IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE STEVE ALLEN CHAMPION PETITIONER, ON HABEAS CORPUS.	)	No. S065575 (Related Appeal: *People* v. *Champion*, Crim. No. 22955.)

TRAVERSE

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Steve Allen Champion
By Appointment of the
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TRAVERSE

In this verified Traverse, petitioner Steve Allen Champion, responds to respondent's Return to the Order to Show Cause which was filed pursuant to this Court's order of February 20, 2002. Petitioner admits, denies and specifically alleges as follows:

I.

As to Paragraph I of the Return, petitioner denies that petitioner Steve Allen Champion is properly in the custody of the Warden of the California State Prison at San Quentin. He admits that he 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. (Return at p. 1.) Petitioner denies that the confinement and the sentence are lawful and pursuant to a valid judgment and conviction.

II.

In paragraph II of the Return, respondent denies the allegation in paragraph IX.C.1 of the Petition that trial counsel failed to provide effective assistance of counsel, and further denies "that counsel failed to recognize, investigate, or present evidence of any material that would have been of material benefit in obtaining a verdict of life." (Return at p. 2.) Petitioner disagrees, and realleges that counsel provided ineffective assistance in failing to recognize, investigate, and present an abundance of reasonably available evidence that would have been of material benefit in obtaining a life sentence, including, inter alia, the compelling social history and mental and emotional impairment evidence set forth in petitioner's claims IX.C and VII.H and the exhibits thereto, and evidence to disprove petitioner's involvement in other crime aggravators (the Taylor and Jefferson homicides) proffered by the prosecutor in support of a sentence of death, as set forth in petitioner's claims VI and VIII and the exhibits supporting those claims.

In paragraph II of the Return, in response to allegations in paragraph IX.C.1 of the Petition, respondent denies that Skyers' petitioner suffered, at the time of his trial, from any brain damage and that the Petition itself contains any shred of support for such a conclusion, that petitioner had any mental impairments, and 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." (Return at p. 1-2.) Petitioner disagrees based upon the ample support provided by the declarations of neuropsychologist, Dr. Nell Riley and psychiatrist, Dr. Roderick W. Pettis, and by a social history replete with both

symptoms and likely causes of brain damage and mental and emotional impairments that petitioner suffers from longstanding brain damage and emotional and mental impairments, all of which could have and should have been offered to his jury in mitigation of penalty. (See Petition claims IX.C and VII.H and the exhibits thereto.)

With the exception noted in the preceding paragraph, respondent does not deny and thereby admits the truth of the facts contained in paragraph IX.C.1. a.-e [1] and paragraphs IX.C.3 through IX.C.132.d.[2] of the petition.

Thus, except for the existence of brain damage and mental impairments and a disagreement as to whether petitioner's emotional impairments would be mitigating, respondent has admitted the accuracy of the entire factual history set forth in the petition and supporting exhibits.

III.

In paragraphs III and IV of the Return, respondent denies that trial counsel acted in any unreasonable manner in deciding which evidence to submit in mitigation, that trial counsel had no tactical reason for trying the case in the manner it was tried and further denies that petitioner's death sentence was due to the manner in which the case was tried by trial counsel. (Return at p. 2.) Petitioner realleges that trial counsel failed to recognize, investigate, and present evidence that would have been of material benefit in

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[1] Petition at pp. 155-156.

[2] Petition at pp. 156-217.

obtaining a verdict of life imprisonment, that the petition contains legally sufficient support for such a conclusion that a reasonably competent attorney would have offered all of the information contained in the Petition and Informal Reply to a jury in mitigation, and that it is reasonably probably that but for trial counsel's unreasonable failure to recognize, investigate and present such evidence petitioner would not have been sentenced to death.

IV.

Petitioner realleges that trial counsel Ronald V. Skyers acted in an unreasonable and ineffective manner in deciding which evidence to submit in mitigation of the case and specifically realleges that trial counsel had not then and can not now offer any reasonable tactical basis for failing to adequately investigate, prepare and present a case for life as set forth in Claim IX.C of the Petition as outlined in paragraphs IX.C 1 and IX.C, 132a. through 132d. incorporated in this Traverse.

Further, trial counsel, because of his failure to conduct an adequate investigation, was simply unaware of much of the available evidence set forth in petitioner's claim IX.C, claim VII.H -- petitioner's brain damage and cognitive deficits -- and claims VI and VIII -- other crime penalty phase aggravators -- and in fact made no decision, tactical or otherwise, to not present it.

V.

Petitioner realleges that there is a reasonable possibility that trial counsel's failure to present the jury with sufficient information about petitioner's life and sufficient

explanation of the effects of petitioner's experiences precluded a sentence of life without the possibility of parole and that but for said failure, petitioner would not have been sentenced to death.

VI.

As to Paragraph V of the return, petitioner denies respondent's specific allegation "that at the time 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." (Return at p. 2.) Petitioner further denies the allegation 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. (Return at p. 2.)

As counsel in a capital case, Mr. Skyers clearly had an "obligation to conduct a thorough investigation of the defendant's background" (*Williams v. Taylor* (2000) 529 U.S. 362, 396, 120 S.Ct. 1495, 1515, citing 1 ABA Standards for Criminal Justice 4-4.1, commentary, p.4-55 (2d ed. 1980)), and yet he limited his efforts to an approach that he knew, or reasonably should have known, would likely leave potentially important information undiscovered. Further, he was certainly on notice that the prosecution intended to proffer the Taylor and Jefferson homicides as penalty phase factors in aggravation, and yet conducted no investigation at all concerning available evidence to show that his client was not involved in these offenses.

Insofar as respondent, by asserting that trial counsel performed all duties within the reasonable range of competence of attorneys practicing in the field *in that day and age,* implies that a lesser standard of care governed the performance of counsel in capital cases at the time of petitioner's trial, petitioner denies that such a lesser standard existed, and further denies that counsel's deficient penalty phase investigation could be deemed adequate under any applicable standard.

VII.

Petitioner incorporates by reference all of the allegations in his Petition and his Informal Reply, the exhibits filed in support of those pleadings, the exhibits filed in support of this Traverse and all factual allegations and argument in the attached Memorandum of Points and Authorities.

VIII.

Respondent relies upon, and attaches as Appendix A to its Return, another declaration by petitioner's trial counsel, Ronald V. Skyers.[3] (Appendix A at pp. 1-43.)[4] The Return declaration contains a number of factual allegations that petitioner denies and/or counters as follows. Some will also be further addressed in the attached memorandum of points and authorities.

As to paragraph 4 of Mr. Skyers' Return declaration, petitioner denies that "Homer

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[3] Mr. Skyers previously signed a declaration submitted as Exhibit 42 to the petition.

[4] Appendix A at pp. 1-43 is referred to as "AA."

Mason had taken the case through preliminary examination." (AA at p. 2.)

As to paragraph 5 of Mr. Skyers' Return declaration, petitioner denies the assertions that suggest that Homer Mason sent petitioner to Dr. Pollack with "the mandate that Dr. Pollock conduct a full evaluation of [petitioner] for the purposes of trial." (AA at p. 3.) The referral questions (which initially appeared in Mr. Mason's request for appointment of an expert and reappear in Dr. Pollack's letter to Mr. Skyers CT: 397-399, 578-580; Informal Reply Exhibit 5), all focused on the availability of a mental defense to the charges i.e., insanity, diminished capacity, unconsciousness, and made no mention of possible penalty phase mitigation. Further, neither Mr. Mason nor Mr. Skyers provided Dr. Pollack with any of the available social history facts or documents that would have alerted Dr. Pollack to the possible need for further inquiry and testing had the issue of mitigation been proffered. Mr. Skyers advised Dr. Pollock, that he (Skyers) believed that the matter "was 'very likely' a case of mistaken identification" and that "he had requested the psychiatric evaluation 'to cover all bases.'" (Informal Reply Exhibit 5 p. 3.) In short, no one ever requested, or provided the basis for a full mental health evaluation for purposes of trial.

As to paragraphs 6-9, 19-20, 23 and 65-66 of the Return declaration, petitioner denies that Mr. Skyers had "extensive" conversations with petitioner's family, especially Mr. Champion's mom, and that he spoke on several occasions with "his two brothers and two sisters." Petitioner denies that Mr. Skyers met on "more than 15 occasions" discussed the case with relatives and/or that Mr. Skyers had "10 to 15 meetings with Mr.

Champion or his family." (AA at p. 3-5, 9-11, 39-40.)

Lewis B. Champion II, Steve's father and Azell Gathright, Steve's mother had five children together, Lewis III, Reginald, Linda, Rita and Steve. (Penalty Phase Exhibit 5.) Azell had three other children, Terri, Traci, and Gerald. (Penalty Phase Exhibit 13.) Thus, Steve had 2 parents, 3 brothers and 4 sisters. None of Steve's siblings speak to "extensive" conversations with Mr. Skyers. As discussed below, in all but a few instances, the meetings were chance meetings which took place in a parking lot, or elevator, or while court was in session. Moreover, as admitted by Mr. Skyers, the focus of any conversation was for the establishment of an alibi for Steve. Only Steve's mother and Reggie were interviewed by an investigator. (Traverse Exhibit 1.) Steve's father, aunts, uncles, cousins, neighbors and teachers were available, willing to talk and never contacted. Without exception, no family member was asked for information regarding family history, Steve's childhood, family, school, or community in which he lived.

Mr. Skyers admits that he never probed for negative facets of Steve's life and development, he never explained to the family members he spoke to why this type of information might be important or helpful, and never sought out sources of information such as other witness [5] and documentary evidence – despite his admitted awareness that family members might be hesitant to reveal negative and/or embarrassing history and

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[5] Various additional relatives, teachers, and neighbors were easily locatable and willing to talk to Mr. Skyers about Steve's parents, siblings, community and childhood. (See for example Petition Penalty Phase Exhibits 2, 3, 4, 12, 14, 17, 19, 22, 23, and 24.)

were likely to paint an overly rosy picture of his client's life. This was not a reasonable approach to investigating his client's background.

In paragraph 9 of the Return declaration, Mr. Skyers asserts that in the early 80's most lawyers and most 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, and that it wouldn't be helpful to present evidence not reinforcing that theme. (AA at p. 5.) Petitioner denies this assertion insofar as it suggests that there was some accepted view that it was unwise to present a mitigating history of abuse, deprivation, and mental impairment such as set forth in claim IX.C . Further, any such view would not have provided a reason to not conduct a thorough investigation to find out what the client's history was, and moreover, in this case, that investigation would have revealed an abundance of mitigating evidence in no way inconsistent with counsel's very limited efforts to present petitioner as a good person.

