ORIGINAL

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

S065575

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

PETITION FOR WRIT OF HABEAS CORPUS

PETITION
VERIFICATION
PROOF OF SERVICE

(Volume 2 of 2 volumes)

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DEATH PENALTY

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PENALTY PHASE CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Petitioner's death sentence was unlawfully and unconstitutionally obtained in violation of petitioner's rights under the First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and under article I, section 1, 7, 15, 16, 17, and 24 of the California Constitution and the statutory and decisional law of California, in that petitioner was denied effective assistance of counsel by various errors and omissions of his trial counsel relating to the penalty phase and as a result of those errors and omissions, also denied his rights to due process of law, to freedom of association, to equal protection, to confrontation, and to a fair and reliable guilt and sentencing determination. But for counsel's errors and omissions, which were not the product of any reasonable tactical decision and would not have been committed by competent counsel, it is reasonably likely that the result of the proceedings would have been more favorable to petitioner.

Specifically, defense counsel provided constitutionally ineffective assistance in (1) failing to object to the prosecutor's argument that petitioner would kill if sentenced to life without the possibility of parole and that his demeanor should be used as a factor in aggravation; (2) failing to object to the prosecution's argument that an alleged lack of a mitigating factor was, as to each factor, to be considered a factor in aggravation; and (3) failing to discover and produce substantial mitigating evidence at the penalty phase of the trial.

The facts supporting this claim, among others to be presented after full investigation, discovery, access to this Court's subpoena power, and an evidentiary hearing, include, but are not limited to the following:

1. During the penalty phase, the prosecution presented evidence concerning two juvenile

adjudications of petitioner. The adjudications concerned a 1977 theft charge and a 1978 assault charge. (RT 3532-3547.)

2. The defense presented evidence of Mr. Mallet's involvement as the gunman in the Taylor killing, Mr. Mallet's sentence of life without the possibility of parole for the crime (RT 3663), petitioner's juvenile parole officer's opinion of petitioner's satisfactory performance on parole (RT 3666-3672) , and the testimony of petitioner's mother that petitioner had aspirations of becoming a counselor or teacher. (RT 3681-3682.)

3. The prosecution offered evidence of prior crimes and acts of violence allegedly committed by Mr. Ross. Mr. Ross presented no penalty phase evidence in mitigation. (RT 3548, 3553-3554, 3579, 3633.)

IX. A. Trial counsel was ineffective in failing to object to the prosecutor's argument that petitioner would kill if sentenced to life without the possibility of parole and that his demeanor should be used as a factor in aggravation

1. During the penalty phase the prosecutor argued that to prove that if petitioner were sentenced to life without parole this would provide him the "hope" escape and then implied that he would kill his prison guards and escape. (RT 3699.) The prosecutor then argued that petitioner's demeanor also reflected his dangerousness when the guilt verdicts were read. (RT 3699.) A prosecutor can not argue that a defendant will kill in prison if given life without the possibility of parole unless defendant first puts on evidence that he will be peaceful in prison. (*People v. Taylor* (1990) 52 Cal. 3d 719.) Petitioner did not put on evidence that he would be peaceful in prison. Trial counsel failed to object to all of these arguments and the jury was compelled to believe that they had to render a death verdict to protect prison guards from being murdered by petitioner.

2. At the reading of the guilt verdicts, the defendants stood up, petitioner first, followed by Mr. Ross. Petitioner stated, "fuck this" or "fuck that." The trial court instructed the defendants to sit down. Petitioner indicated that there was no more to hear and began walking toward the lock-up area followed by Mr. Ross. Petitioner turned to the audience and indicated to his mother that "there was a railroad" or that they "were going to railroad him." Plainclothes officers came from the audience and approached the defendants. Mr. Ross gave some indication to the plain clothes officer that he was willing to get into a fight, but no fight ensued. The court bailiff then opened the courtroom door to the lock-up area and took the defendants out of the courtroom. (Settled Statement of July 8, 1985, 70-74.)

3. During the penalty phase arguments the prosecutor made reference to this incident as a factor for the jury to consider in determining whether or not to impose a sentence of death. He

approached the incident by first urging the jury to consider it in the context of petitioner's "future dangerousness," an impermissible argument. He then added:

> MR. SEMOW: And in that regard I ask you this, and I ask you to recall the display that was put on for you by the defendants, and particularly Mr. Ross, when the verdicts were rendered at the time when it should have been most important in his (sic) whole life to behave like a civilized person in front of the jury. Mr. Ross engaged in a confrontation with the guards here and almost got into a fight with them. Is that the kind of person from whom we can protect not only the society outside of prison but society inside prison by incarcerating him for the rest of his life? (RT 3699-3700.)

4. Semow returned to the incident twice again during his penalty phase argument. On both occasions he implied that the death penalty would be appropriate because of the apparent display of emotion by the defendants:

> MR. SEMOW: When you rendered those verdicts that you so carefully considered after listening to so much evidence, he (Mr. Ross) was the one who first got up in mock indignation started to walk toward the lockup, Mr. Champion followed. (RT 3712.)

And,

> MR. SEMOW: Did either of them show you any remorse when they did that mock display of indignation for you when you rendered the verdicts of guilty, verdicts which you rendered not because you delighted in doing so but because you had to, you had no choice based upon the law and the evidence. Did that show remorse on their part? (RT 3728.)

5. Following this last reference the prosecutor launched into his argument that a penalty of death should be based upon anger, another impermissible argument, "Don't be ashamed of your anger [against the defendants] and don't try to stifle it." (RT 3728-3729.) This was unobjected to.

6. A defendant's nontestimonial conduct in the courtroom does not fall within the

definition of "relevant evidence" as that which "tends logically, naturally (or) by reasonable inference to prove or disprove a material issue" at trial. (*People v. Jones* (1954) 42 Cal.2d 219, 222.) Neither can it be properly considered by the jury as evidence of defendant's demeanor since demeanor evidence is only relevant as it bears on the credibility of a witness. (California Evidence Code section 780.) If anything, focusing the jury's attention of a defendant's courtroom conduct distracts attention from, and may diminish, the weight the jury assigns to the permissible factors identified by the instructions as legitimately aiding in the determination whether the defendant committed the alleged offense. Authorizing the consideration of such demeanor in the determination of guilt or innocence also runs the serious risk of inviting the jury to use the character of the accused to prove guilt which is wholly improper. (*People v. Terry* (1970) 2 Cal.3d 362, 400.)

7. How the defendant comports himself -- or, more accurately, how he appears to be comporting himself -- at the counsel table within the highly structured and artificial world of the courtroom is the product of many factors. Moreover, regardless of what the defendant is really feeling, the way in which he appears to be acting is open to vast misinterpretation. Given the incident here at issue, it may be that Mr. Champion was, as Mr. Semow accused, "displaying mock indignation," then again, he may truly have felt indignant, or may honestly have felt that there had been a miscarriage of justice for him to be found guilty.

8. The point is that what the prosecutor really argued was not simply that the jurors take into account what actually occurred, but to draw inferences therefrom regarding petitioner's state of mind. In other words, the jury was asked to speculate, to infer a particular mental state from petitioner's appearance. That practice has been held improper. (*United States v. Carroll* (4th Cir.

1982) 678 F.2d 1208; *Panico v. United States* (1963) 375 U.S. 29.) Had counsel objected properly such evidence would not have been admitted.

9. Behavior of no rational probative value was used as the basis for an argument to the jury. Moreover, the argument was not just that the jury take the behavior into account, but that unreliable factual inferences should be drawn from the behavior, and that the inferences then be used to support a capital sentence. The defense had no opportunity to rebut such an argument, or could rebut it only at the cost of surrendering the defendant's right to remain silent.

10. Although petitioner did not testify at the penalty phase of his trial, the prosecutor argued that petitioner's lack of remorse was a factor which the jury should consider to impose the death penalty. Specifically he argued that the jury should take into account that there was no evidence "that to someone at sometime they displayed remorse about what they did." (RT 3723.)

11. The prosecutor's comment to the jury as to petitioner's demeanor, lack of remorse, and attempt to characterize petitioner as a "bad guy" was also a violation of petitioner's Sixth Amendment right to confrontation and cross-examination. Thus, the prosecutor's unobjected to statements in this regard not only constituted prosecutorial misconduct but also violated Petitioner's Sixth Amendment and Fifth and Fourteenth Amendment Due Process rights. Moreover, as trial counsel never raised the issue of remorse, the prosecution's argument was in violation of petitioner's right against self-incrimination and refusal to testify. (*Griffin v. California* (1965) 380 U.S. 609, 14 L.Ed.2d 106, 85 S.Ct. 1229.)

12. A prosecutor's closing argument could be so improper as to create federal constitutional error. (*Chapman v. California* (1967) 386 U.S. 18, 25-26, 17 L.Ed.2d 705, 87 S.Ct. 824.) Reversal is also required because the prosecutor urged the jury to consider irrelevant

evidence as factors in aggravation. Evidence of a defendant's background, character, or conduct which is not probative of any specific factor listed in Penal Code Section 190.3 has no tendency to prove or disprove a fact of consequence to the determination of the penalty to be imposed, and is therefore irrelevant to aggravation. (*People v. Boyd* (1985) 38 Cal.3d 762.)

13. Since the admission of such evidence is irrelevant, it therefore follows that it is improper for a prosecutor to argue that the jury should consider such "factors" in determining penalty. The prosecutor's allegations of the "future dangerousness" of petitioner, as well as his exhortations to the jury to base its penalty decision on their anger and outrage, and petitioner's lack of remorse, were clearly improper appeals that the jury should reach beyond the factors enumerated under Section 190.3 to find other, non-statutory factors in aggravation to weigh into the equation.

14. Here the prosecutor's comment on petitioner's in-court demeanor, lack of remorse and future dangerousness and to use anger to render a death verdict not only violated petitioner's Sixth Amendment rights, it also violated the Eighth Amendment command that factors in aggravation be defined to narrow the class of persons eligible for the penalty of death. (*Gardner v. Florida, supra,* 430 U.S. 358; *Gregg v. Georgia, supra,* 428 U.S. at p. 188.) Further, by urging the jury to rely on an ambiguous and probably only partially witnessed nonevidentiary courtroom incident, his own uncross-examined characterization of the incident, and personal belief as to whether or not petitioner expressed remorse, the prosecutor committed misconduct that precluded the reliable capital sentencing determination that is required by the Eighth Amendment. (*Johnson v. Mississippi* (1988) 486 U.S. 578, 100 L.Ed.2d 575, 108 S.Ct. 1981; *Woodson v. North Carolina* (1976) 428 U.S. 280, 49 L.Ed.2d 944, 96 S.Ct. 2978.) Moreover, California's prohibition against

a capital sentencer's weighing nonstatutory aggravating factors on death's side of the scale establishes an important procedural safeguard. That safeguard is protected not only by state law, but by the Due Process Clause of the Fourteenth Amendment as well. (*Hicks v. Oklahoma* (1980) 447 U.S. 343; *Campbell v. Blodgett, supra,* 997 F.2d at p. 522; *Fetterly v. Paskett* (9th Cir. 1993) 997 F.2d 1295, 1300.)

15. This Court opined, "Defendants also assert that other comments by the prosecutor in closing argument implied that they should be sentenced to death because they would be a danger to other prisoners and to prison guards if they were sentenced to life imprisonment without possibility of parole . . . . [D]efendants' failure to object to the prosecutor's comments bars them from complaining about the comments on appeal." (*People v. Champion, supra,* 9 Cal.4th at 940.) "Defendants contend the prosecutor's comments [at the penalty phase on their demeanor in court] were impermissible because a defendant's demeanor in court is not a factor that the jury in a capital case is entitled to consider in aggravation . . Neither defendant, however, objected to the prosecutor's comments at trial. Because a timely objection and admonition would have negated any harm arising from the prosecution's comments, defendants are barred from now attacking the propriety of the prosecutor's argument." (*Id.,* at 941.) Petitioner asserts that he was denied effective assistance of counsel by his failure to properly object. Reasonably competent counsel would have registered the above noted objections and recited the applicable constitutional and evidentiary law. The prejudicial arguments made by the prosecutor would not have been allowed.

16. It is urged that the prosecutor's impermissible comment upon petitioner's future dangerousness, in-court demeanor and lack of remorse are of sufficient magnitude as to require reversal of the penalty. It cannot be said that the prosecutorial misconduct did not contribute to

the verdict obtained. (*Chapman v. California, supra,* 386 U.S. at p. 24.) When taken in conjunction with the other errors noted throughout petitioner's case, which considered alone may or may not be so prejudicial as to amount to a denial of due process, the errors cumulatively produced a trial setting that was fundamentally unfair, and therefore a denial of due process. This type of evidence and argument injected arbitrariness into the sentencing proceedings in violation of (*Furman v Georgia, supra,* 408 U.S. 238 and *Gregg v Georgia, supra,* 428 U.S. 153.)

17. There was no tactical reason for defense counsel not to have objected to the arguments made by the prosecutor. Counsel's failure to do so was therefore a violation of petitioner's Sixth Amendment right to effective assistance of counsel. Trial counsel's unreasonable and prejudicial errors deprived petitioner of his right to the effective assistance of counsel. This failure fell below an objective standard of reasonableness under prevailing professional norms and had counsel done so, the arguments could not have been made and the outcome of petitioner's penalty verdict would have been different.

IX. B. Trial counsel failed to object to the prosecution's argument that an alleged lack of a mitigating factor was , as to each factor, to be considered a factor in aggravation.

1. Penal Code § 190.3 describes the factors in aggravation and mitigation that the jury may consider in deciding whether to impose the death penalty. A prosecutor may not argue that the absence of mitigating factors transforms those factors into factors in aggravation. That is exactly what the prosecutor did in petitioner's case and trial counsel did not object to it.

2. When discussing factor (d) of section 190.3 (whether or not the offense was committed while the defendant was under the influence of extreme emotional disturbance), the prosecutor argued that there was "no evidence, of course, of anything of that nature whatsoever, the only evidence is that these killing were brutal and cold blooded. So again as to both defendants we have a strong factor in aggravation." (RT 3709.)

3. Similarly, when discussing factor 190.3 (e) (whether or not the victim was a participant in the defendant's homicidal conduct or consented), the prosecutor argued: "Well what we are talking about here is something like the dual [sic] or mutual combat, the rare instance of a suicide compact. I don't mean to be funny. We have crimes where people engage in sadomasochistic relations and one of them goes too far and kills somebody. That is what we mean by the victim participating in or consent in the conduct. Of course, we have no consent in the conduct of this case. We have strong aggravation by the defendant." (RT 3710.)

4. With regard to factor (g) of section 190.3, (whether or not defendant acted under extreme duress or under substantial domination of another person), the prosecutor said: "Defendant Champion is bigger than Mr. Ross, first of all, and there is no evidence in this case presented at the guilt phase or at the penalty phase of this trial, [that] Mr. Champion was acting

under the duress of anybody. So again we have a factor in aggravation as to both defendants." (RT 3711-3712.)

5. With regard to factor (f) (whether or not the offense was committed under the circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct), the prosecutor said: "A classic example of something like that would be euthanasia or mercy killing. The defendants, of course, showed their victims no mercy whatsoever.[93] They did not believe what they were doing was right, there was not a reasonable basis for them to believe that and they didn't believe that." (RT 3711.)

6. With respect to this issue, this Court stated, "In his closing argument, the prosecutor discussed each of the statutory factors in aggravation and mitigation to be considered by the jury in its deliberations, telling the jury that because there was no mitigating evidence, it should consider certain mitigating factors as being factors in aggravation. This argument was improper. Defendants, however, never objected to the prosecutor's argument, and therefore has [sic] not preserved the issue for consideration on appeal." (*People v. Champion, supra,* 9 Cal.4th at 939.) Petitioner asserts that trial counsel was ineffective for failing to properly object. A reasonably competent counsel would have objected to this improper argument by the prosecutor. It was patent that the prosecutor was making an improper and very prejudicial argument by transforming the lack of each mitigating factors into an aggravating factor for the jury to add on death's side of the balancing equation. By failing to object the prosecutor was permitted to improperly transform

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[93] Here, the prosecutor magically transformed the "mercy killing" mitigating factor into an aggravating factor by arguing that since the defendants showed the victims "no mercy," the "mercy killing" mitigating factor is transformed into an aggravating factor. What he did was persuade the jurors to double count factor (a), i.e. the circumstances of the underlying crime, through double counting factor (f)

four mitigating factors into four aggravating factors. Petitioner asserts that had counsel performed as a reasonably competent counsel and properly objected, the arguments would not have been allowed by the court.

7. The use here of four additional aggravating factors, in addition to the errors which occurred with respect to the use of "Multiple Duplicative Special Circumstances" inflated the life vs. death balance into five additional "strikes" against petitioner.[94] Under the Eighth and Fourteenth Amendments to the United States Constitution the penalty verdict in petitioner's case must be reversed based on trial counsel's ineffectiveness in failing to properly object to the prosecutors patently improper arguments.

8. Improper duplication of aggravators improperly inflates the risk that the jury will improperly impose the death sentence. The finding of more than even one special circumstance has crucial significance in the penalty phase in a "weighing" state, such as California. Because the jury is directed to impose death when the aggravators outweigh mitigators, the constitutionally mandated objective of reliably and fairly carrying out that grave task is undermined when the defendant's conduct is egregiously artificially inflated by multiple errors by transforming the lack of mitigators into four extra aggravators.

9. Eighth Amendment error occurs when a sentencing jury considers even a single invalid aggravating factor. (*Sochor v. Florida* (1992) 112 S.Ct. 2114, 119 L.Ed.2d 326, 112 S.Ct.

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[94] The massive overrepresentation of aggravating factors in petitioner's case was in **addition** to the errors which occurred with respect to the improper use of multiple duplicative special circumstances in aggravation, which the Court found to be error, but "harmless." (See *People v. Champion, supra,* 9 Cal.4th at 936.) Petitioner disagrees with the Court that error was "harmless" and has made that issue the subject of Claim 11 in his federal petition. In combination with these four mitigating factors improperly counted as aggravating factors, the Court can no longer find this massive improper over representation of aggravating factors to be "harmless."

2114.) Here the sentencing jury considered not just one, but four invalid factors in addition to the duplicative special circumstances error in determining petitioner's sentence, all because trial counsel failed to object. The jury improperly counted the additional false aggravators and presumably gave great weight to each one. The prosecutor argued that each factor was "strong" aggravation. (RT 3709-3710.)

10. Given the jury's great discretion -- when proper arguments are made to them -- in weighing factors in aggravation and mitigation, this error was certainly prejudicial. A prosecutor's closing argument could be so improper as to create a federal constitutional error. The failure to object and prevent this argument injected arbitrariness into the sentencing proceedings in violation of the Eighth Amendment. (*Furman v. Georgia, supra*, 408 U.S. 238; *Gregg v. Georgia, supra*, 428 U.S. 153, 49 L.Ed.2d 859, 96 S.Ct. 859.) Here, the procedure further violated due process by precluding a fair sentencing determination. See (*Beck v. Alabama, supra*, 447 U.S. 625.)

11. Trial counsel had no rational or tactical reason for failing to prevent this significant over counting of aggravating factors and raising proper objection. The failure fell below an objective standard of reasonableness under prevailing professional norms and infected the penalty phase of petitioner's trial. But for counsel's failure in this regard, a reasonable probability exists that the result of the guilt phase would have been more favorable to petitioner.

IX. C. Defense counsel failed to discover and produce substantial mitigating evidence at the penalty phase of the trial.

1. Trial counsel's failed to recognize, adequately investigate, consult and prepare appropriate lay witnesses and experts, and present evidence of petitioner's full social history, including petitioner's severe brain damage, parental death, family mental illness and neurologic disease, divorce, poverty, and life threatening danger at home and in the community, in mitigation of penalty and, as to evidence of severe brain damage, which if considered by the jury, constituted evidence which would have precluded any finding of special circumstance liability.[95] Each factor described above alone constituted a significant obstacle to healthy development, but in combination they resulted in serious emotional problems and mental impairments. The absence of compensatory or protective forces in petitioner's life exacerbated the long term consequences of risks that affected every sphere of his life. The risks included:

a. Petitioner's ability to understand the world in which he lives is compromised by severe brain damage, most likely the result of prenatal trauma caused by his mentally ill father's attempts to kill him in utero, infant malnourishment, head injury from a serious automobile accident which resulted in the death of his step father, intentional blows to his head by his two older mentally ill brothers, voluntary inhalation of organic solvents, and ingestion of nearly lethal amounts of liquor in childhood.

b. Petitioner's family plunged into chaos and poverty when the only positive father figure he ever had, his mother's second husband, was killed in an automobile

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[95] The relation of brain damage to special circumstance liability is discussed fully in Claim VII.H.

accident when Mr. Champion was only six years old.

c. Petitioner's maternal and paternal families have a significant history of major mental illness that contributed to his parents' inability to protect and nurture him and his siblings, his two older brothers' unrestrained assaults on petitioner and their younger siblings, and his genetic vulnerability to mental disorders.

d. Petitioner faced the threat of annihilation daily in his home at the hands of his two older brothers, one diagnosed as suffering from schizophrenia and the other addicted to violence producing drugs. The brothers terrorized petitioner, his mother, and his siblings with knives, guns, physical assaults, and threats to kill. The oldest brother tortured petitioner and his siblings, destroyed their treasured possessions at will, and kept them isolated from others in the community.

e. By fortuity or design, Steve Champion's community lacked the resources it needed to intervene and protect the lives of children like petitioner, whose basic physical and emotional needs went unmet. Schools, health care providers, law enforcement agencies, and social service organizations in South Central Los Angeles had few if any adequate programs aimed at identifying, assisting, and protecting at risk children in South Central Los Angeles. (Exhibit 1, Vol. 1, Claims relating to Penalty Phase Ineffective Assistance of Counsel.).[96]

2. The failure to develop a complete social and cultural history regarding petitioner was prejudicial.

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[96] The exhibits referred to in this claim of Ineffective Assistance of Counsel at the Penalty Phase are numbered 1 through 240 and are bound in Volumes 1-13. Exhibit 1, contained in Volume 1, is the declaration of Dr. Pettis.

3. Petitioner refers to and incorporates herein the declarations of Roderick W. Pettis, M.D., and the documents and declarations referred to in his declaration, the declaration of Dr. Nell Riley Ph.D.,[97] and all other documents and declarations contained in Exhibits 1-240 of Volumes 1-13.

4. Steve's father, Lewis Burnis Champion II, has been diagnosed alternately as having schizophrenia or bipolar mood disorder, either one of which is a major psychiatric illness which causes grave impairment in cognition and day to day functioning. Lewis II has been voluntarily and involuntarily hospitalized in veterans' psychiatric facilities in several states, where mental health staff reported his psychotic behavior, auditory and visual hallucinations, paranoid delusions, violent outbursts, and prolonged periods of depression punctuated with episodes of mania. [CHAMPION, Lewis Burnis II (Father). Medical Records: Veterans Affairs Medical Center, Albuquerque, NM. (1986-1994); CHAMPION, Lewis Burnis II (Father). Medical Records: Veterans Affairs Medical Center, Las Vegas, NV. (1/16/87-5/18/95); CHAMPION, Lewis Burnis II (Father). Medical Records: Veterans Affairs Medical Center, Los Angeles, CA. (1/28/91, 1/5/93-1/12/93, 4/7/97-4/10/97); CHAMPION, Lewis Burnis II (Father). Medical Records: Veterans Affairs Medical Center, New Orleans, LA. (8/29/95-9/13/95)] Lewis II explained that he often feels like he is "in another world." He also feels "like people are after me" and like he is "being watched wherever" he goes. He does not have memory of things he says and does when he is "in a different reality." [Declaration of Lewis B. Champion II (Father), 1997]

5. Lewis Burnis Champion and Anna Marie Hill, Steve's paternal grandparents, migrated

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[97]Dr. Riley's declaration is Exhibit 67 and is continued in Volume 3 of the exhibit volumes entitled Guilt Phase Claims and other Claims (excluding Penalty Phase Ineffective Assistance of Counsel Claims.)

from the Deep South to the Chicago area. [CHAMPION, Lewis Burnis II (Father). IL Birth Certificate. (5/25/33); CHAMPION (ARMOUR), Gwendolyn (Paternal Aunt). IL Birth Certificate. (1/14/32); CHAMPION (BAXTER), Marcia Joan (Paternal Aunt). IL Birth Certificate. (10/3/42); CHAMPION (RENDER, DIXON), Marjorie Yvonne (Paternal Aunt). IL Birth Certificate. (3/30/30); CHAMPION, Vernon Rene (Paternal Half-Uncle). IL Birth Certificate. (6/19/45); CHAMPION (BURTON), Ramona Bernadette (Paternal Half-Aunt). IL Birth Certificate. (3/9/49); CHAMPION, Eugenia Vernel Jones (Paternal Paternal Great-Grandmother). IL Death Certificate. (5/8/64); CHAMPION, Wesley (Paternal Paternal Great-Grandfather). IL Death Certificate. (6/15/49)] Lewis II's father, Lewis (Steve's paternal grandfather), was the first of three sons born to Wesley C. Champion and Eugenia Jones (Steve's paternal paternal great grandparents), both of Sumter, South Carolina. [CHAMPION, Lewis Burnis I (Paternal Grandfather). IN Marriage Certificate to Anna Marie Hill. (10/1/29)] Lewis was born February 12, 1908, his brother Sanford (Steve's paternal great uncle) was born September 25, 1913, and his youngest brother Cornelius (Steve's paternal great uncle) was born May 14, 1914. [CHAMPION, Lewis Burnis I (Paternal Grandfather). IN Marriage Certificate to Anna Marie Hill. (10/1/29); CHAMPION, Sanford (Paternal Great-Uncle). IL Death Certificate. (10/10/74); CHAMPION, Cornelius (Paternal Great-Uncle). IL Death Certificate. (10/24/91)] Eugenia had two daughters "who died as children." [Declaration of Gwendolyn Armour (Paternal Aunt), 1997] Eugenia also had two sons, John and William Brimfield, from an earlier relationship, but Wesley forced Eugenia to "give her first two sons away." [Declaration of Vernon R. Champion (Paternal Half-Uncle), 1997]

6. Wesley and Eugenia Champion were born in South Carolina in 1882 and 1878,

respectively. Former slaves had been liberated, Wesley and Eugenia were reared during "a new guerilla war of terrorism directed against blacks" that allowed white South Carolinians "to shoot, stab, or knock-down Negroes on slight provocation" with impunity. [Butterfield, Fox, All God's Children, Alfred A. Knopf: New York, 1995, p. 38] In 1917, when Lewis was 8, Sanford 4, and Cornelius 3, Wesley and Eugenia left Sumter for Evanston, Illinois, located north of Chicago, "because the prejudice in the south was unbearable" and they wanted to "make a better life for themselves." [Declaration of Gwendolyn Armour (Paternal Aunt), 1997; Declaration of Ramona B. Burton (Paternal Half-Aunt), 1997] When they left South Carolina, Wesley "stopped communicating" with his family. [Declaration of Vernon R. Champion (Paternal Half-Uncle), 1997]

