IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

STEVE ALLEN CHAMPION,

On Habeas Corpus.

S065575

DEATH PENALTY CASE

Los Angeles County Superior Court No. A365075
The Honorable Willliam B. Keene, Judge

RETURN TO ORDER TO SHOW CAUSE AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RETURN; APPENDICES; ALTERNATIVE REQUEST FOR DISCHARGE OF ORDER TO SHOW CAUSE OR BIFURCATION OF EVIDENTIARY HEARING

BILL LOCKYER
Attorney General of the State of California

ROBERT R. ANDERSON
Chief Assistant Attorney General

PAMELA C. HAMANAKA
Senior Assistant Attorney General

SHARLENE A. HONNAKA
Deputy Attorney General

ROBERT S. HENRY
Deputy Attorney General
State Bar No. 57285

300 South Spring Street
Los Angeles, CA 90013
Telephone: (213) 897-2257
Fax: (213) 897-2263

Attorneys for Respondent

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RETURN TO ORDER TO SHOW CAUSE

Respondent makes this return to the Order To Show Cause pursuant to this Court's order of February 20, 2002, and admits, denies and alleges as follows:

I.

As to paragraph I, Respondent admits that Petitioner Steve Allen Champion (hereinafter "Petitioner") is properly in custody of the Warden of the California State Prison at San Quentin and is presently confined on death row and condemned as a result of a sentence of death imposed in Los Angeles Superior Court case number A365075 but denies that either the confinement or the sentence is unlawful and affirmatively alleges that both the confinement and the sentence are lawful and are pursuant to a valid judgment and conviction.

II.

As to paragraph IX(C)(1) of the Petition, respondent denies the allegations contained therein that trial counsel failed to provide effective assistance of counsel and specifically denies the allegations that trial counsel failed to recognize, investigate, or present evidence of any material that would have been of material benefit in obtaining a verdict of life

imprisonment at the penalty phase and further specifically denies the allegations contained therein 1) that Petitioner suffered, at the time of his trial, from any brain damage whatsoever, severe or otherwise, and even denies that the Petition itself contains any shred of support for such a conclusion, 2) that Petitioner had any mental impairments, 3) that Petitioner suffered from any emotional impairments that could have been offered to a reasonable jury in mitigation or excuse at the penalty phase of his trial.

III.

As to paragraph IX(C)(132a), Respondent denies that trial counsel acted in any unreasonable manner in deciding which evidence to submit in mitigation in the case and specifically denies the allegation that trial counsel had no tactical reason for trying the case in the manner it was tried, as more fully set forth in the attached "Declaration of Ronald V. Skyers," attached hereto as Appendix A of this Return.

IV.

As to paragraph IX(C)(133), Respondent denies that Petitioner's death sentence was due to the manner in which the case was tried by trial counsel.

V.

Respondent affirmatively alleges that at the time that trial counsel tried the case, trial counsel performed all duties within the reasonable range of competence of attorneys practicing in the field in that day and age and performed, or his predecessor counsel had performed, all necessary investigation and preparation to try the case and further, that no circumstances or events were presented to trial counsel that would have suggested that he perform more investigation than he did or that suggested that he investigate any different area than he did.

WHEREFORE, respondent prays the Petition For Writ Of Habeas

Corpus be denied and the order to show cause be discharged, or, as more fully explained below, in the alternative, that any evidentiary hearing ordered be bifurcated to force Petitioner to first demonstrate that counsel's performance was inadequate *from the perspective of the time* that he investigated and presented the case and only if inadequacy is thereby shown should the hearing proceed to a second stage wherein Petitioner will be allowed to show what evidence could have been presented, i.e., prejudice, and wherein Respondent will be able to show what evidence would have been offered in rebuttal.

MEMORANDUM OF POINTS AND AUTHORITIES

PROCEDURAL HISTORY

On October 19, 1982, following a jury trial, petitioner and his co-defendant, Craig Ross, were convicted of the first degree murders of Bobby Hassan and his 14-year-old son Eric[1/]. The jury also convicted petitioner of two counts of robbery and one count of burglary. Allegations that a principal was armed with a firearm were found true. The jury also found true three special circumstances making petitioner death-eligible: (1) that there was a multiple murder; (2) that the murder was committed during the course of a robbery; and (3) that the murder was committed during the commission of a burglary. (CT 780-782.) On October 27,1982, following a penalty trial, the jury fixed petitioner's sentence at death. (CT 798.)

On or about January 27, 1986, petitioner filed his opening brief on automatic appeal. Thereafter, on September 10, 1986, petitioner filed a petition

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1. Ross also was convicted of numerous offenses, which were committed on December 27, 1980, at the apartment of Michael Taylor, and for which he was sentenced to death. Petitioner was neither charged nor convicted of any of the crimes committed at the Taylor apartment. (See *People v. Champion* (1995) 9 Cal.4th 879, 900-901.)

for writ of habeas corpus, wherein he argued only that he was denied effective assistance of counsel for his trial counsel's failure to secure a ruling on a pretrial motion regarding the death qualification of the jury during voir dire. In connection with his appeal, petitioner subsequently filed a supplemental opening brief, a reply brief, and a supplemental reply brief.[2/]

On April 6, 1995, this Court issued its opinion in the automatic appeal. (*People v. Champion*, *supra*, 9 Cal.4th at p. 879.) This Court ordered that one of petitioner's two multiple-murder special circumstances be stricken as duplicative. (*Id.*, at pp. 935-936.) In all other respects, the judgment, including the death sentence, was affirmed. (*Id.*, at p. 952.) One month later, this Court denied petitioner's petition for writ of habeas corpus.

Two years later, on April 21, 1997, petitioner filed a petition for writ of habeas corpus in the United States District Court, Central District of California. The petition consisted of 139 pages raising 27 claims. Respondent filed a motion to dismiss the habeas petition. On September 8, 1997, the district court heard the motion to dismiss and found it could not entertain the petition because it contained unexhausted claims. On that basis, the district court issued an order holding the federal proceedings in abeyance while petitioner returned to state court to exhaust his remedies. Petitioner was ordered to file his state habeas petition within 60 days of the court's order.

On November 5, 1997, petitioner filed the instant petition for writ of habeas corpus. On November 7, 1997, this Court requested respondent to file an informal response to the petition, pursuant to rule 60 of the California Rules of Court. On November 9, 1998, Respondent filed its "Informal Response." On

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2. Petitioner also joined in the arguments raised by co-defendant Ross on appeal. Contemporaneously with this pleading and in a separate document, Respondent will ask this Court to take judicial notice of its own records, including all documents petitioner, respondent, and Craig Ross filed in the course of the automatic appeal and previous habeas corpus proceeding. (*Evid.* Code, § 452; see *In re Clark* (1993) 5 Cal.4th 750, 798, fn. 35.)

June 25, 1999, Petitioner filed his "Reply to Informal Response."

On February 20, 2002, this Court issued this Order to Show Cause "why petitioner is not entitled to relief as a result of trial counsel's failure to adequately investigate and present mitigating evidence at the penalty phase of petitioner's trial."

STATEMENT OF FACTS

I. Facts Of The Case

The facts of this case are contained in this Court's opinion in *People v. Champion* (1995) 9 Cal.4th 879, 897-904.

II. Facts Relating To Claim Of Ineffective Assistance At Penalty Phase

Following his arrest, Petitioner was first represented by Homer Mason. Mr. Mason immediately caused Petitioner to be evaluated by Dr. Seymour Pollack, a forensic psychiatrist of the University of Southern California, and hired an investigator to work on the case. After the preliminary hearing, Petitioner's family dropped Mr. Mason and hired then attorney, now Judge, Ronald V. Skyers to represent Petitioner. See Appendix A, *Declaration of Ronald V. Skyers*, p. 2, ¶ 4 .

The crime involved an unlawful forcible entry by several individuals into a home, accompanied by a robbery and the murder of an adult male, Bobby Hassan, and his 14 year-old wheelchair-bound son, Eric Hassan. The motive for entry into the house and the robbery was obviously financial gain and the motive for the murder was to silence the witnesses to the robbery.

Attorney Skyers saw no indication in his meetings with Petitioner and his numerous conversations with Petitioner's family that indicated that Petitioner suffered from any mental disease, disorder, defect or illness. Moreover, Attorney Skyers saw nothing in the crime that would suggest that mental illness, rather than financial gain and desire to avoid apprehension, might

have motivated the killings. Dr. Seymour Pollack had found that there was no indications of any mental abnormality upon which to predicate any legal defense or mitigation of these profit-motivated crimes. See Appendix A, *Declaration of Ronald V. Skyers*, pp. 2-3, ¶¶ 4-6.

In this case, the prosecutor could not prove which of the entrants into the home had fired the shots that killed the victims. Attorney Skyers' strategy at the guilt phase was to try to prove misidentification and his strategy at the penalty phase was to prove that Petitioner was a good hearted person who was to start a job tutoring and would not have been the type of person who would have been involved in the shootings, particularly of the handicapped youth. See Appendix A, *Declaration of Ronald V. Skyers*, pp. 6-9, ¶¶ 11-19.

In view of the fact that Dr. Pollack had provided no basis for a mental defense and nothing about 1) Petitioner's appearance, 2) the information provided by his relatives, or 3) the nature of the crime suggested any cause to further investigate mental illness, Attorney Skyers did not seek to put on any such evidence. However, evidence of mental illness was inconsistent with the guilt phase strategy of misidentification and Attorney Skyers would have not have introduced evidence suggesting such unless it was of such reliability and force as to virtually "guarantee" him a reduction of the charges. See Appendix A, *Declaration of Ronald V. Skyers*, pp. 36-38, ¶ 63.

Moreover, evidence of mental illness at the penalty phase would have also been inconsistent with Attorney Skyers' strategy of attempting to prove that Petitioner was a good kid who would not have been involved in the shooting and in fact, such evidence might have been regarded as a hint that Petitioner was indeed the shooter but should be excused because of his mental condition. Attorney Skyers has never, in his career, seen mental health evidence rise to such a level. See Appendix A, *Declaration of Ronald V. Skyers*, pp. 6-7, 14-16, ¶¶ 12-14, 16-18, 29-32 .

Attorney Skyers spent enough time with Petitioner's relatives that they

could have told him anything about Petitioner's past history and that of his family that they thought was relevant. Attorney Skyers felt, however, that in 1981, when he tried the case, families of defendants would like to accentuate positive aspects of a defendant's history that in turn would tend to show him as a good person and his family as good people. The families were reluctant to mention, even to the defendant's attorney, instances of negative occurrences in the defendant's life for the reason that they often felt that such negative historical experiences could only be likely to be considered as motive or causes for the defendant to have committed the crime. See Appendix A, *Declaration of Ronald V. Skyers*, pp. 3-6, ¶¶ 6-10.

Attorney Skyers felt that, in 1981, when he tried this case, the chances of avoiding a death sentence were good only if he could prove misidentification or establish a reasonable doubt on that basis. He felt that the chances of avoiding a death sentence were not great even if he could convince the jury that Petitioner had only entered the home but was not in the room where the shooting of the victims had occurred. Attorney Skyers felt that, in 1981, there was *no* chance of avoiding the death penalty if the jury believed that Petitioner was at least one of the shooters and that *no mental defense short of legal insanity* would have staved off a death verdict given that belief. As such, even though he had no such evidence, Attorney Skyers would not have introduced evidence suggesting but falling short of actually proving mental illness. See Appendix A, *Declaration of Ronald V. Skyers*, pp. 6-7, 16, ¶¶ 12, 32.

Lastly, given the fact that there was a tremendous amount of natural sympathy for the handicapped child who had been brutally murdered, Attorney Skyers felt that appeals to sympathy, such as that Petitioner had had a rough life, would most likely backfire or, at worst, might have the effect of "offering up" Petitioner as being one of the killers. See Appendix A, *Declaration of Ronald V. Skyers*, pp. 8-9, 13, ¶¶ 17-18, 28.