In paragraphs 65 and 66 of the Return declaration, Mr. Skyers states that although he never knew of the in utero abuse that petitioner had suffered or of the automobile accident petitioner was in as a child, and never asked specific questions about such abuse or about head trauma, he had asked sufficient open ended questions "that had an accident or in utero event been a significant factor in [petitioner's] history, a family member would have told me." (AA at pp. 39-40.) Petitioner denies this assertion as it errs in assuming that family members would necessarily recognize significant factors in a defendant's history, and would, for example, connect in utero abuse with possible

neurological impairment. Also, the assertion ignores what Skyers himself acknowledges earlier in his declaration, i.e., that family members may be hesitant to reveal negative or embarrassing facets of a defendant's history.

Petitioner denies Mr. Skyers assertion in paragraph 19 that he spent "considerable time going over with each family member about what the individual was to testify." (AA at p. 10.) Only one family member testified -- petitioner's mother. Moreover, as Mr. Skyers never told Steve's mother what kind of information was useful for the penalty phase of the trial and never asked any questions about Steve's family history or the kind of life Steve had she could not have been "prepared" for her penalty phase testimony.

In paragraphs 10-16, 18, 19-25, 27-30, and 68 of the Return declaration, Mr. Skyers states that he would have been reluctant to present the evidence in mitigation set forth in claim IX.C for fear that such evidence would have been interpreted by the jury as a concession that petitioner was one of the shooters or would have angered the jury as some untoward effort to garner sympathy for petitioner. In paragraph 15 of the Return declaration, Mr. Skyers asserts that any effort to present evidence that petitioner had suffered abuse or suffered from a mental defect or disease "would have most likely been regarded by the jury as a concession that my client had done the killings." Petitioner denies that presenting the evidence in mitigation set forth in claim IX.C, or any portions of that evidence, would have been interpreted by the jury as a concession that petitioner was one of the shooters, would have angered the jury as some untoward effort to garner sympathy for petitioner, or would have had any effect other than to dramatically enhance

petitioner's chances for a sentence less than death. Moreover, petitioner asserts that neither of the fears posited in Mr. Skyers' declaration would have provided a reasonable basis for not introducing the evidence in mitigation set forth in claim IX.C.

Petitioner denies the assertions of paragraph 17 of the Return declaration that petitioner's mother testified that petitioner "was a good person who would not be involved in such a killing." (AA at p. 9.) Steve's mother's entire testimony, which consists of roughly one transcribed page, was to the effect that petitioner was planning to register for a tutoring program.

Petitioner denies Mr. Skyers' assertion in paragraph 31 of the Return declaration that Skyers "did introduce evidence . . . and strived very hard to demonstrate . . . that even at the Youth Authority, Steve Champion had a good behavior record." (AA at pp. 14-15.) This is not so. Mr. Skyers called only a CYA parole officer to testify that he had no problems supervising Steve during his few months of parole and also that Steve had scheduled to sign up for a tutoring program. There was no evidence presented regarding petitioner's behavior at CYA.

Petitioner also denies any assertion in paragraph 31 the Return declaration that the Youth Authority changed petitioner into a "dark and brooding" individual or that petitioner has presented evidence to that effect. (AA at p. 14-15.) According to family declarations, when released from CYA, Steve was "serious," "quiet" "defensive," "nervous," "depressed," "withdrawn," "jumpy," "paranoid," "worried," and "anxious." (Petition Penalty Phase Exhibits 7, 15, 16, 21.) The words dark and brooding were never

used and never implied.

As to paragraph 36 of the Return declaration, petitioner denies that Homer Mason had done a substantial investigation. (AA at p. 17.)

As to paragraph 51 of the Return declaration, petitioner denies the assertion that the fact that an expert was allowed to testify concerning the graffiti makes it unlikely that a hearsay objection would have been sustained. (AA at p. 27.)

As to paragraph 58, of the Return Declaration, petitioner denies that the Jefferson killing was irrelevant to proving petitioner's guilt in the Hassan killings. The Jefferson killing was relevant to show mens rea needed for special circumstance findings. Moreover, petitioner denies that there was no basis to object to admission of evidence of the Jefferson killing.

Here, no conspiracy was charged and there was no evidence tending to implicate either petitioner or Mr. Ross in the Jefferson murder. Thus, to justify the admission of evidence of the Jefferson killing, the prosecutor assumed the existence of the conspiracy in order to establish the Jefferson killing's relevance. The prosecutor then used the evidence of the Jefferson killing to prove the very conspiracy it assumed was in existence. Thus, evidence of the Jefferson killing was essential to the prosecution's case as there was no evidence of a conspiracy without it and no way to even arguably attribute the requisite homicidal intent to all four of the perpetrators of the Hassan burglary/robbery unless a related killing preceded the killing of Bobby and Eric Hassan. Trial counsel failed to inform the trial court of the dissimilarities between the Jefferson and Hassan

cases and to argue to the court that the prosecution had no evidence which tended to show participation by petitioner in the Jefferson murder. Mr. Skyers admits that he did not investigate the Jefferson crime at all. If he had, he would have discovered numerous grounds for objection to the admission of its evidence.

Petitioner denies Mr. Skyers' assertions in paragraphs 63 and 67 of the Return declaration insofar as these assertions suggest that the jury would have had trouble keeping straight the primary defense of misidentification, and this very narrow category of mental impairment defense, suggesting only that if petitioner had been one of the intruders, he would have had trouble picking up cues that might have made clear to an unimpaired person that one or more of the intruders intended to kill. Petitioner asserts that there is no conflict between these defenses.

IX.

WHEREFORE, petitioner Steve Allen Champion respectfully prays that this Court:

1. Take judicial notice of the certified record on appeal and all documents and pleadings on file in the cases of *People v. Champion*, Case No. S004555, and *People v. Craig Ross;*

2. Issue a writ of habeas corpus to vacate the sentence of death imposed upon Mr. Champion, or alternatively, refer the matter for an evidentiary hearing;

3. Authorize Mr. Champion to conduct discovery with respect to the claims pleaded in his Petition, Informal Reply and herein;

4. Permit Mr. Champion a reasonable opportunity to fully develop the facts and law relevant to the claims raised in his Petition, Informal Reply and herein, and to amend the petition to include claims which become apparent from further investigation or from allegations made in the Informal Response or the Return to the Petition;

5. Deny respondent's request that any evidentiary hearing ordered be bifurcated;

6. Upon final review of the cause, order that Mr. Champion's death sentence be set aside; and

8. Provide Mr. Champion such other and further relief as may be appropriate in the interests of justice.

DATED: 11/12, 2002

Respectfully submitted,

Karen Kelly
Attorney for Petitioner Steve Allen Champion

VERIFICATION

I, KAREN KELLY, declare under penalty of perjury:

I am an attorney admitted to practice law in the State of California. I am the attorney representing Mr. Champion, who is confined and restrained of his liberty at San Quentin State Prison, San Quentin, California.

I am authorized to file this Verification on Mr. Champion's behalf. I am making this verification because Mr. Champion is incarcerated in Marin County, and because these matters are more within my knowledge than his.

I have read the foregoing Verification and know its contents to be true.

Signed 11/12, 2002, at Modesto, California.

KAREN KELLY 118105

MEMORANDUM OF POINTS AND AUTHORITIES

I.

SUMMARY OF RESPONDENT'S POSITION AND PETITIONER'S RESPONSE THERETO

Respondent does not deny the truth of any factual allegation which supports Mr. Champion's Petition for Writ of Habeas Corpus and/or Informal Reply other than its unsupported assertions that petitioner did not suffer from any brain damage or mental defect at the time of trial that petitioner has not presented any evidence of brain damage. Respondent does not deny that the facts which support Mr. Champion's Petition for Writ of Habeas Corpus and/or Informal Reply were readily available for discovery by Mr. Skyers. Rather, respondent contends Mr. Skyers performed the investigation required of a reasonably competent attorney and even had he discovered the evidence in mitigation presented by petitioner, it conflicted with trial strategies and hence, he would not have presented it to a jury.

Stated another way, even though every fact in support of every claim, other than brain damage or mental defect at the time of trial, is true, and by the most rudimentary of trial investigation was readily discoverable, respondent asserts that no competent attorney would have undertaken any investigation other than the investigation undertaken by Mr. Skyers to uncover those facts and moreover given the tactical concerns identified by Mr. Skyers no competent attorney would have presented those facts to a jury.

For the multitude of reasons discussed below, this position is nonsense. Mr.

Skyers had the constitutional duty to investigate and present evidence in mitigation at a penalty phase. The standard of competent representation, which Mr. Skyers failed to satisfy, is, as it was in 1981, federally mandated. California case law is, as it was in 1981, in conformity. Reasonable counsel was obliged to do far more than Mr. Skyers did, and there would have been no reasonable tactical basis for not presenting the evidence set forth in the Petition.

As Mr. Skyers had not undertaken a constitutionally adequate investigation, he was in no position to make a rational and informed decision on strategy and tactics. Because Mr. Skyers was unaware of the existence of the mitigating evidence set forth in claim IX.C., he made no decision, tactical or otherwise, not to present it.

Any decision by Mr. Skyers not to perform penalty phase investigation can not be justified on the basis of any investigation performed by prior counsel Homer Mason. The fact that petitioner was once represented by other counsel who undertook some investigative tasks and requested some funds for experts did not relieve Mr. Skyers of his obligation to investigate the penalty phase of the case, present evidence to an expert for evaluation, direct all necessary expert testing, and present mitigating evidence to the jury. Moreover, Mr. Mason did not direct "substantial investigation" of the case He requested only a very limited initial guilt phase investigation be performed. Further it was while Mr. Skyers represented petitioner that the investigator's results turned in.

Additionally, Mr. Mason did not "immediately [or at any other time cause] Petitioner to be evaluated by Dr. Seymour Pollock...." (Return at p. 5.) As discussed

below, the evaluation of Mr. Champion by Dr. Pollock was requested by Mr. Skyers and done at the Mr. Skyers' direction and pursuant to Mr. Skyers' instructions. Any decision by Mr. Skyers to rely on the report of Dr. Seymour Pollock in deciding no further mental impairment investigation or evaluation was required for the purpose presenting of evidence in mitigation was unreasonable. Dr. Pollock was not asked to and did not evaluate petitioner for the purpose of offering mitigating evidence at the penalty phase of the trial.

Given the jury's findings of special circumstances, the prosecutor's admission that there was no proof of who the gunman was, and the nature of the evidence set forth in claim IX.C, petitioner disputes any claim that presentation of mental defense evidence would have conflicted with trial counsel's professed penalty phase strategy.

