not usurp or subvert the function of the defense in our justice system.

By contrast, at the January 23, 2020, hearing on petitioner's earlier motion for disclosure of the Corley letter, respondent explained to the undersigned that he takes

"a very conservative view of the State's obligations" "to disclose what a person has a right to and retain what he does not have a right to." Doc. 42 at 21:19-23. This raises an obvious question of compatibility: how does respondent reconcile his "very conservative view" with what is a constitutionally "broad" obligation? In practice, respondent has shown that his view of favorability is indeed too "conservative." As an example, in his response to the instant motion, respondent ties *Brady*'s favorability requirement with the concept of exoneration. *See* Doc. 73 at 9-10 (arguing that, because the "second letter" does not concern the Walker murder and does not "name, implicate, exonerate, or even reference" petitioner, it "is not exculpatory for *Brady* purposes"). But respondent points to no case limiting *Brady*'s reach to evidence of exoneration.

As was discussed in the District Judge's order, *see* Doc. 67 at 19, John Leo Brady himself was not "exonerated" by his co-defendant's suppressed statement that was at issue in *Brady*. Brady testified at his trial and admitted his involvement in a robbery that precipitated a murder, and his counsel conceded he was guilty of first-degree murder. 373 U.S. at 84. The Supreme Court held that the co-defendant's statement admitting that he committed the homicide was possibly material to the defense effort to avoid capital punishment and that, accordingly, due process required that it be provided to Brady. *Id*. at 86. *Brady* and its progeny plainly do

not require that evidence tend to "exonerate" a defendant in order to trigger the prosecution's "broad" duty to disclose.

Furthermore, respondent's dogged insistence, even after partial disclosure, that no part of the Corley letter, front or back, is favorable for *Brady* purposes calls into question respondent's ability to reckon in good faith with this area of the law. Respondent adamantly staked out this position at the hearing before the undersigned, *see* Doc. 42 at 22:2-3, and maintained that stance in briefing before the prior order to disclose the Corley letter. The District Judge rejected that contention, finding that the letter, as described in the pleadings, is exculpatory and should have been turned over. *See* Doc. 67 at 17 n.5; *id*. at 19. Now, having disclosed only a portion of the letter, respondent doubles down on his contention that it is not favorable because it "does not create one iota of residual doubt[,]" and, indeed, "confirm[s] Petitioner's confession to participating in the crime and eliminate[s] any possible doubt over his guilt." Doc. 73 at 6.

As discussed above, respondent's position—that "favorable" evidence must create residual doubt about guilt—obviously ignores the broad applicability of *Brady* to evidence bearing on impeachment and punishment. Once again, the latter of these was the crux of *Brady*. It also hastily glosses over what is alleged to have occurred here. To review: the grand jury of Houston County charged that petitioner "did intentionally cause the death of DEWEY WALKER by HITTING DEWEY

WALKER WITH A BAT AND CHOKING DEWEY WALKER WITH AN EXTENSION CORD[.]" Doc. 76-1 at PDF 34, Bates 34 (capitalization in original). As was described in the District Judge's order, at trial the prosecution introduced evidence that Walker was repeatedly and severely beaten with a baseball bat, causing devastating injuries that could not have been caused by the single blow petitioner claimed to have struck against Walker. The prosecution even introduced evidence that Walker continued to breathe for hours after he was attacked by petitioner, his lungs filling with blood over that time, notwithstanding petitioner's admission that he strangled Walker for up to six minutes with an extension cord. *See* Doc. 76-9 at PDF 45, Bates 1652 (testimony of the medical examiner). A juror could reasonably infer from such evidence that it was the progressive deterioration in Walker's condition caused by the beating he endured, including multiple skull fractures and broken bones in his chest, sternum, and ribs, rather than any momentary constriction of his airways, that ultimately resulted in his hours of suffering and eventual death.

The prosecution did not introduce direct evidence that petitioner specifically inflicted these many injuries with a baseball bat. Rather, it presented petitioner's statement that he struck Walker one time and said nothing of Corley's claim to have struck Walker with a bat until he fell. In essence, therefore, the prosecution proved to the jury that a severe beating occurred and argued that the jury should disbelieve petitioner's claim that he struck Walker only once with a bat. And, as was discussed

in the previous order, the prosecution repeatedly emphasized its contention that petitioner delivered the beating in its closing arguments in the guilt and penalty phases of the trial. The jury found petitioner guilty as charged in the indictment and recommended, by a vote of 10-2, that he be sentenced to death. Doc. 76-10 at PDF 165, Bates 1974.