PETITIONER'S SPECIFIC ALLEGATIONS

That trial counsel was ineffective in not discovering and presenting evidence of:

1. A general conclusory *assertion,* unaccompanied by any allegations of fact, that Petitioner had "severe brain damage." See Petition, pages 155-157, paragraphs 1-3.

2. Petitioner's paternal family's history of slavery and discrimination in South Carolina. See Petition, pages 157-159, paragraphs 4-8.

3. Petitioner's paternal grandfather, Lewis I, being abandoned by his first wife and his resentment and abuse of Petitioner's father. See Petition, pages 159-164, paragraphs 9-16.

4. Petitioner's father, Lewis II, his early life, his lack of success in life, his hostility and temper, and the racial discrimination he faced. See Petition, pages 164-166, paragraphs 9-19.

5. Petitioner's maternal ancestors and their history of slavery and discrimination in Georgia and Mississippi. See Petition, pages 166-167, 170-172, paragraphs 20-22, 28-33.

6. Petitioner's mother's paternal grandfather acting so bizarrely that he was known as "Crazy Nero" as well as other family members on that side of the family who had mental, substance abuse and domestic violence problems. See Petition, pages 167-170, paragraphs 22-27.

7. Petitioner's mother's childhood of abuse and discrimination. See Petition, pages 172-175, paragraphs 33-41.

8. The marriage of Petitioner's parents and the abuse of Petitioner's mother by his father, Lewis II. See Petition, pages 175-180, paragraphs 42-50.

9. Petitioner's father's abuse of his mother while Petitioner was *in utero* and his abandonment of the family when Petitioner was born and the family's resultant poverty. See Petition, pages 180-182, paragraphs 51-54.

10. Petitioner's mother's depression and inability to care for the children until see met Petitioner's stepfather, Gerald Trabue. See Petition, pages 182-183, paragraphs 55-57.

11. Petitioner's family's stabile life with Gerald Trabue, the auto accident that claimed his life and in which Petitioner "hit his head." See Petition, pages 183-184, 187-189, paragraphs 58-59, 66-71.

12. The danger of the community in which Petitioner lived at various stages of his life including gang violence and police brutality. See Petition, pages 184-185, 204-211, paragraphs 60, 102-119.

13. Abuse at the hands of Lewis III, Petitioner's eldest brother. See Petition, pages 184-185, 189-195, paragraphs 61, 72-83.

14. Abuse at the hands of Reginald, Petitioner's second eldest brother. See Petition, pages 195-197, paragraphs 84-86.

15. The poor educational and socialization records of Petitioner's siblings. See Petition, pages 185-187, paragraphs 62-65.

16. Petitioner's incarceration in juvenile facilities and the dangers and lack of adequate resources for rehabilitation therein. See Petition, pages 211-214, paragraphs 120-125.

17. Petitioner's release from juvenile incarceration and the change in his behavior and the death of close friends during this period. See Petition, pages 214-217, paragraphs 126-131.

SUMMARY OF RESPONDENT'S POSITION

Respondent asserts that an order to show cause issued on grounds of ineffective assistance of counsel must be discharged unless either the petition or the traverse raises an arguable issue that either 1) trial counsel failed to perform a reasonable investigation to be expected of a reasonably competent attorney in like circumstances or 2) that trial counsel ignored information indicating that he should do more intensive investigation into a selected area.

Even if Petitioner can establish that the case might have been won had trial counsel performed in a different manner or tried a different tact, it is still not enough to prevail on a claim of ineffective assistance of counsel. This is because counsel's actions must be judged by the perspective of what counsel knew at the time he tried the case. Respondent submits that neither this Court, nor any referee conducting an evidentiary, can consider what evidence could have been but was not introduced until Petitioner has met the burden of establishing ineffective assistance from the perspective of the time that the trial counsel tried the case. In so judging his or her performance therefore, only two questions are relevant, 1) did trial counsel conduct a reasonably competent standard investigation to be expected in all cases, and 2) did trial counsel ignore any special indications that would have redirected a reasonable counsel's attention to a specific area, i.e., did he ignore any sounding alarms.

In this case, the Petition unabashedly neglects to demonstrate or even bother to allege that counsel either failed to conduct a normal investigation or that he ignored any "smoke alarms" indicating that he should investigate any particular area further. Here, neither Petitioner's behavior nor history, the crime or its circumstances, nor any information known to trial counsel suggested that a mental defense should be pursued. To the contrary, the attorney saw no such indications, the mental health professional hired by predecessor counsel could provide no such basis for any defense and none of Petitioner's family volunteered any information concerning any mental defenses. Moreover, the nature of the crime, robbery and the silencing of witnesses, was not such that would have suggested itself that some mental aberration might be involved. Lastly, as Respondent will demonstrate later, not only was a mental defense not suggested but it was not warranted and would only have serve to close the very small door of opportunity that Petitioner did have for avoiding a death sentence.

The only evidence that was offered to trial counsel for the penalty phase and that which fit with his strategy and that he utilized to the fullest extent possible, was evidence of Petitioner's good behavior. No other evidence concerning Petitioner's background and history was offered to trial counsel although he actively solicited information from Petitioner's family on numerous occasions.

As such, from the standpoint of judging trial counsel's behavior at the precise time he put on his case, there was no ineffective assistance and Petitioner has failed to specifically demonstrate what normal investigation in this respect was not performed or what indications presented themselves that trial counsel ignored which would have suggested a more intensive investigation into a particular area than that trial counsel performed. The inquiry should end here.

However, even if this Court should judge the effectiveness of trial counsel on the basis of what is known *now* as well, his representation would still withstand challenge. First, although the Petition loudly announces that Petitioner has "brain damage," this contention is not supported. It appears to be the legal equivalent of a "Ponzi" or a "check kiting" scheme. The petition relies on the report of a psychologist as support for this finding but reading the report of the psychologist reveals that he relies on a combination of an oral history that Petitioner was involved in an accident where he "hit his head" and certain tests which the psychologist opines show that Petitioner's performances on the tests, with few exception, *although pretty much falling in the average range, albeit low, are, coincidentally, similar to* those of people with brain damage. Nowhere does the psychologist state that it is his opinion to a *reasonable medical certainty* that Petitioner actually suffers from organic brain damage. There are

no brain scans, x-rays or any certain diagnosing tool indicating any *physical evidence of* brain damage. As such, the evidence of brain damage contained in the Petition can be described as "flimsy" at best. Trial counsel indicates in his declaration that the defense of misidentification at the guilt phase and that the defendant was not the shooter at the penalty phase were so viable that he would have compromised it with mental health evidence only if it were so strong as to virtually guarantee a verdict on a lesser offense or a life verdict. This flimsy attempt at fooling the jury into thinking that Petitioner had brain damage would have fallen far short.

Separately, the psychologist opines also that Petitioner suffered from something akin to a siege mentality from growing up in South Central Los Angeles, which again is a conclusion that she derives from information provided by Petitioner, and the Petition alleges that Petitioner was terrorized by his two older brothers, one who was mentally deranged and another who was also supposedly deranged and a drug abuser as well. Again, none of this information had been transmitted by the family to trial counsel despite trial counsel giving the relatives numerous opportunities to alert him..

Thirdly, the other evidence in mitigation heralded by the Petition is the family history of slavery and discrimination and the bizarre behavior by petitioner's grandparents, the brutality of Petitioner's own birth father, who left the family prior to Petitioner's birth, the accident that caused the death of Petitioner's stepfather, the community in which Petitioner was raised that was full of violence as well as police brutality and resulted in the loss of some of Petitioner's acquaintances.

However, since there was either no, or at best, flimsy evidence of brain damage and no evidence establishing any other mental disease or defect, no

rational attorney would have introduced this evidence at this particular trial wherein the only viable guilt phase strategy was misidentification and the only viable penalty phase strategy was that Petitioner was a non-shooter. No rational attorney would have introduced this information because it either would have contradicted both strategies by offering up Petitioner as the shooter or would have backfired as appeals for sympathy in a case involving the heartless execution of a handicapped child taken out of a wheelchair and shot in the back of the head. Here, trial counsel indicated that it was his overriding concern that he do nothing in the trial to single out his defendant as possibly being one of, if not the sole, shooter of the victims.

As such, even if the trial were held today, no rational attorney would put on the nonsense evidence that Petitioner has included as exhibits to his petition.

ARGUMENT

THE PETITION HAS NOT ALLEGED FACTS SUFFICIENT TO ESTABLISH INEFFECTIVE ASSISTANCE AT THE PENALTY PHASE

The California Constitution guarantees a person improperly deprived of his liberty the right to petition for a writ of habeas corpus. (Cal. Const., art. I, § 11; *People* v. *Duvall* (1995) 9 Cal.4th 464, 474; *In re Clark*, *supra*, 5 Cal.4th at p. 764 & fn. 2.) However, the petitioner in a habeas corpus proceeding bears the heavy burden initially to plead sufficient grounds for relief and then later to prove those facts. (*People v. Duvall*, *supra*, 9 Cal.4th at p. 474; *In re Martin* (1987) 44 Cal.3d 1, 28-29; *In re Lawler* (1979) 23 Cal.3d 190, 195.)

> "For purposes of collateral attack, all presumptions favor the truth, accuracy, and fairness of the conviction and sentence; defendant must undertake the burden of overturning them. Society's interest in the finality of criminal proceedings so demands, and due process is not thereby offended."

(*People* v. *Gonzalez* (1990) 51 Cal.3d 1179, 1260.)

A. To Establish Ineffective Assistance Of Counsel, It Must Be Shown That Trial Counsel Either 1) Failed To Conduct A Reasonable Investigation Or 2) Ignored Alarms Indicating That He Should Conduct Further Investigations

This Court's own opinion in *People v. Pope* (1979) 23 Cal. 3d 412, 590 P.2d 859; 152 Cal. Rptr. 732, inspired the United States Supreme Court to follow with *Strickland v. Washington* (1984) 466 U.S. 668; 104 S. Ct. 2052; 80 L. Ed. 2d 674. Since *Strickland*, this Court has been mindful of its chief

admonition to not fall into the trap of allowing a defendant to be heard to criticize his counsel on grounds that his loss of the case is proof enough that something different "might have succeeded."

In *People v. Coddington* (2000) 23 Cal. 4th 529, 652, 2 P.3d 1081, 97 Cal. Rptr. 2d 528, this Court summed up the point of this section by discoursing, in reference to *Strickland*, that

> In any assessment of trial counsel's conduct of a criminal defense we are mindful of the admonition of the United States Supreme Court that we must make every effort "to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." (*Strickland v. Washington*, *supra*, 466 U.S. at p. 689 [104 S. Ct. at p. 2065].) The burden is on an appellant who challenges the competence of his or her trial counsel to overcome the presumption that counsel's conduct is within the range of reasonably professional assistance. (*Ibid.*; *People v. Earp*, *supra*, 20 Cal. 4th at p. 896.)

Also, in *People v. Mendoza* (2000) 24 Cal. 4th 130, 158, 6 P.3d 150, 99 Cal. Rptr. 2d 485, the way it was phrased was

> Because after a conviction it is all too easy to criticize defense counsel and claim ineffective assistance, a court must eliminate the distorting effects of hindsight by indulging "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.' [Citations.]" (*Strickland v. Washington*, *supra*, 466 U.S. 668, 689 [104 S. Ct. 2052, 2065].)

It is no secret that claims of ineffective assistance of counsel are becoming far too common. One study has placed the proportion of ineffective assistance of counsel claims in habeas corpus petitions filed in federal court by state prisoners in California at 46 per cent. *Federal Habeas Corpus Review of State Court Convictions*, 31 Cal. W. L. Rev. 237, 248, fn. 29. Given the requirement that federal habeas petitioners must first exhaust claims in state court, the proportion of state petitions raising the claim is undoubtedly similar.

Within those challenges, among the most popular of the specific allegations are that trial counsel was ineffective in failing to putting on a mental defense. Again, its attractiveness has its genesis in the same fundamental lure of the claim of ineffective assistance itself, i.e., that since what was tried did not work, something different should have been tried.

