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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Alvie Copeland Kiles,  
Petitioner,  
v.  
Charles L. Ryan, et al.,  
Respondents.

No. CV-17-04092-PHX-GMS  
DEATH-PENALTY CASE  
**ORDER**

Pending before the Court are Respondents’ Motion to Set Reasonable Page Limits for Habeas Petition, Answer, and Reply (Doc. 11), and Motion to Preclude Juror Contact (Doc. 13).<sup>1</sup> The motions are fully briefed. (Docs. 20–21, 23–24.) The Court addresses the motions as follows.

**1. Page Limits**

Respondents ask the Court to set “reasonable page limits on the habeas petition, answer, and reply,” with a limit of 150 pages for the petition and answer and 75 pages for the reply. (Doc. 11 at 6.) They argue that the Court has discretion to set such limits and cite as examples the page-limits imposed by other federal courts, and by a Magistrate Judge in a non-capital case in this Court. (*Id.* at 3.) However, the District of Arizona has not placed page limits on capital habeas petitions, and the issue is being reviewed as a

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<sup>1</sup> Respondents filed a third motion asking the Court to preclude the defense team from contacting the victims in this case. (Doc. 12.) Consideration of this motion was stayed pending the resolution in a separate case involving a constitutional challenge to the Arizona statute on which Respondents rely in their motion to preclude victim contact. That case was resolved and briefing has resumed on Respondents’ third motion. The Court will address the motion by separate order.

1 matter of District Court policy. *See Morris v. Ryan*, No. CV 17-00926-PHX-DGC (Sep.  
2 28, 2017) (Doc. 16). The Court is unwilling to impose page limits on an ad hoc basis,  
3 therefore Respondents' motion is denied.

## 4 **2. Juror Contact**

5 Respondents ask the Court to preclude Petitioner's "defense team from contacting  
6 trial jurors absent leave of Court based on a threshold showing of good cause." (Doc. 13  
7 at 1, 4.) Petitioner contends that habeas counsel must be allowed to interview jurors in  
8 order to competently investigate claims alleging juror misconduct and extraneous  
9 influences upon the jury, as well as counsel's failure to investigate such issues. (Doc. 20  
10 at 1–2.) This Court grants Respondents' motion in part based on the following  
11 considerations.

12 There is no statute, rule, or law prohibiting federal habeas counsel from  
13 interviewing jurors to discover admissible evidence of juror misconduct, or requiring a  
14 showing of good cause prior to contacting jurors. *See Harrod v. Ryan*, No. CV-16-02011-  
15 PHX-GMS, 2016 WL 6082109, at \*2 (D. Ariz. Oct. 18, 2016).

16 Nonetheless, there are safeguards in place that address the long-recognized and  
17 very substantial concerns supporting the protection of jury deliberations from intrusive  
18 inquiry. *Tanner v. United States*, 483 U.S. 107, 127 (1987); *see also Traver v. Meshriy*,  
19 627 F.2d 934, 941 (9th Cir. 1980) (explaining that because evidence concerning the  
20 manner at which a jury arrived at its verdict is inadmissible to test the validity of a  
21 verdict, "the practice of counsel in propounding questions on these subjects to jurors after  
22 trial should be discouraged"). Rule 606(b) of the Federal Rules of Evidence is grounded  
23 in the common-law rule against admission of jury testimony to impeach a verdict. Rule  
24 606(b) allows jury testimony only in limited circumstances to show that (1) extraneous  
25 prejudicial information was improperly brought to the jury's attention, (2) an outside  
26 influence was improperly brought to bear upon any juror, or (3) there was a mistake in  
27 the verdict form. Fed. R. Evid. 606(b); *see Tanner*, 483 U.S. at 121.