The trial court's sentencing order similarly relied substantially on the finding that petitioner savagely beat Walker with a baseball bat. Summarizing the trial evidence, the trial judge concluded that "defendant . . . attacked Mr. Walker with a baseball bat which he had brought with him inflicting numerous broken bones in the chest area and strangling him with an extension cord." Doc. 76-2 at PDF 184, Bates 384. In particular, the trial judge found that "defendant hit the victim numerous times with a baseball bat breaking three ribs on one side, five ribs on the other side, and the victim's sternum[.] The defendant also hit the victim on the head with the bat causing skull fractures. Blows of tremendous force would have been necessary to have caused the injuries sustained." *Id*. at 185, Bates 385. The trial judge concluded that, because these injuries caused Walker tremendous pain, and considering evidence that Walker lived for two or more hours suffering from these injuries, Walker's death was "especially heinous, atrocious, or cruel as compared to

other capital offenses." *Id*. at 186, Bates 386. With this substantial[6] aggravating circumstance thus weighted against the mitigating circumstances, the trial judge sentenced petitioner to death. *Id*. at 187-88, Bates 387-88.

In short, the allegation that petitioner caused Walker's death, at least in part if not entirely, by severely and repeatedly beating him with a baseball bat was integral to the grand jury's indictment, the prosecution's case at trial, and, most importantly, the trial court's order sentencing petitioner to death. Petitioner was not charged, in respondent's phrasing, with "participating" with Corley or anyone else in Walker's murder. He was not charged with contributing to Walker's death by strangling him during a mutual attack in which an accomplice beat Walker with a bat. He was charged simply and straightforwardly with wielding the bat and striking the blows that caused, or at least substantially contributed to, Walker's death. The Corley letter stands as evidence, however improbable or inconvenient, that someone else did the beating charged to petitioner. While it does not "exonerate" petitioner of culpability in the murder of Walker, its exculpatory character respecting the specific charges against petitioner, and his punishment, is evident.

[6] Alabama's "heinous, atrocious, or cruel" aggravating circumstance has been recognized as especially hefty in the sentencing calculus requiring the weighing of aggravating and mitigating circumstances. *See Boyd v. Allen*, 592 F.3d 1274, 1302 n.7 (11th Cir. 2010) (describing Alabama's HAC aggravating circumstance as "a particularly powerful aggravator").

No doubt, prosecutors might have charged and prosecuted petitioner on a capital murder theory in a manner consistent with the version of events described in the letter and still obtained a conviction and death sentence. Prosecutors simply chose not to do so while also not providing to the defense the actual letter that obviously undermines the theory they opted to present at trial. Respondent may not now glide past those decisions by continuing to insist that the letter is not and never was favorable to petitioner merely because it implicates him in the murder of Walker.[7] That respondent persists in arguing this point devalues his contention that the still undisclosed portion of the letter is not favorable to petitioner.

[7] Not to get too far afield in this discovery order, but this is not a matter of semantics. The prosecution's charging decision and the theory it brings to trial can be important context in a *Brady* analysis. The Ninth Circuit Court of Appeals stressed this point in *Comstock v. Humphries*, 786 F.3d 701, 712-13 (9th Cir. 2015) (citations and quotations omitted):

> We evaluate the materiality of *Brady* evidence based on the crimes charged, not based on the crimes that might have been charged. This makes sense. *Brady* requires prosecutors to disclose evidence that is material to the defendant's guilt or punishment. Guilt or punishment cannot, of course, be premised on uncharged crimes, and evidence that directly undermines the prosecution's theory of the charged crime is plainly material under *Brady*. Just as a habeas petitioner alleging actual innocence need not establish that he was innocent of an uncharged crime, a petitioner alleging a *Brady* violation need not establish that the suppressed evidence would have exculpated him from an uncharged offense.

Again, this is a discovery order that portends no conclusion on the materiality of any evidence at issue. This discussion is only to demonstrate that the question of favorability under *Brady* is not so easily dismissed just because the Corley letter does not "exonerate" petitioner of having "participated" in Walker's murder.

In sum, respondent effectively waived his new argument against full disclosure of the Corley letter. Even if he had not done so, nothing in the portion of the letter already disclosed vitiates the "good cause" found by the District Judge for disclosure of the entire letter, and respondent's argument that the undisclosed portion of the letter is irrelevant or immaterial for *Brady* purposes is unavailing. Accordingly, as previously ordered by the District Judge, respondent must disclose the entirety of the Corley letter to petitioner. Upon a showing of good cause, respondent may move to place the undisclosed "backside" of the letter under seal, or for entry of a protective order, if necessary to protect any ongoing State investigation or for other sufficiently compelling reason.

CONCLUSION

For the reasons stated above, petitioner's Motion for Full Disclosure of the Kittie Corley Letter (Doc. 70) is GRANTED. Within seven days of the date of this order, respondent shall provide to petitioner the undisclosed portion of the Corley letter, which respondent has previously described as the "backside" of the Corley letter and/or a "separate" or "second" letter from Corley. Respondent may satisfy this obligation by providing a legible photocopy of the letter to petitioner via electronic transmission, along with a certification that the combined disclosures required by this order and the District Judge's March 27, 2023, order (Doc. 67) constitute the entirety of the Corley letter. Petitioner may move for appropriate

relief, with a showing of good cause, if he determines that physical inspection of the original letter is necessary to fully present his claim and related arguments.

DONE this 21st day of June, 2023.

/s/ Charles S. Coody
UNITED STATES MAGISTRATE JUDGE