Again, however, the purpose of providing relief for instances of ineffective assistance of counsel are to redress an unfair trial, *not to provide a new opportunity to try a different strategy at a second trial.* Here, none of the allegations of the petition demonstrate that trial counsel was ineffective in investigating this case. Predecessor trial counsel had sent Petitioner out for a mental evaluation and failed to receive a report showing any mental abnormalities that could have formed any basis for either a legal excuse or diminution of Petitioner's responsibility for the crime. See Appendix A, *Declaration of Ronald V. Skyers*, page 2, paragraph 4.

The Petition does not defend the proposition that discovery of the historical evidence about the slavery and discrimination suffered by Petitioner's ancestral families was so essential to a normal investigation of the case that trial counsel's failure to discover this information was an act outside the reasonable range of competence of practicing attorneys.

Nor does the Petition defend the assertion that discovery or presentation of evidence that Petitioner grew up in a violent community was so essential to a normal investigation of the case that trial counsel's failure to document or present this information was an act outside the reasonable range of competence of practicing attorneys.

Nor does the Petition defend the assertion that discovery or presentation of evidence that Petitioner's grandfather abused his grandmother, that his mother's grandfather was known as "Crazy Nero" and that there were extensive mental health problems in both families was so essential to a normal investigation of the case that trial counsel's failure to document or present this information was an act outside the reasonable range of competence of practicing attorneys. Criticism of trial counsel on this ground is particularly inappropriate since there was no documentation showing any mental illness on Petitioner's own part and in fact after he was evaluated by Dr. Seymour Pollack, a psychiatrist working at the University of Southern California, no mental defense was offered.

Nor does the Petition defend the assertion that discovery or presentation of evidence that Petitioner's father suffered from mental illness all his life and that he abused petitioner's mother, including when she was pregnant with Petitioner, was so essential to a normal investigation of the case that trial counsel's failure to document or present this information was an act outside the reasonable range of competence of practicing attorneys. Criticism of trial counsel on this ground is particularly inappropriate since there was no documentation showing mental illness on Petitioner's own part.

Nor does the Petition defend the assertion that discovery or presentation of evidence that Petitioner suffered from possible learning

disabilities and grew up in a community full of gang and police violence was so essential to a normal investigation of the case that trial counsel's failure to document or present this information was an act outside the reasonable range of competence of practicing attorneys. Criticism of trial counsel on this ground is particularly inappropriate since it was obvious to trial counsel the nature of the community in which Petitioner was raised and that every criminal defendant raised there would be excused if this were allowed as a defense.

Nor does the Petition defend the assertion that discovery or presentation of evidence that the juvenile facilities in which Petitioner was incarcerated were violent and inadequate was so essential to a normal investigation of the case that trial counsel's failure to document or present this information was an act outside the reasonable range of competence of practicing attorneys. Moreover, the trial counsel, in his declaration, took pains to indicate that this specific allegation, that the youth authority changed Petitioner from a sweet kid to a dark and brooding individual, was precisely the type of information he would *not have introduced* even if it were true. See Appendix A, *Declaration of Ronald V. Skyers*, pp. 14-15, ¶ 31.

Accordingly, since the petition has failed to show that trial counsel did anything wrong or failed to heed any indications to investigate any other particular area further, the Order to Show Cause should be discharged.

B. None Of The Information In The Petition Would Have Been Utilized By Any Rational Attorney, In Any Event, Because It Would Have Served To Both Convict Petitioner At The Guilt Phase And Ensure A Death Sentence At The Penalty Phase

However, as can be seen below, claims of failure to raise mental defenses are not a true one-size-fits-all panacea even in "hindsight." That is

because a mental defense is usually only effective where 1) there is no possibility of a finding of innocence and 2) there is no question that the defendant is the killer. It is, in fact, downright bizarre to offer mental health evidence in cases wherein the question of identity is still a viable question at the guilt phase but also even at the penalty phase in rare cases such as this where it cannot be proved that the defendant took part in the killing and he is only death eligible mainly due to accomplice liability.[3/]

Trial counsel here states that, given the case he had, he would have been reluctant to introduce such evidence unless it was of the quality to almost virtually assure that it would be accepted by the jury. However, trial counsel stated that in all of his years of practice and on the bench, he had never seen mental health evidence of that quality. See Appendix A, *Declaration of Ronald V. Skyers,* page 38, ¶ 63.

Here, the evidence not only failed to provide a guarantee but was, in fact, wholly lacking. To indicate that petitioner suffered from mental defect, the petition relies on the *Declaration of Nell Riley, Ph. D.,* attached as Exhibit 67 to the Guilt Phase exhibits, volume 3 of 4. Riley indicates that she is a licensed psychologist and that she was provided with "background materials" on Petitioner and consulted with Roderick Pettis, M.D., who did a study on Petitioner's "social history." Dr. Riley interviewed Petitioner in the presence of habeas counsel, Karen Kelly. According to Dr. Riley, she administered tests to

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3. Although technically the jury had to find that Petitioner intended to assist in a killing to find him death-eligible, needless to say Petitioner's counsel would be incompetent indeed to forego the chance to, at the penalty phase, convince the jury that his client was a good person who would not have participated in the killing and since the setting of the crime was a house, to have the jury believe, if possible, that his client was not even in the room where and when the killing occurred.

Petitioner "designed to detect and assess the effects of neuropsychological deficits on cognitive functioning and behavior." For her conclusions, she relied on "information provided during . . .clinical interviews, [her] observations of [Petitioner], and the life history documents provided by his attorney [which] formed the basis of findings set forth below." See Petition, Exhibit 67, *Declaration of Nell Riley, Ph. D.,* paragraphs 4-9.

Even according to Dr. Riley, petitioner's had a verbal I.Q. of 92 and a full scale I.Q. of 83. However, Dr. Riley states she gave Petitioner a Halstead-Reitan Battery test in which Petitioner's "scores fell into the range *characteristic* of neuropsychological damage." This Court should note the "weasel" word "characteristic" because Dr. Riley never states that the test is definitive proof of *brain* damage but states that Petitioner's scores are *characteristic* of *neuropsychological* damage, the latter term being undefined and not specifically asserted to be the same as *physical, organic brain damage.*

On attention tests, Dr. Riley found that Petitioner's "function is *vulnerable to* distraction." Dr. Riley does not answer the question which suggests itself that are not we all *vulnerable* to one degree or another to distraction.

Next, Dr. Riley found that on a motor function test, Petitioner's "performance was particularly poor . . . with his left hand, *raising the possibility* of right hemispheric dysfunction." Again, Dr. Riley uses "weasel words" such as "raising the possibility" instead of making a definitive statement that the results of the test are definitive indications of brain damage.

Dr. Riley's most humorous conclusion, but the one in which she seems to take the most pride, was that she found it "striking" that Petitioner had a deficient ability "to pronounce nonsense words such as 'snirk' or 'gusp'" even

though "Mr. Champion's ability to pronounce familiar English words and to comprehend short written passages was *average accurately*." See Petition, Exhibit 67, *Declaration of Nell Riley, Ph. D.,* paragraphs 14-19.

On memory tests, even Dr. Riley pronounced Petitioner as "at the lowest end of the *average* range." On a spatial test, Dr. Riley merely found that Petitioner "performed slowly" and that he was "deficient in recalling" shapes he had seen. Dr. Riley found that on a test requiring Petitioner to draw a complex shapes, Petitioner's "approach *is consistent with* deficits in the ability to plan and organize a behavioral strategy." Again, Dr. Riley employs language that suggests, without proving, a defect.

Dr. Riley also found out that Petitioner's "visuomotor integration skills" were at the level of a 9-year-old on "*a test which is typically administered to children.*" The reason that this language is suspicious is that if the test is indeed to indicate success by equating the level of performance with age, and it is *designed to be administered to children*, the top range of the test would hardly be expected to be an adult age. In other words, as far as we know, the 9-year-old level might be the top range. In any event, Dr. Riley in no way indicates how this test shows or is related to organic brain damage.

Dr. Riley lastly found that Petitioner "did not" improve as most subjects do, as the test progressed and that while Petitioner "*performed adequately* on Tails A, he had *mild* difficulty in alternating between sets on Part B." See Petition, Exhibit 67, *Declaration of Nell Riley, Ph. D.,* paragraphs 20-27. Again, there is nothing in that finding that suggests even a gross abnormality of any sort, let alone brain damage.

In paragraph 28 of the declaration, Dr. Riley virtually admits that she is simply speculating about the existence of brain damage by her statement that

"While damage to any region of the brain can cause impairment on these tasks, deficits are most commonly associated with the frontal lobes of the cerebral hemispheres, regions critical to the ability to reason and problem solve." See Petition, Exhibit 67, *Declaration of Nell Riley, Ph. D.,* paragraph 28.

Dr. Riley has not conducted nor relied on any physical tests, CAT scans, or X-rays to confirm the existence of brain damage. She merely takes the social history that he has heard, performs tests which, not surprisingly, mirror the learning deficits that no doubt were responsible for Petitioner's poor performance in school and which no doubt would be found in mostly all poor achievers, and concludes by speculating that it is caused by brain damage which could be on any part of the brain but most likely on the frontal lobes. The diagnosis of brain damage has no support. As an aside, Dr. Riley does not contend, nor is there any support for the proposition, that all children suffering from learning disabilities are brain-damaged. Respondent is not here contesting the proposition that Petitioner suffers from learning disabilities, but the implication or assertion that those disabilities translate into either brain damage or any cognizable basis for mitigation is simply not supported by Dr. Riley's declaration.

In her conclusion, Dr. Riley speculates that there are "several possible sources or etiologies of [Petitioner's] cognitive deficits, including *in utero* "insults he may have suffered when his mother was beaten by her husband during pregnancy....physical abuse suffered by [Petitioner] during his childhood and early adolescence, and his abuse of drugs." See Petition, Exhibit 67, *Declaration of Nell Riley, Ph. D.,* paragraphs 29-32.

As such, the "Ponzi" or "check kiting" scheme turns full circle. Petitioner's habeas counsel presented information to the doctor that Petitioner's

mother was abused while pregnant by him and that Petitioner suffered at the hands of his older brothers and that he performed poorly at school. Dr. Riley performed test which indicate, not surprisingly in view of his school performance, that Petitioner is at the low average range of functioning and then Dr. Riley reaches the conclusion, based on the fact that brain-damaged people also score similarly on these tests, that Petitioner is brain-damaged because, circularly, of his performance on the tests and probably due to the abuse of his mother while pregnant and the violence inflicted on him by his brothers. If one takes a moment to consider this submission in its totality, conspicuously missing is any independent evidence that any brain damage exists at all.

Respondent submits that this is not the type of evidence for which a rational counsel would have abandoned his best chance of acquittal at the guilt phase. As stated above, practically speaking, trial counsel either had to try the case at the guilt phase on the grounds that Petitioner was not involved in the crime or, in the alternative, that he was involved but should be excused or his sentence mitigated because of his brain damage or mental condition. Trial counsel here clearly indicated that he would not have made that exchange at the guilt phase. See Appendix A, *Declaration of Ronald V. Skyers*, pp. 36-38, ¶ 63.

Moreover, with respect to the penalty phase, this flimsy evidence of brain damage does not rise to the level of being of sufficient persuasive force that counsel would desire to , in order to introduce it, effectively abandon his overall strategy *to avoid appearing to take credit* for the shooting. Trial counsel here clearly indicated that it was his overriding tactical concern to not give that impression. See Appendix A, *Declaration of Ronald V. Skyers*, p. 7, ¶ 13.

It is clear that introducing such evidence, even if only at the penalty phase, would have been inconsistent with maintaining that Petitioner was not a

shooter at the home that was invaded, even if he did enter unlawfully. The purpose of mental illness evidence is, quite indisputably, to provide an explanation as to why a defendant acted in a socially aberrant manner. Here, in this crime, there were only two socially aberrant acts, the theft and the murder.