7. Wesley and Eugenia were devout church-goers who reared their three sons in the Church of God, founded only a few years before their arrival in Evanston from South Carolina. In 1922, when Steve's paternal grandfather, Lewis, was a teenager, Lewis, his father, and his brothers "were the core of the men and workers in the church." [CHURCH OF GOD. *An Historical Sketch of Our Church Fellowship*] Lewis met his future wife, Anna Marie Hill, at the church, where her father, Joseph Hill, Sr. (Steve's paternal maternal great grandfather), was also an active member. [CHURCH OF GOD. *An Historical Sketch of Our Church Fellowship*] Anna Marie and Lewis shared a common Southern ancestry and culture. Anna Marie was born April 28, 1910, in Besman, Alabama, to Joseph Hill Sr. and Florence Foshee (Steve's paternal maternal great grandmother) who were from Greensboro and Clanton, Alabama, respectively. [CHAMPION, Lewis Burnis I (Paternal Grandfather). IN Marriage Certificate to Anna Marie Hill. (10/1/29)]

8. Lewis and Anna Marie were married in Crown Point, Indiana, on October 1, 1929, by a

justice of the peace. Lewis was a chauffeur with a prestigious job driving Oscar Mayer, and Anna Marie planned on being a housewife. [CHAMPION, Lewis Burnis I (Paternal Grandfather). IN Marriage Certificate to Anna Marie Hill. (10/1/29)] Soon after their marriage, they returned to Evanston, Illinois, where their three children were born over a span of three years: Marjorie Yvonne (Steve's maternal aunt) was born May 5, 1930; Gwendolyn (Steve's maternal aunt) was born January 14, 1932; and Lewis II, Steve's father, was born May 25, 1933. [CHAMPION (RENDER, DIXON), Marjorie Yvonne (Paternal Aunt). IL Birth Certificate. (3/30/30); CHAMPION (ARMOUR), Gwendolyn (Paternal Aunt). IL Birth Certificate. (1/14/32); CHAMPION, Lewis Burnis II (Father). IL Birth Certificate. (5/25/33)]

9. Anna Marie deserted her three small children and husband in May 1934 when Lewis, the youngest, was one year old, Gwendolyn was one and one half years old, and Marjorie was three. Lewis' brief marriage to Anna Marie was marred by her alcoholism and instability. Dora Willis, Lewis' third wife, described Anna Marie as "a drunk and adulteress" who "never went to church" after their marriage. [Declaration of Dora Willis (Paternal Step Grandmother), 1997] Anna Marie neglected her children when she "went out all the time and left their kids at home alone." [Declaration of Dora Willis (Paternal Step Grandmother), 1997] Lewis knew of his wife's promiscuity and doubted that Lewis II, Steve's father, was his biological son. Years later, Lewis' son by his second wife described him as "a very secretive, untrusting person" who "did not trust any of his children." [Declaration of Vernon R. Champion (Paternal Half-Uncle), 1997]

10. Lewis was unable to care for three small children and resented Lewis II the most. Lewis II was Lewis' "least favorite child," and Lewis, who "never liked Lewis II much," considered him "a liar and a bad person." [Declaration of Dora Willis (Paternal Step

Grandmother), 1997] Lewis turned to Wesley and Eugenia to rear Lewis II for most of his childhood. Eugenia "was blind, but she quoted the Bible by heart." [Declaration of Lewis B. Champion II (Father), 1997] One of her grandchildren, Ramona B. Burton, described her as "a very religious woman" who "used to say strange things that [Ramona] did not always understand." [Declaration of Ramona B. Burton (Paternal Half-Aunt), 1997]

11. Lewis was deeply religious, active in his church and provided basic physical necessities to his first three children. Lewis "dropped out of high school because he needed to help support his family" and went to work full-time at the age of 17. [Declaration of Vernon R. Champion (Paternal Half-Uncle), 1997] He:

> . . . had to work three jobs in order to make ends meet. He began working for Oscar Mayer when he was 17 years old. He worked for Oscar Mayer as a chauffeur and a cook for over 40 years. He also worked at a local grocery store, stocking shelves, and a movie theater as a janitor. [Declaration of Lewis B. Champion II (Father), 1997]

12. Lewis' dislike of his son Lewis II became especially evident after Lewis remarried Ethel Dixon in November 11, 1939, when Lewis II was six years old. [CHAMPION, Lewis Burnis I (Paternal Grandfather). IL Marriage Certificate to Ethel Dixion [sic]. (11/11/39)] Lewis and Ethel had three children together: Marcia Joan, born October 3, 1942; Vernon, born June 19, 1945; and Ramona B. Burton, born March 9, 1949. [CHAMPION (BAXTER), Marcia Joan (Paternal Aunt). IL Birth Certificate. (10/3/42); CHAMPION, Vernon Rene (Paternal Half-Uncle). IL Birth Certificate. (6/19/45); CHAMPION (BURTON), Ramona Bernadette (Paternal Half-Aunt). IL Birth Certificate. (3/9/49)] Lewis II and Ethel did not believe that Lewis and his two sisters, Gwendolyn and Marjorie, were "smart enough to succeed in school" and did not

believe that they were college material." [Declaration of Ramona B. Burton (Paternal Half-Aunt), 1997] The family believed that "Anna Marie had bad genes" and that her children were less intelligent than Ethel and Lewis' children. [Declaration of Ramona B. Burton (Paternal Half-Aunt), 1997] When Lewis II was in his teens, his "mother died of cirrhosis of the liver." [Declaration of Lewis B. Champion II (Father), 1997]

13. Lewis and his second wife were extremely strict and serious parents who brooked no disobedience from their children. Vernon Champion, one of Lewis' children by his second wife, acknowledged that "people today might call [his] parents' behavior child abuse," but Vernon believes "that the Bible warrants a parent beating his child." [Declaration of Vernon R. Champion (Paternal Half-Uncle), 1997] Vernon's mother "usually beat or whooped" the children "with a tree branch or the electrical cord of an iron." [Declaration of Vernon R. Champion (Paternal Half-Uncle), 1997] Lewis and Ethel enforced rules of behavior that isolated Lewis II and his siblings from their peers. They were not allowed to "play board games that used dice or cards. . . . dance" or "go to the movie theaters." [Declaration of Vernon R. Champion (Paternal Half-Uncle), 1997]

14. Lewis was a cold, distant father who greatly influenced his son, Lewis II. Vernon believes that Lewis II "tended to emulate [their] father." [Declaration of Vernon R. Champion (Paternal Half-Uncle), 1997] Lewis, knowingly or unknowingly, was emotionally cruel to his children and compared them with Oscar Mayer's children, pointing "out all the ways in which" Lewis II and his siblings "were inferior." [Declaration of Vernon R. Champion (Paternal Half-Uncle), 1997] Vernon reported that Lewis "was always asking us why we were the way we were and complaining that we were not more like Oscar Mayer's children." [Declaration of Vernon R. Champion (Paternal Half-Uncle), 1997] Lewis did not spend time with his children or make any

"attempt to form an emotional connection with any of" them. [Declaration of Vernon R. Champion (Paternal Half-Uncle), 1997]

15. Lewis II feared his father's wrath and "beatings and did everything [he] could possibly do to stay out of trouble." [Declaration of Lewis B. Champion II (Father), 1997] On one occasion, as Lewis II lay sleeping in the early morning hours, his father began to hit him "over and over again with the switch" without saying "anything" to the boy. [Declaration of Lewis B. Champion II (Father), 1997] Lewis II had "painful welts covering" his legs the next day. [Declaration of Lewis B. Champion II (Father), 1997] Lewis' method of punishing the children was "harsh and frightening" because he allowed wrong doings to accumulate "for a few weeks, or maybe even a few months" and beat the children "for everything at once." [Declaration of Gwendolyn Armour (Paternal Aunt), 1997] Lewis II reported that he "spent a lot of time in the basement alone." [Declaration of Lewis B. Champion II (Father), 1997]

16. In addition to his father, mother, and paternal grandmother, Lewis II's paternal uncle Cornelius experienced serious mental and emotional problems that interfered with his functioning. He lived with his parents as an adult because he:

> had very bad nerves. He fought in World War II, and was clearly disturbed by the experience. He shook and over reacted to loud noises. He was quick-tempered and sometimes went all night without sleeping. [Declaration of Gwendolyn Armour (Paternal Aunt), 1997]

Cornelius gave Lewis II "a pair of boxing gloves to wear and then started throwing punches at" him because Cornelius thought that Lewis II "needed to learn how to fight." [Declaration of Lewis B. Champion II (Father), 1997] John Brimfield, one of Lewis II's maternal half-uncles, also

suffered from mental impairments. He "jumped under the table or into a closet" during storms and when there was lightning. [Declaration of Gwendolyn Armour (Paternal Aunt), 1997] Sanford, another paternal uncle of Lewis II's, fared better and had six children, one girl and five boys, with his wife, Mary Berry. Sanford died at age 61 from status epilepticus. [CHAMPION, Sanford (Paternal Great-Uncle). IL Death Certificate. (10/10/74)]

17. The combination of maltreatment, abandonment, and genetic vulnerability took its toll on Lewis II. He showed signs of developmental problems in his academic performance and in his behavior at home. His sister remembered that he "argued and fought with folks for no reason at all," and "did not make sense a lot of the time." [Declaration of Gwendolyn Armour (Paternal Aunt), 1997] Lewis II was unable to control himself sometimes. He banged on furniture and the walls to the point that his family was "afraid he was going to break all the furniture." [Declaration of Gwendolyn Armour (Paternal Aunt), 1997] Lewis II tried to "tell jokes, but they were never funny," and he,"tried to be a musician, but he was not very talented." [Declaration of Ramona B. Burton (Paternal Half-Aunt), 1997] Lewis II could become violent without provocation, and his sisters once "had to lock Lewis II out of the house in order to protect themselves until" their father came home. [Declaration of Ramona B. Burton (Paternal Half-Aunt), 1997] He "did not let up in arguments" and "had a reputation at school for being a good fighter." [Declaration of Gwendolyn Armour (Paternal Aunt), 1997] He was placed in special education classes at school, and he withdrew before completing the 11th grade. [CHAMPION, Lewis Burnis II (Father). School Records: Evanston Township High School. (1949-1952)]

18. Lewis II was drafted May 8, 1953, and served in the 1st and 4th Armored Divisions of the U.S. Army, headquartered in Ft. Hood, Texas. [CHAMPION, Lewis Burnis II (Father).

Military Records: National Personnel Records Center, Certifications of Military Service. (6/23/77, 1/6/87, 4/2/87, 3/19/90, 3/7/95, 6/22/95)] Lewis II was terrified by his experiences in the army and wrote his sisters "about the training. He told [them] about spending nights in holes in the wilderness, about getting bitten by snakes, and about the deaths of some of his peers." [Declaration of Gwendolyn Armour (Paternal Aunt), 1997; CHAMPION, Lewis Burnis II (Father). Military Records: National Personnel Records Center, Certifications of Military Service. (6/23/77, 1/6/87, 4/2/87, 3/19/90, 3/7/95, 6/22/95)] Lewis II was also disturbed by the intensity of the racism in the service and in Texas, which was unparalleled in his experience. During his first month of basic training Lewis II got into a physical confrontation with his commanding officer who called him a "nigger." [Declaration of Lewis B. Champion II (Father), 1997] Here Lewis II also experienced Jim Crow laws and segregation conditions, similar to those his parents survived. He was "humiliated" by "separate bathrooms and eating areas for black people and white people" and by being "forced to ride in the back of the bus." [Declaration of Lewis B. Champion II (Father), 1997] Lewis II felt his life was in danger every day: "I believed that they were firing live ammunition at me. Every day I thought I might die." [Declaration of Lewis B. Champion II (Father), 1997]

19. When Lewis II returned home from the service, his sister noticed that he "was easily agitated and very hostile. . . .He almost always mention[ed] the snakes whenever he talk[ed] about his experience. . . .[H]e was terrified and confused." [Declaration of Gwendolyn Armour (Paternal Aunt), 1997] Lewis II was honorably discharged from the army May 6, 1955, and returned home to Evanston. [CHAMPION, Lewis Burnis II (Father). Military Records: National Personnel Records Center, Questionnaires About Military Service. (6/10/77, 12/28/87, 6/29/88)] After his

discharge he was classified as a "disabled veteran." [CHAMPION (POWELL), Rita (Sister). CA Birth Certificate. (3/17/61)] Lewis II's behavior was common to soldiers who have been traumatized by their war time experiences. He reported that he "was very nervous" and "[e]very time [he] heard a noise [he] dove to the ground or hid under the table." [Declaration of Lewis B. Champion II (Father), 1997]

Maternal Family

20. Steve's mother, Azell Gathright, shared his father's cultural relationship to the South, but her family migrated north two generations later than Lewis II's. Azell was born and grew up on land passed down from her paternal grandfather, a former slave, to her father. Nero Gathright, her paternal grandfather (Steve's maternal paternal great-grandfather), was born a slave in Georgia. Azell's brother, E. L. (Steve's maternal uncle) reported that Nero:

> . . .and his brother David, were sold to a family in Mississippi when he was only six years old. My grandfather and David were taken from their mother and never saw their family again. At the end of the Civil War, my grandfather received 40 acres of land which my father Jim then inherited. [Declaration of E.L. Gathright (Maternal Uncle), 1997]

21. Mississippi "was a hard place for black children to grow up," and Nero Gathright and his wife Levi (Steve's maternal paternal great grandmother) had three sons and one daughter. Their eldest son, Jim Raspberry Gathright (Steve's maternal grandfather), was born January 8, 1893, on the family farm, located near Preston, Mississippi. When farming responsibilities allowed, Jim and his siblings attended Pine Grove Street School, a segregated and poorly equipped school house. [Gathright family reunion flyer] When Jim was 21 he married Emma Lidell (Steve's maternal grandmother) on October 15, 1914. Emma was a bright, hardworking young woman

who taught school at Pine Grove. She was born December 3, 1892, to Bailey Liddle and Lizza Reed, who had at least one other child, Albert. [LIDDELL (GATHRIGHT), Emma (Maternal Grandmother). CA Death Certificate. (10/31/76); Declaration of Czell Gathright (Maternal Uncle), 1997]

22. Steve's maternal grandparents, Jim and Emma Gathright, worked their farm and reared 13 children on it, four daughters and nine sons: Ozella, Chalmus, Vergil, Bailey, Raspberry, Emanuel, Ceola, Tbell, E.L., Jadell, Czell, Azell (Steve's mother), and Gladis [GATHRIGHT (JACKSON, CHAMPION, ROBINSON, TRABUE), Azell (Mother). MS Birth Certificate. (1/28/33); GATHRIGHT, Czell (Maternal Uncle). MS Birth Certificate. (1/28/33); GATHRIGHT, Jadell (Maternal Uncle). MS Birth Certificate. (1/23/30); GATHRIGHT (OVERSTREET), Gladis (Maternal Aunt). MS Birth Certificate. (8/12/35);GATHRIGHT, Ozella (Maternal Aunt). MS Birth Certificate. (11/11/15)]. By the time Azell was born January 28, 1933, her maternal grandparents, Bailey and Lizza, and her paternal grandmother Levi were deceased. [GATHRIGHT (JACKSON, CHAMPION, ROBINSON, TRABUE), Azell (Mother). MS Birth Certificate. (1/28/33)] Her paternal grandfather, Nero, was considered mentally unbalanced by neighbors. Azell recollected:

> People in the area called my grandfather "crazy Nero" because he came to church in the middle of the summer wearing long overcoats. He talked to himself, twitched around, and yelled out at inappropriate times. People thought he was funny. Grandpa Nero yelled at kids a lot and so when he was sleeping, children threw apples at him. [Declaration of Azell Jackson (Mother), 1997]

23. In addition to Nero, many other members of Steve's maternal family have a history of

mental health problems, substance abuse, addiction, and domestic violence. Azell's brothers Tbell, E.L., and Jadell all had problems drinking alcohol. Jadell also was addicted to gambling. [Declaration of Wanda Gathright (Maternal Cousin), 1997] The wives of Steve's great-uncle Leslie Gathright, uncle Manuel Gathright, and uncle Jadell Gathright all divorced their husbands due to repeated instances of physical abuse.

24. In 1962 Mattie Gathright divorced her husband Leslie for his acts of "extreme and repeated cruelty," citing instances of physical abuse in which Leslie "struck [Mattie] about her body with violence bruising and injuring her" in "a fit of anger" [GATHERIGHT, Leslie (Maternal Great-Uncle). Divorce Records: Cook County Superior Court, *Arlethia Gatheright v. Leslie Gatheright*, Case No. 62S-20578. (9/19/62-10/22/62)] Azell's brother Manuel was divorced by his wife Mattie, also on grounds of "extreme and repeated cruelty." Manuel struck his wife "about her head causing her to fall upon the floor then kicked [her] in the mouth breaking several of her teeth." He also struck her "face and head with his fists, and attempted to choke her." [GATHERIGHT, Manuel (Maternal Uncle). Divorce Records: Superior Court of Cook County, *Mattie L. Gathright v. Manuel Gathright*, No. 63S-3869. (1/28/63-2/13/64)] In 1963, Jadell's first wife Louise filed for divorce on the grounds of "extreme cruelty" and "the wrongful infliction of grievous mental suffering as well" which caused Louise "great physical and mental injury and suffering." Jadell was issued a restraining order during the trial to keep him from "harassing, annoying, molesting, or striking" his wife. [GATHRIGHT, Jadell (Maternal Uncle). Divorce Records: L.A. County Superior Court, *Jadell Gathright vs. Louise Gathright*, No. D 645 412. (3/64)] In 1978 Jadell was subject to another restraining order during divorce proceedings with his second wife, Dorothy Gathright. [GATHRIGHT, Jadell (Maternal Uncle). Divorce Records: L.A.

County Superior Court, *Jadell Gathright vs. Dorothy Gathright*, No. D 976 938. (11/8/78-12/2/81)]

25. Jadell had multiple addictions, abusive tendencies, and strange behavior did not go unnoticed by his family. Jadell's daughter Wanda states that he "seemed mentally ill" and described his demeanor:

> He was also very high tempered and violent. He beat my mother and all of my sisters. . . He drank nearly every day, and this made his bizarre behavior even more unpredictable. [Declaration of Wanda Gathright (Maternal Cousin), 1997]

26. Jadell killed his wife, Louise Calvin Gathright, in 1968. The two had been separated for about a year when Jadell entered the home in which she lived with their four children, and shot her to death. [GATHRIGHT, Jadell (Maternal Uncle). California Department of Corrections. (11/68-9/75)]

27. Two of Jadell's daughters, Wanda and Evangeline (Steve's first cousins), also have major mental health problems. Evangeline had a major nervous breakdown in the mid-seventies while attending school at Pitzer College. She was unable to complete her education as a result, and has suffered from delusions, suicidal ideations, and hallucinations. Evangeline has been in and out of several psychiatric care programs, because "[a]t times she is completely unable to take care of herself." [Declaration of Wanda Gathright (Maternal Cousin), 1997] Wanda had been diagnosed both as bipolar and schizophrenic. [GATHRIGHT, Wanda Denise (Maternal Cousin). Medical Records: Psychiatric Evaluation by William Vicary M.D., as ordered re: *State of Nevada v. Wanda Gathright*, Case No. A092741. (3/86)] As a teen she attempted to commit suicide by swallowing Ajax and slitting her wrists. [Declaration of Wanda Gathright (Maternal Cousin), 1997] She has

been treated at several institutions in the Los Angeles area, and has been treated with anti-psychotic medications such as Resperidol, Thorazine, Haldol, and Prolixin. [Declaration of Wanda Gathright (Maternal Cousin), 1997; GATHRIGHT, Wanda Denise (Maternal Cousin). Court Records: Clark County Superior Court (NV), *State of Nevada v. Wanda Denise Gathright*, Case No. C96377. (9/20/90-11/15/90)] Wanda has also exhibited traits of polysubstance abuse, with drug and alcohol addictions. [Declaration of Wanda Gathright (Maternal Cousin), 1997]

28. Survival in Mississippi required every family member's efforts. Children in Azell's family "worked hard from the day [they] were barely big enough to follow orders," and they worked "as hard as adults." [Declaration of Jadell Gathright (Maternal Uncle), 1997] They performed household chores, tended livestock, collected eggs, and picked cotton. Picking cotton was "back breaking work." [Declaration of Jadell Gathright (Maternal Uncle), 1997] According to Jadell:

> Chalmus, Bailey and Raspberry. . . .used to pick four hundred pounds of cotton a day while I only picked two hundred fifty pounds of cotton. Picking cotton kept my hands and arms all cut up and sore and made my muscles ache. We dragged big bags filled with cotton up and down the rows, and their weight made our shoulders and back sore and stiff. [Declaration of Jadell Gathright (Maternal Uncle), 1997]

29. The family "grew cotton, corn, okra, and peas," and raised enough food, but they seldom had cash. [Declaration of Czell Gathright (Maternal Uncle), 1997] They raised "pigs, cows and chickens" and grew "sweet potatoes, white potatoes. . .beans, pears, apples, peaches, peanuts, watermelons, corn. . . and cotton." [Declaration of Azell Jackson (Mother), 1997] After tending the fields, Azell and her sister Gladis continued to work, helping Emma prepare dinner for the

entire family and performing other household chores.

30. Azell's family, like Lewis II's family, was deeply religious, but they did not follow the same strict set of rules. They did, however, switch from the local Baptist church to the Church of God, because members of the Baptist church "smoked, drank alcohol, danced, and listened to the blues," which Emma considered "ungodly." [Declaration of Azell Jackson (Mother), 1997] Emma and Jim took a dim view of normal childhood play and whipped the children if they saw them "playing" and did not want them to "mess around." [Declaration of Azell Jackson (Mother), 1997] Parents and children worked six days a week, but "[o]n Sundays. . . went to church at the Church of God." [Declaration of Ceola Nunn (Maternal Aunt), 1997] The family attended church "all day Sunday and stayed into the night. The family also went to church on Wednesday for the prayer meetings." [Declaration of Azell Jackson (Mother), 1997] The church was too small to have its own preacher, so a visiting preacher came weekly. Emma, Azell's mother, kept a "room for the preachers and their families" who "came every weekend from Louisville or Meridian." [Declaration of Azell Jackson (Mother), 1997] Azell was not able to rest on the weekends because they "prepared so much food" for the company:

31. We cooked extra chickens and made pies all day, but the preacher, his family, and his friends ate most of it up before we got any. We served the preacher first, because my mother made us. My brothers, sister, and I fussed to each other about the preacher making us work so hard only to have us watch him eat our food. When my mother heard us she got angry and beat us because we were speaking bad about a man of God. [Declaration of Azell Jackson (Mother), 1997]

32. Azell and her siblings attended the same segregated, ill-equipped school her father

attended, Pine Grove. Learning was difficult at the school. Jadell described the harsh conditions:

> 33. The school was so small that kids from different grade levels all sat together in the same room. . . .We had a few used books but not enough to go around for all the students. Our school did not have running water, electricity, or a gym. . . .There was no way one teacher could control all the students, and things got out of hand a lot of times. The boys had fist fights at school almost twice a week. [Declaration of Jadell Gathright (Maternal Uncle), 1997]

Punishment was severe, and students were hit "up to twenty times on [their] rears with. . . .a large wooden stick" for fighting, "[s]leeping in class, not having done homework, not knowing an answer to a question, or talking in class." [Declaration of Jadell Gathright (Maternal Uncle), 1997] Children "from the ages of five to nineteen" went to Pine Grove's eight grades. [Declaration of Czell Gathright (Maternal Uncle), 1997]

34. Azell's mother wanted her children to be educated and arranged for the younger ones to attend high school. The nearest high school for black students was 25 miles way in Louisville, Mississippi, so Azell and Czell moved to their uncle's home nearer to the school. After high school, Czell and Azell enrolled in a black college in Holly Springs. Azell attended only briefly, and Czell withdrew when he was drafted into the Army during the Korean War.

35. Discipline at home was as strict as at school. Children were beaten "for not working hard enough or for forgetting to do a chore." [Declaration of Jadell Gathright (Maternal Uncle), 1997] Jim, Azell's father, delivered "more severe" beatings than Emma, her mom. [Declaration of Jadell Gathright (Maternal Uncle), 1997] Jim used a rope and hit the children with "all his strength." [Declaration of Jadell Gathright (Maternal Uncle), 1997] At times, he beat the children

"with a rope to try and make [them] pick cotton faster." [Declaration of Jadell Gathright (Maternal Uncle), 1997]

36. Azell and her siblings grew up in an era well before civil rights were recognized and granted to Mississippi's African-American citizens. Every sphere of social and economic life for black people was governed by strictly enforced Jim Crow laws aimed at preserving segregation at any costs to African-Americans. Czell described the insidious effects of racism:

> . . . .[R]acism everywhere . . .put black people on guard. There were frequent lynchings and beatings, and black men could be jailed on a white man's say so. Black people were not supposed to go to the white part of town. Whites cheated blacks out of money, but there was nothing that blacks could do because the law did not protect black people. Blacks could not get jobs which they were qualified for because whites would not hire them. [Declaration of Czell Gathright (Maternal Uncle), 1997]

37. White people exercised arbitrary control over black people, and Azell's family, like their neighbors, adopted strategies to avoid confrontation with whites. Her brother Czell "went into the street" when he "saw a white woman walking toward" him so that no one could "say [he] was bothering her." [Declaration of Czell Gathright (Maternal Uncle), 1997] Azell's grandfather Nero refused to work for white people because he knew they had license to cheat him. E.L. learned when he "was very young that it was dangerous, as a black person, to go into the white part of town" and he "learned. . .to protect" himself.

