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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 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA, )

14 Plaintiff, )

15 vs. )

16 RAYMON HILL, et al., )

17 Defendants. )

18 )

19 )

20 )

**Case No. CR-05-00324-MMC**

**DECLARATION OF COUNSEL IN  
SUPPORT OF POST-CONVICTION  
MOTION FOR DISCOVERY OF  
INFORMATION AND EVIDENCE  
BEARING ON VALIDITY OF  
CONVICTIONS DEPENDING ON  
DRUG-RELATED EVIDENCE  
[EXHIBITS APPENDED]**

**Date: June 2, 2010**

**Time: 2:30 PM**

**Dept: Hon. Maxine M. Chesney,  
District Judge**

21 I, JOHN T. PHILIPSBORN, declare that:

22 1. James S. Thomson and I are counsel of record of and for Dennis Cyrus, Jr. in the  
23 above-entitled case.

24 2. I have prepared the motion papers, including the Memorandum of Points and  
25 Authorities, which this Declaration supports. I asked Mr. Thomson to review the papers,  
26 and to assist in the redrafting and editing of them.

27 3. I believe that the contents of the Memorandum of Points and Authorities which  
28 is supported by this Declaration correctly and accurately states background information as

1 follows: the background to the bringing of this motion, including information gleaned by  
2 the defense concerning revelations in the press, and in Court papers, about allegations  
3 brought against SFPD criminalist Debbie Madden that have resulted in an investigation of  
4 Ms. Madden's alleged use of cocaine, as well as investigations into laboratory practices in  
5 the SFPD Crime Lab; descriptions of the procedural history of this case; descriptions of  
6 the testimony given by current employees of the SFPD Crime Laboratory and/or former  
7 employees of the SFPD Crime Laboratory, including a group of analysts who are  
8 specifically named in the motion papers. Where Mr. Thomson and I have sought to  
9 provide summarized material, in an abundance of caution, we have also provided detailed  
10 summaries of the transcripts, specifying our references, and attempting, in discussing the  
11 facts of our case, to be accurate in our characterization of the testimony given by the  
12 various representatives of the SF Crime Laboratory both retired and active as of the time in  
13 2009 when they testified in this case. In addition, Mr. Thomson and I have reviewed  
14 various statements attributed to a wide variety of persons, including representatives of the  
15 U.S. Attorney's office; the SF District Attorney's office; the SF Police Department; the SF  
16 Public Defender's office. We have sought to correctly characterize, and where quoted, to  
17 correctly and accurately quote, statements attributed to various persons, including former  
18 SFPD Crime Lab analyst Debbie Madden who has been quoted in a variety of papers,  
19 including in the April 15, 2010 edition of The Recorder, a local legal newspaper.

20 4. I believe that I have correctly and accurately set forth the sequence of events  
21 leading to the filing of this motion. I believe that it was at some point during the first  
22 week in March, 2010, that it came to my attention that allegations were being made that an  
23 analyst who had testified in this case, Debbie Madden, who is the subject of an  
24 investigation. I believe that it was on March 10, 2010 that Mr. Frentzen suggested to me  
25 in an email that I should access the internet to obtain information regarding Ms. Madden.  
26 According to the records I have maintained, Mr. Frentzen informed me in the pertinent  
27 email that the first time he had heard of any allegations concerning Ms. Madden was on  
28 the morning of March 10 of this year. Mr. Frentzen indicated to me in the email that he

1 wanted to "... know how you want to proceed."

2 5. After having looked online, and contacted some other criminal defense lawyers  
3 in San Francisco, I began to collect information that was available through media outlets,  
4 and through information sharing by counsel interested in the rapidly disseminating  
5 information about the SFPD Crime Laboratory.

6 6. I believe that Mr. Thomson and I have sought to accurately quote from the  
7 various local newspapers, some of them daily papers of general circulation, and others  
8 daily newspapers oriented for the legal profession in providing the Court descriptions of  
9 the kind of coverage that has occurred with respect to the disclosures of investigations into  
10 Ms. Madden and into the SF Crime Laboratory.

11 7. I have not sought to quote exhaustively from relatively recent articles. For  
12 example on April 14, 2010, a local legal newspaper called The Recorder published a front  
13 page story, authored by staff writer Kate Moser entitled "Discovery Doors Open to  
14 Defense in Lab Scandal." This story covers recent disclosures in the press about a series  
15 of hearings held in the SF Superior Court before Judge Anne-Christine Massulo, who, I  
16 am informed not only by the Recorder article, but also by at least one contact with an  
17 experienced lawyer in the Public Defender's office, resulted in Judge Massulo releasing  
18 drug lab-related information to various members of the defense bar. I have not yet seen  
19 the material at issue, but I am hoping to see it.

20 8. Mr. Thomson and I have quoted selectively, and not extensively, from the  
21 various local newspapers that have quoted representatives of the Office of the U.S.  
22 Attorney, including the current U.S. Attorney. I have no reason to doubt the information  
23 being provided in the press with respect to there being some review by personnel in the  
24 Office of the U.S. Attorney of the implications of the so-called 'drug lab scandal' at the  
25 SFPD Crime Laboratory. In making this statement I am not relying exclusively on  
26 information published in local newspapers, but I am relying as well on anecdotal  
27 information provided to me by lawyers who practice regularly in federal District Court  
28 with whom I have spoken directly, or with whom I have attended meetings about

1 developments concerning SFPD Crime Laboratory.

