Sheila Polk
Yavapai County Attorney
Firm No. 00048700
Jack H. Fields, SBN 012470
Deputy County Attorney
255 E. Gurley Street
Prescott AZ 86301
Telephone: (928) 771-3344
Email: ycao@co.yavapai.az.us

Attorneys for the Yavapai County Sheriff

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA
2010 JAN 21 AM 12: 49
JEANNE HICKS, CLERK
BY: B. Hamilton

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

| | |
|---|---|
| STATE OF ARIZONA,<br><br>Plaintiff,<br><br>vs.<br><br>STEVEN CARROLL DEMOCKER,<br><br>Defendant. | CAUSE NO. P1300CR20081339<br><br>Assigned to Hon. Thomas Lindberg<br><br>Div. 6<br><br>**BRIEF IN SUPPORT OF SHERIFF'S DENIAL OF DEFENDANT'S REQUEST FOR PRIVATE ROOM, COMPUTER, PHONE LINE AND RELATED EQUIPMENT** |

The Yavapai County Sheriff's Office (YCSO) opposes Democker's request for a private room, a computer, computer equipment and private telephone line. Democker has no constitutional right to a private room, possession of a computer or computer equipment, or a private telephone line while in jail, and jail security objectives outweigh Defendant's need for such special treatment. YCSO supports its Response with the following Memorandum of Points and Authorities.

////

////

Office of the Yavapai County Attorney
255 E. Gurley Street, Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

Office of the Yavapai County Attorney
255 E. Gurley Street, Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. BACKGROUND

### 1. Democker's demand.

The State indicted Democker for 1st degree homicide, alleging he caused the death of his former wife Carol Kennedy. Democker is currently housed in the Yavapai County Jail awaiting trial. Democker has a defense team consisting of over a dozen individuals, including investigators, experts, paralegals, and three attorneys. Despite this formidable team of manpower for his defense, Democker alleges that he cannot adequately prepare for his defense without special treatment in order to review the discovery in his case and communicate with his defense team. Democker has requested that he be allowed to have a computer supplied by his defense counsel in the jail, as well as a power cord for the computer, headphones, access to electricity, and access to a private phone line, and that he be given a private room in which to use this equipment. Democker justifies this request as necessary for him to assist his defense counsel in preparation for trial.

### 2. YCSO policy- Computers and related equipment.

YCSO policy disallows computers in its detention facility because of the security concerns they pose. With the use of a computer, inmates may continue to participate in criminal enterprises in jail. They may create and distribute information unchecked with universal serial bus ("USB") devices, which are small enough to be smuggled into the facility. Computers may be dismantled and the multiple components (power cords, batteries, RAM stick, etc.) used as weapons by Democker or other inmates against jail staff or inmates, or as instruments of self-harm or suicide. Further, inmates can sharpen broken CD and DVDs or computer parts into

shanks, endangering other inmates and staff. Unfettered access to electricity creates the risk of fire, self-harm or suicide.

**3. YCSO policy – Private room.**

YCSO's policy is to house inmates in general population, or in a segregated setting. In either setting inmates are clustered in specific areas and monitored as part of a distinct group, not as individuals. Democker is currently housed in general population. Giving an individual inmate preferential treatment results in resentment among the other inmates, and can lead to violence in general and in particular against Democker himself, as having special privileges in a jail setting often makes one a target for intimidation and violence by other inmates. Giving him a private room would require an additional officer specifically assigned to monitor Democker during the times his is provided with his private room. Finally, the only room available to accommodate Democker's request is in the infirmary, and could seriously limit the ability of YCSO to provide proper medical care to other inmates.