Obviously, the jury need not have been provided any explanation for the theft because the profit motive itself provides the explanation. Therefore, any jury could have only taken the introduction of mental illness evidence as being offered in explanation of the killing. Here, as Respondent has shown above, the evidence of mental illness, even if only introduced at the penalty phase, is so flimsy and non-existent that its introduction would have been a concession without any benefit. The concession would have been that Petitioner was a shooter, as well as merely an unlawful entrant into the home and a thief, but it would have fallen short of providing any basis for mitigation on its account. Trial counsel would have been virtually putting the noose around Petitioner's neck with his own hands.

Lastly, trial counsel here was concerned about introducing the evidence about the violence experienced by, witnessed by, and permeating petitioner's life and other such evidence in the Petition and listed above under "Petitioner's Specific Allegations." His concerns were two-fold. First, as with the mental defect evidence, trial counsel would have been concerned that introducing such evidence would be the equivalent of a *hint* that Petitioner did the killing coupled with a plea for mercy on the basis of this evidence. See Appendix A, *Declaration of Ronald V. Skyers,* pp. 12-16, ¶¶ 27-32.

Since this case involved a 1981 jury trying the penalty phase in a killing of a 14-year-old wheelchair-bound handicapped child, trial counsel did not want to do anything to suggest Petitioner was one of the killers and, in fact,

indicates that he believed that a death verdict would have been inescapable had the jury settled on any defendant as a killer, regardless of any excuse. See Appendix A, *Declaration of Ronald V. Skyers*, pp. 5, 15-16, ¶¶ 9, 32.

Secondly, for the same reason, trial counsel indicated that he felt that any appeals for sympathy from the jury based on unfortunate incidents in Petitioner's own life would backfire given the enormous sympathy for the handicapped child who was brutally murdered. See Appendix A, *Declaration of Ronald V. Skyers, pp. 13-14, ¶ 28.*

As such, the petition has failed to establish even a prima facie case for relief.

C. Should This Court Order An Evidentiary Hearing, It Should Be Bifurcated In Such A Manner That Petitioner First Be Required To Establish That Trial Counsel's Representation Was Inadequate From The Perspective Of The Time He Tried The Case Before Petitioner Is Permitted To Proceed And Demonstrate What Other Evidence Trial Counsel Could Have Offered

Should this Court order an evidentiary hearing, it should be bifurcated in such a manner that Petitioner first be required to establish that trial counsel's representation was inadequate from the perspective of the time he tried the case. As stated above, Petitioner cannot prevail by merely establishing that there was *a better case that could have been tried.* Petitioner's burden is to demonstrate that trial counsel performed inadequately from the standpoint of what he knew or should have known when he tried the case.

The first reason for Respondent's prayer that any evidentiary hearing ordered be bifurcated is that it would ensure a correct result. The language in *Strickland* cautioning courts reviewing ineffective assistance claims about the "*distorting effects of hindsight*" is not idle chatter. Reviewing courts, and

particularly referees holding evidentiary hearings, undoubtedly find it difficult to make an objective call about whether trial counsel was deficient at the time he tried the case when, *before making that decision*, they are inundated with information that trial counsel never discovered or utilized.

The subconscious "second guessing" phenomenon takes over and the recipient of the information has a natural bias toward the belief that such information should have been sought out. This merely indicates the difficulty of mentally excising knowledge once gained. In science fiction, there is an old science fiction conundrum about whether, if you could travel back in time, you would kill Hitler when he was still a child. The difficulty inherent in the riddle is a testament to the fact that Hitler's deeds as an adult are well known. The question of whether a normal society would even contemplate the killing of any given nameless child would not be even subject to debate. However, when one throws into the equation *after the fact knowledge*, we begin to contemplate what otherwise would be the unimaginable. Such are the natural effects of knowledge once obtained. No matter how much confidence one may have his or her objectiveness, his or her ability to mentally excise knowledge is simply not great enough to overcome this natural phenomenon.

The second reason that any evidentiary hearing ordered should be so strictly circumscribed and bifurcated is that without boundaries, Petitioner will simply continue to introduce more and more hindsight evidence until ultimately focus is lost between what the counsel knew or should have known and what he *could* have known. As can be shown by this Petition, Petitioner has already submitted 16 volumes averaging approximately 330 pages each of exhibits. Thus, without this constraint, the evidentiary hearing becomes unwieldy with no clear benefit to the objectives of this Court.

As such, Respondent prays that if this Court should feel the need to order an evidentiary hearing, the Referee be given instructions to conduct the hearing in two stages, if necessary. First, the referee should entertain evidence only of the adequacy of the trial counsel's performance as judged from the standpoint of the time he tried the case encompassing what he knew or should have known or what indications that he ignored that would have caused a reasonable attorney to investigate any particular area further. The referee should be instructed that if Petitioner fails to show a deficiency under these strictures, the evidentiary hearing should be adjourned and the referee should file a report so indicating. However, if Petitioner can show inadequate performance at this stage, the referee should be ordered to proceed to a second stage wherein Petitioner will be allowed to establish what additional evidence trial counsel had available at the time had he conducted an adequate investigation and wherein Respondent will be allowed to contest that evidence as well as demonstrate what evidence could have been brought in rebuttal of such additional evidence.

CONCLUSION

Accordingly, for the reasons stated, respondent submits that the evidence proffered in the instant petition does not even provide a sufficient basis to maintain an Order to Show Cause and thus, the Order To Show Cause should be discharged and the Petition For Writ Of Habeas Corpus should be denied. However, if an evidentiary hearing is ordered, Petitioner should first be required to demonstrate that trial counsel's investigation and performance were deficient from the perspective of the time in which he tried the case. Only after Petitioner has satisfied the referee that he has met that burden should the evidentiary hearing enter the phase wherein Petitioner is allowed to show what

evidence trial counsel should have offered and wherein Respondent is permitted to rebut that evidence.

Dated: May 22, 2002

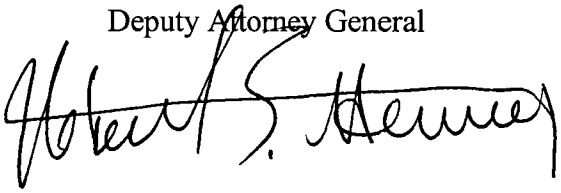
Respectfully submitted,

BILL LOCKYER
Attorney General of the State of California

ROBERT R. ANDERSON
Chief Assistant Attorney General

PAMELA C. HAMANAKA
Senior Assistant Attorney General

SHARLENE A. HONNAKA
Deputy Attorney General



ROBERT S. HENRY
Deputy Attorney General

Attorneys for Respondent

RSH:rm
LA1997XH0026

APPENDIX A

DECLARATION OF RONALD V. SKYERS

Ronald V. Skyers hereby declares under penalty of perjury that the following is true and correct:

1. That I am presently a Judge of the Los Angeles County Unified Municipal and Superior Court assigned to Division 4 in Compton.

2. That prior to becoming a judge and while practicing law, I represented Steve Allen Champion in his trial in October of 1981 of *People v. Steve Allen Champion*, Los Angeles Superior Court number A365075.12. I started practicing law in 1974, therefore, at the time of this trial, I had practiced about seven or eight years. At the time of the trial, I belonged to the Indigent Criminals Defense Association, a panel group of attorneys practicing criminal law in the local branch court at that time.

3. This was my first death penalty case. However, since the initiative reinstating the death penalty had just passed in 1978, supplanting a 1977 legislatively passed death penalty scheme, these crimes, which were committed in the early 1980's were among the first batch of crimes to be tried under the new death penalty law. Therefore, I do not believe that there were a large number of attorneys who, at that time, had extensive experience in trying death penalty cases, either under the new or the old law that had been declared unconstitutional in the early

1970's.

4. Prior to my assuming representation of the client, his former counsel, Attorney Homer Mason had taken the case through the preliminary hearing. In addition, Mr. Mason had already sent Mr. Champion out to be evaluated by Dr. Seymour Pollack, a psychiatrist working at the University of Southern California. Nothing about my observations of Mr. Champion gave me any concern that he might suffer from any mental disease, defect or illness. Moreover, since the crime was one of monetary gain, the motive for its commission did not necessarily suggest or imply the existence of mental illness. Additionally, neither Mr. Champion nor anyone in his family told me anything to indicate that he had suffered brain damage and I saw nothing about him that led me to suspect that such brain damage might exist. Since I saw no facts to suggest otherwise during my representation of Steven Champion, I did not take it upon myself to ask that Mr. Champion be examined for organic brain damage after I assumed representation in the case.

5. Moreover, my method of practice was that I would rely on the mental health expert, whether he be a psychiatrist or a psychologist, to either send the defendant out for or conduct himself any kind of test necessary to establish whether the client might have a mental defense to the charges. Thus, specifically with reference to organic brain damage, I would have

relied on Dr. Pollack to, if he felt that it was warranted, conduct any test necessary to discover any indication that such organic brain damage existed. Obviously also, had I myself seen what I thought was any indication that Steven Champion had any kind of organic brain damage or any other disorder, I would have directed the doctor's attention to that fact and asked him to specifically test for it. However, since I saw no indications that Mr. Champion suffered from any organic brain damage or any other mental illness and if Dr. Pollack did not test, or send Mr. Champion to someone else to be tested, for brain damage then I would have assumed at the time that neither did Dr. Pollack think that such a test was necessary. My understanding was that Mr. Champion's prior attorney, Homer Mason, sent him to Dr. Pollack with the mandate that Dr. Pollack conduct a full evaluation of Mr. Champion for the purpose of the trial. I believed then that it was my job as an attorney to ask the mental health professional to evaluate the defendant fully but to leave the particulars of how to conduct that full evaluation to the mental health professional.

6. Prior to Mr. Champion's trial, I had extensive conversations about the case with Mr. Champion's relatives, particularly his mother. In addition, I spoke on several occasions with his two brothers and two sisters, one of whom worked for the City of Los Angeles, whose place of employment was

right across the street from the courthouse and who I saw on somewhat of a regular basis. I would estimate that I had more than fifteen occasions to be with Mr. Champion's relatives to discuss the case. The questions I asked of the Champion relatives was mainly directed to ascertaining his whereabouts in order to establish an alibi at the guilt phase but also, for purposes of the penalty phase, to find out if there were any problems with him. However, I was told nothing about the existence of brain damage on his part or anything like that.

7. On several occasions, these interviews I conducted with Mr. Champion's family were held not only in my office but in the Champion home with the brothers and sisters present and on other occasions alone with Mrs. Champion, the mother. During those numerous visits, I had many occasions to ask them open ended questions of the sort that would have called on them to provide me with any other information that they could think of other than what they had told me in response to my questions that would give me instances of good conduct on the part of Mr. Champion that could be used at the penalty phase.

8. Similarly, on several occasions I asked them open-ended questions that would have allowed for them to give me any information that they possessed relating to any bad experiences that Mr. Champion might have suffered. It would not be accurate to state that I conducted these interviews in a manner that was

not conducive to the family telling me any information that would have been of benefit to Mr. Champion in the penalty phase. Further, it also would not be accurate to indicate that I foreclosed, by the way I conducted the interviews, the opportunity of Mr. Champion's relatives to refer me to other relatives who could have provided any other information they, in turn, possessed and felt would have been useful at the time.

9. Of course, I am assuming that any such information was not such that the relatives may have decided for their own reasons to withhold. In the early 1980's, in my experience, most lawyers and lay people felt that the best way to succeed at the penalty phase was to show the defendant as being as good a person as they could get the jury to believe he was. I did not feel that the juries would spare the life of people that they believed to be bad or dangerous, no matter what the excuse or reason there may have been for him becoming that way. Therefore, when asked by an attorney for information that would be helpful to a defendant in a death case, the defendant's family might typically want to paint as rosy a picture as possible and might not want to volunteer any information, even to their attorney, that might suggest a motive why the defendant would have been angry and dangerous and therefore would have been the type of person who committed the crime or worst, would be likely to do so again.