Likewise, Mr. Skyers' apparent decision not to probe into any negative aspects of his client's social history and personal development, despite Skyers' awareness that family members might be reluctant to reveal such matters to him was unreasonable. Mr. Skyers' declaration establishes that he did not prod family members with any specific inquiries about such matters, that he did not explain how such matters might be relevant or helpful in a penalty phase trial, that he did not contact or ask for the names of relatives outside the immediate family, and that he did not attempt to gather any school, medical, or other life history records that might have given him insight into his client's life. According to his declaration, Mr. Skyers simply accepted what the family chose to offer up in response to open ended questions. Given that he was himself aware that family

members were likely to be reluctant to reveal negative or embarrassing facets of his client's life, and that he was aware, or should have been aware, that family members may not even understand what may be helpful at the penalty phase of a capital trial, this was clearly an unreasonable and constitutionally inadequate approach to penalty phase investigation. It reflected adoption of an investigative approach likely – indeed, almost guaranteed – to leave important facets of his client's life undiscovered. In short, the declaration submitted by the Mr. Skyers itself establishes deficient performance within the meaning of prong I of *Strickland*.[6] As the U. S. Supreme Court put it in *Williams v. Taylor* (2000) 529 U.S. 362,396, 120 S.Ct. 1495, 1515, "trial counsel did not fulfill [his] obligation to conduct a thorough investigation of the defendant's background. See 1 ABA Standards for Criminal Justice 4-4.1, commentary, p.4-55 (2d ed. 1980)."

As the Return, and more particularly the declaration attached to the Return, provide facts confirming that trial counsel did not conduct a constitutionally adequate penalty phase investigation on behalf of his client, whom he believed and continues to believe, is factually innocent, respondent's suggestion that any evidentiary hearing be limited initially to prong I of *Strickland* is thus singularly inappropriate. Petitioner asserts that any hearing required on the issue of prejudice may be <u>less</u> burdensome than may ordinarily be the case, since respondent, with one exception, has admitted the accuracy of the entire factual history set forth in the petition and supporting exhibits – the very

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[6] *Strickland v. Washington* (1984) 466 U.S. 686.

history which led this Court to find a prima facie case for relief and issue an OSC.

The only factual denial by respondent is its denial that petitioner suffers from any brain damage or mental defect, but even on this issue respondent offers little reason to question Dr. Riley's findings of long standing brain damage and related cognitive deficits. Dr. Riley's findings of brain damage and cognitive deficits are based on an extensive battery of well accepted and reliable neuropsychological tests. (Exhibit 3: Declaration of Dr. Nell Riley.) Her conclusions concerning the possible etiology and long standing nature of petitioner's impairments are based on the social history information which respondent has admitted to be true. Apparently respondent is unwilling to accept the validity of the generally well accepted neuropsychological tests that Dr. Riley administered. Respondent, however, has suggested no reason why this Court should not accept the validity of such testing. In short, this Court would be fully warranted in granting relief and setting aside petitioner's sentence of death on the basis of the record as it stands. This is so because the failure of the return to address the specific factual allegations raised in the pleadings and encompassed within the rubric of the Order to Show Cause constitute an admission of those uncontested facts. "When an order to show cause does issue, **it is limited to the claims raised in the petition and the factual bases for those claims alleged in the petition. It directs the respondent to address only those issues.**" (*People v. Duvall* (1995) 9 Cal.4th 464, 475, quoting *In re Clark* (1993) 5 Cal.4th 750, 781, fn. 16; emphasis added.) Failure to factually address petitioner's

claims constitutes an admission of their truth. "Facts set forth in the return that are not disputed in the traverse are deemed true. (Citation) Conversely '[W]hen the return effectively acknowledges or "admits" allegations in the petition and traverse which, if true, justify relief sought, **such relief may be granted without hearing on other factual issues joined by the pleadings**.'" (*Duvall* at p. 477, quoting *In re Saunders* (1970) 2 Cal.3d 1033, 1048; emphasis added.)

Alternatively, if this Court does not deem it appropriate to grant relief without a hearing, petitioner would request a hearing as to both prongs of *Strickland*, restricted only by virtue of the fact that respondent has admitted the social history facts set forth in petitioner's claim IX.C (paragraphs 1.a through 1.e, and 3 through 132.d) and the supporting exhibits thereto, and should not be permitted to challenge those facts at an evidentiary hearing.

IV.

RONALD V. SKYERS' REPRESENTATION OF STEVE ALLEN CHAMPION WAS CONSTITUTIONALLY DEFICIENT AND BUT FOR MR. SKYERS' DEFICIENT PERFORMANCE, THERE IS A REASONABLE PROBABILITY THE RESULT OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT

A. Constitutional Guarantees of Effective Assistance of Counsel, Generally and the Standard for Review

Both the Sixth Amendment to the United States Constitution and article I, section 15 of the California Constitution guarantee a criminal defendant effective assistance of counsel. (*Strickland v. Washington* (1984) 466 U.S. 686, 691-692; *People v. Ledesma*

(1987) 43 Cal.3d 171, 215.) The right of a criminal defendant to counsel "entitles the defendant not to some bare assistance but rather to effective assistance." (*In re Cordero* (1988) 46 Cal.3d 161, 180.) "Specifically, he is entitled to the reasonably competent assistance of an attorney acting as his diligent and conscientious advocate." (*Ibid.*) "This means that before counsel undertakes to act, or not to act, counsel must make a rational and informed decision on strategy and tactics founded upon adequate investigation and preparation." (*In re Marquez* (1992) 1 Cal.4th 584, 602; see also *People v. Ledesma, supra*, 43 Cal.3d at p. 215.)

To prevail under the two-prong test of *Strickland v. Washington* (1984) 466 U.S. 688, a petitioner must establish that "counsel's performance was deficient, i.e., that it fell below an 'objective standard of reasonableness' under 'prevailing professional norms'" and petitioner "was prejudiced by counsel's deficient performance, i.e., that there is a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different." (*Id.*, at p. 691.)

In other words, "[f]irst, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the `counsel' guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." (*Id.,* at p. 687.) Courts may look to the cumulative effect of trial counsel's errors to meet this standard. (*Ewing v. Williams* (9th Cir. 1979)

596 F.2d 391, 395.)

When assessing deficient performance, "it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable...." (*Strickland v. Washington, supra,* 466 U.S. at p. 689.) "A fair assessment of attorney performance requires that every effort be made 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." (*Ibid.*) Such an assessment is highly deferential to defense counsel's decisions at trial, with the attorney presumed to have rendered professionally adequate assistance. (*Id.* at p. 690.)

While the court's scrutiny of an attorney's conduct of the defense is deferential, that deference is limited. "[I]t must never be used to insulate counsel's performance from meaningful scrutiny and thereby automatically validate challenged acts or omissions. Otherwise, the constitutional right to the effective assistance of counsel would be reduced to form without substance." (*People v. Ledesma, supra,* 43 Cal.3d at p. 217.)

Even if petitioner shows that his lawyer's performance was deficient, he must still prove that this prejudiced his defense. (*Id.* at pp. 687, 693.) Though it is not enough for petitioner to establish merely that "the errors had some conceivable effect on the outcome of the proceeding," he is *not* required to "show that counsel's deficient conduct more likely than not altered the outcome in the case." (*Id.* at p. 693, emphasis added.) To prove prejudice, petitioner must demonstrate *only* that "there is a reasonable probability

that, but for counsel's unprofessional errors, the result of the proceeding would have been different...." (*Id.* at 694, emphasis added.) A reasonable probability is defined as "a probability sufficient to undermine confidence in the outcome." (*Ibid.*)

B. Effective Assistance of Counsel, Standard of Competent Representation in Capital Cases

A capital defendant is constitutionally entitled to an individualized sentencing determination, with full consideration of any mitigating factors about the petitioner which support a life sentence. (*Gregg v. Georgia* (1976) 428 U.S. 153; *Lockett v. Ohio* (1978) 438 U.S. 586.) Thus, trial counsel in a capital sentencing proceeding has the obligation to conduct a "reasonably substantial, independent investigation" into potential mitigating circumstances. (*Evans v. Lewis* (9th Cir. 1988) 855 F.2d 631, 636-637.) This is so because where there is sentencing discretion, the sentencer's "possession of the fullest information possible concerning the defendant's life and characteristics" is "[h]ighly relevant – if not essential – to [the] selection of an appropriate sentence." (*Williams v. New York* (1949) 337 U.S. 241, 247.)

In some cases, counsel may reasonably decide not to put on mitigating evidence. But adequate investigation must predate trial counsel's selection of a reasonable tactic or strategy. For example, where defense counsel fails to conduct a reasonable investigation of defendant's background and childhood so as to enable him to make an informed decision as to the best manner of proceeding at the penalty phase, counsel has failed to provide competent representation under the prevailing professional standards. (*In re*

Jackson (1992) 3 Cal.4th 578, 612.)

While strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable, strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. (*Wade v. Calderon* (9th Cir. 1994) 29 F.3d 1312.)

Thus, to make the decision not to present certain mitigating evidence, counsel must first understand what mitigating evidence is available. Where counsel has no knowledge of the available mitigating evidence, his decision not to find out, and then to offer nothing in mitigation cannot be supported as a tactical choice. (*In re Marquez* (1992) 1 Cal.4th 584, 606 .)

C. Respondent's position regarding standard of competent counsel and procedure for an evidentiary hearing should be rejected

In Part V of the Return, respondent suggests trial counsel's performance be judged by a lesser standard of competent counsel which existed "in like circumstances" or "from the perspective of the time." (Return at pp. 9-10.) Respondent asserts that trial counsel's actions "must be judged by the perspective of what counsel knew at the time he tried the case." (Return at p. 10.) By implication respondent urges this Court to find a that less demanding standard of professional performance existed in the early 1980's. Respondent then requests this Court bifurcate any evidentiary hearing so it may be first determined whether counsel failed to meet this lesser standard before petitioner will show what

evidence could be presented. (Return at p. 3.) Respondent's proposals should be rejected.

Trial counsel in a capital case had the same obligation to investigate and present a case in mitigation in 1982, as he or she has now.

In *Bean v. Calderon* (9th Cir. 1998) 163 F.3d 1073 a **1981** death verdict was reversed for trial counsel's ineffective assistance of counsel at the penalty phase. The State asserted that the magistrate judge erred by evaluating the performance of Bean's trial counsel on the basis of modern competency of counsel standards, rather than 1981standards. That court held:

> [T]he ineffectiveness at issue in this case did not arise from failure to employ novel or neoteric tactics. Rather, it resulted from inadequacies of rudimentary trial preparation and presentation: providing experts with requested information, performing recommended testing, conducting an adequate investigation, and preparing witnesses for trial testimony. These were not alien concepts in 1981, but were an integral thread in the fabric of constitutionally effective representation.

