

LAW OFFICES
ROBERT R. BRYANROBERT R. BRYAN
MEMBER CALIF., ALA. & NEW YORK BAR
RRATANLAWSF@AOL.COMJILL CULBERT
MEMBER CALIF. BAR
JILLCULBERT@AOL.COMMARY BRESNAN
PARALEGAL
MARY@ALLENLAW.COM2008 UNION STREET, SUITE 4
SAN FRANCISCO, CALIFORNIA
94123-4124

June 14, 2006

TELEPHONE (415) 292-2400
FACSIMILE (415) 292-4878NICOLE GIBIER
RESEARCH
NICOLEZSF@AOL.COMPAUL D. ANDERSON
(945-1901)Hon. Frederick Ohlrich, Clerk
Supreme Court of California
350 McAllister Street
San Francisco, California 94102-4783Re: *In re Panah*, No. S045504 (death penalty)
Exhibits 22-29

Dear Mr. Ohlrich:

Enclosed please find additional exhibits in support of various claims presented in the Petition for Writ of Habeas Corpus pending in the above-referenced matter. The new exhibits were obtained through the process of post-conviction discovery pursuant to the newly enacted Penal Code section 1054.9 and *In re Steele* (2004) 32 Cal. 4th 682, and could not have been obtained earlier.

Exhibit 22, Supplemental Report, Keith E. Petersen Inman, Senior Forensic Scientist, Forensic Analytical, May 25, 2006

This is offered in support of Claims 2, 3, 5, 6, and 17. It supplements Exhibit O, Forensic Analytical serology and DNA report, Feb. 27, 2004. It is based upon a forensic analysis of new evidence received on January 25, 2006 from the Los Angeles Police Department's Scientific Investigation Division. The state had previously incorrectly represented that it has produced all lab material relating to the case; then the new material was discovered pursuant to my urging that more had to be in their files. The Supplemental report explains relevant part concerning the discovery:

This review supplements one written on February 27, 2004, by Lisa Calandro of our office. It is based upon new discovery material received on January 25, 2006 from the Los Angeles Police Department's Scientific Investigation Division.

In her February 2004 report [Exhibit O], Ms. Calandro notes that inconclusive DNA results were obtained for two items of evidence, Item 55, a bedsheet, and Item 60, a kimono. She notes that

The meaning of the "inconclusive" finding cannot be determined without additional information such as photographic quality copies of the typing strips. (pages 7 and 9 of her report)

This review was conducted to resolve the issue of "inconclusive findings" for the DNA results from these samples.

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I received for review, from Larry Blanton of the Los Angeles Police Department's Scientific Investigation Division, color copies of 6 pages of "DNA Hybridization Records," including records 309, 310, 315, 316, 317, and 318. According to the notes that I have reviewed, all of the DNA typing of the samples of interest are contained in these records.

Each record consists of a table listing the samples typed, including information about the tube number, Item number, description (which typically contains the case number and sample analyzed), hybridization volume, and results. Also recorded are the lot numbers of reagents used, the date the samples were typed, and the initials of the primary and confirming analysts. Finally, a photograph of the typing strips is present on the record. For all but record 309, black and white photographs were taken. Record 309 contains a color photograph of the typing strips.

Exhibit 22, Supplemental Report, Keith E. Petersen Inman, Senior Forensic Scientist, Forensic Analytical, May 25, 2006.

Exhibit 22 supports Claim 2 which relates to the presentation of misleading forensic evidence by a prosecutor who was subsequently disbarred for being a pathological liar. It squarely related to Claim 3, in that the "biological evidence developed during the investigation and presented at trial did not support the hypothesis that intimate sexual contact occurred between Petitioner and the deceased since the serology evidence presented at trial was misleading, inconclusive, and the product of prosecutorial misconduct and ineffective assistance of trial counsel . . ." This exhibit also supports Claims 5 and 6 since it further proves that defense counsel did not investigate, develop and present available evidence at the guilt and penalty phases bearing upon Petitioner's degree of culpability and would have been in mitigation. Finally, Exhibit 22 establishes that Petitioner "has been denied discovery of material crucial to the identification, development, and presentation of claims on habeas corpus." Finally, the exhibit establishes the contention in Claim 17 that "Petitioner has been denied discovery material crucial to the identification, development and presentation of claims on habeas corpus."

This exhibit is appropriate for review in the pending habeas corpus proceedings because of the prosecution's long delay in producing essential discovery material that is exculpatory in nature. Further, Exhibit 22 must be considered in light of the decision earlier this week in *House v. Bell* (June 12, 2006) ___ U.S. ___, 2006 WL 1584475, which concerns DNA evidence and innocence.