38. E. L. repeated a story about a black man who borrowed five dollars from a white man: The white man made him sign a check. Later, the white man changed the amount and made the black man work it off for a year. This type of thing happened all the time. Blacks counted for

nothing, and if they argued, they were beaten or killed. Black men were lynched over nothing where I grew up. [Declaration of E.L. Gathright (Maternal Uncle), 1997]

39. Ultimately, the unchecked power of white people to harm black people forced Azell's father to flee Mississippi, divide his family, and abandon the family farm. A group of armed vigilantes attacked Azell's home when they perceived that her brother had been disrespectful to a white farmer. Jadell described the harmless incident that led to a Klan attack on the farm:

> . . .[M]y brother Raspberry came back from the army to Mississippi to visit our family. As he drove up the dry, dirt road our family lived on, his car made a big dust cloud which settled on a white man's house. Minutes after Raspberry arrived home, the white man and a group of his friends stormed up to my family's farm. . . .and told my dad that he was going to return with the Klan that night. [Declaration of Jadell Gathright (Maternal Uncle), 1997]

When the Klan returned, Jim was prepared:

> My father and his friends waited in the barn that night with their guns. After Klansmen arrived at the Gathright farm, my father, his friends and the Klansmen started shooting at each other. . .[T]he Klansmen got frightened and ran away. [Declaration of Jadell Gathright (Maternal Uncle), 1997]

40. Azell's father had no choice but to flee after standing up to the Klan. As Jadell explained, "A black man could not stand up to the Klan and live to be very old in Mississippi." [Declaration of Jadell Gathright (Maternal Uncle), 1997] The day after the Klan attack on their farm, Jim and Raspberry fled to East St. Louis, Illinois. One by one, other children in the family also left Mississippi, with their mother's encouragement. Emma "knew that there was little

opportunity for black people in Mississippi, so she encouraged all" her children "to leave Mississippi when they were old enough." [Declaration of Ceola Nunn (Maternal Aunt), 1997]

41. By the mid-1950s, all of Azell's family had left Mississippi. Most moved north to East St. Louis where their father had fled or to Chicago and the Midwest. Czell settled in Los Angeles after he served two years in the army during the Korean War. Azell left the farm in 1951 and "moved north to live with her brothers." [Declaration of Azell Jackson (Mother), 1997] She stayed in the living room of a small trailer with Bailey and his wife. He helped her find a clerical job at Fort Sheridan. Azell, like her older siblings, sent "money home for [her] younger sister Gladis, to help her go to college." [Declaration of Azell Jackson (Mother), 1997] Eventually, Azell's parents joined Czell, Jadell, E.L., Ceola, Azell, and Tbell in Los Angeles, found work, and raised their families there.

Family of Origin: 1955 - 1962

42. Azell met her future husband Lewis II at the Church of God in Evanston shortly after he returned home from the army. Azell thought "Lewis was very handsome. He was an Army man." [Declaration of Azell Jackson (Mother), 1997] They began dating, and church members "encouraged" them to marry. [Declaration of Azell Jackson (Mother), 1997] They married October 8, 1955, after knowing each other less than six months. [GATHRIGHT (JACKSON, CHAMPION, ROBINSON, TRABUE), Azell (Mother). IL Marriage Certificate to Lewis Burnis Champion. (9/30/55)] Their first child, Steve's oldest brother, Lewis Burnis Champion III was born July 28, 1956 in Evanston. [CHAMPION, Lewis Burnis III (Brother). IL Birth Certificate. (8/28/56)] Lewis II worked as a machine operator in a stamping company, and Azell took a short while off from a series of clerical jobs. [CHAMPION, Lewis Burnis III (Brother). IL Birth

Certificate. (8/28/56); GATHRIGHT (JACKSON, CHAMPION, ROBINSON, TRABUE), Azell (Mother). Employment Records: Social Security Itemized Statement of Earnings. (1953-1988)]

43. Some family members opposed the marriage even though they liked Azell. Lewis II's sister thought he "was too young to get married and that he did not know her well enough. He got married because other people thought it would be a good idea, not because he wanted to." [Declaration of Gwendolyn Armour (Paternal Aunt), 1997] Another one of Lewis II's sisters, Ramona, thought "Azell was a sweet, timid woman." [Declaration of Ramona B. Burton (Paternal Half-Aunt), 1997] Lewis II recollected that he too "was unsure" about the marriage. [Declaration of Lewis B. Champion II (Father), 1997] Some of Azell's family members also objected to the marriage. Jadell opposed the marriage because he thought Lewis II "was a lunatic and an alcoholic." [Declaration of Jadell Gathright (Maternal Uncle), 1997]

44. Steve's parents' marriage quickly deteriorated into a chaotic, abusive, and dangerous relationship. From the beginning, Lewis II "did horrible things to [Azell] and the children that no person should have to live through." [Declaration of Azell Jackson (Mother), 1997] Shortly after the birth of their first child, Lewis II raped and beat Azell, threatening to kill her if she did not have sex with him. [Declaration of Azell Jackson (Mother), 1997; Declaration of Ceola Nunn (Maternal Aunt), 1997] Lewis II "raped Azell frequently," but she "did not talk much about it, because she was ashamed." [Declaration of Ceola Nunn (Maternal Aunt), 1997] Lewis II did not provide basic necessities for his wife and child, and Azell "had to get a job at Marshall Fields" when she was pregnant. [Declaration of Azell Jackson (Mother), 1997] Her pregnancy was difficult, her "feet and legs swelled," and her "back ached." [Declaration of Azell Jackson (Mother), 1997] On March 31, 1958, Azell gave birth to her and Lewis II's second child, Reginald. [CHAMPION, Reginald

(Brother). IL Birth Certificate. (3/31/58)]

45. Lewis II lost his job and decided to move his small family to Los Angeles, where both he and Azell had relatives. Azell was pregnant with Linda when they left Chicago on a bus. They arrived in Los Angeles and stayed with Azell's brothers and sisters while they tried to get established. Linda Faye, the third child in the family, was born July 18, 1959, in Los Angeles, following a pregnancy marked by violent assaults. [CHAMPION (MATTHEWS), Linda Faye (Sister). CA Birth Certificate. (7/18/59)] Lewis II "kicked" Azell "in the stomach repeatedly" when she was pregnant with Linda. [Declaration of Azell Jackson (Mother), 1997] He attacked her in the company of her family and stated that "he did not care if the baby died. . .that he did not want the baby anyway." [Declaration of E.L. Gathright (Maternal Uncle), 1997; Declaration of Azell Jackson (Mother), 1997] Lewis "drank so much and was so unreliable" that finding their own home "took a while." [Declaration of Azell Jackson (Mother), 1997]

46. Azell's brothers and sisters had ample opportunity to observe Lewis II's treatment of her and the children, as Azell and Lewis II moved their family from one relative's home to the next. They unanimously condemned Lewis II's brutal treatment of his wife and small children, but eventually grew angry with Azell when she was unable to control Lewis II. Azell's sister witnessed Lewis II beating "baby Reginald with the curtain rod" and heard him brag "about how he beat up his children." [Declaration of Ceola Nunn (Maternal Aunt), 1997] Azell's brother-in-law, Jethro Nunn, once "had to jump on" Lewis II "to pull him back and make him leave the house" because he "beat the children so bad." [Declaration of Ceola Nunn (Maternal Aunt), 1997] Czell thought that Lewis II was "not a family man. He drank too much, and he did not care for his wife and children. . . [H]e was hardly ever home." [Declaration of Czell Gathright (Maternal

Uncle), 1997] Czell saw that Lewis II beat Azell "very badly." [Declaration of Czell Gathright (Maternal Uncle), 1997] Lewis did not provide income for the family's expenses, and Azell "tried not to eat much so there was more food for the children." Azell "went to bed hungry many nights." [Declaration of Azell Jackson (Mother), 1997]

47. Everyone in the family recognized that Lewis II had serious mental problems, but no one knew what could be done about it. On one occasion, following a particularly severe beating of Azell, Azell's brothers "got very angry and went and roughed him up," but that failed to stop the beatings. [Declaration of Czell Gathright (Maternal Uncle), 1997] Czell described Lewis II as "a strange man who acted in odd ways" and "was very selfish." [Declaration of Czell Gathright (Maternal Uncle), 1997] Lewis II's sister Gwendolyn "noticed that he had mental problems" and described them:

> He was edgy like uncle Cornelius. Sometimes he acted paranoid, and other times he made no sense when he spoke. He also had violent outbursts on occasion. . . .Sometimes he yelled nonsense. I did not recognize his mental problems when he was younger, but looking back I can see that he has been troubled for a long time. [Declaration of Gwendolyn Armour (Paternal Aunt), 1997]

Lewis II's brother Vernon also came to believe that his "brother had a mental breakdown." Azell's brother E.L. concluded that Lewis II "had a sick mind" after Lewis II, Azell and the two children stayed with him and his wife Johnnie for two weeks. E.L. came home from work one day and discovered that "Azell had bruises and scratches on her face and body." [Declaration of E.L. Gathright (Maternal Uncle), 1997] Lewis II's beatings caused serious injury to Azell, and on one occasion she "was not able to walk for weeks." [Declaration of E.L. Gathright (Maternal Uncle),

1997]

48. Lewis II's violent and dangerous behavior accelerated during Azell's pregnancies. He denied paternity of all children except Lewis III, the firstborn, and often stated that he intended to kill his other children before they could be born. When Azell's brother E.L. stopped a beating during one of Azell's pregnancies and asked Lewis II "what he was doing and if he knew that he might kill the baby," Lewis II told E.L. "to keep the baby if he cared so much." [Declaration of Azell Jackson (Mother), 1997] During Azell's pregnancy with Rita, who was born March 17, 1961, Lewis II "came home with another woman" who "was his girlfriend and was dropping him off." [Declaration of Azell Jackson (Mother), 1997] When Azell went outside to "ask him where he had been. . . he shoved" her down on the sidewalk and "began to hit" her. Lewis II's girlfriend came to Azell's aid and "held him back." [Declaration of Azell Jackson (Mother), 1997]

49. The threat of physical harm and even death at the hands of Lewis II was accompanied by other cruelties. Lewis II denied his family food, punished them if they ate food against his wishes, and tormented them by eating in front of them when they were hungry and "starving." [Declaration of Azell Jackson (Mother), 1997] He cursed Azell in front of the children, called her "terrible names" and told the children that she "was crazy" and "did not have any good sense." [Declaration of Azell Jackson (Mother), 1997] He refused to take Azell anywhere, even to the hospital when she was in labor. Although Lewis II bought Lewis III "a nice little suit," the other children did not have underwear or adequate clothing. [Declaration of Azell Jackson (Mother), 1997] He "locked" the family "out of the house for hours at a time." [Declaration of Azell Jackson (Mother), 1997] Azell believed he treated her and the children "worse than dogs in the street." [Declaration of Azell Jackson (Mother), 1997]

50. Lewis II attempted to starve Azell and her children. He refused to provide money for food and prohibited Azell from going to the store to buy food. If he "found food" Azell had hidden for the children, he beat her. [Declaration of Azell Jackson (Mother), 1997] Azell feared her children were dying from starvation. She "tried to keep the children alive by breast feeding them, even when they were too old, because there was no other food." [Declaration of Azell Jackson (Mother), 1997] She nursed them until her "nipples bled, because there just was not any food." [Declaration of Azell Jackson (Mother), 1997] Azell's brother and his wife "sometimes bought food for Azell's children when they were hungry." [Declaration of E.L. Gathright (Maternal Uncle), 1997] They found the children "screaming and crying" from hunger and an empty refrigerator. [Declaration of E.L. Gathright (Maternal Uncle), 1997] The children "were all very thin" and "cried all the time." [Declaration of Ceola Nunn (Maternal Aunt), 1997] Azell "did not eat, even when she was pregnant" and "fed the kids crackers and mayonnaise." [Declaration of Ceola Nunn (Maternal Aunt), 1997]

Birth and Infancy: 1962

51. Steve Allen Champion was born August 26, 1962, despite his father's deliberate, repeated attempts to kill him and his mother. [CHAMPION, Steve Allen. CA Birth Certificate. (8/26/62)] The enduring effects of Lewis II's multiple assaults on Azell and Steve in utero may well be the brain damage Steve suffers. According to Azell, Steve experienced breathing difficulty shortly after birth, an indication of fetal stress. [CHAMPION, Steve Allen. School Records. (9/67-2/78)] Azell described the attacks by Lewis II during her pregnancy with Steve:

> Lewis Sr. was determined to kill this baby. He said that Steve was not his. He hit me in the stomach repeatedly on several occasions. He yelled at me asking how come I kept

getting pregnant. One time he even strangled me and left me for dead. As he was choking me, I passed out and thought I was dying. [Declaration of Azell Jackson (Mother), 1997]

52. Azell was knocked unconscious and beaten repeatedly during her pregnancy with Steve. Azell's sister Ceola had to care for her following one beating. Ceola remembered:

> Another time, while she was pregnant with Steve, Lewis Sr. beat up Azell so bad she could not walk for a long time. My sister-in-law Johnnie and I had to carry her to the doctors. I cannot imagine what Lewis Sr. must have done to her to injure her legs so bad. [Declaration of Ceola Nunn (Maternal Aunt), 1997]

53. Azell had an "emotional breakdown" during her pregnancy with Steve, had "trouble eating and sleeping," and was "depressed." [Declaration of Azell Jackson (Mother), 1997]

54. Lewis II abandoned his family during Azell's pregnancy with Steve, and she was helpless to care for herself and her children. [GATHRIGHT (JACKSON, CHAMPION, ROBINSON, TRABUE), Azell (Mother). Divorce Records: L.A. County Superior Court, *Azell Gathright Champion v. Lewis Burnis Champion*, No. D 157 257. (12/31/85, 4/16/86, 7/29/86, 10/28/86, and 10/30/86)] Lewis II returned once to sexually assault Azell "soon" after she returned from childbirth at the hospital and on a few other occasions, but made no contribution towards the financial needs of his family. [Declaration of Azell Jackson (Mother), 1997; Declaration of Ceola Nunn (Maternal Aunt), 1997] With no husband or employment and five children six years old or under, Azell had to turn to her brothers and sisters for housing and food. She moved from one family's home to the next, but "they had their own families to worry about, and so they could only help so much." [Declaration of Azell Jackson (Mother), 1997] When Azell, the children, and her newborn son Steve were living at Ceola's, Azell "had to move out" because

"it was already really crowded." [Declaration of Ceola Nunn (Maternal Aunt), 1997] Jethro, Ceola's husband who later became Steve's favorite uncle, drove Azell and the children "to a homeless mission" that was "not clean and not safe." [Declaration of Ceola Nunn (Maternal Aunt), 1997] Some of Azell's siblings contributed enough money to rent an apartment for her.

55. By the time of Steve's birth, Azell was so depressed and overwhelmed by the trauma she survived that she was unable to meet the demands of parenting. She was terrified of Lewis II, who continued to threaten to kill her if she opposed him and to kill her brothers if they protected her. When her brothers learned Lewis II had visited Azell at the apartment they had rented for her, they "were angry for what he was doing to the kids" and "stopped helping." [Declaration of Ceola Nunn (Maternal Aunt), 1997] They did not understand "what kind of power Lewis Sr. had over Azell" and her ingrained belief that she, the children, and her brothers faced death if she opposed him. [Declaration of Ceola Nunn (Maternal Aunt), 1997] Azell became "very secretive," was unable to give her children the "care, protection, and discipline" they needed, and was "helpless." [Declaration of Czell Gathright (Maternal Uncle), 1997; Declaration of Ceola Nunn (Maternal Aunt), 1997; Declaration of Jadell Gathright (Maternal Uncle), 1997]

56. Azell knew of no alternative to domination by Lewis II and came to believe that she was "mentally sick" because she "could not get away from him." [Declaration of Azell Jackson (Mother), 1997] She "did not know where" she "could go that he would not find" her. [Declaration of Azell Jackson (Mother), 1997] She sought protection and assistance from the police department, but was rebuffed and humiliated by them. She described their response to her plea for protection:

When they arrived, I was usually crying a lot and begging them to help. One officer told

Lewis Sr. that he had the same problems with his "bitch" at home. The officers did not take Lewis Sr. away because they said they had to see him beating me to arrest him. They told me to shut up and to quit acting crazy and hysterical. They said they would arrest me if I did not shut my mouth. It was hopeless, and I did not know what to do. [Declaration of Azell Jackson (Mother), 1997]

57. Shortly after Steve was born, Azell met Gerald Trabue, Sr., a friend's brother from Evanston, Illinois. Gerald was "a good man" who helped Azell "take care of the kids." [Declaration of Azell Jackson (Mother), 1997] They soon moved in together, but Azell "could not believe that a man wanted to be with a poor woman with five kids." [Declaration of Azell Jackson (Mother), 1997] Azell and Gerald Sr. had their first child together, Gerald Walter Trabue Jr., on August 5, 1963, almost a year after Steve was born. The family lived in a small house on East 83rd Street a few blocks from Watts. The children "had to sleep together in the dining room." [Declaration of Azell Jackson (Mother), 1997] Although the neighborhood was "dangerous," Azell believed she and the children were better off because "at least there was a good man in the house." [Declaration of Azell Jackson (Mother), 1997]

Early Childhood: 1962 - 1968

58. A modicum of stability entered Steve's life when his mother and Gerald Sr. lived as husband and wife. Although they never married and Azell did not divorce Lewis II until 1986, Gerald Sr. served as a responsible head of the household. Czell described him as:

. . .much better than Lewis Sr. He had a furniture business on 76th and McKinley with his brother. He was nice and caring, and he treated Azell and the kids with love and respect. He was more like a father to Steve than Lewis Sr. ever was. [Declaration of Czell

Gathright (Maternal Uncle), 1997]

59. Gerald Sr. was concerned for the children's safety, a vastly different experience for the children. The family moved from frequently during Steve's early childhood, sometimes only as far as a house next door that was in somewhat better condition. They moved from East 120th Street in 1962, to East 83rd Street in 1963, and then to another house on East 83rd Street in 1964. They moved from East 83rd Street to 757 East 76th Street in 1964, then moved next door to 759 East 76th Street. All their homes were in the segregated and impoverished section of Los Angeles now known as South Central. [CHAMPION, Reginald (Brother). School Records. (5/63-6/76); CHAMPION (MATTHEWS), Linda Faye (Sister). School Records. (9/64-6/77), CHAMPION (POWELL), Rita (Sister). School Records. (2/66-6/78); CHAMPION, Steve Allen. Residential Map] Gerald Sr. and Azell had their second child, Terri Lynn, September 21, 1967, when they lived on East 76th Street. [TRABUE (GETER), Terri Lynn (Maternal Half-Sister). CA Birth Certificate. (9/21/67)]

60. Steve's community was filled with danger. Although school was "only a short walk, . . .Gerald Sr. drove the kids and picked them up in the car sometimes, because it was a rough neighborhood." [Declaration of Azell Jackson (Mother), 1997] His sister Linda described the atmosphere of danger Steve and his siblings saw:

> There were lots of fights in our neighborhood. . . .Older kids beat up and stole money from younger kids. Sometimes entire families got in screaming matches in their front yards. They threw rocks at each other and started punching one another. [Declaration of Linda Champion Matthews (Sister), 1997]

61. Although Steve and his family were much safer than they had been under the rule of

his father, Steve was not safe from danger at the hands of Lewis III. Gerald Sr. worked and was not able to maintain discipline in the house when he was absent. Lewis III, Steve's oldest brother, "had learned how to behave by watching his father" and "began to take Lewis Sr.'s place." [Declaration of Azell Jackson (Mother), 1997] Lewis III acknowledged that he "lost control" and "took it out on Steve by knocking him around." [Declaration of Lewis B. Champion III (Brother), 1997] Lewis III "started causing trouble and beating on his brothers and sisters from an early age." [Declaration of Azell Jackson (Mother), 1997] Lewis III's abuse increased after Azell took a part time job at Mattel, where she worked nights so that "there was a parent in the house for the most part of every day." [Declaration of Azell Jackson (Mother), 1997] Lewis III resented the extra responsibility he had and found that "it was too much . . . to deal with." [Declaration of Lewis B. Champion III (Brother), 1997]

62. The damaging consequences of surviving chronic trauma are evident in Steve's older siblings' school records. Lewis III's first grade teacher noted that Lewis III was "not entirely adjusted socially and emotionally" and that he displayed "markedly below average achievement." [CHAMPION, Lewis Burnis III (Brother). School Records. (9/61-1/73)] His second grade teacher remarked that Lewis III was "highly nervous" and had "definite emotional problems." [CHAMPION, Lewis Burnis III (Brother). School Records. (9/61-1/73)] Throughout elementary school several teachers commented on Lewis III's lack of self control. [CHAMPION, Lewis Burnis III (Brother). School Records. (9/61-1/73)] Lewis III received mostly C's in junior high. His eighth grade teacher noted that he was "not interested in academic subjects" and furthermore that he was "never quite sure what his mother [was] using for a last name." [CHAMPION, Lewis Burnis III (Brother). School Records. (9/61-1/73)] In ninth grade, Lewis III was "still an absence

and tardy problem." Lewis III failed every class his first semester of tenth grade, and he dropped out after completing his second.

63. Reginald's kindergarten teacher at Russell Elementary School noted he had "below average academic growth" and needed "help in oral expression." [CHAMPION, Reginald (Brother). School Records. (5/63-6/76)] Reginald had difficulty "following directions" and in "abstract reasoning." [CHAMPION, Reginald (Brother). School Records. (5/63-6/76)] Teachers recommended retention in the first grade, but Azell and Gerald Sr., who were "very interested[,] . . .opposed" it. [CHAMPION, Reginald (Brother). School Records. (5/63-6/76)] In the third grade, teachers noted he had "white spots" on his face, a sign that he was inhaling organic solvents. [CHAMPION, Reginald (Brother). School Records. (5/63-6/76)] By the fourth grade, Reginald was not able to keep up with his peers, was "very restless," needed "considerable help in self-control," and required speech therapy. [CHAMPION, Reginald (Brother). School Records. (5/63-6/76)]

64. Steve's sister Linda also performed below her peers in elementary school. However, she had fewer difficulties with her peers than Reginald, played well with others, and had a "mind set to learn." [CHAMPION (MATTHEWS), Linda Faye (Sister). School Records. (9/64-6/77)] She was "hyperactive" and "capable of excellent work" although she needed "help in self control." [CHAMPION (MATTHEWS), Linda Faye (Sister). School Records. (9/64-6/77)] She needed to "develop confidence in [her]self" and was not able to "work independently." [CHAMPION (MATTHEWS), Linda Faye (Sister). School Records. (9/64-6/77)] Steve's second sister, Rita, had academic and behavioral problems similar to her siblings. She was "shy. . .fearful of new situations" and lacked self confidence. [CHAMPION (POWELL), Rita (Sister). School Records.

(2/66-6/78)]

65. Steve also had great difficulty in school, although he tried hard and wanted to please his teachers. He enrolled in kindergarten September 11, 1967, and was an "[e]nthusiastic student" who had "good peer relations." [CHAMPION, Steve Allen. School Records. (9/67-2/78)] Steve was a "clumsy" child, and teachers had him evaluated for assignment. The school counselor noted that he had "below average perceptual [and] motor performances," and teachers reported he had difficulty following instructions. [CHAMPION, Steve Allen. School Records. (9/67-2/78)] Steve applied himself, and showed that he was "[i]ncreasingly able to work with numbers." [CHAMPION, Steve Allen. School Records. (9/67-2/78)]

Death of Gerald Trabue, Sr.: 1968

66. One of the most significant losses Steve experienced during childhood was the death of Gerald Trabue, Sr., who had served as a father figure and protector for Steve, his mother, and his siblings. Gerald Sr. died June 28, 1968, shortly after Steve completed kindergarten. Gerald Sr. died as a result of head injuries sustained in a serious automobile accident that severely injured several members of the family. Steve was knocked unconscious and remained confused after the accident. His sister offered details of the accident that occurred during a family afternoon drive:

> While we were crossing an intersection near Slauson and Overhill, we were hit by another car. It hit the driver's side right where Gerald Sr. was sitting. He was knocked unconscious and was bleeding a lot. My mother was thrown out the passenger side of the car. Steve broke his collarbone and hit his head. He was knocked unconscious. I was in the middle, and I hit my head pretty hard. [Declaration of Rita Champion Powell (Sister), 1997]

67. Hospital personnel did not recognize the severity of Gerald Sr.'s head injuries and discharged him home after a brief stay. The family thought "[h]e was not himself" and observed his odd behavior: "He did not talk as much, and he was not able to work hard like he did before. He laid down on the floor to rest." [Declaration of Rita Champion Powell (Sister), 1997] Azell wished she "had been able to take better care of Gerald Sr. or get him to a doctor," but she was "too dazed" from her own injuries, and she was preoccupied with caring for her injured children. [Declaration of Azell Jackson (Mother), 1997] Gerald Sr. feared doctors and returned to the hospital only at the insistence of his brother, Clarence.

68. According to his autopsy report, Gerald Sr. was readmitted to the hospital and died nine days later. The neuropathology report concluded:

> . . .[f]lattening and concavity of dorsolateral surfaces of cerebrum, bilateral, almost symmetrical; [g]eneralized congestion; [s]econdary hemorrhages of brain stem; and [c]erebral edema and basilar herniation. [TRABUE, Gerald Walter (Step-Father). Los Angeles Office of Chief Medical Examiner: Coroner, File # 68-6510. (6/29/68)]

69. Azell received a modest settlement from a lawsuit she brought on behalf of her and the children.

70. Steve and his family were devastated by Gerald Sr.'s death. Azell suffered a setback and "became extremely depressed." [Declaration of Azell Jackson (Mother), 1997] She was "not able to do anything," and felt that life was "far too much . . . to handle." [Declaration of Azell Jackson (Mother), 1997] Azell recognized that she needed professional assistance and attended therapy sessions sporadically. Azell reported how immobilized she was by Gerald Sr.'s death:

> The doctor gave me medication to ease my nerves. I was jumpy and anxious, and the

medication helped me to sit still and to sleep. I was not able to work in this condition, and so I had to live on food stamps and county aid. I passed many days in a haze. [Declaration of Azell Jackson (Mother), 1997]

Azell did not work for three years after Gerald Sr. died, and then she only worked a few days in 1971 before retreating back to her home. [GATHRIGHT (JACKSON, CHAMPION, ROBINSON, TRABUE), Azell (Mother). Employment Records: Social Security Itemized Statement of Earnings. (1953-1988)]

71. By all accounts, Steve and his family's lives "changed. . .forever" after Gerald Sr.'s death. [Declaration of Lewis B. Champion III (Brother), 1997] Azell "cried often and was overwhelmed. . . very sad, depressed, and withdrawn." [Declaration of Lewis B. Champion III (Brother), 1997] Rita remembered that it "was horrible for the whole family. The wreck came out of the blue, and all of a sudden we had no father anymore. As kids we were confused, but we knew it was terrible because my mother just kept crying. . . .[L]ife did not return to normal." [Declaration of Rita Champion Powell (Sister), 1997] Czell opined that Azell "never got back on her feet." [Declaration of Czell Gathright (Maternal Uncle), 1997] Czell believed that if Gerald "was still alive. . .Steve would never have gotten into trouble." [Declaration of Czell Gathright (Maternal Uncle), 1997]

Elementary School Years: 1967 - 1974

Relationship with Lewis B. Champion, III

72. Lewis III replaced Gerald Sr. as head of the household and brought back the terror that characterized his father's relationship with the family. Lewis III beat, threatened, denigrated, and tortured Steve and his siblings and at times attacked Azell. Azell offered little resistance to

Lewis III and admitted she lived in a "daze." [Declaration of Azell Jackson (Mother), 1997] Although she was unable to protect the children from Lewis III, she was aware of how unacceptable and shameful his behavior was. She did not allow any of the children to bring their friends home for fear the friends would witness Lewis III's behavior or even get hurt by him. His ruthless treatment of the children, combined with the failure of any other caretaker to protect them, created permanent emotional scars.