10. Back in 1981 and 1982, when I tried the case, I was aware that should there occur a conviction in this case, the penalty phase in the trial would proceed immediately thereafter and therefore, I realized there would be little time between the guilt and the penalty phase to do an investigation of the penalty phase "from scratch." This is because I knew that it would be unlikely that the judge would let any jury empanelled to try both phases of the trial disband for a significant amount of time between the guilt and penalty phases and then reconvene. As such, I mainly conducted my investigation for the penalty phase prior to trial and at the same time as I conducted my investigation for the guilt phase. I then continued to investigate as the trial progressed.

11. I was well familiar with the facts of the trial before the case began. What was unique about this case involving a home invasion into the Hassan residence by a group of men and the killing of Bobby and Eric Hassan was that the prosecutor could not prove who actually fired the shots that killed the two victims.

12. Moreover, I believed that, at that time, the public mood was overwhelmingly in favor of the death penalty because they had just voted overwhelmingly for the reinstatement of the death penalty. At that time, I did not feel that 1981 juries would be sympathetic to mental defenses that fell short of

proving actual insanity.

13. Of course it was my strategy in the penalty phase to, above all, not to do anything, including the introduction of evidence, that might be interpreted by the jury as a concession by me that Mr. Champion had actually committed the shootings that resulted in the killings in these crimes. I was aware that in the typical case involving murder and/or the death penalty, there was usually no question as to the identity of the accused as the killer. Mr. Champion's case was rare in that neither his nor his co-defendant's identity as the actual killer could be proved by the prosecution. All things being considered, as the death penalty case I had to try was much better in that sense than the average capital case. In the case where the defendant's identity as the actual killer could not be seriously contested, it was understandable to me why the attorneys representing those clients would be forced to submit mental illness or prior abuse evidence in order to explain and try to mitigate their client's commission of the killing.

14. However, I regarded it as obviously much better for me to have a case wherein identity as the killer was not proven and, in fact, could not be proved. As such, I did not want to do anything to suggest to the jury that Mr. Champion was the killer, even in the penalty phase, because I felt confident that neither Mr. Champion nor anyone else would have had <u>any</u>

chance of escaping a death verdict if the jury believed that he was the actual killer.

15. At the time I tried the case, I had no indications that Mr. Champion suffered any mental diseases or defects or had been abused and I certainly would not have looked lightly on introducing evidence to that effect given that such an effort would have most likely been regarded by the jury as a concession that my client had done the killings.

16. This was particularly true since co-defendant Craig Ross, who was being tried at the same penalty phase, and his attorney had decided to remain silent and not to put on any penalty phase evidence. Had I offered mental illness, defect, disease, or abuse evidence, it could have given the jury the impression that since it was Mr. Champion who was "making excuses," it was he who had to offer explanations and excuses because he was either the sole, or at least one, killer and that Craig Ross was remaining silent because he had no need to explain or make excuses for anything he had done. Although the case I tried did not call on me to consider this because I had no mental illness evidence in the first place, I certainly would have been reluctant to put on such testimony if I did.

17. Moreover, one of the victims in the crime was a 14-year-old handicapped boy who had been taken out of his wheelchair, laid on a bed and shot on the back of the head. I

put on Mr. Champion's mother on the stand in the penalty phase to testify not only that he was a good person who would not have been involved in such killing but that since Mr. Champion had himself been involved in trying to get a job to tutor others and thus a teaching role, committing, knowing about ahead of time, or being involved in the killing of a child would have been inconsistent with the type of person Mr. Champion was.

18. Furthermore, although this was not a consideration of mine at the trial because I knew of and put on no such mental defense, it does occur to me now that my putting on a penalty phase defense in the way I did suggested that Mr. Champion had done good things in his life. The fact that Mr. Ross put on no penalty phase defense at all may have tended to have the jury believe that Mr. Ross's silence was an admission that he was the killer, whereas Mr. Champion was not. However, had I put on evidence of mental illness or defect on the part of Mr. Champion, Mr. Ross's silence might have worked to convince the jury that he was not the shooter but Mr. Champion was.

19. During my numerous occasions speaking with the family of Mr. Champion, no one ever volunteered that while growing up he had been terrorized by his older brothers. In fact, I remember having extensive conversations with two brothers who I believe were named Lewis and Reginald. Again, I believe that I asked enough questions of the relatives and that there

were a sufficient amount of occasions I was with them that if his relationship with his older brothers had been a significant part of his history, the family would have had plenty of opportunity to have volunteered it. I spent considerable time going over with each family member about what that individual was to testify and what benefit it had in helping Mr. Champion. Obviously, it may have been the case that they may not have wanted to tell me about negative occurrences. Nonetheless it cannot be said that it was for a lack of being given an opportunity that the relatives did not relay to me any information they had.

20. None of the members of the family ever made me aware that Steven Champion had been in a car accident at age five. I believe that I asked sufficient questions and spent enough time with the family that if the family had truly felt that this was a major event that had a pronounced effect on Steven's life, they would have told me about it. In any event, they certainly had the opportunity to tell me if they had felt it was significant. However, even if they had told me that Mr. Champion had been involved in a car accident when he was at the age of five, but that it had only resulted in a broken collarbone and also a situation that would be characterized in non-medical lay terms as he had simply "hit his head" and that he received no further medical attention or hospitalization as a result, I would not have necessarily felt that it was something that should have

been introduced by me at the penalty phase, particularly since the examination of Dr. Pollack had failed to find any mental disorder. Moreover, as I will explain below, there would have been a downside about introducing such testimony that might have made me uncomfortable.

21. Even if I had been told prior to trying the penalty phase that there was proof available that Steven Champion's ancestors and forebearers had suffered slavery and discrimination at the hands of White people, it would not have been something I would have necessarily put on at the penalty phase. Again, for reasons stated below, in fact, introducing such testimony might have caused me some concern.

22. Had I been told, prior to trying this case, that Mr. Champion's father had been abused by his own father, but that Mr. Champion's father had also left the family prior to Steven's birth never to return, I would not had necessarily thought that it was something that I should have addressed to the penalty phase jury. Also, for reasons cited below, putting on such testimony might have been of great concern to me.

23. I spent enough with Mr. Champion's mother that had any abuse she suffered at the hands of Mr. Champion's natural father been something that she regarded as having a major impact on Steven's life, she had sufficient opportunity to volunteer it and my questioning of her was not so close-ended that she would

not have had the opportunity to volunteer it.

24. Even if I had known that Mr. Champion's natural father had abused his mother when Mr. Champion was in utero, given the fact that Dr. Pollack found no indication of any abnormality in Mr. Champion, without any other evidence showing that he suffered concrete damage thereby, I would not have necessarily sought to introduce this evidence at trial for the reason of concerns I will state below.

25. I cannot remember whether or not I asked Mr. Champion mother where was his natural father. However, had I known that she had not seen him, or at least that he had not lived with the family, since before Mr. Champion's birth, I would not have thought it necessary for me to investigate his whereabouts and his past history to determine, in 1981, any "genetic" cause for mental illness of Mr. Champion. This would have been particularly true since I suspected no mental illness in Mr. Champion in the first place.

26. Unless Mr. Champion's doctors, at the time of trial, had indicated to me that he suffered from some mental disease, defect, or illness, I would not have considered it relevant even if I knew that his father had suffered from mental illness all of his own life. Moreover, introducing such evidence might have caused me some concern for reasons I will state below.

27. The reason that I would have been very cautious

about introducing the evidence that above I mentioned I would have had concerns about introducing is as follows. As to the evidence concerning the history of abuse, both by and of Mr. Champion's natural father, his father's life long history of mental illness, and the fact that his mother may have been physically abused while Mr. Champion was in utero, I would have been concerned that if I put that evidence on at the penalty phase, the jury might have thought that I was offering to explain why Mr. Champion did the shooting by showing a pattern of violence and abuse in his family as an excuse thereof.

28. Secondly, given the fact that a handicapped minor boy was executed in this case, I had to be careful about making appeals for sympathy for Mr. Champion. This is because, often, appeals to sympathy can anger a jury where the victim is particularly sympathetic and the sympathy evidence I attempt to put on falls short of the matching the natural sympathy the jury would feel for the victim. In this case in particular, I could easily see that a sympathy appeal might backfire. As such, I would have been reluctant to put on the evidence that Mr. Champion's ancestors had suffered discrimination and slavery and that his mother was an abused wife for fear that it might create a backlash among the jurors in light of the fact that the crime the jury was sentencing him for involved the callous execution of a wheelchair-bound handicapped child.

29. In addition, I would have had concerns putting on evidence showing that while he was growing up, Mr. Champion witnessed or suffered the deaths of a number of his friends or relatives who had been unjustly and brutally murdered, given the fact that this case was about the execution of a handicapped boy. Additionally, I would have had a different trepidation that I might seem to be hinting to the jury that Mr. Champion's shooting of the victims were excusable or at least explainable when viewed in light of all the murders people close to him had suffered. Again, I did not want to claim that Mr. Champion was the shooter. This would have been a great concern to me.

30. Similarly, if someone had told me that one of Mr. Champion's older brothers was a drug addict and another a psychotic and both were menaces to the family when Steven was growing up, I might have been reluctant to introduce it because it could also be regarded by the jury as a plea by me for sympathy from them on this account or, even worst, a concession that Mr. Champion was the actual killer but should be excused because he had been terrorized and brutalized by his older brothers all of his life.

31. One of the things I <u>did</u> introduce evidence of at the penalty phase, and strived very hard to demonstrate, was that even at the Youth Authority, Steven Champion had a good behavior record. In introducing this evidence, I hoped to project the

image that Mr. Champion was a good kid who would not have knowingly been involved in the brutal murders in this case and so the jury should, at least, spare his life. I strongly feel that I would not have introduced, even had it been available, evidence that when Steven was released from the Youth Authority, he had changed and become a dark and brooding individual. This would have run absolutely contrary to what I was hoping to accomplish in the penalty phase. I certainly would not have put on evidence that prior to going into the youth authority, he was a friendly and likeable individual but when he came out he was no longer such. I cannot see any benefit whatsoever that would have had in saving Steven's life. Again, moreover, I would have had a trepidation that the jury would have thought that I was really tacitly admitting that Steven was the shooter but that I was attempting to excuse or mitigate his killings by blaming his stay in the Youth Authority for changing him from a likeable and friendly outgoing kid to a brooding and silent killer. I do not believe that a 1981 jury would have in the slightest degree excused the brutal murders in this case on that ground. In fact, by employing this tactic, it may have won a life verdict for co-defendant Ross but it certainly would have designated Mr. Champion as the shooter and sealed his fate as far as a sentence of death was concerned.

32. Regardless of what I thought Mr. Champion's

chances were of avoiding the death penalty, even if the jury had merely assumed that he had only participated in the entry into the home and not the killings, I felt then that there would be absolutely no chance that Mr. Champion would have avoided the death penalty if the jury settled on him as one, if not the only, killer.

33. Further, I have recently reviewed my declaration signed on November 10, 1997 and submitted for inclusion in Steven Allen Champion's Petition for Writ of Habeas Corpus. I have seen a xeroxed copy of the docket entries of the California Supreme Court in this case and am aware that this declaration was filed as an independent and separate document with this Court. I would like to add some clarification to that declaration.

34. While I felt, at the time I signed the 1997 declaration, that Petitioner Steven Allen Champion was innocent, as I did at trial and as I do now, upon re-reading that declaration recently it occurs to me that I should correct any inadvertent impression given that I was admitting to doing a less than adequate job in preparing for and presenting Mr. Champion's case at the guilt phase of the trial. To the contrary, I believe that I performed to the best of my abilities and that my representation was well within the reasonable range of competence of attorneys practicing at that time representing defendants in capital cases.

35. Rather, what I had attempted to convey in the 1997 declaration was that had I better material to work with in that trial I certainly would have put it on. But I would have introduced evidence only had it not conflicted with the obvious tactical mandates of a case wherein the best defense was total misidentification at the guilt phase and, at the penalty phase, that, if anything, my client was only a participant in the entry of the home and not the killing. However, as will become clear below, I did not mean to suggest that I did an inadequate job in not obtaining the information that I said I would have introduced had it been available.

