

ATTACHMENT B

DECLARATION OF FRED LEATHERMAN

Fred Leatherman declares and states as follows:

1. I am a lawyer. For much of my career I practiced law in the State of Washington. My primary field of practice was criminal defense. In 1993 I was appointed to represent Darold R. Stenson in a murder prosecution in Clallam County Washington. The State was seeking the death penalty.
2. Mr. Stenson went to trial and was convicted. In addition, the jury returned a death verdict. During trial and after Mr. Stenson questioned the effectiveness of my representation. It is safe to say our relationship was very poor. At one point, I told the court that I could not stand the sight of Mr. Stenson.
3. David Neupert, a local Clallam County attorney, was appointed to assist me in the representation of Mr. Stenson. I was lead counsel and made all the decisions as to how to proceed.
4. At all times during the case and after Mr. Stenson maintained that he was absolutely innocent. He maintained that he was innocent during interviews with the police before his arrest. There was no doubt in my mind that Mr. Stenson wanted to win the guilt phase of the trial. That was his goal and his hope. Based on my investigation, I did not think Mr. Stenson could win at trial and, as a result, my focus was the penalty phase of the case. That focus was a primary force in the deterioration of the relationship I had with Mr. Stenson. At one point, his family complained about my effectiveness to the press. That complaint was reported in the local newspaper and angered me. From that

point forward, I had virtually no meaningful communication with Mr. Stenson. I did not seek his opinion as to how to proceed. When court convened the next morning, I referenced the article and orally moved the court to permit me to withdraw, but the court denied my motion. From that point forward, I decided not to meet with Mr. Stenson alone in the attorney-client conference room in the jail because there was no physical barrier between us and I feared for my physical safety. My co-counsel, Mr. Dave Neupert, agreed to serve as my go-between and all of my communications with Mr. Stenson went through Mr. Neupert, unless Mr. Neupert or Mr. Walker, the defense guilt-phase investigator, accompanied me and were present during the meeting with Mr. Stenson.

5. My guilt phase investigation failed to generate meaningful evidence of Mr. Stenson's innocence. In recent months I have learned that information has been developed suggesting that others were responsible for the murders attributed to Mr. Stenson. My investigation did not identify these suspects. I have been advised that David Oberman, who lived on Mr. Stenson's property, is an associate of those suspects. I never conducted an investigation into the possibility that Mr. Oberman might have committed the murders.

6. At the time I was representing Mr. Stenson I had an expertise in DNA evidence. The bulk of my effort at the trial portion of Mr. Stenson's case was designed to keep DNA evidence from the jury. I was successful in that quest but, in the process, did not develop information consistent with Mr. Stenson's claim of innocence.

7. I told the jury, without Mr. Stenson's permission, after they had convicted Mr. Stenson, that we accepted the verdict. Mr. Stenson did not accept the verdict. My telling the jury that "we" accepted the verdict was inappropriate, unauthorized, and undermined even more my relationship with Mr. Stenson. Obviously, that concession did not help in the penalty phase. In the penalty phase, I did nothing to advance a verdict of other than death based upon the principle of "residual doubt." I could have, but I chose not to so because I did not believe the jury had any residual doubt. In retrospect I believe this was a serious mistake.

8. At the time I was representing Mr. Stenson my marriage was deteriorating and that fact was stressful and distracting. Together with my ongoing difficulties with Mr. Stenson, I must admit that I was impatient and angry most of the time. I was convinced that my judgment was infallible. I considered Mr. Stenson's claim of innocence to be ridiculous under the circumstances as I understood them to be. I recall impatiently and angrily cutting him off many times when he insisted he was innocent in spite of the evidence. I told him over and over again that his case wasn't about winning or losing; it was about living or dying and he damn well better understand that because his case was unwinnable. I spoke harsh words and, in retrospect, I believe I was arrogant and too full of myself. As a result, I may have failed to recognize and develop exculpatory evidence.

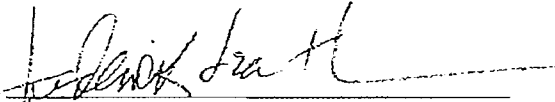
9. I am wiser now. In retrospect, there is no doubt that I should have withdrawn from this representation. I should have told the trial judge that I could not and would not represent him anymore, given the circumstances of our relationship. If I had it

to do over again, I would do it differently. Under the circumstances, I understand and appreciate why Mr. Stenson challenges the adequacy and effectiveness of my representation. While it is not for me to judge my effectiveness, the information in this declaration is relevant to a decision maker's opinion.

10. I am making this statement freely and voluntarily.

I declare under penalty of perjury that the foregoing is true and correct.

Dated April 10, 2009.



Fred Leatherman