73. As Lewis III grew into his teens and began to use violence-producing drugs, he became especially brutal and threatening. Lewis III explained that he used drugs "[t]o help. . . cope" with the stress of running "a whole household" at such a young age. [Declaration of Lewis B. Champion III (Brother), 1997] He described the origin of his substance abuse:

> When I was 8 or 9, I started drinking alcohol. When I was 14, I started smoking marijuana. When I was 15, I started using LSD. When I was 17, I started smoking PCP. I still have problems with alcohol. Both my marriages broke up due to my drinking and it has caused problems in most of my other personal relationships. [Declaration of Lewis B. Champion III (Brother), 1997]

No one was safe from his violence. Steve and his older siblings hid the youngest children, Traci and Terri, "in closets and in the kitchen cabinets. . .with the pots and pans" so Lewis III would not find them. [Declaration of Terri Lynn Geter (Maternal Half-Sister), 1997] Linda hid Traci in the closet "and covered [her] up with clothes so Lewis Jr. would not see" her. [Declaration of Traci Evette Robinson-Hoyd (Maternal Half-Sister), 1997]

74. Lewis III became "even more unpredictable and dangerous" when he used PCP, a drug long recognized to induce psychosis and violence. [Declaration of Linda Champion Matthews

(Sister), 1997] Lewis III "had extreme mood swings" and forced Steve, Rita and Gerald Jr. to "hold [their] hands up while he hit [them] or whipped [them] with an extension cord." [Declaration of Linda Champion Matthews (Sister), 1997] When he was intoxicated with PCP, "[i]t was like the drugs made him stronger," and he beat Steve harder. [Declaration of Linda Champion Matthews (Sister), 1997] He once "tore up a bed and ripped out one of the support slats. Then he started hitting Steve with it. Steve got under the bed. . .and Lewis Jr. kept swinging." [Declaration of Reginald Champion (Brother), 1997] Lewis III "threw a screwdriver" at Reginald, and "it stuck in [his] arm," leaving a scar. [Declaration of Reginald Champion (Brother), 1997]

75. Some of the tactics used by Lewis constitute torture. Terri, the second youngest child in the family, stated:

> I can still remember the horrible torture that he put us through. He used to make my older siblings hold their hands up while he beat them. The torture went for hours and hours. As soon as my brothers and sisters started to drop their hands he lashed them with an extension cord, until they held their hands back up again. [Declaration of Terri Lynn Geter (Maternal Half-Sister), 1997]

76. Lewis III's assaults against Steve were serious and life threatening. Steve's brother Gerald Jr. believed that Lewis III "took it out on Steve and Linda the most." [Declaration of Gerald Walter Trabue Jr. (Maternal Half-Brother), 1997] Reginald remembered that "it was a struggle to stay alive." [Declaration of Reginald Champion (Brother), 1997] Rita reported that Lewis "slammed Steve's head into the wall, and beat him" until Lewis III grew exhausted. [Declaration of Rita Champion Powell (Sister), 1997] When he attacked Steve and the other children, he "was out of his mind." [Declaration of Jadell Gathright (Maternal Uncle), 1997] Once

when Lewis III attacked Steve, Azell called Jadell for help. Jadell reported:

> When I arrived at Azell's house, Lewis III was beating Steve in the living room. I walked over, grabbed Lewis III away from Steve and warned Lewis III to watch out because I was going to beat Lewis III if he did not stop hitting Steve. Lewis III started to fight me, but he soon realized that fighting me was not as easy as beating his little brother. [Declaration of Jadell Gathright (Maternal Uncle), 1997]

77. Jadell's help was unavailable to Azell for several years, beginning in November of 1968, because he was convicted of second degree murder. [GATHRIGHT, Jadell (Maternal Uncle). California Department of Corrections. (11/68-9/75)] This placed an added burden on Azell's siblings, who had to find homes for Jadell and Louise's four children: Fanchon, Gwen, Evangeline, and Wanda. Fanchon moved in with Czell, and the other three went into foster care. [Declaration of Wanda Gathright (Maternal Cousin), 1997] Wanda reports that Ceola continued to help her while she was in foster care: "Aunt Ceola came to visit me, and she brought me money so that I could buy clothes." [Declaration of Wanda Gathright (Maternal Cousin), 1997] Jadell's imprisonment made it even more difficult for Azell to secure the help she needed to keep her children safe from Lewis III.

78. Lewis III's cruel behavior was not limited to physical violence. He gratuitously destroyed Steve's and his siblings' photographs, toys, and memorabilia. He "broke all of Steve's swimming trophies." [Declaration of Linda Champion Matthews (Sister), 1997] Lewis III "tore up everybody's stuff," including "every picture the family had." [Declaration of Reginald Champion (Brother), 1997] Lewis "threw plates. . .broke out every window in the house" and "stole everyone's money." [Declaration of Reginald Champion (Brother), 1997] He destroyed "anything

that was precious" to his family. [Declaration of Azell Jackson (Mother), 1997] On one occasion, Azell had new concrete poured in the driveway, and the children wrote their names in it. Lewis III bought more cement and covered up their autographs. He tried to turn Steve and his siblings against each other by offering "money to go fetch someone that he wanted to beat." [Declaration of Linda Champion Matthews (Sister), 1997]

79. Steve and his siblings developed their own strategies for attempting to protect themselves from Lewis III, but they still lived in daily terror of him. Linda "ran away as fast as" she could when she saw Lewis III lose "control of himself." [Declaration of Linda Champion Matthews (Sister), 1997] Steve and the other children "were very careful" and "tried not to talk to him." [Declaration of Linda Champion Matthews (Sister), 1997] Steve was in a state of hyper-arousal when he entered the house, and, like his siblings, looked first to "see where Lewis Jr. was and how he was acting." [Declaration of Linda Champion Matthews (Sister), 1997] When Lewis III attacked, Steve often curled in a ball on the ground to protect his head and face while Lewis III hit and kicked him. Steve and his siblings learned to "watch his posture and reactions" to see if Lewis III was angry. [Declaration of Linda Champion Matthews (Sister), 1997]

80. Steve and his brothers and sisters tried to get the police to help them when Lewis III attacked them, and sometimes they were successful. Lewis was "so loud and violent it disturbed the neighborhood." Sometimes, the police came and "took him to the Metropolitan Hospital at Norwalk or to Harbor General to observe him for a few days." [Declaration of Reginald Champion (Brother), 1997] Steve and his siblings "tried to work together to protect" themselves by warning each other to stay away from the house when Lewis III was angry or by distracting him when he attacked someone. Steve was too small to overpower Lewis III, but he learned how to get "Lewis

Jr. to chase him around the neighborhood so that Rita and [Linda] could get away with Terri and Traci. When Lewis Jr. caught him, he beat Steve senseless." [Declaration of Linda Champion Matthews (Sister), 1997]

81. Steve and his siblings encountered more danger when they fled their home and Lewis III's attacks. Linda found sanctuary in a friend's home initially, but was attacked on one occasion by a stranger when she fled to their house. The stranger cut, hit, and tried to rape her. [Declaration of Linda Champion Matthews (Sister), 1997] Steve and his siblings also frequently went to the home of Alvin Bobo because his mother asked no questions of them. Although Mrs. Bobo was home she did not supervise or enforce any rules for her children or their friends. According to Rita, Mrs. Bobo's "kids hardly ever went to school. They went to the park or stayed at home. They drank and smoked, and they had lots of friends over." [Declaration of Rita Champion Powell (Sister), 1997] Although Steve and his siblings were safe from attack by Lewis III at their friends' homes, they were exposed to corrupting influences.

82. Steve and his siblings responded to the constant threat of annihilation in characteristic ways. Lewis III and Reginald used drugs and kept them in the house. Steve's friends, the Bobo's, had illegal drugs. By the time Steve was ten, he was drinking alcohol and smoking marijuana along with his siblings. Linda stated "[i]t was the only thing we knew about that could calm our nerves." [Declaration of Linda Champion Matthews (Sister), 1997] Steve and his friends also "inhaled spray paint, paint thinner, or glue. They said it made them feel like they were in space." [Declaration of Rita Champion Powell (Sister), 1997]

83. Despite Steve's tender years, he became addicted to drugs and alcohol when he was "still in elementary school." [Declaration of Gerald Walter Trabue Jr. (Maternal Half-Brother),

1997] He and Gerald Jr. drank "to try and deal with" their "nerves" and to make their "problems" go away. [Declaration of Gerald Walter Trabue Jr. (Maternal Half-Brother), 1997] Steve and Gerald developed a strategy for drinking that reflected their constant fear of harm:

> If we were at a close friend's house where we could stay late, we drank until we passed out sometimes. If we were out somewhere else, Steve did not drink as much, because he wanted to be alert. People got jumped walking around our neighborhood, and so he wanted to be ready to run or defend himself. Also, he liked to get clear-headed before he went home so that he could defend himself from Lewis Jr. [Declaration of Gerald Walter Trabue Jr. (Maternal Half-Brother), 1997]

Concerned teachers knew that their students "turned to drugs and alcohol to cope with the hopelessness in their lives." [Declaration of Barbara Williams (Teacher), 1997]

Relationship with Reginald Champion

84. Reginald, the second oldest child in the family, is mentally ill and has been diagnosed alternately with schizophrenia and bipolar mood disorder, with symptoms similar to his father's. He also has been diagnosed with a seizure disorder for which he received Dilantin. [CHAMPION, Reginald (Brother). Medical Records: Patton State Hospital. (2/1/93-5/17/93)] Steve's uncle Czell thought Reginald "was like his father, Lewis Sr. He just wasn't all there and was mentally unbalanced. He acted suspicious a lot of the time when there was no cause for it. He used to walk around the neighborhood looking spaced out." [Declaration of Czell Gathright (Maternal Uncle), 1997] Steve's uncle E.L. agreed with Czell that Reginald "was the spitting image of his father. . . .slow, confused, and moody." [Declaration of E.L. Gathright (Maternal Uncle), 1997] In seventh grade one teacher noted that Reginald "does not always comprehend what is being said."

[CHAMPION, Reginald (Brother). School Records. (5/63-6/76)] Reginald "had moods swings and took it" out on his siblings. [Declaration of Rita Champion Powell (Sister), 1997] Reginald "was strange and did not quite fit in with anyone. . . He was not mentally stable as a child, and he got worse growing up. He had delusions and hallucinations. He eventually ended up in prison for shooting" his brother in law and wounding him and his sister. [Declaration of Rita Champion Powell (Sister), 1997]

85. A clinical psychologist in the Department of Corrections concluded Reginald was "extremely dysthymic, speaking in a soft voice with disorganized thoughts" and inappropriate affect. [CHAMPION, Reginald (Brother). California Department of Corrections. (1982-1996)] Reginald received psychotropic medications, including Navane, Cogentin, Elavil, and Sinequan, but began "hearing voices long before taking psych meds." [CHAMPION, Reginald (Brother). California Department of Corrections. (1982-1996)] He attempted suicide at least three times by hanging or overdosing on drugs. He was charged with attempted manslaughter after he shot and wounded his brother-in-law, but was initially found incompetent to stand trial. [CHAMPION, Reginald (Brother). Records of the Public Defender, *State of California v. Champion,* Superior Court of California, County of Los Angeles, No. YA 009272]

86. Reginald assaulted Steve, his mother, and his siblings, although his attacks were less frequent and were not accompanied by the array of cruelties Lewis III inflicted. He was "always doing violence against his own family," who were "all scared of him." [CHAMPION, Reginald (Brother). Records of the Public Defender, *State of California v. Champion,* Superior Court of California, County of Los Angeles, No. YA 009272] Reginald, like Lewis III, "developed a serious addiction for many years," and it no doubt contributed to his violent behavior. [Declaration of

Lewis B. Champion III] Steve's sister Linda suggested that Reginald's behavior was the result of his mental confusion that "made him upset." [Declaration of Linda Champion Matthews (Sister), 1997] Reginald was a "moody boy" who "beat on everyone at one time or another. He even attacked and threatened" his mother, "once with a knife." [Declaration of Linda Champion Matthews (Sister), 1997; Declaration of Rita Champion Powell (Sister), 1997]

School Experience

87. Steve's family moved from the east side to the west side of Los Angeles and purchased a small home at 1212 West 126th Street in the spring of 1969 with funds Azell received from Gerald Sr.'s insurance. The family hoped that the new neighborhood would be safer than the east side, but they did not anticipate the ostracism they faced. Although the neighborhood was populated by working-class, blue-collar residents, the families had "more money than" the Champions and other children "teased" them because they "had old clothes. Steve looked messy a lot of the time, and he was teased for being darker than other students." [Declaration of Linda Champion Matthews (Sister), 1997] Steve found no respite from taunts at home where his siblings "teased him. . .because he was darker than all of us. We called him 'Spooky.' Steve was a sensitive child, and when kids made fun of him he took it hard." [Declaration of Linda Champion Matthews (Sister), 1997]

88. Azell's siblings offered assistance to the family when they could, but their resources were also limited. Jadell tried to help Steve out on one occasion when he found Steve crying:

> . . .Steve walked into the house crying. He was eight or nine years old and the other children at his school had been making fun of him. The kids in school and the neighborhood teased Steve and his siblings because they were so poor. Azell did not have

enough money to buy clothing for Steve, so he wore clothing that was full of holes and much too small for him. When I saw how hurt Steve was by his classmates' teasing, I took all of Azell's children to the Salvation Army to buy them clothing. The clothing at the Salvation Army was old and worn, but it was still better than the clothing Azell's children were wearing. [Declaration of Jadell Gathright (Maternal Uncle), 1997]

89. For a brief period, another man entered the household when Azell married Henry Robinson, October 20, 1969. [GATHRIGHT (JACKSON, CHAMPION, ROBINSON, TRABUE), Azell (Mother). Marriage Certificate to Henry Robinson (10/20/69)] Azell, having never divorced Lewis II, was not legally married to Robinson, with whom she had her last child, Traci Evette Robinson, on September 18, 1970. [ROBINSON (HOYD), Traci Evette (Maternal Half Sister). CA Birth Certificate. (9/28/70)] Robinson and Azell separated before Traci was born. Henry did not interact with Steve or the other children in the home, but on at least one occasion, Henry beat Reginald badly. Azell stated that Henry "did not much care for [her] children. . . .yelled at them and slapped them around." [Declaration of Azell Jackson (Mother), 1997]

90. The family's move from the east side to the west side caused Steve to transfer schools from McKinley to West Athens Elementary during the first semester of first grade. Teachers reported that he was below grade level and needed "to improve in learning to listen" and was "easily distracted." [CHAMPION, Steve Allen. School Records. (9/67-2/78)] Steve was promoted from the first to the second grade, which he began in the fall of 1969. Second grade teachers attributed Steve's excessive absences of 21 days to "[d]ifficulties in family life." [CHAMPION, Steve Allen. School Records. (9/67-2/78)] Steve's teachers responded positively

to him and thought he could "do good work" even though he was "easily distracted." [CHAMPION, Steve Allen. School Records. (9/67-2/78)] Steve had orthodontic and decay problems, and his teeth needed "to be cleaned." [CHAMPION, Steve Allen. School Records. (9/67-2/78)] Steve was promoted to the third grade, despite his inability to perform on grade level with his peers.

91. Steve's severe neurological impairments help explain his dismal performance on standardized testing and in the classroom. Linda observed that he "had trouble learning. . . .It did not make sense to us, because he tried hard, and he was not slow. . .He just had trouble putting it all together." [Declaration of Linda Champion Matthews (Sister), 1997] Steve tried to offset his academic failure by excelling in sports. Linda explained:

> Steve made up for this in sports. He was a good swimmer, and he won trophies when he was on the swim team at Helen Keller Park. He also was good at football and baseball. He wanted everyone to see that he was good at something, so he worked hard and succeeded. [Declaration of Linda Champion Matthews (Sister), 1997]

92. Although teachers acknowledge Steve required "individual attention," he was never placed in special education classes or classes for children with learning disabilities. [CHAMPION, Steve Allen. School Records. (9/67-2/78)] The special education class was reserved for "children who were physically handicapped or severely emotionally disturbed. The school classified those children who were abusive to themselves, threw tantrums, or blurted out obscenities to be emotionally disturbed." [Declaration of Barbara Williams (Teacher), 1997] Steve's brain damage did not cause him to "holler, scream, or act grossly inappropriate as did the students in the special education classes," so he remained in regular classes. [Declaration of Barbara Williams (Teacher),

1997]

93. Steve scored in the borderline intellectual functioning range on standardized tests. His IQ measured 75 in the fourth grade in April, 1972. In the sixth grade, he fell far below other children and received a stanine score of 1 on a scale of 1 to 9 for overall academic performance. Steve, like almost all the children in his family, struggled to learn. Lewis III "found it difficult to concentrate in school" and had "difficulty learning." [Declaration of Lewis B. Champion III (Brother), 1997] School was "hard" for Linda, who also had trouble concentrating. [Declaration of Linda Champion Matthews (Sister), 1997] Reginald was "confused a lot" and "stuttered when he was young. . . so everyone just thought he was slow." [Declaration of Linda Champion Matthews (Sister), 1997] Rita also had difficulty in school, where she "had trouble concentrating" because her "home life was rough." [Declaration of Rita Champion Powell (Sister), 1997]

94. A former special education teacher at West Athens commented on the lack of adequate resources at the school during the time Steve was a student:

> At that time facilities were very limited, so the one special education class was limited to fifteen students. Far more than fifteen children required special attention, but they did not get it because of lack of resources. Instead, these children were stuck in the regular classrooms which were packed with thirty-six to forty students per room. [Declaration of Dorothy Williams (Teacher), 1997]

95. Even though Steve's teachers took a special interest in him and liked him, they "had so many students to deal with . . .that it was impossible to spend enough time with every child." [Declaration of Dorothy Williams (Teacher), 1997] Steve's teachers reported that "home problems disturb child," but no agency intervened to determine the nature and scope of the problem or

offered protective measures for him and his siblings. [CHAMPION, Steve Allen. School Records. (9/67-2/78)] One of his teachers observed:

> He seemed troubled all the time, and was despondent. He got teased because he was very dark and his clothes were old. He was not on grade level. Such problems are very hard for children of that age, because it causes them to get teased a lot. His problems at home made the teasing even worse. When a child has serious troubles at home like Steve did, it is especially hard for him or her to cope with the stress of a big school where all the kids are competing for attention. [Declaration of Dorothy Williams (Teacher), 1997]

96. Steve's sixth grade teacher, Barbara Williams, developed a "special relationship" with him, and "[t]hey talked a lot." Ms. Williams was "very concerned" about Steve and "tried to figure out ways to help him." [Declaration of Dorothy Williams (Teacher), 1997] She found Steve "very likeable" and described him:

> . . .[H]e showed respect for teachers and other students. He had very low self-esteem. It was visible in the expression on his face and in his posture. He cowered his shoulders and did not carry himself proudly. He had a lot of trouble learning, and he was unable to complete his work. Steve clearly had a desire to learn, but he was afraid to ask questions because he did not want to be laughed at. There was overwhelming pressure from his peer group to avoid doing anything that would make him look stupid or weak, such as seeking help with his work. He did not know as much as the other students, and he was not performing at the sixth grade level. He also had a very dark complexion, and he was very self-conscious about it. Even in a school which was almost entirely African-American, students were ashamed of dark skin. [Declaration of Barbara Williams (Teacher), 1997]

97. Racial tension and race bias were significant factors at West Athens, and "teachers racially segregated themselves." [Declaration of Barbara Williams (Teacher), 1997] White and African-American teachers were polarized and had "horrible" relations between the two groups. [Declaration of Barbara Williams (Teacher), 1997] She stated:

> Some white teachers simply had no respect and understanding for African-Americans and their communities, while others had an obvious disdain for black people. There were several who spoke rudely to the children and punished them for no good reason. . . Instances of white teachers demeaning black students were not uncommon . . .I was often treated like a child. [Declaration of Barbara Williams (Teacher), 1997]

a. Teachers did not understand community issues that affected their students' ability to learn. White teachers and administrators were "unable to confront successfully the complex issues facing lower income communities like West Athens, because most of them did not come from. . .a similar community." [Declaration of Barbara Williams (Teacher), 1997] They failed to understand or recognize "the profound consequences of domestic violence, substance addiction, neglect and hunger that many students like Steve faced at home." [Declaration of Barbara Williams (Teacher), 1997] Students at school were not safe from the violence of the community. Ms. Williams described what Steve and his fellow students faced daily at school:

> . . . fights and shootouts were not uncommon on school grounds after hours. There was a good deal of fighting on school grounds during the day. . . .After school hours smaller children who could not defend themselves were attacked and robbed. The older kids also

attacked each other. Some students were overwhelmed by fear especially if they lived in unstable and unsafe homes. The playground was littered with liquor bottles, drug paraphernalia, and spent rounds from guns. [Declaration of Barbara Williams (Teacher), 1997]

98. The best and most caring teachers, like Ms. Williams, were unable to meet the demands of a student population who, like Steve, needed extra assistance to compensate for the chaos and poverty in their homes. Crowded classrooms placed a "heavy load" on teachers, especially when so many of their students "were below grade level." [Declaration of Dorothy Williams (Teacher), 1997] Even though the need was great, "students did not have the opportunity to attend pre-school because schools in our area were not able to support and develop such programs." [Declaration of Dorothy Williams (Teacher), 1997] Without a preparatory program such as Head Start, "students were behind in first grade" and "it was impossible to bring everyone up to speed" in overcrowded classes. [Declaration of Dorothy Williams (Teacher), 1997]

Junior High School Years: 1974 - 1977

99. Teachers promoted Steve into junior high, even though he lagged far behind his peers at West Athens. Steve completed elementary school in June, 1974, and enrolled in seventh grade at Henry Clay Junior High in the fall of 1974. Steve's academic performance remained erratic. The first semester of seventh grade he failed two courses, summer math and practical arts, and he failed English and Art the second semester. He performed at the second-grade level and in the lowest 4 percentile of students. Once again, Steve was promoted from one grade to the next despite his inability to perform academic tasks at grade level.

100. Steve's need for special education classes was as great in junior high as it was in

elementary school, but the administration instead assigned him to a satellite program "for students who were slow learners or did not fit in." [Declaration of Gerald Walter Trabue Jr. (Maternal Half-Brother), 1997] Students in mainstream classes "mocked" students in the satellite program." [Declaration of Gerald Walter Trabue Jr. (Maternal Half-Brother), 1997] No special education classes were available for him. A former teacher from the mid-1970s at Henry Clay reported:

> There were only two special education classes. . . .These classes were only for extreme cases of learning handicaps, such as mental retardation. At the time most students with special needs were stuck in the regular classrooms where they did not receive the special assistance they needed. [Declaration of Reeper Hamilton (Teacher), 1997]

101. Steve was not able to keep pace with his peers at all by the time he reached the eighth grade; he failed all subjects except physical education and scored at the fourth-grade level in standardized testing. Nonetheless, he was promoted to the ninth grade, where he completed the first semester but withdrew during the second semester in early 1977. Steve returned to public school in the fall of 1977 and enrolled in the tenth grade at Washington High School, but he did not complete the semester.

102. Steve's adolescence, a period of life difficult for boys in safe and stable environments, was spent in turmoil and fear. Lewis III and Reginald's violence at home were matched by violence and danger in the community. Azell returned to work during 1973, 1974, and 1975, and was not able to watch "her kids all by herself" while she worked. [Declaration of Czell Gathright (Maternal Uncle), 1997] She eventually had to quit her job because she had "no one to care for them or protect them from Lewis III." [Declaration of Jadell Gathright (Maternal Uncle), 1997]

103. Steve sought the guidance and respect of older men, and he found it in his

relationship with his maternal uncle Jethro Nunn. Jethro "was like a father. . .to Steve" and "adored" him. [Declaration of Ceola Nunn (Maternal Aunt), 1997] Jethro "gave Steve special attention. . .and. . .made Steve feel good about himself." [Declaration of Azell Jackson (Mother), 1997] Jethro's wife described her husband's relationship to Steve:

> We saw [Steve] almost every weekend, and my husband and Steve liked to drive the motor home to the market to get sodas. Steve was outgoing and friendly. He was a talker. My husband just fell in love with him. . . .A lot of times Steve confided in my husband and went to him like he was his father. Steve went to my husband a couple of times crying because of Reginald beat him so badly. Steve sometimes came to our place and stayed the weekend. [Declaration of Ceola Nunn (Maternal Aunt), 1997]

104. Jethro, a security guard, was stabbed and murdered at work January 8, 1976. [NUNN, Jethro George (Maternal Uncle by Marriage). Los Angeles Office of Chief Medical Examiner: Coroner, File # 76-360. (1/9/76)] Jethro's death was especially painful for Steve who "took it really hard." [Declaration of Ceola Nunn (Maternal Aunt), 1997] Steve "cried all the time after" Jethro "died, and "[i]t was like losing a father again." Steve had another significant loss when his maternal grandmother, Emma Gathright, died at home in Pacoima October 31, 1976. [LIDDELL (GATHRIGHT), Emma (Maternal Grandmother). CA Death Certificate. (10/31/76)] Steve and the other children "in the family were very upset because she was so close to them." [Declaration of Ceola Nunn (Maternal Aunt), 1997] Steve and his siblings had loved visiting their grandmother in Pacoima where the older relatives let the younger ones "run around because the neighborhood was safe." [Declaration of Azell Jackson (Mother), 1997]

Community Danger

105. The *de facto* segregation and social isolation of South Central Los Angeles guaranteed that a child like Steve could "live, eat, shop, work, play and die in a completely Negro community." [John Buggs, Executive Director of the Los Angeles County Commission on Human Relations, U.S. Commission on Civil Rights, 1963] Red-lining, plant closures that cost 70,000 manufacturing jobs, unemployment, and poverty ravaged Steve's community. Forty percent of all household in South Central were headed by women, and unemployment hovered at 30 percent for adults and 50 percent for teenagers. The area was cut off from the rest of the city by a complex web of freeways that carried commuters over and around South Central. Public transportation was woefully inadequate and expensive for an impoverished family. Azell waited hours for a bus driven by a friend who allowed her to ride for free. South Central residents had the highest mortality rate and the fewest physicians per capita in the county. Homicide was the primary cause of death for African-American males.

106. Law enforcement served a particularly aggressive role in the community and constituted a threat rather than protection to young African-American males. The Los Angeles Police Department and the County Sheriff's Department have histories of well-documented, frequent incidents of police misconduct that include terrorizing, humiliating, falsely arresting, and beating African-American residents. Some police officers taunted and degraded teenagers with racial slurs and threats to maim, torture, and kill them for sport. Police officers, many of whom viewed South Central as enemy territory and their work as combat, compiled and kept secret lists of African-American males they deemed politically threatening, such as the Black Panthers or possible members of gangs. They distributed these secret lists to potential employers without

notifying those people whose names were on the lists or giving them any opportunity to correct misinformation. African-American residents of South Central had little recourse against police maltreatment and misconduct.