36. Specifically, in paragraph 5 of the 1997 declaration, I mentioned that I was paid a sum for a retainer by Petitioner's mother and that "I also performed a limited investigation." Prior to assuming my representation of Mr. Champion, he had been represented by Mr. Homer Mason, who had not only done the initial investigation but had taken the case through the preliminary hearing and I was retained afterwards. Mr. Homer Mason retained the investigator and also sent Mr. Champion out for mental evaluation to be done by Dr. Seymour Pollack of the University of Southern California, a psychiatrist. Given the fact that Mr. Mason had done substantial investigation on the case, I characterized my additional investigation as "limited". I did not mean to imply that my investigation was

limited because Mr. Champion's mother had only paid me a certain sum of money.

37. Also in that same paragraph I state "I can offer no reasonable tactical basis upon which I decided to forego second counsel, except for the fact that in 1981 second counsel was not as universally used as come to be in later years." By that I meant that since, in 1981, second counsel was not commonly in existence, let alone asked for by attorneys or granted by the courts, neither I, nor many other attorneys in that day and age would have requested the assistance of a second counsel. In addition, the chief question in this case was identity and, in fact, even looking at the case in retrospect, with the exception of the fact that two heads may have been better than one, I still see no special reason where a second counsel would have been of materially more benefit or of necessity rather than my sole representation. Of course, however, I would have welcomed such additional help had I been afforded it.

38. I still feel, as I stated in paragraph 6 of the 1997 declaration, that I wanted to have a basic familiarity with the Taylor crimes. I got that basic familiarity by reading police reports and visiting the location. However, I believe that it would not have been a productive use of my time to devote as much, or an equal share of my, time to investigating the Taylor crime as well as the Hassan crimes given the fact that Mr.

Champion was not charged in the Taylor crime, nor was there any information in the initial reports linking him to that crime. I had enough to do to defend against the Hassan and I might have actually been doing a disservice to my client by spending too much time on another case.

39. Also, my actions with respect to the Taylor crime must be viewed in the light of the denial of my motion for severance. Much is made of the fact that Mr. Champion was identified at the trial by witnesses who were at the joint trial but for the purpose of testifying against co-defendant Ross concerning the Taylor crimes. I not only felt at the time that the denial of my severance motion was wrong then but also feel so today. It was to prevent the very type of collateral prejudice that occurred at the joint trial with respect to the Taylor crime that I made the motion for severance. My belief also was that once my motion for severance was denied, despite my bringing to the attention of both the trial and appellate court the possibility of this very type of prejudice, I would have had little success in convincing the trial judge to sustain my objections to the admission of the in-court identifications of Mr. Champion in what became a joint trial of Champion and Ross for the Hassan crime which unfortunately tended to implicate Mr. Champion in the Taylor crimes for which Mr. Ross was being solely tried.

40. When I said in paragraph 7 of my 1997 declaration "that I did not consider that knowledge even of those events may tend to implicate [the Petitioner] in the Hassan crimes." I was not referring to knowledge that would have made Mr. Champion legally responsible for the Taylor crimes or knowledge that could be used to prove his participation in the Taylor crime but simply hearsay knowledge of the crime that he might have heard on the street.

41. Also, when I also stated in the same paragraph that, "I had not planned to object in this procedure and in fact did not object when either Mary or Cora were asked whether Mr. Champion resembled one of the men who had entered their home ...," implicit in that statement was my belief that given the fact that my severance motion had been denied and that denial had been upheld in the appellate court, it was unlikely that my objection would serve any purpose but to emphasize the evidence to the jury or worse, to alert the jury to the fact that Mr. Champion had been hurt by that testimony and therefore that the identifications must be accurate. Given my belief that the judge would overrule any objection, I felt that calling more attention to this might do my client more harm than good. Further, I am aware that, as a matter of appellate law, certain evidence, if erroneously admitted, can be so devastatingly prejudicial when it comes out in court that even an objection and a timely admonition

will not cure it. Somewhere in the back of my mind, therefore, I may have believed that the issue might be still preserved on appeal if I were correct in my belief that the motion for severance should not have been denied. Although the appellate court had denied an extraordinary writ to preclude the joint trial, I felt that it still could reach a different decision on the merits of the motion in a subsequent appeal after a conviction.

42. Similarly, although I stated in paragraph 8 of my 1997 declaration, "I was unprepared to counter this eventuality when Petitioner was identified as bearing a resemblance to one of the perpetrators," from my practice and experience I know that sometimes very little can be done in a situation like this once a witness makes an in-court identification for the first time. Certainly some witnesses might back off of the identification upon cross-examination. Moreover, I also was aware that a witness can often be impeached with prior police reports and a prior failure to make an identification from a photographic line-up. However, it is also true that just as often in these situations that, to the contrary, witnesses tend to "dig in" and become even more positive as the cross-examination goes on. This being true, again, I probably felt, in the back of my mind, that the best policy was simply to leave the damage where it lay and not to aggravate the situation further.

43. Further, I also realize that people may seem different to other witnesses in photographs than in person and descriptions on police reports are often inaccurate due to the inability of some lay witnesses to accurately assess measurements. If the jurors also realized this to be true, they might not have put much emphasis on a cross-examination of the witnesses that attempted to impeach them with a prior failure to identify. Instead, at the trial, I urged the jury to focus on the fact that the only crime they had to consider with respect to Mr. Champion was the Hassan crimes, not the Taylor crimes. Had I undertaken to "take the witnesses on" with respect to their identifications of Mr. Champion for the Taylor crimes and the witnesses had survived that cross-examination with their credibility intact, Mr. Champion would have been left in an even worse position and any subsequent pleas on my part to the jury to simply focus on the Hassan crimes would have seemed hypocritical.

44. Similarly, in paragraph 9 of my 1997 declaration, I stated, "Unfortunately, I had no [sic] of the information, in hand or in mind which would cast doubt on this identification. Specifically, I did not perform any independent investigation into the customary areas of witness identification impeachment, such as personal bias, physical disabilities and infirmities-such as poor eyesight or lack of opportunity to observe-in order to determine whether or not Cora Taylor's identification could be

impeached." Again, Mr. Champion was not charged with commission of the Taylor crimes and, as I said above, I did not conduct a full scale intensive investigation of the Taylor crimes as I did of the Hassan crimes, nor do I think that I would have been doing my client a service to do so given the fact that he was not charged with that offense.

45. Moreover, even if, as stated in paragraph 9 of my 1997 declaration, the judge trying the Jerome Evan Mallets trial had indeed "commented very strongly that Ms. Taylor did not make a very good eyewitness," I would not, at that time, have thought, and do not think now, that it would have been the type of evidence that I could have had introduced at the trial of Steven Champion and got before his jury since it was only an opinion expressed outside of court by a non-percipient individual. Again, I firmly believed that the more I made of the Taylor issue, the worse my client would look and the more certain the jury would focus on the possibility of his guilt of the Taylor offenses when I was striving to direct attention away from, not toward, that crime.

46. In paragraph 10 of my 1997 declaration, when I stated that I believed that the worst that could come of the introduction of the Taylor crimes would be the "jurors' tendency to take the association between Steve and Craig Ross and draw an inference that because of that association, Mr. Champion may have

had some knowledge of the crime," I was not referring to the legal knowledge of a criminal accomplice in aiding or abetting a crime that would make Mr. Champion criminally liable but merely stating because they were friends, Mr. Champion might have gained some hearsay knowledge of the crime from Mr. Ross. However, since the prosecutor only had to prove that Mr. Champion was aware of the modus operandi of these robberies before deciding to participate in a future robbery, there was no legal way to keep evidence of such a connection out of the trial. Moreover, there was no way that I could "investigate away" any close relationship the prosecutor could prove Mr. Champion and Mr. Ross had, either through the gang to which both belonged or otherwise.

47. Also in the same paragraph, when I stated "So when Mr. Semow argued that the jury should `reason backwards' from the Taylor to the Hassan to find Petitioner guilty, I did not object," this is subject to misinterpretation. To the extent that Mr. Champion had even simply "heard" on the street that a prior robbery had been committed wherein there had been a killing and decided to go along himself with the perpetrators of the old crime on another such venture, there would have been little basis to object. Moreover, I also did not object because I felt that it would be counterproductive because I knew that such an objection during closing argument would only result in either the judge simply advising the jury that argument is not evidence or,

at best, admonishing the jury and thereby focusing more attention on the comment. As it was, the comment was brief and likely to have escaped the notice of the jury. Even if it did not escape notice, as I stated before, it may have also been in the back of my mind that if the comment were truly improper, it could be argued on appeal that an objection and an admonition would not have cured the harm from such a comment made during closing argument.

48. Although I stated in paragraph 11 of my 1997 declaration that "I had no tactical reason for failing to object to the identification, failing to move for a mistrial, or failing to request a continuance so as to prepare a defense to the charge," it is obvious that I provided the tactical reason in the next sentence when I said "I believed then, but not now, that it was better `to leave it alone' and that way perhaps it might be less harmful." Although I admit that I now probably would do it differently if I had it to do over again, I cannot say how much my hindsight knowledge of the fact that I lost the trial has to do with my present opinion. I recognize that it is easy to say that one would have tried a trial differently if one knows that the original trial was lost.

49. Moreover, in paragraph 12 of the 1997 declaration, I indicated that I did not interview the witnesses to the Taylor crime, nor was prepared to corroborate Mr. Champion's alibi for

December 27, 1980 through the morning of December 28th and did not know he had an alibi for that night. Again, I had hoped that my motion for severance would have prevented any connection of Mr. Champion to the Taylor crimes but since that had been denied, my strategy was to avoid the subject as much as possible and since I did not believe that the district attorney could actually prove Mr. Champion's involvement in the crime, I also did not feel that he could make out this proof based on his cross-examination of Mr. Champion alone. As it was, I still feel that the prosecution did not prove such guilt through his cross-examination of Mr. Champion.

50. In the last sentence of paragraph 12 of my 1997 declaration, I stated "Had I realized that four perpetrators, none of whom was Mr. Champion, were identified in the police report, I would have presented this information to the jury." Although this is true, as I stated before, I did not think it would have been a reasonable choice for me to have devoted half of my time to investigating the Taylor offense. Even so, in retrospect, although I now believe that I may have presented this information to the jury had I known it, I cannot guarantee that my mindset at the time, to keep the focus of the trial off the Taylor murders insofar as Mr. Champion was concerned, may not have prevented me from putting on this information before the jury even if had I considered putting it on.

51. A clarification I would like to make is to paragraph 13 of my 1997 declaration relates to the evidence of the graffiti and the testimony of Deputy Williams that his interpretation of the graffiti was that it stated "do-re-me." The first thing I pointed out in that paragraph is that "I overlooked the hearsay objection and tried to focus on whether it was Steve's graffiti." Although it is true that I did not urge a hearsay objection, the very fact that the trial court allowed a gang expert to testify indicates, of course, that it would have been doubtful that such an objection would have been sustained. The whole purpose of the expert was to testify as to the meaning of gang symbols and the like. Deputy Williams was an expert witness; not a percipient witness.

52. Also in the same paragraph, I indicate that after I reviewed the photographs I "missed" the interpretation of the photographs as stating "do-or-die" instead of "do-re-me." However, I have to assume that at the time I saw the photographs, although I was primarily interested in whether it could be proven that Mr. Champion wrote the graffiti, I indeed, must have at the same time myself interpreted that writing to state "do-re-me." I have no present memory but had I, at the time, interpreted the writing to state "do-or-die," it is doubtful that I would have ignored that fact, which was a major purpose for the testimony of Deputy Williams, to concentrate solely on whether the writing

belonged to Mr. Champion. Obviously, proving that the expert was wrong in his diagnosis of the writing would have rendered his testimony useless.

53. In the last sentence of the same paragraph, I state "Had I known that the graffiti did not say do-re-me, I would have objected to and impeach [sic] Deputy Williams' implication that because Mr. Champion's moniker appeared on the wall with these words and a dollar sign, he was implicated in the Taylor crimes." Of course, as I have stated in the last sentence, this is a totally abstract question because I really have no recollection of seeing "do-or-die" and must assume that, rightly or wrongly, at the time I looked at the graffiti contained on the photograph it appeared to me to read "do-re-me."