**4. YCSO policy - Private telephone line.**

Similarly, YCSO does not allow jail inmates access to personal telephone lines. Granting such a request would create serious safety and security issues within the jail. Giving an individual inmate preferential treatment results in resentment among the other inmates, and can lead to violence in general and in particular against Democker himself, as having special privileges in a jail setting often makes one a target for intimidation and violence by other inmates. In addition, a separate, private phone line would allow an inmate to unmonitored contact with individuals other than those associated with their defense team. This poses a safety and security threat to the jail because such contact can be used to plan such security threats as escapes and the introduction of contraband into the jail. A safe and secure private, hard-wired full-time access

**Office of the Yavapai County Attorney**
255 E. Gurley Street, Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

telephone line that is capable of limiting calls only to defense counsel is technologically almost impossible to grant in the institutional setting as it currently exists. Because of the nature of the building materials and design used in jail construction, cell phones do not receive or transmit signals in the YCSO jail

**5. Democker is currently able to review material and communicate with his attorney during large blocks of time each day.**

Democker has access to up to 2 file boxes of records in his cell, and another 12 boxes can be stored on site and available when he requests them during the day. The records in his cell are available to him 24 hours per day. Except for an hour at the noon and evening meal periods, Democker's defense team has the ability to communicate with him in person at the jail every day from 6:00 AM to 10:00 PM, 7 days a week. Democker has reasonable access to video conferencing capabilities that may be arranged through the Public Defender's Office that allows his defense team to communicate via video and audio link for 2-3 hours each day. Democker may telephone his defense team up to 17 hours each day. YCSO currently allows telephone access to inmates without discipline issues access to common telephones from 5:00 AM to 10:00 PM each day, excepting times when DOC transportation is prepared (averaging twice a week for about 2 hours each time).

## II. LEGAL ARGUMENT

### A. The Courts have very limited power to interfere with the Sheriff's operation of the jail.

It is well established in Arizona that it is the county sheriff that is empowered to manage the county jail. A.R.S. §11-441(5) ("The sheriff shall: . . . take charge of and keep the county jail and the prisoners therein"); A.R.S. §31-101 ("The common jails in the several counties shall be

Office of the Yavapai County Attorney
255 E. Gurley Street, Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

kept by the sheriffs of the counties in which they are respectively located."). It is also well established that "absent any constitutional violations with regard to prisoners, the judiciary has no authority to interfere with a sheriff's duties to maintain and operate the county jails pursuant to the Arizona Constitution and A.R.S. §§11-441(5) and 31-101, and then only to determine whether specific constitutional violations exist and in doing so to order narrow remedies to correct these violations." Judd v. Bollman, 166 Ariz. 417, 419, 803 P.2d 138, 140 (App. 1991).

**B. Democker's Sixth Amendment Rights are not being violated.**

Democker claims that YCSO's denial of his request for a computer violates his Sixth Amendment right to adequately prepare his defense. Democker asserts this claim based on his alleged need to review each and every document and photograph ("over 80,000") and listen to each and every recording ("hundreds of hours") that have been gathered in his defense. He claims that without a computer to manage this information, and without full-time access to his legal team to analyze it, he will be unable to meaningfully assist in his defense and thus his Sixth Amendment rights will be violated.

The Sixth Amendment to the United States Constitution, as well as its Arizona counterpart, Article 2 Section 24 of the Arizona Constitution, gives a criminal defendant the right to assistance of counsel for his or her defense. See United States v. Morrison, 449 U.S. 361, 364, 101 S. Ct. 665, 667 (1981). Here, Democker has been fully accorded these rights.

Democker has counsel through which he has access to legal advice and to the courts – indeed Democker has a defense team of over a dozen, including investigators, paralegals, experts, and three attorneys. Further, Democker has large amounts of access both to his case files and his Defense team. Democker has access to 14 file boxes of material at a time, clearly more than he can review in a single day. Democker may call members of his defense team during 17 out of 24

**Office of the Yavapai County Attorney**
255 E. Gurley Street, Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

hours each day, 7 days a week. Democker may personally visit with his defense team for 14 hours out of 24 hours each day, 7 days a week at which time records for his review may be exchanged. And, Democker may video conference with his defense team for 2-3 hours each day, 7 days a week.

