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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT
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In re

STEVE ALLEN CHAMPION,

On Habeas Corpus.

S065575

DEATH PENALTY CASE

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

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

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DEATH PENALTY

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re **STEVE ALLEN CHAMPION,** On Habeas Corpus.	S065575 DEATH PENALTY CASE

RETURN TO ORDER TO SHOW CAUSE

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

I.

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

II.

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

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

III.

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

IV.

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

V.

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

WHEREFORE, respondent prays the Petition For Writ Of Habeas

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

MEMORANDUM OF POINTS AND AUTHORITIES

PROCEDURAL HISTORY

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

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

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

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

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

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

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

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

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

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

STATEMENT OF FACTS

I. Facts Of The Case

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

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

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

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

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

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

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

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

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

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

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

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

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

PETITIONER'S SPECIFIC ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY OF RESPONDENT'S POSITION

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

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

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

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

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

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

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

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

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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