54. In paragraph 14 of my 1997 declaration, I stated "Finally, I had no tactical explanation for failing to prepare a defense to the introduction of the Taylor crimes at the penalty phase." The phrase, "I had no tactical explanation" is somewhat misleading in that although I have no specific memory when it happened, I am sure that at the time I tried the case I had reviewed and was familiar with the death penalty statute then in effect, the 1978 Briggs initiative. I have to assume that at the time, having read the relevant section, which is codified in Penal Code section 190.3, I would have known that incidents that could be offered in aggravation were felony convictions and

crimes of violence that the prosecutor could convince the penalty phase jury that the defendant committed and/or in which he participated. As I have stated before in this declaration and at least once in the prior declaration, I did not believe that the prosecutor could actually prove that Mr. Champion was involved in the Taylor offense, otherwise he would have been charged and tried for those offenses. Whether this belief was a tactical decision or a simple statement of fact, it remains an explanation as to why I did not prepare a full scale investigation of the Taylor crimes.

55. As stated in paragraph 15 of my 1997 declaration, I had no recollection of receiving the June 2, 1982 letter from Deputy District Attorney Semow informing me that he intended to offer evidence of the Jefferson murder at both the guilt and penalty phases of the trial. Not having a recollection is mainly due to the fact that twenty years have now elapsed since the time of the trial and I did not have, at the time I signed the 1997 declaration, access to my trial file which I believe had much earlier had been loaned to attorneys representing Craig Ross and never returned.

56. Similarly, although I stated in paragraph 16 of the 1997 declaration that I did not realize that evidence of the Jefferson homicide was to be offered at the guilt phase, this statement is also true only to the best of my present

recollection.

57. Also, in the same paragraph, I stated that I was aware that the prosecutor intended to offer evidence of the Jefferson crime as aggravation at the penalty phase. I then stated, "I admit that, at the very least, I should have done some investigation of the Jefferson homicide between the guilt and penalty phases of the trial. I did none then or at any time before or during any phase of this case. Obviously I did not do enough." However, again, Mr. Champion was not charged with the Jefferson homicide and I had more than enough to occupy me in trying the Bobby and Eric Hassan murder cases. I did not feel the prosecutor could prove Mr. Champion was involved in the Jefferson crime. Therefore, I do not feel that it would have been a reasonable consumption of my time to devote an inappropriate amount of time prior to the trial in work on a homicide case in which my client was not being charged and which I did not think he could prove, even in the face of a warning by the prosecutor that he intended to offer evidence of that other crime during the trial.

58. Upon re-reading my prior declaration filed in 1997, I now note that there are two paragraphs that are enumerated 17. In the first of the two paragraphs numbered 17, I stated that there was "no tactical reason for my failure to object to the admission of the Jefferson killing under the

specific grounds of violating Evidence Code section 352 or 1101, or as violative of Mr. Champion's right to due process of law. I believed at the time that my general objection to the introduction of evidence of the crimes was sufficiently specific. I am aware that subsequent California Supreme Court authority has changed the standard required for preserving a specific objection on appeal." However, at the guilt phase, I did believe then and believe now that evidence of the Jefferson killing was irrelevant to my client in particular because he was not being charged with it and it had no tendency in reason to prove his guilt in the entirely separate offenses in the Hassan case. Therefore, I believe my general objection as to relevancy was on point. Moreover, to the extent that the Jefferson crime was relevant to co-defendant Ross, again, this was the reason that I moved to sever the cases, to prevent any evidence against Ross spilling over against Mr. Champion. Furthermore, with respect to the penalty phase, the law in effect then as it is now, codified in Penal Code section 190.3, details the evidence permissible at the penalty phase of a capital trial, and does not provide a legal basis to object to the evidence at the penalty phase on the basis of either Evidence Code section 352, 1101 or generally, Due Process. In view of the fact that under Penal Code section 190.3, evidence of specific acts of prior violent criminal conduct are admissible if provable, there is no reason to think

that any objection would have excluded it. Although I have no personal memory now that this was my thinking at the time, I can say that at the time of the trial, I was certainly more focused on the statute and what evidence was admissible at the penalty phase than I am now twenty years later.

59. In the second paragraph enumerated 17 in the 1997 declaration, I indicated that "Had I known that Walter Winbush, Raymond's father would corroborate the fact that his son owned a ring like that entered into evidence and that his son had given it to Steven Champion, I would have presented that testimony at trial." As I said in paragraph 13 of the 1997 declaration, I did present the testimony of Mr. Champion's mother and his sister in support of the statement that he had gotten the jewelry from Raymond Winbush. Also, as the 1997 declaration states, I did interview Raymond Winbush's sister. I have no recollection of being told at the time that Walter Winbush, Raymond's father, was available at the time to corroborate the fact that his son owned a ring like the one entered into evidence and to corroborate the fact that his son had given the ring to Steven Champion. Nor do I recollect having any information that Walter Winbush possessed such knowledge. Moreover, I have no memory of having heard it from Raymond Winbush's sister who presumably was in a position to have informed me of this Therefore, it would have been difficult for me to think to ask various people about testifying to

information of which I had no knowledge existed in the first place.

60. Additionally, I have recalled other things about the ring that I apparently did not recall when I signed the 1997 declaration. I remember going to the courthouse to the exhibit room with Mr. Emmit Woodard for the purpose of examining the ring. I do not remember the date of that visit but it is my distinct memory that what I learned as a result of that visit caused me not to make an issue of the ring. I explained this in a telephone conversation with Respondent's counsel, Deputy Attorney General Robert S. Henry, who indicated he was going to investigate the matter further to see if he could document my recollections.

61. In paragraph 19 of the 1997 declaration, I stated "I failed to obtain telephone records and paycheck logs which I now realized could have provided documented evidence of the time when Steve was on the phone and may have been helpful in determining when he left to pick up his paycheck." Although this is true, I also realize that the phone records would not tell anything but that someone at Mr. Champion's home was talking to someone at the Winbush residence at the time Steven said he was talking to Sue Winbush. As such, it was not actual proof of Mr. Champion's whereabouts.

62. In that same paragraph, I stated that "Although

the employment agency did not keep records when a particular check was picked up, Steve['s] brother recalled that he and Steve and [sic] to sign a `list' which indicated the check was picked up. It is possible that that list contained the names of other people who picked up their check before or after Steve did, and who might recall with better certainty the time that they did so." Although this seems a good idea, the fact remains that at the time I asked the employment agency whether they kept records of the timing of when a particular check was picked up and they indicated that they did not. Had such a list been kept and had it been chronological, I would have expected my question to the agency to have yielded a response about the existence of a chronological list. Moreover, if at the time I tried the case the case, Mr. Champion's brother only indicated to me that he and Mr. Champion "had to sign a list" when he picked up his check, I most probably thought it would not have been of help because I would have presumed that such a list would have either been constructed alphabetically and/or by department or section. Moreover, I probably would have naturally assumed that such a list most likely would have been preprinted in order to show a person's name printed next to which a place for the employee's signature for the purpose of indicating that he or she picked up their check. Moreover, given the way that businesses and agencies in general are conducted, I now, in retrospect, consider

it highly doubtful that a company would have kept a list for picking up checks that would have been solely chronological. In order to have been helpful to my case in establishing witnesses who could pinpoint or at least narrow the time of Mr. Champion's arrival, it is obvious that the list would have had to have been only a lined blank sheet of paper somewhat like a sheet from a yellow legal pad which would have allowed for employees to sign their names in a vertical line, one after the other in the order they arrived to pick up their respective checks. However, such a sheet of paper most likely would not have had the employees' printed names next to which a place where they would affix their signature because, obviously, the future order of their arrival could not be predicted. For this reason, had I devoted much time to consideration of this issue at the time, I would have doubtless thought it impractical for such a list to be chronological since the purpose of keeping such a list would be to provide a reliable record that each employee had retrieved his or her check. Since it is not rare for any given person's signature to be indecipherable, having a sheet with blank lines with no preprinted names would provide no assurance that any signature on such an impromptu list actually belonged to any particular check recipient. Secondly, it would be impractical for a company or agency to ask another staff worker to be present in order type the employee's name on a blank sheet of paper next

to the signature as each arrived to receive his or her check. The third alternative, that there would be a blank sheet of paper wherein each employee would be required to both sign and print his name would seem to be unlikely since any business or agency, in most instances, could just as easily simply preprint a list containing the names of the employees who were expected to pick up paychecks. Therefore, if Mr. Champion's brother told me at the time of the trial that he and Steven had "had to sign a list," to pick up the paychecks, without devoting much thought to it, I probably would not have thought that this information would have been of benefit to me in establishing Mr. Champion's whereabouts.

63. In paragraph 21 of the 1997 declaration, I acknowledged that under the special circumstances statute, the prosecution had to prove that Mr. Champion had to either intend to kill or intend to assist in the killing in order to be liable of the special circumstances allegation. I indicate therein "Had I known that Mr. Champion was, at the time of the Hassan crime, suffering from significant mental impairment that if explained to the jury, would have precluded the jury from finding that petitioner, if present at the Hassan residence, possessed the intent to kill required for special circumstance liability, I would have presented this information to the jury." I would like to clarify that statement to the extent that I would have only

presented such evidence if I was convinced the evidence of mental impairment was so strong that there was no chance at all that the jury would have rejected it. In other words, it would have had to be so compelling as to have guaranteed me an acquittal on the special circumstances allegations. The reason is that in this particular trial, the central issue in the guilt phase was identity. I believed that the identification evidence submitted by the prosecutor was weak. However, given the horrific nature of the crime which included the execution style murder of a 14-year-old handicapped child who had been taken out of his wheelchair, placed on the bed and shot in the back of the head, my best judgement as an attorney indicated to me that had the jury found that anyone, including Mr. Champion, was an accomplice to the crime in any manner or to any degree, it would be difficult not only preventing a guilty verdict but saving his life at the subsequent penalty phase as well. Thus, the key from the standpoint of the guilt phase was for my client to be acquitted on the basis of misidentification, not to concede identity and attempt to demonstrate a lesser degree of criminal responsibility. I believe that since juries are not usually composed of lawyers but of ordinary people who find it difficult to compartmentalize legal arguments when weighing the facts, any presentation of both a claim of absolute innocence coupled with a legal argument of lesser criminal responsibility predicated on

the introduction mental impairment evidence would have certainly been taken as a virtual concession that Mr. Champion was among the participants to the Hassan crimes. Although legally speaking, a contention that a particular person lacks the mental state to be fully responsible for a crime is not a concession that he or she committed that crime, whether a jury could keep those concepts separate would have been of concern to me. Thus, I would not have wanted to seem to be making that concession unless the mental impairment evidence was so powerful that it would have provided a basis for an appeal had the jury rejected it. However, in all my years of practice and on the bench, I have rarely seen mental state evidence rise to such a level. Of course, had I had such powerful evidence I would have submitted it but, lacking such evidence, faced at the guilt phase with a choice of abandoning or effectively nullifying the defense of lack of identity on one hand or trying the case as I did on the other hand, I would have, without question, still chose to try the case as I did.

64. In paragraph 22 of the 1997 declaration, I indicated that I could offer no tactical reasons for failing to present evidence that a pair of dark gloves, which were seized from Petitioner's bedroom and sent to a crime lab for testing for blood and gunshot residue, tested negative for those substances. Nonetheless, obviously the fact that items were seized from a

suspect's home that did not inculpate him or her does not logically establish her or his innocence. Moreover, the lapse of twenty years may prevent me from remembering that at the time of the trial, I may have reasoned that by putting on evidence that gloves seized from my client's possession were found to be without traces of blood or gunshot residue, the jury might have gotten the impression that I was trying to communicate to them that although Mr. Champion was there at the time of the offense wearing those gloves, he did not do the shooting. Again, at the guilt phase, I was trying to convince the jury that Mr. Champion was not there at all, not that he was there but did not participate in the killing, although that eventually came to be the only strategy that I had left at the penalty phase. Moreover the absence of blood and gunshot residue would not have been of material benefit in any event because the district attorney had already conceded that he had no way of proving that every person who had entered the home had taken part in the killings. Thus, to endanger my case of mistaken identity to rebut a contention that the prosecutor had already conceded that he could never prove in the first place does not appear to me to be wise in retrospect.