Trial counsel is required to investigate, discover, and present among other mitigating evidence, evidence regarding petitioner's early childhood and family relationships. This type of evidence may be relevant to a mental health diagnosis and potentially mitigating. (*In re Gay* (1998) 19 Cal.4th 771.) In **1983**, an investigation which omitted this evidence manifested incompetence. (*Id.*, at p. 807.)

In *In re Jackson, supra,* 3 Cal.4th at p. 612, trial counsel, by failing to conduct a reasonable investigation of defendant's background and childhood to enable him to make an informed decision as to the best manner of proceeding at the penalty phase, failed to

provide competent representation *under the prevailing professional standards* of **1979.**

In *Jennings v. Woodford* (2000) __ F.3d __ [No. 00-99008; Docket No. CV-89-01360-WAI],it was argued that trial counsel was ineffective for failing to investigate or present mental health defenses in either the guilt or penalty phases of his capital trial. Because the court found ineffective assistance of counsel at the guilt phase and reversed, it did not reach the penalty phase ineffective assistance of counsel claim. Mr. Jennings was tried in **1984.**

In *Evans v. Lewis, supra.*, 855 F.2d 631 the court held defense counsel had the duty to investigate and present evidence of mental health in **a 1979** capital sentencing proceeding. Moreover, a mental health diagnosis must be made in accordance with prevailing professional standards. In the early 1980's, such professional standards required a coherent referral question, information about the nature and purpose of a capital sentencing proceeding, detailed information from sources other than petitioner about his symptoms and experiences, the identification and integration of evidence and symptoms consistent with recognized mental disorders, and appropriate testing. (*In re Gay, supra,* 19 Cal.4th at p. 803, fn. 15.)

The court in *Mayfield v. Woodword,* _____ F.3d _____, No. 97-99031, 2001 U.S. App. LEXIS 24030, at 27 (9th Cir. Nov. 7, 2001) held that to perform effectively in the penalty phase of a capital case, counsel must conduct sufficient investigation and engage in sufficient preparation to be able to present and explain the significance of all

the available mitigating evidence. Mr. Mayfield was tried in 1983.

In *Caro v. Woodford* ___ F.3d ___ a **1981** death verdict was reversed where trial counsel failed to investigate, provide appropriate experts with the information necessary to evaluate petitioner, and failed to present mitigating evidence of brain damage.

In re Marquez, supra., 1 Cal.4th at 607-609, which itself involved a 1984 capital trial, this Court discussed at length the four cases below -- each tried **before 1982** -- wherein habeas corpus relief was granted because counsel had failed to adequately investigate in preparation for the penalty phase of capital trials.

In *Armstrong v. Dugger* (11th Cir. 1987) 833 F.2d 1430, the court concluded "[t]he major requirement of the penalty phase of a trial is that the sentence be individualized by focusing on the particularized characteristics of the individual. The evidence before the district court plainly established that Armstrong's trial counsel failed to provide the jury with the information needed to properly focus on the particularized characteristics of this petitioner." (*Id.*, at pp. 607-608 citing *Armstrong v. Dugger, supra*, 833 F.2d at p. 1433.)

In *Thomas v. Kemp* (11th Cir. 1986) 796 F.2d 1322, the evidentiary record showed that witnesses testified that had they been called to the sentencing hearing, they would have told the jury about the defendant's difficult home environment, about the mental and physical abuse which he encountered there and about his mother's drinking problem. They and other witnesses would have testified as to positive character traits of the defendant. A psychiatrist could have presented testimony showing the petitioner as a pathetically sick youngster who had struggled to succeed in life, both in school and on the

job, despite a chaotic home environment and a major mental illness. That court concluded: "'It cannot be said that there is no reasonable probability that the results of the sentencing phase of the trial would have been different if mitigating evidence had been presented to the jury. The key aspect of the penalty trial is that the sentence be individualized, focusing on the particularized characteristics of the individual. Here the jurors were given no information to aid them in making such an individualized determination.'" (Id., at p. 608, citing *Thomas v. Kemp, supra*, 796 F.2d at p. 1325.)

In *Pickens v. Lockhart* (8th Cir. 1983) 714 F.2d 1455 "the court referred to evidence 'of a turbulent family background, beatings by a harsh father, and emotional instability.' It concluded that '[i]t is sheer speculation that character witnesses in mitigation would do more harm than good ... and that [the petitioner] was not prejudiced by the omission. Here, counsel's default deprived Pickens of the possibility of bringing out even a single mitigating factor. ... We find that Pickens was actually and substantially prejudiced in the penalty phase of the case.'" (*Id.* at pp. 608, citing *Pickens v. Lockhart, supra,* 714 F.2d at pp. 1467-1468.)

In *Blake v. Kemp* (11th Cir. 1985) 758 F.2d 523, the circuit court concluded that "[t]he district court was correct when it noted that the available mitigating evidence 'might have demonstrated to the jury that the petitioner was not the totally reprehensible person they apparently determined him to be.' ... [¶¶] We thus believe that the probability that Blake would have received a lesser sentence but for his counsel's error is sufficient to undermine our confidence in the outcome." (*Id.* at p. 535.)

In *Marquez,* this Court directed the referee to take evidence and make findings on the question of what further action, if any, would competent counsel have undertaken to obtain and present mitigating evidence at the penalty phase. (*Id.*, at p. 595.) The referee noted that although trial counsel interviewed the petitioner's parents and some of his sisters, he "did not interview them regarding matters relevant to mitigation of penalty." (*Id.*, at p. 600.) The referee concluded that "[i]n sum, there was no penalty phase investigation conducted in this case with respect to petitioner's character, background, and conduct as a youth. (*Ibid.*) The referee found that competent counsel would have undertaken *in-depth* interviews with petitioner's family, friends, and neighbors in an effort to uncover mitigating evidence. When trial counsel attempted to justify his failure to investigate as the result of his fear that an investigation might turn up aggravating evidence, the referee concluded competent counsel would have conducted further investigation to determine the basis and reliability of this fear. (*Ibid.*) The referee went on to conclude that trial counsel's failure to conduct any penalty phase investigation about petitioner's individual characteristics could not be viewed as an informed tactical decision *because it is inherently unreasonable to forego any search for mitigation because of the fear of some inchoate adverse information.* (*Ibid.*, emphasis added.) This is so because "[u]nless a minimally adequate investigation is undertaken, it is impossible to make a tactical decision about whether to present or withhold mitigating evidence at the penalty phase." (*Ibid.*)

After reviewing the mitigating evidence that could have been discovered and

presented, the referee concluded that petitioner should receive a new penalty trial. (*Id.*, at pp. 601-602.) This Court agreed and noted too that trial counsel had no knowledge of the available mitigating evidence. Even though he had encountered ominous signs, he was in no position to assess the admissibility or strength of any aggravating evidence. His decision not to find out, and to offer nothing in mitigation, could not be supported as a tactical choice. (*Id.*, at p. 606.) Mr. Marquez's death sentence was vacated.

In *In re Gay*, *supra,* the defendant was convicted in **1983**. This Court noted that an examination which included a 10-hour psychiatric evaluation of petitioner, including a mental status examination, a structured psychiatric diagnostic interview, a review of both extensive documents related to petitioner's childhood and adolescence, and of a post-conviction social history and other testimony "was not uncommon in capital case defense at the time of this trial." (*Id.*, 19 Cal.4th at pp. 802, 807, citing *People v. Ledesma*, *supra*, 43 Cal.3d at pp. 200-20,1 which involved a 1980 capital trial, and *People v. Brown* (1985) 40 Cal.3d 512, 537, which involved a 1982 capital trial.)

In *Williams v. Taylor, supra*, a case involving a 1985 trial, the United States Supreme Court held that counsel's failure to investigate and present evidence of a defendant's mental defect and social history constituted deficient performance. As the high court explained, "trial counsel did not fulfill [his] obligation to conduct a thorough investigation of the defendant's background. See 1 ABA Standards for Criminal Justice 4-4.1, commentary, p.4-55 (2d ed. 1980)." (*Williams v. Taylor, supra*, 529 U.S. at 396, 120 S.Ct. 1495, 1515; see also, *Williams v. Taylor, supra*, 529 U.S. at 415, 120 S.Ct. at 1524-

1525, O'Connor, J., concurring (noting "counsel's failure to conduct the requisite, diligent investigation into his client's troubling background and unique personal circumstances").

It is thus clear that Mr. Skyers, as he prepared for petitioner's capital trial in 1981 and 1982, had a duty to thoroughly investigate his client's background and unique personal circumstances, to consult and prepare appropriate lay witnesses and experts, and to provide experts with the social history information necessary for a thorough and reliable evaluation for purposes of exploring potential penalty phase mitigation. Had he conducted such an investigation, he would have discovered the wealth of mitigating evidence set forth in claim IX.C, including evidence of petitioner's long standing brain damage and cognitive deficits, the traumatic loss by accident (stepfather) and murder (uncle) of the only stable adult males in petitioner's life, a pattern of family mental illness and neurologic disease, poverty and malnourishment, chronic life threatening danger and abuse at home and in the community, and a lack of available protective or compensatory resources. And there would have been no reasonable tactical basis for not presenting this evidence to the jury in mitigation of penalty.

D. Mr. Skyers' did not perform adequate investigation or present available evidence in mitigation.

Mr. Champion was arrested on January 9, 1981. (CT 120.) At the February 27, 1981, preliminary examination, petitioner was represented by William Jacobsen, Esq.

(CT 1.)[7] By March 24, 1981, petitioner was represented by Homer Mason. (CT 215.) Mr. Skyers began his representation of petitioner on August 24, 1981. (CT 569.)

Thus, Mr. Mason represented petitioner for approximately 5 months -- from March 24, 1981 to August 24, 1981 – beginning shortly after petitioner's preliminary examination. Mr. Skyers represented petitioner for a period of one year and one month *before trial* and an additional two and one-half months, for a total of more than 15 months from just after preliminary examination through the guilt trial, the penalty trial, and imposition of the death sentence.

During the five months Mr. Mason represented petitioner he requested an investigator to interview Rose Winbush, Thomas Crawford, petitioner's mother and bother Reggie, to attempt to locate Daryl Taves, an alternative suspect and to take pictures and measurements of the Hassan crime scene. (Traverse Exhibit 1.) The letter from the investigator to Mr. Mason outlining the progress of that investigation is dated *after* Mr. Skyers was retained. (*Ibid.*) The letter has on the front Mr. Skyers handwritten notation that he telephoned Mr. Lawrence on 10/23/81. (*Ibid.*) This is the extent of the investigation performed by any one other than Mr. Skyers in preparation of petitioner's case.