107. Steve and his peers witnessed acts of police misconduct, experienced it firsthand, and heard accounts by family and others about life-threatening actions of police against children and adults in South Central. One of Steve's friends summarized the impact of police treatment of youth in the community:

> It felt like the police liked to search us in front of groups of people to further our embarrassment and humiliation. We felt shame, as though we were different and apart from the rest of the community. . . .Even today when I see policemen fear automatically rises in me and my heart races and I break out sweating. [Declaration of Michael Reed (Friend), 1997]

108. Police adopted specific practices aimed at terrorizing youth. Michael Reed described a dangerous practice called "dropping off" to which Steve was subjected:

> The police handcuffed a kid in the neighborhood, drove him around in the police car so that everyone would think the kid was working with the police, and then dropped the kid off in a hostile neighborhood where the kid had a good chance of being beaten up or killed. Steve was one of the first kids I knew who had this happen to him. The police picked Steve up, drove him around the neighborhood, and then dropped Steve off in a hostile area far away from home. Steve had to run home. . . . I saw many friends come back from being dropped off either badly beaten or out of breath from running to safety. The police dropped me off several times. . . .I thought each time that I was going to be killed. [Declaration of Michael

Reed (Friend), 1997]

109. Police humiliated children in the community at will, and Steve learned early in life that he was powerless to protect himself from police maltreatment. Steve often walked with his sisters or other children to protect them from danger in the community. Michael Reed described a typical incident when he and Steve were stopped by police as they walked down the street:

> Once when I was about 9 years old, Steve was walking me home from baseball practice at Helen Keller Park, when a police car pulled up. Steve was only about 11 years old and I was wearing my baseball uniform. The policemen asked us what we were doing. We were only walking home from the park, but the policemen searched and questioned us. I was embarrassed and felt ashamed that they could treat us any way they liked. [Declaration of Michael Reed (Friend), 1997]

110. Steve and other children were exposed to physically painful and emotionally degrading treatment at the hands of the police. Michael Reed described a common practice:

> The police . . .used to hold us up against their police cars and force our faces down onto the hoods of their cars. Since the car had usually just been running, the hood was incredibly hot and burned our faces. It was very painful. [Declaration of Michael Reed (Friend), 1997]

111. Steve and other children in his community lived in fear of being picked up by police who taunted them and threatened them. Michael Reed described what often happened to Steve and his friends after they were picked up by police:

> . . .[W]e were brought into the police station and strip searched . . . .for the first time when [we] were 11, 12, or 13 years old. It made us feel violated and ashamed to have men who

had hit us, threatened us, called us niggers and monkeys, and told us we were worthless to force us to take off all our clothing and examine our naked bodies. [Declaration of Michael Reed (Friend), 1997]

112. Police officers threatened Steve and his friends with sexual assault by older boys and abandonment by their mothers. Michael Reed further detailed police practices:

Sometimes as they were searching us the police explained to us how they were going to lock us up with older boys who were going to beat us up and have their way with us sexually. They told us that our mothers were not going to come pick us up from the police station because they did not want us. [Declaration of Michael Reed (Friend), 1997]

113. Steve witnessed the treatment his brothers received at the hands of police. His brother Lewis II was "assaulted. . .several times" and "saw the police punch kids in the stomach and hit them on the chest and legs with billy clubs." [Declaration of Lewis B. Champion III (Brother), 1997]

114. Steve and his peers were exposed to chronic danger from other children, teenagers, and adults in their community and "had no place to go where [they] could be safe from violence." [Declaration of Linda Champion Matthews (Sister), 1997] Surrounded by poverty and a pervasive sense of hopelessness, "[o]lder kids and bigger kids robbed the younger and smaller kids" and "stole clothes, money, and even meal tickets." [Declaration of Linda Champion Matthews (Sister), 1997]

115. Unprotected children like Steve learned to rely on each other for safety and respect. They developed a deep sense of loyalty to each other that had its roots in surviving chronic life threatening situations together. They knew that being alone or "[b]eing in the streets at the wrong

time could get you killed." [Declaration of Linda Champion Matthews (Sister), 1997] Children and youth from other sections of the community invaded Steve's neighborhood and "stole from and beat up kids" in Steve's community. [Declaration of Linda Champion Matthews (Sister), 1997]

116. Steve became hyper-vigilant for any threat of violence. His brother related that they:

> . . . had to be smart and pay attention all the time. If we saw something unfamiliar, we knew it meant danger. When a car was driving slow or a stranger was approaching we had to be prepared to defend ourselves. Attacks were possible at any moment. We did not always know who was attacking or why, but we knew the threat was constant. [Declaration of Reginald Champion (Brother), 1997]

117. Steve lived under conditions of danger that paralleled a combat zone. Reginald described the neighborhood as a "war zone." [Declaration of Reginald Champion (Brother), 1997] Steve practiced evasive measures as if he were a soldier in battle. When he returned home, "he went from bush to bush, hiding from anyone who might jump him. Even if the streets were clear, he practiced to stay alert." [Declaration of Linda Champion Matthews (Sister), 1997] He devoted considerable effort to defending himself, and he and his friends "boxed each other a lot to practice defending themselves." [Declaration of Linda Champion Matthews (Sister), 1997] Students in elementary and junior high school "had to keep weapons to protect themselves." [Declaration of Rita Champion Powell (Sister), 1997]

118. Steve was charged with protecting his older sisters and went with them "to parties and social events" because "[p]arties were dangerous. Just being in the front yard at a party got some people killed, when people from another neighborhood drove by and shot them."

[Declaration of Rita Champion Powell (Sister), 1997] Steve grew wary of ordinary life events. He "was scared for people to know his address" and "worried that people from other neighborhoods might come to his house and kill him if they knew where he lived." [Declaration of Michael Reed (Friend), 1997] Steve's family qualified for free meal tickets because of their poverty, but the meal tickets made him and his siblings "targets, and people tried to steal" the tickets. [Declaration of Gerald Walter Trabue Jr. (Maternal Half-Brother), 1997] Steve and Gerald Jr. "were attacked a lot because" they had meal tickets. [Declaration of Gerald Walter Trabue Jr. (Maternal Half-Brother), 1997] Gerald Jr., like Steve, had "planned escape routes all over the neighborhood." [Declaration of Gerald Walter Trabue Jr. (Maternal Half-Brother), 1997]

119. Neighborhood rivalries developed and "became deadly." [Declaration of Rita Champion Powell (Sister), 1997] Teachers recognized that their students "were in gangs for a variety of reasons, including protection, support, dysfunctional homes, and fear." [Declaration of Reeper Hamilton (Teacher), 1997] Children and youth "were in danger of being beaten up or shot based on where" they lived, even if they "were not in a gang." [Declaration of Michael Reed (Friend), 1997] Steve and his peers had "to be alert every minute" because "it was the only way to protect yourself." [Declaration of Michael Reed (Friend), 1997]

Juvenile Facilities: 1977 - 1980

120. In late 1977, when he was 15 years old, Steve was taken from the community and placed in a series of juvenile facilities following several encounters with law enforcement. It appears that his illegal activity was conducted with a group of other boys who were considerably older than he. Steve was "very loyal" to them and "grew dependent on their protection and support." [Declaration of Rita Champion Powell (Sister), 1997] Although this older group of boys

had "once kept him safe. . .his inability to separate himself from the kids. . . .got him thrown into the youth detention system." [Declaration of Rita Champion Powell (Sister), 1997]

121. From the ages of 15 to 18, when Steve was released from the California Youth Authority (CYA), he was subjected to a range of new dangers that were as devastating to his development as the violence in his home community had been. Steve was confined for varying periods of time in juvenile hall facilities, camps, and CYA facilities, where youngsters and staff assaulted, humiliated, threatened, and injured each other. When Steve's family visited him, they "could tell he was lonely and depressed." [Declaration of Rita Champion Powell (Sister), 1997] Azell saw CYA "changing him. . . . but there was nothing [she] could do to get him back." [Declaration of Azell Jackson (Mother), 1997] Life at CYA was harsh, and Steve had heard of its reputation well before he arrived:

> . . . YTS is worse than prison -- kids either had to lay down and die, or protect themselves. They could not count on staff members or guards. Kids who did not stand up for themselves and fight risked being assaulted and having their possessions stolen. Some kids were raped. Some kids tried to save themselves by asking to be placed in protective custody. But when someone wanted to attack a weaker kid, he could ask to be placed in protective custody himself. There was nowhere at YTS that was safe. [Declaration of Michael Reed (Friend), 1997]

122. Violent assaults were commonplace in CYA facilities. The frequent attacks youth suffered at the hands of there peers went unchecked: "It was common knowledge that CYA staff did not protect the kids. . . Your very life was in jeopardy when you were sent to CYA." [Declaration of Gerald Walter Trabue Jr. (Maternal Half-Brother), 1997] The CYA staff

themselves contributed to the atmosphere of violence by regularly attacking the youth in confinement. One of Steve's counselors, Robert Blair, was suspended and demoted four months after Steve was released because he "shoved a ward into the control center with such force that the ward hit the cabinet before falling to the floor" and then "got on top of the ward and. . . began choking him" saying, "Next time there won't be anyone around to pull me off of you. I'll teach you to fuck around with me." [BLAIR, Robert (California Youth Authority Counselor). *Blair v. State Personnel Board*, Case No. 302246, Writ of Mandamus and Notice of Punitive Action. (2/24/81)]

123. Educational and mental health programs at CYA were inadequate and failed to diagnose and treat mental impairments that were common to wards like Steve. Although Steve had severe brain damage, was depressed, and exhibited symptoms commonly associated with trauma survivors, he was not afforded special education classes or effective treatment programs. An incomplete battery of psychological tests was administered to Steve, thus failing to identify the presence of brain damage. [CHAMPION, Steve Allen. Certified Juvenile Court File. (1977-1979); CHAMPION, Steve Allen. California Youth Authority. (1977-1980)] A probation report stated that Steve's family was normal and made no reference to the bizarre behavior of Steve's father and older brothers. Steve was placed on the Medical-Psychiatric unit for three months, where he was more frightened of other wards than in the general population. The conditions he faced in CYA exacerbated Steve's pre-existing mental and emotional impairments and may well have contributed to the development of new symptomatology.

124. Although CYA staff observed some of the indicators of brain damage and enduring effects of trauma on Steve's behavior and cognitive functioning, institutional response was

inadequate. A psychiatric evaluation concluded that Steve conceptualized in "concrete, pragmatic terms." His "impulse control and judgment" were impaired, and he had "limited" insight. [CHAMPION, Steve Allen. Certified Juvenile Court File. (1977-1979)] A psychological evaluation noted Steve's "underlying depression" and characterized it as:

> . . . .recurrent and episodic. This depression is related to internal conflicts. He seems to express disappointment at having failed his family as well as having failed his own life goals. . . .He suffers from an impaired sense of self-esteem. . . .He has remorse for his past behavior and recognizes that he does have problems. [CHAMPION, Steve Allen. Certified Juvenile Court File. (1977-1979)]

125. Steve tried to benefit from the limited programs available in CYA and completed his sentence safely. Early in his confinement, mental health personnel believed he "would make a satisfactory adjustment" to CYA and that he had a "negligible" potential for violence. [CHAMPION, Steve Allen. Certified Juvenile Court File. (1977-1979)] They also noted that "it does not appear likely that Steve was totally immersed and committed to the gang subculture. Further, it would seem that he was actually used by the gang members, or at least he was only a follower." [CHAMPION, Steve Allen. Certified Juvenile Court File. (1977-1979)] Other CYA staff reported that Steve asked for assistance in moving away from gang influence, but counselors refused to move him to an institution where he would be subjected to less gang pressure. [CHAMPION, Steve Allen. California Youth Authority. (1977-1980)]

18 Years Old: 1980

126. Steve's experiences in the California Youth Authority had long term consequences on his behavior and functioning. When he returned home from CYA, two months past his 18th

birthday, he was a changed person, and family and friends were concerned about his well being. He was more hyper vigilant about physical danger, suspicious, and withdrawn. Linda thought he "was jumpy" and said "he always looked over his shoulder. He was careful about where he sat, and he kept a close eye on his surroundings. He was worried about people jumping him from behind." [Declaration of Linda Champion Matthews (Sister), 1997] Steve "kept an eye out for danger at all times and never relaxed." [Declaration of Rita Champion Powell (Sister), 1997]

127. Steve's harsh years at CYA caused him to be "different," "serious and quiet," and made Reginald feel like he "had lost [his] little brother." [Declaration of Rita Champion Powell (Sister), 1997; Declaration of Reginald Champion (Brother), 1997] Steve was "defensive and nervous." [Declaration of Reginald Champion (Brother), 1997] Steve's physical size had increased dramatically "because he had to exercise and get strong to defend himself from the vicious attacks in YA." [Declaration of Rita Champion Powell (Sister), 1997] Gerald Jr. noticed that Steve "used to joke around before camp and CYA, but he didn't afterward. . . .he was quiet and serious all the time." [Declaration of Gerald Walter Trabue Jr. (Maternal Half-Brother), 1997]

128. The trauma Steve suffered during his time at CYA was not limited to the violence and instability of his confined environment. Steve also suffered major emotional trauma as three of his closest friends, one of whom was his first cousin, were shot and killed in 1980. On April 15, Steve's longtime friend Raymond Winbush was shot and killed by men who mistakenly identified him as a burglar [WINBUSH, Raymond Anthony (Friend). CA Death Certificate (4/15/80); WINBUSH, Raymond Anthony (Friend). Los Angeles Office of Chief Medical Examiner: Coroner, File # 80-4986. (4/17/80)] Steve was "not allowed to attend Raymond's funeral and was depressed over Raymond's death for a long time." [Declaration of Michael Reed (Friend), 1997]

129. In September that same year, only weeks before Steve was released, his good friend Donald Kelly was killed by a man trying to steal his car at a concert. [KELLY, Donald Lynn (Friend). CA Death Certificate. (9/21/80); KELLY, Donald Lynn (Friend). Los Angeles Office of Chief Medical Examiner: Coroner, File # 80-12219. (9/24/80)] Steve's cousin Emil Overstreet was killed that same night in a separate incident. [OVERSTREET, Emil (Maternal Cousin). CA Death Certificate (9/22/80); OVERSTREET, Emil (Maternal Cousin). Los Angeles Office of Chief Medical Examiner: Coroner, File # (80-12225). (9/24/80)] Alone at CYA Steve was unable find emotional support to help him recover from the deaths of his good friends. Steve's friend Michael Reed described the gravity of a friend's death: "Our friends have been there for us when our families have not . . .To lose a friend is to feel a deep, permanent pain." [Declaration of Michael Reed (Friend), 1997]

130. It is remarkable that Steve returned from CYA with the goal of "finding a good job and getting educated. He wanted to be a counselor to help kids . . .who had trouble at home." [Declaration of Linda Champion Matthews (Sister), 1997] Azell believed Steve "really wanted to set his life straight" and "he planned to enroll in school so that he could teach or counsel." [Declaration of Azell Jackson (Mother), 1997] Steve's basic character is evidenced in the comments of his family, teachers, and friends, who uniformly praise his positive traits that survived chronic exposure to violence. Betty Borland, a neighbor who has known Steve since childhood, has memories of Steve "laughing and having fun in the backyard" with her son." [Declaration of Betty Borland (Family Friend), 1997] Betty described Steve as "nice, polite, and friendly." [Declaration of Betty Borland (Family Friend), 1997] Lewis III, Steve's oldest brother, stated it was "good to be around" him. [Declaration of Lewis B. Champion III (Brother), 1997] Linda

remembered that Steve "liked to help people:"

> He went to the store for our next-door neighbors, and he gave money to my brothers and sisters when they needed it. He taught me how to swim. He was respectful, responsible, and protective. . . .When people were fighting at the park he tried to stop them. Steve was friendly, and he loved to talk to people. [Declaration of Linda Champion Matthews (Sister), 1997]

131. After his release from CYA, Steve lived at home with his mother and siblings. They all agree that he "stayed home most of the time." [Declaration of Azell Jackson (Mother), 1997] Unemployment was high in South Central, but Steve found temporary employment and enrolled in school. [CHAMPION, Steve Allen. Employment Records: Social Security Itemized Statement of Earnings. (1980)] Steve was arrested January 13, 1981, and subsequently tried and convicted of the November 12, 1980, murders of Bobby and Eric Hassan.

132.a. All of the above information, documentation and evidence was available for discovery by trial counsel. Trial counsel offers no tactical reason for failing to adequate investigate, prepare and present a case for life which would have demonstrated to the jury, in the words of Dr. Pettis, that Steve Champion's life was shaped by the catastrophes he survived as a child, his family's unsuccessful attempts to overcome its history of mental illness, addiction and domestic violence, and the ever present threat of harm and death in his community. His ability to understand and make sense out of the world in which he lived was compromised by serious brain damage, which dramatically impaired his ability to learn basic skills of life and increased his dependency on others. The etiology of his neurologic impairments is impossible to determine with certainty, but the severity and effect of the impairments are manifested in all aspects of his life,

including academic performance, peer relationships, social understanding, and cognitive functioning.[98]

132.b. Petitioner's caretakers failed to recognize and respond to petitioner's basic physical and emotional needs as a developing child. At least three generations in the Champion and Gathright families have histories of major mental illness, addictive disease, and domestic violence that dramatically interfered with their functioning as parents and spouses. A legacy of domestic violence and cruelty was passed from one generation to the next as a deeply ingrained pattern of behavior with devastating consequences for all members of the family, especially the children. Petitioner's family life was defined by the unpredictable assaults by his older brothers, his helplessness to protect himself, his siblings, or his mother from danger, and the debilitating mental illnesses suffered by his father.

132.c. No zone of safety existed in petitioner's life. Violence in petitioner's home paralleled chronic danger outside his home in schools, the community, and in institutions charged with his care. Petitioner was beaten, threatened, humiliated, and degraded by older children, adults, and police officers. He was placed in the California Youth Authority where the environment was equally dangerous and for at least three months was confined in the psychiatric ward. By all accounts, petitioner's experience as a teenager at CYA damaged and altered his

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[98] Here, petitioner incorporates by reference, as though set out in full the declaration of Dr. Riley (Exhibit 67) and the facts presented in Claim VII. E.(Defense counsel provided constitutionally ineffective assistance in failing to discover, present, and argue evidence that petitioner was, at the time of the crime, suffering from significant mental impairment so that he was not capable of drawing inferences from which, if explained to the jury, would have precluded the jury from finding that petitioner, if present at the victims' residence, possessed the intent to kill required for special circumstance liability.)

perception of the world and his functioning. By the time he returned home, he exhibited clear symptoms of dysthymia, a chronic mood disorder that caused considerable distress and impairment. Petitioner continues to exhibit symptoms of dysthymia today.

132.d. Petitioner was overwhelmed by continual exposure to violence at home and in his community and reacted in a manner characteristic of those who survive chronic life threatening events. He had difficulty concentrating and was preoccupied throughout his childhood and adolescence with attempts to be safe. He could not attend to learning tasks that children need to master as part of their development. Petitioner's efforts to be safe and protect his siblings from harm invaded every life sphere. He was hyper vigilant, had intrusive imagery of the violence he had either witnessed or experienced, attempted to avoid situations that caused him to remember traumatic events, and experienced psychic numbing. He reported episodes of dissociation, increased heart rate, and perspiration during times of acute stress and reexperiences those physiological symptoms when he has intrusive thoughts of traumatic events from his childhood and adolescence.

133. 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 his experiences precluded a sentence of life without the possibility of parole.

X.

PETITIONER'S CONSTITUTIONAL RIGHTS WERE VIOLATED BY THE PROSECUTOR IMPLYING THAT PETITIONER HAD A CRIMINAL RECORD AND BY THE TRIAL COURT'S REFUSAL TO GRANT A MISTRIAL

1. The investigation in this case initially focused on Benjamin Brown and Clarence Reed. Both men and their car were identified by eyewitness Ms. Moncrief as participants in the Hassan murders. (RT 1825, 1991-1992, 2002.) Los Angeles Police Detective David Crews, the investigating officer in the case, was called by the prosecution to explain the prosecution's abandonment of Brown and Reed as suspects. After Crews testified to Ms. Moncrief's alleged misidentification of these two, he was asked whether Brown or Reed had a criminal record. His answer, given over defense objections, was that "neither had a criminal record that I could determine." (RT 1901.)

2. Immediately thereafter, the prosecutor's questions shifted to identification of petitioner and Mr. Ross and the automobile that the police ultimately focused on. The clear implication of the question and response was that the investigation shifted from Brown and Reed to petitioner and Mr. Ross because the former had no criminal records while the latter did. The defense moved for mistrial on this basis. (RT 1908.)

3. The fact that an individual does or does not have a criminal record is inadmissible for any purpose. The existence or nonexistence of a criminal record is of too little probative value to be admissible for any purpose. (California Evidence Code sections 352 and 1101; *People v. Ozuna* (1963) 13 Cal.App.2d 338, 341-342.) The rule against using character to show propensity is virtually universal. (*McKinney v. Rees, supra*, 993 F.2d at 1381 n.2.) For the above reasons, the admission of Detective Crew's testimony that strongly inferred petitioner was involved in prior

crimes was constitutionally improper and violated petitioner's due process rights.

4. In petitioner's case trial counsel objected and asked for a mistrial concerning Detective Crew's testimony. The court denied the motion. The case against petitioner was far from strong and he was being tried as an alleged gang member who was involved in a sophisticated and ongoing criminal conspiracy to commit multiple robberies and murders. The inference that he had a criminal record requires reversal of all convictions and sentences.

XI.

DEFENSE COUNSEL'S CONFLICT OF INTEREST PREVENTED HIM FROM RENDERING EFFECTIVE ASSISTANCE OF COUNSEL

1. In order to establish a conflict of interest that violates the Sixth Amendment, a defendant must demonstrate an actual conflict and a resulting adverse effect. Once this showing is made, prejudice is assumed. A defendant must prove that the conflict adversely affected counsel's performance by showing "some effect on counsel's handling of particular aspects of the trial likely." (*Sanders v. Ratelle* (9th Cir. 1994) 21 F.3d 1446.) The defendant must demonstrate: "a plausible alternative defense strategy or tactic that might have been pursued." (*Winkler v. Keene* (19) 7 F.3d 304.)

2. A violation of the Sixth Amendment as the result of a conflict of interests may be raised although counsel is retained, not appointed. The Sixth Amendment applies equally to both. The Court decides that where the trial court knows or reasonably should know that a particular conflict exists, it must initiate an inquiry. Whenever a defendant fails to object to a conflict of interest at trial, in order to establish a Sixth Amendment violation, he must demonstrate (1) that an actual conflict exited, and (2) that conflict adversely affected his counsel's performance. Once a defendant demonstrates that an actual conflict adversely affected his attorney's performance, he need not prove prejudice. The judicial determination of whether a conflict exists is a mixed question of law that is open to collateral review. (*Cuyler v. Sullivan* (1980) 446 U.S. 335, 64 L.Ed.2d 333.)

3. Here, as discussed above, trial counsel was retained by petitioner's mother for the sum of $10,000.00. According to Mr. Skyers, all of the funds obtained from the Champion family for

Mr. Champion's defense were considered his legal fees. Counsel did not request additional funding for the purpose of hiring an investigator. Counsel's investigation was limited to a cursory investigation of the circumstances of the Hassan crime.

4. "Murder is a crime of utmost gravity; inasmuch as the state is seeking the death penalty, it is a crime of the gravest consequences to petitioner." (*Martinez* v. *Superior Court* (1981) 29 Cal.3d 574, 583; see too *Williams* v. *Superior Court* (1984) 36 Cal.3d 441, 454.) Indeed, "[r]epresentation of an accused murdered is a mammoth responsibility." (*In re Hall* (1981) 30 Cal.3d 408, 434.)

5. Counsel here was presented with the task of investigating and preparing for both a guilt and penalty phase trial. The guilt phase consisted of four homicides which occurred in three separate instances. Other complex issues of gang membership, conspiracy, eyewitness identification, third party culpability, and forensic evidence required extensive investigation, legal research, briefing and argument. Finally, petitioner was before the jury with a codefendant whose involvement was strongly indicated. A prior trial of one of the Taylor perpetrators had occurred. It is argued here that $10,000.00 was not a sufficient fund for pretrial legal preparation alone. In addition court time was also extensive. Petitioner's trial began on September 28, 1982. The sentence of death was imposed on December 10, 1982. (CT 725-735; RT 3807-3808.)

6. The funds Mr. Skyers collected from the Champion family were not sufficient to compensate him for the time actually spent in preparation of or presentation of petitioner's case.

XII.

THE UNCONSTITUTIONAL JOINDER OF PETITIONER'S CASE WITH THAT OF CRAIG ROSS DENIED PETITIONER DUE PROCESS OF LAW AND IN COMBINATION WITH PROSECUTORIAL BAD FAITH, INEFFECTIVE ASSISTANCE OF COUNSEL, AND ERRONEOUS TRIAL COURT RULINGS RESULTED IN FUNDAMENTALLY UNFAIR GUILT AND PENALTY TRIALS

Petitioner's convictions and death sentence were unlawfully and unconstitutionally obtained in violation of petitioner's rights under the First, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and under article I, section 1, 7, 15, 16, 17, and 24 of the California Constitution and the statutory and decisional law of California, in that petitioner was denied effective assistance of counsel by the unconstitutional joinder of petitioner's case with that of co-defendant Craig Ross, in combination with prosecutorial bad faith, ineffective assistance of counsel, and erroneous trial court rulings.

The facts supporting this claim, among others to be presented after full investigation, discovery, access to this Court's subpoena power, and an evidentiary hearing, include, but are not limited to the following:

1. The constitutional violations contributing to petitioner's unfair guilt and penalty trials are summarized in this claim to provide the Court with an overview of how joinder was engineered by the State to create a judicial device with which to improperly introduce knowingly false, unreliable, suppressed and unfairly prejudicial evidence against petitioner concerning murders not charged against him. This claim demonstrates the overwhelming cumulative unfair and compelling prejudice that a joint trial caused petitioner in derogation of his constitutional rights.

2. The prosecutor promised he would not introduce evidence during the guilt-phase of petitioner's trial (purported identification as a Taylor murder participant), or misled the court into

believing was relevent (the Jefferson murder) was introduced against petitioner due to prejudicial joinder. Regrettably, the court failed in its continuing duty to sever upon the violation of the prosecutor's promise not to introduce evidence of alleged involvement in the Taylor murder against petitioner during the guilt phase, and his failure to connect the Jefferson murder to petitioner. Trial counsel was ineffective in failing to object to the improper and confabulated identification of him as being at the Taylor murder, ask for a mistrial, or renew the severance motion. The Taylor and Jefferson murder evidence that was introduced became so significant to the prosecution's case against petitioner that the guilt and penalty verdicts based thereon violated fundamental due process in violation of petitioner's First, Fifth, Sixth, Eighth and Fourteenth Amendment Rights to the United States Constitution and article I, Section 1, 7, 15, 16, 17 and, 24 of the California Constitution.