65. In paragraph 26 of the 1997 declaration, I indicated that I was unaware that Mr. Champion suffered from extreme brain damage as indicated in the report by Dr. Nell

Riley. My statement in this regard of course, assumes the accuracy of Dr. Riley's declaration. I also indicate that "I did not directly ask any family member of Mr. Champion himself whether Petitioner had suffered any head injuries." I made this statement in reference to a prior statement that I had not been told that Mr. Champion had been abused in utero or that he had been involved in a car accident when he was five-years-old. Although I did not specifically ask those precise questions, I had approximately ten to fifteen meetings with Mr. Champion or members of his family and throughout those meetings it appeared to me that the family members were offering as much helpful information as they could. At no time did they volunteer such information. Moreover, as stated earlier in this declaration, I did on several occasion ask the family open-ended questions such as whether they could think of anything else that might aid in a particular area.

66. Also in same paragraph, I indicated that had I been aware that Mr. Champion had suffered severe significant injuries with the possibility of brain damage I would have requested funding for a neurological examination. Again, I had no indications from seeing or talking to Mr. Champion that led me to suspect mental illness, disease, retardation or brain damage. Moreover, I do feel that I gave the family given sufficient opportunity to apprise me of their suspicions as to any such

brain damage. Moreover, I believe that I asked sufficient questions that, had the accident or in utero event been a significant factor in Mr. Champion's history, a family member would have told me in the numerous occasions I had to speak to and interview them.

67. Also in paragraph 26 of the prior declaration, I stated that had findings consistent with Dr. Riley's been available at trial, I would have presented them at both the guilt and penalty phases of the trial. Again, to clarify, I would have only presented the evidence at the guilt phase if I was near to absolutely certain that the jury would have accepted it thereby precluding any possibility of a special circumstances finding at the guilt phase. Without such assurances, I probably would not have put such evidence on because it would have carried with it the high probability of risk that it would have conflicted with and detracted from my main defense of misidentification, which I believed was my best opportunity to prevail at the guilt phase. As to the penalty phase, again, I would have approached the introduction of such evidence with caution to the extent it may have carried with it the possibility that I seemed to be signaling to the jury that Mr. Champion had done the killing but should be excused because he suffered from a mental disease or defect.

68. In paragraph 27 of the 1997 declaration, I

indicate that I did not gather supporting documentation so as to present evidence of Petitioner's full social history. "Thus, I was unaware of and did not present evidence of Mr. Champion's severe brain damage, parental death, family mental illness and neurologic disease, divorce, poverty and life threatening danger at home and in the community, in mitigation of penalty." Again, as stated in the first part of this declaration, at the penalty phase, my overriding concern was not to give the jury the impression that Mr. Champion was the shooter. This was particularly the case because he was being tried jointly with co-defendant Craig Ross who remained silent during the penalty phase. Most of the factors that I enumerated in paragraph 27, however, I viewed to be more applicable to a case wherein guilt as the defendant's identity as the actual killer is removed as a viable issue by the guilt verdict and not a case such as this wherein the person is being tried in the penalty phase on the alternative theories that he may have done the killing but also that he may have solely been an accomplice to the home invasion and not the killing. Moreover, given the brutal murder of the handicapped child execution style, again, I would have avoided appeals to sympathies such as the death of a beloved step-parent, divorce, poverty and life threatening danger at home and in the community because they might have backfired by angering the jury as an appeal to have them feel sorry for my client in light of

what happened to the handicapped boy in this case or worse, might have seemed to suggest that Mr. Champion was the actual killer but should be excused on account of these misfortunate occurrences in his life.

Executed at Compton, California, this 6th day of May, 2002.

Ronald V. Skyers

The Honorable Ronald V. Skyers,
Judge of the Unified Los Angeles County
Municipal and Superior Courts

APPENDIX B

DECLARATION OF ROBERT S. HENRY

Robert S. Henry hereby declares under penalty of perjury that the following is true and correct:

1. That Deputy Attorney General Lisa Brault of the Appeals, Writs, and Trials Section of the Criminal Law Division of the Attorney General's Office in Los Angeles is assigned to the response to the petition for writ of habeas corpus in the above matter. That Deputy Attorney General Brault is now on a leave of absence from our office. That I have been temporarily assigned the preparation of the return to the Order to Show Cause requested by this Court on February 20, 2002 in the above matter.

2. That on or about April 28, 2002, I placed a telephone call to the Exhibits Room of the Clerk's Office of the Los Angeles County Superior Court, Criminal Division and asked if that office would still have exhibit logs showing who viewed exhibits in a case concluded in 1982. After some moments of waiting, I was informed by the court personnel that indeed they still did possess the "Exhibit Viewing Request" forms for Los Angeles Superior Court case number A 365075, *People v. Steve Champion* relating to the viewing of a ring. I was told telephonically that these logs showed that Attorney Ronald V. Skyers visited the Exhibit Room on two occasions, October 10, 1981, and December 29, 1981, and on those occasions viewed, *inter alia*, the ring marked Exhibit 1 in the Preliminary Hearings.

3. I asked the Deputy Clerk could she certify those copies for me and she informed me that they would be available for my pick-up.

4. On or about April 30, 2002, I went to the Exhibits Room of the Los Angeles County Superior Court, Criminal Courts Building, located in the basement at 210 West Temple. I there obtained from the court personnel there the two documents which are attached to this pleading as Exhibit C.

Executed at Los Angeles, California on May 20, 2002.

ROBERT S. HENRY
Deputy Attorney General

RSH:rm
LA1997XH0026

APPENDIX C

EXHIBIT VIEWING REQUEST

Office Use Only
View No. 5882

The undersigned hereby requests permission to view the exhibits hereinafter described in the case entitled below.

CASE NO. A.365075	DATE 12/29/81
DEFENDANT(S) S. CHAMPION	
NAME (Print) RONALD V. SKYERS	PHONE 487-6410
ADDRESS 3701 Wilshire Bl. LA	
SIGNATURE Ronald V. Skyers BAR# 60018 / CDL #J045895	(Office Use) I.D.
NAME (Print)	PHONE
ADDRESS	
SIGNATURE	(Office Use) I.D.
NAME (Print)	PHONE
ADDRESS	
SIGNATURE	(Office Use) I.D.

The exhibits listed below were examined in my presence between:

10:24 AM and 10:30 AM Custodian's Signature

10:30 AM and 10:37 AM Custodian's Signature

All exhibits viewed in the above entitled action were checked and returned to the Exhibit Room for refiling at 10:40 AM.

Custodian's Signature

No.	Describe Exhibit Viewed	Check if copy to viewer	No.	Describe Exhibit Viewed	Check if copy to viewer
Ross Prelim 1,2	Photos				
Champion 2	Photo				
1	Ring				
Motion 2,3	mug folder				
4	line-up photo				
4	mug folder				

NOTE: Removal of or altering any exhibit in the custody of the County Clerk without a court order is a felony. (Government Code Sections 620-6201)

C062 (Rev. 4-77) 8-77

INSTRUCTIONS

1. Check guide for **HOT/SPECIAL HANDLING** case or court orders.
2. Viewer(s) to fill in all appropriate information.
3. Viewer(s) to be properly identified.
4. **VIEW LOG** to be completed.
5. Exhibits to be inventoried prior to viewing.
6. Custodian to sign as observer.
7. Exhibits to be described.
8. Custodian to allow only three(3) exhibits to be viewed simultaneously.
9. Check column if copy made for viewer.
10. Custodian to audit exhibits at end of viewing.
11. Place completed viewing form in guide envelope and give copy to supervising custodian.
12. Return exhibits to their proper place of storage.

THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL, TRUE, AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.

ATTEST APR 29 2002

JAMES H. DEANSLEY

Executive Officer/Clerk of the Superior Court of California, County of Los Angeles.

By _____, Deputy

REVIEW DETAILED INSTRUCTION

IN EXHIBIT MANUAL

EXHIBIT VIEWING REQUEST

Office Use Only
View No. 5802

The undersigned hereby requests permission to view the exhibits hereinafter described in the case entitled below.

CASE NO. A 365 075	DATE 10/20/81
DEFENDANT(S) CHAMPION, STEVE	

NAME (Print) RONALD V. SKYBERS	PHONE 487-6010
ADDRESS 3701 Wilshire Blvd LA 90010	
SIGNATURE Ronald V. Skybers	(Office Use) I.D. Bar# J0950995

NAME (Print)	PHONE
ADDRESS	
SIGNATURE	(Office Use) I.D.

NAME (Print)	PHONE
ADDRESS	
SIGNATURE	(Office Use) I.D.

The exhibits listed below were examined in my presence between:

220 P.M and 2:57 P.M R. E. Stephens
Custodian's Signature

____ M and ____ M ____
Custodian's Signature

All exhibits viewed in the above entitled action were checked and returned to the Exhibit Room for refiling at 3:00 P.M.

R. E. Stephens
Custodian's Signature

No.	Describe Exhibit Viewed	Check if copy to viewer
Champion 1	Ring & Gold Chain	
2	Photo	
3	Photo	
4	Photo	
Champion's motion exhibits		
1	9 page report	
2	Line up Card w/6 photo	
4	Photo	
5	Copy of Search Warrant	
6	Property Report	
A	Photo Line Up Card w/6 photos	

No.	Describe Exhibit Viewed	Check if copy to viewer
	Ross' Prelim Exhibits	
1	Photo	
2	Photo	
3	Photo	
4	Photo	

NOTE: Removal of or altering any exhibit in the custody of the County Clerk without a court order is a felony. (Government Code Sections 6200-6201)

C062 (Rev. 4-77) 8-77

INSTRUCTIONS

1. Check guide for **HOT/SPECIAL HANDLING** case or court orders.

2. Viewer(s) to fill in all appropriate information.

3. Viewer(s) to be properly identified.

4. **VIEW LOG** to be completed.

5. Exhibits to be inventoried prior to viewing.

6. Custodian to sign as observer.

7. Exhibits to be described.

8. Custodian to allow only three(3) exhibits to be viewed simultaneously.

9. Check column if copy made for viewer.

10. Custodian to audit exhibits at end of viewing.

11. Place completed viewing form in guide envelope and give copy to supervising custodian.

12. Return exhibits to their proper place of storage.

REVIEW DETAILED INSTRUCTION

IN EXHIBIT MANUAL

DECLARATION OF SERVICE

Case Name: ***In re Steve Allen Champion***
Case No.: **S065575; Our File No. LA1997XH0026**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the Bar of this Court at which member's direction this service is made. I am 18 years of age or older and not a party to the within entitled cause; 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, correspondent placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On May 22, 2002, I placed the attached

RETURN TO ORDER TO SHOW CAUSE AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RETURN; ALTERNATIVE REQUEST FOR DISCHARGE OF ORDER TO SHOW CAUSE OR BIFURCATION OF EVIDENTIARY HEARING

in the internal mail collection system at the Office of the Attorney General, 300 S. Spring Street, Los Angeles, California, 90013, for deposit in the United States Postal Service that same day in the ordinary course of business, in a sealed envelope, postage thereon fully prepaid, addressed as follows:

KAREN KELLY
ATTORNEY AT LAW
P.O. BOX 520
CERES, CA 95307

A copy of the **RETURN TO ORDER TO SHOW CAUSE AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RETURN; ALTERNATIVE REQUEST FOR DISCHARGE OF ORDER TO SHOW OR BIFURCATION OF EVIDENTIARY HEARING** was hand delivered to the Clerk of the Court of Appeal, Second Appellate District, Division One, 300 South Spring Street, Los Angeles, CA 90013.

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on May 22, 2002.

Rita Murphy

Signature