It is pretty clear that Democker's request is his legal teams' effort to make their management of the case more convenient for them and for their client, and not the result of a violation of Democker's Sixth Amendment rights. Democker's attorney John Sears admitted as much when he said that he has voluntarily stopped contact visits with Democker because he didn't like the fact that Democker was strip-searched after every contact visit (as is every inmate that has a contact visit, in order to prevent the introduction of weapons and other contraband into the jail). See, transcript of January 12, 2010 hearing, page 23, lines 1-7.

This is typical of the reasoning that Democker uses in his attempt to gain special privileges. They argue: (1) The strip-searches are demeaning (hardly an excuse for Sears to balk at meeting with his client, and certainly better than ending up with a dead detention officer or inmate); (2) Fourteen file boxes of documents aren't enough (25,000 documents at a time aren't enough?); (3) The phones are inconvenient to use (but they work!); (4) The defense team has to travel to Camp Verde to see their client (try video conferencing once in a while); (5) Democker can't listen to audio files (play them for Democker on the video conferencing); (6) They don't trust the video conferencing equipment (despite the fact that the Yavapai County Public Defender does).

Neither the United States Constitution nor the Arizona Constitution requires the jail to make Democker's access to his defense team more convenient for him than for any other inmate. All of the rules of the jail applied to Democker are applied to the other approximately 575

**Office of the Yavapai County Attorney**
255 E. Gurley Street, Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

inmates in the jail. As noted above Democker does have the ability to keep and review evidence in the jail, and to communicate effectively with his defense team. What he asks for is special treatment based on convenience, and the Sheriff refuses to give him special treatment.

Nor does the United States or the Arizona Constitutions require that Democker himself be given all of the "equipment" necessary for him to conduct his defense as if he were representing himself. Even in propria persona defendants are not given unfettered access to legal resources (such as computers or private telephones) while in custody. See, e.g., Milton v. Morris, 767 F.2d 1443, 1447 (9th Cir.1985).

Democker complains about the large volume of evidence that needs to be reviewed. But the whole point of having a legal team in excess of a dozen members is to help manage the volume of evidence that is routinely produced in a capital case. The fact that Democker's case is complex or document intensive is no doubt a challenge for Democker's counsel, but it does not rise to the level of a constitutional violation, and does not require YCSO to jeopardize the security of its facility, endanger its officers or visiting members of the public to accommodate one inmate who complains of being inconvenienced. A defense team of over a dozen should and can take the time to help Democker cull the evidence, to decide what is relevant, material and admissible, what needs further study, etc, and what needs to be brought to Democker for review and discussion. And, as noted above, Democker can be given plenty of material to review (12 full file boxes, 25,000 documents) and has plenty of time each day (up to 17 hours) and multiple opportunities (phone, in person, video) to communicate with his defense team.

Because there is no Sixth Amendment violation, under Judd the court has no authority to override the Sheriff's exercise of his constitutional and statutory duty to keep and manage the Yavapai County Jail. YCSO requests that this Court deny Democker's Motion.

**Office of the Yavapai County Attorney**
255 E. Gurley Street, Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

Office of the Yavapai County Attorney
255 E. Gurley Street, Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

**C. YCSO's Stance is Reasonably Related to Legitimate Penological Interests.**

To the extent that YCSO's policies might somehow impinge on Democker's ability to prepare for trial, the policies are allowed by law because they are reasonably related to legitimate penological interests. YCSO disallows inmates from having private rooms, possessing computers or having special phone access because of the many and significant security risks such practices would pose. To the extent Democker challenges YCSO's policy as violating his constitutional rights, "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." Turner v. Safley, 482 U.S. 78, 89 (1987). In determining whether the regulation is "reasonably related to legitimate penological interests," four factors should be considered ("the Turner test"): (1) whether the regulation has a logical connection to the legitimate government interests invoked to justify it; (2) whether alternative means of exercising the right on which the regulation impinges remain open to prison inmates; (3) the impact that accommodation of the asserted right will have on guards, other inmates, and prison resources; and (4) the absence of ready alternatives that accommodate the prisoner's rights at de minimis cost to valid penological interests. Harper v. Wallingford, 877 F.2d 728, 732 (9th Cir.1989) (emphasis in original); see also Turner, 482 U.S. at 89-90.

