

abeyance of this cause is warranted, the Court will direct the parties to furnish this Court with information regarding the precise nature of petitioner's DNA-testing requests and the current status of those requests in the state courts.

More specifically, this Court wishes to know whether (1) any of the materials identified in petitioner's motion for reconsideration, filed April 25, 2006, are, in fact, currently in existence and in proper condition to permit them to be subjected to DNA-testing, (2) petitioner has yet exhausted all avenues available under state law for DNA-testing those materials identified in petitioner's motion for reconsideration, and (3) any valid reasons currently exist at this juncture for continuing to hold this cause in abeyance.

The parties are advised this Court will not hold this cause in abeyance indefinitely. The parties should also be advised, pursuant to the Supreme Court's holding in *House v. Bell*, discussed in this Court's Order of August 2, 2006, once the state courts have finally resolved petitioner's request for DNA-testing, this Court will entertain a motion permitting petitioner to obtain DNA-testing of any materials currently in existence which petitioner identified in her motion for reconsideration and which the state courts have refused to make available for such testing. As best this Court can tell from the information before it, the state courts required more than four years to rule on petitioner's initial request for DNA-

testing. This Court will not require a period even vaguely resembling four years to rule on a similar request, provided the parties furnish this Court with all necessary information. Toward that end, it would be helpful if the parties advised the Court with regard to whether any of the materials petitioner has identified in her motion for reconsideration are currently in existence of otherwise in proper condition to be subjected to modern DNA-testing procedures. Absent some determination as to whether there is anything left to test at this juncture, continuing the stay in this cause is a useless act.

Accordingly, it is hereby **ORDERED** that:

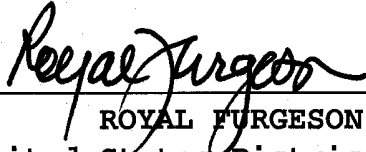
1. On or before thirty days from the date of this Order, both parties shall file advisories setting forth their respective positions on whether (1) any of the materials identified in petitioner's motion for reconsideration, filed April 25, 2006, are, in fact, currently in existence and in proper condition to permit them to be subjected to DNA-testing, (2) petitioner has yet exhausted all avenues available under state law for DNA-testing those materials identified in petitioner's motion for reconsideration, and (3) any valid reasons currently exist at this juncture for continuing to hold this cause in abeyance. The parties are directed to specify in their advisories whether any genuine dispute exists between the parties at this juncture

regarding either the existence of the materials in question or their suitability for modern DNA-testing.

2. In lieu of meeting the directive contained in paragraph 1 above by filing separate advisories, the parties may in their discretion submit a *joint* advisory in the form of a letter to this Court signed by counsel for both parties containing the information requested in paragraph 1 above.

3. Nothing in this Order shall be construed as altering or amending any of the provisions of this Court's Order issued August 2, 2006 staying this cause.

SIGNED AND ENTERED this 21ST day of May, 2008, at San Antonio, Texas.



ROYAL FURGESON
United States District Judge