Also during the five months he represented petitioner, Mr. Mason applied for funding for a guilt phase psychiatric examination.

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[7] Mr. Skyers' declaration that Homer Mason had "taken [the case] through the preliminary examination" is inaccurate. (Return Declaration at p. 17:36.)

On August 4, 1981. Mr. Mason filed a motion for appointment of Seymour Pollack, M.D. to perform a psychiatric examination of petitioner to determine the availability of any psychiatric defenses to the charges. (CT 397-399, 578-580.) The order permitting the appointment and allocating funding was signed by the judge during Mr. Skyers representation of petitioner. Mr. Skyers name is stamped on the front of the order, and there is a notation that any report should be forwarded to Mr. Skyers. (*Ibid.*) Thus, while the motion requesting the appointment of Dr. Pollock was filed during Mr. Mason's representation of petitioner, the motion was granted during Mr. Skyers' representation of petition.

Mr. Skyers' states that had he had "better material to work with" he "certainly would have put it on." (Return Declaration p. 17¶35.) Had Mr. Skyers undertaken a rudimentary penalty phase investigation consisting of the fundamental tasks of thorough interviewing, record collection and referral to appropriate experts with respect to social history data, he would have had the "better material" he wished for.

Mr. Mason did not initiate a penalty phase investigation. It was Mr. Skyers' responsibility to conduct a thorough penalty phase investigation. Mr. Mason began the investigation of petitioner's alibi for the guilt phase. According to his declaration, the only additional investigation conducted by Mr. Skyers consisted of visits to the Hassan scene, review of some police reports and conversations with petitioner's mother, four of petitioner's siblings, and CYA parole officer. (Petition Guilt Phase Exhibit 47 at ¶ 27.) Petitioner disputes any characterization of Mr. Skyers' conversations with petitioner's

family as numerous or sufficient to constitute a thorough or reliable investigation of his client's background. As noted above, the Steve's family's declarations dispute both the alleged quantity and quality of the meetings with Mr. Skyers.

For example, Mr. Skyers never spoke to Lewis B. Champion II, Steve's father. If Mr. Skyers had spoken to Steve's father, he could have told him about his experiences growing up and in the service. He could have told Mr. Skyers about the problem's Steve's mother and he had during their marriage and he could have told Mr. Skyers about his own (Lewis II) mental problems. (Petition Penalty Phase Exhibit 5.)

Lewis B. Champion III, Steve's oldest brother, was not interviewed by Mr. Skyers. If he had been interviewed he could have told Mr. Skyers about the poverty his family experienced, the racism and violence that existed in their neighborhood, the problems Lewis III had that caused him to turn to drugs, that Steve was injured in a car accident that killed his stepfather and how hard it was for each of Steve's mother's children to learn in school. (Petition Penalty Phase Exhibit 6.)

Reginald Champion, the second oldest of the five Champion siblings did not meet with Mr. Skyers until he entered the courtroom -- expecting to testify on his brother's behalf. Before trial, Reginald had seen Mr. Skyers once in the parking lot when he drove his mother to his office. Mr. Skyers did not prepare Reginald to testify. Mr. Skyers never interviewed Reginald about his family life or the community in which they lived. If he had interviewed Reginald, Mr. Skyers could have learned that Lewis II beat Steve's mother, Lewis III terrorized the entire family for years and learned of the trauma of losing

their stepfather in a car accident. Reginald could have also told Mr. Skyers about the violence and drug use in their community and his own (Reginald's) psychiatric problems. (Petition Penalty Phase Exhibit 7.)

Vernon R. Champion, Steve's uncle and Lewis II's half brother was never interviewed by Mr. Skyers. If he had been interviewed, he could have told Mr. Skyers about the problems in his and Lewis II's family. (Petition Penalty Phase Exhibit 8.)

Czell Gathright, Steve's uncle and his mother's twin brother was never contacted by Mr. Skyers. At the time of Steve's trial, Czell lived only a few blocks from Steve's mother. He could have told Mr. Skyers all about growing up in Mississippi, about Lewis II's selfishness, violence, and mental problems, about Lewis III mental problems and abuse and about Steve's responsibility and caring for his family. (Petition Penalty Phase Exhibit 9.)

E.L. Gathright, Steve's uncle and his mother's brother was not contacted by Mr. Skyers. If he had been contacted, he could have told Mr. Skyers about the hardships his family faced in Mississippi, the problems in Steve's home and community. (Petition Penalty Phase Exhibit 10.)

Jadell Gathright, Steve's uncle and his mother's brother was never contacted by Mr. Skyers. If Mr. Skyers had interviewed Jadell he could have learned about Steve's childhood, how poor Steve's family was, how, at times, Steve's mother was unable to feed or clothe her children, the mental illnesses and abuses of Lewis II and Lewis III and Jadell's children's psychiatric problems. (Petition Penalty Phase Exhibit 11.)

Steve's half sister, and Azell's daughter Terri Lynn Geter was never asked by Mr. Skyers about information that was helpful to the investigation or presentation of penalty phase mitigation evidence. Terri was never asked any questions about what it was like growing up. If she had been, she could have told Mr. Skyers about the death of her father, Gerald Trabue and the impact it had on Steve and all of his siblings, what it was like for all of the children when Lewis III and Reggie began taking drugs, beat them up, and destroyed the house. (Petition Penalty Phase Exhibit 13.)

Steve's mother, Azell, scraped together everything she had to hire Mr. Skyers. According to Steve's mother, Mr. Skyers never told her or her children he spoke to what kind of information was useful for the penalty phase of the trial. Mr. Skyers never asked any questions about Steve's family history or the kind of life Steve had. If Mr. Skyers had asked, Steve's mother would have told him about the abuse in her family, the mental problems which her family and she have suffered from, the hunger and poverty Steve and his siblings lived through, Steve's love for his family, the loss of Gerald Trabue, the terror inflicted by Lewis III and Reggie and the problems Steve had in school. (Petition Penalty Phase Exhibit 15.)

Linda Champion Matthews, Steve's sister also was not asked for information regarding her home life, family life, or community. She too could have told Mr. Skyers about the poverty, abuse, racism, mental illness, hunger and school problems Steve and his siblings endured. (Petition Penalty Phase Exhibit 16.)

Rita Champion Powell, Steve's sister, was not asked for information about Steve's

life, violence in the community and her home, mental illness or substance abuse in the family. Although at the time of trial, most of Steve's family lived in or near Los Angeles, according to Rita, Mr. Skyers made no effort to contact anyone. (Petition Penalty Phase Exhibit 18.)

Mr. Skyers did not ask Traci Evette Robinson-Hoyd, Steve's sister, for information about what it was like growing up. (Petition Penalty Phase Exhibit 20.)

Gerald Walter Trabue, Jr., Steve's brother recalled meeting Mr. Skyers only once this was in the elevator at Steve's trial. Gerald did not believe that Mr. Skyers even recognized him. As was true with the two or three family members that Mr. Skyers talked to, Gerald was not asked for any information regarding his and Steve's life, community, education, and childhood. (Petition Penalty Phase Exhibit 21.)

Mr. Skyers states that the focus of his investigation was "mainly directed to ascertaining" alibi evidence. (Return declaration at p. 4¶6.) He declares, however, that "It would not be accurate to state that [he] conducted these interviews in a manner that was not conductive to the family telling [him] any information that would have been of benefit to Mr. Champion in the penalty phase." (*Id.*, at p. 5¶ 8.) Mr. Skyers states that he asked "open-ended" questions. (Return Declaration at p. 4¶¶7, 8.) Mr. Skyers did not conduct an in-depth, focused, deliberate, comprehensive or purposeful investigation designed to elicit mitigating information he could then use to discover further mitigating evidence, and facilitate the referral to experts for appropriate testing. Had he done so, he would have uncovered readily discoverable mitigating evidence of brain damage,

parental death, family mental illness and neurologic disease, poverty, malnutrition, and chronic life threatening danger at home and in the community. He performed no other investigation with respect to petitioner's character, background, and conduct as a youth such as collecting social history records, or interviewing any witnesses, including petitioner's mother and the siblings who he interviewed for alibi purposes.

Mr. Skyers failure to conduct in-depth and thorough interviews of family members is all the more perplexing in light of his admission that he suspected families frequently attempted to portray a "rosy picture" of the defendant (Return Declaration at p. 5¶9.) Aware that the family might not be inclined to give him the whole story, Mr. Skyers did nothing to elicit the difficult and negative aspects of Mr. Champion's and his family's lives. He, in effect, adopted an investigative approach guaranteed to leave important facets of his client's background undisclosed.

Like all capital counsel, Mr. Skyers had the responsibility of consulting appropriate experts, providing those experts with necessary information and requesting all necessary testing be performed. Mr. Skyers' referral to Dr. Pollock and his reliance on Dr. Pollock's guilt phase report as a basis for conducting no further inquiry into possible mental health related mitigation was not reasonable.

As noted above, it was actually Mr. Skyers and not Mr. Mason who requested and directed the mental health examination of petitioner and he adopted the guilt phase focused referral questions originally drafted by Mr. Mason as his motion for appointment of an expert. Mr. Skyers was appointed on August 24, 1981. Mr. Skyers contacted Dr.

Pollock on November 10, 1981 after which petitioner was examined, for an hour, by Dr. Pollock and/or a colleague on November 17, 1981. Following a November 25, 1981 telephone conversation with Mr. Skyers, Dr. Pollock examined petitioner for an addition one and one half on December 1, 1981. (Informal Response Exhibit 5.) Thus, both examinations occurred months after Mr. Skyers began his representation of petitioner. (CT 569.) And Drs. Pollack and Imperi thanked Mr. Skyers -- not Mr. Mason -- for the referral of Mr. Champion to them. (Informal Response Exhibit 5.)

Mr. Skyers directed Dr. Pollock to perform an evaluation to determine whether Mr. Champion was mentally ill at the time of the Hassan offense, whether he was suffering from diminished capacity, was unconscious, or suffering from an irresistible impulse. (*Ibid.*) According to Dr. Pollock, Mr. Skyers advised him that petitioner's case "was 'very likely' a case of mistaken identification," and that he had requested an evaluation of possible psychiatric defenses "'to cover all bases.'" (*Ibid.*) Dr. Pollock was not provided with a social history of petitioner. He did not have access to school records, medical records, or employment records or interviews with family members.