1           The Supreme Court recently recognized another exception to the no-impeachment  
 2 rule. In *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 869 (2017), the Court held that  
 3 “where a juror makes a clear statement that indicates he or she relied on racial stereotypes  
 4 or animus to convict a criminal defendant, the Sixth Amendment requires that the no-  
 5 impeachment rule give way in order to permit the trial court to consider the evidence of  
 6 the juror’s statement and any resulting denial of the jury trial guarantee.” The Court  
 7 explained that “[n]ot every offhand comment indicating racial bias or hostility will justify  
 8 setting aside the no-impeachment bar to allow further judicial inquiry.” *Id.* Instead, “the  
 9 statement must tend to show that racial animus was a significant motivating factor in the  
 10 juror’s vote to convict.” *Id.* The Supreme Court acknowledged that the “practical  
 11 mechanics of acquiring and presenting such evidence will no doubt be shaped and guided  
 12 by state rules of professional ethics and local court rules, both of which often limit  
 13 counsel’s post-trial contact with jurors.” *Id.*

14           Ninth Circuit law makes clear that, generally, interviewing jurors about their  
 15 deliberative process is both improper and unethical.<sup>2</sup> *Northern Pac. Ry. Co. v. Mely*, 219  
 16 F.2d 199, 202 (9th Cir. 1954) (“We do hold for future guidance that it is improper and  
 17 unethical for lawyers . . . to interview jurors to discover what was the course of  
 18 deliberation of a trial jury.”); *see also Harrod*, 2016 WL 6082109, at \*2. Counsel shall  
 19 adhere to the applicable ethical rules and shall abide by their declaration that they “will  
 20 make clear to jurors that they are under no obligation to speak with counsel, and counsel  
 21 will not harass jurors.” (*See* Doc. 20 at 10.) To the extent counsel pursue a proper and  
 22 ethical course of investigation into juror conduct that falls within the allowed exceptions  
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 25           <sup>2</sup> This Court’s Local Rules of Civil Procedure, Rule 83.2(e), subjects attorneys  
 26 practicing in this Court to the Rules of Professional Conduct of the Arizona Supreme  
 27 Court. In addition to the requirements above, those rules require that a lawyer “shall not  
 28 . . . communicate with a juror or perspective juror after discharge of the jury if . . . the  
 juror has made known to the lawyer a desire not to communicate; or . . . the  
 communication involves misrepresentation, coercion, duress or harassment.” Ariz. R.  
 Sup. Ct. 42, E. R. 3.5.

1 listed above, it is not necessary to impose a good cause standard because counsel are  
2 ethically obligated not to pursue inadmissible evidence about the jurors' deliberations.

3 Finally, while Arizona law does not prohibit post-verdict contact with jurors, the  
4 Arizona Rules of Criminal Procedure protect juror privacy, and this Court will require  
5 counsel to abide by those protections. *See* Ariz. R. Crim. P. 18.3 (requiring  
6 confidentiality of juror biographical information).

7 For the reasons set forth above,

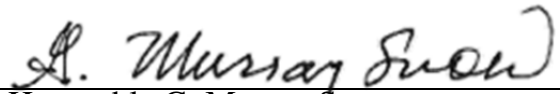
8 **IT IS ORDERED DENYING** Respondents' request to impose page limitations  
9 (Doc. 11).

10 **IT IS FURTHER ORDERED GRANTING** Respondents' Motion to Preclude  
11 Juror Contact (Doc. 13) to the extent it would prevent Petitioner from using the  
12 information deemed confidential under Arizona Criminal Rule 18.3 to locate and  
13 interview jurors. Petitioner is, however, not otherwise restricted from using other publicly  
14 available information for locating the juror's in this case.

15 **IT IS FURTHER ORDERED GRANTING** Respondents' Motion to Preclude  
16 Juror Contact to the extent it would prevent Petitioner from questioning jury members on  
17 matters not admissible in evidence absent further authorization of this Court.

18 **IT IS FURTHER ORDERED DENYING** Respondents' Motion to Preclude  
19 Juror Contact to the extent it would prevent Petitioner from questioning jurors'  
20 concerning extraneous influences on the jury, or whether a juror made a clear statement  
21 that indicates racial animus was a significant motivating factor in a juror's vote to  
22 convict.

23 Dated this 6th day of April, 2018.

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25   
26 Honorable G. Murray Snow  
27 United States District Judge  
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