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8 Attorneys for Defendant DENNIS CYRUS, JR.

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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA, )  
13 Plaintiff, )  
14 vs. )  
15 RAYMON HILL, et al., )  
16 Defendants. )  
17 )  
18 )

**Case No. CR-05-00324-MMC**  
**NOTICE OF MOTION AND**  
**MOTION TO RESET**  
**COMMENCEMENT OF**  
**EVIDENCE TO PERMIT**  
**EFFECTIVE ASSISTANCE OF**  
**COUNSEL AND EFFICIENT CASE**  
**MANAGEMENT**  
**Date: Jan. 9, 2009**  
**Time: 2:00 p.m.**  
**Dept: Hon. Maxine M. Chesney,**  
**District Judge**

19

20 TO: THIS HONORABLE COURT; TO ASSISTANT UNITED STATES ATTORNEYS  
21 WILLIAM FRENTZEN AND ROBERT REES:

22 PLEASE TAKE NOTICE that on January 9, 2009 at 2:00 p.m. before the  
23 Honorable Maxine M. Chesney, defense counsel for Mr. Cyrus will move this Court for an  
24 order setting the commencement of the evidence in this case such that counsel can provide  
25 effective assistance of counsel, and also setting a case management plan that will allow  
26 both efficiency and jury time utilization, and effective assistance of counsel as well.

27 The motion is based on the following grounds:

28 1. Counsel for Mr. Cyrus need sufficient time to effectively prepare their defense

1 of this case, including the preparation of the case in mitigation and rebuttal of aggravation;

2           2. The current case management plan that involves counsel in jury selection at a  
3 time when they are also being provided with what the Government has indicated will be  
4 hundreds of pages of materials bearing on the substance of the charges against Mr. Cyrus  
5 places counsel in a situation of not being able to discharge their duties to the Court and  
6 Mr. Cyrus under the Fifth, Sixth, and Eighth Amendments to the United States, and as the  
7 phrase effective assistance of counsel is defined in the *ABA Guidelines for the*  
8 *Appointment and Performance of Defense Counsel in Death Penalty Cases* (2003 ed.), as  
9 well as under the *ABA Standards, the Defense Function* (1993). As demonstrated in the  
10 appended Memorandum of Points and Authorities, both of these authoritative statements  
11 of standards define the ingredients of effective preparation and assistance of counsel in  
12 both capital and non-capital cases.

13           3. During the course of discussions about case management issues, this Court has  
14 indicated its understanding that the Government's provision of the bulk of 'sensitive'  
15 witness materials approximately twenty-one days prior to the commencement of evidence,  
16 and other additional materials shortly before the testimony of specific witnesses, will  
17 impact the defense's ability to timely investigate aspects of this case. The defense is still  
18 preparing the defense of the guilt trial case based on the discovery it has to date, and is  
19 also working on the case in mitigation, and penalty hearing preparation. The defense will  
20 not have any meaningful way to plan and implement its investigation into 'sensitive  
21 witnesses' during the course of jury selection.

22           4. The defense needs time to prepare its case. At the very least, the Court should  
23 permit some preparation time for the defense between the closure of jury selection and the  
24 commencement of trial evidence. As a lesser alternative if the motion just made is denied,  
25 the Court should indicate, as a matter of efficient case management, how it intends to  
26 allow the defense the time to effectively prepare its cross-examination of sensitive and  
27 critical Government witnesses, and the preparation of any rebuttal to these witnesses by  
28 giving the defense some reasonable periods of time "off" so that defense counsel can



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**PROOF OF SERVICE**

I, Steven Gray, declare:

That I am over the age of 18, employed in the County of San Francisco, California, and not a party to the within action; my business address is 507 Polk Street, Suite 350, San Francisco, California 94102.

On today's date, I served the within document entitled:

**NOTICE OF MOTION AND MOTION TO RESET COMMENCEMENT OF EVIDENCE TO PERMIT EFFECTIVE ASSISTANCE OF COUNSEL AND EFFICIENT CASE MANAGEMENT**

- By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, California, addressed as set forth below;
- By electronically transmitting a true copy thereof;
- By having a messenger personally deliver a true copy thereof to the person and/or office of the person at the address set forth below.
- By delivering a true copy thereof to "Federal Express" to be delivered to the person at the address set forth below.
- By serving a true copy by facsimile to the person and/or office of the person at the address set forth below

Robert Rees  
William Frentzen  
Assistant United States Attorneys  
Office of the United States Attorney  
450 Golden Gate Avenue, 11th Floor  
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 30th of December, 2008, at San Francisco, California.

Signed: /S/ Steven Gray

Steven Gray