There was no penalty phase related referral question, no information about the nature and purpose of the capital sentencing proceeding, no detailed information from sources other than petitioner about his symptoms and experiences, no identification and integration of evidence and symptoms consistent with recognized mental disorders, and no request for any evaluation or input regarding possible mitigation.

All of the above clearly establishes that Mr. Skyers' penalty phase investigation

was deficient. Further, petitioner was prejudiced by this deficient performance.

Mr. Skyers' statements that, had he performed the investigation petitioner alleges should have been performed and discovered the evidence in mitigation petitioner has supplied in his Petition and Informal Reply, for tactical reasons, he would have been reluctant to present it to the jury are unpersuasive. Respondent's contention that "no rational attorney" would have presented the proffered evidence (Return, pp.13,18-25) is equally unpersuasive and, indeed, is simply preposterous.

Mr. Skyers states that he would have been reluctant to present the evidence in mitigation set forth in claim IX.C for fear that such evidence (a) would have been interpreted by the jury as a concession that petitioner was one of the shooters or (b) would have angered the jury as some untoward effort to garner sympathy for petitioner. In paragraph 15, Mr. Skyers goes so far as to assert that any effort to present evidence that petitioner had suffered abuse or suffered from a mental defect or disease "would have most likely been regarded by the jury as a concession that my client had done the killings." Petitioner maintains that presenting the evidence in mitigation set forth in claim IX.C, or any portions of that evidence, would not have been interpreted by the jury as a concession that petitioner was one of the shooters, would not have angered the jury as some untoward effort to garner sympathy for petitioner, and would not have had any effect other than to dramatically enhance petitioner's chances for a sentence less than death. Moreover, neither of the fears posited in Mr. Skyers' declaration would have provided a reasonable basis for not introducing the evidence in mitigation set forth in

claim IX.C.

In the first place, it overlooks what the jury had found in returning its guilt phase verdicts. The jury had concluded beyond a reasonable doubt not only that petitioner had participated in the Hassan home invasion and was thereby guilty of two felony murders, but that as to each victim he had acted with an intent to aid and abet the commission of murder. That finding of homicidal *mens rea* was a prerequisite to special circumstance liability because, as the prosecutor had conceded, there was no evidence as to which of the four intruders had fired the fatal shots. (See RT 3191 [prosecution closing argument], and CT 677-678 [special circumstances - introductory jury instruction].) Because there was no evidence as to which of the intruders did what within the Hassan home, the jury, in returning its verdicts, necessarily found that each of the four intruders had acted with an intent to aid and abet the killings.

Respondent, in a curious footnote, attempts to minimize the significance of this finding by suggesting that it was merely a "technical" prerequisite to death-eligibility. (Return at p.19, n.3.) But there is nothing "technical" about a finding beyond a reasonable doubt that a defendant acted with a homicidal intent. The level of culpability determined by the jury's guilt phase verdicts certainly warranted presentation, if available, of mitigating evidence. A reasonable jury would have had no reason to interpret the presentation of social history or mental impairment evidence as a concession that petitioner was the shooter as opposed to a totally appropriate effort to mitigate the culpable involvement the jury had found.

Mr. Skyers and respondent also overlook that Mr. Skyers would have had available both an opening statement and closing argument to make perfectly clear that in presenting the evidence set forth in claim IX.C, he was in no way suggesting that petitioner had fired the fatal shots, but was rather attempting to explain the factors in petitioner's social history, community, schooling, and the personal impairments which may have led him to join a street gang and become involved in its activities, so that this behavior could be seen not as some perverse embrace of evil but as an understandable, if unfortunate, response to a host of difficulties and developmental impediments at work in his life.

Further, the evidence set forth in claim IX.C, explaining and mitigating petitioner's gang involvement would in fact have in no way isolated him among the four alleged gang-member intruders as somehow being the likely shooter. Indeed that evidence suggests reasons why it was unlikely that petitioner was the shooter. For example, even during the years when he and his younger siblings were terrorized by their oldest brother, Lewis III, petitioner, rather than responding violently, often responded in a self-sacrificing way, learning how to get Lewis III to chase him around the neighborhood so that Rita and Linda could get away with Terri and Traci – a ploy that would result in his being beaten senseless when Lewis III caught him. (Claim IX.C, par. 80.) Despite the dangers and difficulties he faced at school, petitioner showed respect for teachers and other students (claim IX.C, par. 96.) Later, when he was committed to CYA, mental health personnel concluded that he had a "negligible" potential for violence, and that it did not appear that he was totally immersed in and committed to the gang subculture, and

was at most, only a follower. (Claim IX.C, par. 125.) When petitioner was released from CYA, he returned with the goal of finding a good job, and, despite high unemployment in his South Central community, he found temporary work. (Claim IX.C, pars. 130-131.)

Further, the nature of petitioner's neurological impairments, not only did not make him more likely to have been the shooter, it suggested a reason to doubt, if he was one of the intruders, that he necessarily understood when he entered that one or more of his fellow intruders intended to kill the occupants (claim VII.H, pars. 18-20), and hence provided a basis for lingering doubt as to whether he was even as culpable as the guilt phase verdicts had declared.

The concern that co-defendant Ross's failure to present a case in mitigation would have led the jury to view petitioner's presenting the evidence set forth in claim IX.C as a concession that petitioner was the shooter and more culpable than Mr. Ross is totally implausible. Mr. Ross, unlike petitioner, had been convicted not only of the Hassan murders, but the Taylor murder and related offenses as well, and the jury had heard testimony from Michael Taylor's sister as to how Mr. Ross had raped her in the bathroom of her residence before her brother was murdered. It's hardly likely that the jury would have concluded that Mr. Ross was less culpable than petitioner. In fact, had petitioner presented the evidence set forth in claim IX.C and Mr. Ross presented no case in mitigation and no evidence of any mental or emotional impairments, the jury was likely to have concluded that Mr. Ross was more fully responsible for what occurred and more deserving of severe punishment.

Finally, petitioner would note that the jury's guilt phase finding that each of intruders acted with an intent to aid and abet the homicides, while not eliminating the importance of who actually fired the fatal shots, certainly diminished its determinative significance, and increased the need to find some way to mitigate the criminal conduct the jury found that petitioner had committed. There would have been no reasonable tactical basis for not presenting the evidence set forth in claim IX.C had Mr. Skyers done an adequate investigation and discovered the evidence.

In addition, under California law, evidence of lingering doubt is admissible at the penalty phase, thus trial counsel's concern that he might be "hinting" that petitioner was the shooter, could have been countered with (1) evidence that petitioner could not have been involved in the Taylor crimes as he was in the company of friends who were never considered viable suspects, he was detained by Los Angeles County Sheriff's Department deputies at the time the Taylor crimes were being committed, he did not match the description of any suspect who law enforcement saw exiting the suspect vehicle, and had approached the officers from an area which would have made it very difficult, if not impossible for him to have been involved; (2) evidence of the actual or likely perpetrators, as to whom the police had reliable, incriminating information; (3) evidence to demonstrate that neither petitioner's physical description nor the clothing he was known to be wearing near the time of the crimes matched the victims' descriptions of any perpetrator; (4) evidence to demonstrate that no forensic evidence or other identification procedures resulted in a pretrial identification of, or linkage to petitioner; (5) evidence to

demonstrate that motives other than the prosecution's conspiracy theory accounted for Michael Taylor's killing; (6) evidence to impeach the prosecutor's gang expert and his opinion that petitioner was linked to Michael Taylor's killing through (a) graffiti, (b) his membership in the Raymond Street Crips, and (c) his close association with Craig Ross; (7) evidence that petitioner had an alibi for the Hassan crimes; (8) evidence that the jewelry in petitioner's possession at the time of his arrest did not belong to Bobby Hassan; (9) evidence that the statements by Elizabeth Moncrief were so diverse and conflicting so as to be inherently unreliable and that the descriptions by Ms. Moncrief did not match petitioner; (10) exculpatory forensic evidence; (11) mental health evidence that would have precluded the jury from finding beyond a reasonable doubt that petitioner, if he did enter the Hassan residence, did so understanding that anyone would be killed; and (12) evidence that the Jefferson case was not similar to either the Hassan or Taylor crimes undercutting the prosecution theory that petitioner was a participant in or at least had knowledge of all four homicides and its theory that petitioner's knowledge of the Jefferson homicide evidenced the required mental state for finding the special circumstances to be true.

Finally, trial counsel's new assertion that had he would have been reluctant to offer mental illness and other evidence had he known of it is in sharp contrast with both his declaration attached to the Petition and an August 1993 letter written to petitioner's first habeas counsel, James Merwin. (Traverse Exhibit 2.)

When asked to consider his tactics had he, at the time of trial, been aware that

petitioner had suffered head injuries, Mr. Skyers stated that he would have requested funding for neurological testing. Moreover, had findings consistent with Dr. Riley's been available at trial, Mr. Skyers declared he would have presented them at both the guilt and penalty phases. (Petition Exhibit 47 ¶ 26.) Thus, at the time he executed the declaration which supports the Petition, Mr. Skyers had no tactical consideration as to why findings of brain damage would not be introduced at both trials. Moreover, in 1993, Mr. Skyers expressed a similar view that he would have sought additional evaluations and presented any evidence of mental illness obtained therefrom at trial.

> "There were no other psychiatric reports besides Dr. Pollack's which is in the file and based on his report I did not have enough to mount a psychiatric defense. Unfortunately I did not know about Steve's accident when he was 9 years old and in my several conversations with his mother, brothers and sisters at their home it never came up and unfortunately I did not ask them. If I had that information I would have submitted it to Dr. Pollack and seek [sic] a further evaluation and report. PTS Disorder based on such a serious accident would be a significant factor especially at penalty if not guilt. I hope this is an area that can help." (Traverse Exhibit 2.)

CONCLUSION

To have received effective representation of counsel at trial, petitioner was entitled to have counsel who investigated his social, medical and mental history. Petitioner was entitled to counsel who requested ancillary funds to ensure the case in mitigation was thoroughly investigated and developed. Petitioner was entitled to counsel who obtained all available documents and records pertaining to him -- including his medical, school, criminal, prison, and employment records. Petitioner was entitled to counsel who had

Mr. Champion, members of his extended family, neighbors, friends and acquaintances thoroughly interviewed. Petitioner was entitled to counsel who would have review all the documents and records obtained and all investigatory reports prepared in order to determine the need for consultation with experts in appropriate areas. Based on the information such investigation would have developed petitioner was entitled to counsel who would have consulted with experts in the fields of psychology, psychiatry, neuropsychology, child abuse, dysfunctional families, and alcohol and drug abuse dysfunction.