3. Some of the claims referenced herein appear as separate claims in the petition, e.g. trial counsel's failure to object to the Cora Taylor identification. For each separate claim referenced, the applicable claim number is cited.

4. This aggregate joinder claim will discuss the prosecutor's deceptive pretrial and trial maneuvers, the court's erroneous initial denial of severance, erroneous evidentiary rulings, failure to sever when the prosecutor breached his promise to the court and counsel re: "other crimes" evidence, and the ineffectiveness of petitioner's counsel in failing to ensure due process for his client.

5. Petitioner, was convicted of two counts of murder (Bobby and Eric Hassan) with special circumstances, two counts of burglary and two counts of robbery. He has been sentenced to death despite the fact that there is no evidence that he killed or had the intent to kill the Hassans. This

all occurred because joinder of his trial with that of Craig Anthony Ross allowed petitioner to be tried not only for the two charged murders, but for two uncharged murders as well. He was not convicted on the basis of any direct evidence that he was a killer. Rather, he was convicted because he associated with codefendant Ross and other alleged members of the Raymond Avenue Crips.

B. THE CASE AGAINST PETITIONER CHAMPION

1. Victim Bobby Hassan was a drug dealer. On December 12, 1980, his body and that of his fourteen-year-old son were found lying on a waterbed in their Los Angeles home. Each had been shot execution-style in the back of the head with a .357 caliber weapon with rifling characteristics described as "six lands and grooves with a left hand twist," a characteristic of Colt revolvers. (*People v. Champion, supra,* 9 Cal. 4th at 899.) Jewelry, Christmas presents and a .357 Ruger revolver were stolen from the home. Neighborhood nursing-care worker, Elizabeth Moncrief, witnessed four Black males exit the Hassan home carrying a pillowcase and paper bags. The State presented the following evidence against petitioner Champion at trial:

a. Ms. Moncrief identified petitioner as one of four men leaving the house. This identification, however, was shaky at best and, in her own words, "confused." (RT 1784, 1835). (See Claim VII. C.)

b. At the time of petitioner's arrest on January 9, 1981, he was wearing a yellow metal ring with white stones and a gold chain necklace with a charm bearing half of a king-of-hearts playing card. Mrs. Hassan identified the ring and charm, but not the necklace, as belonging to her husband. (*People v Champion, supra,* 9 Cal. 4 at 899.) (See Claim VII. A.)

c. Photographs found in petitioner's home showed both he and Ross holding a revolver.

(*Id.* at 500.)

d. Petitioner and Ross had been secretly tape-recorded while in a police van. They made derogatory comments concerning Bobby Hassan, Jr., another son of the victim, and Ross mentioned a "waterbed." (*Id.* at 909.)

2. The case against petitioner had glaring problems. No ballistics, fingerprints, fibers, or any hard evidence existed to link petitioner to the Hassan murders. Ms. Moncrief testified that the last person leaving the Hassan residence (who she identified as petitioner) had dark gloves on (RT 1726). The prosecution proved that dark gloves were indeed seized from petitioner's bedroom upon his arrest (RT 1959). However, the dark gloves tested negative for blood and gunshot residue, which would show that petitioner wasn't present, but if present, surely wasn't the triggerman. These are facts never established by trial counsel (See Exhibit 66.) (See Claim VII. D.)

3. Petitioner also had an alibi for the Hassan crimes. He, his brother and mother all testified that he had picked up his paycheck at the approximate time of the murders and spent the afternoon at home. (*Id.* at 902.) Petitioner had also been on the phone with Rose Winbush for a long period of time before leaving to pick up his paycheck (Exhibit 55.) This particular fact, however, was not established by trial counsel. (See Claim VII. B.) Substantial questions existed concerning the State's evidence:

a. Ms. Moncrief's identification was highly impeachable. She had originally identified Benjamin Brown and Clarence Reed as being at the Hassan home and identified their Chrysler car. At trial she changed to a "gold-or cream colored Cadillac" and then settled on a brown Buick which was linked to another murder. (*Id.* at 899.)

b. The jewelry was not unusual or distinctive. Both pieces were mass-produced and commonly available in retail stores. The identification of the ring by Mrs. Hassan was also questionable. She could not describe it to police until she was provided a sketch prepared by a jeweler at Noro Jewelry Store. The ring that was bought for her husband, as it has turned out, was not the same size as the ring worn by petitioner upon his arrest, another fact not established by trial counsel (Exhibits 56-60.) (Claim VII. A.)

c. The revolver shown in the photographs was highly generic. Quite significantly, when Benjamin Brown was arrested the day after the Hassan murders for an attempted robbery that resulted in the death of Clarence Reed, he had a Colt revolver with the Hassan rifling characteristics. (*Id.* at 900.)

d. The secret tape recording of petitioner and Ross captured no admissions of involvement in any crime. The reference by Mr. Ross to a "waterbed" was not particularly probative. The conversation took place long after preliminary hearings and case-discovery had made it universal knowledge that the Hassans had been slain on a waterbed. (Claim VII. G.)

e. Lastly, the State had no evidence that petitioner killed the Hassans or harbored any intent to kill them. It bears repeating: **no evidence of intent to kill or aid someone to kill.**

4. The weakness of the prosecution case against petitioner was obvious, particularly the Moncrief identification. If that identification were questioned by the jury, petitioner undoubtedly would go free of even the burglary. And then there was the nagging problem of intent to kill, proof of which was non-existent. Therefore, the State turned to the device of joinder to unfairly prejudice petitioner.

C. JOINDER OF THE TAYLOR MURDER TO PETITIONER'S CASE

1. On December 27, 1980, three men invaded the home of Michael Taylor and killed him. Witnesses identified two of these men as Craig Ross and Jerome Evan Mallet. They also terrorized Michael's mother, Cora Taylor, and Michael Birdsong, a friend. Ross raped Mary Taylor, the victim's sister. Mallet attempted to do so. (*Id.* at 900.)

2. The prosecution first attempted to join petitioner's case (the Hassans) with the Taylor case against Mallet. This tactic failed, as will be discussed. The State then successfully joined the case of Craig Ross, charged in the Hassan murder and the Taylor rape/murder, with that of petitioner. The resulting joint trial allowed the State to link petitioner to other murders and to show him as an associate of known killers. Once shown to be an associate of killers, it was easy for the jury to find him a murderer and become terrified of him.

3. The State had a clear motive for joinder: the weakness of the case against petitioner had to be improved by the strength of the case against Ross. Only through joinder could the State "pad" it's case against petitioner. Ross' fingerprints were on Christmas wrappings in the Hassan home. Stolen Hassan property had been found in a vehicle used as the getaway car in the Taylor murder and Ross certainly participated in that crime. Ross was positively identified by eyewitnesses at the Taylor murder, his fingerprints were in the Taylor home, and sperm consistent with Ross' was found on the clothing of the woman he raped. (*Id.* at 901.) Using joinder to bolster a weak case with a strong case of a codefendant is not an unusual prosecutorial tactic, but **inflammatory** bolstering of a "weak" case is a denial of due process. (*People v. Chambers* (1964) 231 Cal.App. 3d 23, 28; *United States v. Douglass* (9th Cir. 1986) 780 F.2d 1472; *People v. Proce* (1991) 1 Cal.4th 390.

D. BAD FAITH OF THE PROSECUTOR

1. Whether the government has acted in good or bad faith is an important factor in assessing a claim of denial of due process. (See, e.g., *Arizona v. Youngblood* (1988) 488 U.S. 51,57, 109 S.Ct. 333, 102 L.Ed.2d 281, 289 [destruction of evidence]; *United States v. Marion* (1976) 404 U.S. 307, 324, 92 S.Ct. 455, 30 L.Ed.2d 468, 481 [preindictment delay].) Joinder will not be upheld where charges have been brought in bad faith. (*United States v. Donaway* (9th Cir. 1971) 447 F.2d 940, 943; *United States v. Manfredi* 275 F.2d 588, 593 (3d Cir.), *cert. denied,* (1960) 363 U.S. 828, 80 S.Ct. 1598, 4 L.Ed.2d 1523.)

2. While this Court viewed the case against petitioner as "far from weak," (*Id.*, at 905), that is simply not true. The acts of the prosecutor clearly reflect bad faith and desperate moves to bolster a weak case. The prosecutor's **first** maneuver to unfairly strengthen the case against petitioner was to try to trick petitioner into making incriminating statements by arranging a secret tape-recording of conversations between petitioner and Evan Mallet. Without notice to petitioner's trial counsel, the prosecutor moved ex-parte under seal, to have petitioner and Mallet transported in a van from jail to a concocted, legally-unfounded joinder hearing. The prosecutor knew that joinder was legally improper, but placed these unrelated cases on calendar for a phony joinder hearing. (Exhibit 68.)[99] (Claim VII. F.)

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99 Evan Mallet was charged with the Taylor murder only. The prosecutor knew Mallet could not have been involved in the Hassan murders because he was in jail at the time. The evidence against Mallet on the Taylor murder was very strong as he was identified after the crime. The prosecutor didn't need to improve his case against Mallet, only petitioner. In his ex parte application, the prosecutor stated that Mallet and petitioner were closely associated in the same gang, and the murders had close factual connections. The prosecutor felt that if petitioner and Mallet were brought to court alone they would talk about the two murder incidents (CT 401-402.) Having to resort to this clandestine

3. Mallet had been charged with the Taylor murder and had no connection to the Hassan murders. Likewise, petitioner had no connection to the Taylor murder. No evidence linked him to the "Taylor" murder. In fact, petitioner's photograph and person had been shown to all witnesses of the "Taylor" murder and no one could identify him. (RT 1519). (Claims VI. D; VI. E; VI. F.)

4. Additionally, the prosecution knew that petitioner could establish a police-officer and citizen-witness alibi for the time period of the Taylor murder. (Claim VI. A.) Trial counsel investigated this crucial, police-detention alibi for petitioner and therefore never presented this fact to oppose joinder, or, later during trial to dispel Cora Taylor's confabulated identification.

5. The prosecutor believed that Mr. Mallet and Craig Ross committed the Taylor murder with two other unidentified men. The prosecutor knew that three people were inside the Taylor residence when Taylor was shot. Although four people were involved because four people ran from the getaway car shortly after the murder and Cora and Mary Taylor each saw a hand or arm of the fourth perpetrator outside of their home. Thus, through improper joinder, the prosecutor intended to prove petitioner was this "fourth" suspect, who presumably stayed outside the Taylor residence and could not be seen by witnesses inside, and he did not care that petitioner had an alibi. In his joinder motion, the prosecutor suggested his view as to why petitioner could not have been seen by Taylor witnesses: "Champion was never identified in the Taylor case, however, it should be noted that none of the witnesses ever saw the face of the **fourth** suspect."(CT 422; RT 1519, 1520, emphasis added.) The prosecutor knew or should have known that the third and fourth men involved were Michael Player and Robert Simms. (Claim VI. B.)

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skullduggery to obtain something of substance to convict Petitioner hardly reflects a case that is "anything but weak."

6. The **second** maneuver reflecting bad faith was to try to prejudice petitioner's case by attempting to **improperly join** it with Mallet's. Again, Mallet was not charged with the Hassan murders and petitioner was not charged with the Taylor murders. Nevertheless, on July 24, 1981 (CT 383) the prosecutor sought **joinder** of Mallet's case with that of petitioner.[100] The prosecutor transported petitioner and Mallet alone to the phony joinder motion in a sheriff's van so that he could carry out his first bad-faith maneuver, to tape record them in the hope they would talk about having committed the Hassan and/or Taylor murders (CT 403.) This joinder attempt was a pure "set-up" for the tape recording, and was not grounded in case law. This behavior is a clear example of prosecutorial bad faith. The prosecutor knew his case was not "anything but weak." (Claim VII. F.)

7. Craig Ross was arrested on August 1, 1981, approximately seven months after petitioner's arrest. Petitioner was still awaiting trial. Again, the quantum of evidence against Ross concerning the Hassan and Taylor murders was abundant. Continuing to realize the weakness of his case against petitioner, however, the prosecutor employed his **fourth** bad-faith maneuver. He moved ex-parte, under seal, to have petitioner and **Ross** transported alone to court in a sheriff's van to be tape recorded. The prosecutor, again, expressed the hope in his motion that

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The prosecutor was an experienced death penalty litigator. In his joinder motion he withheld citations to well-known case and statutory authorities which clearly precluded joinder of two defendants' cases when they were not named together in at least one common count, *People v Ortiz*, 22 Cal. 3d 38; and Penal Code § 1098 (CT 383-387.) Regrettably, petitioner's court appointed attorney, Homer Mason, filed an opposition to the People's joinder which proved that he was unaware of any case or statutory authority preventing joinder as a matter of law. Such was the caliber of petitioner's trial counsel throughout these proceedings (See CT 391-396.) Fortunately, Evan Mallet was represented by a deputy public defender who knew the law and opposed the patently unfair joinder tactic by filing and citing the applicable authority, thereby thwarting the improper maneuver by the prosecutor (CT 388-389.)

incriminating statements would be made. (CT 405-408).[101]

8. The August 7, 1981, second court-ordered taping (CT 405) was obtained months after police reports of the Hassan murders had been provided to petitioner as the Hassan case-discovery. In January, 1981, this discovery informed Petitioner how the Hassans had been murdered while positioned upon their waterbed. Moreover, during Petitioner's preliminary hearing on February 27, 1981, Detective David Crews testified that he had viewed the Hassans hanging off the edge of their "waterbed." (CT 35).

9. The result of the second clandestine tape-recording was that petitioner and Ross used offensive swear words, referred to the prosecutor as a "little-punk-bastard", used racist and sexist expressions, spoke in alleged gang jargon and "tough-man" lingo, and referred to the surviving son of Bobby Hassan as a "punk-ass."

10. The last portion of the taped conversation contained two short, inaudible verbal exchanges between petitioner and Ross. Ross then asked petitioner, "Was that a waterbed in that room," to which petitioner replied, "Uh-uh." Again, petitioner had been informed about the waterbed in January, 1981 when discovery was issued. Thus, any answer, if "uh-uh" can be deemed such, about a waterbed was not some crime-scene secret which only the Hassan killers could have known, and had little probative value. (Exhibit 76 -- Transcript of Recording.) Thus, very little in the nature of incriminating evidence developed from the August 1981 tape recording. The prosecutor possessed his same weak case, but, he now had an extremely inflammatory tape

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[101] As the two cases were quite strong against Ross, the tape recording was certainly done to obtain information to strengthen the weak case against petitioner. These tactics do not reflect a case that is "anything but weak."

recording he could admit into evidence to arouse the jurors' terror of petitioner. Unfortunately, trial counsel failed to object to major portions of the tape recording which contained this completely irrelevant and inflammatory language. (See Claim VII. G.) This Court stated, "But defendant's never notified the court that, in their view, portions of the tape recording were particularly prejudicial. Accordingly, they have not preserved the issue for appeal." (*Id.*, at 915.)

11. Faced with a very weak case against petitioner, and having twice failed to obtain incriminating statements from him, the prosecutor resorted to his **fifth** bad-faith maneuver. Over objection (CT 412-413), the prosecutor moved to **join** petitioner's case with that of Ross and based joinder on the legal theory that there was a "common element of substantial importance in the commission" of the Hassan and Taylor crimes (CT 423). The common elements listed were that **Ross** committed both murders, that they were committed within 16 days of each other, they were committed within one-half mile of each other, each victim was shot in the back of the head during a residential robbery, the same car was used in both crimes, and the killers in the Taylor crime probably used the weapon stolen from the Hassans (CT 419-424). These grounds would be viable in reaching the conclusion that Ross' two murder incidents should be joined with one another, but had nothing to do with petitioner's separate case.

12. In the prosecutor's joinder pleading, the prosecutor revealed his improper legal theory for joinder of petitioner's separate case. The impropriety of that legal theory should have compelled the court to grant petitioner's severance motion, notwithstanding trial counsel's ineffectiveness in opposing joinder through his failure to argue case authority, or to investigate petitioner's Taylor alibi, or to distinguish the facts of the Taylor and Hassan incidents. (CT 413; RT A-282). In the joinder motion, the prosecutor argued (CT 422) that the car used in the Hassan

murders was the same car that had been abandoned by **four** people shortly after the Taylor murder and since the vehicle "was regularly driven by Michael, Lavelle, and Marcus Player"...and since "Champion, Ross, Mallet, and the Player brothers all closely associate with one another in the Raymond Street Crips Gang," joinder should be based on defendants' **membership in a conspiracy** engaged in murdering drug dealers. However, a conspiracy was not charged in either Ross' or petitioner's case. (See Claim VIII. D.)

13. Under state law that existed at the time of the joinder motion, severance should have been granted where the possibility existed that a conviction of petitioner could result from "guilt by association," rather than based upon the evidence. (*People v Chambers* (1964) 231 Cal. App. 2d, 23; *People v Biehler* (1961) 198 C.A. 2d 290.) Trial counsel opposed joinder by citing these cases (CT 412-413.) In petitioner's guilt and penalty trials, there was not merely the possibility that the jury might infer petitioner's guilt by association, that was precisely the theory the prosecutor argued for joinder and his announced legal theory to join petitioner's case. Moreover, severance should have been granted because the evidence against Ross was strong, while that against petitioner was weak. In such circumstances, the finding of a persons guilt by association must be considered a strong impetus for granting a severance motion. (*People v Massie* (1967) 66 Cal. 2d 899.) However, joinder was allowed.

14. Once joinder had been granted, the prosecutor's **sixth** bad-faith maneuver was to deceive the court and trial counsel into a false sense of security by stating, during hearings, that he would not prejudice petitioner as a result of a joint trial. The prosecutor told everyone, during in limine hearings prior to opening statements, that he would not seek to introduce evidence against that petitioner was personally involved in the joined charges. However, the prosecutor knew he

was misleading the court and counsel. He fully intended to introduce evidence that petitioner was at the Taylor murder. During trial, the prosecutor not only strenuously tried to have Mary Taylor identify petitioner in the Taylor home, but got Cora Taylor to do so. The prosecutor knew that Cora Taylor had unsuccessfully tried to identify petitioner several times before trial, that petitioner had a police officer alibi for the Taylor murder. Yet, he proceeded to violate his promise to the court and counsel and confabulated an identification.

15. There can be no dispute that all of these prosecutorial maneuvers were done in bad faith to obtain joinder for the purpose of later introducing misleading evidence. These acts did not reflect having a case that was "anything but weak."

E. THE UNCONSTITUTIONALITY OF JOINDER AND RESULTING PREJUDICE

1. Joinder of petitioner's case with that of Ross violated both California and federal constitutional law. Nevertheless, in this case, this Court found that "at the time the trial court made its ruling, it could reasonably conclude that the evidence of Taylor's murder would not adversely affect Champion at trial." (*People v Champion, supra*, 9 Cal 4th at 905. In so doing, the court missed the constitutional focus in this case. "[It] is only the **consequences** of joinder, over which the trial court has much control, and not the joinder itself, which may render the trial `fundamentally unfair.'" (See *Herring v. Meachum* (2d Cir. 1993) 11 F.3d 374, 377.)

2. In the opinion of this Court, joinder was nonprejudicial because evidence of the Taylor murder was admissible against petitioner in light of what the court deemed a common *modus operandi* shared by the Hassan and Taylor murders. The Court emphasized that, "In both cases, the victims included drug dealers (Bobby Hassan and Michael Taylor) who were robbed in their

homes, ordered to lie on their beds, and shot in the back of the head at close range. These common features are sufficiently distinctive to support an inference that both crimes were committed by the same persons." (*People v. Champion, supra,* 9 Cal. 4th at 905.)

3. The Hassan and Taylor shootings were generic crimes. This minimal commonality of elements is far from sufficient to find the "signature" that due process requires for the cross-admissibility of like crimes: Evidence that a person has committed one crime is not admissible to show the identity of the person committing another crime merely because the two offenses are similar. The offenses must be so similar in their circumstances as to guarantee a reasonable likelihood that they are committed by the same person.(See *Featherstone v. Estelle* (9th Cir. 1989) 948 F.2d 1497, 1501-02 ; *Drew v. United States* (D.C. Cir. 1964) 331 F.2d 85, 90.) Otherwise, the possibility that the jury will draw improper conclusions as to the accused's character is too great to allow admission of the evidence, notwithstanding its marginal probative value. (*United States v. Quinn* (9th Cir. 1994) 18 F.3d 1461,1466.)

4. Petitioner submits that execution-style slayings of drug dealers are unfortunately too common to be regarded as "signature" crimes. (See *United States v. Luna* (9th Cir. 1994) 21 F.3d 874 [bank robberies featuring guns, gloves, masks, bags, profanity, loud entry, etc., are not signature offenses]; *United States v. Satterfield,* (9th Cir. 1977) 548 F.2d 1341, 1345, *cert. denied* [[U]se of disguises is so common in bank robberies that resorting to the device on different occasions does not by itself constitute a common pattern].)

5. This Court also relied on the fact that the car used in the Taylor murder contained items stolen from the Hassan residence. Thus, "the jury could reasonably infer that the same four men who had fled from the Buick had also participated in [both] murders." (*People v. Champion,*

supra, 9 Cal.4th at 906.) This reasoning stretches logic. The stolen property suggests that there *may* be a link between the two murders, that being participation it is fundamentally unfair to reason that since Champion may have associated with Ross he was involved in the murders Ross allegedly committed. The dangers of guilt by association are far too great.

6. In assessing the prejudice to petitioner as a consequence of the joint trial, it is critical to consider what evidence the jury heard that could not have been introduced if petitioner had been tried alone. There are four principal categories:

a. That Craig Ross, a Raymond Avenue Crip, and Evan Mallet, a Raymond Avenue Crip, robbed and killed Michael Taylor; that Ross raped Cora Taylor and Mallet attempted to do so. The entirety of the Taylor rape-robbery-murder incident was used against petitioner at the guilt and penalty phases.

b. That a third Black male entered the Taylor residence and participated in the Taylor murder and that, according to Cora Taylor's "surprise" in-court identification, this person was petitioner.

c. That gang graffiti, including petitioner's moniker was found across the street from the Taylor home "hurrahing" that he committed a robbery at that location and that petitioner was an associate of the Raymond Avenue Crips, members of whom were associated with the Taylor getaway car. In effect, the graffiti and all of the "gang evidence" was introduced against petitioner because of joinder.

d. That the Hassan-Taylor killers were part of a Raymond Avenue Crips "conspiracy" that also executed Teheran Jefferson. Thus, the entirety of the Jefferson murder was also introduced against petitioner because of joinder.

7. Each of these categories of evidence, not admissible against petitioner in a separate trial, will be discussed individually. The prejudice which flowed therefrom, both individually and collectively, was overwhelming and produced a trial mired in unfairness.

F. THE TAYLOR RAPE/MURDER

1. If petitioner had been separately tried for the Hassan murders, it would have been fair to prove that he knew Craig Ross whose fingerprints were found at the Hassan home. Proof of their association could have been easily be accomplished through Deputy Williams testifying that he saw petitioner and Ross associate with each other at Helen Keller park.[102] However, it would have been grossly improper to introduce evidence that Ross was the Taylor murderer and rapist. This could only serve to inflame the jury and to convict petitioner through "guilt by his association" with Ross.

2. The State would certainly argue that, in a separate trial, the Taylor crimes should be admitted to show that Ross was in the Buick that contained both Hassan and Taylor stolen property and that every grisly Taylor fact should therefore be available to prove the identity of Ross, who petitioner associates with. Petitioner submits that no reasonable court would accept this argument. The highly inflammatory Taylor evidence would be cumulative to Ross' identification as a Hassan killer. It was established that, "Latent fingerprints lifted from the Christmas wrapping paper and from a white cardboard box matched defendant Ross' fingerprints." (*People v. Champion, supra,* 9 Cal.4th at 908-909.) In a separate trial, no reasonable court would allow the facts of an unrelated rape and murder to come in against petitioner to prove a fact

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[102]But, see Claim VI.G. Deputy Williams' testimony that petitioner and Ross were seen together during the summer months was inaccurate.

already proven, particularly when the stolen property evidence bears no link to petitioner, but only to a person whom he knows. This is precisely why the constitution protects against grossly prejudicial joint trials. A defendant can not be tried for a codefendant's unrelated wrongdoing.

G. CORA TAYLOR'S "SURPRISE" IDENTIFICATION WOULD NOT HAVE OCCURRED

1. Three men entered the Taylor residence. Two clearly were Ross and Mallet. Four men ran from the Buick which was the Taylor getaway car. If petitioner had been tried separately, no jury could have been invited to speculate that he was the unknown third or fourth man.

2. The prosecutor knew that Cora Taylor had inspected petitioner's photographs (RT 2244) and viewed him in a lineup (RT 2242,) all without ever identifying him as a participant in the attack at her home.[103] With the utmost of bad faith, the prosecutor inquired of Mary and Cora Taylor at trial if the men who killed her son were in court. Although Mary Taylor could not positively identify petitioner, Cora Taylor forthwith identified the only men seated before her at defense counsel table, Champion and Ross. This identification should have been suppressed as grossly suggestive. (See *United States, v. Emanuele* (3d Cir. 1995) 51 F.3d 1123.) However, defense counsel made no objection. Such ineffectiveness of counsel is discussed *infra*. (Claim VI. F.) The point now made is that this incident could **not** have occurred in a separate trial, nor in a

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[103] Prior to opening statements, defense counsel objected to any tactics that the prosecutor might use to introduce evidence of the Taylor murder against petitioner: "I object to any reference of Champion being involved in the Taylor case..it would be highly prejudicial." (RT 1519). To lead the court and counsel into a false sense of security the prosecutor responded: "Well I have no evidence that Mr. Champion--no direct evidence Mr. Champion was inside the house and I have given counsel, in fact, evidence of negative identification that is not contained in any written report." (RT 1519. Thus, through this response the prosecutor was assuring the court and parties that he would not introduce evidence of the Taylor murder against Mr. Champion.

joint trial if the prosecutor had acted ethically.

3. The State likely will claim that this identification was a surprise, a mere fortuity. Indeed, the constitution may not protect against bad luck, but it should protect against damningly prejudicial fortuities which are **invited by the prosecutor**. In a separate trial, the question of Cora Taylor simply could not have been asked.

4. This Court dismissed this prejudice because, prior to trial, no eyewitness had identified petitioner as one of Taylor's killers. "Thus, at the time the trial court made its ruling [granting joinder], it could reasonably conclude that the evidence of Taylor's murder would not adversely affect Champion at trial." (*People v. Champion, supra,* 9 Cal.4th at 905-906.) Petitioner must reiterate that this statement misses the entire constitutional point. There is a continuing duty to sever when prejudice appears. (See, *United States v. Gossett* (11th Cir. 1989) 877 F.2d 901.) Joinder in this case permitted the prosecutor to engage in misconduct which he had planned from the moment joinder occurred. The prosecutor took advantage of the situation that he improperly created.

