

COPY

**In the Supreme Court of the State of California**

**THE PEOPLE OF THE STATE OF  
CALIFORNIA,**

**Plaintiff and Respondent,**

**v.**

**ANTHONY LETRICE TOWNSEL,**

**Defendant and  
Respondent.**

**CAPITAL CASE**

Case No. S022998

**SUPREME COURT  
FILED**

**SEP 15 2011**

**Frederick K. Ohrich Clerk**

**Deputy**

Madera County Superior Court Case No. 08926

Paul R. Martin, Judge

**OPPOSITION TO MOTION FOR JUDICIAL  
NOTICE**

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**DEATH PENALTY**

Appellant moves, pursuant to Evidence Code section 452, subdivision (h), and Evidence Code section 459, subdivision (a), for this Court to take judicial notice of: (1) a purported copy of a September 9, 2009, certification by the medical board of California that Charles A. Davis Jr., who was issued a Physician's and Surgeon's Certificate number in 1953, became deceased in 2006;<sup>1</sup> (2) a purported copy of a cover and page from the 2005 edition of ABMS Directory Of Board Certified Medical Specialists, with a reference to Charles A. Davis as a "Cert. Psyc 64" as well as indicating other training and experience; and (3) a purported cover and copy of a page from a 1990-1991 ABMS Compendium of Certified Medical Specialists, referencing Charles A. Davis as "Cert. Psy 64" and indicating other training and experience. (Motion pp. 1-2; Ex. Nos. 1-3.)

Appellant asserts this Court should take judicial notice of these documents to demonstrate Dr. Davis was one of the two psychiatrists that evaluated him for his competency hearing, and, to show that Dr. Davis is now deceased. He asserts this information is relevant to Argument I of his opening brief where he argued that he was entitled to a second competency hearing. More specifically, appellant claims the material he attaches as exhibits purporting to show Dr. Davis is deceased should be considered because "this Court and others have recognized" that where a defendant was improperly deprived of a competency hearing "remand for a retrospective competency hearing . . . may be appropriate." (Motion p. 4.) As such, he claims that Dr. Davis' inability to "testify at any retrospective competency hearing" is relevant. (Motion p. 5.)

Respondent opposes appellant's motion to judicially notice appellant's exhibits because:

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<sup>1</sup> Appellant cites Business and Professions Code section 162 as support for this document.

(1) The material in the attached exhibits has not been authenticated, showing how it was obtained and that it is, in fact, what it purports to be (See, e.g., *Archer v. United Rentals, Inc.* (2011) 195 Cal.App.4th 807, 819 [authentication through counsel's declaration]; Contrast, *E. Bay Asian Local Dev. Corp. v. Cal.* (2004) 24 Cal.4th 693, 711);

(2) The material in the exhibits was not presented to and considered by the trial court in the first instance. (See, *People v. Sakarias* (2000) 22 Cal.4th 596, 636); and,

(3) The material in the exhibits is not relevant. As demonstrated in respondent's Argument I, Dr. Davis was one of two psychiatrists who evaluated appellant for a competency hearing called for by his counsel; there was no evidence or suspicion of appellant being mentally retarded at his competency hearing; the matter was submitted on the report of Dr. Davis and another psychiatrist and the court found, pursuant to those reports, that appellant was competent and malingering; and, appellant, on appeal, did not challenge that ruling. Moreover, on appeal appellant has failed to demonstrate that he was entitled to a second competency hearing based on either mental retardation or mental defect; and, even if appellant had shown he was entitled to a second competency hearing, appellant should more properly present his documents on "remand" to the trial court as part of the retrospective competency feasibility determination to be made by that court. Therefore the exhibits to be noticed are not of "substantial consequence to the determination of the action" here. (*People v. Terry* (1974) 38 Cal.App.3d 432, 439; RB Arg. I.) In addition, the material provided by appellant contains information far beyond that indicating that a Charles Davis is now deceased, so it is overly broad. (See, *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [declining to take judicial notice of materials that are not "necessary, helpful, or relevant"].)

For all the foregoing reasons, respondent respectfully submits that appellant's request for judicial notice should be denied.

Dated: September 14, 2011      Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
DANE R. GILLETTE  
Chief Assistant Attorney General  
MICHAEL P. FARRELL  
Senior Assistant Attorney General  
LOUIS M. VASQUEZ  
Supervising Deputy Attorney General

A handwritten signature in black ink, appearing to read 'L.M. Vasquez', with a large, sweeping flourish extending to the right.

LOUIS M. VASQUEZ  
Supervising Deputy Attorney General  
*Attorneys for Respondent*

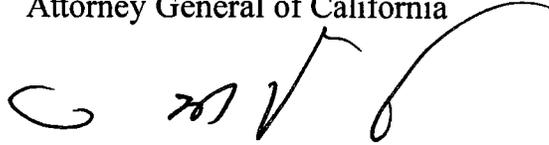
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**CERTIFICATE OF COMPLIANCE**

I certify that the attached OPPOSITION TO REQUEST FOR JUDICIAL NOTICE uses a 13 point Times New Roman font and contains 824 words.

Dated: September 14, 2011

KAMALA D. HARRIS  
Attorney General of California

A handwritten signature in black ink, appearing to read 'L. M. Vasquez', with a long, sweeping flourish extending to the right.

LOUIS M. VASQUEZ  
Supervising Deputy Attorney General  
Attorneys for Respondent

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **People v. Townsel**  
No.: **S022998**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On September 14, 2011, I served the attached **OPPOSITION TO MOTION FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 2550 Mariposa Mall, Room 5090, Fresno, CA 93721, addressed as follows:

C. Delaine Renard  
Deputy State Public Defender  
221 Main Street, Suite 1000  
San Francisco, CA 94015  
Attorney for Appellant  
(Two Copies)

The Honorable Michael R. Keitz  
District Attorney  
Madera County District Attorney's Office  
209 West Yosemite Avenue  
Madera, CA 93637

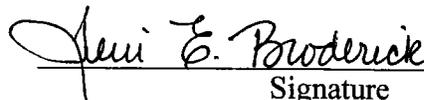
County of Madera  
Main Courthouse  
Superior Court of California  
209 West Yosemite Avenue  
Madera, CA 93637

Fifth Appellate District  
Court of Appeal of the State of California  
2424 Ventura Street  
Fresno, CA 93721

California Appellate Project (SF)  
101 Second Street, Suite 600  
San Francisco, CA 94105-3672

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 14, 2011, at Fresno, California.

Terri E. Broderick  
\_\_\_\_\_  
Declarant

  
\_\_\_\_\_  
Signature