Mr. Skyers did none of the above. Having not performed the most rudimentary of trial investigations, his representation of petitioner is deficient *per se.* As no reasonable attorney would have foregone the introduction of the mitigating evidence presented to this Court, petitioner has been prejudiced by his counsel's defective performance. Mr. Champion's death sentence should be vacated on the basis of the record as it now stands. Alternatively, this Court should order an evidentiary hearing on the matter where respondent should not be permitted to contest the social history facts.

DATED: November 12, 2002

Respectfully submitted,

Karen Kelly
Attorney for Petitioner Steve Allen Champion

Criminal Defense Investigations
General Investigations

Low Profile Protective Services To
Businessmen-Celebrities-Property

LAWRENCE PROTECTIVE SERVICES
A Division of Charles W. Lawrence, Inc.
5140 CRENSHAW BOULEVARD, SUITE "D"
LOS ANGELES, CALIFORNIA 90043
PHONE (213) 295-2574 / 295-2575

CHARLES "CHOPS" LAWRENCE
President

RODNEY J. LAWRENCE
Director of Security

August 28, 1981

Re: A365075 Steve A. Champion

Mr. Homer Mason
Attorney At Law
P. O. Box 75367
Los Angeles, California 90075

Dear Mr. Mason:

Attached hereto is our Declaration ReInvestigator's Fees for services rendered in the above titled case. We are hopeful that you will find it in order and affix your signature prior to forwarding to the court for approval of payment.

Thank you for the opportunity to serve.

Very truly yours,
"Chops"
Charles W. Lawrence

4/29/81

10/23/81 Called Lawrence

Criminal Defense Investigations
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CHARLES "CHOPS" LAWRENCE
President

RODNEY J. LAWRENCE
Director of Security

August 1, 1981

REPORT OF INVESTIGATION

CASE: Steve Champion - A 365075

ATTORNEY: Homer Mason
Attorney at Law
P.O. Box 75367
Los Angeles, CA 90075

INVESTIGATORS: Charles W. Lawrence
Rodney Lawrence

RESULTS OF INVESTIGATION:

Enclosed, please find a set of photographs (10) depicting the crime scene and surrounding area. Also a description of each phot and measurements are included.

NOTE: Investigator has had no success in contacting the mother of Darryl Taves. Several trips have been made to her residence and several messages have been left. Contact was made with his brother Stephen Moseley who stated that Darryl was in Louisiana and he did not know when he would return. Investigation has not turned up any leads into his involvement nor Alvin Bobo's involvement in the crime the defendant is charged withl.

Please advise of any additional investigative work desired on the above.

Respectfully,

Rodney Lawrence

encl

Criminal Defense Investigations
General Investigations

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LOS ANGELES, CALIFORNIA 90043
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CHARLES "CHOPS" LAWRENCE
President

RODNEY J. LAWRENCE
Director of Security

July 20, 1981

REPORT OF INVESTIGATION

CASE: Steve Champion - A 365075

ATTORNEY: Homer Mason
Attorney at Law
P.O. Box 75367
Los Angeles, CA 90075

INVESTIGATORS: Charles W. Lawrence
Rodney Lawrence

RESULTS OF INVESTIGATION:

Exhibit "A" attached is Investigator Rodney Lawrence's report of an interview with Rose Winbush, witness. She will testify that she talked to the defendant on the date of the crime (telephone). She also states that her brother (deceased) gave the defendant a diamond ring.

Exhibit "B" attached is Investigator Rodney Lawrence's report of an interview with Thomas Crawford, parole officer. He will testify that the defendant was a "o.k. guy" who probably did not have the propensity to violence to commit such a violent crime.

NOTE: A criminal check was made on Alvin Bobo at the Los Angeles County Clerk. He has a 187 pending in Department 113. The matter is set for hearing on 8-3-81. Case number A365859 dated 3-20-81. Investigator will follow up on information to determine if Bobo is involved in the defendant's case.

Investigation continues.

Respectfully,

Rodney Lawrence

encl

Los Angeles, California
July 16, 1981

RE: Steve Champion
A 365075

REPORT OF INTERVIEW WITH:

Rose Winbush
1141 W. 124th Street
Los Angeles, CA

Rose Winbush was named by the defendant as the person he was talking to on the phone on the date of the crime at the approximate time the crimes were committed. Winbush is a 19 year old Black female who has been acquainted with the defendant for the last 13 years. She describes their relationship as "very good friends."

Winbush will testify that on the day in question, 12-12-80, she called the defendant at his residence. She places the time at sometime prior to 1:00p.m. She states that the conversation lasted until 1:30p.m. at which time the defendant told her that he had to go and pick up his paycheck. He told her that his mother was taking him to pick it up. She is positive of the 1:30p.m. time but is not definite of the actual time the conversation began. She states that she cannot remember any details of the conversation.

She will testify that after the conversation, unsure of the time (still daylight) she and her mother were in the vicinity of the victim's residence and saw the police all around the house. Later that same evening, she again talked to the defendant and he informed her that he had heard that the victims had been killed in their residence. She was acquainted with the victim's son who was killed. He attended Henry Clay Jr. High. She knew nothing of the father. She also stated that the defendant was acquainted with the Hassans.

Regarding the ring the police took from the defendant that allegedly belonged to the victim, Winbush states that her brother had given the defendant a gold with diamond cluster ring approximately 3 years ago. She states her brother, Raymond Winbush had purchased the ring and gave it to the defendant for his birthday. She states that her brother and the defendant were very good friends and that was why he purchased the ring for him. She states that her brother was a employee of W&B Auto Parts on 111th and Vermont. He was killed 1 year ago. He was shot in a non gang related shooting. She will testify that she does not know when the ring actually changed hands but believes it was in 1978 for the defendant's birthday. To her knowledge, that was the only jewelry that her brother had bought for the defendant. She does not know where he purchased the ring from. NOTE: Winbush could not elaborate as to why her brother would purchase a ring for another male.

Winbush states that she has heard on the streets that Alvin Bobo might have something to do with the crime the defendant is being held on. Bobo, who is a member of the Raymond Street Crips, was overheard the day after the crime stating, "Another one bit the dust." This was referring to the victims being killed. This conversation took place in Helen Keller Park, located across the street from the victim's residence. She did not know who he made this statement to. To her knowledge, Bobo is in jail on an unrelated murder.

Winbush's number is 779-2463.

Los Angeles, California
July 16, 1981

RE: Steve Champion
A 365075

REPORT OF INTERVIEW WITH:

Thomas Crawford
State Parole Officer
2930 W. Imperial Highway
Suite 626
Los Angeles, CA

Thomas Crawford was the parole officer of the defendant upon the defendant's release from YTS. Crawford did not seem to remember the defendant real well but described him as a "o.k. guy"who accepted his parole responsibilities.

Crawford, who is Black, states that he no longer has the file on the defendant. His job is to monitor the parolees for 90 days after their release and then turn over their file to the district parole office. In this case the defendant's file went to Compton, ph#979-5676. He states that the defendant was under his supervision for maybe 60 days. The policy is for the parole agent and parolee to have once a week, face to face contact for the first 30 days after the parolee's release from incarceration and twice a month thereafter for the remaining 60 days. He did not have his file to refresh his memory of their contacts but remembers some of their contacts. At the time of the crime (period of time) Crawford was still handling the case. Crawford states that he saw the defendant within a few days after the crime at his office and the defendant did not seem nervous or act like anything was bothering him. This was prior to his arrest. Crawford states that the defendant did have a potential for violence but he does not believe he would commit a crime as violent as the one he is charged with.

Crawford believes that the defendant wore his hair in a natural style, medium length. He went on to state that he believes the defendant had signed up for a tutorial program that pays the parolees a salary to tutor other parolees or to be tutored themselves. He will check his records and contact investigator with the information. He does not believe the defendant had started the program prior to his arrest.

Crawford states that he handles between 20 & 25 cases on a regular basis.

B

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CHARLES "CHOPS" LAWRENCE
President

RODNEY J. LAWRENCE
Director of Security

July 13, 1981

REPORT OF INVESTIGATION

CASE: Steve Champion - A 365075

ATTORNEY: Homer Mason
Attorney at Law
P.O. Box 75367
Los Angeles, CA 90075

INVESTIGATORS: Charles W. Lawrence
Rodney Lawrence

RESULTS ON INVESTIGATION:

Enclosed, please find Investigator Rodney Lawrence's reports of interviews with Azell Champion, defendant's mother and Reginald Champion, defendant's brother. Both of them will testify that the defendant was in their company the entire day that the crime took place.

NOTE: Mike Osborne of the Prompt Employment Services, Inc., was contacted. His office is located at 1910 W. Redondo Beach Blvd., Gardena, CA, phone number 532-6790. He states that Champion did in fact work through the employment agency. Also he stated that the day of the crime, 12-12-80 is a normal payday (fell on a Friday). He went on to state that his company did not begin having their employees sign for their checks until 1-16-81. At the time of the incident, they did not keep written records of when checks were released. He will check back on his records to verify if in fact the defendant was due a paycheck on the day in question but will not be able to verify if in fact the defendant picked it up on that day.

Thomas Crawford, defendant's probation officer has not been contacted to date. Numerous messages have been left for him with negative results. He apparently is in the field quite regularly.

I have in my posession a list of the defendant's immediate family members including aunts and uncles. Please advise if and when you want to hold a seminar with them. My office will be available if needed. Also please inform me when you want to meet with me and the defendant at the jail.

Respectfully,

Rodney Lawrence

Los Angeles, California
July 7, 1981

RE: Steve Champion
A 365075

REPORT OF INTERVIEW WITH:

Azell Champion
1212 W. 126th Street
Los Angeles, CA

Azell Champion is the mother of the defendant. She was interregarding her knowledge of the defendant's whereabouts on the day of the crime, 12-12-80. She will testify that the defendant was in her presence the majority of the day and evening.

Ms. Champion will testify that on the day in question, the defendant got out of bed around 12 noon. As soon as he got up, he got on the telephone and talked to Sue Winbush (not contacted to date). They talked on the telephone for 2 or 3 hours causing Ms. Champion to complain about the length of the conversation. After the termination of the call, the defendant took a shower and ate breakfast. She states that sometime in the afternoon (time unknown), the defendant and his brother, Louis Champion, rode to Prompt Employment Services in Gardena so that the defendant could pick up his paycheck. She will testify that the defendant returned home immediately, went to his room, turned on the music and stayed home the remainder of the night. She states that Louis and Reginald Champion can testify to the defendant being home on the day in question. (See report of Reginald).