H. GANG GRAFFITI AND OTHER GANG EVIDENCE

1. There was evidence at trial that petitioner had at some unspecified time been affiliated with the Raymond Avenue Crips. It might therefore not have been unreasonable to use that bare association to show that he knew codefendant Ross, whose fingerprints were found at the Hassan scene, or the Player brothers, who were connected to the Buick auto in which Hassan stolen goods were found. That, however, is as far as gang evidence could have properly gone. As Judge Kozinski quite recently observed:

Membership in a gang cannot serve as proof of intent, or of the facilitation, advice, aid,

promotion, encouragement or instigation needed to establish aiding and abetting. To hold otherwise would invite absurd results. Any gang member could be held liable for any other gang member's act at any time so long as the act was predicated on the "common purpose of fighting the enemy. *(Mitchell v. Prunty* (9th Cir 1997) 107 F.3d 1337.)

2. Such admonitions against guilt by association have long been recognized. They were ignored by the prosecutor, who, in closing argument, emphasized that, "We work backwards now, from Bobby Hassan to Teheran Jefferson... making it abundantly clear that whatever group committed this crime also committed this one...they [Champion and Ross] are part of the same criminal conspiracy and same criminal organization ...." (RT 3192-3193.) Likewise, this Court found that, "[E]vidence of defendants' gang membership tended 'logically, naturally, and by reasonable inference' to establish their identities as perpetrators of those offenses. *People v. Champion, supra*, 9 Cal.4th at 922.

3. That gang membership was a key feature of the trial is as evident as its unconstitutional impact. But it is also apparent that without misjoinder, under an uncharged "conspiracy" theory, the trial could never have gotten so far out of control. Without bringing in the Taylor murder, no mention could have been made of Mallet, Raymond Avenue Crips and participants in the Taylor murder and rape. Similarly, without joinder, evidence of gang graffiti advertising petitioner as committing the Taylor robbery/murder could not have been admitted. A photograph of the graffiti on a wall across the street from the home of Michael Taylor was admitted. It was admissible only because of joinder. The graffiti read: "Trecherous," "Popeye," "Raymond Avenue Crips Cuzzins," and **purportedly** "Do-Re-Me" and a dollar sign "$." According to the prosecution gang expert, "'Treacherous' was defendant Champion's nickname, "Popeye" was the name of another member

of the Raymond Crips, and the words "Do-Re-Me" and a dollar sign referred to the obtaining of money in a robbery or burglary. The graffiti, which was clearly hearsay, allegedly identified petitioner as a robber and burglar. Even if not hearsay, it would be inadmissible in any jurisdiction because it was evidence of bad character and proclivity to steal and rob. However, this Court found the error to be harmless because, "Although it could be inferred from the graffiti that defendant Champion participated in the robbery and murder of Michael Taylor, defendant Champion was neither charged nor convicted of those offenses." (*Id.* at 924.) Petitioner submits that this is just the point. He was smothered in evidence of uncharged crimes, painted as a robber by hearsay graffiti and entangled in a Crips murder conspiracy of which there was no evidence. This is precisely the "absurd result" counseled against in *Mitchell v. Prunty*. Worse, and tragically, the graffiti did not even say "Do-Re-Mi," but "Do-Or-Die" and had nothing to do with committing a robbery or burglary. (Exhibit 41.) Trial counsel failed to look at the graffiti photograph. Had he done so, he would have seen this crucial discrepancy, which would have destroyed the basis for the gang expert's opinion and made the evidence totally irrelevant. Tragically, petitioner was convicted on a mass of false or confabulated evidence, which went uncountered, was irrelevant to his separate case, and was only admitted because of prejudicial joinder.

I. THE MURDER OF TEHERAN JEFFERSON

1. Once the error of joinder had been made, it became easy to pile on other heinous crimes, regardless of relevance. Thus, the murder of Teheran Jefferson was introduced despite the fact that it had no connection whatsoever with Champion, Ross, Mallet, any Raymond Avenue Crip or, for that matter, any identifiable person whatsoever. It is petitioner's present purpose to

show the gross prejudice **accruing** from this kind of wholly irrelevant evidence occasioned by joinder. This evidence alone, however, rendered the trial fundamentally unfair and requires reversal.

2. The jury was permitted to hear in grisly detail, and to see photograph upon photograph that on November 14 or 15, 1980, drug-dealer, Teheran Jefferson, was found bound on his bed. He had been shot once in the head. The jury was presented with a photo of the bloody exit wound, which was Mr. Jefferson's former eye (RT 1554-55).

3. Petitioner need not belabor the lack of connection of the Jefferson murder, as this Court has already found that "the prosecution offered no evidence directly connecting defendants to Jefferson's death." (*Id.* at 919.) No evidence was presented because none existed. As the prosecutor's own pretrial memorandum to his superior while proof that petitioner and Ross murdered the Hassans logically proves that they murdered Jefferson as well, the reverse is not true, since there is no evidence connecting them directly to Jefferson. Thus no tactical advantage would have been served by filing the additional charge. (Exhibit 73.)

4. How was the wholly unrelated Jefferson murder admitted against petitioner? It was accomplished through a fantasy "conspiracy." The prosecution convinced the trial court that "the evidence was admissible to show an ongoing conspiracy by defendants to murder drug dealers in their neighborhood, because the crimes exhibited a similar modus operandi, and because the Jefferson murder showed <u>that in this case defendants harbored the intent to kill Bobby and Eric Hassan</u> ...." (*People v. Champion, supra,* 9 Cal.4th at 918 emphasis added.)

5. Commonality of a generic *modus operandi* (execution slaying) is insufficient to show a pattern, much less a conspiracy. Conspiracy requires agreement and concert and *if* established can

sufficiently link crimes to permit joinder. There is not a scintilla of evidence that any conspiracy linked the Jefferson killing to that of Taylor or the Hassans. The Jefferson murder was so unrelated to the Hassan and Taylor murders that it is impossible "to guarantee a reasonable likelihood that they were committed by the same person. (Claim VIII. A.)

6. But the most troubling matter is that the Jefferson murder was brought in to show petitioner's **intent** to kill the Hassans. That was done because there was no evidence whatsoever of such intent. Despite the fact that petitioner's death-eligibility depended upon proof of such an intent to kill, this Court reached the following conclusion:

> "As defendants themselves point out, the prosecution offered no evidence directly connecting defendants to Jefferson's death. Thus, it seems unlikely that the jury gave the evidence substantial weight. We conclude that there is no substantial probability that the outcome of the trial would have been different if the trial court excluded evidence of Jefferson's murder." (*Id.* at 919.)

7. Respectfully, the Court's conclusion is but another way of saying that petitioner was already so prejudiced by the introduction of the Taylor evidence, one more murder could not hurt him. This Court is, however, not bound to continue such backward reasoning and the clear error in admitting this irrelevant evidence cannot be considered harmless and requires reversal. That the Jefferson evidence was not harmless may perhaps best be shown by the prosecutor's efforts to convince the jury that petitioner harbored an intent to kill:

> Mr. Semow: "We work backwards now, from Bobby and Eric Hassan to Teheran Jefferson, I discussed with you at length from the beginning of my summation to you the striking similarities and connections between these two crimes making it abundantly clear that whichever group committed this crime also committed this one. Now whether or not Mr. Ross or Mr. Champion were actually physically present at the Teheran Jefferson murder, it is no doubt that they are part of the same criminal conspiracy and same criminal

organization that committed this murder as well as the Hassan murders. It is conceivable (sic) to any reasonable person, any reasonable attorney, any reasonable juror that these defendants went into the Hassan residence without knowing that Teheran Jefferson had died as a result of a gunshot wound to his head in the course of a robbery-murder that this same group had committed only one month earlier." (RT 3192-3193)

8. A more unfair and prejudicial joinder can hardly be imagined. Steven Champion was not tried for the Hassan offenses. He was tried for being a member of the Raymond Avenue Crips and was convicted on the basis of any crime that could reasonably, or with no reason whatsoever, be imputed to any member of that gang. The quagmire of guilt by association was spread through every aspect of his guilt and penalty trials and he is entitled to a new and **separate** trial.

J. THE CUMULATIVE CONSTITUTIONAL DEFECTS

1. The above-outlined violations had a substantial and injurious effect and influence on the jury. All evidence improperly admitted through joinder was strenuously argued by the prosecutor in closing arguments, unfairly biased the jury rendering the guilt and penalty judgments fundamentally unfair, and resulted in a miscarriage of justice. The Court must conclude that it has "grave doubt" that petitioner received a fair guilt and penalty trial as a result of the introduction of the above evidence occasioned by joinder. The unfairness resulting from the joint trial in this case precluded the reliability required by the Eighth and Fourteenth Amendments for a conviction of a capital case. The evidence introduced at this joint trial not only deprived petitioner of a fair penalty hearing as required by Due Process under the Fourteenth Amendment, but deprived him of a reliable and individualized capital sentencing determination guaranteed by the Eighth Amendment. As a result of the foregoing, in cumulation with all other claims raised in the case, petitioner's guilt and penalty verdicts must be reversed.

XIII.

CLAIMS OF PROSECUTORIAL MISCONDUCT

Petitioner's death sentence was unlawfully and unconstitutionally obtained in violation of petitioner's rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and under article I, section 1, 7, 15, 16, 17, and 24 of the California Constitution and the statutory and decisional law of California, in that the prosecutor committed acts of prejudicial misconduct which resulted in a denial of petitioner's rights to due process of law, to freedom of association, to equal protection, to confrontation, and to a fair and reliable guilt and sentencing determination.

Specifically, the prosecutor knowingly committed prejudicial misconduct (1) when he secretly, without notice to petitioner's counsel, applied to the trial court for permission to, and did, specially transport petitioner alone with Evan Mallet and then alone with Craig Ross for the purpose of inducing and tape recording self-incriminating conversations, and further manipulated the trial court's calendar with a bogus motion to carry out his plan; (2) when he knowingly misrepresented the similarities between the Jefferson killing and the Taylor and Hassan crimes to the trial court; and (3) when he represented to both defense counsel and the court that he had "no direct evidence Mr. Champion was inside the [Taylor] house" but proceeded to elicit an 11th hour identification from Cora Taylor and the inference that petitioner was not only involved in the conspiracy, but was the tallest of the three individuals who entered the residence, from Mary Taylor, knowing the contrary to be true.

The facts supporting this claim, among others to be presented after full investigation, discovery, access to this Court's subpoena power, and an evidentiary hearing, include, but are not

limited to the following:

XIII. A. The prosecutor knowing committed prejudicial misconduct when he secretly, without notice to petitioner's counsel, applied to the trial court for permission to, and did, specially transport petitioner alone with Evan Mallet and then alone with Craig Ross for the purpose of inducing and tape recording self-incriminating conversations, and further manipulated the trial court's calendar with a bogus motion to carry out his plan

1. Petitioner fully incorporates paragraphs 1-9 of Claim V.II. F. "**Trial counsel failed to object to the use of a secretly taped conversation between petitioner and Mallet both pretrial and when used by the prosecution during its cross-examination of petitioner.**" and paragraphs 1-18 of Claim VII. G. "**Trial counsel failed to properly object to the use of a secretly taped conversation between petitioner and Mr. Ross**" and paragraphs D.1 through D.10 of Claim XII " **The unconstitutional joinder of petitioner's case with that of Craig Ross denied petitioner due process of law and in combination with prosecutorial bad faith, ineffective assistance of counsel and erroneous trial court rulings, resulted in fundamentally unfair guilt and penalty trials.**"

2. As discussed in Claim V.II. F., on July 29 or 30, 1981, prosecuting deputy district attorney Semow secretly, without notice to petitioner's counsel, moved the superior court for an order permitting him to specially transport petitioner and Evan Jerome Mallet and to secretly tape two conversations between them. (CT 401-402.) In his declaration in support of his request, Semow justified his request on his information and belief that Mallet and petitioner's separate cases bore "close factual connections." (CT 403.) Semow requested that the taping take place on August 4, 1981, a time which he declared would be "the first and possibly the only time [Mallet and petitioner would] appear in court together. (CT 403.) The reason Mallet and petitioner would be in court together on August 4, 1981, was because Semow had scheduled a motion to

consolidate the two men's cases for that date. (CT 383-387.) Semow's motion to consolidate was filed on July 24, 1981. (CT 383.)

3. Also on July 24, 1981, Mallet's attorney Charles A. Gessler, filed an opposition to Semow's motion to consolidate. In it, Gessler argued the controlling authority *People v. Ortiz* (1978) 22 Cal.3d 38, which made clear. *Ortiz* stood for the proposition that defendants may not be joined unless they are named together in at least one count of the Information. (*Id.*)

4. Mr. Gessler raised his objection to Semow's deceptive acts when the prosecutor in Mallet's case, Mr. Marin, moved to admit the conversation between petitioner and Mallet at Mallet's trial.

> MR. GESSLER: The stipulation is that that Jeff Semow is deemed called, duly sworn and testified that his is a deputy district attorney with the County of Los Angeles who is prosecuting the case of People versus Steve Champion in Central District in Judge Rick's court; that in good faith he moved to consolidate the case of People versus Champion with the present case of People versus Mallet and set it on the calendar for August 4th in Judge Rick's court.
>
> That sometime on July 23rd or shortly thereafter, he read points and authorities that defense counsel Charles Gessler filed in opposition to the motion for consolidation citing the case of People versus Ortiz, 22 Cal 3rd 38.
>
> That at that time he though the case of Ortiz looked pretty good but he was not sure at that point that it was controlling law.
>
> That on July 29th he then filed an affidavit and order to have Mr. Champion and Mr. Mallet transported to court together on August 4th in a van that was specially equipped to monitor their conversation and to record it and also place them in a cell in the Criminal Courts Building which was similarly monitored or wired and taped their conversations.
>
> That sometime before August 4th, Mr. Semow convinced that Ortiz was controlling law and the motion for consolidation was not well taken
>
> That at that point when he became convinced that Ortiz was controlling law, he had time to take the consolidation off calendar but did not do so, and the reason that he did not do so was his desire to get the tape of conversation between Mr. Champion and Mr. Mallet, and

that he did not notify counsel for Mr. Mallet of the proposed tape recording.

That on August 4th neither Mr. Champion nor Mr. Mallet was physically brought into the courtroom, but Mr. Semow appeared in Judge Ricks' court and conceded that the motion was not well taken.

MR. MARIN: People would so stipulate. (Exhibit 68 -- Mallet RT 340-345 at 340-342.)

5. The prosecutor's misconduct was prejudicial to petitioner. During cross-examination, Mr. Semow discussed petitioner's conversation with Mr. Mallet. By referring to the taped conversation between Mr. Mallet and petitioner, Mr. Semow further connected petitioner to the Taylor crime. This was despite the fact that Mr. Semow had previously represented to the court that he had no reason to believe petitioner was directly involved in Mr. Taylor's murder and despite the fact that, as proved in the Taylor claims above, the prosecution had actual or imputed knowledge that petitioner was not involved in the Taylor crimes. Further, the portion of the conversation emphasized by Mr. Semow implied that petitioner and Mr. Mallet were attempting to fabricate an alibi for petitioner as to the Hassan killings, by implying that Nicardo Petit was involved.

6. As explained in the above-mentioned claims (VII. F, VII. G, and XII., the taped conversation was introduced and, as used by the prosecution prejudiced petitioner at both phases of trial.

XIII. B. The prosecutor committed prejudicial misconduct by knowingly misrepresenting to the trial court the purported similarities between the Jefferson killing and the Taylor and Hassan crimes including alleged similarities as to weapon and motive

1. Petitioner fully incorporates claims VIII. C. "**Trial counsel was ineffective in failing to object on the ground that the evidence was inconsistent with the prosecutor's offer of proof,**" VIII. D."**Trial counsel was ineffective in failing to object to the prosecution's conspiracy evidence and argument**"and VI. H. "**Defense counsel provided constitutionally ineffective assistance in failing to discover, present and argue evidence that the motive for the Taylor killing was personal retribution, undercutting the prosecution theory that the killing was part of, and motivated by, an ongoing conspiracy to rob and kill marijuana dealers.**"

2. Review of the reports in Exhibit 69 and the exhibits which support Claim VI. H (exhibits 48-50), demonstrate that Mr. Semow misrepresented to the trial court the actual similarities between the two crimes and that the crimes are glaringly dissimilar.

3. Mr. Semow had represented to the court that both of the Hassan victims and Jefferson were "shot with a .38 [or .357] caliber revolver with a six left twist." (RT 1507. 1512.) The ballistic reports provided to defense counsel and contained in the police reports provided to habeas counsel indicates only a "possible" left hand twist and that the bullet could have been fired from a number of weapons, including but not limited to a Colt. The ballistics report concerning the bullet fragment submitted from the Hassan case does not specify rifling characteristics and states only that it could have been fired from a .38 Colt recovered from Benjamin Brown. A report dated 7/13/81, contained in the district attorney files comparing the Jefferson fragment to the gun

recovered from Brown, again indicating the extensively damaged fragment, determined it too could have been fired from Brown's gun. (Exhibit 74.)

5. At trial, the prosecution offered Patrick Slack as its ballistics expert. (RT 2377 et. seq.) Slack offered few conclusions. Slack did conclude that the bullet fragment recovered from the Taylor residence and the bullet fragments recovered from the Hassan residence came from different guns. (RT 2385.) Although the Taylor fragment indicated similar general characteristics, it did not demonstrate sufficient specific characteristics to conclude that it had come from the Hassan gun. (RT 2386.)

6. Both the Bobby Hassan bullet fragments and the Jefferson bullet fragments demonstrated similar general rifling characteristics. Neither could be compared to the other through specific rifling characteristics. Both appeared to be fired from either a .38 caliber or .357 caliber weapon. Slack did not conclude that the fragments came from the same gun. (RT 2393)

7. Ultimately, the only thing that Slack actually compared was the bullets recovered from the various murder scenes. (RT 2390, 2395, 2407.) There was no proof that the Hassan and Jefferson bullets were fired from the same gun. Either or both of them could have been fired from a Colt or other name brand gun. (RT 2396-2397.) In fact, either or both bullets could actually have been fired from the gun recovered from Clarence Reed. (RT 2411.)

8. Similarly, the prosecution's assertion of a conspiracy to commit robbery and murder of drug dealers was a misrepresentation to the court. The prosecutor offered no evidence of a conspiracy. The prosecution's assertion that all three incidents were part of the alleged conspiracy was a misrepresentation of other likely motives for the Taylor crimes.

9. For the reasons stated in Claim VIII. A **[defense counsel provided constitutionally**

ineffective assistance by failing to discover and produce 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], the prosecutor committed misconduct by representing that the Taylor, Hassan, and Jefferson killings were sufficiently similar to be admitted at petitioner's trial.

10. Petitioner incorporates the facts of that claim here as though set out in full and argues that this misconduct was so prejudicial as to deny petitioner his rights to confrontation, due process and a fair trial and to a fair and reliable guilt and sentencing determination.

XIII. C. The prosecutor knowingly committed prejudicial misconduct in that after he had represented to both defense counsel and the court that he had "no direct evidence Mr. Champion was inside the [Taylor] house" he proceeded to elicit an 11th hour identification from Cora Taylor and the inference that petitioner was not only involved in the conspiracy, but was the tallest of the three individuals who entered the residence, from Mary Taylor, knowing the contrary to be true.

1. Petitioner incorporates Claims VI.A though VI.H here as though set out in full.

2. Petitioner asserts that Mr. Semow had either actual or imputed knowledge of all of the facts contained in the police reports which support petitioner's Claims VI. A through VI. H. and therefore knowledge that petitioner was not involved in the Taylor crimes. This is so because petitioner could not have been one of the four men at the Taylor home when the crimes were committed.

3. Mr. Semow's purposeful elicitation of an identification of petitioner by Cora Taylor and an implication by Mary Taylor that petitioner may have been involved was outrageous. Mr. Semow knew that petitioner was not inside of the Taylor home. Mr. Semow knew that petitioner was not one of the four men involved.

4. Mr. Semow's argument to the jury that petitioner's involvement in Taylor was proof of his involvement in the Hassan crimes was further outrageous misconduct.

5. This misconduct was so severe as to result in a denial of petitioner's rights to due process and a fair trial, and to a fair and reliable guilt and sentencing determination.

XIV.

THE CALIFORNIA STATUTORY SCHEME UNDER WHICH PETITIONER WAS SENTENCED TO DEATH IS UNCONSTITUTIONAL

The California statutory scheme under which petitioner was convicted and sentenced to death, as set forth in Penal Code sections 189 *et. seq.*, violates the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and article I, sections 1, 7, 15, 16, 17 and 24 of the California Constitution, in that the California statute fails to adequately narrow the class of persons eligible for the death penalty. The facts supporting this claim, among others to be presented after full investigation, discovery, access to this Court's subpoena power, and an evidentiary hearing, include, but are not limited to, the following:

1. The California death penalty statute under which petitioner was convicted and sentenced to death fails to adequately narrow the class of persons eligible for the death penalty and creates a substantial and constitutionally unacceptable likelihood that the death penalty will be imposed in a capricious and arbitrary fashion. (*Furman v. Georgia, supra,* 408 U.S. 238 [death penalty statute must provide "a meaningful basis for distinguishing the few cases in which the death penalty is imposed from the many cases in which it is not"] [White, J., concurring].)[104] A capital murder

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[104] In *Furman v. Georgia* (1972) 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346, the Supreme Court, for the first time, invalidated a state's entire death penalty scheme because it violated the Eighth Amendment. Because each of the justices in the majority wrote his own opinion, the scope of, and rationale for, the decision was not determined by the case itself. Justices Stewart and White concurred on the narrowest ground, arguing that the death penalty was unconstitutional because a handful of murderers were arbitrarily singled out for death from the much larger class of murderers who were death-eligible. (*Id.* at 309-310 (Stewart, J., concurring) and at 311-13 (White, J., concurring.) In *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), the plurality understood the Stewart and White view to be the "holding" of *Furman* (*id.* at 188-189), and in *Maynard v. Cartwright*, 486 U.S. 356, 108 S.Ct.

statute must take into account the Eighth Amendment principles that death is different (*California v. Ramos* (1983) 463 U.S. 992, 998-99, 103 S.Ct. 3446, 77 L.Ed.2d 1171.) and that the death penalty must be reserved for those killings which society views as the most grievous affronts to humanity.(*Zant v. Stephens* (1983) 462 U.S. 862, 877 n.15, 103 S.Ct. 2733, 77 L.Ed.2d 235; see also *Adamson v. Ricketts* (9th Cir. 1988) 856 F.2d 1011, 1025 (blanket eligibility for death sentence may violate the Fifth and Fourteenth Amendment due process guarantees as well as Eighth Amendment).

2. California's death penalty statute, which was enacted by an initiative measure, violates the Eighth Amendment by multiplying the "few" cases in which the death penalty is possible into the many. Further, it was enacted for precisely this unconstitutional purpose. The proponents of the initiative measure ("Proposition 7"), as part of their Voter's Pamphlet argument that the initiative statute was necessary, described certain murders that were not covered by the existing death penalty statute, and then stated:

> And, if you were to be killed on your way home tonight simply because the murderer was high on dope and wanted the thrill, the criminal would not receive the death penalty. Why? Because the Legislature's weak death penalty law does not apply to every murderer. Proposition 7 would.

(1978 Voter's Pamphlet, p. 34, "Argument in Favor of Proposition 7," emphasis added.)

3. As of the date of the offenses charged against petitioner, twenty-seven "special circumstances" existed under California Penal Code § 190.2, embracing every type of murder likely to occur.[105] The over-inclusive nature of the death penalty law in California means that death

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1853, 100 L.Ed.2d 372 (1988), a unanimous Court cited to the opinions of Stewart and White as embodying the *Furman* holding. (*Id.* at 362)

[105] The number of special circumstances has continued to grow, and is now thirty.

eligibility is the rule, not the exception, as required by the Eighth Amendment.

4. At the time of the decision in *Furman*, the evidence before the high court established, and the justices understood, that approximately 15-20% of those convicted of capital murder were actually sentenced to death. Chief Justice Burger so stated for the four dissenters (402 U.S. at p. 386 n. 11), and Justice Stewart relied on Chief Justice Burger's statistics when he said: "[I]t is equally clear that these sentences are 'unusual' in the sense that the penalty of death is infrequently imposed for murder . . ." (402 U.S. at p. 309, n. 10)[106] Thus, while Justices Stewart and White did not address precisely what percentage of statutorily death-eligible defendants would have to receive death sentences in order to eliminate the constitutionally unacceptable risk of arbitrary capital sentencing, *Furman*, at a minimum, must be understood to have held that any death penalty scheme under which less than 15-20% of statutorily death-eligible defendants are sentenced to death permits too great a risk of arbitrariness to satisfy the Eighth Amendment.

5. In order to meet the concerns of *Furman*, the states must genuinely narrow, by rational and objective criteria, the class of murderers eligible for the death penalty:

> Our cases indicate, then, that statutory aggravating circumstances play a constitutionally necessary function at the stage of legislative definition: they circumscribe the class of persons eligible for the death penalty.

(Zant v. Stephens, supra, 462 U.S. 862.) It was the high court's understanding that, as the class of death-eligible murderers was narrowed, the percentage of those in the class receiving the death

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[106] In *Gregg*, the plurality reiterated this understanding: "It has been estimated that before *Furman* less than 20% of those convicted of murder were sentenced to death in those states that authorized capital punishment." (428 U.S. at 182 n. 26, citing *Woodson v. North Carolina* 428 U.S. 280, 295-96 n. 31.)

penalty would go up and the risk of arbitrary imposition of the death penalty would correspondingly decline.

> As the types of murders for which the death penalty may be imposed become more narrowly defined and are limited to those which are particularly serious or for which the death penalty is peculiarly appropriate . . . it becomes reasonable to expect that juries -- even given discretion not to impose the death penalty -- will impose the death penalty in a substantial portion of the cases so defined. If they do, it can no longer be said that the penalty is being imposed wantonly and freakishly or so infrequently that it loses its usefulness as a sentencing device. *Gregg v. Georgia*, 428 U.S. at p. 222 (White, J., concurring).

6. In California during the 5-year period 1980-84 (a period including the year of the capital offense charged against petitioner), approximately 9.5% of convicted first degree murderers were sentenced to death. (Exhibit 77, Supplemental Declaration of Steven P. Shatz, originally filed as an exhibit in federal habeas proceedings before the United States District Court for the Eastern District of California in *Karis v. Calderon*, No. CIV-S-89-527-LKK-JFM, ¶ 5.)[107] Under the California scheme, the class of first degree murderers is narrowed to a statutorily death-eligible class by the special circumstance provisions set forth in California Penal Code section 190.2. (*People v. Bacigalupo* (1993) 6 Cal.4th 457, 467-468.)[108] There are, however, so many special circumstances, so broadly construed, that the special circumstances accomplish very little narrowing.