Exhibit 23, Los Angeles Police Department note

This handwritten note was found in the early part of the discovery material. It states that "all paper-clipped areas are documents which have been withheld" from the defense, and is directed to Detective Duane Burris, Los Angeles Police Department. This is offered in support of Claim 2 which asserts "prosecutorial misconduct" at trial. It also relates to Claim 17 since the prosecution "denied discovery material crucial to the identification, development and presentation of claims on habeas corpus."

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Exhibit 24, Preliminary Investigation report, Los Angeles Police Department, Nov. 22, 1993
Exhibit 25, Hitman Information Form, Case Information, Los Angeles Police Department, Nov. 22, 1993

Petitioner asserts that Exhibits 24 and 25 contain exculpatory evidence and bears upon third party guilt. Both list an address other than that of Petitioner where the body of the deceased was found. He lived in apartment 122, but the reports state that the deceased was found in 126 which contradicts the evidence presented at trial. Exhibit 24 also documents that Petitioner was "heavily sedated on sleeping pills." Finally, Exhibit 25 provides that "the cause of death is poss. suffocation" rather than strangulation as contended by the prosecution at trial.

The exhibits are offered in support of Claim 14, because Petitioner contends they contain facts "creating reasonable doubt as to Petitioner's culpability and evidence also exists that demonstrates the death of the deceased was unintentional and accidental . . ." They are also relevant to Claims 5 and 14 because his trial attorney did not uncover and present the evidence bearing upon the issue of reasonable doubt. The exhibits support Claim 17 that "Petitioner has been denied discovery material crucial to the identification, development and presentation of claims on habeas corpus."

Exhibit 26, Area Broadcast, West Valley Division, Los Angeles Police Department, Nov. 20, 1993
Exhibit 27, Telephonic Interview, Jan. 25, 1994

Petitioner contends that the exhibits related to the issue of reasonable doubt since Ahmad Seihoon, who had been in his apartment the morning the deceased disappeared, should have been viewed as a suspect. Exhibit 25 establishes that the child was last seen at 11:15 AM, so she disappeared around the time Mr. Seihoon left the apartment. Petitioner also contends that his behavior when the father came to his apartment door as indicated in Exhibit 27, bears on the reasonable doubt issue. The exhibits support Claim 5 as to the ineffective assistance of counsel, and Claim 14 both as to reasonable doubt and the deficient representation provided by his appointed attorney. They also support Claim 17 that "Petitioner has been denied discovery material crucial to the identification, development and presentation of claims on habeas corpus." Petitioner feels that this evidence relates to the issues of third-party guilt. (*Holmes v. South Carolina* (May 1, 2006) ___ U.S. ___, 126 S.Ct. 1727.)

Exhibit 28, Time Line, Nov. 20-21, 1993

Petitioner points out that this establishes Ahmad Seihoon left the apartment with a suitcase, had contact with the deceased, and contradicts trial testimony regarding searches of his closet. Further, it impeaches the testimony of Rauni Campbell. In fact he told her "they made him do something," rather than having done "something very bad" in connection to the homicide as she testified at trial. This supports the reasonable doubt issue and third-party guilt presented in Claim 14, and further bears upon the ineffective assistance of trial counsel in failing to investigate and present a defense as contended in Claim 5. (*Holmes v. South Carolina, supra*, ___ U.S. ___, 126 S.Ct. 1727.) The exhibit supports Claim 17 that "Petitioner has been denied discovery material crucial to the identification, development and presentation of claims on habeas corpus."

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**Exhibit 29, "Susp. psycho-seyso. according to Dr. Hospitalized 4 yrs. ago. O.D. . . Men in hoods 2. .
. . The dragon fly in hand is good too."**

Exhibit 29 is evidence further proving that Petitioner suffered from mental illness, had a history of psychiatric problems including overdosing on drugs, and made irrational statements, e.g., "dragon fly in hand is good too." It provides evidentiary support for Claims 5 and 6 since it bears on both a mental defense at the guilt phase, and would have been mitigating at the penalty phase. The exhibit also bears on the mental incompetence issue in Claim 9. Exhibit 29 also pertains to Claim 14, reasonable doubt and third-party culpability, since it mentions that "the men in hoods" were responsible—"they did." In addition, this is consistent with that found in the previously submitted suicide note of Petitioner. (Reply To Informal Response, Exhibits 4-5, Aug. 10, 2005.)

A Declaration of Service By Mail is attached. It is understood that CAP will prepare and submit CDs for the remaining copies of the exhibits.

Your courtesy is appreciated.

Yours very truly,



Robert R. Bryan
Attorney for Petitioner,
Hooman Ashkan Panah

RRB/bm