2           9. Mr. Thomson and I have endeavored to get information concerning the issues  
3 presented as this information becomes available. Thus, while we have received some  
4 information concerning the background of Debbie Madden's conviction for a  
5 misdemeanor domestic violence incident that was adjudicated in San Mateo County, we  
6 have yet to receive transcripts of the proceedings pertinent to that matter. In addition, I  
7 have sought, but have not been able to obtain, transcripts, or other copies, of the  
8 interview(s) allegedly given by Debbie Madden to SFPD investigators. This interview is  
9 described in the press as having been given around February 26, 2010. I have quoted from  
10 that interview as that interview has been quoted in the press.

11           10. In speaking with counsel, who are either currently litigating drug cases in SF  
12 Superior Court, or who have obtained pleadings pertinent to the litigation in SF Superior  
13 Court, I have been informed that all of the audits of the SF Crime Laboratory's drug  
14 analysis methods and practices have not concluded. I am informed and believe that the  
15 Office of the Attorney General, State of California, is still either desirous of seeing another  
16 audit completed, or that the State Attorney General's office has worked with State  
17 laboratory personnel to ensure that another audit takes place.

18           11. I have referenced a late March, 2010 drug analysis audit report that appears to  
19 have documented a two or three day audit that took place at some point between March 20  
20 and 30, 2010. A copy is appended to this Declaration. The "audit" as I understand it  
21 involved a site visit, and interviews of some analysts, including Lois Woodworth, one of  
22 the analysts who testified in this case. It did not involve interviews of the analysts and  
23 criminalists who testified in this case besides Ms. Woodworth, and it is not clear that the  
24 audit at issue purported to bear on the many matters discussed in the motion papers that  
25 Mr. Thomson and I have prepared.

26           12. In addition to all of the above bearing on drug evidence, I have been informed  
27 by conferring with a San Francisco Deputy Public Defender that her office has been  
28 informed of irregularities in the analysis of at least one DNA sample related to a local

1 homicide case. In addition, I have reviewed a four-page letter dated April 9, 2010  
2 authored by attorney David Wise, addressed to the Office of the San Francisco District  
3 Attorney, alleging that there are at least two separate analysis results indicating that a  
4 sample used by the SFPD Crime Lab for DNA analysis was contaminated at the Lab. Julie  
5 Renfroe, an SFPD Crime Lab DNA analyst testified in this case. She identified blood on a  
6 t-shirt discarded soon after the Jimmerson shooting as consistent with Mr. Jimmerson's  
7 DNA profile. I am informed and believe that inquiries into the integrity of the operation of  
8 the SFPD DNA analysis section are currently being made.

9       13. I believe it accurate to state that as of the time that this Declaration has been  
10 prepared, the Government has not answered either of the discovery letters that are  
11 appended to this Declaration as exhibits.

12       14. If, for any reason, the Court is not inclined to grant discovery, either because  
13 the Government responds by stating there is no discoverable material in its possession, or  
14 for any other reason, I believe that there is good and just cause, given the nature of the  
15 issues presented, and the ample showing that the Cyrus defense has made, for this Court to  
16 issue Rule 17 subpoenas commanding that the City and County of San Francisco, through  
17 its Police Department, produce any information sought in this motion which the Office of  
18 the U.S. Attorney, and its allied investigative agencies, either cannot or will not provide to  
19 the defense.

20       15. In sum, I believe there is good and just cause for this Court to order discovery  
21 and disclosures. I believe that Mr. Cyrus is entitled to these disclosures, and that the  
22 subject matter of the current motion is such that the integrity, and legal validity, of at least  
23 some of the convictions suffered by Mr. Cyrus in this case are sufficiently implicated so as  
24 to justify the issuance of a discovery Order and/or the issuance of Rule 17 subpoenas.

25       16. I have attached true and accurate copies of letters, audit reports, and newspaper  
26 articles obtained by the Cyrus defense during the post-conviction investigation of the  
27 matters addressed in these motion papers.

28       I declare under penalty of perjury that the foregoing is true and correct except as to

1 those matters alleged on information and belief, and as to those matters I believe this  
2 declaration to be true and accurate.

3 Executed this 27th day of April, 2010 at San Francisco, California.

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5  
6 /s/John T. Philipsborn  
7 JOHN T. PHILIPSBORN  
8 Declarant  
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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 Suite 350, 507 Polk Street, San Francisco, California 94102.

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

**DECL OF COUNSEL ISO POST-CONVICTION MOTION FOR  
DISCOVERY OF INFORMATION AND EVIDENCE BEARING ON  
VALIDITY OF CONVICTIONS DEPENDING ON DRUG-RELATED  
EVIDENCE [EXHIBITS APPENDED]**

- By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, CA, 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.

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 27th day of April, 2010, at San Francisco, California.

Signed: /s/ Steven Gray  
Steven Gray