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[107] Professor Shatz' data and analysis in the Karis declaration are based on the statutory listing of special circumstances and the statutory definition of first degree murder in 1981, the year of the crime charged against Mr. Karis. (Exhibit 77,¶¶ 5 and 7.) The relevant statutory provisions, Penal Code sections 189 and 190.2, were the same in 1980 (the year of the capital crime charged against petitioner) as they were in 1981, and hence Professor Shatz' data and analysis are fully applicable to petitioner's case.

[108] There is some slight additional narrowing as a result of the exclusion of minors. (Penal Code §190.5.) Professor Shatz' analysis takes into account this slight additional narrowing. (Exhibit 77, ¶ 25.)

7. Under the death penalty scheme in effect in 1981, 83% of first degree murders were special circumstance murders. (Exhibit 77, ¶ 25.) Thus, only 11.5% of the statutorily death-eligible class of first degree murderers were in fact being sentenced to death. (Exhibit 77, ¶ 26.) A statutory scheme under which 83% of first degree murderers are death-eligible does not "genuinely narrow" (see *Wade v. Calderon* (9th Cir. 1994) 29 F.3d 1312, 1319 *cert. den.*__ U.S. __, 115 S.Ct. 923, 130 L.Ed.2d 802 (1995). Further, since only 11.5% of those statutorily death-eligible are sentenced to death, California's death penalty scheme permits an even greater risk of arbitrariness than the schemes considered in *Furman,* and, like those schemes, is unconstitutional.

XV.

THE CUMULATIVE EFFECT OF THE ERRORS ON THE ISSUES OF GUILT, SPECIAL CIRCUMSTANCES AND PENALTY WARRANT REVERSAL

Petitioner's death sentence was unlawfully and unconstitutionally imposed in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution because, although this Court concluded that assuming petitioner was correct in his assertion that numerous errors in the automatic appeal were harmless, when those errors are considered with the numerous constitutional violations contained in this petition, they cannot be said to be harmless beyond a reasonable doubt.

1. In the automatic appeal, this Court found or presupposed the existence of constitutional errors, but concluded that the errors were not sufficiently prejudicial to warrant relief. Among those errors are the following:

a. The trial court erroneously admitted evidence of the Jefferson killing;

b. The trial court erroneously admitted gang membership evidence;

c. The trial court erroneously admitted evidence of graffiti;

d. The trial court erred in its "aiding and abetting" instructions;

e. The trial court erred in omitting portions of CALJIC no. 1.00;

f. The trial court erred in instructing with CALJIC no. 6.13;

g. The trial court erred in admitting evidence of petitioner's juvenile adjudications;

h. The prosecutor improperly argued that because there was no mitigating evidence, the jury should consider certain mitigating factors as aggravation;

i. The trial court failed to instruct the jury that it could not consider the evidence of

the Jefferson killing and the Taylor killing as to petitioner unless it found beyond a reasonable doubt that petitioner committed these crimes;

3. The cumulative effect of these errors coupled with the significant constitutional errors contained in this petition, and in petitioner's prior habeas corpus petition, severely prejudiced petitioner, deprived him of a fair trial on the issue of his guilt or innocence of the charges, and also rendered his convictions and death sentence inherently unreliable.

XVI.

EXECUTION AFTER PROLONGED CONFINEMENT UNDER SENTENCE OF DEATH

1. Mr. Champion was sentenced to death on December 10, 1982. He has been continuously confined under sentence of death for more than fourteen years. Execution of Mr. Champion following his confinement under sentence of death would constitute cruel and unusual punishment in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution as well as article I, sections 1, 7, 15, 16 and 17 of the California Constitution. *(Lackey v. Texas* (1995) 514 U.S. __ , 115 S.Ct. 1421.)

2. Mr. Champion's confinement on death row, in part, has been directly attributable to this Court's delay in appointing counsel and deciding his appeal and habeas cases.

3. The appeal from a judgment of death is automatic, Penal Code § 1239, subd. (b), and there is "no authority to allow [the] defendant to waive the [automatic] appeal." (*People v. Sheldon* (1994) 7 Cal.4th 1136, 1139, *cert. denied,* 513 U.S. 1022, relying on *People v. Stanworth* (1969) 71 Cal.2d 820, 833-834. The prisoner's use of the automatic appeal remedy required by law does nothing to negate the cruel and degrading character of long-term confinement under judgment of death.

4. The United States stands virtually alone among the nations of the world in confining individuals for periods of many years while continuously under sentence of death. The international community is increasingly recognizing that, without regard for the question of the appropriateness or inappropriateness of the death penalty itself, prolonged confinement under these circumstances is cruel and degrading and in violation of international human rights law. (*Pratt v. Attorney General for Jamaica,* 4 All.E.R. 769 (Privy Council) (1993) ; *Soering v. United*

Kingdom, 11 E.H.R.R. 439, ¶ 111 (Euro. Ct. of Human Rights).) *Soering* specifically held that, for this reason, it would be inappropriate for the government of Great Britain to extradite a man under indictment for capital murder in the state of Virginia, in the absence of assurances that he would not be sentenced to death.

5. In an earlier generation, prior to the adoption and development of international human rights law, this Court rejected a somewhat similar claim. (*People v. Chessman* (1959) 52 Cal.2d 467, 498-500.) But the developing international consensus demonstrates that, in addition to being cruel and degrading, what the Europeans refer to as the "death row phenomenon" in the United States is also "unusual" within the meaning of the Eighth Amendment and the corresponding provision of the California Constitution, entitling Mr. Champion to relief for that reason as well.

6. While the Ninth Circuit rejected a claim of this type in (*Richmond v. Lewis* (9th Cir. 1991) 948 F.2d 1473, 1491-1492, *rev'd. on other grounds*, 506 U.S. 40 (1992), *vacated*, 986 F.2d 1583 (1993)), that rejection was deprived of persuasive force when the Arizona Supreme Court subsequently reduced Richmond's death sentence to a sentence of imprisonment because he had changed during his excessively long confinement on death row. (*State v. Richmond* (1994) 180 Ariz. 573; 886 P.2d 1329.)

7. Thus, execution of Mr. Champion following confinement under sentence of death for this lengthy a period of time would constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.

XVII.

EXECUTION BY LETHAL INJECTION CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT

1. Mr. Champion's sentence of death is illegal and unconstitutional under the Eighth and Fourteenth Amendments to the United States Constitution and under Article I, section 17 of the California Constitution because execution by lethal injection, the method by which the State of California plans to execute him, violates the prohibition of cruel and unusual punishment.

2. At the time of the offenses and judgment in this case, lethal gas was the sole means of execution provided for under California law. In 1992, California added as an alternative means of execution "intravenous injection of a substance or substances in a lethal quantity sufficient to cause death, by standards established under the direction of the Department of Corrections." (Cal. Penal Code § 3604.) The 1992 legislation allowed the inmate to select either lethal gas or lethal injection, and provided that if the inmate made no selection, execution would be by lethal gas.

3. On October 4, 1994, Judge Patel of the United States District Court for the Northern District of California ruled that the use of lethal gas is cruel and unusual punishment, amounting to a violation of the Eighth Amendment. (*Fierro v. Gomez* (N.D.Cal. 1994) 865 F.Supp. 1387), This judgment was affirmed on appeal. (*Fierro v. Gomez* (9th Cir. 1996) 77 F.3d 301.) On October 15, 1996, the judgment of the Ninth Circuit was vacated. (*Gomez v. Fierro* (1996) 519 U.S. ___, 117 S. Ct. 285.) The judgment of the District Court remains undisturbed.

4. In 1996, Penal Code section 3604 was again amended, to provide that in default of an election by the inmate, the execution would be by lethal injection.

5. The Department of Corrections has not complied with the mandate of section 3604,

subdivision (a), to establish standards for the administration of lethal injection. As it is administered, in the absence of protocols ensuring the prisoner's right to be free from unnecessary suffering, the method of lethal injection violates the Eighth Amendment, applicable to the states through the Fourteenth Amendment.

6. The only information available from the Department of Corrections is a three-page document (hereafter "document") dated March 1996 which provides merely a vague description of the lethal injection procedures. It neither states the source of the information it contains, nor does it refer to any official regulations or rules. (Exhibit 78 — California Execution Procedures: Lethal Injection.)

7. This document states that at some unspecified time before an execution, syringes containing specified amounts of sodium pentothal, pancuronium bromide, and potassium chloride are to be prepared. It provides that the condemned prisoner will be strapped onto a table, and connected to a cardiac monitor which is connected to a printer outside the execution chamber. An IV is started in two usable veins and a flow of normal saline solution is administered at a slow rate; one line is held in reserve in case of a blockage or malfunction in the other. The door to the execution chamber is closed, and the warden issues the order to execute. The sodium pentothal is first administered, then the line is flushed with sterile normal saline solution; pancuronium [sic] bromide then follows; finally, potassium chloride is administered. A physician "is present" to declare when death occurs. No other standards have been established by the California Department of Corrections for administering lethal injection pursuant to Section 3604.

8. Mr. Champion is aware that certain methods of lethal injection used in other states have been held to be constitutional, but these cases did not involve an examination of the method used

in California. The method of execution by lethal injection scheduled to be used on Mr. Champion will cause such pain and suffering that his execution will be in violation of the Eighth Amendment to the United States Constitution and Article I, section 17 of the California Constitution.

9. The document released by the Department of Corrections does not define a coherent set of procedures to ensure that the condemned prisoner would be free from unnecessary suffering. Prolonged suffering and pain are likely to occur in the ways explained below. (See also Exhibit 79 -- Declaration of Kim Marie Thorburn, M.D., F.A.C.P., February 22, 1996; Exhibit 80 -- Declaration of John Davis Palmer, M.D., Ph.D., February 22, 1996; Exhibit 81 -- Affidavit of Michael L. Radelet, February 22, 1996.)[109]

b. It does not prescribe even a minimal level of training for the personnel involved in administering the lethal injection, thereby raising substantial and unnecessary risks of causing extreme pain and suffering to Mr. Champion before and during his execution.

c. It does not provide for properly trained personnel to insert the intravenous line or catheter. If the catheter is not properly inserted, there is a risk that the chemicals will be inserted into Mr. Champion's muscle and other tissue rather than directly into his bloodstream, causing extreme pain in the form of a severe burning sensation. Furthermore, a failure to inject the chemicals directly into the blood-stream will cause the chemicals to be absorbed far more slowly, and the intended effects will not occur. Improper insertion of the catheter could also result in its

[109]These declarations refer to a document dated January 1996, which is similar in relevant particulars to the March 1996 document referred to in text.

falling out of the vein, resulting in a failure to inject the intended dose of chemicals. There is also the risk that the catheter will rupture or leak as pressure builds up during the administration of the chemicals unless the catheter has adequate strength and all the joints and connections are adequately reinforced. Without proper training, these problems that may arise would not be properly responded to.

d. The document does not mandate that a physician or other trained medical expert be present to render treatment or assistance to a prisoner in the event of an emergency; instead, the document mandates only that a physician be present to declare death. In fact, medical doctors are prohibited from participating in executions pursuant to the ethical principles set forth in the Hippocratic Oath. The American Nurses Association also forbids members from participating in executions. This increases the chances of improper administration which could result in pain, an air embolism, the clotting of the catheter which would prevent injection, and heart failure. Furthermore, there is a risk that the dosages selected by untrained persons may be inadequate for the purposes for which they were selected, may result in unanticipated or inappropriate effects in a particular individual for medical or other reasons, and may inflict unnecessarily extreme pain and suffering.

e. The document does not outline the proper guidelines for the storage or the handling of the chemicals involved. Improperly stored and/or handled chemicals may cause unnecessary suffering. Sodium pentothal wears off quickly; and if not given enough, it would paralyze the muscles of the prisoner and cause him to choke, making him unable to breathe.

10. The condemned prisoner is guaranteed an execution free from "unnecessary and wanton infliction of pain," (*Gregg v. Georgia, supra,* 428 U.S. 153, 173) (plurality opinion), and the method of execution used in California fails to comport with this in that the risk of such pain is substantial. (See also Exhibits 79, 80 and 81.)

11. If Mr. Champion is given sodium pentothal followed by pancuronium bromide and regains consciousness before the potassium chloride takes effect, he will be unable to move or communicate in any way while experiencing excruciating pain. As the potassium chloride is administered, he will experience an excruciating burning sensation in his vein, like the sensation of a hot poker being inserted into the arm and traveling up the arm and spreading across the chest until it reaches the heart, where it will cause the heart to stop.

12. If the sodium pentothal, pancuronium bromide and potassium chloride are administered in the sequence described and Mr. Champion's heart fibrillates but does not stop, he will wake up but be unable to breathe.

13. The initial dose of sodium pentothal could sensitize Mr. Champion's pharynx, causing him to choke, gag, and vomit. He would be at risk of aspirating his vomitus or swallowing his tongue and suffocating.

14. If the flow of the solution during the initial injection of sodium pentothal is too fast, Mr. Champion is likely to suffer a violent muscular reaction. It is very likely that an unskilled technician would fail to detect the improper flow rate.

15. Furthermore, it is likely that Mr. Champion's heart activity will not be adequately monitored because the EKG monitoring pads attached to him will become detached because faced with imminent execution, it is likely that he will sweat, the moisture of the skin will cause the pads

to come loose, and this circumstance will not be detected, causing the risk that any state of medical distress or other emergency will not be detected.

16. These risks increase significantly where proper comprehensive procedural safeguards are lacking.

17. In examining whether a method of execution is "unconstitutionally cruel," the court is to look at the "degree of risk" involved in its administration. (*Fierro v. Gomez, supra,* 865 F. Supp. at 1411, discussing *Campbell v. Wood* (9th Cir. 1994) 18 F.3d 662.) Factors to be considered in this assessment include the amount of pain involved and the immediacy of unconsciousness. (*Id.* at 1410-1411 [interpreting the authorities cited in *Campbell*]. The *Fierro* court interpreted *Campbell* to suggest that "the persistence of consciousness 'for over a minute' or for 'between a minute and a minute-and-a-half, but no longer than two minutes' might be outside constitutional boundaries." (*Id.* at 1411.) There have been many instances where execution by lethal injection has been prolonged, extending the amount of psychological pain inflicted.

18. In 1982, Charles Brooks of Texas was the first person executed by lethal injection in the United States. The Warden of the Texas prison reportedly mixed all three chemicals into a syringe. The chemicals had precipitated; thus, the Warden's initial attempt to inject the deadly mixture into Brooks failed.

19. On March 13, 1985, in Texas, Stephen Peter Morin laid on a gurney for forty-five minutes while his executioners repeatedly pricked his arms and legs with a needle in search of a vein suitable for the lethal injection. *See* Graczyk, *Convicted Killer in Texas Waits 45 Minutes Before Injection is Given*, Gainesville Sun (Mar. 14, 1985); *Murderer of Three Women is Executed in Texas*, N.Y. Times (Mar. 14, 1985). The problem associated with the execution

prompted Texas officials to review their lethal injection procedures for inmates with a history of drug abuse. (*Id.*)

20. Over a year later, on August 20, 1986, Texas officials experienced such difficulty with the procedure that Randy Wools had to help his executioners find a good vein for the execution. *See Texas Executes Murderer*, Las Vegas Sun (Aug. 20, 1986).

21. Similarly, on June 24, 1987, in Texas, Elliot Johnson laid awake and fully conscious for thirty-five minutes while Texas executioners searched for a place to insert the needle.

22. On December 13, 1988, in Texas, Raymond Landry was pronounced dead 40 minutes after being strapped to the execution gurney and 24 minutes after the drugs first started flowing into his arms. Two minutes into the execution, the syringe came out of Landry's vein, spraying the deadly chemicals across the room towards witnesses. The execution team had to reinsert the catheter into the vein. The curtain was pulled for 14 minutes so witnesses could not observe the intermission. *See* Graczyk, *Landry Executed for '82 Robbery Slaying*, Dallas Morning News (Dec. 18, 1988); Graczyk, *Drawn-Out Execution Dismays Texas Inmates*, Dallas Morning News (Dec. 15, 1988).

23. On May 24, 1989, in Huntsville, Texas, Stephen McCoy had such a violent physical reaction to the drugs (heaving chest, gasping, choking, etc.) that one of the witnesses fainted, crashing into and knocking over another witness. Karen Zellars, a Houston attorney who represented McCoy and witnessed the execution, thought the fainting would catalyze a chain reaction among the witnesses. The Texas Attorney General admitted that the inmate "seemed to have a somewhat stronger reaction," adding, "[t]he drugs might have been administered in a heavier dose or more rapidly." *See Man Put to Death for Texas Murder*, N.Y. Times (May 25,

1989); *Witnesses to an Execution*, Houston Chronicle (May 27, 1989).

24. On January 24, 1992, in Arkansas, it took the medical staff more than 50 minutes to find a suitable vein in Rickey Ray Rector's arm. Witnesses were not permitted to view this scene, but reported hearing Rector's loud moans throughout the process. During the ordeal, Rector, who suffered serious brain damage from a lobotomy, tried to help the medical personnel find a vein. The administrator of the State's Department of Corrections Medical Programs said, paraphrased by a newspaper reporter, "the moans came as a team of two medical people, increased to five, worked on both sides of Rector's body to find a suitable vein." The administrator said that may have contributed to his occasional outbursts. *See* Farmer, *Rector, 40, Executed for Officer's Slaying*, Arkansas Democrat-Gazette (Jan. 25, 1992); Clinesmith, *Moans Pierced Silence During Wait*, Arkansas Democrat-Gazette (Jan. 26, 1992).

25. On March 10, 1992, in Oklahoma, Robyn Lee Parks had a violent reaction to the drugs used in the lethal injection. Two minutes after the drugs were administered, the muscles in his jaw, neck, and abdomen began to react spasmodically for approximately 45 seconds. Parks continued to gasp and violently gag. Death came eleven minutes after the drugs were administered. *Tulsa World* reporter Wayne Greene said, "The death looked scary and ugly." *See Witnesses Comment on Parks' Execution*, Durant Democrat (Mar. 10, 1992); *Dying Parks Gasped for Life*, The Daily Oklahoman (Mar. 11, 1992); *Another U.S. Execution Amid Criticism Abroad*, N.Y. Times (Apr. 24, 1992).

26. On April 23, 1992, Billy Wayne White died 47 minutes after his executioners strapped him to the gurney in Huntsville, Texas. White tried to help prison officials as they struggled to find a vein suitable to inject the killing drugs. *See Man Executed in '76 Slaying After Last Appeals*

Rejected, Austin (Tex) American-Statesman (Apr. 23, 1992); *Killer Executed By Lethal Injection*, Gainesville Sun (Apr. 24, 1992); Graczyk, *Veins Delay Execution 40 Minutes*, Austin (Tex) American-Statesman (Apr. 24, 1992); Fair, *White Was Helpful at Execution*, Houston Chronicle (Apr. 24, 1992).

27. On May 7, 1992, in Texas, Justin Lee May had a violent reaction to the lethal drugs. According to Robert Wernsman, a reporter for the *Item* in Huntsville, Texas, May "gasped, coughed and reared against his heavy leather restraints, coughing once again before his body froze . . ." Associated Press reporter Michael Graczyk wrote, "He went into a coughing spasm, groaned and gasped, lifted his head from the death chamber gurney and would have arched his back, if he had not been belted down. After he stopped breathing, his eyes and mouth remained open." Graczyk, *Convicted Texas Killer Receives Lethal Injection*, Plainview, Texas Herald (May 7, 1992); *Convicted Killer May Dies*, Huntsville, Texas Item (May 7, 1992); *Convicted Killer Dies Gasping*, San Antonio Light (May 8, 1992); Graczyk, *Convicted Killer Gets Lethal Injection*, Denison, Texas Herald (May 8, 1992).

28. On May 10, 1994, in Illinois, after the execution of John Wayne Gacy had begun, one of the three lethal drugs used to execute Gacy clogged the tube, preventing the flow of the drugs. Blinds were drawn to block the scene, thereby obstructing the witnesses' view. The clogged tube was replaced with a new one, the blinds were reopened, and the execution resumed. Anesthesiologists blamed the problem on the inexperience of prison officials who conducted the execution. Doctors stated that the proper procedure taught in "IV 101" would have prevented this error. It took fifty minutes to execute Gacy, after the mixed chemicals clogged the tube twice. *See* Karwath and Kuczka, *Gacy Execution Delay Blamed on Clogged T.B. Tube*, Chicago Tribune

(May 11, 1994).

29. On May 3, 1995, Emmitt Foster was executed by the state of Missouri. Foster was not pronounced dead until twenty-nine minutes after executioners began the flow of lethal chemicals into his arm. Seven minutes after the chemicals began to flow, the blinds were closed to prohibit the witnesses' view. Executioners finally reopened the blinds three minutes after Foster was pronounced dead. According to the coroner who pronounced death, the problem was caused by the tightness of the leather straps that bound Foster to the execution gurney. The coroner believed that the tightness stopped the flow of chemicals into the veins. Several minutes after the strap was loosened death was pronounced. The coroner entered the death chamber twenty minutes after the execution began, noticed the problem, and told the officials to loosen the strap so that the execution could proceed.

30. The risk of such prolonged administration of the lethal injection is increased by California's lack of comprehensive standards in defining the procedures.

31. In *McKenzie v. Day* (9th Cir 1995) 57 F.3d 1461, 1469, the court held that execution by lethal injection under the procedures that had been defined in Montana was constitutional. The Court of Appeals explained that those procedures passed constitutional muster because they were "reasonably calculated to ensure a swift, painless death." (*Id.*) Such a statement cannot be made about the procedures in California. A swift, painless death cannot be ensured without standards in place to ensure that the lethal chemicals will be administered to Mr. Champion is a competent, professional manner by someone adequately trained to do so.

32. Similarly, in *LaGrand v. Lewis* (D.Ariz. 1995) 883 F.Supp. 469 appeals pending, Nos. 95-99010 & 95-99011 (9th Cir., argued Mar. 22, 1996), the district court upheld the written

Internal Management Procedures prescribing standards for the administration of lethal injection because "they clearly indicate that executions are to be conducted under the direction of the ASPC-Florence Facility Health Administrator, knowledgeable personnel are to be used, and the presence of a physician is required." Such procedures are not found in the document released by the California Department of Corrections. (*See also Poland v. Stewart* (9th Cir. 1996) 92 F.3d 881, 892 [also upholding the Arizona injection procedures]).

33. California's use of lethal injection in the administration of the death penalty fails to protect condemned prisoners from unnecessary pain and suffering, violating the Eighth Amendment of the Constitution. The risk of inflicting such cruel and unusual pain is enhanced with the lack of established, comprehensive protocols. Accordingly, Mr. Champion's death judgment must be vacated.

XVIII.

PETITIONER'S DEATH SENTENCE VIOLATES INTERNATIONAL LAW

Petitioner was denied his right to a fair trial, appeal and habeas by an independent tribunal, and his right to the minimum guarantees for the defense under customary international law as informed by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the American Declaration of the Rights and Duties of Man (American Declaration). (*See* Exhibit 82 -- *People v. Stephen Jenkins,* Argument XXXII; *see also* Exhibits 83 — *State v. Makwayanyane and M. Mchunu,* Constitutional Court Opinion and 84 -- International Commission of Justice Report.)

1. Additionally, the death penalty is imposed based on racial considerations throughout California and the United States in violation of customary international law as evidenced by the equal protection provisions of the above-mentioned instruments and of the International Convention Against All Forms of Racial Discrimination. (*Id.*)

2. The factual and legal issues presented in this case demonstrate that petitioner was denied his right to a fair and impartial trial, appeal and habeas in violation of customary international law as evidenced by Articles 6 and 14 of the International Covenant on Civil and Political Rights as well as Articles 1 and 26 of the American Declaration. (*Id.*)

3. The racial discrimination endemic in the death penalty process violates customary international law, as evidenced by Articles 2, 6, and 26 of the International Covenant of Civil and Political Rights, Article 2 of the American Declaration, and the Convention Against All Forms of Racial Discrimination. (*Id.*)

4. The due process violations and discrimination that petitioner suffered throughout his

trial and sentencing phase are prohibited by customary international law. The United States is bound by customary international law, as informed by such instruments as the ICCPR and the Race Convention. The purpose of these treaties is to bind nations to an international commitment to further protections of human rights. The United States must honor its role in the international community by recognizing the human rights standards in our own country to which we hold other countries accountable. (*Id.*)

5. As the ICJ found:

> Under the Rule of Law, the application of the death penalty in an unjust and racially discriminatory manner is unacceptable. Alleged perpetrators of serious crimes should and must be brought to justice, however, they must also be dealt with in accordance to justice. This report of the ICJ mission provides a disturbing account of the difficulties involved -- even for a country which is regarded by many as the world's leading democracy and protector of basic individual rights and freedoms -- in ensuring that the implementation of the death penalty is in accordance with accepted international norms and its obligations under ratified international human rights instruments. More needs to be done, and the ICJ urges the United States and other countries with death penalty sentencing -- including India and Nigeria -- to take the necessary steps to ensure that there is greater compliance with their international obligations." (Exhibit 81.)

6. As a result of these violations, petitioner's unlawful death sentence must be set aside.

XIX.

PRAYER FOR RELIEF

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;

2. Authorize Mr. Champion to conduct discovery with respect to the claims pleaded herein;

3. Permit Mr. Champion a reasonable opportunity to fully develop the facts and law relevant to the claims raised herein, and to amend this petition to include claims which become apparent from further investigation or from allegations made in the informal response or the return to the petition;

4. Issue an order to show cause, returnable before this Court, why Mr. Champion's convictions, special circumstance findings, and death judgment should not be set aside;

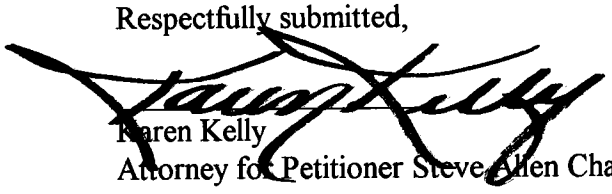
5. Grant an evidentiary hearing on the claims pleaded herein, and on any claims which are the subject of a supplemental or amended petition;

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

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

DATED: October 31, 1997

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 one of the attorneys 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 petition for writ of habeas corpus on 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 petition for writ of habeas corpus and know the contents of the petition to be true.

Signed October 31, 1997, at Modesto, California.

KAREN KELLY 118105

PROOF OF SERVICE

I am a citizen of the United States and employed in the Stanislaus County. I am over 18 years of age and 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:

PETITION FOR WRIT OF HABEAS CORPUS (2 volumes)

plus

EXHIBITS

13 VOLUMES PENALTY PHASE IAC (exhibits numbered 1-240)

4 VOLUMES GUILT PHASE CLAIMS AND OTHER CLAIMS (exhibits numbered 1-84)

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:

Lisa Brault
Deputy Attorney General
300 South Spring Street, Suite 500
Los Angeles, CA 90013

I, Lori Tilly, declare under penalty of perjury under the laws of the State of California and these United States that the foregoing is true and correct.

Executed on November 3, 1997 at Ceres, California.

Lori Tilly