Ms. Champion states that she believes a Daryl Tate, who looks similar to the defendant had something to do with the incident the defendant is charged with. She states that soon after the crime, Tate moved to Louisiana. He lived in the nieghborhood and his resemblance to the defendant is obvious. She also stated that a Alvin Bobo, who is in jail on an unrelated 187 is also involved along with two other black males (unidentified).

Ms. Champion states that the defendant attended Henry Clay Jr. High and Washington High School. Subpena Duces Tecums will be needed for the school records. Defendant was incarcerated in YTS in 1980. His counselor name was Mr. Yosky (sic). His probation officer is Thomas Crawford (unable to contact to date).

Los Angeles, California
July 7, 1981

RE: Steve Champion
A 365075

REPORT OF INTERVIEW WITH:

Reginald Champion
1212 W. 126th Street
Los Angeles, CA

Reginald Champion is the brother of the defendant. He will testify that he was in the defendant's presence the entire day in question (12-12-80).

Reginald will testify that the defendant awoke at 10a.m. on the day of the crime. He states (contrary to defendant's mother) that he drove the defendant to pick up both of their checks at Prompt Employment Services between 11:a.m. & 1:p.m. He states that they signed a list to pick up checks. When they returned home (immediately after picking up checks), the defendant remained in the house, talking on the phone and listening to music, the remainder of the day.

Reginald is married with a small child. He is positive that his brother had nothing to do with the crime. He states that on the day Steve was arrested, Steve was in the park looking for him (Reginald). He states that if Steve would have been involved in the murders he certainly would not have been hanging around the park, which is located across the street from the scene of the crime.

Ronald V. Skyers,Commr.
200 W. Compton Blvd.
Compton, CA 90220

August 30, 1993

James Merwin, Esq.
219 Broadway,Ste 394
Laguna Beach, CA 92651

Re: People v. Champion

Dear Mr. Merwin:

I hope that in my reply to your letter dated August 19,1993 you will be able to find something to help Steve in habeas corpus.

In answer to your first question regarding investigators, the only investigator who was involved was Charles Lawrence whose short report should have been in the file. Other than that all other investigation was done by me along with the help of Steve's family who were quite cooperative. The investigation focussed on the Hassan murders mainly. As to other suspects I chose to use the Brown and Reed situation by way of impeachment of the main witness who was viewing from the house across the street and who had at one point identified them to the police as being in the car and also leaving the house of the murder. I believe that the prosecution called Benjamin Brown and he testified about his non involvement. Prosecution also called the employer of Reed, the one who was shot by the victim on an unrelated robbery attempt by Brown and Reed, and the employer excluded Reed by his testimony. I would have had to impeach the employer of Reed in order for both Brown and Reed to be in the place of the murder at the same time, and I don't believe I was able to do this. Other possible suspects such as Bobo and Taves were given cursory investigation by me but were discarded. I can't remember the details of why I did not focus on them as viable suspects, but in this area I probably could have done a little more.

As to gang information there seemed to have been no real issue that Steve was a gang member, and the officer who testified regarding gangs even though he was a young officer seemed to have had the knowledge and experience to give opinion. Furthermore there were pictures available to the prosecution to show Steve at CYA flashing gang signs with other Crip members.

Regarding the eye witness identification expert/none was used, nor did I consider the use of one at that time. I believed the probability of eyewitness misidentification was apparent in the inconsistencies of identification by the eyewitness. Having said that, I believe that if I was trying this case today I would seek an eyewitness expert even though I believe the expert would tell me that the typical factors causing misidentification were absent - factors such as cross racial identification, stress etc.

There were no other psychiatric reports besides Dr. Pollack's which is in the file and based on his report I did not have enough to mount a psychiatric defense. Unfortunately I did not know about Steve's accident when he was 9 years old and in my several conversations with his mother, brothers and sisters at their home it never came up and unfortunately I did not ask them. If I had that information I would have submitted it to Dr. Pollack and seek a further evaluation and report. PTS Disorder based on such a serious accident would be a significant factor especially at penalty if not at guilt. I hope this is an area which can help.

As to Steve's alibi that he could not have been at the scene of the murder because he was at home except for a short period when he went to pick up his check from an agency he worked for I called his other brother, not Louis Champion, because that brother worked at the same agency and went with him to pick up his check. I remember that he said Louis drove him and his other brother to the place in Gardena. I in fact drove from their house to that agency and back several times timing it and saw that they could have made it there and back in the time they said it took them. I chose not to call Louis Champion for the same thing to avoid expansive cross-examination on this point.

As to Rose Winbush, I believe she is the one who had a brother who was killed. I don't believe Winbush would have been helpful because her information was not consistent with Steve's. The nature of her testimony would have been that the jewelry found on Steve was given to him by her brother before he was killed, however Steve said the jewelry came into his posession when Rose's brother asked him to hold it for him and that after he died Steve simply kept it. It was this jewelry that the prosecution said was Hassan's and that Steve took it as a trophy. Winbush was not considered a witness who could testify that Steve was picking up his check at the time of the killing because she was not with him.

Best wishes and if I can be of any further assistance please let me know.

Sincerely

Ronald V. Skyers

Ronald V. Skyers

DECLARATION OF NELL RILEY, PH. D

I, Nell Riley, Ph. D, declare as follows:

1. I am a licensed psychologist specializing in clinical neuropsychology. (Please refer to my declaration attached as Exhibit 67 to petitioner's petition for a more complete discussion of my qualifications, education and experience.)

2. At the request of counsel for petitioner, I have reviewed portions of the Attorney General's return, specifically its comments on my declaration regarding the results of my 1997 neuropsychological evaluation of Steve Allen Champion.

3. It is my opinion that the response of the attorney general reflects a lack of understanding of the instruments, methods and reasoning processes underlying neuropsychological evaluations. His conclusions and assertions are based on selective reporting of my test findings and he has ignored the most compelling test results to make his claim that Mr. Champion does not suffer from brain damage. Respondent completely fails to objectively consider the results of the neuropsychological examination.

4. Respondent suggests that neuropsychological testing is inadequate to assess brain damage, and suggests that physical tests such as "CAT scans and X-rays" are necessary for confirmation of such disorders. This statement suggests respondent's lack of knowledge and sophistication in understanding contemporary techniques for the assessment of brain damage. Neurologists and other medical experts frequently rely on neuropsychological testing to detect abnormalities of cognitive and behavioral

functioning which physical scans cannot reveal.

5. As indicated in the executive summary of the report of the Therapeutics and Technology Assessment Subcommittee of the American Academy of Neurology (1996), "Most neuropsychological tests have established validity and reliability, and the information garnered from them can be regarded with confidence when the tests are administered using the prescribed method and interpreted by an individual with competence and experience." The tests referred to in the Report of the Therapeutics and Technology Assessment Subcommittee of the American Academy of Neurology are the tests I used to evaluated Mr. Champion. (Please see page 4 of Petition Exhibit 67 which lists the 23 tests I administer to Mr. Champion.)

6. Moreover, neuropsychological assessment incorporates numerous data points that support or refute various hypotheses. A study drawing from more than 125 meta-analyses on psychological and neuropsychological test validity demonstrates that the predictive accuracy of neuropsychological testing is equivalent to that of standard laboratory tests used in diagnosing other medical conditions. The fact that neuropsychological departments and services have become standard in leading American medical schools and teaching hospitals further attests to the clinical value and unique diagnostic contribution of the field.

7. The Attorney General asserts that the conclusions drawn from my 1997 neuropsychological assessment are based on "circular logic," simply mirroring information obtained from the defendant's social and medical history. On page 23, he

states "...conspicuously missing is any independent evidence that any brain damage exists at all." This statement again suggests a lack of understanding of the neuropsychological assessment process.

8. As in any clinical field, neuropsychologists consider information about the subject's background to provide a historical context and to suggest possible etiologies for the subject's condition. In Mr. Champion's case I considered information that Mr. Champion's mother may have been beaten by her husband when she was pregnant with Mr. Champion as well as physical abuse suffered in early childhood, early adolescence and Mr. Champion's drug usage. However, neuropsychological conclusions, including those in this case, about whether or not the subject is impaired are based on objective test data and interpreted using normative databases. The "independent evidence" which the attorney general states is missing in the instant case, is discussed in detail in sections 8 - 28 of my 1997 declaration.

8. In his response, the Attorney General quoted the portions of my declaration that described tests or domains of cognitive processing in which the defendant performed normally or was only mildly impaired. However, he omitted any reference to findings that demonstrated striking or unusually severe deficits, such as Mr. Champion's overall performance on the Halstead Reitan Neuropsychological Battery. This transparently skewed description of test findings results in respondent presenting an inaccurate and distorted assessment of Mr. Champion's neuropsychological capacity.

9. As I declared in my 1997 declaration (attached at Exhibit 67 to the petition),

Mr. Champion's Halstead Impairment Index was 1.0, which indicates that his score fell in the range associated with brain damage on each of seven measures which make up the index. An Impairment Index of 1.0 is quite rare; when adjusted for Mr. Champion's age and educational level using the extensive normative base of Heaton, Grant and Matthew, the index score placed him in the 0.02 percentile of the normal population. In other words, of 10,000 men of his age and educational level, Mr. Champion would place second from the bottom. Performance at these levels clearly indicates significant brain damage. Moreover, testing revealed deficits in problem solving, nonverbal reasoning, attention and slowed information processing. These deficits would impair Mr. Champion's ability to draw inferences in ambiguous circumstances and leave him especially vulnerable to missing or misreading cues concerning the intentions of others.

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The foregoing is true and correct and executed under penalty of perjury under the laws of the State of California and the United States of America on this 8 th day of November, 2002.

Nell Riley, Ph.D.

PROOF OF SERVICE

I am a citizen of the United States and am employed in the Stanislaus County. I am over 18 years of age and am not a party to the within action. My business address is P.O. Box 520 Ceres, CA 95307. On the date specified below I served the attached:

Traverse

on the interested parties by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in an United States Postal Service mailbox at Ceres, CA addressed as follows:

California Attorney General
300 South Spring St.
Los Angeles, CA 90013

Ronald Skyers
Los Angeles County Superior Court
200 W. Compton Blvd. #406
Compton, CA 90220

Steven Parnes, Esq.
CAP
1Ecker Place
San Francisco, CA 94104

Steve Champion C58001
San Quentin Prison
San Quentin, CA 94974

Los Angeles Superior Court
Capital Appeals Division
111 N. Hill St.
Los Angeles, CA 90012

District Attorney Los Angeles
111 N. Hill St.
Los Angeles, CA 90012

I, K. KELLY, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 11/15/02 at Ceres, California.

K. Kelly