**1. Jail Security is a Legitimate Government Interest**

Here, all four factors weigh heavily in favor of YCSO's policy. YCSO's legitimate interest is to maintain the security of the facility. YCSO has a positive duty to protect the inmates of the jail from themselves and each other, as well as a duty to protect jail personnel.

As discussed above, any one of the hundreds of components in a computer or computer accessories can be fashioned as a weapon to harm jail staff, other inmates, or themselves. Although Democker and similarly housed inmates are searched when leaving and returning from

their housing units, inmates' body cavities are not searched and can easily conceal USB devices or other computer components. With a smuggled USB device, an inmate may transfer information outside the jail, bypassing screening, to threaten, intimidate, or order the death of witnesses. Additionally, other inmates would view the Court's ordering of a computer as preferential treatment, resulting in resentment and possible violence. See Standing Deer v. Carlson, 831 F.2d 1525, 1529 (9th Cir.1987) (upholding a prison regulation banning the wearing of headgear in the prison dining room against a free exercise challenge by Native Americans in part on the ground that "special arrangements for one group could create an appearance of favoritism that could generate resentment and unrest.").

**2. Democker May Exercise His Sixth Amendment Right.**

Democker has alternative means to exercise his rights. Democker has an attorney who can review the discovery materials. Democker can retain up to 2 file boxes in his cell, and can store another dozen on premises that will be retrieved by jail staff on request. Democker's defense team may visit him for up to 14 hours per day. Video conferencing is available up to 3 hours per day, and Democker may use the telephone up to 17 hours per day. Democker can review paper copies of the discovery and paper transcripts of the telephone calls.

**3. The Impact on YCSO is Great.**

The impact of accommodating Democker, and likely many other inmates, is extensive. The jail will need to assign an officer to watch Democker constantly to insure he does not use the privacy and equipment to injure himself, or to injure or provide contraband to other inmates. YCSO will have to expend precious resources to keep track of the discs and make sure they are the original discs provided. YCSO will have to randomly inspect the computer and phone lines to ensure that Democker has not tampered with it, expending additional officer time. Further, if

**Office of the Yavapai County Attorney**
255 E. Gurley Street, Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

Democker is successful in his demands, YCSO can anticipate that there will be many such demands from other inmates. This Court is well aware that the County and YCSO are under budgetary constraints. The Sheriff is entrusted with the care, custody, and control of county inmates. As such, the allocation of resources should be left to the Sheriff—especially when safety and security of the facility is at stake. Turner instructs that where, as here, "accommodation of an asserted right will have a significant 'ripple effect' on fellow inmates or on prison staff, courts should be particularly deferential to the informed discretion of corrections officials." Turner, 482 U.S. at 90.

**4. Democker Has Not Proposed Any Other Alternative.**

Democker has failed to propose any alternative method, contending that only a computer, private room, and private phone line per his specifications will suffice. As noted above, Democker in fact has a broad range of alternatives to review his files and communicate with his defense team.

## III. CONCLUSION

Democker has no constitutional right to the special treatment he requests. YCSO's policy disallowing his requests satisfies the Turner test. Democker will continue to be provided his Sixth Amendment rights with the representation of his attorney and reasonable access to his defense team. As such, YCSO respectfully requests that this Court deny Democker's request.

RESPECTFULLY SUBMITTED this 21 day of January, 2010.

Sheila Polk
YAVAPAI COUNTY ATTORNEY

By: _____
Jack H. Fields
Deputy County Attorney

**Office of the Yavapai County Attorney**
255 E. Gurley Street, Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

COPY of the foregoing hand delivered
this _____ day of January, 2010, to:

John Sears
P.O. Box 4080
Prescott, Arizona 86301
Attorney for Defendant

By:_____

**Office of the Yavapai County Attorney**
255 E. Gurley Street, Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110